

Title IX Athletics HANDBOOK

TITLE IX OVERVIEW

Title IX:

- prohibits sex discrimination in education programs
- is a federal law, enacted by Congress in 1972
- covers all aspects of education programs including:
 - admissions and recruitment
 - access to academic courses and extracurricular activities
 - treatment of students
 - employment

Title IX is enforced nationwide by the Office for Civil Rights (OCR) within the U.S. Department of Education, which has 12 enforcement offices nationwide and a headquarters office in Washington, D.C. OCR investigates complaints, conducts compliance reviews (agency-initiated investigations), and provides technical assistance. The Title IX statute was written by the U.S. Congress. Subsequent policy documents were written by OCR. The major policies for athletics are:

- 1972 Title IX statute
- 1975 Title IX regulation (implementing the statute)
- 1975 Memorandum—Elimination of Sex Discrimination in Athletics Programs
- 1979 Intercollegiate Athletics Policy Interpretation
- 1990 Title IX Athletics Investigator's Manual
- 1996 Policy Clarification for the Three-Part Test
- 1998 Athletics Scholarship Guidance

The 1979 Intercollegiate Athletics Policy Interpretation is OCR's major policy for athletics; this document also applies to high school and middle school athletics programs.

IX H A N D B O O K

Intercollegiate, Interscholastic, Club, and Intramural Programs. Title IX views intercollegiate, interscholastic, club, and intramural programs as four separate programs. Although the same access and treatment policies apply to all four types of athletics programs, the opportunity to become a participant and the treatment of those participants within each program are reviewed separately for compliance. The opportunities and treatment of athletes in club programs do not affect compliance for intercollegiate or interscholastic programs; for example, offering a club team for lacrosse does not relieve the institution of an obligation to consider offering an intercollegiate or interscholastic lacrosse team. This Handbook specifically addresses intercollegiate athletics programs.

Total Program Approach Determines Compliance. Title IX does not require identical programs for men and women or identical benefits for women's and men's teams in the same sports. Title IX imposes no requirements related to the level of quality of that program; in effect, whether the institution offers an excellent, mediocre, or poor quality program. Title IX only requires that the program be equally excellent, equally mediocre, or equally poor for male and female students. This requirement concerns the overall athletics program, as Title IX imposes no requirements by sport, such as for basketball, football, or volleyball.

Title IX ***does not require*** educational institutions to:

- offer an athletics program
- offer a good athletics program
- be a member of an athletics conference
- offer certain sports
- provide coaches
- provide facilities
- provide equipment, scholarships, transportation, or any other benefits

The Title IX perspective – quite simply – is that institution administrators choose: whether to offer an athletics program; how many teams to offer; how many coaches to hire; what facilities to provide; what equipment each team will receive; the modes of transportation; whether to award athletic scholarships; the quality of benefits; and whether to become a member of a national, regional, and/or local athletics conference. In making all of these choices, institution administrators are not at liberty to choose noncompliance with Title IX. The obligation to comply with the Title IX requirements for equal access and equivalent treatment does not evaporate because: institution officials choose to operate their athletics program as a business; or some sports are more popular than others; or some teams make money and others do not; or some coaches choose to fundraise, while others do not; or because donors donate to some teams but not other teams, etc. The bottom line for Title IX compliance does not change.

Title IX is a federal civil rights law. Civil rights laws have two major provisions: equal access to get in to the program; and equivalent treatment of those who have gained access. The Title IX athletics policies follow this same pattern; the equal access provision is the three-part test within the program component of the "accommodation of interests and abilities." Equivalent treatment requirements are addressed by twelve additional Title IX program components: athletic scholarships, and eleven other athletic benefits and opportunities:

The access issue:

- **accommodation of interests and abilities (includes the three-part test)**

The treatment issues:

- **athletic scholarships**

other athletic benefits and opportunities (11 program components):

- **equipment**
- **scheduling**
- **travel**
- **tutoring**
- **coaching**
- **facilities**
- **medical services**
- **housing, dining services**
- **publicity**
- **support services**
- **recruitment**

Different sports may be emphasized for men and women. This means that institutions may provide benefits for the men's basketball team that are superior to those for the women's basketball team if this is offset, for example, by providing benefits to the women's lacrosse team that are superior to those for the men's wrestling team.

Offsetting benefits refers to situations where students of one gender are provided an advantage in some aspect of the program, while students of the other gender are provided an advantage in a different aspect of the program. If the benefits are of equivalent weight or importance, they may "offset" each other or provide a balance of benefits; in effect, comply with Title IX. Institution officials have the flexibility to provide offsetting benefits within a factor, within a program component, or among the combined eleven program components under "other athletic benefits and opportunities," in effect: equipment; scheduling; travel; tutoring; coaching; facilities; medical and training services; housing and dining services; publicity; support services; and recruitment. For example, if the overall women's program is disadvantaged in the program area of equipment, this may be offset by providing women's teams with benefits superior to men's teams in scheduling games and practices. Determining whether benefits are truly offsetting requires judgment that is within OCR's purview.

Generally, it is simpler to provide offsetting benefits within a program component rather than between program components, as providing offsetting benefits presents a continuous administrative challenge to ensure gender equity. Furthermore, it is very unusual for a review of the benefits for all men's and women's teams in any single Title IX program area to reveal advantages for women. When one gender is disadvantaged, it is nearly always women.

Compliance findings for the accommodation of interests and abilities, which incorporates the three-part test, are independent of all other findings. Findings for athletic scholarships are also independent of all other findings.

Sport-to-sport comparisons are useful for analysis and identifying differences in benefits, but again, compliance determinations are dependent upon comparing the total women's program to the total men's program. For example, for a program with ten men's teams and eleven women's teams, the benefits provided to all ten men's teams must be compared to those provided to all eleven women's teams before a compliance determination can be made. A review of benefits for the more popular sports, Olympic sports, revenue-producing sports, highest tier sports or any other subdivision is incomplete, and therefore, inaccurate. Also, compliance is based on what the students actually receive, not what is planned or budgeted for them. Title IX compliance is based on actions, not intent.

MONEY

Title IX DOES NOT REQUIRE EQUAL FUNDING for:

- the women's and men's overall athletics programs
- women's and men's teams in the same sport
- the same benefit, such as equipment or transportation, for men's and women's teams in the same sport

However, **Title IX DOES NOT PERMIT DISPARATE BENEFITS** by gender due to:

- lack of funds
- fundraising efforts of coaches and staff
- donations
- booster club contributions
- endowments
- student fees

Fundraising. Title IX neither requires nor prohibits fundraising. Title IX only requires that fundraising opportunities not be limited or imposed discriminatorily; for example, men's teams are allowed to fundraise for additional benefits while women's teams are not; or men's teams are provided priority for the more lucrative fundraising opportunities; or men's teams are given benefits that women's teams must pay for through fundraisers. If women's coaches must conduct more extensive fundraising to purchase the same level of benefits provided to men's teams, this affects the availability of coaches who must spend inordinate time fundraising to supplement the operating budgets for their teams. Such imbalances create compliance problems. Athletes may not receive lesser benefits based on gender because their coach is not as successful at fundraising as other coaches. In other words, the benefits for student-athletes cannot be dependent upon coaches' ability to fundraise. Institutions should ensure that equitable benefits are provided program-wide for female and male athletes, regardless of coaches' fundraising success.

Booster Clubs. In September 1975, OCR issued a nationwide memorandum to Chief State School Officers, Superintendents, College and University Presidents and others providing general guidance on Title IX athletics requirements, per the Title IX regulation issued two months before. Among other provisions, the September 1975 Guidance states specifically:

“[T]he fact that a particular segment of an athletic program is supported by funds received from various other sources (such as student fees, general revenues, gate receipts, alumni donations, booster clubs, and non-profit foundations) does not remove it from the reach of the statute and hence of the regulatory requirements.”

In other words, the source of funding may not justify sex discrimination. Booster clubs, athletic foundations, or similar organizations may provide financial support to specific teams or the entire intercollegiate athletics program. Booster clubs may be independent and not subject to Title IX. Regardless, any benefits provided by a booster club are viewed under Title IX as provided by the institution, and are subject to Title IX. If booster clubs provide benefits that create disparities based on gender, the institution is responsible for offsetting those disparate benefits. For example, the athletic department’s assignments for coaching availability are equitable, but the booster club pays stipends for additional football and men’s basketball coaches. The institution is then liable for the disparate coaching availability disadvantaging women. In this example, the institution may address this compliance problem by hiring additional coaches for women’s teams, or by not allowing the additional coaches to work with the football and men’s basketball teams.

General Guidance. At many institutions, coaches have discretion about spending for equipment, team travel, recruitment travel, and even stipends for assistant coaches. Often, the overall women’s program is under funded in comparison to the men’s program. When coaches have discretion regarding expenditures, the disparate funding is manifested as compliance problems in different Title IX program areas. Those areas tend to be recruitment and team travel, but also equipment and benefits such as pre-game and post-game meals. Identifying the compliance concerns in each area will lead to identifying appropriate resolutions. Those resolutions may involve increasing funding for women’s teams, reallocating funding from men’s teams to women’s teams, or reducing funding to men’s teams.

