



# COMPLIANCE IN COVID – COLLEGIATE ATHLETICS

Webinar – July 31, 2020



# YOUR FACULTY



**W. Scott Lewis, J.D.**

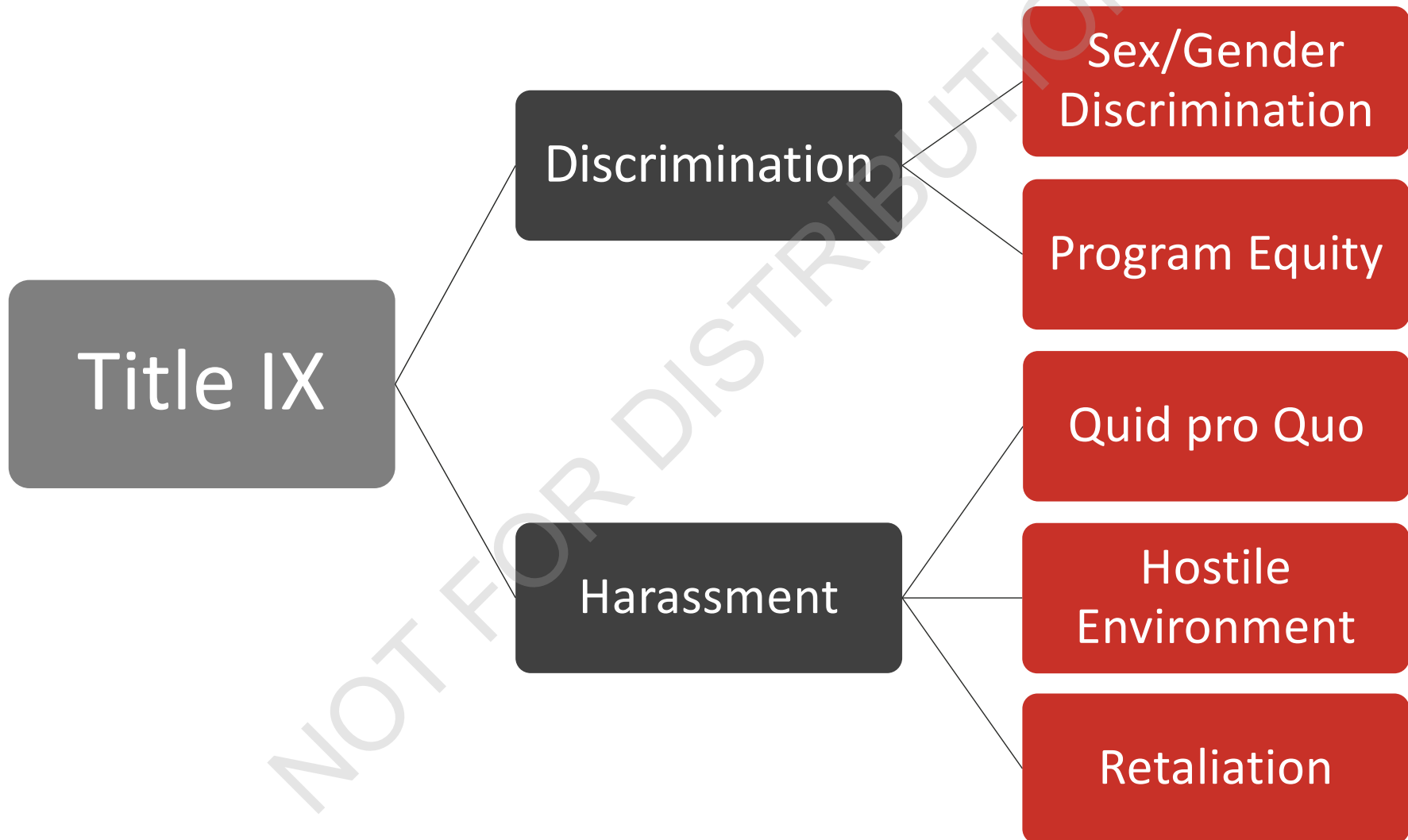
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# TITLE IX & ATHLETICS

