

**CONSTRUCTING A
TIERED SPORTS PROGRAM
FOR COLLEGE ATHLETICS**

A COST-EFFECTIVE APPROACH TO MEET EQUITY STANDARDS AND
PRESERVE PARTICIPATION OPPORTUNITIES

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I. INTRODUCTION

One of the most important responsibilities of a university president and the senior-level staff is to define the institution's mission and to measure how effectively each university department promotes and supports that mission. It is an ongoing process requiring constant attention, evaluation, and discourse. Equally responsible are program managers who are expected to create, monitor, and evaluate department goals and objectives to ensure that they serve as appropriate complements to the central mission of the institution. Through this process, there should evolve a clear articulation of each department's "value added" to the university, which in turn, serves as a rationale for program existence and continued program support.

As college and university presidents struggle with a multitude of issues surrounding intercollegiate athletics, it has become increasingly obvious that, as program managers, athletics administrators have been held to different standards when compared to their peers. Athletics departments are notorious for being permitted to work in a vacuum. There has been little oversight by deans or vice-presidents and, at best, casual assessments of how program practices affect the university at large. This situation has placed athletics departments under constant scrutiny and criticism by faculty, alumni/ae, and the media. Faced with serious integrity, gender equity, and financial issues, university administrators are searching for ways to evaluate their athletics departments and formulate goals and objectives that are compatible with educational principles and are compliant with Title IX, while preserving maximum participation opportunities and promoting fiscal responsibility.

In an effort to help administrators address these concerns, this manual provides a system for evaluating and restructuring an athletics program model that meets equity standards and is flexible enough to accommodate each institution's financial limitations. Contents include strategies for analyzing current practices and evaluating them for compatibility with the institutional mission. Also included are insights into philosophical, legal, and financial issues that must be addressed before athletics program parameters can be established.

II. MATCHING THE MISSION AND THE GOALS OF THE ATHLETICS DEPARTMENT TO THE INSTITUTION

Is it Education or Business?

All organizations must have direction and focus. The overall mission and the goals of the organization must be articulated in a way that creates a philosophical and practical foundation from which to work. Athletics departments are complex organizations even in the smallest of institutions. It is often difficult to create concrete mission and goal statements for athletics programs because they are dynamic organizations that can be easily influenced by many variables such as economics, personnel inside and outside the department, teams' or athletes' successes and failures, alumni/ae interests, and the practices of the institutions they compete against. In addition, the mission of any athletics program is rarely focused on one outcome. Program objectives often reflect and accommodate two distinctly different mandates: 1) providing students with an educational sports experience that is a worthwhile and appropriate complement to the university's central mission of education and personal development, and 2) demonstrating achievement of ancillary and often unrelated objectives such as increasing student enrollment, enhancing institutional exposure, maximizing alumni/ae involvement, and in some cases, raising a significant amount of money.

Some suggest that these two mandates are incompatible. The first mandate, which is educational in nature, focuses on personal growth of student-athletes; while the second is a business perspective that may lead to an exaggerated emphasis on winning and the exploitation of student-athletes. The National Collegiate Athletic Association (NCAA), which serves as the largest governing body of intercollegiate sport programs, recognizes this potential conflict and reinforces its commitment to educational sport within the *Basic Purpose* section of the NCAA Manual (2003-2004) which states:

A basic purpose of this Association is to maintain intercollegiate athletics as an integral part of the educational program and the athletes as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports. (p. 1)

This dissonance between education and business can be found in other departments as well. For example, most educators would agree that the primary objective of each faculty member should be teaching excellence. Yet, the faculty member that produces important research, acquires significant grant dollars, and is nationally recognized may not be held to the same standards of teaching proficiency. Similarly, the objective of the university's development officer may be to raise as much money as possible. But what happens when donors want decision-making authority about the educational curriculum that may compromise institutional integrity? These issues in campus offices other than athletics seem to be more manageable. They are usually isolated problems that don't affect the overall mission or function of a department. They are handled on a case-by-case basis and may be less visible to the outside world.

Balancing educational objectives and business objectives can be a more difficult and pervasive problem for athletics departments because it is woven into the fabric of everyday work. For example, coaches may be under significant pressure to meet recruiting quotas in order for the institution to fill the class and maximize tuition revenue. The admissions department may aid in the process by lowering academic standards. Once those student-athletes matriculate, the pressure changes. Now coaches are expected, perhaps unfairly, to meet the educational objectives of developing those under-qualified athletes into model students who graduate.

The problem is not whether educational and business objectives can co-exist within a university athletics program. The real dilemma is how to strike a balance that university administrators feel comfortable with, can articulate, and will support. Defining the educational objectives and the business objectives that apply to the athletics program is the first step toward formulating a department mission that is compatible with that of the institution.

Educational Objectives of an Athletics Program

There are three educational objectives that should be an integral part of and, arguably, the primary focus of any college or university athletics program. These three objectives are: (1) enhancing the growth and development of each student-athlete, (2) serving as an integrator for campus community life, and (3) contributing to “town and gown” relationships.

Enhancing Student Development. Sport professionals have made lofty claims about how the sports experience can have a positive impact on the overall development of each student-athlete. Learning to compete in a high stress environment, setting and reevaluating goals, appreciating the benefits and expectations of cooperative effort, and winning and losing gracefully are a few of the lessons that may have carry-over value to everyday life. Most athletics programs explicitly link life-enhancing lessons through the sports experience as a primary part of their mission statement. These are the objectives that best complement the goals of the student life department and help justify the existence of the athletics program as an important and effective extracurricular student activity.

Interestingly, many people are questioning whether participation in sport provides an environment that is truly conducive to personal development. Has the desire to win at all costs overshadowed the importance and value of training and competition as an educational experience, in and of itself? Are athletes too isolated and privileged? According to Miracle and Rees (1994), “results of in-depth analysis of moral reasoning in sport have shown that athletes have a tendency to shrug off moral decisions as not their responsibility” (p. 94).

Participation in an organized sport can make one see the potential for individual growth in a variety of ways. The problem is not whether the environment can support such development but whether or not there are structures and mentors in place to guide student-athletes through the sports experience so they are aware of what is important and how team effort, goal setting, and performance can be linked to everyday life.

There are many reasons why those connections may not be made. One reason is that coaches are under-prepared to perform their jobs. There is no established educational path to become a college coach. Experience as a player is often the only prerequisite for gaining access to coaching positions at small colleges. Larger universities may require some experience as an assistant or head coach but, except for the number of wins and losses, there may be little information about the impact of their coaching on the lives of their student-athletes. Zotos, et al (1995) state “coaches occupy a unique position in that they are given all the rights and responsibilities of any other professional group without a systematic approach to preparation that assures employers, parents, and student-athletes that coaches have the skills and knowledge to safely and effectively perform their jobs” (p.1).

A second reason why educational objectives are not always achieved is due to the absence of definitive policies and procedures to measure objective attainment. Expectations for success as well as consequences for not meeting performance standards are not clearly defined. Most athletics administrators do keep a watchful eye on coaches’ behaviors, graduation rates, academic risk status, athlete discipline, and similar critical indicators. Unfortunately, many athletics administrators do not create formal sanctioning standards. This allows them the flexibility to make case-by-case decisions. At times, these decisions appear to be too lenient when high profile coaches or student-athletes commit transgressions. Therefore, policies and expectations tend to be general and minimum standards absent, creating an environment in which coaches or athletes do not clearly understand what is expected of them.

Hesitation by university presidents or their staff to properly supervise the athletics program is a third reason why educational objectives are often unmet. There are many reasons why higher education administrators do not provide the level of leadership that is needed. They may struggle with creating the balance between educational and business objectives, fear the power of the alumni/ae that support athletics, or have limited knowledge about the complexity of administering an athletics program. In some ways, they may feel that keeping a safe distance from the program will protect them from scrutiny. In actuality, the result is a dearth of leadership that gives athletics administrators and coaches a sense of false or, in some cases, real power.

Campus Community Integrator. Another educational goal of most university athletics departments is to utilize the power that comes from group membership to contribute to campus and community life. From pep rallies to student attendance at mass participation events like sports competitions, athletic programs create a sense of pride in the community, an affiliation with the institution, and camaraderie among students and alumni/ae. Athletics also demonstrates the power of diversity in race and ethnicity.

Athletes are often called upon to play leadership roles in activities on campus that are not sponsored by the athletics department. Team representatives may be asked to help first-year students move into their residence halls during orientation week or to take the lead in a campus fund-raising project. It is not unusual for managers from other campus offices to call coaches and request that student-athletes participate in new or ongoing initiatives.

Town and Gown Relationships. Teams and individual athletes are frequently asked to perform community service projects. As community celebrities they may be active in mentoring elementary or middle school students. They make youth sport program appearances and act as ambassadors for the university. In return, the university and the athletics department can become a source of pride for the entire town, and athletics contests can serve as a place for social gatherings.

Unfortunately, some schools struggle to stay true to these educational components. Pressure to win, raise money, and satisfy alumni/ae can cloud the importance of attending to the positive development of each athlete as well as holding athletes as a group accountable to the higher standard of visible institutional representatives. Scandals related to academic integrity, hazing, and drug abuse continually undermines the athletics departments' claim that they are a functional and important part of the educational community.

Business Objectives of an Athletics Program

The business objectives of the athletics program vary according to the size of an institution, its competitive level, and the perception of the importance of athletics success to the institution's image. Typically, business objectives include: (1) meeting tuition goals, (2) creating national exposure for the institution, (3) raising revenues, and (4) increasing alumni involvement.

Meeting Tuition Goals. Attracting students to the university is one of the most important and fundamental tasks that must be successfully completed by faculty and staff. The financial health of most institutions relies on meeting or exceeding the number of tuition-paying students necessary to fill each class. However, it is not only a game of numbers. Recruiting students who have a reasonable chance of success is just as important. If students are successful, retention can be positively affected and those yearly tuition dollars will not be lost by high numbers of students failing academically or transferring to other institutions.

Coaches are expected to be active participants in the recruiting and retention process. The significance of athlete recruiting differs from institution to institution. In schools of undergraduate populations of fifteen hundred or less, student-athletes may represent one-third of the population. This would place an inordinate amount of pressure on coaches to be successful recruiters and would make it a central, measurable objective of the athletics department. Conversely, institutions with thirty thousand undergraduates, where athletes only represent 2% of the population, would rely less on the athletics department's recruiting efforts to meet class quotas.

National Exposure. There is another institutional recruiting objective that is often an isolated responsibility of a few select departments on campus. This objective is to attract students who possess some form of exceptional talent and who may bring current or future recognition to the university. If these students do not meet the academic profile necessary to be accepted to the institution, many universities lower their academic admissions standards to allow

these exceptionally talented students to matriculate. These students are often gifted in the performing arts such as drama, music, dance, or sport.

The recruitment and matriculation of athletes into these “special talent” slots is a common practice among the majority of higher education institutions. As a business objective of the university, the rationale is that excellent athletes will lead to nationally ranked teams who create community pride, increase alumni/ae involvement, and enhance recognition of university excellence through national exposure.

The recruitment of an excellent quarterback or an excellent violinist may not be very different. Both may bring recognition to the university. However, problems may arise when the volume of “special talent” slots provided to the athletics department is excessive compared to other departments. At what point does this influx of students who are academically under prepared affect the academic integrity of the institution? There is an underlying concern that this critical mass of student-athletes may create an ethos that marginalizes academic effort. In addition, there is a debate over the ethical responsibility of recruiting student-athletes that may have an average chance of graduating after exhausting all four years of athletics eligibility. According to the NCAA (2003), graduation rates for Division I-A male athletes who complete eligibility in the sports of basketball and football are 44% and 54% respectively.

University administrators must create stringent policies regarding the use of special talent slots and clearly define how many slots can be accommodated by those departments on campus that provide academic support services. In a 1990 interview, Donna Lopiano stated that the women’s athletics program at The University of Texas limited their special talent slots to 10% of total athletes. She felt that any more than that would compromise the support staff’s ability to provide needed services for academically under-qualified students. In concert with setting slot limits, administrators must determine what constitutes the minimally acceptable levels of academic preparation that will give special students a reasonable chance to succeed in the classroom.

Despite the difficulty in determining how many special talent slots to provide and at what level minimum academic standards should be set, the value of such talent to the university can be considerable. The media exposure generated by a conference or national championship, or a televised athletics contest, could translate into millions of dollars of public relations and advertising value. Bowl appearances and television-rights fees can bring significant revenues into university coffers.

Revenue Generation. Some institutions impose an expectation that the athletics department or specific teams will be either be self-sufficient or raise a significant portion of its annual operating budget. Unfortunately, this expectation is used as a justification for almost any athletics department expenditure that can be remotely linked to successful revenue generation. The reality is that very few athletics programs come close to being self-sufficient. According to Fulks (2002), only 40 Division I-A institutions reported revenues in excess of expenses (p. 28). Once an institution enters the “arms race” of big-time college sports, fiscal control is often compromised. Unfortunately, this inexorable march to increase expenditures on revenue

producing sports in the name of maximizing revenues may result in diminishing the support of non-revenue producing sports.

