

Hot Topics in Athletics Compliance and Risk Management: What Every Administrator Should Know

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Disclaimer

- This isn't legal advice!
- (but please ask questions if you have them)

Session Description

- Athletics programs are often at the center of complex compliance and reputational challenges that impact the entire institution. This session will provide non-athletics administrators with an inside look at emerging issues shaping the athletics landscape—including **Name, Image, and Likeness (NIL)** regulations, **Title IX equity in fundraising and participation**, **student-athlete health and safety**, and **personnel and reputational risk**. Attendees will gain a clearer understanding of how these developments intersect with broader institutional compliance responsibilities and learn strategies to support athletics colleagues in managing risk, ensuring equity, and protecting institutional integrity.

Your Presenters

- Melissa Carleton, Partner
- Joel Nielsen, Higher Education Compliance Consultant

Agenda

- **Name, Image, and Likeness (NIL)**
- **Title IX Equity**
 - Athletic participation (the “three prong test”)
 - Fundraising
- **Student-athlete health and safety**
 - Athletic Injuries
 - Mental Health
- **Personnel and reputational risk**
 - Sexual Misconduct/Title IX
 - Hazing



Name, Image, and Likeness (NIL)

The *House* Settlement and NIL

- The settlement would resolve a host of antitrust claims by requiring the NCAA to pay around \$2.8 billion over ten years to former Division I athletes and establishing a revenue-sharing model for athletes beginning with the 2025-2026 academic year.
- DI institutions will have the option to engage in direct NIL contracts with student-athletes in the form of a licensing agreement, endorsement deal and/or brand promotion agreement.
 - **Institutions opting-in will be subject to roster limits and team scholarship limitations will no longer apply.
- DI athletes will be required to report to (a) the member institution in which they are enrolled and/or (b) the designated reporting entity any and all third-party NIL contracts or payments with a total value of \$600 or more

College Sports Commission

- NIL Go, an online portal built with assistance from Deloitte, determines whether third-party NIL deals are made with the purpose of using a student-athlete's NIL for a valid business purpose and do not exceed a reasonable range of compensation.
- Evaluation will be based on:
 - **Associated Status** - The relationship(s) between the Deal Sponsor and/or Deal Facilitator and a given institution
 - **Valid Business Purpose (VBP)** - Whether a deal is being made with the purpose of using the student-athlete's NIL for a valid business purpose related to the promotion or endorsement of goods or services being provided to the general public for profit
 - **Range of Compensation (RoC)** - Whether the compensation paid to the student-athlete is commensurate with compensation paid to similarly situated individuals

NIL Go platform snapshot

- Since the NIL Go platform launched on June 11, 2025, and through August 31, 2025:
 - 28,342 student-athletes and 1,227 institutional users have registered and are approved to use the NIL Go platform
 - 6,090 deals have been cleared, with values ranging up to \$1.6M

Deal Activity – As of Aug. 31

Total Deals in the NIL GO System* to Date	8,359
Total Value of Deals in the NIL GO System* to Date	\$79.8M
Total Deals Cleared to Date	6,090
Total Value of Cleared Deals to Date	\$35.42M
Total Deals Not Cleared to Date	332
Total Deals Re-Submitted to Date	75
Total Deals Currently in Arbitration	0
Most Common Clearance Issues	• Delay in attesting to or providing required information • Contradictory deal terms, misreporting of deal terms and/or mistakes made in entering deal terms • Deal does not satisfy valid business purpose requirement

**This does not include deals cancelled by the student-athlete before review or following being "not cleared."*

NIL in D2, D3, and the NAIA

- Division II, Division III and NAIA athletes are eligible for NIL (Name, Image, and Likeness) deals, which allow them to earn money from endorsements, social media, and other activities, just like their Division 1 counterparts. All NCAA and NAIA athletes are eligible as long as they comply with their school's policies and any applicable state laws.
- Many schools, conferences and organizations use third-party vendors to support their athletes with NIL, such as Opendorse.

- Student-athletes who participated before 2016 antitrust lawsuits
 - *Chalmers v. NCAA* (*dismissed b/c of statute of limitations*)
 - *Bailey v. NCAA*
 - *Robinson v. NCAA* (*dismissed b/c of statute of limitations, said they will appeal*)
 - *Bush v. NCAA*
 - *Pryor v. NCAA* (*dismissed b/c of statute of limitations*)
 - **Key issue: Statute of limitations**
- International student-athlete litigation
 - *Poa v. Jaddou* (U.S. Citizen and Immigration Services)
 - **Key issue: Visas**
 - Related: Texas Bill
- Promises to student-athletes
 - *Rashada v. Hathcock, et al*

Title IX Equity

The Law

- Title IX Regulations – prohibits schools that receive Federal funding from discriminating based on sex in their programs or activities, including its athletic program.
- "Dear Colleague" letters and guidance from OCR
- Case law
- OCR Case Resolutions

Why it is a good time to “play offense”

- Influx of complaints (and anyone can file a complaint with OCR)
- Institutional restructuring due to financial challenges and how it may impact athletics programs
- Eliminating sports programs often leads to litigation
- Save College Sports Executive Order



Save College Sports EO

- Signed on **July 24, 2025**
- Aims to **preserve participation opportunities** in collegiate athletics, especially for **women's and non-revenue sports**
- Introduced in response to the *House* settlement, but does **not override** its terms
- Establishes expectations for **Title IX-compliant implementation** of the settlement
- Seeks to **mitigate roster limitations** imposed by the *House* settlement
 - Reduced opportunities in 13 men's sports and 8 women's sports
- Encourages institutions to **maximize roster spots** within existing caps.