IDENTIFYING COMPLIANCE PROBLEMS

A difference in benefits between women’s and men’s teams is not a compliance problem. A difference in benefits that creates a disadvantage for students based on gender is a compliance problem, or “disparity.” The higher the percentage of athletes affected by any disparity, the more serious the problem. The more important the benefit, the more serious the compliance problem when an imbalance in benefits exists. For example, scholarships that pay for students’ educations are more important than whether a coach has a private office, so a compliance problem for scholarships is more serious than a compliance problem for office space. The margin for error is smaller for the most important benefits, such as the opportunity to participate, scholarships, coaching, facilities, and recruitment. Some benefits are minor, such as practice t-shirts or the pep band providing entertainment at the games, so the number of teams or percentages of athletes disadvantaged may be greater before significant disparities result.

A violation of Title IX is a denial of equal opportunity that disadvantages student-athletes on the basis of gender program-wide. For both the accommodation of interests and abilities and scholarships, failure to comply with either program component may violate Title IX. Compliance

problems within the other eleven program components do not by themselves violate Title IX unless the problems are egregious. However, disparities are reviewed collectively to determine whether they, in civil rights parlance, create a pattern and practice of discrimination. If so, a series of disparities may rise to the level of a violation. The distinction between a violation and a disparity is important. A violation — and continued refusal by education officials to correct it — is the point at which OCR may initiate proceedings to terminate federal funds to the institution.

IX IX IX IX IX IX IX

ACCOMMODATION OF INTERESTS AND ABILITIES

The Access Issue: THREE-PART TEST

Institutions have three different ways to comply when deciding what sports to offer and how many participants there will be in the athletics program. Schools may:

- 1) offer participation opportunities at rates proportionate to enrollment rates; or
- 2) show continued program expansion for the underrepresented sex; or
- 3) offer every team for the underrepresented sex for which there is sufficient interest, ability, and competition in the school's competitive region

Institutions only need to meet one of these methods, or tests for compliance. Administrators may choose which test, and may change which test from one year to the next. Most colleges and universities choose to comply with test three (by fully accommodating the underrepresented sex, which is nearly always women).

TEST ONE — Proportionality

If choosing to meet test one, the institution must offer participation opportunities proportionate to the full-time undergraduate enrollment. So, if women are 52% of the full-time undergraduate students, then 52% (or very close to 52%) of the intercollegiate athletes should be women.

OCR developed a working definition and counts as participants those athletes who are on the team and on the squad list as of the first date of competition. OCR also developed a mathematical analysis to determine how close is close enough between rates of participation and rates of enrollment. The analysis tolerates about a 1.0 to 2.0 percentage points difference between enrollment and participation rates for the very largest of collegiate athletics programs (for example, 800 or more participants) to as much as a 15 percentage points difference at the smallest of programs — most likely community college programs where only one team each is offered to women and men (likely to be less than 50 total participants). Institutions choosing to comply with test one should plan on two percentage points difference for most programs, and potentially, three and possibly four percentage points difference for programs with 200 or fewer total participants.

COUNT the following as participants:

- count an individual athlete for every team on which she/he competes
- on the squad list as of the first date of competition
- joining the team after the first game
- athletes receiving coaching and practice (including redshirts)
- walk-ons (athletes not receiving scholarships)
- junior varsity, "B" teams, etc.
- medicals – athletes who cannot participate but receive an athletic scholarship
- quit or cut from the team after the first game
- nontraditional season participants *only* if countable contests are held at that time and participation only at that time uses a year of eligibility

DO NOT COUNT the following as participants:

- quit or cut from the team before the first date of competition
- medicals – athletes injured before the first game who do not receive an athletic scholarship
- slots – unfilled positions on the team
- fifth year athletes who have exhausted their eligibility
- male athletes practicing with female athletes
- club or intramural participants
- academically ineligible if athlete cannot receive coaching or practice with the team
- student managers, student trainers, or others who may be on the squad list
- athletes participating *only* in the nontraditional season who do not use a year of eligibility for participating only at that time

Option. Institutions may employ "roster management" to meet test one. Roster management refers to adding or eliminating opportunities on existing teams. This method of adjusting participation — when adjustments are reasonable — may allow an institution to meet test one (proportionality) without the expense of adding a team or the difficulties of discontinuing teams.

Caution. Counting an individual athlete multiple times for their participation in cross country, indoor track, and outdoor track is acceptable. The caution herein, however, is for multiple counts of individual athletes in one program to a much greater extent than the other program. For example, eliminating the men's indoor track team so that men are counted only twice for cross country and outdoor track, while maintaining the women's indoor track team, so that individual female athletes are counted three times for cross country, indoor track, and outdoor track, might be interpreted as numbers manipulation that is inconsistent with the intent of the Title IX policy. Discontinuing the men's indoor track team does not eliminate the male athletes from the track program or reduce the number of regular season contests in which the athletes may compete (per NCAA rules, for example). Thus, if the only disadvantage for men in discontinuing the men's indoor track team is the elimination of indoor track championship opportunities, that would be viewed as a Title IX scheduling issue, not the all-important access issue for equitable participation opportunities under the three-part test.

TEST TWO — Program Expansion

For test two to apply, students of one sex must be underrepresented, in effect, participating at a rate less than their rate of enrollment. When one gender is underrepresented in the intercollegiate athletics program, it is nearly always women. Thus, the institution can meet test two by showing that it has added opportunities for women as their interests and abilities have developed and evolved. This usually means adding a women's team or teams; however, this can also mean adding opportunities on existing teams, if athletes receive coaching and practice and are not just names added to a squad list. Program expansion means increasing the number of participants for the underrepresented gender; it does not mean improving the quality of benefits for the current participants. OCR has not issued any standards for how many opportunities must be added or in what time frames to meet test two. Institutions that have not significantly increased women's opportunities in the last five years, or that have discontinued one or more women's teams in the history of the women's athletics program, are unlikely to comply with test two. (This same approach would be true for men in those rare cases where men may be underrepresented.) It is unusual for schools to meet test two; past studies have shown that only about six percent of the collegiate programs may be meeting test two.

TEST THREE — Full Accommodation

If choosing to meet test three, an institution must offer every team for women (assuming women are underrepresented) for which there is sufficient interest and ability for a viable team, and sufficient competition for that team in the institution's normal competitive region. These three factors of test three — sufficient interest, ability, and competition — must exist before a school is required to add a team under test three. Most often, it is lack of sufficient competition in the institution's normal competitive region that enables an institution to meet test three.

Determining interest and ability means evaluating:

- club sports participation
- intramural sports participation
- elective physical education classes
- high school participation in normal recruitment areas
- community programs – AAU, traveling teams, etc.
- results of any interest surveys

If evaluating all of these programs and any survey results suggests sufficient interest and ability for a team, then the final factor is determining sufficient competition in the institution's normal competitive region. OCR has provided only general guidance that this region is the geographic area in which the institution's athletes primarily compete and includes institutions against which the school may not now compete. To provide some guidance, it is suggested herein that institutions compute the one-way miles to each regular season away event for all teams. At that point, the mileage radius in which about 85% or more of the away trips occur can be a reasonable indicator of the school's normal competitive region. This is a gauge only; it is not a formal requirement or policy. Once identifying the normal competitive region, then whether competition is sufficient will be determined by the number of institutions in the normal competitive region offering sports not currently offered at the school.

TWO-PART TEST — LEVELS OF COMPETITION

The purpose of the two-part test is to prohibit actions such as a university offering a real intercollegiate program for men while offering an intramural quality intercollegiate program for women. Most institutions comply with the two-part test for levels of competition by meeting the first test.

TEST ONE — Levels of Competition: Equivalently Advanced Opportunities

Compliance is achieved when the same or similar percentages of the total contests for women and men are at the appropriate division level. For example, women's teams compete in 11 of 142 total contests outside the school's division level, so 92% (131 of 142) are at the appropriate competitive level. Men's teams compete in 17 of 173 contests outside the division level, so 90% (156 of 173) are at the appropriate competitive level. The two percentage points difference between 92% of women's contests compared to 90% of men's contests is not significant. While there is no percentage point difference that defines compliance, differences of five percentage points or more should be avoided. Differences up to five percentage points and sometimes more may be justified if coaches and athletes indicate satisfaction with the level of competition.

Junior Varsity, "B" Teams. Junior varsity athletes, "B" team participants, etc., are considered intercollegiate athletics participants under Title IX. A compliance goal is for similar percentages of male and female athletes to be provided opportunities at the junior varsity level. Differences in percentages of female and male athletes provided junior varsity opportunities may be justified by lack of interest or lack of competition. However, a much higher proportion of athletes for either gender participating at the junior varsity or lower levels raises compliance questions under the two-part test for levels of competition. Another caution is that schools should not plan to add junior varsity opportunities in lieu of viable varsity level opportunities in an attempt to meet test one (proportionality) or test two (program expansion) of the three-part test.

TEST TWO — Levels of Competition: Upgrading Competitive Opportunities

Compliance is achieved when a continual improvement in scheduling better competition is demonstrated for the historically disadvantaged sex (nearly always women). Analyzing compliance under this method is rarely necessary since most institutions comply with test one — levels of competition.

CAUTIONS — ELIMINATING TEAMS

If women are underrepresented in the program, then the elimination of a viable women's team would require the school to meet test one — proportionality of the three-part test, as that would be the only realistic option left for compliance. Once a viable women's team is eliminated, the school would not be meeting test two, because it would be unable to demonstrate a history and continuing practice of program expansion for women (unless the school simultaneously added other women's teams to its intercollegiate program); and, the school would not be meeting test three, because it just eliminated a women's team for which there was sufficient interest and ability for the team and sufficient competition. The elimination of a men's team might not create a compliance concern under Title IX — that is, unless men are already underrepresented in the program or become underrepresented once discontinuing the team(s).