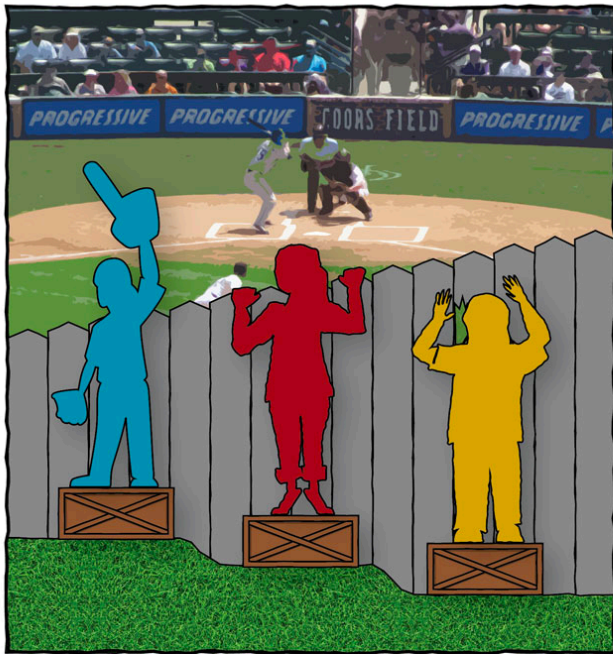


- Title IX DOES require an institution to:
  - Provide an equal opportunity for female and male students to become intercollegiate athletes.
    - Analyzed by means of a three-part test
  - Provide equivalent treatment of participants in the overall women's program as compared to the overall men's program.
    - Analyzed according to thirteen (13) different program components.

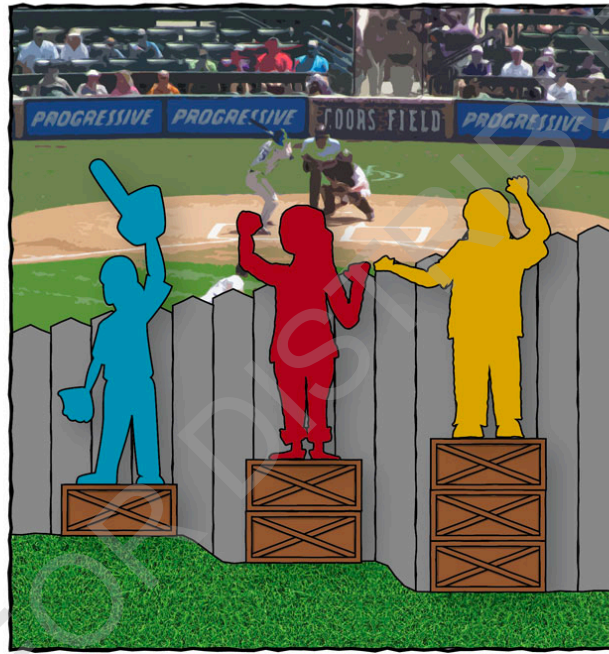
Source: Valerie McMurtrie Bonnette (2004), Title IX and Intercollegiate Athletics, p.7.