Increasing Alumni/ae Involvement. Several scholars (Thelin, 1994; Zimbalist, 1999; Shulman and Bowen, 2001) have studied the relationship between successful athletics teams and alumni/ae giving to higher education institutions. The results demonstrate that there is no significant correlation between winning and an increase in alumni/ae donations. However, there is little doubt that athletic contests bring alumni/ae to campus and are a source of alumni/ae pride. Homecoming activities center on major athletics rivalries and create a festive atmosphere with band, cheerleaders and parades. Development officers utilize athletics contests to cultivate and entertain current and prospective donors. Academic departments schedule alumni/ae advisory council meetings on days of athletics contests in order to enhance the experience of returning to the university. At some universities, athletics contests seat locations are tied to alumni/ae donor giving levels.

Balancing Educational and Business Objectives

Once institutional administrators have defined the educational and business objectives that apply to their athletics program, the next step is to determine whether they equally apply to all sports. It is important for administrators to convey that the growth and development of each student-athlete applies to all sports and is a priority that cannot be compromised by business or other educational objectives. However, saying that is not enough. There must be a clear statement of policies and expectations that tells coaches and athletes what is expected with regard to honesty, integrity, ethical conduct, academic performance and behavior as an institutional representative. If standards are not met, sanctions must be delineated and, importantly, applied without bias.

Next, administrators must determine which of the other educational and business objectives apply to each sport. Athletics departments are complex organizations in which objectives can vary from team to team. Trying to prioritize a single set of objectives for the unit as a whole may be an exercise in futility. The student-athletes in a high profile sport that strengthens alumni/ae involvement and provides national exposure for the university may not be asked to perform community service projects. The team that has a part-time coach and no fan base may not be required to fund raise. In essence different sports teams are faced with different expectations. Universities, by accident or by design, have created “tiered” athletics programs. Unfortunately, at most universities, athletics program tiers or differences in treatment are neither acknowledged nor clearly defined. This absence of clarity creates challenges in articulating program objectives, creating policy, exercising fiscal controls, and providing a gender equitable athletics program.

It is essential that every university formalize the structure and function of its athletics program by conducting a self-study that will aid administrators in prioritizing athletics department objectives, setting realistic program expectations, and evaluating team by team funding patterns. Such an assessment will also provide a clear picture of how well the athletics program is complying with gender equity requirements.

Administrators must also realize that there is no perfect model that should be emulated. Each institution has to create its own unique model that is consistent with institutional philosophy, affordable within financial resources, and compliant with state and federal legal obligations.

III. FORMALIZING THE STRUCTURE AND FUNCTION OF AN ATHLETICS DEPARTMENT

Why a Formal Structure Is Important

There are four main reasons why formalizing the athletics program's structure and function through a systematic analysis of current practices is essential: (1) to control planned growth as an economic necessity, (2) to clearly communicate the university's athletics commitment to prospective students and employees, (3) to be accountable to the faculty and other constituents, and (4) to adequately respond to aggressive media.

Planned Growth As An Economic Necessity. Over the past 30 years, university athletics programs have grown dramatically primarily due to the impact of gender equity laws. According to a report by the National Coalition for Women and Girls in Education (2002), in 1972 29,977 female athletes and 170,384 male athletes participated in intercollegiate athletics (p. 13-14). By 2003, those figures had risen to 160,650 women and 216,991 men at NCAA member institutions (NCAA, 2004, p. 63-65). The sheer volume of sponsoring more athletes and more sports have created the need to have a plan in place that addresses program goals, gender equity objectives, and funding levels on a sport-by-sport basis. Such a plan is particularly important during times of economic recession.

Communicating the University's Athletics Commitment to Prospective Athletes and Coaches. Prospective student-athletes require accurate information during the decision-making process involved in school selection. Prospective student-athletes and their parents have become sophisticated consumers of the sports product. They want every advantage possible and expect that coaches and athletics administrators will clearly present the benefits and limitations of participating in sports at their institution. Primarily, they are interested in the credentials and accessibility of the coach, the expectations for success of the program, the quality of the facilities, and the provision of athletics scholarships and support services. The recruiting process has become a negotiation similar to any other sales encounter. Coaches and athletics administrators must know their product and sell it on its own merits.

Communicating the advantages and limitations of specific sports programs in the employment recruiting process is also essential. One of the advantages of a clear statement of differences in sport program goals and objectives is to control a coach's expectations of financial support and program emphasis. It is unfair to provide an unrealistic or unclear picture of program support to prospective coaches. They must know what will be expected of them and what types of resources will or will not be available to meet those expectations.

Accountability to Faculty and Other Constituents. Being accountable to a variety of constituents creates another reason to have a clearly defined athletics program model. Faculty need to understand the diverse roles athletics departments play on a university campus, as well as the value of its existence. They must also be comfortable that there is a carefully crafted plan for

objective attainment and enough oversight to control the potential dysfunctions of the largest, most powerful student activity on campus.

Alumni/ae are another group that need to understand how and why the athletics program functions the way it does. For those alumni/ae who question the value of intercollegiate athletics, it serves to justify the department's existence and explain expenditures which may come at the cost of providing other student activities. For alumni/ae that support athletics programs, it sends a clear message of how important the program is to institutional life, sets limits on their involvement in athletics program decision-making, and provides a clear rationale for the necessity of their financial support.

Responding to Aggressive Media. Helping the media understand why an athletics program conducts business the way it does is another reason for athletics departments to have a clear, identifiable structure. The media's interest in sports has evolved far beyond contest reporting. They have become much more active as watchdogs for student-athletes rights, sportsmanship, and commercialism. University administrators must be able to articulate the objectives of the program, define and justify differences in treatment from sport to sport, and provide rationale for how the structure relates to the central mission of the institution.

What is a Tiered Athletics Program?

Most university athletics programs, whether they formally recognize it or not, administer a tiered athletics program model. A tiered athletics program is a system for defining different levels of funding and support for various sports teams. There are very few educational institutions, at the high school or university level that can afford to offer athletics programs where all teams receive equivalent support and have access to a full-time coaching staff. Tiered funding models can range from two tiers, often referred to as a major-minor sports model, or a multi-tiered model than can include as many as six or seven tiers. The teams that receive the highest level of financial support are often referred to as Tier 1 sports or "major" sports. Along with enhanced funding, university administrators usually set higher expectations of success for Tier 1 sports. If there are many tiers, expectations of success, measured in a variety of ways, are usually correlated with funding levels.

Though it sounds like a relatively simple process, there are two sets of complex decisions that must be addressed in setting the parameters for tier designations. The first set of decisions is to determine what level of difference in treatment is significant enough to create a whole new tier. If every team has its own locker room except for men's and women's cross country, would that mean that the cross country teams have to be classified in a different tier? What if some teams have on-campus facilities for competition and others must travel to off-campus sites? What if some teams have assistant coaches and others do not? There is no absolute right or wrong answer when determining whether differences in treatment between teams are relatively minor or significant. Each institution's administration would have to wrestle with these questions, set their own standards and be able to justify their decisions. However, there is some information in the Title IX literature as it relates to gender discrimination in sport that could serve as guidance for determining tiers. In the November 2000 issue of *Title IX Q and A*,

Bonnette identified four areas of gender discrimination in sports that deserve particular attention. The four areas included: 1) the quality of and access to coaching, 2) the awarding of athletics scholarships, 3) the quality and availability of practice and competitive facilities, and 4) the financial support for and expectations of recruiting student-athletes (p. 10). Differences in these four areas may be a good starting point to help determine tier differentiation.

The second set of decisions that must be made is to define what constitutes significant differences in expectations for success in each tier. In theory, funding is tied to expectations of success. Is the expectation to win the conference every two to three years significant enough for a team to be placed in a higher tier and to receive more financial support than teams that are expected to finish among the top half in the conference annually? Does the expectation for a specific team to raise more revenue create a different funding tier? How much more revenue? Is \$50,000 enough? Does the funding difference in each tier adequately reflect the difference in expectations? The answers to these questions will vary depending on the priorities of each institution.

No matter what decisions a university makes regarding a tiered funding model, there is no reason to apologize for its existence. It is a common practice for educational institutions to prioritize program areas. Even within the academic curriculum, every institution puts more resources in certain majors or disciplines based on the institution's desire to establish areas of excellence. For example, an analysis of staffing patterns may show that some academic departments on campus have fully funded, tenure track professors with exceptional credentials compared to other departments that, due to limited funding and lower priority, must employ more adjunct professors. There is no doubt that, given an open checkbook, all educators would elect to provide the best of everything to everybody. Unfortunately, education is like any other business. Economics dictates that the organization must establish a mission and prioritize offerings through an analysis of strengths and limitations within the constraints of available resources.

Benefits of a Tiered Athletics Program

There has been a historical reluctance to admit that tiered models in colleges and universities exist. Sometimes, athletics administrators and coaches will claim that their reluctance stems from a concern that athletes who participate on teams in lower tiers will feel undervalued. Less often, they will admit that they can't explain why the tiered model exists. In most cases, athletics directors and coaches have inherited a model that simply evolved over time. There may have been no plan or little evaluation as treatment of teams became differentiated. Even with the addition of women's sports teams and the implications of gender equity, few institutions considered the necessity of considering the gender equity factor in their placement of teams in various tiers.

There are many benefits to formalizing and openly articulating the existence of a tiered sports program including: (1) the accommodation of a variety of educational and business objectives, (2) fairness to student-athletes, (3) the promotion of effective and efficient

management strategies, (4) compliance with legal standards, and (5) the ability to maintain or increase participation opportunities for student-athletes.

Accommodating a Variety of Educational and Business Objectives. As discussed in Section I, the mission of an athletics department within a university setting may be quite unique to each institution and will more often encompass multiple objectives. For example, an institution may want to create national recognition through the success of the athletics department. Every sport at that institution does not have to be exceptional to create that exposure. Therefore, administrators may select some men's and women's sports, categorize them in Tier 1, and provide a level of financial support in a way that brings about a successful, nationally recognized program. That same institution may want a group of Tier II sports that help increase enrollment at the institution and provide a base of support for community service projects.

Fairness to Student-Athletes. Fairness to student-athlete consumers is another benefit associated with creating and openly articulating a clear, definable athletics program model. Student-athletes should know exactly what kind of program they will be participating in including the level of competition, the expectations of performance, and available benefits. Coaches and athletics administrators have demonstrated a reluctance to articulate the presence of a tiered funding model. They argue that student-athletes participating on teams in lower tiers will feel unappreciated because they do not receive benefits afforded other student-athletes. Student-athletes know when they are being treated differently; what is important is to be able to explain why. Only then will it be clear that there are logical reasons for such decisions, rather than arbitrary favoritism.

Promotion of Effective and Efficient Management Strategies. A tiered athletics program promotes efficient and effective management strategies. Tiers not only define institutional funding and treatment distinctions but they also limit what coaches can do on their own. When supervisors allow coaches to unilaterally administer their own program with little regard for the department at large, the result is a fuzzy understanding of organizational mission and a variety of practices based on the diverse personalities and desires of staff rather than educationally sound objectives and carefully considered priorities. A well-defined tier structure increases institutional control and creates consistent work standards and expectations.

Compliance With Legal Standards. Lack of a clearly defined athletics program model could make an institution more vulnerable to legal challenges. Continually espousing that all athletes and programs are treated equally and have the unlimited potential for success, when practices indicate otherwise, increases an institution's risk related to accusations of gender discrimination under Title IX, Title VII, and the Equal Pay Act. In addition, some athletes are filing lawsuits that claim unrealistic or unfulfilled promises made by the coach or the institution, alleging an impact on potential opportunities and earnings in professional sports.

Maintaining or Increasing Participation Opportunities. One of the most compelling advantages of administering a tiered athletics program is the ability to maintain or increase participation opportunities for student-athletes. With the influx of women participating in sport,

the excess spending on the high profile sports of football and men's and women's basketball, and the escalating costs of officials fees and athletics equipment at rates higher than inflation, athletics department dollars have been stretched. A tiered athletics program allows for a variety of funding levels that preserves opportunities. Varying level of perquisites, such as practice gear or year round access to locker rooms, can be provided on a tier-by-tier basis. In addition, the expectation of raising money by teams who receive higher levels of support could be implemented. There are a multitude of options created by a tiered funding approach that can help off set the high costs of running an athletics program without compromising opportunities to participate.

Challenges Created by A Tiered Athletics Program

There are a number of challenges created by adopting a tiered athletics program model including: (1) creation of a class system, (2) the difficulty in defining the true varsity experience, (3) finding a conference with homogenous competitive aspirations, and (4) denying top tier designation when teams succeed.