IX IX IX IX IX IX IX

ATHLETIC SCHOLARSHIPS

The Title IX requirements for athletic scholarships are simple. Total dollars are to be awarded at rates proportionate to women's and men's rates of participation in the intercollegiate athletics program at or within one percentage point. In effect, if 48.3% of the participants are women, then from 47.3% to 49.3% of the athletic grant dollars are to be awarded to female athletes. OCR has outlined some exceptions to this 1.0 percent policy.

The NCAA, NAIA, NJCAA or other national or regional conferences may set maximum limits for scholarships by sport, including different limits for men's and women's teams in the same sport. Title IX neither imposes nor prohibits such requirements. Title IX only requires that total dollars program-wide be awarded to men and women proportionate to their respective rates of participation.

The challenge is figuring out who to count as participants, and which dollars to include. Participants are counted one time only program-wide, because one athlete can only receive one full scholarship. Fifth year athletes who have exhausted their eligibility are not counted as participants. Fifth year and summer term aid should each be evaluated separately.

Counting Participants

Refer to the lists on page 7 for the athletes to count or not count. The significant difference is that athletes are counted once program-wide. Counting participants one time only program-wide usually results in a different rate of participation from the analyses for the three-part test, where athletes are counted for every team on which they participate. For example, for all other Title IX analyses except scholarships, the number of participants on the cross country and track teams might be: cross country — 19; indoor track — 43; outdoor track — 45, for a total of 107 participants. When single counting student-athletes for athletic scholarships, it may be that 17 of 19 cross country athletes are also on the track teams, while all of the indoor track athletes also compete on the outdoor track team. The single count or unduplicated count of participants would be: cross country — 2; indoor track — 0; outdoor track — 45; thus, the total number of individual participants for the cross country/track programs is 47.

Counting the Money

The dollars to include are athletic grant dollars awarded to participants for athletic ability. In effect, count:

- athletic grant dollars awarded (not budgeted) for athletic ability
- tuition waivers granted for athletic ability

Then:

- divide dollars into three separate categories:
 - regular academic year aid
 - summer term aid — count these dollars separately, and compare the rates of dollars to the rates of participation during the preceding regular academic year
 - fifth year aid — count these dollars separately, and compare to the rates of participation during the regular academic year

Fifth year aid and summer term aid should each be analyzed separately from regular year aid. Not all athletes want or need fifth year or summer term aid, whereas all student-athletes want regular year aid.

Money That Should NOT Be Counted:

- ✧ need-based assistance grants
- ✧ academic scholarships
- ✧ work-study funds
- ✧ dollars from wills and trusts awarded for reasons other than athletic ability
- ✧ “athletic scholarships” awarded to non-participants, such as cheerleaders, student managers, student athletic trainers, etc.

Academic scholarships, need-based aid, and athletic scholarships awarded to non-participants are reviewed under other sections of the Title IX regulation. The dollars reviewed under the athletic scholarship provisions of Title IX are athletic grant dollars awarded for athletic ability.

IN SHORT:

- **count individual athletes one time only program-wide**
- **count athletic grant dollars only**
- **award total dollars proportionate to participation at or within 1%**
- **analyze fifth year aid separately**
- **analyze summer term aid separately**

EXAMPLE

The table below shows the difference between rates of participation for the duplicated count (for the three-part test and all analyses except scholarships) and the unduplicated count (used for scholarships) at Institution ABC, and analyses for regular year, fifth year, and summer term aid.

EXAMPLE

INSTITUTION ABC					
Program	participation rates— duplicated count for three-part test	participation rates – unduplicated count for scholarships	rate of regular year scholarship awards	rate of fifth year aid	rate of summer term aid
WOMEN	48.1%	46.9%	46.5% (\$4,395,797)	73.2% (\$67,904)	39.5% (\$115,937)
MEN	51.9%	53.1%	53.5% (\$5,057,530)	26.8% (\$24,883)	60.5% (\$177,531)
Totals	100%	100%	100% (\$9,453,327)	100% (\$92,787)	100% (\$293,468)

athletic scholarships: 0.4 percentage points difference between rates of participation (unduplicated count of participants for scholarships) and rates of awards (46.9%–46.5% for women, 53.5%–53.1% for men) complies with OCR’s 1.0 or less percentage point standard for presumed compliance for scholarships awarded proportionate to participation

athletic scholarships – fifth year aid: 26.3 percentage points difference between rates of participation (unduplicated count of participants for scholarships) and rates of fifth year awards (73.2%–46.9% for women, 53.1%–26.8% for men) falls well outside OCR’s 1.0 or less percentage point standard for presumed compliance for scholarships awarded proportionate to participation; HOWEVER, Institution ABC awards fifth year aid to all male and female students desiring such aid and who qualify academically, and thus, complies with Title IX

athletic scholarships – summer term aid: 7.4 percentage points difference between rates of participation (unduplicated count of participants for scholarships) and rates of summer term awards (46.9%–39.5% for women, 60.5%–53.1% for men) falls well outside OCR’s 1.0 or less percentage point standard for presumed compliance for scholarships awarded proportionate to participation; Institution ABC imposes dollar limits for summer term awards and does not award summer term aid to all male and female students desiring such aid and who qualify academically; thus, Institution ABC violates the Title IX requirements for scholarships because summer term aid, on which limits are imposed, is not awarded to women and men at or within one percentage point of their rates of participation

Institution ABC complies with the athletic scholarship awards for the regular academic year by awarding total dollars at or within one percentage point of women's and men's respective rates of participation (per the unduplicated count of athletes for scholarships). In effect, women are 46.9% of the participants and receive 46.5% of the regular year awards, a difference of 0.4 percentage points.

Fifth Year Aid — Despite a 26.3 percentage points difference (73.2%–46.9%) favoring women, Institution ABC complies because it awards fifth year aid to all student-athletes who desire such aid and qualify academically.

Summer Term Aid — Institution ABC has a compliance problem for summer term aid, which is not awarded to all those student-athletes who desire such aid and qualify academically. Because summer term aid is limited, and is not awarded at or within one percentage point of rates of participation (46.9%–39.5% for women — a 7.4 percentage points difference), Institution ABC does not comply with the Title IX requirements for athletic financial assistance.

Justifications for Disproportionate Awards. Acceptable justifications for differences exceeding one percentage point for regular year aid include: the differences between in-state and out-of-state tuition, as long as such differences are not the result of discriminatory recruitment practices; actions taken to promote athletic program development; unexpected fluctuations in participation rates; and reasonable practices in phasing in scholarships when adding a new team.

Remedies. Institutions may correct disproportionate awards for athletic scholarships by adjusting participation, adjusting awards, or doing both. For fifth year and summer term aid, if aid limits must be imposed, then dollars should be awarded for the fifth year, and separately for the summer term, at rates at or within 1.0 percentage points of the regular year rates of participation for women and men.

IX IX IX IX IX IX IX

OTHER ATHLETIC BENEFITS AND OPPORTUNITIES

IX IX IX IX IX IX IX

EQUIPMENT AND SUPPLIES

Factors reviewed:

- quality
- amount
- maintenance

Quality. Compliance is achieved when the same or similar proportions of female and male athletes are provided equipment of the same quality. For example, while medium quality equipment is provided to most teams, excellent quality equipment is provided to:

men's basketball and football
(accounting for 126 of 300 male athletes = 42% of male athletes)

women's basketball, lacrosse, soccer, softball, and volleyball
(accounting for 116 of 265 female athletes = 44% of female athletes)

In this example, compliance is achieved by providing two men's teams and five women's teams with excellent quality equipment, while the remaining men's and women's teams are provided with medium quality equipment. Differences between the overall men's and women's programs for the quality of equipment cannot be justified by staff fundraisers or donations. Common problems arise when disproportionately higher numbers of male athletes are provided better quality equipment; for example, two men's teams (often football and basketball) accounting for 40% of male athletes, and two women's teams (e.g., basketball and volleyball) accounting for 15% of female athletes, while all other teams are provided medium quality equipment. Providing a higher proportion of athletes with better quality equipment is a compliance problem when based on gender.

Amount. A simple compliance approach is to provide, for men's and women's teams in the same sport, the same numbers of equipment items for:

- game uniforms
- practice uniforms
- shoes
- sport-specific equipment items
- general equipment items

For dissimilar sports, equipment should be provided to the same extent as needed and desired, based on the nature of the sports. Schools may choose to emphasize certain teams and, for example, provide three sets of uniforms for men's basketball and only two for women's basketball. This can comply if offset elsewhere in the program; for example, the women's soccer team has three sets of uniforms, while the men's soccer team has only two sets. Disparate amounts of equipment based on gender cannot be justified by booster club or other donations, or staff fundraisers.

Maintenance. The maintenance factor includes:

- storage
- professional and student managers
- laundry services

Equipment storage should be equivalently adequate and convenient when comparing the total women's program to the total men's program. Professional and student equipment managers are to be equally available based on the nature of sports. Because equipment needs are the same for men's and women's teams in the same sports, maintenance services should be the same. Common problems include: providing paid student managers for men's teams and none for women's teams; and providing laundry services to men's teams but to fewer or no women's teams. Resolutions include reassigning storage space, reassigning student managers, and balancing available laundry services.