Recent Litigation - SFA

- ***Myers et al v. Stephen F. Austin State University*** 9:25-cv-00187 (E.D. Tex.)
- Facts: In May 2025, SFA announced that they were eliminating women's beach volleyball, men's and women's golf, and women's bowling
 - Plaintiffs, student-athletes on those teams, argued that SFA's actions violated Title IX because SFA was not providing equitable athletic participation opportunities to females (the three prong test).
 - SFA argued that the three prong test was guidance and should not be followed in light of *Loper Bright*, and even if they had to comply with the three prong test, they complied with prong one(counting the cheer and dance team) or prong three (no interest in bowling and beach volleyball, but did not conduct an interest survey).

Recent Litigation - SFA (cont.)

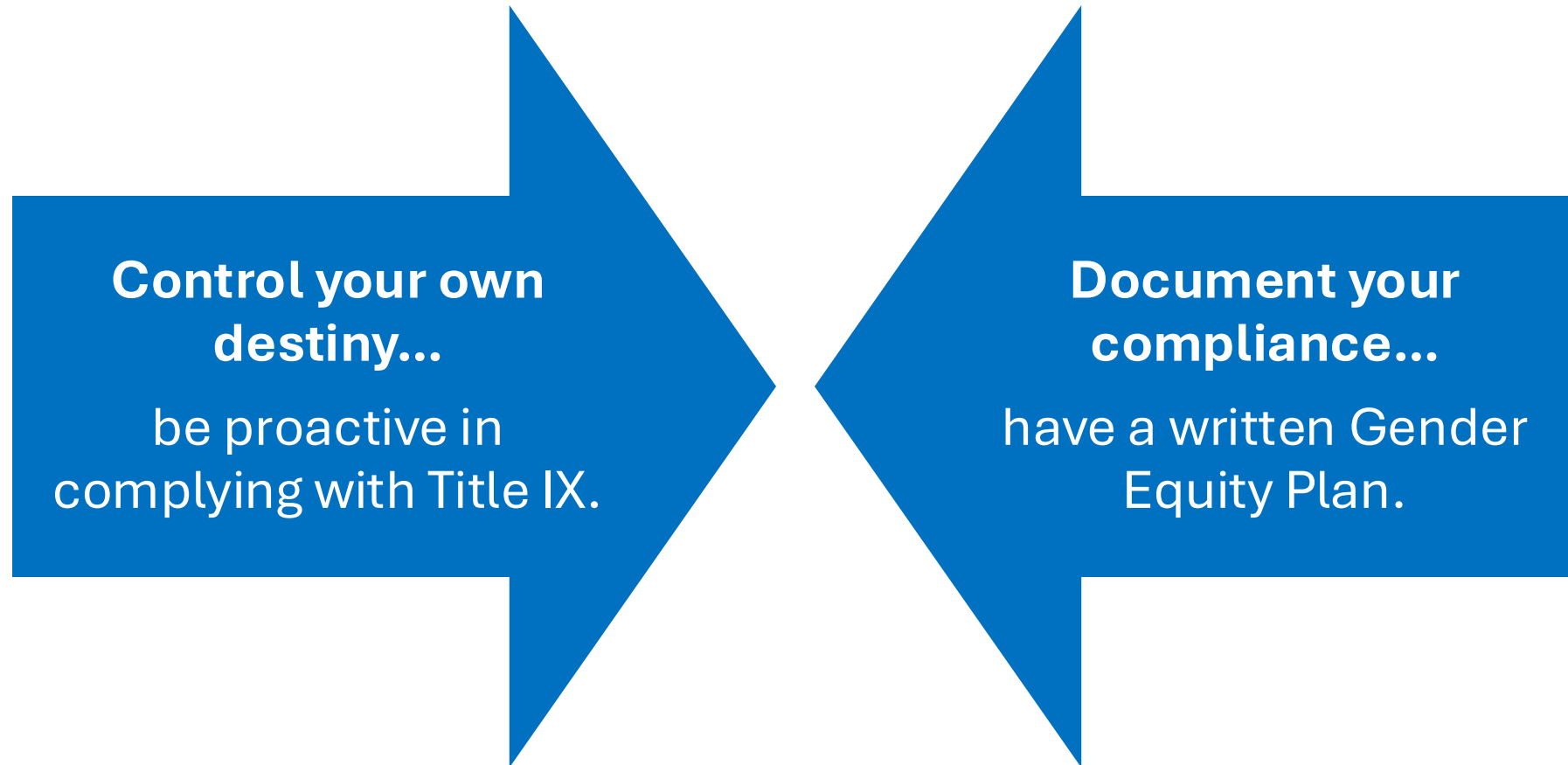
- On August 1, 2025, the judge ruled at the preliminary injunction stage, after a hearing, that SFA must reinstate the three women's programs
 - Judge rejected SFA's argument that the recent Supreme Court decision invalidated Title IX policy interpretations and guidance.
- SFA has appealed to the Fifth Circuit, which will hear the case
 - Fifth Circuit granted SFA's motion to stay the injunction while the appeal is pending
 - Both Plaintiffs and Defendants have filed briefs
- SFA filed a motion to dismiss on 9/18, still no decision
- SFA voluntarily reinstated the women's golf and beach volleyball team

Why is compliance tricky?