Creation of a Class System. A tiered model in athletics does create an economic class system. The athletes in the top tier sports are often treated like royalty, receiving many perquisites, state-of-the-art facilities, and access to the finest coaches who can dramatically impact team and individual success. Simultaneously, athletes in lower tiered sports may be driving to contests in vans, have part-time coaches, and old uniforms. These class systems often create dissonance among student-athletes, coaches, and athletics administrators. It is one of the primary reasons why athletics administrators have failed to formalize the existence of the tiers. However, the reality is that student-athletes and coaches have always known which teams were considered flagship programs with privileges and perquisites, and which teams were funded at moderate or base levels.

Defining the True Varsity Experience. The presence of a tiered model raises concerns about the quality of the student-athlete experience for members of teams that are placed in the lowest tiers. Administrators and coaches have to wrestle with the issue of defining the difference between a club sport and a varsity sport experience. When does a varsity sport really become a club sport that relies more on student or volunteer coaches, student fees, fund raising, and participants' out-of-pocket dollars? What is the minimum amount of funding or support a university should give a team so that it is a true varsity experience? The line is not always clear. For many institutions it becomes a struggle to preserve participation opportunities without totally compromising the quality of the experience.

Finding the Right Conference Affiliation. A dilemma of administering a multi-tiered model is finding the right "competitive fit" for all sport programs with regard to conference affiliation. Conferences provide a route to championship competition, guarantees of games, and a sense of identity. An institution may have one or two flagship sports that would be best served by playing in a very competitive conference. However, if the other schools in the conference support all their teams at either a Tier 1 or Tier 1 and Tier 2 levels, the institution that has four funding tiers may find that their lower tier sports have no chance of success. Since each college

and university creates their own unique athletics model, it is difficult to find a set of institutions to compete against in all sports. If some teams are being embarrassed, it puts pressure on the administration to compress the tiers with better funding or it risks igniting the quality versus participation opportunities question.

Denying Top Tier Designation to Successful Teams. When a bottom tier sport program exceeds the performance expectations of a top tier sport, there is an immediate pressure on the system to elevate its status or defend not doing so. In such situations, the administration must reflect on the variety of reasons why sports were placed in different tiers. Winning cannot be the only criteria for tier placement. Those other reasons must be resurrected to remind advocates of the overachieving sport that there are other considerations for tier assignments. Frequently, lower tier placement is simply a matter of economic limitations.

IV. DETERMINING SPORT PROGRAM DIFFERENCES

Analysis of Current Policies and Practices

There are two ways the institution can develop tiers: (1) starting from scratch with a theoretical model or (2) examining current sport program differences and developing tiers that more closely approximate these differences. The advantage of the latter is that such an analysis reveals the historical forces that created such differentiation.

One easy way to begin this process is to create a system that examines those practices for which legal requirements apply. Under the athletics regulations of Title IX of the Education Amendments Act of 1972, there are 13 elements for which gender equity is required (Achieving Gender Equity, p. II-1, 2):

1. accommodation of interests and abilities
2. athletic financial assistance
3. coaching
4. recruitment of student athletes
5. practice and competitive facilities
6. equipment and supplies
7. scheduling of games and practice times
8. travel and daily allowance
9. access to tutoring
10. housing and dining facilities and services
11. medical and training facilities and services
12. publicity
13. support services

Element 1 as it relates to participation opportunities and sports offered is thoroughly discussed in Section IV of this manual. For the other 12 elements, the current practices in each sport should be examined and defined. Below are sets of questions that can be used to identify current practices.

ELEMENT 2: SCHOLARSHIPS

Answer the following questions for each sport in the program:

1. Are there limits on the total number of full scholarships permitted?
2. Are there limits on the number of in-state or out-of-state scholarships permitted?
3. With regard to partial scholarships, is there a minimum or maximum number of recipients permitted?
4. With regard to partial scholarships, is there a minimum scholarship amount for individual student athletes?
5. Are there limits on the total amount of money awarded?

6. Are there limits on the use of scholarship money (i.e., need-based, merit-based, tuition only, etc.)?

ELEMENT 3: COACHING

Answer the following questions for each sport in the program:

1. Is the head coach full-time or part-time?
2. What is the number of full-time assistant coaches?
3. What is the number of part-time assistant coaches?
4. Is there a student-coach ratio policy to determine the size of the coaching staff? What is it?
5. What is the number of volunteer coaches?
6. Is there a limit on numbers of volunteer or assistant coaches permitted?
7. Are there minimum credentials required for head, assistant, or volunteer coaches (i.e., degrees, certifications, experience, etc.)?
8. What are the hiring practices for head coaches (i.e., national search, search committee required, athletic director appointment with no oversight, etc.)?
9. Which of the following job responsibilities are applicable to the head coaches:
 - a. recruitment of student-athletes
 - b. fundraising
 - c. limited season or year round team training (designate one or the other)
 - d. public speaking
 - e. academic advising
 - f. monitoring academic progress
 - g. budget management
 - h. purchasing uniforms and equipment
 - i. facilities and equipment maintenance
 - j. publicity and promotions
 - k. scheduling athletics contests
 - l. scheduling officials
 - m. teaching courses or job responsibilities other than those related to athletic coaching (describe)
 - n. other
10. Define the following expectations applicable to the head coach:
 - a. specific minimum win/loss record or other measures of team success (i.e. conference championship, national rankings, athlete awards such as All-American or All-Conference, coach awards such as Coach of the Year, etc.)
 - b. specific number of recruited athletes
 - a. academic quality of recruited athletes
 - b. athletic quality of recruited athletes
 - c. academic success of student-athletes (i.e., retention, graduation rates, etc.)
 - d. behavior of student-athletes
 - e. minimum fund raising yield
 - f. attendance minimums at home contests
 - g. season ticket sales

- h. public relations
 - i. community service
 - j. other
11. Describe the compensation and benefits packages for head and assistant coaches
- a. predetermined salary ranges
 - b. standard university benefits
 - c. special benefits (i.e., car, country club benefits, etc.)
 - d. additional compensation (i.e., bonuses, merit increases, annuities, shoe contracts, etc.)

ELEMENT 4: RECRUITMENT OF STUDENT-ATHLETES

Answer the following questions for each sport in the program:

1. Is there a quota system or other requirement regarding minimum number of matriculated athletes each year?
2. Are there geographical limitations to recruiting?
3. What is the recruiting budget?
4. Are there limitations on recruiting practices (i.e., off-campus visits, telephone, use of Federal Express, paid campus visits, etc.)?

ELEMENT 5: PRACTICE AND COMPETITIVE FACILITIES

Answer the following questions for each sport in the program:

1. Rank the quality of the team's practice facilities: Excellent, Good, Average, Below Average, Poor
2. Rank the quality of the team's competition facilities: Excellent, Good, Average, Below Average, Poor
3. Is practice facility access unlimited or restricted? What are the restrictions (i.e., off-campus, time, cost, etc.)?
4. Is competition facility access unlimited or restricted? What are the restrictions (i.e., off-campus, time, cost, etc.)?
5. Rank the quality of the team's locker room: Excellent, Good, Average, Below Average, Poor
6. Is access to the locker room unlimited or restricted? What are the restrictions?
7. Who maintains the facilities?
8. Rank the quality of facility maintenance: Excellent, Good, Average, Below Average, Poor

ELEMENT 6: EQUIPMENT AND SUPPLIES

Answer the following questions for each sport in the program:

1. Rank the adequacy of the team's equipment and supply budget: Excellent, Good, Average, Below Average, Poor
2. How often can uniforms be replaced?
3. Rank the quality of uniforms: Excellent, Good, Average, Below Average, Poor

4. How often is equipment replaced?
5. Are there limitations on the type of apparel or equipment that is issued to the team. (i.e., athletic shoes, sport implements, outerwear, etc.)?
6. Rank the adequacy of equipment maintenance: Excellent, Good, Average, Below Average, Poor

ELEMENT 7: SCHEDULING OF GAMES AND PRACTICE TIMES

Answer the following questions for each sport in the program:

1. Is the team permitted to play the maximum number of allowable contests specified by governing body rules? If not, what %?
2. Is the scheduling of contests limited by geographic location or other factors? What are the limitations?
3. Is the team limited in scheduling contests or practices in the non-traditional season?
4. Are there practice time limitations (i.e., hours, prime time, etc.)? What are they?
5. Are there contest time limitations (i.e., times of day, times of week, etc.)? What are they?
6. Is the team provided with ample pre-season practice opportunities? Describe if inadequate.
7. Is practice or competition limited during times when school is not in session (i.e., winter break, spring break, etc.)? If so, describe.
8. Are opportunities to compete in post-season competitions limited in any way? How?

ELEMENT 8: TRAVEL AND DAILY ALLOWANCES

Answer the following questions for each sport in the program:

1. Are there restrictions on the mode of transportation to contests? What are they?
2. Are there restrictions on overnight stays? What are they?
3. Are there restrictions on numbers of athletes in rooms for overnight stays? What are they?
4. Is there a limit on the quality of lodging based on cost per night that is provided for your team? What are the limitations?
5. Are there limitations on the time of arrival and length of stay for competitive events (i.e., permissible departure times, staying at site)? What are they?
6. What is the per diem allowance or limits on expenditures per meal that apply?

ELEMENT 9: ACCESS TO TUTORING/ACADEMIC SUPPORT SERVICES

Answer the following questions for each sport in the program:

1. Are tutoring services provided to the team? If yes, are there limitations to this service (i.e., time of day, numbers of hours, etc.)?
2. What other academic services are provided to your student-athletes?
3. Are tutoring services charged to the operating budget or paid for by the athlete or other sources? What sources?
4. What is the quality of the tutors (i.e., other students, trained professionals, volunteer or paid, etc.)?

5. Is there a specific area designated for your team to access tutoring, study hall, or computer labs?
6. Are there limitations on the numbers of tutors available to the team?

ELEMENT 10: HOUSING AND DINING FACILITIES AND SERVICES

Answer the following questions for each sport in the program:

1. Are athletes provided with housing arrangements different from the general student body? Describe any special benefits or arrangements.
2. If different from the general student body, rate the quality of housing facilities: Excellent, Good, Average, Below Average, Poor
3. Are athletes provided with dining arrangements different from the general student body? If so, describe any special arrangements.
6. If different from the general student body, rate the quality of the dining arrangements: Excellent, Good, Average, Below Average, Poor
7. Are pre-game meals provided prior to home contests? If so, are there any restrictions on this benefit?
8. Are housing and meals available during times when the institution is not in session? If so, describe any limitations.

ELEMENT 11: MEDICAL AND TRAINING FACILITIES AND SERVICES

Answer the following questions for each sport in the program:

1. Rate the quality of weight training and conditioning facilities: Excellent, Good, Average, Below Average, Poor
2. Are there limitations on access to weight training and conditioning facilities (i.e., location, hours, etc.)? If so, what are they?
3. Rate the quality of strength and conditioning coaches assigned to the team (i.e., students, trained professionals, etc.): Excellent, Good, Average, Below Average, Poor
4. Rate the quality of medical and training facilities: Excellent, Good, Average, Below Average, Poor
5. Are there limitations on access to the training room (i.e., location, hours, etc.)? If so, what are they?
6. Describe and rate the quality of the trainers assigned to your team (i.e., students, trained professionals, etc.): Excellent, Good, Average, Below Average, Poor
7. Do trainers attend all practices and home contests?
8. Do trainers travel to all away contests?
9. Does the team have access to a team doctor?
10. Is the team doctor on-site for home and away contests?
11. Are athletes provided annual pre-season physicals paid for by the athletic department or university?
12. Are athletes covered by full medical insurance? Describe any limitations.

ELEMENT 12: PUBLICITY

Answer the following questions for each sport in the program:

1. Rate the availability of sports information promotional services compared to other teams:
Excellent, Good, Average, Below Average, Poor
2. What sports information services are provided:
 - a. media guide
 - b. score reports to media
 - c. press releases
 - d. recruiting brochure
 - e. schedule poster
 - f. scheduling media interviews
 - g. arrangement of radio coverage
 - h. arrangement of television coverage
 - i. promotion of All-American candidates
 - j. travels with team to away contests
 - k. present at home games
 - l. maintains statistics
 - m. other (describe)
3. How would you rate the quantity and quality of publicity compared to other teams:
Excellent, Good, Average, Below Average, Poor

ELEMENT 13: SUPPORT SERVICES

Answer the following questions for each sport in the program:

1. What clerical and secretarial support is provided? Describe number and type of personnel and time assigned.
2. What administrative support and services are provided through the athletics department?
 - a. recruiting coordinator
 - b. laundry services
 - c. equipment manager
 - d. facilities director
 - e. business manager (invoicing, purchasing, etc.)
 - f. fundraising coordinator
 - g. ticket office
 - h. event manager
 - i. counseling/student life support
 - j. travel coordinator
 - k. other (describe)

Defining the Current Athletics Program Model

The next step is to define the athletics program's current de facto tier system. Each element should be examined in an attempt to identify how many different practices exist. This

can be done by listing the practices in a hierarchical order from best supported to least supported. It would also help to indicate which teams benefit from each practice. For example:

Element 6: Equipment and Supplies

Criteria: Uniform Replacement

Replacement annually:	Basketball (M), Basketball (W), Football
Replacement on a two-year rotation:	Soccer (M), Soccer (W), Baseball
Replacement on a three-year rotation:	Softball, Lacrosse (M), Lacrosse (W)
Fill-in replacement only as needed:	Tennis (M), Tennis (W), Cross Country (M), Cross Country (W), Swimming (M), Swimming (W)

Criteria: Uniform Quality

Excellent quality--custom	Basketball (M), Basketball (W), Football
Above average quality--non-custom	Baseball
Average quality--custom	Soccer(M), Soccer(W)
Average quality--non-custom	Lacrosse (M), Lacrosse (W), Swimming(W)
Low quality--non-custom	Tennis(M), Tennis(W), Cross Country (M), Cross Country (W)

As this exercise is completed for each element, a pattern of tiers will emerge. There may be one or two differences of treatment for some criteria among all sports, while other criteria may have seven or eight differences, with little homogeneity in the treatment of individual sports. The administration must determine which criteria and what levels of difference in treatment are significant enough to actually define tiers. Careful attention should be paid to the elements that appear to have the greatest impact on team and individual athlete success and the quality of the athletics experience. These elements include: (1) access to and quality of coaching, (2) support of the recruiting process, (3) availability of scholarship dollars and (4) the quality of and access to practice and competitive facilities. The criteria within these elements should be evaluated first in any tier system. Chart 1 is an example of how tiers may start to emerge based on these four elements.