IX IX IX IX IX IX IX

SCHEDULING OF GAMES AND PRACTICE TIMES

Factors reviewed:

- number of contests
- time of day, day of the week of contests
- practice times and days
- pre-season competition
- post-season competition
- length of season

Number of Contests. This factor includes those contests that count toward the maximum number of contests permitted by the governing athletics association for both the traditional and nontraditional seasons. For example, if the maximum number of contests allowed for basketball is 28, then any game that counts toward the 28 contests should be reviewed.

The number of contests depends on the nature of the sport. For example, fifty games may be appropriate for baseball but not football. Thus, for this factor, institutions should schedule the same number of regular season contests for women's and men's teams in the same sport. For dissimilar sports, the same proportion of the maximum events identified by the governing athletics association should be scheduled. For example, if the football team schedules 91%, or 10 of 11 of the maximum number of contests permitted, then the women's volleyball team should schedule 91%, or close to that proportion, such as 93%, or 26 of the 28 dates of competition allowed by the governing athletics association. Offsetting benefits are permissible for the total program, and even for consecutive academic years. The home and away schedules that may differ annually for certain sports, and the academic calendars in certain years might affect the number of contests without creating compliance concerns. A difference of a couple of games program-wide should not create concerns. A difference of a handful of games, if not offset in consecutive academic years, should be addressed. Acceptable reasons for differences may include: lack of competition for a specific team; or potentially for some sports (most likely gymnastics and swimming), the reasonable professional decisions of coaches in regard to the optimum training of the athletes.

Game Times and Game Days. The time of day and day of the week for contests may vary significantly and be dependent on the nature of the sport. Class schedules, meal schedules, and the opportunity to compete before an audience may affect the preferred time of day and day of the week. Bottom line, contests should be scheduled at times that are equally convenient (or equally inconvenient) for men's and women's teams. Double-header events, where the women's team always competes first, is a concern if the women's teams want to schedule the later game, or if the men's teams want to schedule the earlier game. Game times may be alternated weekly or annually to address this concern. Friday night contests, which may be considered prime time for some sports, should be scheduled equally for men's and women's teams.

Practice Times and Days. Compliance is achieved when practice schedules are equivalently convenient and sufficient (or equivalently inconvenient and insufficient) program-wide. When compliance problems occur, it is usually due to shared facility usage. A common compliance challenge arises when the men's and women's basketball and women's volleyball teams use the same practice facilities. Often, the result is that all three teams do not have their preferred schedule. When all teams have minor disadvantages, the result can be a compliance concern, because it affects two women's teams and only one men's team. If all three teams prefer the same time, then administrators should consider providing the preferred time to the volleyball team throughout its season, while the basketball teams alternate the remaining times. At the conclusion of the fall volleyball season, the basketball teams may then alternate times to incorporate the preferred times vacated by the volleyball team. The basketball teams may alternate the preferred times weekly, monthly, or annually to comply with Title IX. The preferred times might change annually depending on the class schedules of the athletes.

Pre-Season Competition. The simplest compliance method is to schedule the same number of pre-season events for men's and women's teams in the same sport, while scheduling an equivalently appropriate number of events for dissimilar sports, based on the nature of the sports. To simplify Title IX analyses, exhibition games, scrimmages with other teams, and alumni contests should be evaluated as pre-season contests.

Post-Season Competition. Most institutions allow whichever teams that qualify for post-season to compete in post-season contests, which complies with Title IX. An occasional compliance concern arises when an athletics conference allows more men's than women's teams (or vice versa) to qualify for post-season competition even though there are the same or very similar numbers of schools in the conference offering women's and men's teams.

Length of Season. Season lengths should be the same number of weeks for men's and women's teams in the same sport and as appropriate to the nature of the sport for dissimilar sports. Conference rules may create occasional compliance concerns when a season-ending tournament for women is scheduled a couple of weeks before the men's tournament in the same sport, creating a more compressed schedule for the women's teams, and limiting practices and potentially limiting the number of contests for women.

IX IX IX IX IX IX IX

TRAVEL AND PER DIEM ALLOWANCES

Factors reviewed:

- modes of transportation
- housing during travel
- meal arrangements and per diem
- length of stay — arrival and departure times

Modes of Transportation. Teams may travel by plane, bus, van, or car, and even by subway, train, and ferryboat. Acceptable, nondiscriminatory factors that may affect the modes of transportation include: distance to be traveled; size of the travel squad; others accompanying the team; the amount of equipment; and the time of day of the away event.

The different levels of quality for each mode of transportation may also affect compliance. Charter flights are usually preferred to commercial flights due to convenient scheduling; however, charter flights may be justified due to the difficulty in scheduling commercial flights for the size of the travel squad, such as for football or track teams. Otherwise, charter flights should be scheduled to the same extent for women's and men's teams program-wide. Charter buses may have better seating, wifi, lavatory, music and video systems, and luggage compartments that school-bus quality buses do not. Vans are often driven by coaches, and many coaches prefer not to drive; thus, a bus with a professional driver is often preferred to van transportation. Similarly, cars are often driven by coaches, or even athletes, and are a less preferred mode of transportation. When teams travel by aircraft, secondary modes may create compliance problems when some teams use vans for ground transportation, while others use buses; if this affects teams for one gender more than the other, it creates a compliance concern. A compliance gauge, but not a requirement, is for women's and men's teams to use the same mode of transportation for the same proportion of trips, absent acceptable justifications for differences. The simple compliance solution when problems are identified is to reassign modes of transportation.

Housing During Travel. Usually, the quality of the hotels or other housing provided during travel is comparable. The common compliance problem arises for the different number of athletes assigned per hotel room. Compliance is achieved when equivalent percentages of female and male travel squad athletes are assigned two per hotel room, three per room, or four per room. For example, if the football and men's basketball teams are the only men's teams assigning athletes two per hotel room, and they are 50 percent of the male travel squad athletes, then 50 percent of the female travel squad athletes should be assigned two per room. Half of the female travel squad athletes may account for four or five women's teams, not just two teams.

Meal Arrangements, Per Diem. The nature of sports and the time and length of competition may determine when meals take place and whether pre-game or post-game meals are appropriate during travel. Compliance is analyzed by comparing the quality of the food and dining establishments, such as fast food, buffet/family style, or fine dining. Large team sports, such as football, with the need to accommodate dozens of people at once, may have meals catered at the hotel. Golf teams may benefit from special arrangements provided by the tournament sponsor at the host country club. Compliance problems occur when meals for a

team or teams for one gender consist routinely of much better quality food than that provided to other athletes. A common compliance problem is for men's basketball and football teams to be provided higher quality meal arrangements than women's teams.

A simple compliance approach for per diem is to provide the same dollar amount for meals for all athletes. Otherwise, if some teams are provided a higher per diem than other teams, this should be equitable for the women's and men's programs. The institution that provides the same per diem for all athletes does not comply if coaches choose to supplement the per diem amounts with other funds, and the result is better quality dining for one gender in the overall program. For example, all athletes are provided with \$20 per diem. Coaches for two men's teams supplement the \$20 with booster club monies, providing the athletes on those two men's teams with superior dining arrangements. The result is noncompliance.

Length of Stay. The nature of the sport may determine the time of day contests are scheduled, which may in turn dictate travel times. Cross country teams may compete in the morning, and travel to the away site the day before. Golf teams may play a practice round before the competitive rounds of golf begin, and travel the day before. Teams often leave immediately after an event. There can be acceptable reasons for differences for arrival and departure times that include: accommodating class schedules; weather; available transportation, such as air travel schedules; and the contest ending too late to travel back to the campus safely. Compliance problems arise when, for example, men's teams travel the day before contests while women's teams travel the same day, or men's teams stay overnight after events while women's teams travel late night or early morning hours to save funds.

Cautions for Administrators and Coaches. Team travel is one of the most expensive benefits provided for student-athletes. The more discretion coaches have in regard to modes of transportation, the number of athletes per hotel room, the quality of housing, and the per diem amounts for athletes, the greater the likelihood for Title IX compliance problems. Some coaches may choose to save funds by using a van instead of a bus, assigning four athletes per room instead of two, and providing athletes with \$20 per diem rather than the \$30 per day budgeted by administrators. Unless coaches make the same choices program-wide, compliance problems are likely.

To ensure compliance, administrators should identify equitable travel benefits, including determining the modes of transportation for each trip, the number of athletes assigned per hotel room, and the per diem amounts for athletes, and instruct coaches to adhere to the compliance strategy. Team travel records should be monitored to ensure that coaches are complying with the decisions of administrators. It is not unusual for coaches to deviate from the instructions of administrators, thereby creating compliance problems. Also, if some teams have foundation or fundraising accounts that coaches use to supplement travel benefits, this may create compliance problems based on gender when some teams: assign two athletes per room while all other teams assign three or four athletes per room; provide better dining arrangements; and/or provide better modes of transportation.

IX IX IX IX IX IX IX

TUTORING

Factors reviewed:

- availability
- qualifications
- compensation — as it affects athletes, not the tutors
- academic services

This issue applies only to those tutoring programs offered separately to student-athletes, and to those athletics programs that assign academic counselors specifically for athletes. Many NCAA Division I and some Division II programs may have separate tutoring programs or academic staff assigned specifically for student-athletes; otherwise, such benefits are uncommon in most intercollegiate athletics programs, so this issue need not be evaluated.

Compliance problems for tutoring are unusual. When problems occur, it is usually because certain teams, often men's basketball and football, are provided with special tutoring arrangements, priority in services, and/or tutors or academic advisors with superior qualifications.

