

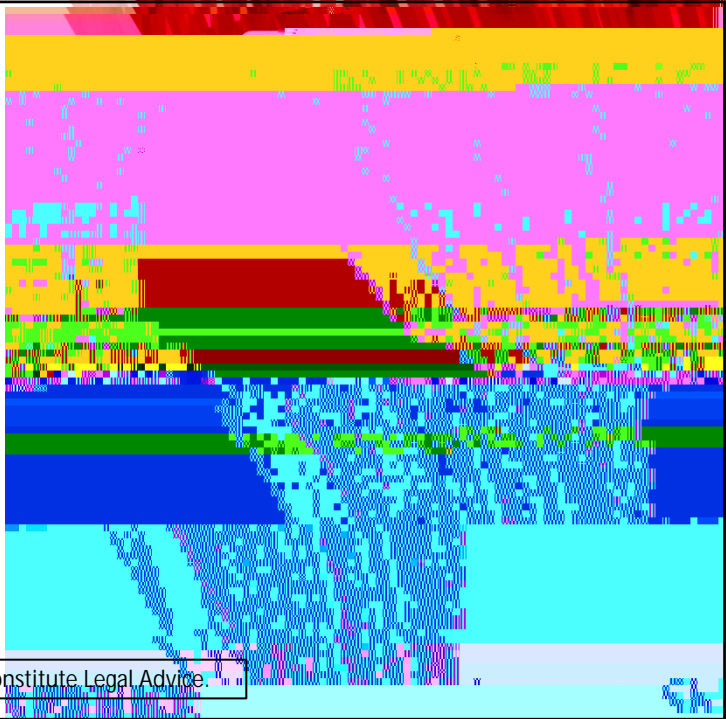
**Marjory Fisher,**  
Associate Vice President & Title IX Coordinator,  
Columbia University

**Melinda Grier**  
Attorney,  
Melinda Grier Consulting

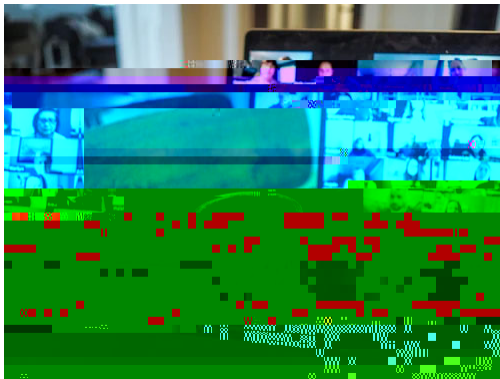
**Janet P. Judge**  
Partner,  
Holland & Knight LLP

**Amy Wilson**  
Manager, Office of Inclusion  
NCAA

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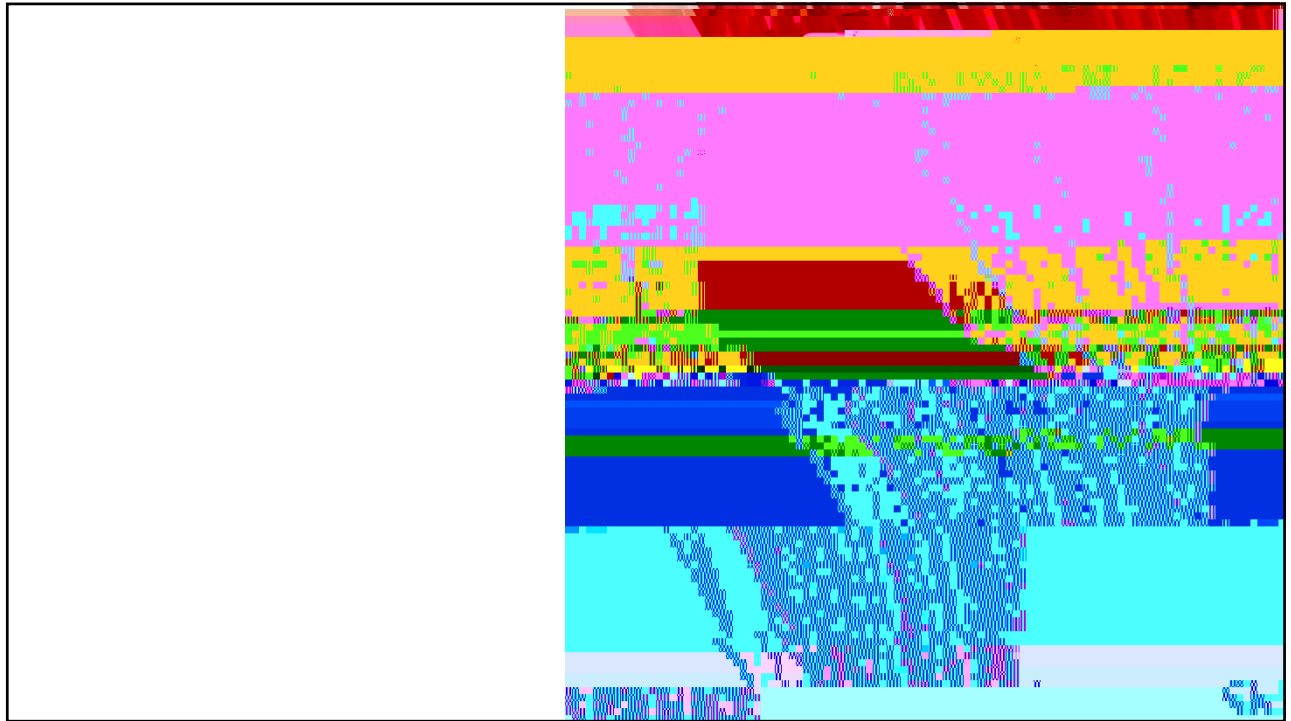
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- Athletic Equity
- Pay Equity
- The Regs
- Trans Athletes