Once the number of tiers is established for the top four elements, the administration must decide how the other criteria will be accommodated. If a three-tier model seems to be the best choice, there may be decisions to compress practices in other criteria to create a “good fit”. For example, if there are currently four different practices regarding uniform replacement as indicated above, the administration could decide to drop the two year rotation and use a three-tier model consisting of an annual replacement cycle, a three-year rotation cycle, and fill-in replacements. There may be good reasons not to compress or expand practices to fit perfectly in the model. For example, due to wear and tear from sliding, the baseball team may have to stay on a two-year uniform rotation.

CHART 1: Example of a Tiered Athletics Program Based on Four Primary Elements

	TIER I	TIER II	TIER III
SCHOLARSHIPS	- Maximum allowable - No restriction on in-state vs. out-of-state	- 50% of maximum - 1/3 out-of-state maximum	- None permitted
COACHING	- Full-time head coach - Full-time asst. coaches max. # assts. allowed	- FT head coach - 1 asst. coach (part-time)	- PT head coach - No assts.
RECRUITING	- National scope - 100% of team recruited	- Regional scope - 75% recruited	- Regional scope -25% recruited
FACILITIES	- State of the art - Exclusive access	- Top 3 rd in conference - Priority access	- Adequate - Priority in season

Each set of practices has to be evaluated to determine what would make the most sense. While going through this process, it is helpful to include all the Title IX elements that apply to your program in the model. If this is done, it will help create practices within each tier that take gender equity into account. See Appendix A for an example of a four-tier athletics program that incorporates 12 elements of Title IX.

Identifying Factors That Influence Preferential Treatment

Once the tiered model has taken shape, administrators should examine the historical factors that influenced why some sports have received preferential treatment and others have not. Was emphasis on certain sports a result of a documented plan or did it just happen? Most administrators will find that there was no plan. More often, the tiered athletics program model came about through a series of reactions to various pressures. A historical analysis will probably show that there were many factors which drove the funding of selected teams upwards and created a de facto tiered system. Following is a list of factors that have typically affected athletics department structure.

Competitive Success. A history of competitive success is one of the primary reasons for a team to have moved into the top tier. Over a number of years, a team can develop a fan base of students and alumni/ae and become a source of pride for the university. When that occurs, there is an expectation that the university’s administration will continue to support that team, at almost any cost, so that competitive excellence is preserved. Unfortunately, there have been times when consistent, long-term success has not been a prerequisite. One or two winning seasons can cause a sense of euphoria among university constituents. The result is increased pressure on the university to devote more resources to that team.

Leadership Influence. A long-term analysis of the university administration's support of athletics and the sport interests of presidents or trustees usually provides insight into why specific teams are more highly funded than others. It has not been unusual for a new president to arrive on campus and almost immediately reallocate resources to a program that he or she thinks will bring pride and notoriety to the university. The same practices hold true for athletics directors. Many athletics directors have coached a specific sport for several years before going into administration and may be inclined to support that sport wherever they work.

Ability of a Coach. The extraordinary ability and commitment of an individual coach who has put considerable time, energy and effort into promoting his or her sport may be another reason why a particular team has risen to the top of the tiered structure. Some coaches are exceptional motivators that have the kind of charisma and energy that creates a sense of campus and community excitement. Athletes, parents, and alumni/ae of the sport become devoted advocates for the growth and development of the team and its' performance. The slightest amount of competitive success makes this group hungrier for additional resources. Their enthusiasm can spill over into the administration, or can put pressure on the administration, and be a catalyst for increased funding to the program. Additional dollars may come in small increments along with slight increases in expectations of success. Before anyone realizes it, the program is being funded at the Tier 1 level and the expectation to continue that amount of support exists.

Keeping Up With the Joneses. How a university's competitors are funding their athletics programs could have impacted the tier structure. If institutional administrators think it is important to successfully compete in athletics with a set of peer schools, decisions they make about which sports to support at a higher level may be in direct response to what those schools are doing. This practice is prevalent among many institutions that are competitive in Division I-A football and basketball. Cedric Dempsey, former President of the NCAA, called it the "ever-growing arms race". He purports that administrative decisions at that level are often based on a "spend to win" mentality with less regard for what is best for student-athletes (quoted in Brown, 2000, p. 14).

Attracting Students. Another reason why a university may have promoted one sport over another is to appeal to a specific type of student. If a university is private and very expensive, coaches may need to attract a high percentage of students who have the ability to pay. There are certain sports, like golf and equestrian, which are very costly to the participant. A high percentage of student-athletes who participate in these sports tend to come from higher socio-economic backgrounds. By providing excellent competitive opportunities in those sports, the university may fulfill one of their business objectives of attracting more full-paying students.

Facilities. The quality of a university's athletics facilities may be another factor that impacted the creation of tiers. For example, if an institution has a rowing team but the river they practice and compete on is thirty-five minutes away, the team may have not been able to create the kind of campus and alumni/ae support needed to provide the rationale for increased funding. Conversely, if the river is at the base of the campus and is a focal point of the city, the rowing program may have evolved as a premier sport for the university and the local community.

There are many other reasons why certain sports have risen or fallen in the tiered athletics program structure at each university. Understanding those reasons is essential before administrators can evaluate whether the model is still a “good fit” with the current university mission and the goals and objectives of the athletics department.

Evaluating the Current Athletics Program Model

In order to assess whether or not the current tiered model is compatible with the mission of the university, administrators must refer back to the issues that were raised in the beginning of this manual. In essence, the question of what the university wants from the athletics program must be answered. There is no magic formula or set of common answers for all universities. Instead, there is a set of questions that must be explored, including:

1. What are the educational objectives of the athletics department?
2. What are the business objectives of the athletics department?
3. How well does the current athletics program model reflect and accomplish the objectives?
4. Are the objectives clearly delineated and prioritized for each tier? Is there defensible rationale for the differences in tier objectives and team expectations?
5. Have the objectives been clearly communicated to all constituents (i.e. student-athletes, coaches, faculty, alumni/ae, the media, etc.)?
6. Are there policies in place that support objective attainment?

While wrestling with these questions and matching objectives to tiers, the administration may find that the existing model does not adequately support the desired program goals. At that point, the focus of analysis should switch to how the current model could be restructured to accommodate goal attainment. This process, in and of itself, would be a time-consuming exercise that would need input from a multitude of sources. Determining what the ramifications would be if significant changes to the athletics program are needed can be a daunting task. It would be a relatively easy process if all decisions led to additional resources for specific sports with no new limitations on any team. Of course, this assumes that the administration has sound justification for increased funding to athletics that would gain the support of the trustees, faculty, and alumni/ae.

The harder decisions occur when the determination is to pare down spending and create additional tiers, widen the funding gap between tiers, or drop sports. One of the mistakes often made during the decision-making process is that administrators do not include the concerns of constituents who will be most affected by the change. There is ample evidence that giving coaches, current athletes, their parents, trustees, and alumni/ae the opportunity to have input before final decisions are made is a prudent strategy.

As reported in the April 2001 and September 2001 issues of the *Title IX Compliance Bulletin for College Athletics*, two Division I members of the NCAA announced plans to cut

programs or realign tiers. Both institutions had to change their strategy after trustees, athletes, or alumni/ae created an unpredicted amount of dissension (p. 1). It is hard to know what kind of effort will be needed to mend the relationships that may have been compromised during the process.

Dropping sports is one of the hardest decisions university administrators can make. In many cases, adjusting tiers and the benefits that are provided could be a better alternative. Administrators should examine the tiers that exist and decide which variables cost the most. There may be ways to adjust those variables so that expenses are reduced and participation opportunities are preserved. Appendix A includes an example of a four-tier athletics program. If that program had originally included only the first two tiers and, due to budget restrictions, had been restructured into a four-tier model, the cost savings could have been significant.

V. MEASURING PARTICIPATION OPPORTUNITIES IN A TIERED FUNDING MODEL

Gender Equitable Participation Opportunities

Once the athletics staff has performed the exercise of creating the tiers based on current program practices, an evaluation of which teams occupy each tier is essential. This exercise is a significant step in measuring whether or not the athletics program is providing participation opportunities in a gender equitable way under Title IX. Title IX, a federal law that was passed in 1972, states:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance. (Achieving Gender Equity, p. I-1)

In Section III, 12 of the 13 variables that must be assessed to measure compliance with Title IX were used to identify current practices that could aid in the delineation of funding tiers. This section will focus on the first variable, participation opportunities, and the distribution of teams among tiers.

In athletics, there are three different ways, often referred to as the three-prong test, to be in compliance with the participation opportunities standards under Title IX. The three ways include proportionality, accommodation of interest and ability, and demonstrating a history of expansion of teams for the underrepresented gender. Following is an explanation of the three prongs. Each explanation includes the assumption that women are the underrepresented gender.

The Proportionality Test

The test of proportionality is the easiest way to measure equitable participation opportunities. Basically, if the percentage of male athletes and female athletes is the same as the percentage of full-time undergraduate male students and female students on campus, an athletics program has met the proportionality standard of Title IX. Chart 2 is an example of a three-tiered model that demonstrates placement of teams within tiers along with the corresponding roster size. If the proportion of students on campus is 50% male and 50% female, the participation opportunities depicted in Chart 2 demonstrates Title IX compliance based on the proportionality test. However, if the undergraduate population is 56% women and 44% men, the proportionality standard has not been met. If meeting the proportionality test is the goal of this institution and the male athlete population of 207 participants is preserved, 56 more participation opportunities for women athletes would need to be provided.

**Chart 2: Placement of Teams in a Three-Tier Athletics Program
To Meet the Proportionality Standard**

(undergraduate population = 50% male and 50% female)

Tier I	Tier II	Tier III
M/Football (85)	M/Soccer (24)	M/Tennis (12)
M/Basketball (15)	W/Soccer (24)	W/Tennis (12)
W/Basketball (15)	M/Swimming (20)	M/Track (22)
W/Lacrosse (27)	W/Swimming (20)	W/Track (22)
W/Crew (32)	M/Fencing (15)	M/Volleyball (14)
W/Field Hockey (26)	W/Volleyball (15)	W/Squash (14)
Total: 100men/100women	59men/59women	48men/48women

Total Athlete Population = 207 men (50%) and 207 women (50%)

In addition to providing more opportunities, the administration should be cognizant of adding teams to the appropriate tier. In Chart 2, approximately 48% of all male and female athletes participate on Tier I teams, 29% on Tier II teams, and 23% on Tier III teams. Assuming that the administration would elect to leave men's teams in the tiers they currently occupy, those same percentages would have to be maintained as women's teams were added. Chart 3 demonstrates how teams could be added to ensure that an athletics program could still meet the proportionality standard if the undergraduate population is 56% women and 44% men.

**Chart 3: Placement of Teams in a Three-Tier Athletics Program
To Meet the Proportionality Standard**

(undergraduate population = 44% male/56% female)

Tier I	Tier II	Tier III
M/Football (85)	M/Soccer (24)	M/Tennis (12)
M/Basketball (15)	W/Soccer (24)	W/Tennis (12)
W/Basketball (15)	M/Swimming (20)	M/Track (22)
W/Lacrosse (27)	W/Swimming (20)	W/Track (22)
W/Crew (32)	M/Fencing (15)	M/Volleyball (14)
W/Field Hockey (26)	W/Volleyball (15)	W/Squash (14)
W/Softball (25)	W/Fencing (16)	W/Cross Country (12)
Tier Total: 100men/125women	59men/75women	48men/60women
% of Gender: (48%)/(48%)	(29%)/(29%)	(23%)/(23%)

Total Athlete Population = 207 men (44%) and 263 women (56%)

It is important to note that Title IX law does not mandate that the same men's and women's teams be placed in the same tiers. In other words, an institution could choose to offer men's basketball and women's volleyball in Tier I while placing women's basketball in Tier II or III. Similarly, as demonstrated in Chart 3, women's volleyball occupies Tier II and men's volleyball occupies Tier III.