Availability. A simple compliance method is to set the same hours and locations for tutor availability, such as at campus libraries or study hall sessions that are equally convenient for female and male athletes throughout the day and days of the week. Another nondiscriminatory policy is to provide tutors on a first-come, first-serve basis. Any special tutoring arrangements should be equally available to female and male athletes. The availability factor also considers whether tutors provide services one-on-one or in group sessions. One-on-one sessions are usually preferred, and should be equally available to female and male athletes.

Qualifications. Tutors may be upper class students, graduate students, faculty, or other professional educators. The occasional compliance concern may arise when more qualified tutors are provided more often for teams of one gender, such as the football and men's basketball teams.

Compensation. This factor is not the employment issue comparing rates of pay between male and female tutors. Rather, this factor is evaluated for its effect on the student-athletes. It concerns whether more qualified tutors, as may be reflected by compensation, are assigned more often to athletes based on gender. The red flag to avoid is for tutors receiving higher pay to be assigned to men's teams more often than women's teams, or vice versa.

Academic Services. This factor is not included specifically in OCR policy documents, but is a simple way to categorize services or benefits such as computer labs, career planning, and pre-registration for classes. Such benefits are to be equally available to female and male athletes.

IX IX IX IX IX IX IX

COACHING

Factors reviewed:

- availability
- qualifications
- compensation — as it affects athletes, not the coaches

Availability. This factor includes the number of coaches per team, the length of contracts, and the percentage of time, such as quarter-time or half-time, assigned to coaching. Volunteer coaches should be excluded from compliance analyses unless: they receive incentives that affect their availability to teams; there are rare circumstances, such as the head coach who is a volunteer; or an assistant coach has years of coaching experience and longevity with the team.

A simple compliance approach is to provide the same number of coaches for women's and men's teams in the same sports, and equivalently appropriate numbers of coaches for dissimilar sports. For example, if the men's basketball team has a head coach and three assistant coaches, then the women's basketball team should have the same. If athletic association rules set maximum limits for the number of coaches at eleven for football and three for volleyball, then providing eleven football coaches and three volleyball coaches should be equivalent. A common compliance problem is that more men's than women's teams have assistant coaches.

Providing the same number of coaches for men's and women's teams in the same sports also means that the proportion of time coaching and lengths of contract should be the same. For example, providing the women's basketball team with a head coach who has full-time coaching duties, and two assistant coaches who have half-time coaching duties, is not equivalent to providing three full-time coaches for the men's basketball team. Similarly, at institutions that employ coaches who are full-time college staff, who may be assigned coaching duties for half-time and teaching duties for half-time, such individuals would be viewed as more available to athletes than half-time coaches who are not otherwise employed by the institution. Contract lengths, such as one year, nine months, etc., should be the same. Furthermore, multi-year agreements should be provided equally program-wide for women's and men's coaches, as such contracts may affect team operations that impact the student-athletes.

Dual coaching responsibilities may also affect coaching availability depending on the assignments. The individual who is the head coach of the volleyball team in the fall season and the head coach of the softball team in the spring season is unlikely to be available to either team during their respective nontraditional seasons. Not only does this limit competitive and practice opportunities during the nontraditional seasons, this may also limit the coach's opportunity to recruit for both teams. Head coaching responsibilities are presumed to be greater than assistant coaching responsibilities; thus, an individual who is an assistant football coach and assistant track coach is unlikely to offset the assignment of an individual who is the head coach for both the women's volleyball and softball teams. Dual coaching responsibilities are not a compliance concern if they occur to the same extent in the men's and women's programs.

Administrative and teaching duties may also affect coaching availability. Avoid the common concern where men's coaches teach racquetball and bowling while women's coaches teach kinesiology and anatomy and physiology, negatively affecting the availability of women's coaches.

Qualifications. The qualifications of coaches are assessed by analyzing the average years of experience and levels of success. As a total program approach, the average years for head coaches may be calculated, and separately, the average years for assistant coaches. For example, the 11 men's head coaches have a total of 237 years of experience, for an average of 22 years per coach, while the 12 women's head coaches have 218 total years for an average of 18 years per coach. This four year difference between women's and men's coaches should not create concerns, as eighteen years of experience is significant. Similar calculations may be conducted for the assistant men's and women's coaches.

Regardless of years of experience, levels of success at the conference, regional and national levels, win-loss records, and/or a significant record of improvement may demonstrate equivalent coaching qualifications and negate any significant differences in years of experience. In effect, a coach with five years of coaching experience may be a much better coach than someone with 20 years of experience, as demonstrated by levels of success.

Compensation. Compliance with this factor is achieved when total dollars for coaches' salaries are at a rate proportionate to men's and women's rates of participation. For example, if women are 48% of the participants, then approximately 48% of the coaches' salaries should be paid to women's coaches. This should include the salaries paid for coaching duties to head, assistant, and graduate assistant coaches. There is no percentage points difference that constitutes noncompliance.

The purpose of this analysis is to identify whether the institution has allocated sufficient resources to assign coaches who are equally available and equally qualified for the overall women's and men's programs. Coaches' compensation under the athletics provisions of Title IX is analyzed for its effect on students, not coaches. Compliance problems for this factor would not be cited unless there are also compliance problems for the availability and/or qualifications of coaches. Also, OCR policy states that ". . . there may be unique situations in which a particular person may possess such an outstanding record of achievement as to justify an abnormally high salary." (1979 Intercollegiate Athletics Policy Interpretation). This permissible situation could result in total compensation that is disproportionate to participation.

Employees are protected by the subpart of the Title IX regulation addressing employment, not the section addressing athletics. Thus, comparisons of individual coach's salaries to identify sex discrimination are not part of an athletics review. Employment discrimination for coaches' salaries is based on the gender of the coaches, not the gender of the athletes.

Cautions for Coaching

Availability. The availability of coaches is one of the most important benefits for student-athletes. Minor differences in coaching assignments can quickly add up to a significant compliance problem. The institution may establish equitable coaching assignments for women's and men's teams. However, if booster clubs pay stipends for additional coaches, or the head coaches use fundraised resources or donor funds to pay stipends for assistant coaches, the result can be disparate assignments, often disadvantaging women's programs. Under Title IX,

the stipends paid by booster clubs or others are viewed as stipends paid by the institutions, and the institutions are responsible for providing equitable coaching availability to the overall women's and men's programs. Schools should monitor the availability of coaches who are paid by booster clubs or others — and adjust coaching assignments as necessary — to ensure compliance with this most important benefit for student-athletes.

Employment Considerations. Some institutions may create the employment position of athletic director/head football coach. Head football coaches are predominantly men. Combining the head football coaching position with that of the director of athletics effectively excludes women from the position of director of athletics. As apparent from the assignments at many postsecondary education institutions, performing duties as the director of athletics is not contingent upon the ability to coach football. Thus, the exclusion of women from the position of athletics director, inherent in creating the combined position of athletic director/head football coach, may raise compliance questions under the employment provisions of the Title IX regulation and Title VII of the Civil Rights Act of 1964, which is enforced by the Equal Employment Opportunity Commission (EEOC). See the summary and full text of the EEOC's 1997 enforcement guidance for coaches' salaries at www.TitleIXSpecialists.com.

Many coaches may host sports camps at the school, teaching skills to younger students. Camps may allow coaches to supplement their incomes, in addition to providing an opportunity to recruit student-athletes. The preferred scheduling for camps, and any administrative and clerical support provided, are to be equitable for women's and men's coaches.

IX IX IX IX IX IX IX

LOCKER ROOMS, PRACTICE AND COMPETITIVE FACILITIES

Factors reviewed:

- availability
- quality
- preparation
- maintenance

All facilities are reviewed for their availability and quality, which includes exclusivity of use. Practice and competitive facilities are also reviewed for the maintenance and preparation of facilities, while maintenance of locker rooms may affect quality.

Practice and Competitive Facilities

Quality and Availability. Compliance may be achieved when roughly equivalent percentages of female and male athletes have facilities of equivalent quality. Some latitude is appropriate based on natural fluctuations in participation and the nature of the facilities. The availability of facilities may be directly related to the scheduling of facilities, and equitable scheduling may resolve availability concerns.

The analysis for practice and competitive facilities is an overall approach that compares all of the facilities for women's teams to all of the facilities for men's teams. Schools can emphasize different teams for men and women. There is no requirement that men's and women's teams in the same sports or like sports have facilities of the same quality. However, the reality for many programs is that the women's and men's teams in the same sports often use the same facilities. Men's and women's teams in such sports as basketball, cross country, golf, soccer, swimming, tennis, and track may all use the same facilities. If volleyball is offered only to women, that team often uses the same facilities as the basketball teams. If the school has a football team, the soccer teams may use the same fields as the football team or the football facilities may be comparable quality to the soccer facilities and/or facilities for most other teams. In many programs, most men's and women's teams use the same facilities, which is equitable; the only unshared facilities remaining for comparison are the baseball and softball fields.

If the softball field is lesser quality than the baseball field, a school can still comply if, for example, the women's soccer field is better quality than the men's soccer field. However, if all other facilities are equitable and the comparison falls solely on the baseball and softball fields, which are not equitable, a compliance problem is likely for the Title IX program component of locker rooms, practice, and competitive facilities. The many features to be reviewed at baseball and softball fields include: field surface quality; dugouts, including dugout size and construction, and any amenities such as double-tiered seating, bat racks, helmet racks, protective screens, lighting, and lavatory; scoreboards, including video/replay features; fencing, including permanent versus portable outfield fencing and perimeter fencing; batting cages; bullpen areas; lights; equipment storage; spectator seating, including bench versus seatback/armrest seating; press boxes; concessions; restrooms; locker rooms; and umpire locker rooms. There is no requirement that identical features be at the softball and baseball facilities, but the same overall analysis applies. For example, if one facility has several features, while the other has very few, or several individual features are higher quality at one field than the other field, a compliance problem is likely. This list of features at softball/baseball fields demonstrates the detail of review for equitable facilities under Title IX.