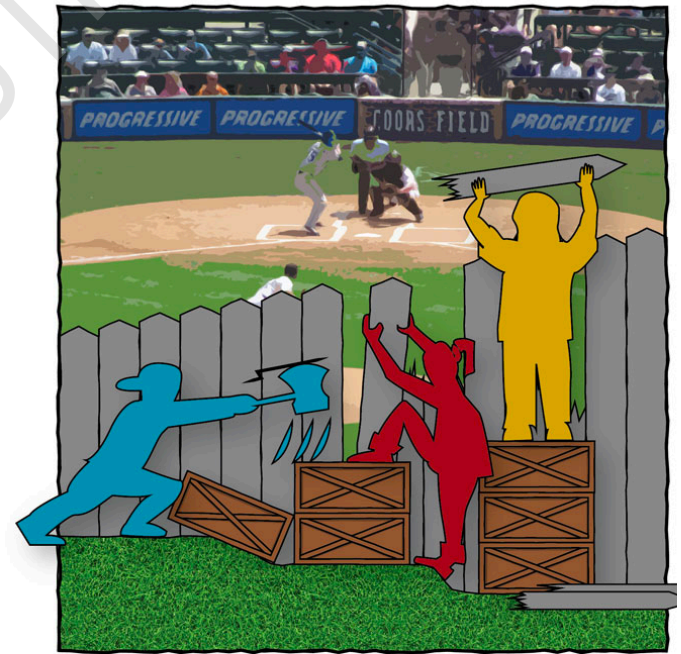
# EQUITY DEFINED



**EQUALITY**



**EQUITY**



**JUSTICE**



# THE THREE-PART TEST: ACCOMMODATION OF INTERESTS AND ABILITIES

- 
1. Proportionality
  2. Program Expansion
  3. Full Accommodation



# OVERSIGHT OF ATHLETICS GENDER EQUITY: THREE-PART TEST (1979)



## Effective accommodation of interests and abilities:

- **Part 1:** Opportunities for males and females substantially proportionate to their respective enrollments; OR
- **Part 2:** Where one sex has been underrepresented, a history and continuing practice of program expansion responsive to the developing interests and abilities of that sex; OR
- **Part 3:** Where one sex is underrepresented and cannot show a continuing practice of program expansion, whether it can be demonstrated that the interests and abilities of that sex have been fully and effectively accommodated by that present program.

# LEVELS OF COMPETITION

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1. Equivalently Advanced Competitive Opportunities
2. Upgrades of Competitive Opportunities



# LEVELS OF COMPETITION



## Compliance is assessed by examining:

1. Whether the competitive schedules for men's and women's teams, on a program-wide basis, afford proportionally similar numbers of male and female athletes equivalently advanced competitive opportunities; OR
2. Whether the institution can demonstrate a history and continuing practice of upgrading the competitive opportunities available to the historically disadvantaged sex as warranted by developing abilities among the athletes of that sex.

