

Title IX in Athletics 50 Years Later: Still a Ways to Go

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Agenda

- **The Playing Field**

Presented by: Val Ackerman and Rick Evrard

A conversation regarding the breadth of opportunities for women in collegiate athletics.

- **The Back Office**

Presented by: Monica Barrett and Sarah Luke

The practicalities of compliance with Title IX and other civil rights laws and NCAA regulations impacting athletics.

- **The Record Books**

Presented by: Kristen Thorsness and Laura Harshbarger

Olympic gold medalist and attorney Kristen Thorsness will share her insights on the ways in which Title IX remains vital and relevant to advance women well beyond the sporting field.

The Playing Field

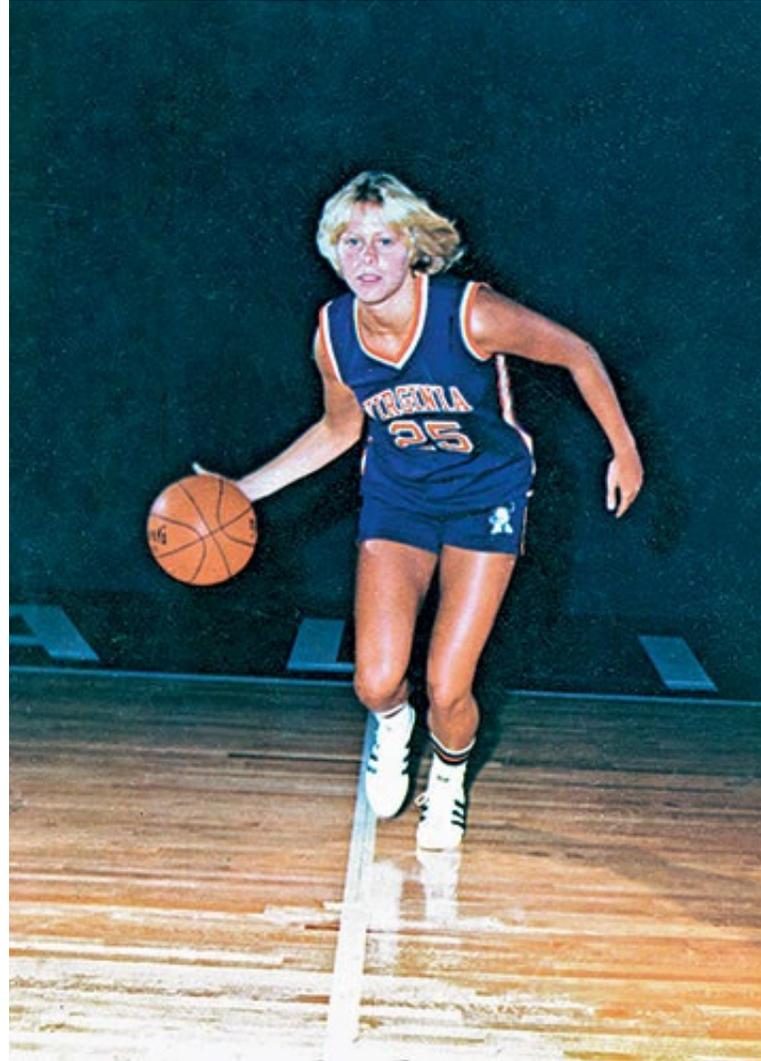


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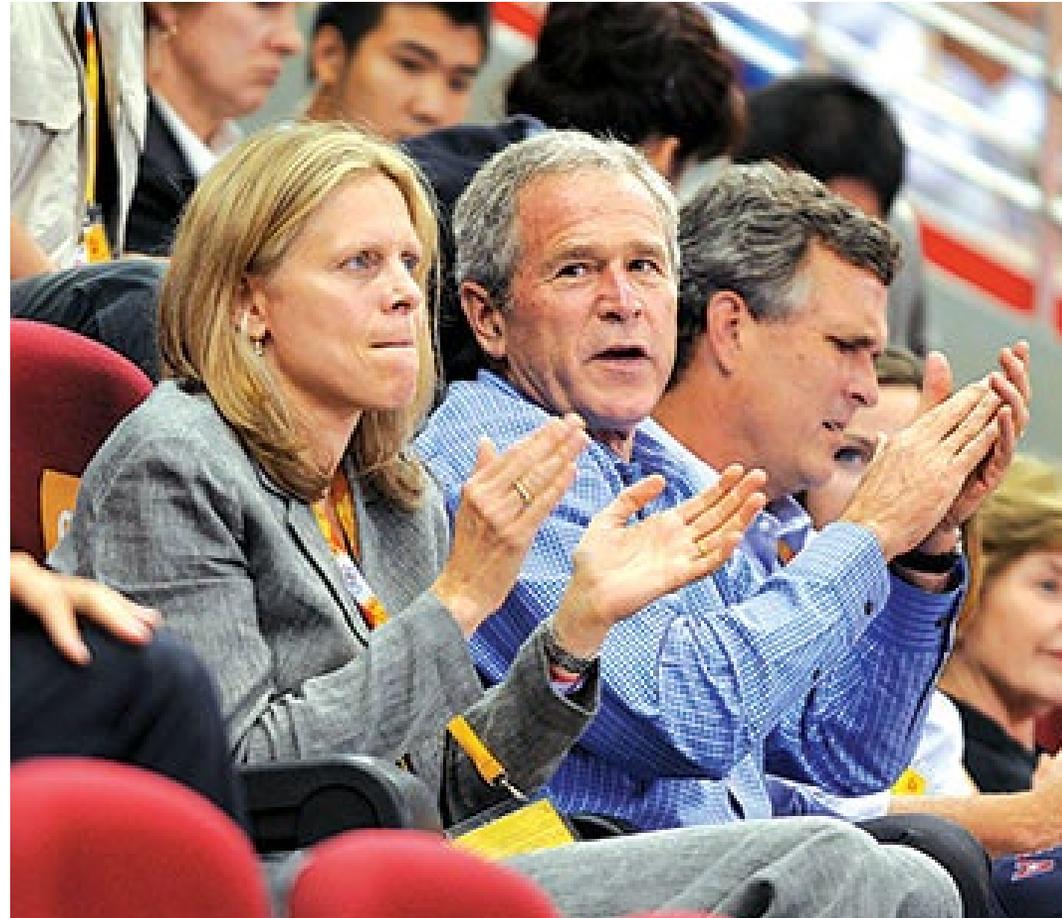
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Title IX: The Basics