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Schoolhouse Rock:  
<https://www.youtube.com/watch?v=tEPd98CbbMk>

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Participation

1. who is receiving the institutionally sponsored support (financially provided to athletes competing at the institution (travel, lodging, coaching, equipment, medical and training room services) on a regular basis during a sport's season and

2. who is ~~300656/170) 11/20/2015 8:51:23 AM~~ ~~TD01 06165j/TT61Tf.2105~~ (

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### Substantial Proportionality



### History and Ongoing Practice of Expansion



### Full Accommodation of Interest and Ability



#### Prong 1.

Male and female intercollegiate participation is provided in numbers substantially proportionate to their respective full time undergraduate enrollment, or

#### Prong 2.

The institution has a history and continuing practice of program expansion responsive to the developing interests and abilities of the members of the underrepresented gender, or

#### Prong 3.

The interests and abilities of the members of the underrepresented gender are fully and effectively accommodated by the present program.

- Amicus Brief (United States) in the Michigan State University (MSU) Case:

- OCR “has not specified a magic number at which substantial proportionality is achieved.” *Equity In Athletics, Inc. v. Department of Educ.*, 639 F.3d 91, 110 (4th Cir. 2011), cert. denied 565 U.S. 1111 (2012); see also *Biediger*, 691 F.3d at 106 (explaining that the Second Circuit did not “understand the 1996 Clarification to create a statistical safe harbor at [2%] or any other percentage”).
- What matters \*\*\* is whether the participation gap is large enough to sustain a *viable* team. As the 1996 Clarification explains, where “it is likely that a viable sport could be added,” an institution will not satisfy the first prong. (1996 Clarification).
- Here, the district court failed to conduct the necessary fact-intensive inquiry to determine whether a participation gap of at least 15 athletes .0042 Tw[(.1(specifiedmore)TJ)-7(7(a ))T-J/TT14 1 Tf18192 0 -7648 Tc0 Tw(viable )T]TT8









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Equipment and Supplies (Apparel and Equipment)			
Scheduling (Practice, Competition)			
Travel (Mode, Housing, Food)			
Tutors/Academic Services (Personnel, Services)			
Coaches (Quantity, Quality, Compensation*)			
Facilities/Spaces (Practice, Competition, Locker Room)			
Medical (Personnel, Experience, Availability)			
Housing & Dining (Home)			
Publicity/Communications (Sports Information & Marketing)			
Support Services (Administrative, Office, Support)			
Recruiting (Financial & Other Support)			

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It's not a dollar to dollar analysis. Focus on goods and services. Where differences exist, OCR may focus on funding.

Private donations are institutional dollars and goods and services provided through private funding still count. In other words, those goods and services are included in the equity analysis.

See, e.g., *Chalenor v. Univ. of North Dakota*, 142 F. Supp. 2d 1154 (D.N.D. 2000)



**Difference, on the Basis of Sex**

- in benefits or services that has a . . .
- negative impact on athletes of one sex . . .
- when compared with benefits or services available to athletes of the other sex.

**Disparity:**

- So Substantial as to Deny Equal Opportunity to Athletes of One Sex.

**Disparities that are not Substantial. . .**

- Evidence to be Evaluated on a case by case basis.

See, e.g., Policy Interpretation, 44 Fed. Reg at 71,417 (1979).



Retaliation is intentional discrimination on the basis of sex.

One who witnesses and complains about discrimination is protected from adverse



- Title IX Program



- NCAA has had a **policy** for a decade.