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

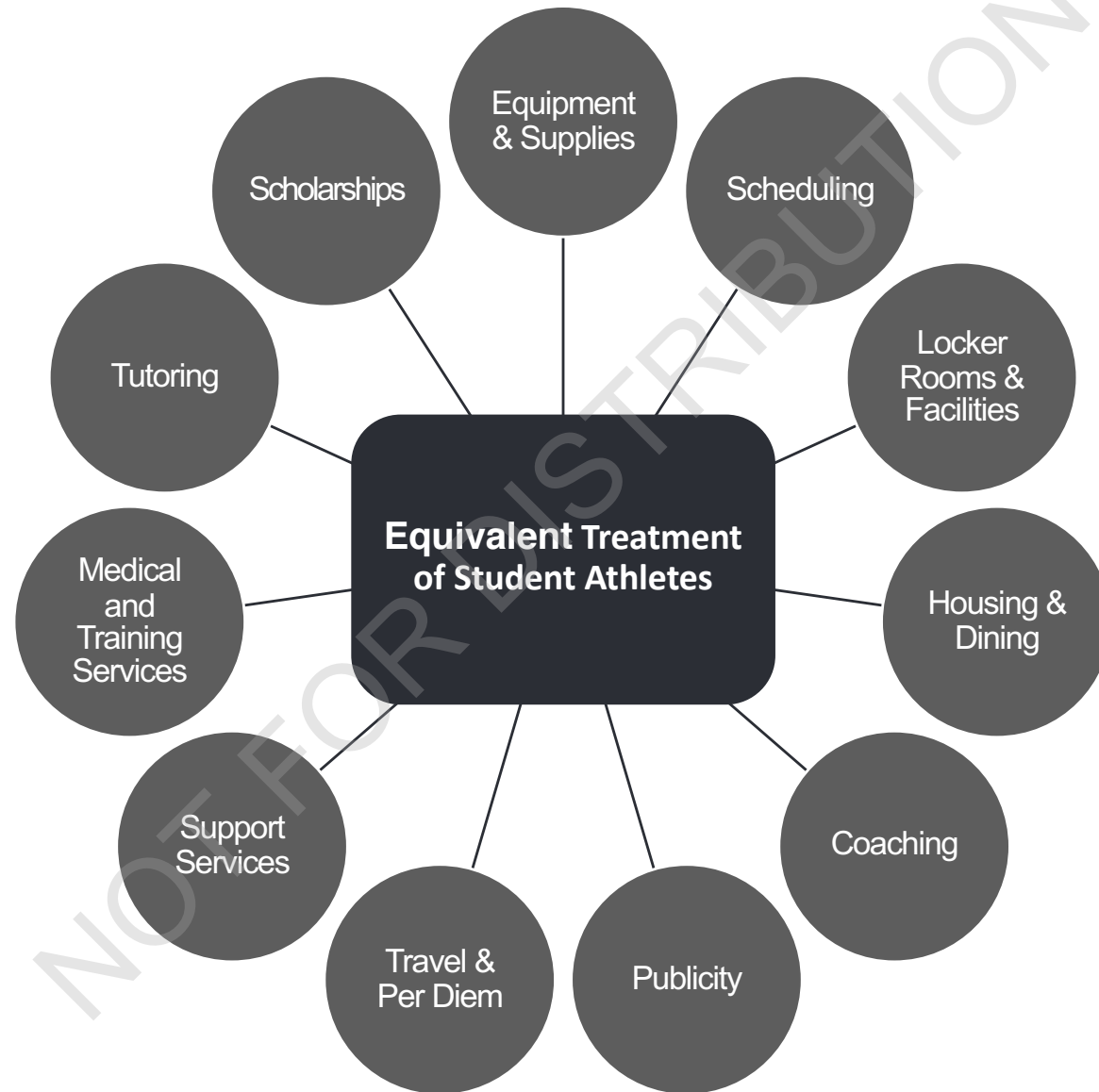
# “OTHER ATHLETIC BENEFITS AND OPPORTUNITIES”

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- Equipment and supplies
- Scheduling (games and practice times)
- Travel and per diem allowance
- Coaches
- Tutors
- Locker rooms and other facilities
- Medical and training services
- Housing and dining services
- Publicity
- Recruitment of student athletes
- Provision of support services



# OVERSIGHT OF ATHLETICS GENDER EQUITY



# SEASON CHOICES IN COVID TIMES – TITLE IX IMPLCATIONS



## Options:

- Go on as normal – not truly a viable option
  - Testing concerns, Infections, liability, etc.
  - Public Relations
- Cancelling seasons
- Delaying and/or Shortening Seasons
- “Freezing Seasons”

# SEASON CHOICES IN COVID TIMES – TITLE IX IMPLCATIONS



## Title IX Implications:

- All or some?
- Which sports?
- Why?
- How?

## Red Flags:

- More boy's than girl's sports
- Team success as rationale
- Football and economics
- “More fun to watch”



# SPORT CHOICES IN COVID TIMES – TITLE IX IMPLCATIONS



## Options:

- Go on as normal – Is this a viable option?
  - Finances, in-person vs. online attendance, enrollment
- Eliminating teams – varsity and/or JV
- “Furloughing” teams (delayed/cancelled seasons)
- “”Demoting” teams
  - Level of competition
  - Club level
  - Intramural

## Title IX Implications

# ATHLETE CHOICES IN COVID TIMES – TITLE IX IMPLCATIONS



## Options:

- If no season:
  - Transfer (state by state implications)
  - Work out or practice only
  - Shift to different competition level
  - Shift to club

## Concerns:

- State rules
- Parent demands/donations/lawsuits
- Transferring in and out

INCLUSION - LGBTQ+

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# NCAA POLICY FOR TRANSGENDER INCLUSION



