

# 1990 TITLE IX ATHLETICS INVESTIGATOR'S MANUAL

## SUMMARY/BACKGROUND

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### Key Points:

- Effective date: April 2, 1990
- Updates and supersedes guidance in the 1980 Interim Title IX Intercollegiate Athletics Investigator's Manual and the 1982 memorandum "Guidance for Writing Title IX Intercollegiate Athletics Letters of Findings."
- Creates new policy for the two-part test and formalizes internal working policy.
- Explains terminology, including the concept of offsetting benefits and disparities.
- Lists data request and interview questions for coaches, student-athletes and staff.
- Outlines basic analytical approaches for investigations.
- Includes model documents for use in OCR investigations.

This formal policy document, the "Title IX Athletics Investigator's Manual," was signed and authorized by the Assistant Secretary for Civil Rights on April 2, 1990, after extensive review by several levels of legal staff in OCR headquarters and all of OCR's regional offices (now known as enforcement offices), including all chief regional attorneys. The 166-page Investigator's Manual was drafted for the specific use of OCR's civil rights professionals in conducting intercollegiate and interscholastic athletics investigations, and was issued to achieve consistency among the regional offices in the extent and scope of data collection, analyses, and content for letters of findings (LOF). The Investigator's Manual: creates new policy; confirms internal policy; outlines procedures for Title IX athletics investigations; lists interview and data request questions for the information to be collected; and includes instructions for analysis.

The 1990 Investigator's Manual supersedes OCR's 1980 Interim "Title IX Intercollegiate Athletics Investigator's Manual," which was considered an internal document rather than formal policy, as it was never signed by the Assistant Secretary for Civil Rights. The 1980 manual quoted language from the 1975 Title IX regulation and the 1979 Intercollegiate Athletics Policy Interpretation, and provided very general guidance for data collection and analyses.

The 1990 Investigator's Manual also supersedes OCR's memorandum entitled "Guidance for Writing Title IX Intercollegiate Athletics Letters of Findings," signed by the Deputy Assistant Secretary for Civil Rights on March 26, 1982, which was issued to OCR's regional offices to "supplement" the 1980 Manual and to provide a format for writing letters of findings. The cover memorandum stated that the 1982 LOF Guidance "invalidates certain portions of the Interim Investigator's Manual[.]" which OCR anticipated revising in the coming year. No revision or update was issued until 1990. The intervening "Grove City years," 1984 to 1988, altered OCR's priorities (see the summary at pages 482-483\* of the Supreme Court's ruling in *Grove City College v. Bell* and the effect on enforcement of Title IX and other civil rights laws). The 1982 Memorandum included instructions to separate coaching and tutoring into two program components. The Title IX regulation at 34 C.F.R. § 106.41(c)(5) lists for review, the "Opportunity to receive coaching and academic tutoring;" and at § 106.41(c)(6) the "Assignment and compensation of coaches and tutors[.]" The 1979 Policy Interpretation and the 1980 Interim Manual

reiterated the factors as stated in the Title IX regulation. However, after investigative experience, OCR concluded that combining coaching and tutoring factors led to involved and inappropriate analyses. Thus, the 1982 LOF Guidance instructs investigators to combine the opportunity to receive tutoring and the assignment and compensation of tutors into one program component, and the opportunity to receive coaching and the assignment and compensation of coaches into a second program component. The 1990 Investigator's Manual confirms this approach, and OCR has followed these investigative and analytical procedures since issuing the 1982 Memorandum.

The 1990 Investigator's Manual includes issuance of new policy for the two-part test for levels of competition (see pages 44-45\* and 455-456\* regarding this policy change). The Investigator's Manual also formalizes OCR's internal policy of using statistical tests to determine compliance for athletic scholarships. Use of these statistical tests was deemed appropriate per the legal opinion of OCR headquarters and chief regional attorneys, based on existing case law at the time the 1990 Investigator's Manual was issued. OCR issued new policy for scholarships in 1998 (see pages 423-429\*).

\* Refers to page numbers in the self-evaluation manual and desk reference entitled: "Title IX and Intercollegiate Athletics: How It All Works – In Plain English."