

2026 Title IX Summer Summit

Gender Equity In Athletics

James Nussbaum, JD

Presented by **Church Church Hittle + Antrim**
Indianapolis, Indiana | July 16, 2026



MEET THE TEAM



James Nussbaum, JD



10+ AS HIGHER EDUCATION COUNSEL

- In-house counsel responsible for athletics, employment, student affairs
- Outside counsel for schools in Indiana and across the country
- Presents for national associations on issues facing higher education



TITLE IX EXPERIENCE

- Investigator
- Adjudicator
- Managing litigation
- Agency complaints
- Training
- Gender equity in athletics



FEATURED IN

Forbes | The Hill | Inside Higher Ed | Bloomberg Law | Chronicle of Higher Education | CBS Sports | USA Today



Agenda

1. Title IX, Gender Equity, and Athletics
 - a. Participation Opportunities
 - b. Financial Assistance
 - c. Treatment Areas
2. Transgender Participation
3. Case Update

Disclaimer on language.

Vocabulary concerning gender identity + sexual orientation continues to evolve. There is no universal agreement on the meaning of all terms or the best terms to use. We strive to use language and examples that are respectful and appropriate but welcome feedback on how we can improve. Please be patient with your colleagues today and assume good faith even if they use language or terms that you would not.

Gender Equity + Athletics

cch+a
ATTORNEYS AT LAW

Title IX

“No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.”

34 C.F.R. §106.31

Overview of Title IX:

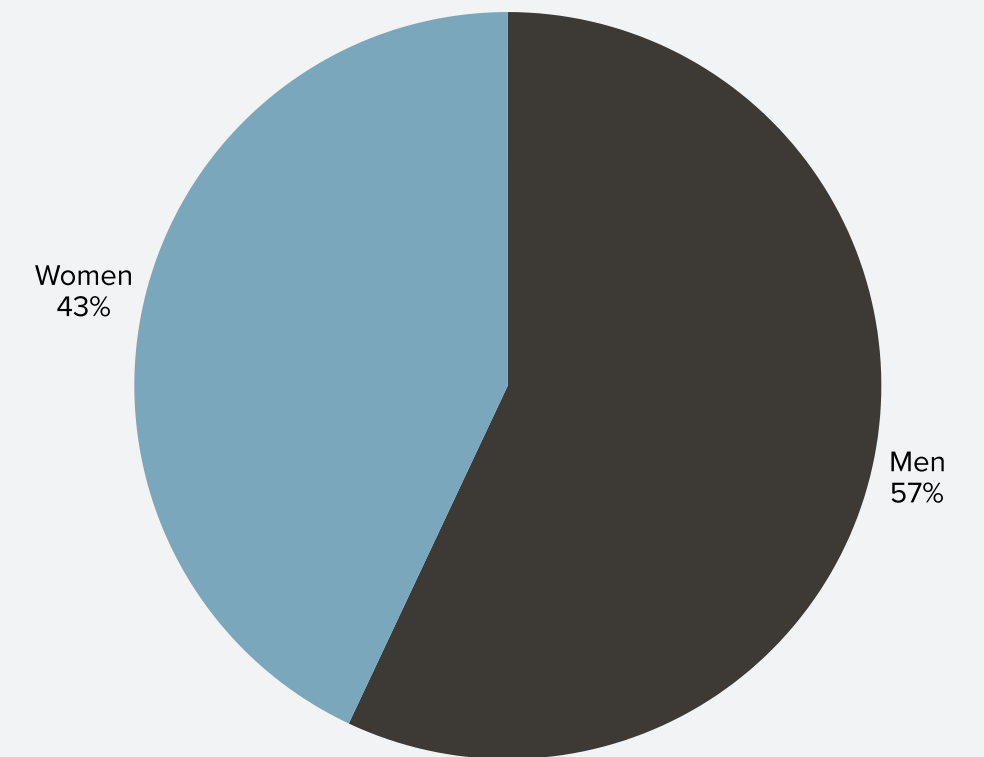
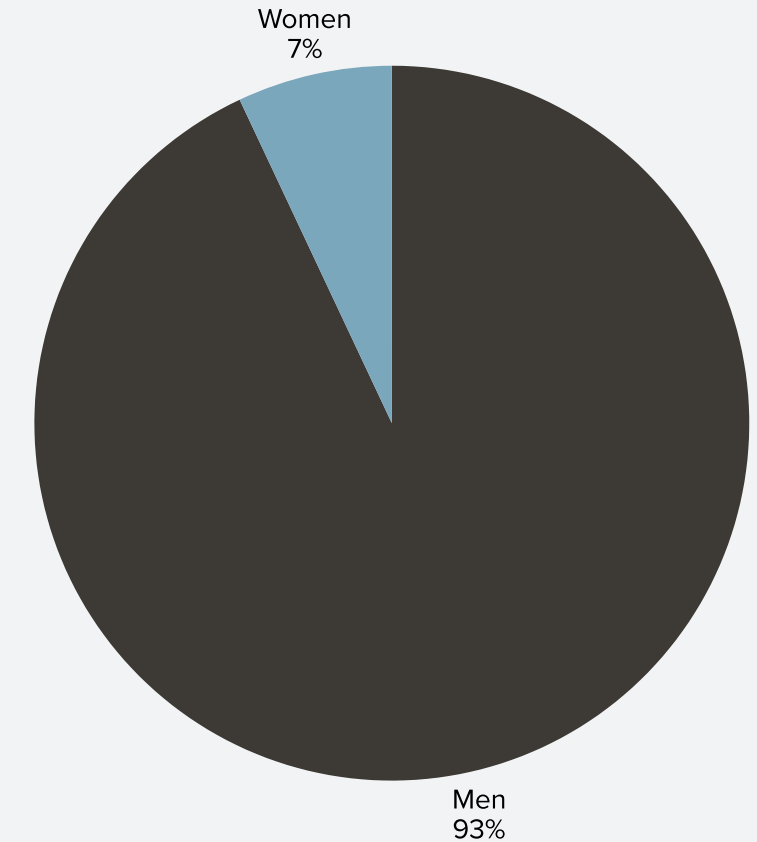
Regulatory Structure