## To play on a women's team

- A transgender woman must have > 1 year of hormone treatment
- A transgender man must not have started hormone treatment

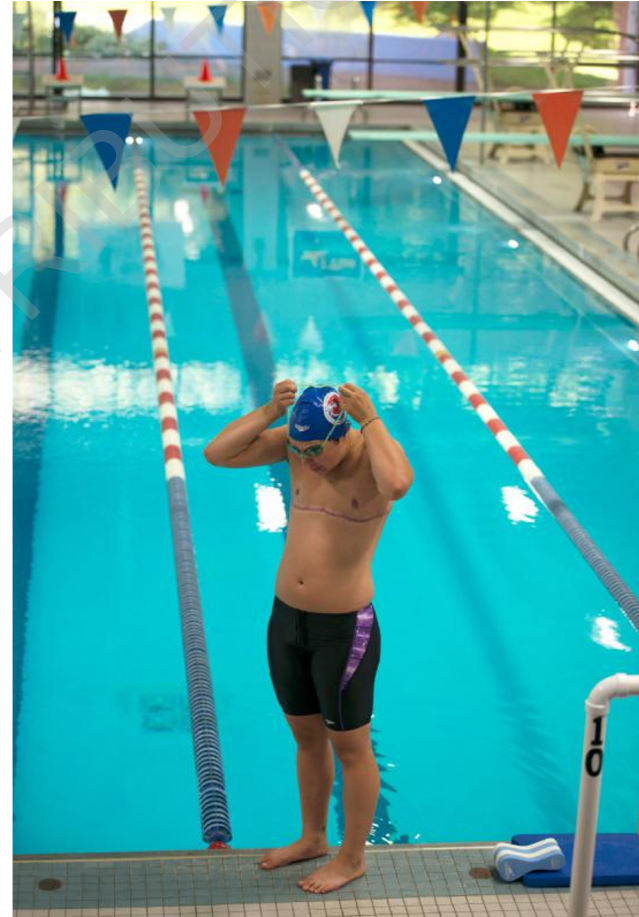


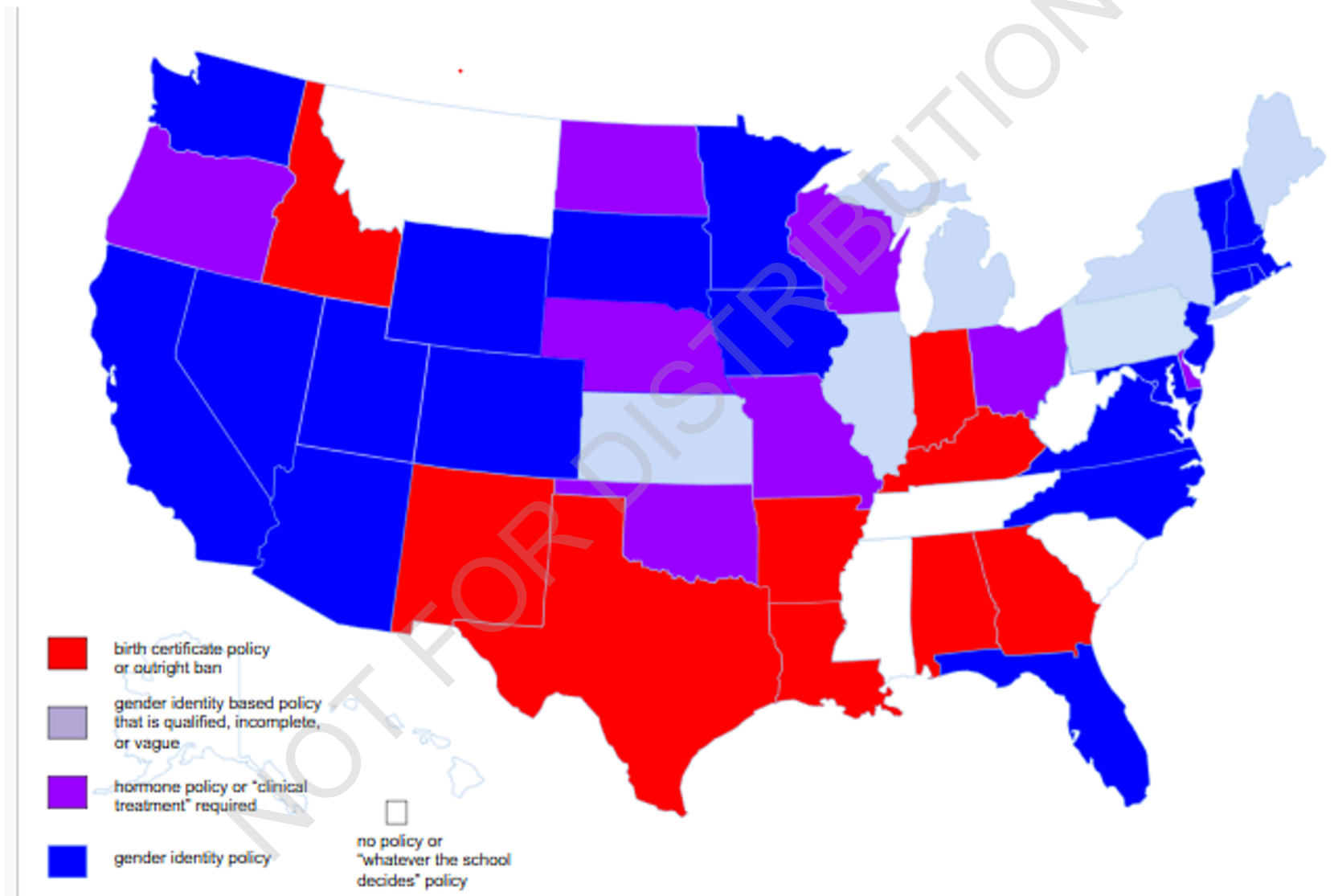
# NCAA POLICY FOR TRANSGENDER INCLUSION:



## To play on a men's team:

- No restrictions.
- Transgender men are eligible for a TUE for exogenous testosterone.





# HECOX V. LITTLE (FILED APRIL 2020)



## Idaho HB 500:

- Designates all high school/college sport on the basis of “biological” sex
- Male athletes are banned from female teams
- Female athletes whose sex is “disputed” must submit to medical examination

## Arguments:

- Idaho law violates equal protection rights of female athletes by subjecting them, but not male athletes, to gender scrutiny.
- Idaho law violates equal protection rights of transgender athletes because their categorical exclusion from women’s sport is not tied to a valid objective.
- Idaho law violates due process rights of female athletes by invading their privacy with intrusive medical intervention.



# SOULE V. CONNECTICUT ASS'N OF SCHOOLS (FILED FEB. 2020)



HIGH SCHOOL

## Connecticut high school transgender athletes 'no longer want to remain silent' following Title IX complaint



By **DAN BRECHLIN**  
HARTFORD COURANT | JUN 20, 2019 | 6:00 AM



# SOULE V. CONNECTICUT ASS'N OF SCHOOLS (FILED FEB. 2020)



- Plaintiffs: cisgender girls who competed against transgender athletes in track
- Argument: CIAC's inclusive policy violates their rights under Title IX by diminishing opportunities for girls.
- Title IX prohibits discrimination on the basis of sex, but permits separate athletics teams as long as the overall quantity and quality of opportunity is equitable.
- Title IX does not define "sex" but courts in Title IX cases about bathrooms and locker rooms have held that sex discrimination includes discrimination against transgender students. See also *Bostock v. Clayton County* (Title VII),
- Separately, OCR issued a ruling letter in May, concluding that CIAC policy violates Title IX. No analysis of "sex."