A dilemma that has plagued college and university administrators is determining how close to the actual proportionality measure an institution has to be so that compliance is attained. The findings of actual court cases have resulted in mixed messages. Each regional court and how it applies the law to the specific circumstances of each institution causes this variation. The size of the athletics program alone could result in very different findings. However, that does not mean that there is or should be a wide range of variance in the proportionality measure. According to Bonnette (2002), "the Office of Civil Rights 1996 Clarification - by the statement that *in some circumstances it may be unreasonable to expect an institution to achieve exact proportionality ...* - suggests that in most cases, it is reasonable to expect exact proportionality." Bonnette goes on to say:

OCR's explanation is that participation is considered substantially proportionate to enrollment when the number of opportunities that would be required to achieve substantial proportionality is not sufficient to sustain a viable team. A viable team is loosely defined as a team for which there is a sufficient number of interested and able students and enough available competition to sustain an intercollegiate team (p. 2).

For example, if an athletics program has 400 total athletes and the full-time undergraduate population is 52% women and 48% men, under the proportionality standard the athletics population should include 208 female athletes (52%) and 192 male athletes (48%). If this athletics program has 200 female athletes and 200 male athletes (a 50%-50% split), they would have to determine how many additional participation opportunities were needed to reach actual proportionality. In this case, 15 additional opportunities for women would suffice. At that point, the institution would have to determine if a viable team could be established with 15 participation opportunities.

Roster management is one strategy that some institutions use to reach actual proportionality. This is the practice of allowing women's teams to carry a few more players on their rosters compared to men's teams or limiting roster sizes for men's teams. In the example given above, if this institution had 10 women's teams, they could meet the proportionality standard by adding 1-2 additional players to the rosters of the women's teams that are already offered to reach the target of 15 additional players.

Accommodating Interest and Ability

The second way to be in compliance with Title IX is more complex. In essence, this standard requires that the institution demonstrate that the athletics program has met

the interest and ability of the underrepresented gender. In other words, if an athletics program has a higher percentage of male athletes than male students it is the obligation of the administrators to prove that it is offering all the sports in which there is significant interest in and ability for by the female population. This can be assessed through a variety of means and must include evaluating the interest and ability of females who are prospective student-athletes as well as current undergraduates.

The rationale for measuring the interest of females who are prospective student-athletes is clear. If an institution does not offer a sport, athletes who are interested in that sport may not elect to attend that institution and will, in essence, self-select themselves out of the pool. Therefore, limiting the scope of interest to current female undergraduates is not a true measure of what the interest would be if the sport were offered.

Evaluating prospective student-athlete interest and ability can be a relatively easy process. One of the easiest and more comprehensive ways is to assess which high school sports for girls are offered in the areas from which the institution recruits undergraduate students. For example, if an institution's student population is heavily recruited from the northeast, there is a good chance that high interest and ability in the sport of girls' field hockey exists. That may not hold true if most of an institutions students came from the public schools in the southwest where field hockey is almost non-existent.

As an additional means of measuring interest and ability of prospective female athletes, some institutions include questions on the standard admissions inquiry card that asks what sports the prospective student would like to participate in on the intercollegiate level and what level of experience and success the applicant has in the sport.

There are several ways institutions can measure interest and ability of women who are already part of the student body. One way is to investigate whether there has been a history of women requesting the addition of intercollegiate sport opportunities. A second way is to assess participation rates and ability levels of female club sport participants. The third, and more comprehensive, way is to conduct a campus-wide survey that measures interest as well as previous experience and levels of success in each sport.

It is very important that institutions make every effort to evaluate the athletics ability of females who indicate an interest in a sport. In a report issued by the National Coalition for Women and Girls in Education (2002), based on statistics from 2000, 2,784,154 females participated on high school sports teams. In the same year, 150,916 women participated in intercollegiate sports at NCAA member institutions (p. 6). Therefore, it is safe to assume that the majority of athletes at four -ear colleges are more often recruited from the top 10% of the high school talent pool. Title IX does not mandate that an institution offer sports where interest is high but ability is not up to the expectation of that particular athletics program. For example, if the results of a campus wide survey indicate that 40 women would be interested in an intercollegiate lacrosse team but none have played past the 10th grade, the ability level may not be high enough to create the need to institute a lacrosse team. This measure is less important when

assessing prospective athletes because most coaches conduct targeted recruiting and only pursue student-athletes who have the capability to play at the collegiate level. However, if a coach and the university are limited to recruiting prospective students in a small geographic area and the high school talent pool in that sport is not large enough to play at the competitive level articulated by the institution, the measure of ability for prospective student-athletes may apply.

There is another caveat in the accommodation of interest standard. An institution is not expected to add a new sport for the underrepresented gender if there is no intercollegiate competition in that sport within the locale that the institution normally competes. For example, if through the investigative process, an institution learns that there is considerable interest and ability in the sport of women’s fencing, that institution would not be required to add fencing if there are not enough women’s fencing teams to compete against within the region in which they normally compete. However, if an institution sends their teams nationwide to compete, this condition would not apply.

Once an institution has undergone the process of measuring interest and ability and has met the goal of meeting participation opportunities through accommodation of interest and ability, how teams are placed in tiers still needs to be considered. Chart 4 is an example of how teams with their corresponding roster sizes could be placed in a three-tier model under a program that has met Prong Two.

Chart 4: Placement of Teams in A Three-Tier Athletics Program to Meet the Accommodation of Interest Standard (athlete population = 207 men and 187 women)			
	Tier I	Tier II	Tier III
	M/Football (85)	M/Soccer (24)	M/Tennis (11)
	M/Basketball (15)	W/Soccer (24)	W/Tennis (11)
	W/Basketball (15)	M/Swimming (20)	M/Track (22)
	W/Lacrosse (27)	W/Fencing (16)	W/Track (22)
	W/Softball (22)	M/Fencing (15)	M/Volleyball (15)
	W/Field Hockey (26)	W/Volleyball (15)	W/Squash (10)
Tier Total:	100men/90women	59men/54women	48men/43women
% of Gender:	(48%)/(48%)	(29%)/(29%)	(23%)/(23%)

Chart 4 demonstrates that there are a total of 207 male athletes and 187 female athletes. In order to be in compliance with Title IX under the accommodation of interest test, each tier must have the same percentage of athletes as it relates to the overall population for male and female athletes. As shown, Tier I sports for men include 48% of the overall male athlete population. Similarly, Tier I sports for women must include 48%

of the female athlete population. As demonstrated, this calculation applies to population percentages of male and female athletes in Tiers II and III as well.

A History of Continued Expansion

Another way for an institution to be in compliance with participation opportunities under Title IX law is to show a history and continuing practice of expansion for the underrepresented gender. However, utilizing this means of compliance can be somewhat misleading because there may come a time when expansion will be completed and an institution must meet either the proportionality standard or the accommodation of interest and ability standard. It is more realistic to present continued expansion as a means to reach Prong One or Prong Three. Therefore, while expanding the athletics program for the underrepresented gender, institutional administrators need to know whether meeting the proportionality measure or the interest and ability measure is the ultimate goal.

While adding teams, an institution has to be mindful of where teams need to be placed within their tiered model. Since both accommodation of interest and proportionality are based on percentages of athletes in each tier, an analysis of which tier needs additional participation opportunities is essential before sports are added. In other words, all new women's teams cannot be added at the Tier III level if the percentages of opportunities for women in Tiers I and II are not representative of equity under the applicable prong.

A review of court cases indicates that institutions have been found in compliance with the participation standards of Title IX using any one of the three prongs. There is a misperception in the athletics community that the proportionality standard is really the only true measure that the Office of Civil Rights uses to evaluate cases. Even though the proportionality test is the easiest way to assess compliance, it is not the only measure. In fact, 77% of the institutions found in compliance with the participation opportunities standards of Title IX, did so under the accommodation of interest and ability or the history of expansion standards (United States General Accounting Office, 2000, p. 40). Appendix B includes a more thorough explanation of the flexibility of the three-prong participation test and a methodology for easy assessment of participation compliance.

VI. CREATING GENDER NEUTRAL POLICIES AND PRACTICES THAT DEFINE EACH TIER

At this point in the process, the basic model, including how many tiers are in place and how teams occupy the tiers, should be completed. Going forward, there are a multitude of other policy decisions that must be made which will help to clearly delineate any philosophical principles and practical procedures that exist between the tiers. The types of decisions that must be addressed are separated into the following categories and continue to reflect a process that promotes gender equity.

Distributing Scholarship Dollars

Simply stated, allotment of athletics scholarships is a "dollar for dollar" requirement under Title IX law. (Bonnette, 2000, p.1) This measure is attached to the percentages of males and females within the athlete population. Assuming an institution is in compliance with participation standards under the proportionality test or the accommodation of interest and ability test described above, the allotment of scholarship dollars is a simple calculation. For example, if an institution is in compliance with the proportionality standard and their athlete population mirrors the full-time undergraduate population of 52% women and 48% men, 52% of the scholarship money would go to women and 48% to men. Similarly, if an institution is in compliance with the participation standard under the accommodation of interest measure and their athlete population is 53% men and 47% women, men would receive 53% of the scholarship dollars and women would receive 47%.

The analysis of scholarship allotments is a bit trickier if an institution is in the process of adding teams. Planning for scholarship allotments while adding teams reinforces the point that was made in Section IV requiring that an administrator knows if the ultimate goal for participation is to reach the proportionality standard or the interest and ability standard. For example:

An institution has determined that they are adding women's teams to meet the accommodation of interest and ability, which would be met when the athlete population becomes 53% men and 47% women. If women were already receiving 47% of the scholarship dollars despite only being 40% of the population, then no new scholarship dollars would be provided for new women's teams. Conversely, if the current female athlete population is 40% of the overall athlete population and they are only receiving 32% of the scholarship dollars, the institution is already out of compliance with Title IX and should be adding scholarship dollars to the current population as well as more scholarship funding when new women's teams are added to reach the needed allotment of 47% of the scholarship dollars allotted to female athletes.

Under Title IX law, allotment of scholarship dollars is calculated program-wide. In other words, in a tiered model there is no requirement to keep scholarship dollar percentages equal between men and women within the same tier. In fact, a review of the

limitations the National Collegiate Athletics Association (NCAA Manual, 2003-2004) places on the number of maximum scholarships allowable in each sport could make an institution's ability to balance scholarships within each tier very difficult, especially if the institution sponsors football (p. 205-206).

To serve as an example of the dilemma faced by administrators, Chart 5 is a reconstruction of Chart 2, which accommodates an athletics program that has 50% men and 50% women. Scholarship allotments have been added with the assumption that scholarships don't differ for out-of-state and in-state students. In this case, the scholarship dollars should be split evenly between men and women. For the teams represented in chart 2, let's assume that the athletics department is Division I and has attempted to create scholarship funding policies that have three conditions: 1) all Tier I sports have funding to satisfy the maximum scholarship limits allowable under NCAA rules, 2) all Tier II sports have funding to satisfy 50% of the maximum scholarship limits allowable under NCAA rules, and 3) there will be no athletics scholarships provided for tier III sports.

Chart 5: Team-by-Team Scholarship Allotments in a Three-Tier Model (207 male athletes and 207 female athletes)		
Tier I	Tier II	Tier III
MFootball (85)	MSoccer (4.45)	MTennis (0)
MBasketball (13)	WSoccer (6)	WTennis (0)
WBasketball (15)	MSwimming (4.45)	MTrack (0)
WLacrosse (12)	WSwimming (7)	WTrack (0)
WCrew (20)	MFencing (2.25)	MVolleyball (0)
WField Hockey (12)	WVolleyball (6)	WSquash (0)
Scholarship: 98men's/59 women's	11.15men's/19women's	0men's/0women's
Totals		
Scholarship Totals by Gender: 109.5 men's and 78 women's		

As demonstrated in Chart 5, there is no way under the current policy statements that this institution could allot 50% of the scholarship dollars to women. A solution would be to change the second and third policy statement to: 2) All tier II sports have some scholarship funding up to the maximum allowable under NCAA rules and 3) all Tier III sports will be allotted some scholarship funding up to 40% of the maximum allowable under NCAA rules. Chart 6 reflects a three-tiered program that would now be consistent with the established policies for scholarship allotment.

