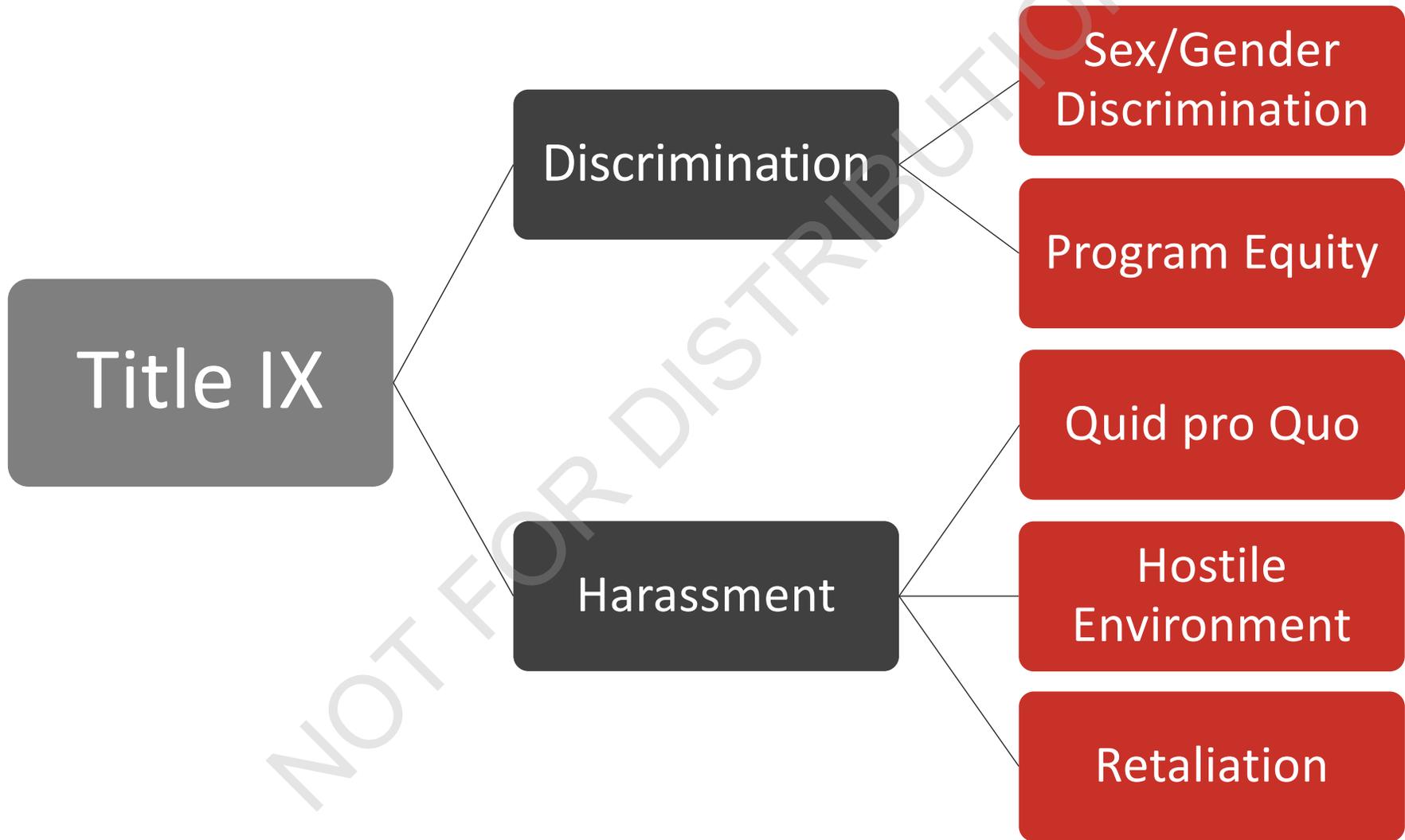




# COMPLIANCE IN COVID – K12 ATHLETICS

Webinar – July 30, 2020



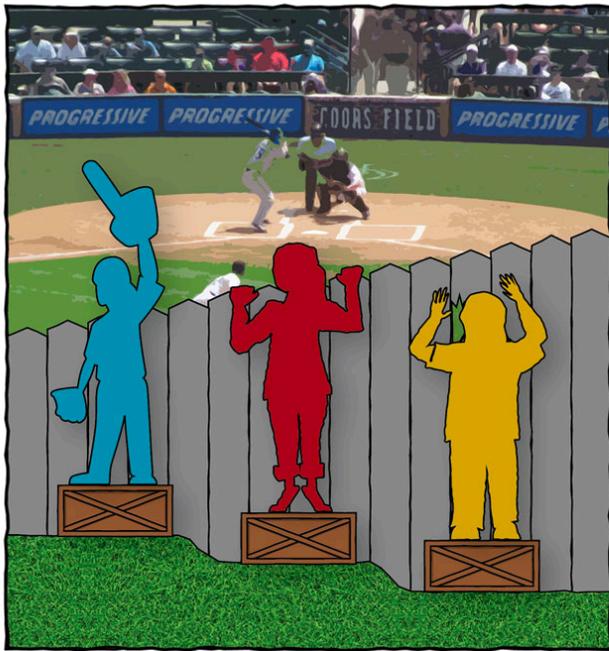
# TITLE IX & ATHLETICS



- 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.