Policy currently under review by NCAA membership committees:

- Committee on Competitive Safeguards and Medical Aspects of Sport
- Committee to Promote Cultural Diversity and Equity

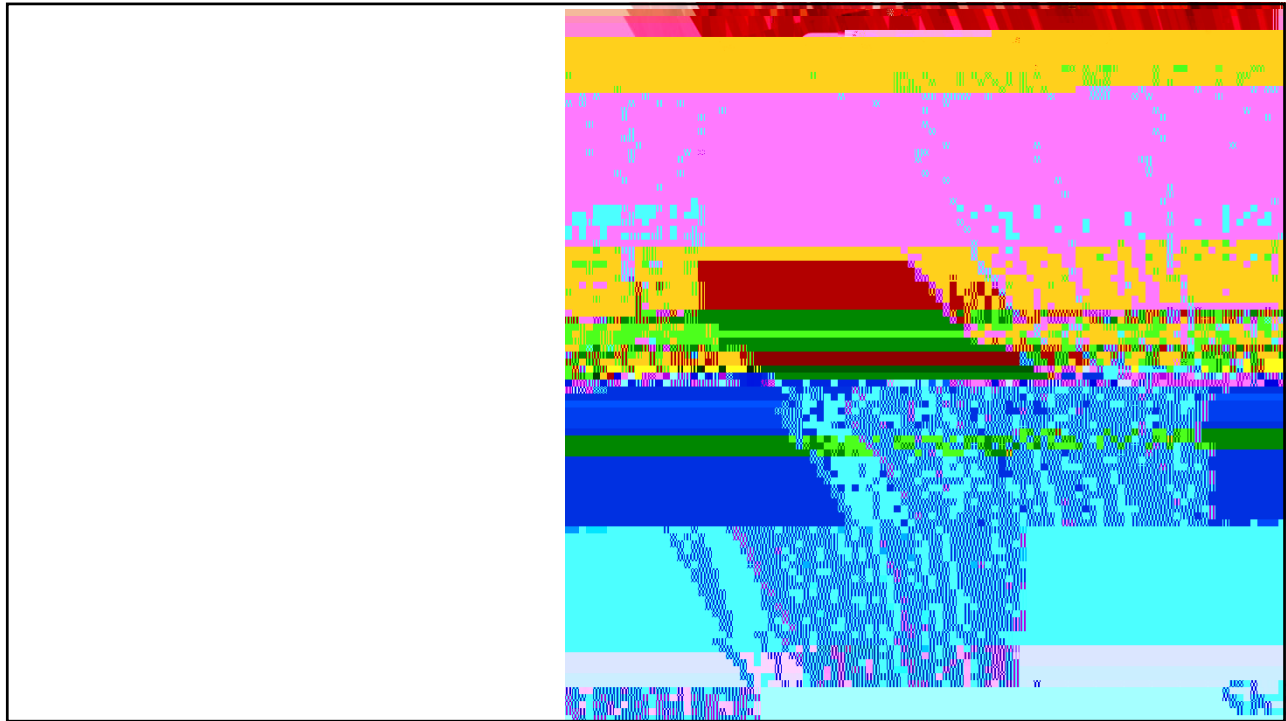
- NCAA **Summit** on Gender Identity and Student Athlete Participation (Oct. 2020)

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What is the Role of the Title IX Office Around Athletic Equity?



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- “[T]he Department declines to address other topics . . . such as pregnancy, parenting, or athletics under Title IX, coverage of Title IX to fraternities and sororities, whether speech codes discriminate based on sex, funding intended to protect women or young adults on campus, funding cuts to girls’ programs by recipients, or forms of harassment other than sexual harassment.”
- These complaints “may be referred” to the recipient’s Title IX Coordinator to review under the grievance procedures ~~Department~~

**Sample Language:**

This policy supplements the overall school policy prohibiting sexual harassment, [provide link] which also applies to all members of the athletics department, both staff and student athletes.

