

### OCR Clarifies Athletics Title IX Compliance.

In a recent “Dear Colleague” letter (the Letter), the Department of Education’s Office for Civil Rights (OCR) provided further clarification of its policy guidance regarding Title IX compliance in intercollegiate athletic programs. That policy dates from 1979 when the Department established a three-prong test for compliance: (1) the institution affords participation opportunities which are substantially proportionate to the male and female full-time undergraduate enrollment; or (2) the institution has a history and continuing practice of program expansion to include the underrepresented sex; or (3) the institution is fully and effectively accommodating the interests and abilities of the underrepresented sex.

The last such guidance was issued in 1996. In that guidance, the Department described only the first, substantial proportionality prong as a “safe harbor” for Title IX compliance. This led many schools to conclude that the first prong provided the only clear and sure path to compliance. The Letter clarifies the position of the Department in this regard by stating that all three prongs of the 1979 policy are equally sufficient means of demonstrating compliance, and that no one prong is favored. The Letter also restates the Department’s position that quotas are not required.

Perhaps in response to past litigation, the Letter states that nothing in Title IX requires cutting or reducing teams to demonstrate compliance, and that elimination of teams is a disfavored practice. Finally, the Letter pledges that the OCR will share information on successful approaches to Title IX compliance with the scholastic community and will ensure that its enforcement practices do not vary from region to region.