Chart 6: Team-by-Team Scholarship Allotments in a Three-Tier Model (207 male athletes and 207 female athletes)		
Tier I	Tier II	Tier III
M/Football (85)	M/Soccer (2)	M/Tennis (1)
M/Basketball (13)	W/Soccer (12)	W/Tennis (3)
W/Basketball (15)	M/Swimming (2)	M/Track (1)
W/Lacrosse (12)	W/Swimming (14)	W/Track (6)
W/Crew (20)	M/Fencing (2)	M/Volleyball (1)
W/Field Hockey (12)	W/Volleyball (12)	W/Squash (4)
Scholarship: 98 men's/59 women's	6 men's/38 women's	3 men's/10 women's
Totals		
Scholarship Totals by Gender: 107 men's and 107 women's		

It has been shown that, with a creative approach to policymaking, equity regarding distribution of scholarship dollars can be achieved. However, it has also been shown that current NCAA legislation may make this difficult at many institutions and, in essence, compromises the desire to treat women athletes or male athletes who occupy teams in lower tiers fairly. How and why has this happened? There are two factors that have contributed to this problem:

- 1) Historically, scholarship limits in football and basketball have been significantly higher than other sports. These limits reflect the major/minor sport mentality. The maximum number of basketball scholarships poses less of a problem because both men and women compete in the sport of basketball. However, philosophically it is hard to understand why almost every other sport has scholarship limits that equal the size of a starting line-up with a few more for significant reserves while football and basketball have arguably 2 to 3 times the size of the starting line-up. Football coaches would argue that high injury rates necessitate having many more athletes on the roster. According to Andrew Zimbalist (2002), an analysis of data from the NCAA Injury Surveillance Summary reports does not indicate that injury rates reinforce the need for 85 scholarships and calls this argument a “red herring” (p. 5). Over the past few years, in an effort to try and balance these scholarship offerings, the NCAA limits have risen for many women’s sports while scholarship limits in men’s minor sports have stayed the same or decreased. This strategy has been at best a band-aid approach to the problem. The reality is that the excess spending on football continues to not only compromise gender equity but often reduces access to scholarship dollars for males on teams that occupy lower tiers.

- 2) Scholarship offerings for some sports are calculated as a “head-count” while other sports are permitted to offer scholarships that are “equivalency-based”. The head count measure means that each athlete who receives any athletics scholarship, even if it is a partial scholarship, is counted in the number allowable. An equivalency-based scholarship allows coaches to divide up the total amount of money allotted and offer it to as many athletes as they wish. Football and basketball are included in the head count sports. It would save institutions a significant amount of money and provide more scholarship dollars for women athletes and males in lower tier sports if the NCAA would reduce the allotted scholarship numbers in football and basketball and change them to equivalency-based sports.

Another problem that exists related to the distribution of scholarships is when in-state tuition differs from out-of-state tuition. Theoretically, if there are no discriminatory policies regarding the allotment of in state versus out-of-state scholarships between men and women, program-wide equity should be attainable. However, sometimes a situation may exist where more out-of-state scholarship dollars are needed to secure an adequate base of talent in one or more sports. If this situation relates primarily to a team or teams of one gender, there could be a large disparity in dollar-for-dollar equity. Administrators would have to be prepared to defend this perceived inequity as a result of unique circumstances rather than gender-biased practices or policies.

Defining the Scope and the Expectations of the Recruiting Process

As society’s passion for winning sports teams grows, so does the pressure on coaches to attract the most talented athletes to their institutions. Even at smaller institutions, recruiting is one of the most significant parts of a coach’s job. In a tiered athletics program model, the expectations and the level of funding provided to recruit players might differ between tiers. There is usually a correlation between the expectation of a team’s success and the support provided for recruiting.

Defining the scope and the expectations of the recruiting process for each tier is essential. However, before that can be done, there are a few philosophical questions that must be addressed by the administration including:

What percentage of athletes should be recruited versus walk-ons from the student body? It is important for institutional administrators to decide if there is value associated with having athletes who are true representatives of the student body in contrast to those who have selected the institution, in large part, because of the athletics program. Walk-on athletes can enhance the feeling of connection that non-athlete students feel toward teams. Walk-ons may also be less willing to devote all their time to athletics and, by example, help a team reject the notion that they are or should be an isolated, elitist sub-group.

What percentage of athletes should be admitted under a “special talent slots” policy? It is no secret that colleges and universities have established practices that allow students

who have special talents to matriculate even if they do not meet the prescribed academic requirements for admission. According to Shulman and Bowen (2001), these practices have filtered down from the large Division I programs and are prevalent among some of the most prestigious liberal arts institutions in the country. Administrators must confront the issues that surround the proliferation of special talent slots. There is some evidence that these athletes under perform academically then they would have been expected to based on their incoming credentials (Bowen and Levin, 2003, p. 145). There are questions whether these athletes create an ethos that permits less attention or effort toward academics and subsequently reinforce the “dumb jock stereotype” for all athletes. In addition, the administration must be prepared to offer academic services to enhance an academically under prepared student-athlete’s ability to succeed in the classroom. All of these services cost money and have to be considered as part of the equation.

What are the university’s recruiting goals and how should athletics recruiting support those goals? One of the greatest components of sport is that it is open to people from a variety of backgrounds. An educational institution may have better success attracting foreign students or ethnically diverse students by recruiting them into their athletics programs than they do through the regular recruiting process. It may behoove administrators to recognize and to support those potential connections. In addition, for small colleges who have difficulty attracting enough students to meet their needed class size, athletics recruitment can play a significant role in fulfilling those objectives.

Once these questions have been answered, athletic administrators must clearly delineate what the recruiting scope and expectations are within each tier. For example, since Tier I teams are usually the most visible programs and are expected to be successful, they may have a budget that supports recruiting internationally. This could allow the full complement of coaches to be on the road assessing and meeting with prospects whenever possible. Tier I teams may hold the majority of special talent slots permitted and the expectation may be that all athletes on the rosters are recruited. Tier II teams may be limited to recruiting regionally, have only a handful of special talent slots, and be expected to leave 25% of their roster open for walk-ons. Tier III teams may have part-time coaches who do not have much time to recruit and the expectation may be that they attract one or two impact players a year.

Regardless of what decisions are made pertaining to the scope and expectations of recruiting within each tier, they must be made in concert with other considerations. There is no doubt that the availability of scholarship dollars, assignment of coaches, quality of facilities, and rigors of schedule are other factors that will impact recruiting.

Designing Coaches’ Employment and Compensation Systems

Designing employment and compensation systems for coaches is a complex process that requires input from a variety of administrative sources. Most universities and colleges have policies in place that must be adhered to regarding hiring, evaluation, termination, affirmative action, and the like. At some public institutions, salary scales are prescribed by the state. Unfortunately, this is another area where many athletics

departments have been permitted to work in a vacuum and have not been held to the same procedural standards as other campus departments. Therefore, it would be wise to include the human resource director in the process of creating or redesigning employment and compensation systems by tier.

It is important to mention that Title IX law addresses “whether an institution has allocated sufficient resources to provide coaches who are equally qualified and equally available to female and male athletes” (Achieving Gender Equity p. II-16). In other words, employment and compensation is analyzed on how it impacts students rather than the employees themselves. If an employee wanted to claim gender discrimination during the hiring process, salary negotiations, termination, etc., they would most likely refer to Title VII of the Civil Rights Act of 1964 or the Equal Pay Act. As a practical matter, if a complaint is lodged with the Office of Civil Rights regarding salary discrimination on the basis of sex, it will usually be referred to the United States Equal Employment Opportunity Commission.

There are many factors that must be considered when determining how employment and compensation systems will or will not differ from tier to tier and how to assure that they are meeting the provisions of gender equitable coach availability and quality for men’s and women’s teams within each tier. Some of the more salient issues that must be addressed include:

How many coaches will be employed for each team? There are many ways to answer this question. An institution may determine that Tier I teams will be provided with the maximum allowable number of coaches under NCAA regulations, Tier II teams will have a head coach and one assistant, and Tier III teams will have a head coach only. Another solution may be to have a policy stating that every team has a head coach and will be assigned assistant coaches on an athlete to coach ratio of 1:12. That could apply to all teams regardless of tier or the policy could include a 1:10 ratio for Tier I teams, a 1:15 ratio for Tier II teams and a 1:20 ratio for Tier III teams. This is an example of a truly gender-neutral policy based on sheer numbers.

What will be the status of head and assistant coaches regarding full-time versus part-time employment and length of employment contracts (i.e. 10 month, 12 month, multi-year)? Part-time or full-time status of a coach is a significant factor pertaining to the availability of the coach to the athletes. Therefore, this measure should be consistent within tiers. For the higher profile sports, all coaches may be expected to be 12 month employees, while lower-tier sports may have more part-time coaches. The consideration of multi-year contracts versus annual contracts would be a hiring incentive and may be reserved for coaches in higher tiers.

Will job descriptions and expectation for coaches be different? This question is a critical element in designing coaches’ employment packages that are fair, legal, and attend to gender equity. As discussed in Section II, different funding levels for each tier creates a different set of expectations for the coaches. If there are no differences in the job or performance expectations of coaches, it would be difficult to create tiered salary,

benefits, and perquisite structures. All of this must be articulated within the job descriptions and tied to compensation. For example, if Tier I coaches are supposed to develop booster groups or fan clubs and there is no expectation of that for coaches in other tiers it should be clearly stated in the job descriptions and used as a rationale for pay differences between tiers. The expectation should be consistent among all Tier I coaches. The second part of this process that is just as important is monitoring whether job and performance expectations are effectively being met. Athletics administrators are on shaky ground when they pay big salaries to coaches who do not meet the job or performance expectations specified in their contracts.

The additional responsibility included in a coach's job description is another area that must be analyzed. An institution may decide that Tier I coaches do not have to perform any duties outside those expected from coaching while lower-tiered coaches may have to teach physical education classes. Problems result when some coaches in the same tier have to perform a second duty, without additional compensation, while others don't. Another problem is when administrative jobs, such as associate athletics director, is reserved as a second assignment for a Tier I coach but it is always given to the football coach regardless if other Tier I coaches have better credentials to fill the post. This would be a discriminatory hiring practice, which is often used as a strategy to inflate the salary of one specific coach.

Will there be differences on how the search process for coaches is conducted? Many institutions already have policies in place that address employee levels and the extent to which a search can be conducted. For example, according to the policies and procedures manual at Drew University (2001), a national search for a staff member can only be conducted for those at director level or higher. Special permission from a vice-president must be obtained before a national search can be conducted for other employees.

In concert with their human resources department, institutions may want to develop the same types of policies within their athletics departments. Perhaps national searches would be approved for the top two tiers with regional searches being the norm for lower tiers. Once search policies are developed, administrators need to be careful not to compromise them. For example, too often athletics administrators will conduct extensive national searches for a Tier I men's basketball coach with the intention of getting the best possible candidate. Conversely, the same administrator may only look around the corner for their Tier I women's basketball coach. After not attracting the same quality coach for their women's program, the administrator will use the experience factor as justification to pay the women's coach significantly less.

What will be the minimum qualifications required for coaches by tier? Will there be differences in preferred qualifications? It is essential that all job descriptions include the qualifications that are required of any applicant. Additionally, many job descriptions also define preferred qualifications. Determining how these qualifications will differ for coaches in separate tiers is important in the employment process. For example, the requirement of number years of experience as a head coach for Tier I coaches may be higher than for coaches in other tiers. If coaches in Tier II or Tier III are expected to

teach, they may be required to have a master's degree with a Ph.D. preferred. Measures that indicate prior coaching success (i.e. championships, coach of the year awards, etc.) are often included as necessary or preferred qualifications to support the salary differences between coaches in different tiers. As stated many times in this manual, there is no perfect model. Each institution has to decide what skills are necessary for a coach to be deemed qualified to meet the performance expectations defined for each tier.

What procedures will be used to determine salary and benefits? Will those procedures differ by tier? Procedures for determining salary and benefits can differ dramatically from institution to institution. Many state colleges have a step system in place that clearly defines salary, annual increments based on the number of years experience, and a standard benefits package available to all full-time employees. Other institutions may have the flexibility to negotiate salaries, include evaluation of merit in annual increases, and offer perquisites that go beyond the standard benefit package. It is important for athletics administrators to know what university parameters may exist regarding salary and benefit negotiations and design a compensation system that is compatible with the system. Within a tiered athletics program, administrators must decide if there will be different procedures used to determine salaries and benefits by tier. In some cases, marketplace value may be a factor that is used to set a salary for a Tier I coach but may not apply to coaches in other tiers. Tier I coaches may have access to bonuses based on team performance as well as country club memberships and other perquisites that are not available to coaches in other tiers. All of these criteria should be clearly defined within the employment contract of each coach.

Quality of and Access to Practice and Competitive Facilities

The quality of and access to practice and competitive facilities is another significant factor in determining tier distinctions and measuring gender equity. Playing soccer on a beautifully manicured grass field used solely by the soccer team is a different experience than playing on a multi-use field that has ruts and bare spots or on an Astro turf field that is primarily a football facility. Coaches can easily correlate team performance and ability to recruit with the quality of the facility.

It is also important to note that the quality of practice and competitive facilities sends a strong message to coaches, athletes, parents, alumni/ae, and fans regarding the commitment an institution is making to a specific team. It is a visible element that can be scrutinized by all. If the baseball team and the softball team are both Tier II programs but the baseball field has a permanent fence, new dug-outs and a scoreboard, and the softball field has benches, no fence and a flip-card scoring device, it is hard to say that parity exists based on tier distinctions or gender equity.

