



Published on Sports Management Resources

A National Governance Organiza...

Donna A. Lopiano, Ph.D

President

This week, the NCAA announced it will pay \$3,000 to the parents of 125 players so they can attend the College Football Playoff finals and \$3,000 to parents of the four teams of 15 men and four teams of 15 women who make it to their respective NCAA Division I Final Four – plus an extra \$1,000 to the parents of the two teams each that make it to their respective championship finals. This is a huge departure from the normal NCAA policy that treats all male and female athletes going to NCAA championships in the same manner - no expenses for parents.

In adopting a policy that in effect says it's important for parents to attend the once in lifetime national championship experience of their children but only if the child plays Division I football or basketball, the NCAA is not only taking an incredible insensitive and unjustifiable educational position, the NCAA is also forcing its member institutions into a Title IX violation corner.

Institutions of higher education are obligated to comply with Title IX.

- They must treat male and female athletes equally with regard to participation and provision of

treatment and benefits – including transportation and travel policies.

- This equal treatment requirement is without regard to where the money comes from to provide that treatment. In other words, you cannot treat football players better than female athletes just because their sport produces revenues or an outside donor is found to fund the benefit.
- While Title IX prohibits institutions from treating male athletes like kings and female athletes like paupers, the law does allow the institution to treat athletes differentially as long as the institution doesn't discriminate on the basis of sex. For instance, an institution can decide to treat 50% of its male athletes like kings if it also treats 50% of its female athletes like queens and the remaining males and female athletes like paupers.
- Title IX clearly states that national governance association rules cannot be used by the institution to justify discriminatory treatment.

So, let's first acknowledge that this NCAA parent travel expenses decision was most likely a reactionary decision that was not based on educational or gender equity principles. The NCAA appears to be trying to avoid continued criticism for perpetuating a system, popularly termed "athlete exploitation", that continues to funnel the riches of the FBS College Football Play-Off and the NCAA Basketball Final Four into the back pockets of head coaches, athletic directors and conference commissioners who are receiving salaries well into the six and seven figures while severely restricting benefits to athletes. The organization also apparently wishes to continue succumbing to the Big Five Conferences, ingratiating itself to the powerful football institutions who threaten to leave whenever they don't get their way. These are two poor reasons for a rules change or waiver.

Second, we should acknowledge that in issuing a policy that treats many more male athletes better than a small number of female athletes, the NCAA is failing to protect its member institutions from violating Title IX, the federal law prohibiting discrimination in athletics as well as all other educational programs and activities. This NCAA decision was incredibly thoughtless with regard to the NCAA's obligation to not act in ways that would put their member institutions out of compliance with Title IX.

So how exactly does this new NCAA decision back institutions into a Title IX compliance corner? First, the provision of expenses for parents of 125 University of Oregon and 125 Ohio State University football players instantly puts UO and OSU out of compliance with Title IX. At both institutions only male athletes get this extraordinary post season benefit...a sex discriminatory practice. Even if the UO and OSU men's and women's basketball teams subsequently qualify for the men's and women's Division I Basketball Final Four where these additional male and female athletes and their parents will be similarly treated, Title IX compliance at UO and OSU will not be possible.

In this latter hypothetical situation in which football and men's and women's basketball all qualify, OSU will end up providing significant parent travel benefits to 140 male athletes with the 125 football players and 15 male basketball players representing 25% of all OSU male athletes and 15 female basketball players representing only 3% of all their female athletes (total athletes on OSU's last federal EADA report were 550 male and 467 female athletes). This represents far from equal treatment. All the other OSU men and women who advanced to post-season play this year will have received no parent travel benefits. The same thing would happen to the University of Oregon whose 140 male athletes represent 45% of their total male athlete population (310) and whose 15 female athletes represent 5% of their total female athlete population (317) representing even a larger gender equity gap.

A more likely future occurrence will be that the schools who make it to this year's Division I Basketball

Final Four will not be UO or OSU. Only if both the men's and women's basketball teams from the same school qualify (highly unlikely) and the 15 players on each team represent the same percentage of male and female athletes in their respective athletic programs, will the institution be on safe Title IX ground. The more likely occurrence is that the schools who qualify will end up discriminating on the basis of sex in the provision of post-season benefits because only basketball playing males or only basketball playing females will be provided with the significant parent travel expense benefit.

Given this scenario, what will the NCAA do if any institution put in this position says they are obligated under Title IX to treat all of their male and female athletes who qualify for championship play equally – or to treat an equal percentage of male and female athletes equally - and therefore, they are going to give \$3,000 for parent travel to all athletes (or an equal percentage of athletes) who qualify for a NCAA championship? Will these schools be held to have violated NCAA rules? In order to avoid a rules violation, will the NCAA allow them to ask for and receive a rules waiver? Or, what if an institution takes the moral high ground and refuses to accept the payment of parent expenses because they don't want to violate Title IX and/or the institution believes male and female athletes should be equally treated for all NCAA championships? Isn't the question of treating males and female athletes equally at all NCAA championships important enough for the membership to consider rather than the NCAA staff determining otherwise? Should the NCAA staff or even a membership committee be permitted to enact a rules waiver that violates a basic principle of the Association that requires a two-thirds vote of the membership to overturn? The following appears on page 3 of the 2014-15 NCAA Division I Manual:

2.3 The Principle of Gender Equity. [*]

2.3.1 Compliance With Federal and State Legislation. [*] It is the responsibility of each member institution to comply with federal and state laws regarding gender equity.

2.3.2 NCAA Legislation. [*] The Association should not adopt legislation that would prevent member institutions from complying with applicable gender-equity laws, and should adopt legislation to enhance member institutions' compliance with applicable gender-equity laws.

2.3.3 Gender Bias. [*] The activities of the Association should be conducted in a manner free of gender bias.

We should expect the NCAA to adhere to duly legislated membership principles. We should expect the NCAA to think through the Title IX implications of rules and policies. We should expect important gender equity decisions to be made by the required two/thirds NCAA membership vote rather than by the NCAA staff or a small membership committee. We should be upset with NCAA leaders impulsively making rules changes or exceptions in reaction to the prospect of bad press or fearing that a subset of institutions will get angry and leave the organization if their waiver request is denied. A national governance organization should be better than this.