# STUDENT ATHLETES AND RACIAL JUSTICE



BIG 12

## Texas athletes call for changes to address university's racial past and future

Brian Davis Austin American-Statesman

Published 5:37 p.m. ET Jun. 12, 2020 | Updated 8:53 p.m. ET Jun. 12, 2020



HEAD HUNCHO  
@marvinwilson21

Man this 🤡 did not happen mane. We got a generated text that was sent to everybody. There was no one on one talk between us and coach. This is a lie and me and my teammates as a whole are outraged and we will not be working out until further notice <sup>100</sup> #hunchoout



Tashan Reed @tashanreed · Jun 2

#FSU head coach Mike Norvell (@Coach\_Norvell) had individual conversations with every player on his roster this past weekend focused on the events surrounding the death of George Floyd. Here's his full quote to @TheAthletic:



Chuba Hubbard @Hubbard\_RMN · Jun 15

I will not stand for this.. This is completely insensitive to everything going on in society, and it's unacceptable. I will not be doing anything with Oklahoma State until things CHANGE.



Kyle Boone @Kyle\_Boone · Jun 15

Mike Gundy went fishing on Lake Texoma donning an OAN t-shirt

[Show this thread](#)

## Clemson athletes lead on-campus protest of about 3,000 in a demonstration of unity

Conor Hughes Greenville News

Published 10:25 p.m. ET Jun. 13, 2020 | Updated 6:20 a.m. ET Jun. 14, 2020



# SEXUAL HARASSMENT, SEXUAL VIOLENCE AND INTIMATE PARTNER VIOLENCE AND SPORT

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NOT FOR DISTRIBUTION

# UNDERSTANDING THE THREE FORMS OF SEXUAL HARASSMENT



Sexual Harassment is

Unwelcome conduct of a sexual nature or that is sex or gender-based

Based on power differentials  
(**quid pro quo**),

The creation of a **hostile environment**,  
or

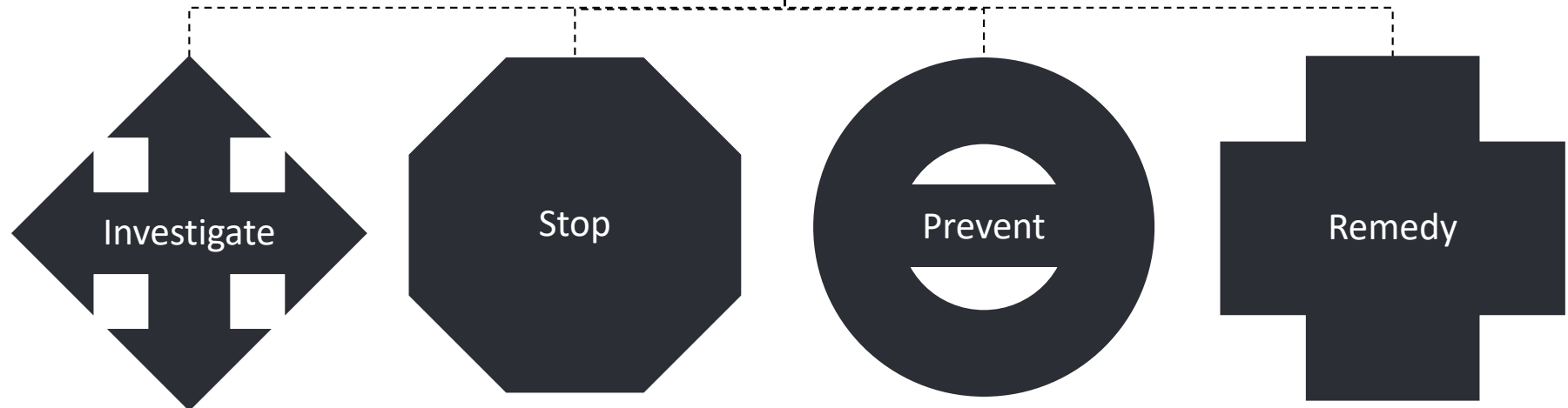
**Retaliation**



# INSTITUTIONAL OBLIGATIONS UNDER TITLE IX



## Sexual Harassment



# QUESTIONS?

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# CONTACT INFORMATION

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