- **Statutory Language:** Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et. seq. “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving federal financial assistance”
- **Implementing Regulations:** 34 C.F.R., Part 106
- **Federal Agency Policy Documents:** See, U.S. Department of Education, Office for Civil Rights webpage, search “athletics”:
<https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance>

NCAA and Gender Equity

- NCAA's Commitment to Gender Equity: Inclusion, Gender Equity and Title IX (2016)
- March 2021 Issue with NCAA Women's and Men's Basketball Tournament Facilities on YouTube:



NCAA and Gender Equity

- NCAA's Response:
<https://www.ncaa.org/sports/2021/9/27/genderequityupdates.aspx?id=3908>
- NCAA Inclusion of Transgender Student Athletes

What We Will Cover in Thirty Minutes

- Sexual harassment prevention requirements of Title IX and NCAA;
- The deep dive when the U.S. Department of Education knocks on your door to check compliance with equity in athletics;
- Transgender student participation in athletics; and
- Overview of recent OCR decisions and case law on Title IX gender equity in athletics matters

Sexual Harassment Prevention Requirements

- In May of 2020 - NCAA Board of Governors voted to expand the association-wide Campus Sexual Violence Policy in three key ways:
 1. Student Athlete Duty to Report
 2. College/University Duty to Confirm
 3. Policy Infrastructure
- These changes became effective for the 2021-22 school year, and are in effect right now!

Sexual Harassment Prevention Requirements

- Approaches to Compliance:
 - Student athlete disclosure form
 - Communication with other institutions (and FERPA considerations)
 - Media/social media searches – due diligence

Office for Civil Rights, Gender Equity in Athletics

- When will OCR investigate?
 - Complaints filed by Students, Coaches and/or others
 - Publicity Generated by Athletics Department
 - Compliance Review
- How will OCR investigate?
 - Notice of Investigation
 - Data and Information Request
 - Possible Interviews on Campus
 - Possible Inspection of all Facilities

Factors to Be Considered By OCR

- Accommodation of Interest and Abilities 34 C.F.R. 106.41(c)(1)
 - “Three-Part Test
- Athletic Financial Assistance, 34 C.F.R. 106.37(c)
- Other Athletic Benefits and Opportunities, 34 C.F.R. 106.41 (a) and (c)
 - Equipment and supplies; scheduling of games and practices times; travel and per diem; academic tutoring; coaching; locker room, practice, and competitive facilities; medical and training facilities; housing and dining facilities; publicity; support services; and recruitment of student athletes.

Takeaways from an Investigation into Athletics

- Importance of the Statement of Position and Timeliness of Response
- Ongoing Communication with OCR Investigators
- Responsiveness to Information Requests and Updates
- Letter of Findings and Resolution Agreements
- Alternatives to Resolution Agreements
- Overall Compliance Reviews
- Surveys of Student Interests and Abilities

Transgender Student Athletes

- U.S. Department of Education Office for Civil Rights Notice of Interpretation dated June 16, 2021:

“[the] Division has determined that the best reading of Title IX’s prohibition on discrimination ‘on the basis of sex’ is that it includes discrimination on the basis of gender identity and sexual orientation.”

NCAA and Transgender Student Athletes

- NCAA's 2011 Policy:
 - 1 year of testosterone suppression to play on women's team
 - Equal treatment of transgender athletes including:
 - Antiharassment protections
 - Recognition of preferred names and pronouns
 - Locker rooms and restroom facilities
- NCAA 2022 Shift in Policy
 - Deference to the governing bodies of particular sports concerning standards applied to transgender athletes (may not be 1 year of testosterone suppression)
 - Equal treatment requirements remain

Sampling of OCR Decisions and Case Law

- Rutgers Compliance Review, Letter of Findings and Resolution Agreement (2015)
- Duguid v. State University of New York at Albany (July 6, 2021)

The Record Books



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Kristen Thorsness
Former Competitive Rower
and Olympic Gold Medalist

1984 Olympic Games Rowing - Women's Eights



Thank You

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