- **Regulatory Structure**
- **Federal laws**
- **Federal Administrative Rules (ED)**
- **Federal Investigative Resolutions (ED OCR)**
- **State Laws**
- **Court Decisions**
- **Athletic Association Policies (NCAA, NAIA, NJCAA)**

Overview of Title IX:

Impact

- Male and female sports continue to set participation records
- About 43% all NCAA student-athletes are female
- In 1972, about 7% of all NCAA student-athletes were female



Why Compliance Matters

- Because it's the right thing to do.
- Complaint filed with or initiated by a federal agency
 - Remedy the violation
 - Ongoing oversight from federal agencies
 - Terminate federal funding (can-but hasn't-occurred)
 - Refer case to DOJ
- Federal Litigation
 - Monetary damages may be awarded + attorneys' fees
 - Reinstatement of athletic programs

Three Primary Areas of Title IX Compliance

1

**Participation
Opportunities**

2

**Financial
Assistance**

3

**Treatment
Areas**

Participation Opportunities

- **Three Prong Test**
- **Separate Teams**



Participation Opportunities

Three Prong Test

Prong 1. Substantial Proportionality

Prong 2. History and Continuing Practice of Program Expansion

Prong 3. Fully Accommodating Interests + Abilities (“Survey Prong”)

Participation Opportunities

Prong 1: Substantial Proportionality

Percentage of athletic opportunities the school provides to male + female student-athletes are substantially proportionate to the percentage of male and female students enrolled.