- Title IX Coordinators have the ultimate responsibility
 - But Athletics often has the data...
- Decisions – good and bad – flow downward to administrators and coaches
 - **Having a plan and oversight is KEY!**
- Compliance is a “snapshot in time”
- Rules, regulations, and requirements are dense and complicated



How to proactively tackle this issue



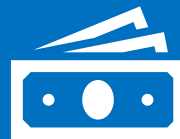
Overview of your Legal Duties

- Must meet compliance with all three “buckets”

Accommodation
of Interests and
Abilities



Athletic
Scholarships

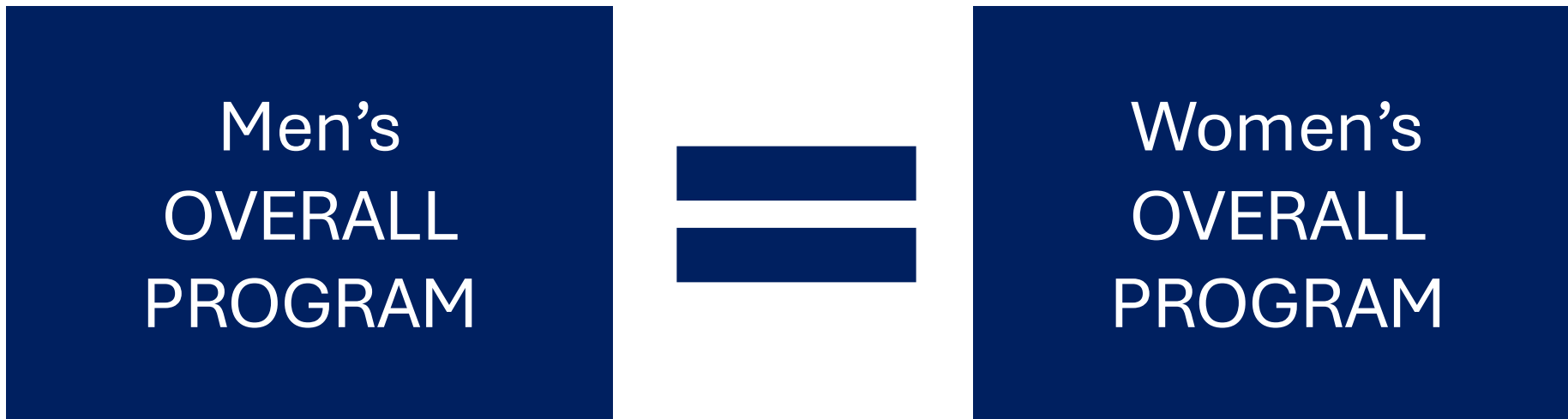


Benefit &
Treatment
Areas



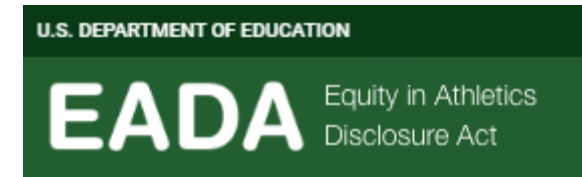
Overall program analysis

- Title IX regulations require that a school offer equivalent benefits, opportunities, and treatment to its men's and women's teams overall.
- Not sport-to-sport comparison (e.g., men's basketball to women's basketball, baseball to softball)



A note on EADA

- Can be used to evaluate (1) athletic participation opportunities and (2) financial aid
- **EADA & Title IX**
 - Although it may not fully reflect, it is pretty close
 - Example: Title IX participants
 - In lawsuits, Plaintiffs often rely on EADA data and courts have used these numbers to issue preliminary injunctions



You can use the questions below to help assess your school's provision of scholarships and athletic financial assistance. Your school's athletic director or other school leaders may be able to provide you with the information needed to answer these questions. Also, the Department's Office of Postsecondary Education maintains the [Equity in Athletics Data Analysis \(EADA\) website](#), which publishes information provided by all coeducational schools that have an intercollegiate athletic program and participate in Federal Student Aid programs. Data on the EADA website may be helpful¹¹ in answering the questions below. But please note that OCR does not rely solely on this data or any one data point to determine compliance with Title IX.