Another common concern is when the football team is provided the highest quality competitive and practice facilities, providing a higher proportion of male athletes with the best facilities. For example, the football and women's and men's soccer teams use the same facilities. The football and men's soccer teams represent 28% and 11% of the male athletes, respectively; the women's soccer team represents 15% of the female athletes. The result is that 39% of the male athletes, compared to only 15% of the female athletes, are assigned to the highest quality facilities. One partial remedy is to assign the men's soccer team to another facility. Also, the women's soccer team may be given preference to compete and practice on the game field, while the football team practices elsewhere. This can reduce, and potentially eliminate, the concern for these facilities.

On-Campus Versus Off-Campus. It does not violate Title IX to provide a facility off-campus, while others are on-campus. Many postsecondary institutions use community golf courses and swimming pools, and local parks for cross country meets. However, whether a compliance problem exists depends on quality, availability, and convenience, and the proportions of athletes from each program using off-campus facilities. For example, compliance questions are raised, and compliance problems may result, when most women's teams use off-campus facilities, while most men's teams have facilities on-campus. But, factors such as quality, priority use, and degree of inconvenience can affect compliance — a facility across the street is more convenient than a facility across town and 30 minutes drive in traffic. If a facility is

community-owned, then the teams may not be able to use a facility at their convenience, but must schedule practices and games around community events. This can influence an institution's compliance in scheduling games and practice times. However, community facilities may have features, such as lights, that on-campus facilities do not, and this can offset the inconvenience of the off-campus location.

Portable Versus Permanent Facilities. Some "permanent" restrooms and concession facilities are on the verge of crumbling, while some portable facilities — for example, large trailers — may serve as concession stands complete with stoves, ovens, sinks, etc., or restroom facilities with all plumbing in full operation. In other words, portable facilities may be comparable to and even better than permanent facilities. The quality of the facilities is the more significant factor, rather than whether facilities are permanent or portable.

Preparation and Maintenance. The preparation and maintenance of facilities should be the same for women's and men's teams in the same sports, and to the same extent necessary for women's and men's teams in dissimilar sports. This may include lining fields; taping boundary lines for volleyball; cleaning mats for wrestling; sweeping floors, setting out team benches or chairs, scorer's tables, and media areas for basketball teams; cutting grass fields, etc. Coaches and athletes may choose to perform minor chores as a team-bonding activity; otherwise, school maintenance staff should be performing facility chores to the same extent for women's and men's teams.

Locker Rooms

Quality and Availability. Compliance may be achieved when roughly equivalent percentages of female and male athletes have locker rooms of the same quality. Calculating the percentages of athletes can be complicated by the fact that some teams, for example, cross country, golf, and tennis, may choose not to use locker rooms even when space is available. Again, some latitude for fluctuations in annual participation is appropriate.

Quality involves a review of: the size of the room and adequacy for the number of athletes using the room at one time; the location of locker rooms in relation to practice and/or competitive facilities, training, weight, and equipment rooms; the number, size and quality of lockers; seating; lighting; flooring; maneuvering space; numbers of toilets, showers, and sinks; meeting space; lounge areas and furniture, including televisions, video, music systems, refrigerators, microwaves or stoves; and adjoining rooms such as team video rooms, training rooms, and laundry rooms. Quality also considers whether a team has exclusive use of the locker room for the entire academic year, just the sports season, or whether the room is shared during the regular season.

Compliance problems for locker rooms are common, including: providing locker rooms to the men's basketball and football teams that are higher quality than those provided to all women's teams; providing the football and men's basketball teams and no other teams with exclusive use of their locker rooms; arranging for visiting teams to share the women's locker rooms but not the men's locker rooms; and assigning locker rooms to women that are inconveniently located in relation to practice and competitive facilities, while men's locker rooms are conveniently located. Compliance problems for locker rooms may be easily resolved on most campuses simply by reassigning the available locker rooms. Locker rooms may be reassigned by season, or alternated annually to achieve compliance.

IX IX IX IX IX IX IX

MEDICAL AND TRAINING FACILITIES AND SERVICES

Factors reviewed:

- availability and qualifications of medical staff
- availability and qualifications of athletic trainers
- weight rooms
- training rooms
- insurance

The availability and qualifications of medical and athletic training staff are based on the nature of the sport; thus, assignments of staff should be the same for men's and women's teams in the same sport. For dissimilar sports, compliance is determined by the extent to which benefits and services are provided based on needs identified by coaches, athletic trainers, and medical professionals. Coaches' "reasonable professional decisions" may determine the extent of any weight training and conditioning for their athletes. Training rooms for treating injuries and taping for injury prevention, etc., should be equivalent quality and equally available for female and male athletes. Any insurance available through the institution for athletics participation should be the same for male and female athletes. Most compliance problems for medical and training facilities and services are readily resolved by reassignments of staff and/or facilities.

Medical Personnel and Services. Medical personnel and services should be equally available to female and male athletes for physical examinations, evaluations of injured athletes, surgeries, MRIs, or other medical procedures. Also, transportation to medical assistance off campus should be equally available to female and male athletes. The assignment of medical personnel to home games, away games, and practices is dependent on the nature of the sport. The nature of the sport of football and the size of the team can justify the assignment of a medical doctor or other medical staff even when no other sports have this benefit. The most common compliance problems are: the assignment of a doctor to men's basketball games but not women's basketball games; and the priority for medical evaluations for men's basketball and football athletes.

Athletic Trainers. Under Title IX, the assignment of athletics training staff is based on the nature of the sport. Although offsetting benefits are permitted, the best compliance approach is identical assignments of athletic trainers for women's and men's teams in the same or similar sports at home events, away events, and practices. Occasionally, additional staff may be appropriate based on the number of participants; for example, if a women's soccer team has 40 participants and a men's soccer team has 20 participants, the institution might assign an additional athletics trainer to the women's soccer team practices. Barring evidence to the contrary, certified staff athletic trainers are assumed to be more qualified than certified intern or graduate student trainers, who are more qualified than non-certified student athletic trainers. There is also greater assurance of continuity of services with staff athletic trainers rather than intern or graduate student athletic trainers. For dissimilar sports, rates of injury and rates of serious injury may guide the assignment of athletics training staff.

Weight Rooms. Men's and women's teams may be assigned to different weight rooms without creating compliance problems, if the rooms are equivalently adequate in quality with equivalently convenient scheduling. Different weight rooms for men and women do not have to be the same size and have the same equipment. Adequate space and equipment are evaluated by how many athletes need to use the weight room at one time and the extent to which desired equipment is available.

When an institution has only one weight room, then the quality is the same (rare exceptions may concern the availability of equipment for specific sports and not other sports). Thus, compliance is based on teams' schedules, and the focus should be for equivalently sufficient and convenient scheduling. Due to the nature of the sport and the number of participants, it is common for football teams to schedule more time in the weight room than many other teams. However, scheduling times that are convenient and sufficient for a football team may not result in less convenient or less sufficient times than desired by women's teams.

Strength and conditioning coaches may be employed by some institutions and may spend considerably more time with football teams than other teams. This is permissible when strength coaches are available to women's teams to an extent that is equivalently adequate.

Training Rooms. Women's and men's teams may be assigned to different training rooms without creating compliance problems if the rooms are equivalent for: adequacy; quality, including age and type of equipment; and accessibility to locker rooms, practice and competitive facilities. If there is only one training room, then the focus for compliance is for equivalently convenient and sufficient schedules.

A simple compliance approach is to allow all athletes to use all training rooms on a drop-in basis. If schedules must be set, then the preferred times should be shared or alternated to ensure equitable scheduling. The common compliance problems include providing men's teams with better training rooms, better scheduling, and/or more conveniently located training rooms.

Insurance Coverage. Many institutions provide secondary insurance that covers the costs for athletics participation. Usually, premiums are not charged to the students for the secondary insurance. If athletes must pay premiums, those costs should be the same for female and male athletes to avoid raising compliance questions. Compliance concerns for insurance are unusual. The main compliance concern that may arise is a policy that excludes gynecological care when health problems requiring such care are the result of athletics participation.

IX IX IX IX IX IX IX

HOUSING AND DINING FACILITIES AND SERVICES

Factors reviewed:

- housing and dining for the regular academic year
- pre-game, post-game meals
- housing and dining during term breaks

Housing and Dining During Academic Year

Housing. Housing during the regular academic year is often not a concern, as student-athletes residing on-campus are housed in the same dormitories as all other students. When housing problems arise under Title IX, it is because athletes of one gender are provided higher quality housing in regard to suites or apartment style housing that may be available on some campuses. Any special housing arrangements or accommodations, including priority in housing assignments, stipends for off-campus housing, or unique or special off-campus housing that may be arranged with an outside agency, must be equally available to female and male athletes.

Special housing arrangements, such as on the night before home events, can be a compliance concern when available for teams for one gender but not teams for the other gender desiring such housing. Many coaches do not want special housing on the night before home events, as coaches consider that athletes are better rested when staying in their regular housing arrangements. If the football team or the football and men's basketball teams are provided special housing, this is not a concern if no women's teams want this benefit; however, it is a concern if denied to women's teams desiring this benefit.