Participation Opportunities

of Female Students
of Total Students



of Female Participation Opportunities
of Total Participation Opportunities

Example: If you have 6,000 women and 4,000 men, 60% of your athletic opportunities need to be for women and 40% for men.

Participation Opportunities

Prong 1: Substantial Proportionality

- *What counts as a sport?*
- *Who counts as a participant?*
- *What is substantially proportionate?*

Participation Opportunities

What Counts as a Sport

If a school is a member of a recognized intercollegiate athletic organization that subjects the activity at issue to its organizational requirements, OCR will “presume” that the activity is a sport + that participation can be counted under Title IX.

Program Structure and Administration: whether the activity is structured + administered in a manner consistent with established intercollegiate varsity sports in the institution’s athletics program

Team Preparation and Competition: whether the team prepares for + engages in competition in a manner consistent with established varsity sports at institution

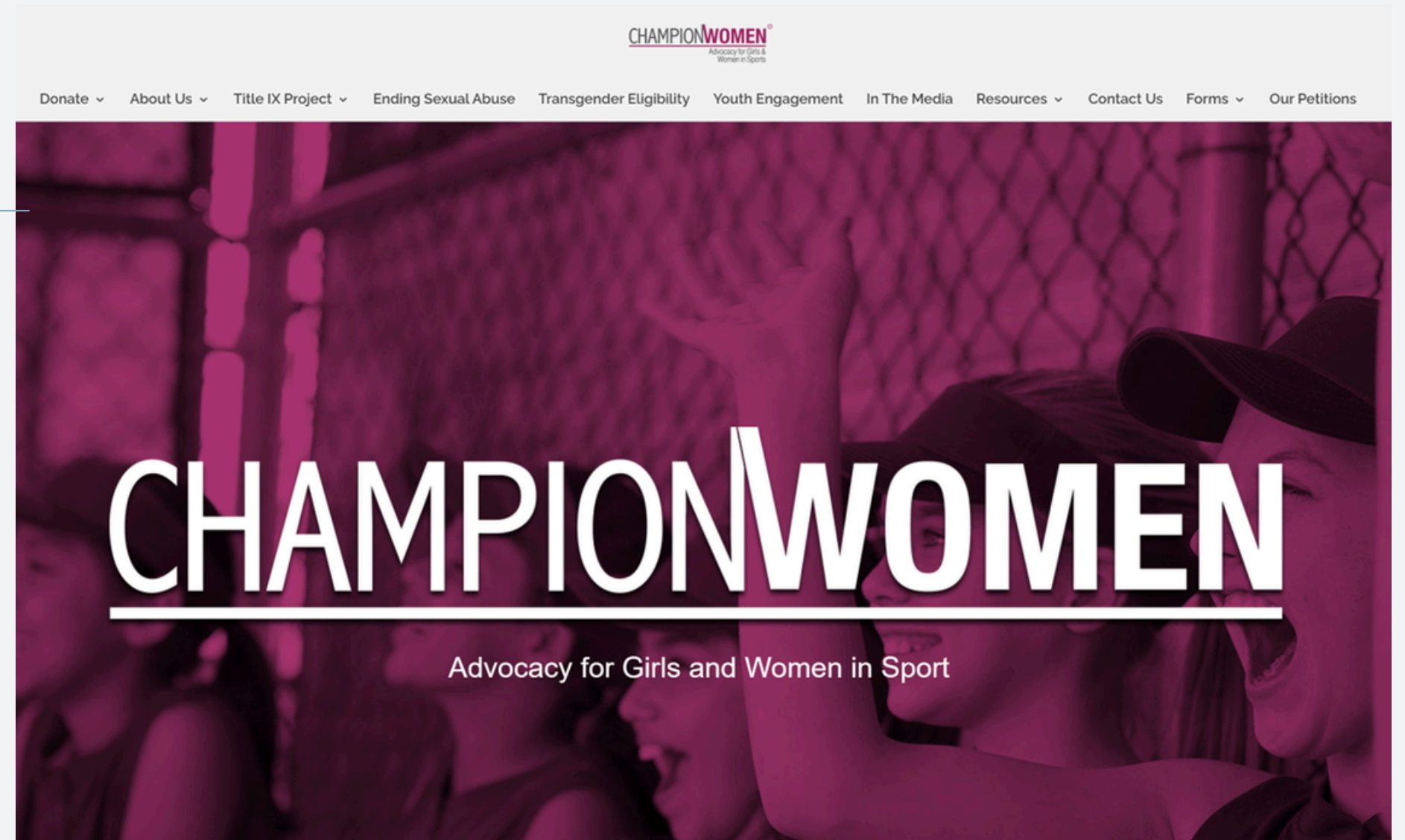
Participation Opportunities

Prong 1: Substantial Proportionality

?	Title IX	EADA
On roster first date of competition?	Yes	Yes
Joins after first date of competition?	Yes	No
Male practice players for female sports?	No	Yes
Medical non-counters?	Yes	Yes
Participant on two teams?	Both	Both

Participation Opportunities

Prong 1: Substantial Proportionality



Participation Opportunities

Prong 2: History + Continuing Practice

Schools that have been steadily expanding the percentage of participation for the underrepresented sex over the years and have a credible plan to continue to do so may be deemed temporarily compliant.

Participation Opportunities

Prong 2: History + Continuing Practice

OCR will review:

- Entire history of athletic programs
- Focus on participation opportunities
- Look for demonstrative evidence of expanding opportunities in response to interests and abilities

What does history mean?

What is a “continuing practice”?

Participation Opportunities

Prong 2: History + Continuing Practice

Prong 2 History + Continuing Practice Best Practices

- Documentation is key – timeline of events, policy on adding teams, policy on participation for existing teams, gender equity plan