Title IX Gender Equity Basics: ***Athletic Participation***

The KEY Takeaway

- **Do not add, eliminate, or transition a varsity sport **WITHOUT** doing an athletic participation analysis**



The “three prong test”

- Your school has flexibility in choosing one of these options:
 1. **Substantial Proportionality**: whether the percentage of athletic participation compared to full-time undergraduate enrollment is "substantially" proportional
 2. **History and Continuing Practice**: whether you are adding opportunities for the underrepresented sex
 3. **Interests and Abilities of Students**: whether you are fully accommodating the interests and abilities of the underrepresented sex



Prong 1

- Ask: Are the percentage of women and men participants on athletic teams equal to – or “substantially proportionate” to—the percentage of women and men enrolled full-time as undergraduates at your school?
 - % full-time undergraduate male = % male **athletic participants**
 - % full-time undergraduate females = % female **athletic participants**



Athletic Participants

1. Can you count the *sport*?



2. Can you count the *participants*?

- Sport on EADA/Traditional Sport?
Yes.
- Emerging sports? **Likely yes.**
 - Keep records of how it meets the requirements
- Other sports? **It depends...**
 - 1. Are you in a jurisdiction that recognizes it?
 - **2. Evaluate under 2008 DCL guidance**
 - Keep records of how it meets the requirements

- Counting participants has become increasingly complicated....
- When do you count?

How close is close enough?

- Now you know how to count, what is “substantially proportionate”? What is the “safe harbor”?
- Two data points to consider:
 1. **Participation gap**: How many additional opportunities are required for the underrepresented sex in order to achieve perfect proportionality?
 2. **Percentage differential**: What is the difference between the full-time undergrad population vs. athletic participants?

Percentage Differential

- Courts in the past have looked at this number
- Calculation
 - $\% \text{ full-time undergraduate male} - \% \text{ male participants} = [\text{percentage differential}]$
 - $\% \text{ full-time undergraduate females} = \% \text{ female participants} = [\text{percentage differential}]$
- Based on case law, if percentage differential is:
 - Over 10% = unlikely compliant
 - Between 3.5% and 10% = less clear, but unlikely compliant
 - Below 3.5% = likely compliant

Participation Gap

- **The most the important data point for courts**
- How many additional opportunities are required for the underrepresented sex in order to achieve perfect proportionality?
 - If sufficient to field a “viable team” = **not compliant**
 - If not sufficient to field a “viable team” = **compliant**
- Million-dollar question: what is a “viable team”?
 - OCR examples:
 - 62 part. gap ☐ can fit a viable team → **not compliant**
 - 6 part. gap ☐ cannot fit a viable team → **compliant**
 - **So what about 6-62 part. Gap?**
 - *Balow v. Michigan State*: Used viable team at issue (women’s swimming and diving). Found that a 31 participation gap is enough to sustain a viable team because the smallest swimming & diving team in the Big Ten Conference was 21 females



Key Takeaways – Prong 1

- Challenging because of the changing demographics
 - Rise of female students since 1970
- If relying on this prong:
 - Do an internal count – don't just rely on EADA data
 - Have rigorous and well-document procedures in place that support the roster numbers being used
 - Calculate the participation gap
 - **Consider having a roster management policy**
 - Consult with legal counsel and/or experts

Prong 2

- In evaluating “**history**,” OCR looks at the institution’s record for:
 - adding teams, (within the last 3-4 years)
 - increasing participants on existing teams, and
 - the institution’s response to requests to add teams.



- In assessing “**continuing practice**,” OCR examines:
 - the institution’s current policy for adding teams and
 - an institution's current implementation of a plan of program expansion that is responsive to developing interests and abilities.

Key Takeaways – Prong 2



- **You MUST have a long-term plan on program expansion (Gender Equity Plan)**

- If you don't have a plan, prepare one.
- Include benchmarks to expand women's participation (adding teams, roster management) and rough timetable



- **You MUST have a history of adding women's participation opportunities**

- Look at the last time you added a women's team. If more than 4 years have passed, be cautious (especially if you have added or are looking to add a men's team).
- Look at your women's sports participation over the past decade. If this number has dropped, be cautious (especially if your men's participation has gone up).



- **You MUST have a policy regarding requesting the addition of varsity sports.**

- If you don't have one, prepare a policy and procedure.
- If you have one, effectively communicate it (website, handbook, etc.) and make sure you document responses to sport requests.

- **Collect information from your students and others on campus including club and intramural sports**

Prong 3

- This is the most complicated because the metrics are nuanced
- Usually referred to as the "survey" prong
- Question – is there enough (1) demand/interest, (2) skill/talent, and (3) competition at your school among [women/men] to sustain a viable team or sport?
 - If the answer is “no” to any of these questions, your school can likely use Prong 3
 - If the answer is “yes” to all three questions, your school likely cannot use this option.

Surveys

- How to assess student's interests and abilities
- Note that you not have to administer a survey to rely upon prong 3
- OCR has released guidance on this prong because it has been controversial
 - Does not consider nonresponses to surveys as evidence of lack of interest or ability in athletics.
- Cross campus commitment



Key Takeaways – Prong 3

- Collect good information
 - Surveys can be complicated. Using an expert might be beneficial.
- Document the analysis
 - If you decide not to add a sport that has been requested, you should **document** the reasons you made that decision, which should include the results of assessing the abilities of interested students and viability of the sport.