Facility decisions are often the hardest to make for administrators. Besides being expensive, facilities can quickly become obsolete. In addition, there are always many constituent groups who want access to athletics facilities. Constructing policies that seem fair to the campus and alumni/ae community, yet protect the facility from overuse and additional expense, can be difficult at best.

Defining Access to and/or Quality of Other Program Variables

There are eight other program areas that need to be assessed for compliance under Title IX and may have policy implications when constructing tiers. The remaining eight areas include:

1. equipment and supplies
2. scheduling of games and practice time
3. travel and per diem allowances
4. tutoring
5. medical and training facilities
6. housing and dining facilities and services
7. publicity
8. support services

Once teams have been placed in tiers and the most salient policies have been formed regarding scholarship dollars, recruiting, availability and quality of coaches, and quality of practice and competitive facilities, it is a simpler process to decide if any of the eight areas listed above will have implications that affect tier distinctions or gender equity. The information that was gathered from the analysis of current policies and practices described in section three can be used to see if there are any outlying practices that seem inconsistent with the emerging tiers. For example, let's say that the women's track team has been categorized as a Tier I sport based on scholarship limits, recruiting dollars, availability and quality of coaches and facilities. However, the women's track team is the only Tier I sport that doesn't have access to a training table. The administration has to decide if there is a sound reason why this team is not included and they must analyze whether this current practice has implications regarding tier distinctions or gender equity.

Any deviations from policies within tiers must be gender neutral. For example, an administrator could not allow men's teams to stay two to a room in hotels while women's teams stayed three to a room based on the rationale that men are usually bigger and need more space. That clearly is not a gender-neutral policy. However, a policy that states that athletes who are at least 5'10" and 150 lbs. will stay two to a room is an acceptable policy as long as it is applied equally to men and women. All of these policy decisions should be practical and defensible.

It is important to remember that Title IX does not, in any way, dictate the structure of the athletics program. In the November 2002 issue of *Title IX Q & A*, Bonnette states:

There is no requirement under Title IX that any institution offer an athletics program. Institution officials make that choice. There is no requirement under Title IX that any athletics program offered be at any specific competitive levels such as NCAA Division I, II, or III.

Institution officials make that choice. There is no requirement under Title IX that an institution join a particular national or regional athletics conference...or that any level of quality athletics program be offered. Institution officials make that choice. There is no requirement under Title IX that any specific benefits be offered in athletics programs regarding equipment, scheduling, modes of transportation, coaching, facilities, training services, housing, publicity, etc. Institution officials make all of those choices All Title IX requires is that female and male students be provided an equal opportunity to become intercollegiate athletics participants and that, they be provided equal treatment, whatever that level of treatment might be. ...With the vast number of choices that may be exercised by institution officials under Title IX, the one choice institution officials may not make is this: they may not choose to provide disparate treatment on the basis of sex. (p. 5-6)

Accommodating Differences Within Each Tier

One of the questions that is often asked about a tiered model is whether or not differences between teams can exist when they occupy the same tier and the ramifications those differences may have on gender equity. One of the major benefits of creating tiers is to help justify decisions that are made regarding treatment of each team. Therefore, it is an advantage for an administrator to create consistent policies that apply to all teams within a tier. Having said that though, there are many valid reasons why teams within the same tier may be exempt from certain policies or practices. Three of the more common reasons include the uniqueness of specific sports, the role that marketplace value plays in determining coaches' salaries, and the short-term accommodation of historical inequities

Uniqueness of Specific Sports. When formulating policies that will be applied to teams that occupy a single tier, administrators may find that some of the policies are less applicable to the unique nature of one or more sports. For example, a policy may exist that all teams in Tier II are required to travel by 15 passenger vans up to 150 miles and may travel by bus to competition sites that are more than 150 miles away. That policy may work very well for teams with little equipment, rosters of 26 or less, and two coaches who can drive. But in the case of a men's lacrosse team that may carry 40 players, employ two coaches, and have helmets, sticks and protective equipment to transport, it may actually be more cost effective and realistic to take busses to all competitions rather than rent four vans and hire two more drivers. This would not be a violation of Title IX as long as this rationale was applied equally to women's teams.

A second example of a policy difference that could be caused by a unique situation may relate to recruiting. If all the teams in a specific tier are only funded to recruit regionally, an exception may be made for a coach to broaden the recruiting scope if the regional area does not have enough high school programs to create an acceptable talent pool. For instance, the majority of high school field hockey is played in the northeast and middle Atlantic regions. Therefore, an institution in the south may decide

to increase the recruiting budget for the field hockey program to a higher rate than any other men's or women's sport in that tier to accommodate this unique difference.

The Role of Marketplace. According to the United States Equal Employment Opportunity Commission guidelines (1997), marketplace value may be an appropriate defense for paying a coach of a men's team higher than a coach of a women's team even if their experience, training, education ability, job expectations, and working conditions are equivalent. Marketplace value is based on "the employer's consideration of an individual's value when setting wages" (EEOC, 1997, p.9). In other words, the employer would have to prove that a particular individual would command a specific salary based on his or her credentials, ability, experience or other relevant factors.

Administrators should not attach a salary to a position. For example, if the median salary for men's basketball coaches in Division II is \$90,000, an athletics director should not automatically pay whoever is hired that amount. Similarly, if the median salary for women's basketball coaches is \$60,000, an athletics director would still have to assess the background of the individual. There is significant evidence that male and female coaches pay differential is a result of long-term discrimination. Therefore, attaching salaries to a position rather than a person would perpetuate discrimination based on sex.

It is also important that administrators do not base a salary offer strictly on the amount that the new hire was paid in his or her last job. Before matching or exceeding that salary, an employer should: "1) consult with the employee's previous employer to determine the basis for the employee's starting and final salary; and 2) determine that the prior salary was an accurate indication of the employee's ability based on education, experience, or other relevant factors" (EEOC, 1997, p. 10).

Short Term Accommodation of Historical Inequities. Allowable accommodation of historical inequities often relates to personnel issues. For example, a coach whose team is placed in a lower tier may be given a salary and perquisites that exceed the identified pay range and the benefits that are normally available to coaches in that tier. This may be due to the longevity of the coach. Perhaps the coach was hired when that team occupied a higher tier. At any rate, it is a reasonable expectation that the university will fulfill their established obligation to this employee with the intention to rectify the situation when there is a shift in personnel.

A historical inequity may also be relevant when assessing scholarship allocations. If the university elects to reassign a scholarship-granting program to a lower tier, which in turn warrants a reduction or total elimination of scholarships, that team may not be expected to meet the new scholarship limitations until the current athletes have graduated or left the university.

The types of accommodations do not apply to historical practices that have no affect on an individual's employment package or expectation of an education. For example, if the football team has always stayed in a hotel the night before a home contest

and no women athletes have been afforded that opportunity, it cannot continue as a practice only available to the football team on the basis of a historical inequity. This would clearly violate gender equity laws.

There may be other reasons, besides the three listed above, why institutions deviate from policies created for teams that occupy the same tier. The key is to try and build in as much consistency as possible and to only deviate when it makes much better sense to do so. It is also important to remember that gender equity assessments are program-wide even when operating a tiered model. Some benefits that afforded men may be offset by other benefits for women. For example, if the baseball team has a better scoreboard than any women's team but a women's team has a better locker room than any men's team, an administrator could argue that these two inequities offset each other. According to Bonnette (2000), "This is acceptable if there is a balance of benefits in the overall intercollegiate athletics program." However, she cautions "weighting the effect of different types of benefits is difficult and would be a continuous challenge administratively" (p. 2).

VII. CONCLUSION

For decades, college presidents and athletics administrators have been struggling to find the appropriate place for intercollegiate athletics within the structure of the university. Athletics departments have been faced with serious allegations pertaining to academic integrity, sexual harassment, gender discrimination, and a variety of other transgressions. Coaches have been permitted too much individual discretion on how to administer their program and, except for the measure of winning, evaluations of their efforts have been limited. There is an undisputable need for stronger administrative leadership, clearer articulation of athletic program goals and objectives, and more effective evaluation of athletic program structure, operations, and goal attainment. None of this can be accomplished without the creation of a well-crafted athletics program model. Development of a clearly articulated, measurable, and defensible model is a time intensive, complex task that requires input from a variety of sources. However, the benefits of completing this exercise far outweigh the costs. The result should be a template of policies and procedures that reinforce department goals and team objectives, create a foundation of work standards for coaches and support staff, and provide a system of personnel and program evaluation.

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IX. APPENDICES

Appendix A
POLICIES FOR A FOUR-TIERED ATHLETICS PROGRAM

TITLE IX ELEMENTS	TIER I POLICIES	TIER II POLICIES	TIER III POLICIES	TIER IV POLICIES
Scholarships	-maximum -no geogr. limits -no hc limits	-up to 75% max -1/2 in-state min -no hc limits	-up to 25% max -all in-state \$'s -hc= roster x .33	-no scholarships
Access to Coaching	- hc: national search, 12 mth -assts (10:1): 12 mth -max ga's -volunteers (25:1)	-hc: regional search, 10 mth -1 full-time asst. -ga (15:1) -1 volunteer	-hc: 10mth, local search -asst(s): (15:1), part-time only -1 volunteer	-hc: part-time -asst(s): (15:1), -1 volunteer
Recruiting	-national/intern. -100% of roster -paid visits	-national -80% of roster min -50% paid visits	-regional -paid visits on case by case	-mail and phone -no paid visits
Practice/Contest Facilities	-state-of-the-art -exclusive use	-above average -year-round priority use	-adequate -in-season priority use	-adequate -in-season priority use
Equipment & Supplies	-fully funded -annual apparel replacement	-fully funded -2yr apparel replacement	-athletes buy implements/shoes -3yr apparel repl.	-athletes buy implements/shoes -4yr apparel repl.
Practice/Contest Scheduling	-full schedule; national -full non-trad. -champ. funding	-full schedule; national -full non-trad. -champ. funding	-full schedule; regional -limited non-trad. -champ.funding	-full schedule; regional -limited non-trad. -champ. funding
Travel & Daily Allowances	-fly over 250m -bus less 250m -full per diem	-fly over 400m -bus less 400m -80% per diem	-bus over 150m -vans less 150m -80% per diem	-vans only -80% per diem
Tutors/Academic Support Services	-full access to athlete study hall facility/staff	-full access to athlete study hall facility/staff	-access to study hall facility/staff case by case	-access to study hall facility/staff case by case
Housing & Dining Facilities	-athlete dorms -training table	-same as other undergrads	-same as other undergrads	-same as other undergrads
Medical & Training Facilities	-exclusive access to weight room/strength coaches -practice/game medical staff	-priority use of univ. weight room -practice/game medical staff	-priority use of univ. weight room -practice/game student trainers	-priority use of univ. weight room -practice/game student trainers
Publicity	-media guides -full SID coverage -tv & radio	-media guides -full SID coverage	-media guides -student SID services	-media guides
Support Services	-full administr. support	-facilit. manager -event manager -equip. manager	-facilit. manager -equip. manager	-equip. manager

Appendix B
Women’s Sports Foundation Education Guide
TITLE IX - ATHLETICS
The Flexibility of the Three- Prong Participation Test^{1[1]}

Introduction

Title IX is not just about participation opportunities. The law requires equal treatment with regard to scholarships and other benefits (i.e., coaching, provision of uniforms, equipment and supplies, facilities, game and practice times, promotions, etc.), all of which have an impact on the interest of students in participating in the program.

However, most athletics administrators don’t realize that the existing letter and spirit of Title IX’s three-prong test effectively accommodates the tremendous variety of types and philosophies of athletics programs. The purpose of this paper is to demonstrate the flexibility of Title IX’s three-prong participation test and to illustrate the process by which administrators may assess whether their institutions meet equal participation opportunity requirements.

Part I. How the Three-Prong Participation Test is Used

1. What is Title IX’s equal participation opportunity requirement?

Schools demonstrate that they are providing an “equal opportunity to participate” by showing that:

- the percentage of male and female athletes is about the same (substantially proportionate) as the percentage of full-time male and female undergraduate students enrolled at the school (“Prong One”), **OR**;
- they have a history and a continuing practice of expanding opportunities for the underrepresented sex, which is usually women (“Prong Two”), **OR**;
- they are **FULLY** and effectively accommodating the interests and abilities of the underrepresented sex (“Prong Three”).

If a school can meet any one of these prongs, it will be found to be in compliance with the participation requirements of Title IX. This three-prong test has been in effect for more than two decades and has been upheld by every appellate court that has considered this issue.