Dining. Regular dining arrangements are usually not a compliance concern. Special dining arrangements, such as more nutritious or greater quantities of food, and/or nutrition stations, should be equally available to female and male athletes. If such benefits are provided to the men's basketball and football teams, and those two teams constitute half of the male athletes, then half of the female athletes should be provided special benefits; half of the female athletes may be the women on four or five women's teams, not just two teams. Special arrangements may include making boxed meals available or arranging special dining hall hours to accommodate practice and/or competitive schedules.

Some collegiate programs provide training table meals, and a common practice is to provide training table meals to just the football and men's and women's basketball teams. If no other teams want training table meals, this is not a concern. However, other women's teams often want training table meals, which they do not receive; thus, there is a compliance problem.

Pre-Game/Post-Game Meals

The provision of pre-game and post-game meals is a common compliance problem. This is often because more men's than women's teams are provided the meals of those teams desiring this benefit. Whether the funding for such meals is from team operating accounts, fundraised, or booster club monies is irrelevant under Title IX — institutions are still obliged to provide equitable benefits. Basic compliance strategies include: provide pre-game and/or post-game

meals to all men's and women's teams desiring this benefit; provide pre-game and/or post-game meals to the same extent for the women's and men's teams desiring this benefit; or discontinue pre-game and post-game meals for all teams.

Housing and Dining During Term Breaks

Housing and dining compliance problems can also arise when athletes are on campus when classes are not in session, such as before classes in the fall, during winter and spring breaks, and after classes end in the spring. The common problems include providing men's teams but not women's teams with sufficient funds to cover the housing and dining costs. This includes the availability of fundraised monies for men's teams that cover meal costs, when women's teams do not have the resources to pay for meals. The lack of funds during term breaks can also affect the scheduling of teams' practices and even competitions.

Some teams prefer to travel during winter and spring breaks, and travel opportunities would be analyzed under the Title IX program component of travel and per diem allowances. Some coaches, even when adequate funding is available, choose to give athletes a break or plan conditioning schedules that athletes may do on their own. Thus, determining compliance involves analyzing the extent to which the women's and men's teams that want housing and dining benefits during term breaks receive them. Even when all teams that want to be on campus during these times can make such arrangements, compliance problems may still arise when, for example: men's teams are provided better housing in hotels while women's teams are in campus dormitories, and more per diem is provided to male athletes than female athletes.

IX IX IX IX IX IX IX

PUBLICITY

Factors reviewed:

- availability and qualifications of sports information personnel
- publications
- other publicity resources — includes in-game promotions and support groups, such as cheerleaders, pep band, and mascot

For many program component areas, equivalent percentages of female and male athletes should be provided comparable benefits. In general, however, benefits under the publicity program component may be provided to the same number of men's and women's teams, or for more women's than men's teams when an institution offers more women's than men's teams.

Sports Information Personnel. Generally, a good approach for compliance is to provide the same number of women's and men's teams with equally qualified sports information personnel at home events, and separately, at away events. Barring evidence to the contrary, professional staff are viewed as better qualified and more available than intern or graduate student staff, who in turn, are considered more qualified than undergraduate student staff.

Publications. Publications may include media guides, game programs, schedule cards, posters, press releases, newspaper ads, websites, and social media posts. Many institutions produce publications online. Any special features for online publications, such as interactive websites or graphics, should be provided to the same extent for men's and women's teams. Any printed publications should be produced for the same number of women's and men's teams, or again, for more women's than men's teams when more women's than men's teams are offered. Media guides are usually the most significant publication, and they do not need to contain identical information to be comparable, but information in the same detail is appropriate. Generally, if women's teams have competed fewer years and have fewer statistics, women's guides may have fewer pages, which does not create a Title IX concern.

Other Publicity Resources. Institutions must make an equivalent effort to publicize and promote their men's and women's programs. This is required even if the result of an institution's equivalent efforts may be that only men's teams receive media coverage. Newspapers, radio and television enterprises have no obligation to comply with Title IX or provide equitable coverage. The policy for equivalent effort is to ensure that institutions do not presume less interest in women's sports, and therefore, publicize and promote women's teams less. Even when media coverage has been denied in the past, institutions are expected to make reasonable efforts at reasonable intervals to obtain television, radio, and newspaper coverage for women's teams when such coverage is otherwise provided to men's teams.

Promotional activities such as give-aways and prize contests should be provided at home events for the same or similar numbers of women's and men's teams. Cheerleaders, pep bands, marching bands, mascots, drill teams, dance teams, etc., are viewed as support groups under the publicity program component. A good compliance approach is to provide such groups at home events for the same number of men's and women's teams and at away events for the same number of men's and women's teams. Some teams at some venues may prefer music and video board presentations to cheerleaders and the pep band, and such choices are acceptable. Compliance concerns for support groups are common and usually arise when women's teams do not have the preferred performances by the cheerleaders, pep band, and mascot that are provided to the men's teams. Compliance concerns may be resolved by increasing performances by support groups at women's games or reducing them at men's games.

IX IX IX IX IX IX IX

SUPPORT SERVICES

Factors reviewed:

- administrative support
- clerical support
- office space

Administrative and Clerical Support. The purpose of the support services program component is to ensure that administrative and clerical chores that coaches may perform do not affect coaches' availability to athletes based on gender. Title IX does not require that the same number of equally qualified support staff be assigned to the men's and women's program or men's and women's teams in the same sport. The analysis focuses on the amount of time that coaches spend performing these chores, which can vary by the nature of the sports. This includes considerations of whether needed support functions are not accomplished due to lack of staff (for example, recruiting paperwork), which can affect the success of the team. Occasionally, student staff or part-time clerical staff may provide the support necessary to achieve the end goal — coaches in the women's and men's programs spending comparable hours performing administrative and clerical chores for their teams. When compliance problems arise, it is usually the women's program that is disadvantaged; consequently, options to achieve compliance generally include adding staff for women's teams, reassigning staff currently available for men's teams to women's teams, or discontinuing the availability of staff for some men's teams.

Office Space. As with administrative and clerical assistance, office space is reviewed only to the extent that it allows coaches to be more effective in serving the student-athletes; it is the students who are protected by the Title IX athletics requirements, not the coaches. Office space, to the extent that it benefits coaches, is a Title IX employment issue, not a Title IX athletics issue. As an employment concern, office space is a secondary issue to salary and benefits such as health insurance and retirement.

On many campuses, the quality of office space is often not significantly different, or when it is, those differences might be justified as an employment benefit for unique employment positions such as the head coaches for the football and men's and women's basketball teams at NCAA Division I member institutions. Often, the main consideration for office space under the Title IX athletics provisions is private versus shared office space. Otherwise, office space is reviewed for equipment that can affect coaching efficiency, such as televisions and video equipment, computers, and printers. The specific quality of furnishings such as desks, chairs, credenzas, bookcases, etc., is usually a secondary consideration to private office space and equipment used for coaching duties. When office space is shared, general compliance approaches include, for example, providing private offices to all head coaches and no assistant coaches. When both head and assistant coaches are provided private offices, it is recommended herein that these benefits be provided to a proportionate number of women's and men's coaches, in consideration of the athletics and potential employment issues.

IX IX IX IX IX IX IX

RECRUITMENT OF STUDENT-ATHLETES

Factors reviewed:

- opportunity to recruit
- financial resources
- treatment of prospective student-athletes

Opportunity to Recruit

The opportunity to recruit is the same issue as the availability of coaches, which is discussed on pages 20-22. To summarize, this factor considers the number of coaches per team, lengths of contracts, and the percentage of time, such as quarter-time or half-time, assigned to coaching/availability to recruit duties. A simple compliance approach is to provide: the same number of coaches, with the same proportion of time and lengths of contract for coaching duties, for women's and men's teams in the same sports; and equivalently appropriate numbers of coaches for dissimilar sports. A coach's length of contract, on-campus or off-campus duties, including teaching and administration, and dual coaching responsibilities all affect the opportunity to recruit.

Financial Resources

Compliance is based on dollars spent, not dollars budgeted. OCR policy presumes that recruitment funds will be proportionate to women's and men's rates of participation, absent a nondiscriminatory justification for disproportionate funding. OCR has set no parameters regarding what constitutes "proportionate" funds for recruitment. It is suggested herein that differences greater than five percentage points be reviewed and addressed as necessary.

Financial resources for recruitment include costs for: transportation, lodging, and meal expenses for off-campus and on-campus recruitment; printing; photocopying; telephone; subscriptions to recruitment services; and courtesy cars or car allowances. The value of the courtesy cars and car allowances should be excluded from the calculations of dollars spent; basically, the availability of the cars is being analyzed rather than the cars' dollar values.

If recruitment funding is disproportionately lower for women (for example, women are 47% of the participants and spend only 38% of the recruitment funds — a 9 percentage points difference), it may be possible to comply if all of the women's head coaches view recruitment funds as sufficient. It is uncertain whether OCR would accept disproportionately lower recruitment resources to the women's program as compliance even if all women's head coaches state that they have sufficient recruitment resources. However, if an institution can demonstrate that women's coaches are properly performing their recruitment duties, that all women's coaches consider their recruitment budgets sufficient, that modes of transportation, housing, and other related benefits for recruitment are equally available in the men's and women's programs — not just for prospective student-athletes, but also for coaches during recruitment travel, which may include the use of charter flights for recruitment trips — and women's teams enjoy the same level of success in regional and national competition as men's teams, it would be difficult for OCR to assert discrimination against women in recruitment based on disproportionately lower resources. Of course, providing funding proportionate to participation would limit if not eliminate compliance questions.