Fundraising and Title IX

Donations

- If an entity provides benefits that creates a disparity, the school is on the hook to offset that disparity. If the benefits bring you closer to compliance, likely no disparity
- Solution: Reallocate funds and provide similar benefits to the other program to offset
 - If the men's golf team receives a \$10,000 donation and spends it go on more recruiting trips, the athletics department can redirect \$10,000 out of reserves or general budget and put towards the women's golf recruiting budget so both teams have similar opportunities to recruit (assuming recruiting spending is the same at the start).

Donations Example

- A University receives a \$25,000 donation for men's basketball, which the men's basketball team may spend on uniforms, travel, facility improvements, equipment, etc. The University does not have any Title IX obligations until the money is SPENT. Once it is spent, the University's obligations are determined by what the students receive as a result of the donation. If the men's basketball team spent the \$25,000 on new uniforms, and the men's basketball team really needed new uniforms, this may not create a disparity. But, if the men's basketball team is receiving an extra set of uniforms, which is something a women's basketball team does not have, this likely creates a disparity that will need to be addressed.

Fundraising

- Men's and women's programs have equitable opportunities to fundraise (allow teams to use facilities, etc.)
- When fundraising creates a disparity...
 - Challenging because some coaches effort is not rewarded while other coaches lack of effort and lack of donors is not penalized.
 - Solution: all fundraised dollars go into the general athletics fund, and the team gets a percentage of the fundraised dollars



Fundraising Example

- The baseball team travels to the California for one weekend and competes in a tournament. The trip is paid for by fundraised dollars (individual donations, camp fees, etc.). The softball team also fundraised throughout the year (donations, camp fees, working concessions at home events, etc.) but did not fundraise enough to cover a trip to California. Must the University pay for the softball team to travel to California?
 - 1. Determine whether the trip to California by the baseball team is offset by fundraising efforts conducted by women's coaches or other benefits already provided to female athletes (not likely).
 - 2. If not, the University is required to provide a benefit of equal importance to the women's team (it makes the most sense to provide them with money to take an out-of-state trip) by supplementing their fundraised dollars.
 - **Theme: Regardless of the source of funds, the institution must provide equivalent benefits to the men's and women's teams**

Hypothetical

- A donor, who is a baseball alumnus, wants to give a gift to build an indoor hitting facility, which will be around \$2 million. He wants the funds to be specifically earmarked for baseball to build the indoor hitting facility. Softball does not have an indoor hitting facility and is in dire need of a turf infield.
 - What should you do?



Key Takeaways – Donations and Fundraising

- Monitor fundraising efforts and successes
- Have conversations with donors
- Be prepared to provide offsetting benefits
- Communicate fundraising expectations with coaches
- Have a policy on what is done with fundraised dollars
- Usually, both men's and women's coaches fundraise, and the results are offsetting benefits

Final Takeaways

- Do not add, eliminate, or transition a varsity sport WITHOUT doing a Title IX analysis – especially an athletic participation analysis
- **Have a written Gender Equity Plan**
 - Document! Document! Document!
 - One that is current, supported by top leadership at the institution, and reviewed by department leadership continuously
 - Have an administrator as a “point of contact/responsibility”
 - In-house plan (committee) or external plan?
 - Importance of start and end date
- **Control your own destiny**
 - Federal judges and OCR investigators are not afraid to tell you how to run your athletic department.

Student-athlete health and safety: Athletic Injuries

Liability of Injuries

- **Potential Liability**

- Negligence
- Inadequate Training and Supervision
- Failure to address known hazards
- Insurance requirements

- **Potential Defenses**

- Assumption of Risk
- Contributory or Comparative Negligence
- Sovereign Immunity
- Compliance with Standards
- Liability Waivers and Releases

Negligence: Duty Owed to Athletes

- General negligence claims require 1) a **duty of care** owed, 2) a breach of that duty, 3) causation between the conduct and the injury, and 4) damages.
- What duty is owed?
 - **State and jurisdiction dependent!** Check with your counsel.
 - Some courts have held that due to the “**special relationship**” between the athlete and the school, that there is a duty to provide “reasonable care.” See, e.g. *Kleinknecht v. Gettysburg Coll.*, 989 F.2d 1360 (3d Cir. 1993); *Davidson v. Univ. of N. Carolina at Chapel Hill*, 142 N.C. App. 544, 543 S.E.2d 920 (2001)

The college has to take **reasonable precautions** against the risk of **foreseeable** life threatening injuries

What is Reasonable?