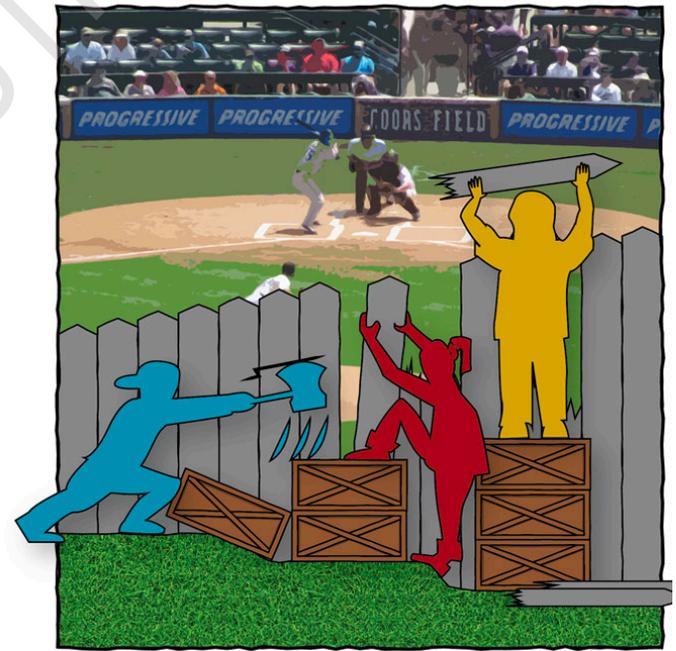
# EQUITY DEFINED



**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

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

# LEVELS OF COMPETITION



## Compliance is assessed by examining:

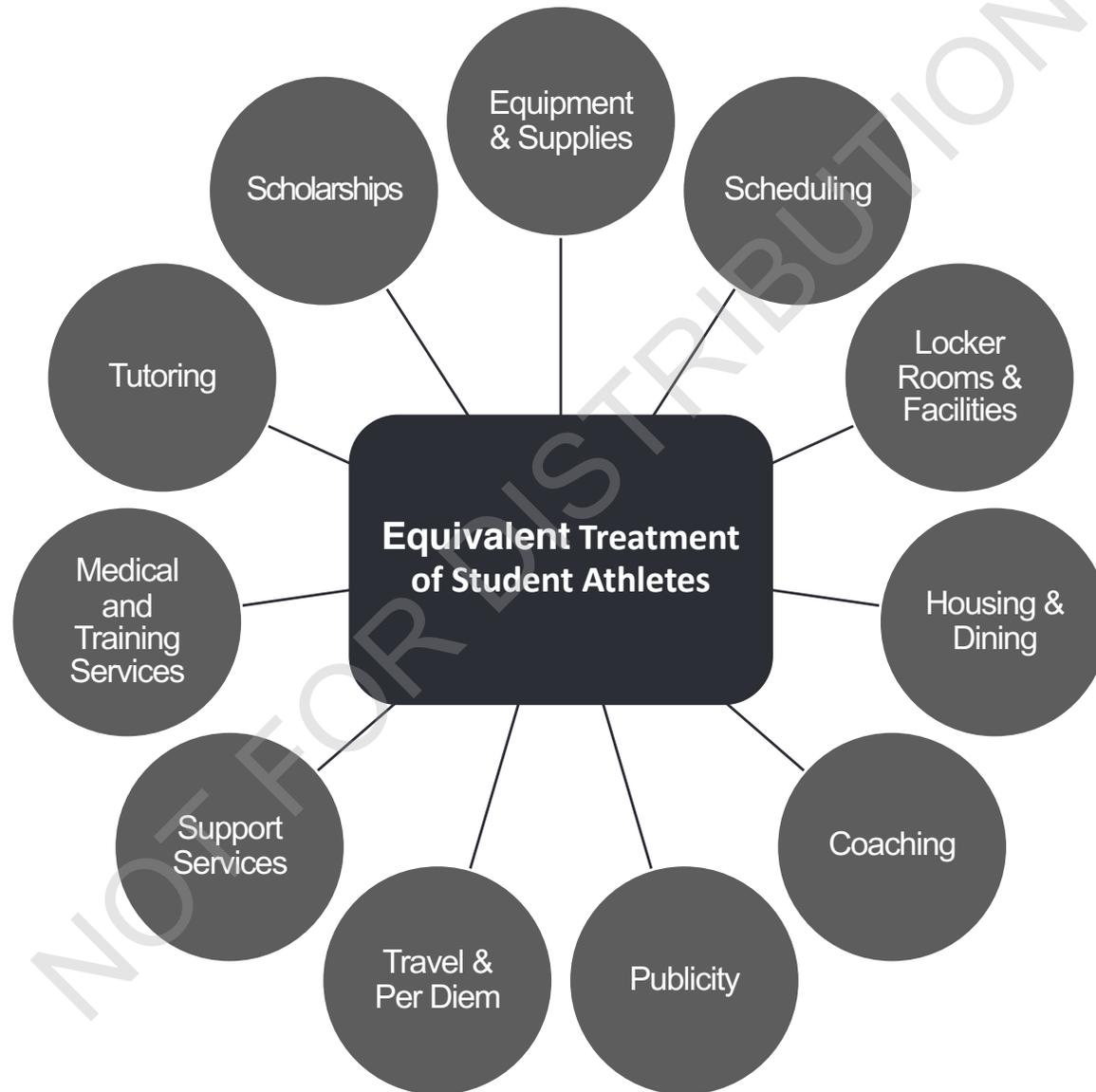
1. Whether the competitive schedules for men's and women's teams, on a program-wide basis, afford proportionally similar numbers of male and female athletes equivalently advanced competitive opportunities; OR
2. Whether the institution can demonstrate a history and continuing practice of upgrading the 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”