2. What is the Prong One “safe harbor” and why is it necessary?

A basic premise of all civil rights laws is that if there is no underrepresented group, there cannot be a finding of discrimination in opportunities to participate. In athletics, if a school demonstrates that it provides athletics participation opportunities in the same proportion as males and females in the student body, no person can realistically say the school is discriminating on the basis of sex. There

^{1[1]} This education guide was authored by Connee Zotos, Title IX Committee Chair, National Association of Collegiate Women Athletic Administrators, with thanks to many of her colleagues who contributed valuable suggestions in the editing process. The author and the Women’s Sports Foundation are responsible for examples of the flexibility of the three-prong test. Institutions justifying departures from the 1996 clarification of the three-prong test or the Title IX Investigator’s Manual should check with their regional Office for Civil Rights to confirm that their practices are acceptable.

must be a clear standard or a “safe harbor”. Simply put, how can anyone maintain that a school is discriminating on the basis of sex in the provision of athletics opportunities if proportionality does exist?

Calling the proportionality test in Prong One a “safe harbor” does not mean that it is the only safe or acceptable method of compliance with Title IX or that Prongs Two and Three are harder or more rigorous standards. Rather, it means that those prongs require additional inquiry that goes beyond the immediate assessment schools can utilize under Prong One.

The Title IX three-part test on participation is a very flexible and unusual civil rights law, when compared to others, in that it allows an institution three ways to comply.

3. Is proportionality a strict mathematical calculation that is fixed by absolute number or range (i.e. plus or minus 3%)?

No. The standard is “substantial proportionality”. The OCR Title IX Investigators Manual specifically states:

“There is no set ratio that constitutes “substantially proportionate” or that, when not met, results in a disparity or a violation. All factors for this program component [participation], and any justification for differences offered by the institutions, must be considered before a finding is made.”

Small departures from strict mathematical proportionality may be acceptable if they are caused by non-discriminatory reasons. For example:

Fluctuation of Gender Representation in Student Body. A school can show that the student body has fluctuated between 50% female and 52% female over the last 3 years and may decide to establish the mean over three years as its Prong One general student body standard.

Fluctuation in Athletics Program Roster Size. Similarly, a school can show that athletics team rosters fluctuate over time and establish the mean or range over the last three years as its Prong One goal. .

It is important to note that there is no guarantee that these two strategies will be accepted by the courts. If a school has any doubt about its justification of substantial proportionality, administrators should consult with the Office for Civil Rights

4. Is proportionality the only standard?

NO. Prongs Two and Three do not require proportionality and instead permit flexibility and allow for the accommodation of certain circumstances. This flexibility makes sense because the interests and abilities of student populations are not fixed. Sports ebb and flow in popularity. Educational institutions change their athletics department philosophies and therefore may change their goals of competing on national versus regional or conference levels. Financial support may limit recruiting to certain geographical areas to conserve resources. Schools such as community colleges might serve predominantly local populations. All of these factors affect the availability of athletics populations.

Thus, flexibility is necessary. In fact, proportionality is not the most commonly used compliance standard. A study conducted by The U.S. General Accounting Office (December, 2000) of the federal government revealed that in the 74 cases or reviews involving Title IX’s participation requirements conducted by the Office for Civil Rights (OCR) from 1994 through 1998, only 21 – less than one-

third – reached compliance using Prong One. The other schools were found in compliance under Prongs Two or Three:

Prong Three was used by institutions most frequently:

Prong One	28% (21 institutions)	Substantial proportionality
Prong Two	5% (4 institutions)	History and continuing program expansion
Prong Three	66% (49 institutions)	Full and effective accommodation of interests and abilities ^{2[2]}

5. Thirty years after the passage of the law, is Prong Two still applicable?

YES. Prong two permits schools that do not meet the proportionality standard to show they have a history and a continuing practice of expanding opportunities for the underrepresented sex. Prong two looks at a school’s past as well as its continuing remedial efforts to provide nondiscriminatory participation opportunities through program expansion. It is a combination of looking at the entire history of the athletics program and what the school is doing now. There are no fixed dates on which a school must have added participation opportunities. For example:

- Single sex schools that become co-ed. This prong gives schools time to gradually develop programs for the new underrepresented gender.
- Change of athletic conference or conference rules. There are times when schools change conferences and must switch to different sports or add sports to compete efficiently or meet the requirements of that conference affiliation. For instance, an institution can move to a conference that requires football, add a men’s football team, increasing sports participation opportunities for males and insuring that all men’s and women’s teams can access conference championships. The institution can identify new women’s teams to add and/or work with the conference over time to identify new women’s championship sports.
- Change of competitive division. High schools and colleges may change their competitive division (i.e., moving from 3A to 1A in high school systems based on school size or moving from DII to DI by preference for colleges) which may also require time to adjust to new sports, new goals, or additional requirements for that competitive division. This prong allows schools time and flexibility in making these changes.
- Change in composition of student body. The percent of males and females in the student body may change. This prong gives schools time and flexibility in making these changes.

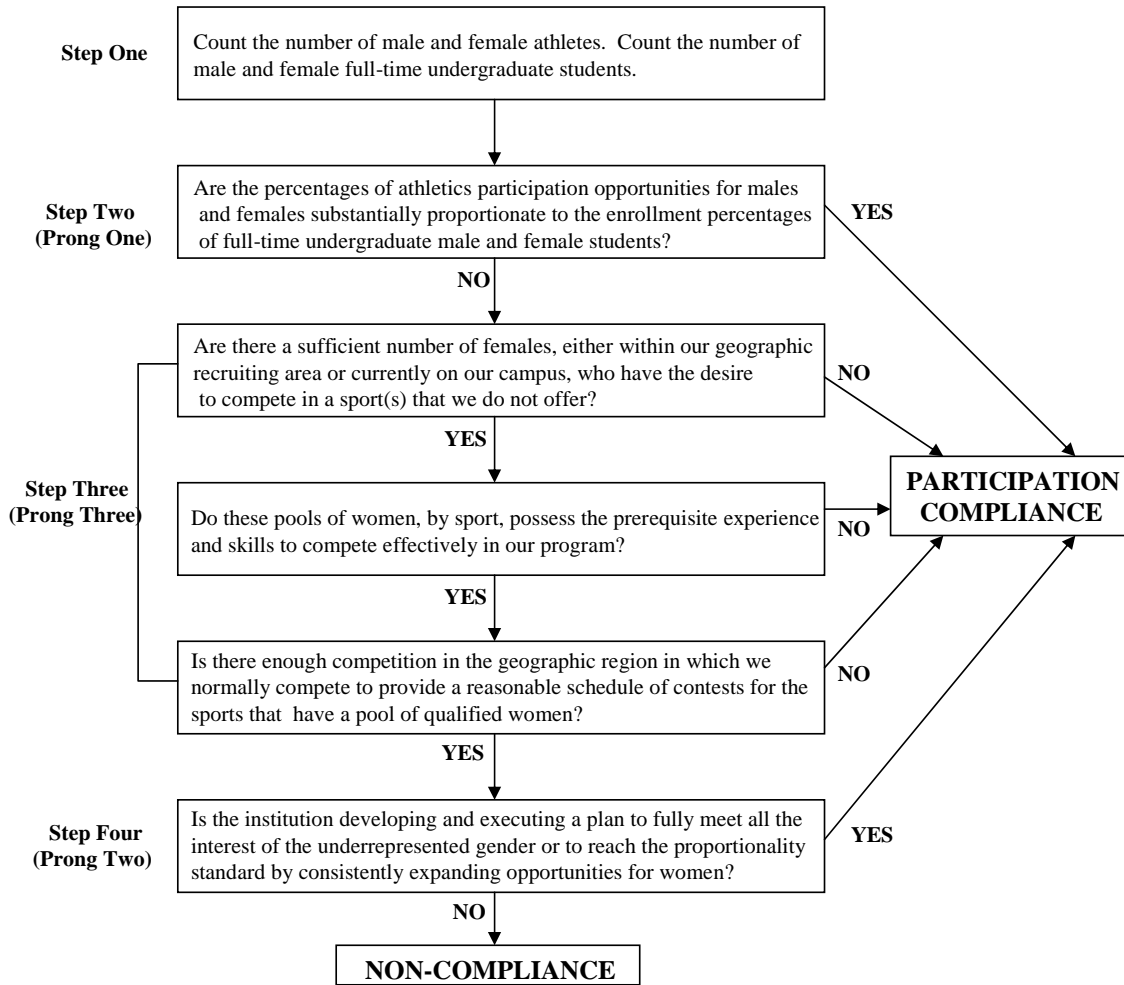
6. How does Prong Three increase flexibility within the test?

Prong Three requires a non-discriminatory assessment process in which the interest and abilities of and availability of competitive opportunities for the underrepresented gender are examined to determine whether additional competitive opportunities should be added. Thus, Prong Three offers institutions additional flexibility by assessing special circumstances that may be relevant to that institution only.

^{2[2]} United States General Accounting Office (“GAO”), No. 01-128 Gender Equity: Men’s and Women’s Participation in Higher Education, December 2000, at 40.

Part II: Methodology for Easy Assessment of Participation Compliance

Although the three-prong test includes three separate and distinctly different measures, an institution can assess participation compliance through the use of a single flow chart. The chart below is created with the assumption that women are the underrepresented gender.



STEP ONE: *Determination of Participation Numbers.* Count the numbers of males and females participating in each sport in the athletic program. An athlete participating in two sports would count as two participation opportunities. Count the number of full-time undergraduate male and female students. Determine the percentages of males and females in the athletic program and the percentages of males and females in the general student body and advance to Step Two.

STEP TWO: *Assessment of Proportionality.* If an institution’s percentages of male athletes and female athletes are equal to the percentages of full-time male undergraduates and full-time female undergraduates, compliance has been achieved. Small gaps may be explained by using means or averages of athletic participation or enrollment over a reasonable time period. If an institution’s percentages of male athletes and female athletes are equal to the percentages of full-time male undergraduates and full-time female undergraduates using these averaged measures or falls within a range of actual participation

or actual enrollment over a recent reasonable time period, compliance has been achieved. If there is a disparity in those percentages, the institution must advance down the flow chart to Step Three.

STEP THREE: *Availability of Interest, Ability and Competition.* The third step is to measure the interest, ability and availability of competition for the underrepresented sex. In this scenario, assume that women are the underrepresented gender. There are three questions that must be answered to begin this part of the assessment:

1. Are there a sufficient number of females in our geographic recruiting area (the area must be the same for men and women) or already on our campus who have the desire to compete at the varsity level in sports that we currently do not offer? If so, which sports?

Assessment tools:

- High school participation in those sports
- Open amateur participation in those sports
- Interest surveys or open forums of current student body
- Existence of intramural participants in that sport
- Existence of club teams in that sport
- Query clubs and intramural participants about interest in elevation to varsity level, noting the eligibility rules that would apply if varsity status was awarded and the time they must devote to competition and practice

If the institution conducts these assessments and finds no interest, the institution is in compliance. If the institution finds enough interest to support a viable team among members of the underrepresented gender who are in the recruiting area or on-campus, go to the next question.

2. Do these pools of women, by sport, possess the prerequisite experience and talent to compete effectively in our athletics program?

Assessment tools:

- If sports exist at the high school or open amateur competition level, it is reasonable to assume there is prerequisite experience and talent.
- Query student body or intramural participants about years of experience in that sport and at what level.

If this assessment results in no interest or ability, the institution is in compliance. If there is interest and ability, go to the next question.

3. Is there enough competition in the geographic area in which we normally compete, to provide a reasonable schedule of contests for the sports that have a pool of qualified women?

Assessment tools:

- Determine the schools or open amateur teams at the varsity level of competition that would be available for competition in the geographical area normally competed in by both men's and women's teams and whether those numbers would constitute a full varsity schedule.
- Determine the opportunities for conference, regional, national, or other post-season play to determine if adequate opportunities exist compared to other sports.

If the institution answered no to any one of these three questions, there is no obligation to increase participation opportunities and the institution is in compliance with the participation standards under Title IX. However, it should be noted that periodic evaluation would be required to determine if the results of this assessment have changed. Note: It is not permissible under Title IX for an institution to justify less than proportional participation because of lack of funding, lack of facilities, or lack of any benefit that is cost-related.

If the answers to these questions are yes, proceed to Step Four.

STEP FOUR: *History of and Continuing Practice of Program Expansion.* Prong Two permits schools that do not meet the proportionality standard or the accommodation of interest measure to show they have a history and a continuing practice of expanding opportunities for the underrepresented sex. Prong Two looks at a school's past as well as its continuing remedial efforts to provide nondiscriminatory participation opportunities through program expansion. It is a combination of looking at the entire history of the athletics program, what the school is doing now, and what plans are in place to continue to expand opportunities. There are no fixed dates on which a school must have added participation opportunities to comply with Prong Two.

When viewed as a flow chart, the three-prong test is a sensible and usable approach to measuring participation opportunities. The on-going argument that the proportionality standard should be eliminated leaves an incredible void in the evaluation process. How could institutions even begin the assessment process without the fair and definitive measure of proportionality? Additionally, if an institution finds that interest, talent, and available competition is vast for the underrepresented sex, how would a school determine how many sports they must offer without the defining limit of proportionality? Overall, the three-part test is a flexible tool to measure participation compliance as it relates to Title IX law.