- Typically a question for juries
 - Presence of properly certified, licensed athletic trainers
 - Monitoring heat/exertion
 - Responding quickly
 - Making sure physicals were completed
 - Having proper medical equipment (like an AED and knowing how to use it)



Liability Waivers

- Disfavored by courts
- Strictly construed against the party seeking to rely on them
- Generally, to be enforceable, they must be:
 - Clear and unambiguous
 - Explicit in the parties' intent to relieve the released party from liability for its own negligence
- Generally, cannot release liability for reckless conduct (against public policy)
- **State law specific**

Pennsylvania Case Study

- *Feleccia v. Lackawanna College*, 654 Pa. 324 (2019)
 - At the time of the injuries, the athletic trainers had not passed their exams and were therefore not properly licensed or certified, but cleared the players to return to practice.
 - Court **allowed** the recklessness and gross negligence claims to move forward (negligence claims were waived through a release form)
- *Jordan v. Pennsylvania State University*, 2022 PA Super 84, 276 A.3d 751 (2022)
 - At the time of the injury and treatment, the University had multiple qualified and licensed medical professionals and athletic trainers tend to Plaintiff's medical needs and referred athlete to qualified physicians, athletic trainers, and medical providers.
 - Court **did not** allow the negligence claim to move forward

Recent case out of Oregon

- *Brenner v. Taggart*, No. 19CV01516, 2019 WL 162023 (Or. Cir. Jan. 9, 2019).
 - In January 2017, Brenner and other team members were hospitalized with exertional rhabdomyolysis. Brenner alleged negligence claims, the lack of proper supervision, and the lack of training. The strength and conditioning coach was certified under NCAA standards, but not NSCA or CSCCA.
 - Brenner was seeking \$20 million in non-economic damages and \$5.5 million in economic damages in his claims against the university, the head football coach, and the strength and conditioning coach, as well as the NCAA, which he is also suing for \$100 million in punitive damages.
 - University settled a case with a football player (Brenner) during the midst of trial.
 - Jury found the NCAA negligent, but that it did not cause damages.

Athletic Trainer Shortage

- High turnover because of inadequate pay and long hours, among other factors
- NCAA Resources:
 - Medical Care and Coverage for Student-Athletes at Away Events
 - Medical Care and Coverage for Student-Athletes at Away Events: FAQ
- Risks of not having athletic trainers at every practice and/or competition
 - Is this reasonable?
 - Work with legal and other knowledgeable people on campus to identify and understand risks and how to mitigate these risks

Key Takeaways

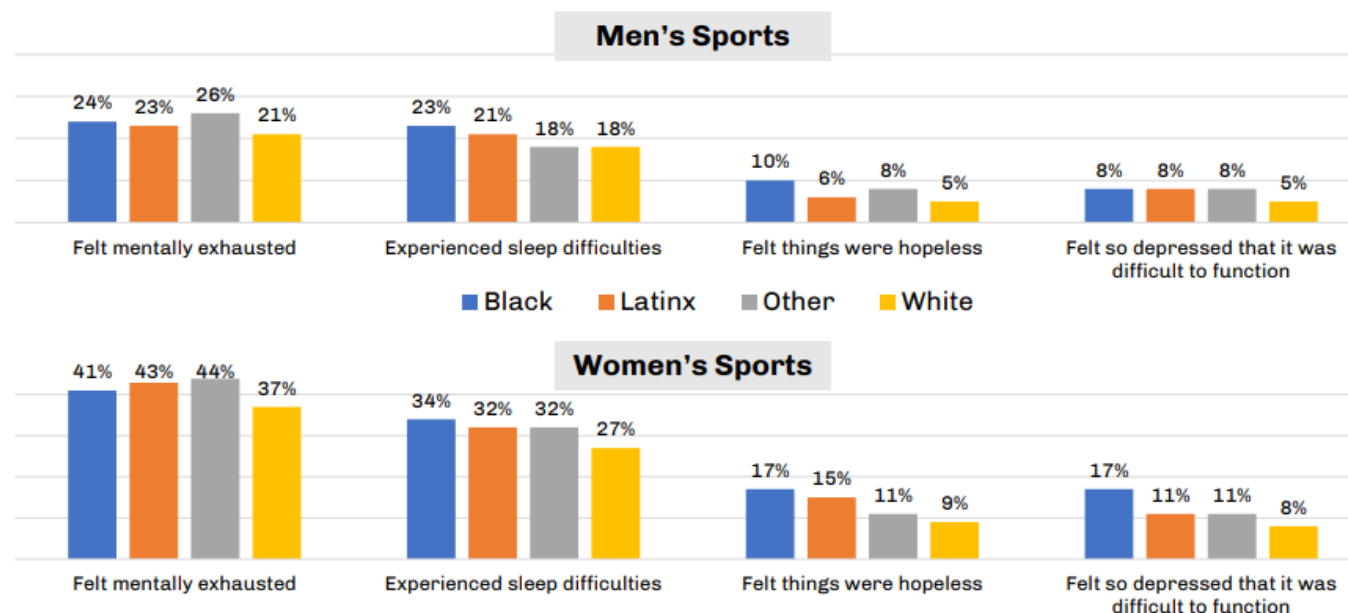
- Make sure your practices are reasonable
 - Have trained and properly certified coaches, strength coaches, athletic trainers, and team doctors
 - Have a way **to verify certifications and keep records!** (Annual? When hired?)
- Review and revise your liability waivers so they are enforceable (work with general counsel)
- Review your policies on athletic trainers and traveling to away events
- Ensure you are prepared for the post-eligibility insurance coverage

Student-athlete health and safety: Mental Health

Student-Athlete Mental Health

- Fall 2021 survey of 9,808 student-athletes across DI, II, and III.