Courtesy Cars, Allowances. OCR does not have set policy regarding courtesy cars or allowances, and the availability of cars or allowances can be both Title IX athletics and Title IX employment considerations. In the athletics context, one nondiscriminatory policy is to provide cars or allowances to all head coaches and no assistant coaches, or for example, to just the head and assistant women's and men's basketball coaches and no other coaches. When both head and assistant coaches are provided courtesy cars or car allowances, it is recommended herein that these benefits be provided to a proportionate number of women's and men's coaches to navigate considerations under the Title IX athletics and employment requirements. For example, if there are 30 men's coaches and 24 women's coaches in the overall athletics program, and courtesy cars or allowances are provided to 20 of 30 (67%) men's coaches, then courtesy cars or allowances should be provided to 16 of 24 (67%) women's coaches. When compliance concerns arise, cars or allowances may be added, reallocated, or discontinued to achieve equitable benefits.

Treatment of Prospective Student-Athletes

There are four basic benefits provided to prospective student-athletes: transportation; housing; meals; and entertainment. A prospective student-athlete's visit may be fully subsidized (all costs paid by the institution) or partially subsidized (some costs paid by the institution). Usually, coaches choose the extent to which they subsidize the visit for each prospective athlete. Unofficial visits, where the prospective athletes pay all costs, are not analyzed for compliance.

Transportation. A simple compliance approach is for distance traveled to determine the mode of transportation provided to prospective athletes.

Housing. Prospective student-athletes are usually housed in hotels, campus dormitories, or off-campus residences of current team members. Some coaches insist that all prospective athletes stay at local hotels. Other coaches are equally insistent that prospective athletes stay in dormitories to get acquainted with potential teammates and the campus. If coaches' choices are reasonable and not imposed by budget limitations, then there should be no compliance concerns when accommodating their preferences. Compliance problems arise if there are extremes, such as most male prospective athletes stay at high quality hotels, while most female prospective athletes stay in the dormitories.

Meals. Coaches may prefer that prospective student-athletes dine at the athletes' dining hall or the campus food court rather than the local chain restaurant. Patterns raise compliance concerns where, for example, most female prospective athletes receive the standard fare at a campus cafeteria, while most male prospective athletes dine at high quality restaurants.

Entertainment. Entertainment may include a tour of the campus, meetings with professors in the student's academic field of interest, tickets to sporting events, and/or visits to local places of interest. Dollar amounts for entertaining prospective athletes may be limited by the national or regional athletics conferences. For example, a student host may be given a specific dollar amount with which to entertain the prospective student-athlete. Providing cash to student hosts for male but not female prospective athletes, or vice versa, suggests compliance problems.

Gauge for Compliance. The basic gauge for compliance is whether female and male prospective athletes are provided subsidized visits at rates at or near women's and men's rates of participation. For example, if 52% of the participants are women and 48% are men, then 52% of the fully subsidized visits should be provided to women and 48% to men. The same is true for partially subsidized visits. However, this is a gauge and not a requirement. Benefits for prospective athletes should be analyzed to identify patterns of treatment that suggest compliance problems; for example, most male prospective student-athletes are provided transportation, housing, dining, or entertainment benefits that are superior to those provided to female prospective athletes.

IX IX IX IX IX IX IX

RESOLVING COMPLIANCE PROBLEMS

Resolutions for most compliance problems are self-evident once the problems are identified. Generally, Title IX compliance problems may be resolved in one of three ways: add benefits for the disadvantaged gender; reallocate benefits from the advantaged gender to the disadvantaged gender; or reduce benefits to the advantaged gender. Again, Title IX does not require that schools have programs of any specific quality, so the option to reduce benefits for one gender is an acceptable option, even if it is an undesirable option.

There are no-cost solutions to all Title IX compliance problems, and most problems can be resolved within a year. Significant remedies that institution officials may choose, such as renovating or constructing facilities, hiring staff, or adding teams, should be completed as quickly as possible, but officials should plan on two or three years at the most. Interim compliance measures, such as reassigning existing facilities, should be implemented while significant long-term remedies are in progress. Delaying any relief for the disadvantaged gender for three years or more might be viewed as dilatory. Officials who choose to delay compliance for as long as five years invite speculation regarding their intentions to comply.

IX IX IX IX IX IX IX

NOTES AND REFERENCES

Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (20 United States Code section 1681) *et seq.* (Title IX), is a federal statute created to prohibit sex discrimination in education programs that receive federal funds. Nearly all postsecondary and many secondary institutions are recipients of federal funds, and thus, required to comply with Title IX. The regulation implementing the Title IX statute is at 34 C.F.R. (Code of Federal Regulations) Part 106. Title IX is enforced nationwide by the Office for Civil Rights (OCR) of the U.S. Department of Education. OCR has authority to develop policy on the regulations it enforces. In regard to athletics programs, OCR developed an Intercollegiate Athletics Policy Interpretation that was issued December 11, 1979, 44 *Fed. Reg.* 71413 *et seq.* (1979). The 1979 Policy Interpretation remains current policy. Generally, courts defer to the policies of the agencies with enforcement authority.

Title IX Statute — enacted June 23, 1972 (20 U.S.C. § 1681 *et seq.*).

This document is the statute written by the U.S. Congress and provides that:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance[.]"

Title IX Regulation — effective date July 21, 1975 (34 C.F.R. Part 106)

This document implements the statute and contains provisions for athletics programs at 34 C.F.R. § 106.41 and for athletic scholarships at 34 C.F.R. § 106.37(c).

September 1975 Guidance:

"Elimination of Sex Discrimination in Athletics Programs"

Issued by OCR to Chief State School Officers, Superintendents, College and University Presidents and others; provides general guidance on Title IX athletics requirements. Among other provisions, this document clarifies that different sources of funds may not justify sex discrimination. Specifically:

"[T]he fact that a particular segment of an athletic program is supported by funds received from various other sources (such as student fees, general revenues, gate receipts, alumni donations, booster clubs, and non-profit foundations) does not remove it from the reach of the statute and hence of the regulatory requirements."

Intercollegiate Athletics Policy Interpretation (December 11, 1979)

Issued by OCR, this document is OCR's major policy for athletics programs. This document elaborates on the provisions of the 1975 Title IX regulation and creates the three-part test for participation opportunities. (*Federal Register*, volume 44, pages 71413 to 71423).

Title IX Athletics Investigator's Manual (April 2, 1990)

Issued by OCR, the 1990 Title IX Athletics Investigator's Manual updates, implements, and/or confirms certain procedures and/or practices. The Manual, designed for OCR investigators, includes: procedures for Title IX athletics investigations; the scope of data collection; and instructions for analyses. The Manual also creates new policy and confirms internal policy. This Manual was signed by the Assistant Secretary for Civil Rights and is formal policy of the Office for Civil Rights, U.S. Department of Education.

Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test
(January 16, 1996)

Issued by OCR, the Clarification explains the three-part test used to analyze compliance for the accommodation of students' athletics interests and abilities (participation opportunities). This document contains the mathematical analysis designed by OCR for determining how close is close enough to constitute rates of athletics participation that are substantially proportionate to rates of enrollment (test one of the three-part test). This document also establishes a working definition for counting participants that identifies the first date of competition as an appropriate point to count participants.

Clarification — Athletic Scholarship Guidance (July 23, 1998)

Issued by OCR, this document creates a new compliance standard — one percentage point — for athletic scholarships; in effect, to establish a presumption of compliance, rates of awards should be at or within one percentage point of rates of participation. OCR disseminated this new policy nationwide in fall 1998.

Additional Clarification of the Three-Part Test: Test Three (April 20, 2010)

On March 17, 2005, OCR issued policy that created a model survey, which institution officials could use at their discretion to gauge compliance with test three of the three-part test for participation opportunities. Non-response to the survey was interpreted as lack of interest. OCR rescinded the 2005 policy in the policy document issued April 20, 2010. The 2010 policy essentially reinforced the guidance in OCR's 1996 Policy Clarification for the three-part test.

IX IX IX IX IX IX IX

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"Title IX and Intercollegiate Athletics: How It All Works—In Plain English" is a self-evaluation manual and desk reference that provides step-by-step instructions and tools for conducting a self-evaluation (including questionnaires for coaches, athletes, and staff, and charts for recording information). This comprehensive manual and desk reference is available for purchase at www.TitleIXSpecialists.com.

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This Handbook was written by Valerie McMurtrie Bonnette, Founder of Good Sports, Inc., Title IX and Gender Equity Specialists. Good Sports, Inc., assists educational institutions in complying with the athletics provisions of Title IX. Prior to founding Good Sports, Inc., in 1994, the Author was employed for fifteen years at the Office for Civil Rights, U.S. Department of Education, Washington, D.C., headquarters office and co-authored OCR's 1990 Title IX Athletics Investigator's Manual. She conducted federal investigations of complaints alleging sex discrimination in athletics programs, provided technical assistance to national and regional athletics organizations, provided on-site technical assistance to individual institutions, and provided guidance on Title IX athletics policy and procedure to OCR's enforcement offices, education officials, students, and parents.

The Author has created this publication to provide accurate and authoritative information concerning the subject matter covered. This publication is not legal advice; it is intended as technical assistance.