School U. values the educational aspect of athletics and as such offers opportunities to compete in a [NAIA/NCAA] Division [I, II or III] varsity athletics program and is a member of the [name] conference[s], club



## Emergency Removals

- A school may remove an individual





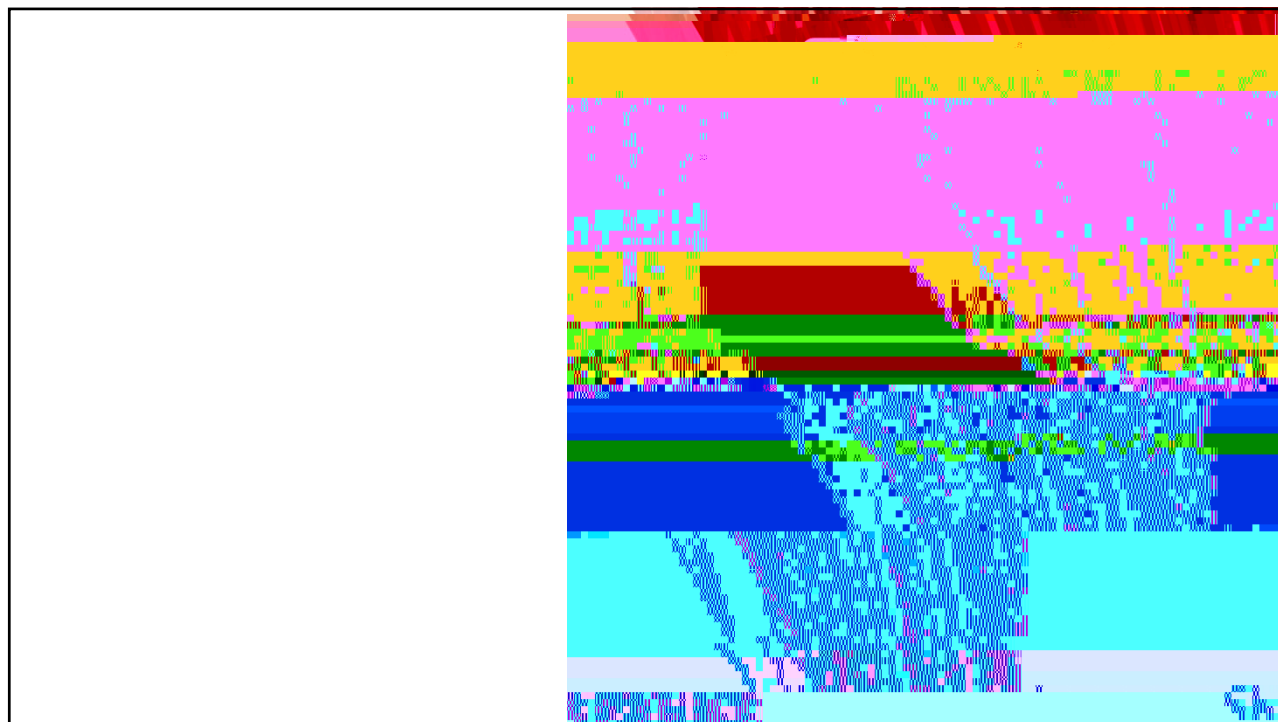
- NCAA Board of Governors adopted a Policy on Campus Sexual Violence on Aug. 8, 2017.
- Requires annual attestations signed by the Director of Athletics, Title IX, and President (CEO).
- April 30, 2020 BOG revisions to the Policy expanded its reach and attestation





1. The athletics department is informed on, integrated in, and compliant with institutional policies and processes regarding sexual violence prevention and proper adjudication and resolution of acts of sexual and interpersonal violence.
2. The institutional policies and processes regarding sexual violence prevention and adjudication, and the name and contact information for the campus Title IX coordinator, are readily available within the department of athletics, and are provided to student athletes.
3. All student athletes, coaches and staff have been educated each year on sexual violence prevention, intervention and response, to the extent allowable by state law and collective bargaining agreements.

- **When did the policy begin?** August 2017. The most recent amendments are effective in the 2022-23 academic year. The annual attestation period runs from March 1 – May 15 each year.
- **What is the deadline for completing the annual education for coaches, student athletes and athletics staff?** For the 2020-21 academic year, education should be completed prior to the May 15, 2021 deadline so that presidents or chancellors, athletics directors and campus Title IX coordinators can attest to their compliance by the May 15 deadline. The attestation form will be available electronically in the NCAA Learning Portal and on [ncaa.org/csvpolicy](https://www.ncaa.org/csvpolicy) beginning March 1, 2021 and must be completed by May 15, 2021. This is a firm deadline.
- **How do I upload my completed form?** Each school's director of athletics must upload the final form in the NCAA Learning portal.
- **What type of education meets the expectations of the policy?** The policy allows member schools to determine the types and manner of education provided. The [NCAA Sexual Violence Prevention Tool Kit](#) can assist member schools in this effort. The tool kit provides checklists for campus collaboration and educational resources created specifically for student athletes. Those resources include the online curriculum myPlaybook, which includes a course on sexual violence prevention.
- **What happens after the deadline?** A list of schools that have and have not attested to the requirements of the policy will be presented in a report to the Board of Governors at their August meeting.



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## Note

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