Fall 2021 Mental Health Concerns
(Percentage of Participants Who Endorsed “Constantly” or “Most Every Day” by Race/Ethnicity)



Note: "Other" includes those who selected American Indian/Alaska Native, Asian, Native Hawaiian/Pacific Islander, and other racial identities. Source: NCAA Student-Athlete Well-Being Study (Fall 2021).

Contributing Factors

Factors Negatively Impacting Student-Athlete Mental Health in the Month Before the Survey

(Percentage of Women's Sports Participants Who Responded "Agree" or "Strongly Agree" by Race/Ethnicity)

	Black	Latinx	Other	White
Academic worries	46%	49%	50%	49%
Planning for the future	45%	46%	48%	39%
Financial worries	38%	38%	30%	24%
Coach relationship	25%	22%	20%	22%
Playing time	23%	23%	23%	21%
Team environment	26%	24%	19%	20%
Family worries	26%	29%	25%	18%
COVID-19 health concerns	17%	18%	13%	14%
Personal experiences of racism or racial trauma	11%	5%	6%	1%
Political disagreements with family/friends	5%	5%	6%	3%

Note: Top 2 points on a 6-point scale. The survey asked, "How much do you agree or disagree that the following have negatively impacted your mental health within the last month?" The survey was in the field Nov. 17-Dec. 13, 2021. "Other" includes those who selected American Indian/Alaska Native, Asian, Native Hawaiian/Pacific Islander, and other racial identities. Source: NCAA Student-Athlete Well-Being Study (Fall 2021).

NCAA Resources

- Division I Bylaw 16.4.2: Mental Health Services “**must** be consistent with the Interassociation Consensus: Mental Health Best Practices.” (new August 1, 2024)
- Division II and III Bylaw 16.4.1: Mental Health Services “**should** be consistent with the Interassociation Consensus: Mental Health Best Practices.”
- Best Practices:
 - Clinical Licensure of Practitioners Providing Mental Health Care
 - Procedures for Identification and Referral of Student-Athletes to Qualified Practitioners (written emergency and non-emergency action plans)
 - Pre-Participation Mental Health Screening
 - Health-Promoting Environments That Support Mental Well-Being and Resilience

***Mental Health Best Practices:
Understanding and Supporting
Student-Athlete Mental Health***

SECOND EDITION

An Inter-Association Consensus Document
Copyright 2016, Revised 2020, Updated 2024

*Note: Schools are legislatively required to make mental health services and resources available to their student-athletes consistent with this document.



NAIA Resources

- **Mental Health Toolkit:** Provides resources and materials for student-athletes, coaches, and administrators to identify and understand mental health concerns and available support systems.
- **Provider partnerships:** The NAIA partners with organizations like [Mantra Health](#) to offer colleges and universities access to virtual therapy and psychiatry services for student-athletes.
- **Return-to-Learn:** For concussions, the NAIA promotes a "Return-to-Learn" protocol that parallels "Return-to-Play" and focuses on gradually increasing cognitive activity to ensure a safe and complete recovery.

Key Takeaways

- Impacts everyone! (Even coaches!)
- Don't let your approach to mental health be an afterthought.
- Develop/maintain relationships with student-athletes.
 - Utilize your Student-Athlete Advisory Committee (SAAC).
 - This will help you identify issues facing individual athletes & give you a chance to brainstorm how you can help them
 - Is it financial? Maybe you can connect the student to financial aid office?
 - Is it coach/team related? Maybe you can arrange a mediation.
 - Is it academic? Maybe you can connect the student to additional tutoring or connect their student with an advisor to adjust schedule.
- Provide access to counseling (does your institution have it on site?)
- Consider partnering with third parties to provide mental health support!

Personnel and reputational risk: Sexual Misconduct/Title IX

Disclaimer

- **This brief overview is not intended to be a comprehensive Title IX Sexual Misconduct training, nor does it satisfy the training requirements under the regulations.**
- Our firm provides an entire training series on the subject of Title IX Sexual Misconduct.
- The purpose of this overview is to provide athletics staff with practical information they need to know to be effective in their roles.

What conduct is prohibited?

- Your institution has a policy prohibiting discrimination based on sex.
- Prohibited conduct includes:
 - Sexual harassment
 - Sexual assault
 - Stalking
 - Dating Violence
 - Domestic Violence
 - Retaliation
- Title IX has limited scope/jurisdiction defined by regulations (34 C.F.R § 106)

Two Essential Tips

- **REPORT. REPORT. REPORT.**
- **Unless you are the Title IX Investigator assigned to the case, DO NOT INVESTIGATE.**



Do I need to report? YES.

- “Actual Knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient. . .” 34 C.F.R § 106.30.
- Might depend on your institution, but generally, most schools say all employees are mandatory reporters.
- **Example: Staff members, AD Staff, Coaches, Athletic trainers, Academic support**

Discipline

- A Respondent is presumed not responsible until a determination is made that they engaged in Title IX Misconduct.
- You cannot penalize a respondent until a finding is made that they engaged in Title IX Sexual Misconduct.
- What does that mean for:
 - Practices?
 - Games?
 - Travel?
 - Team events?
- BUT: Emergency Removals?
- What about when the conduct involves two student-athletes?