- 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 men's than women'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
  - Work out or practice only
  - Shift to different competition level
  - Shift to club

## Concerns:

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

INCLUSION - LGBTQ+

NOT FOR DISTRIBUTION

# NCAA POLICY FOR TRANSGENDER INCLUSION



## To play on a women's team



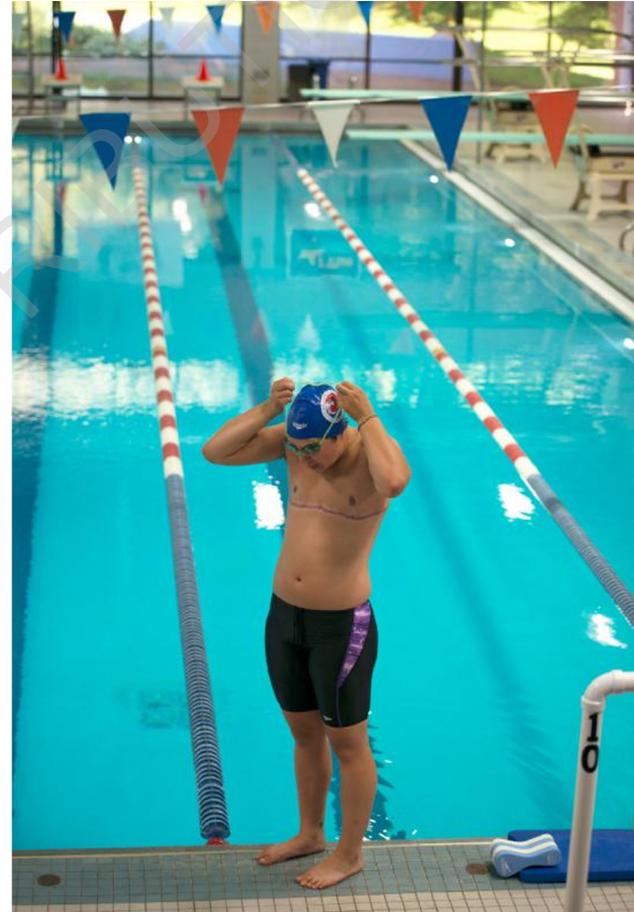
- A transgender woman must have > 1 year of hormone treatment
- A transgender man must not have started hormone treatment