Limitations on Institutional Response

- Cannot penalize until Title IX Process has concluded with a finding that Respondent has engaged in misconduct
 - But, always offer supportive measures.
 - May need to consider offering that the student miss practice/games for supportive measures.
- What about violations of team rules from same conduct?
 - May be limited in your response still.
- FERPA
- Police Investigations? May need to defer institutional investigations pending police investigation.

Who needs to know?

Title IX

Public Safety?

Athletics
Admins?

Coaches?

PR Team?

President?
Board?

Conference?

Advancement
offices?

Key Takeaways

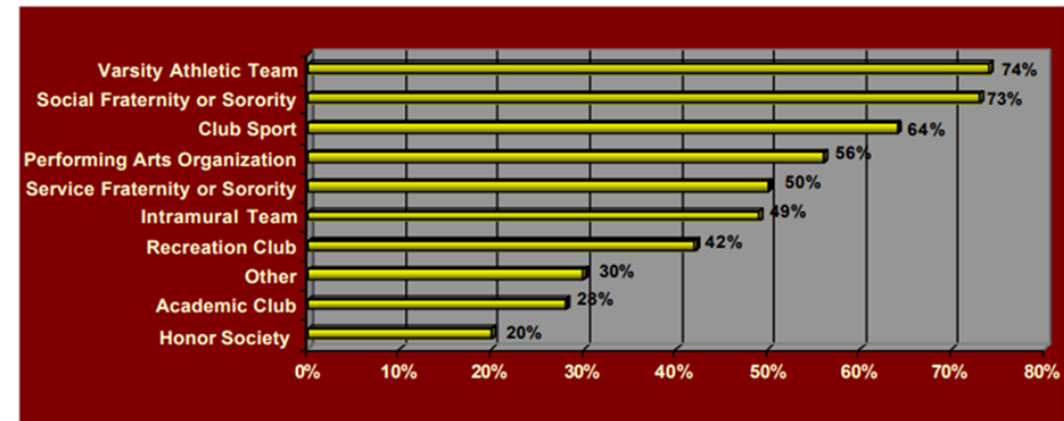
- Mandatory reporting obligations
 - Connect with Title IX Coordinator early and keep lines of communication open.
- Cannot impose a penalty until found responsible for TIX sexual misconduct (except in cases of emergency removal)
- Offer supportive measures to the student-athlete
 - Absence from practices? Games? Connection to mental health resources, academic support?
- MONITOR MENTAL HEALTH
- Due to privacy concerns, Title IX Coordinator might not be able to share some information.
 - Remember, members of your team/staff may be witnesses (be careful to not impact integrity of the investigation).
- Parties are allowed to talk about the case and you cannot tell them not to.
 - Caution: Talking could be considered retaliatory, in violation of a no contact directive, or could constitute other misconduct
- Make sure you are compliant with the NCAA Policy on Campus Sexual Violence and up to date on annual attestations
- Develop/bring to campus engaging annual (or more frequent) prevention education programs
- Work with your campus team to determine the best way to approach sexual misconduct response/prevention on your campus

Personnel and reputational risk: Hazing

An Unfortunate Trend

- 55% of respondents report they had experienced at least one behavior that meets the researcher's definition of hazing
- 61% of male respondents and 52% of female respondents experienced behaviors that met the definition, but **only 7% of students who experience hazing actually recognize the behavior as “hazing”**

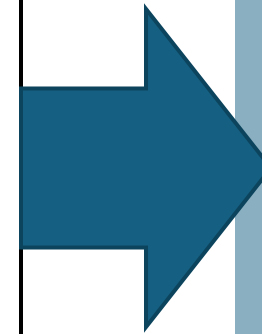
*This mischaracterization of hazing behavior could normalize a dangerous culture: **someone could subject themselves to hazing and not think it is really as bad as it is.***



* Other includes religiously-affiliated organizations, culture clubs and organizations, and student government.

More Statistics

- 25% of students believed **coaches and/or advisors were aware of the activities;**
- 25% of hazing experiences, students reported that **alumni were present;**
- 53% of respondents say a member of their team or organization **posted photos of the hazing activity to a public website (Facebook)** and
- 42% report **posting the hazing photos***



People do not
recognize the
behavior as
problematic or
illegal

Intersection Across Campus

- How does hazing intersect with policies on your campus?
- Concerns your institution has?



Key Takeaways

- Review (or implement) hazing policies and consult with counsel.
- Revisit or develop and implement hazing training protocol for your athletic department.
 - Is the training effective?
- Tap into your student-athletes.
 - Do you have a student-athlete advisory committee (SAAC)?
 - Are you fostering an environment that empowers student-athletes to identify and report hazing?
 - Will you use third party anonymous reporting platforms?
- Be alert – tap into your trainers (or other staff)

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Thank you!

Thank you!

Questions??