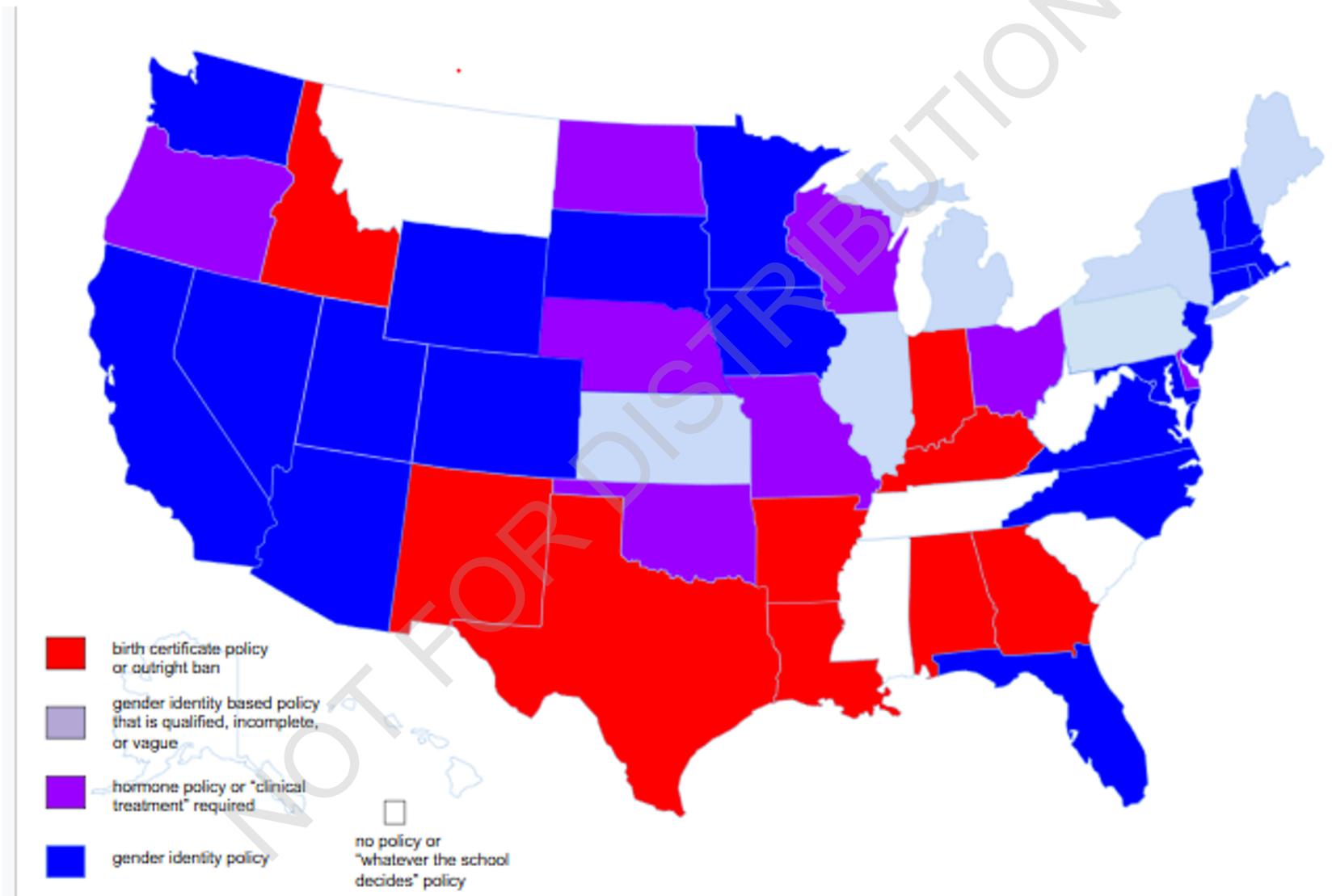
# NCAA POLICY FOR TRANSGENDER INCLUSION:



## 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 🏳️‍🌈 #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

NOT FOR DISTRIBUTION

# UNDERSTANDING THE THREE FORMS OF SEXUAL HARASSMENT



Sexual Harassment is

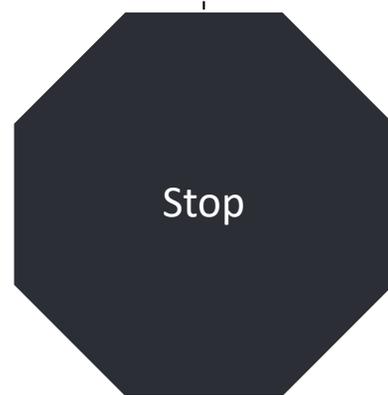
Unwelcome conduct of a sexual nature or that is sex or gender-based

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

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

**Retaliation**

## Sexual Harassment



# THE NEW TITLE IX REGULATIONS

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## “Official with Authority” vs. “Responsible Employee”:

- *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, or to any employee of an elementary and secondary school. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual knowledge is the respondent. ***The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the recipient.***

# NEW REGS EFFECT ON ATHLETICS – INTERIM ACTIONS



## Suspension from team/practice/games:

- *Emergency removal.* Nothing in this part precludes a recipient from removing a respondent from the recipient's education **program or activity** on an emergency basis, *provided that the recipient undertakes an **individualized safety and risk analysis**, determines that an **immediate threat** to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and **provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.***

QUESTIONS?

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# CONTACT INFORMATION

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