- Appropriate squad/roster management
- Multidisciplinary approach to addition/elimination of a sport

Participation Opportunities

Prong 3: Full + Effective Accommodation of Interests + Abilities

- The “Survey Prong”
- Must show that institution is “fully and effectively” accommodating the interests and abilities of the underrepresented gender
- Ask:
 - Are underrepresented sex interested in competing in a particular sport?
 - Sufficient ability among them to sustain a team in that sport?
 - Is there a reasonable expectation of competition for that team?

Participation Opportunities

Prong 3: Full + Effective Accommodation of Interests + Abilities

- *If institution eliminates a team, can still meet Prong 3?*
- *How will OCR determine if sufficient unmet interest?*
- *Any additional ways to assess interest in a sport?*
- *Can we use surveys?*

Participation Opportunities

Separate Teams

A school may operate separate teams for members of each sex.

Generally, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport.

“...sports the purpose or major activity of which involves bodily contact.”

Financial Assistance

"To the extent that [an institution] awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex *in proportion* to the number of students of each sex participating in intercollegiate athletics."

34 C.F.R. § 106.37(c)





What does this mean?

- No requirement to provide the same number of scholarships for men + women or scholarships of equal value
- Instead, must be "substantially proportionate"



What does this mean?

- *What is “financial assistance”?*
- *What is “substantially proportionate”?*
- *What are examples of legitimate, nondiscriminatory reasons?*

Financial Assistance

“...such awards for members of each sex in proportion...”

$$\frac{\$ \text{ female athletic assistance}}{\$ \text{ total athletic assistance}}$$



$$\frac{\# \text{ of Female Athletes}}{\# \text{ of Total Athletes}}$$

1% Discrepancy:

If you have 300 women and 200 men, 59% - 61% of your athletics aid must go to women.



What does this mean for NIL?

Non-grant Assistance

- Summer aid
- Alston awards
- NIL?

“Proportionately available”



Equitable Treatment + Benefits

“The Laundry List”



Equitable Treatment + Benefits

“The Laundry List”

Equipment and Supplies

Scheduling of Games and
Practice Time

Travel and Per Diem
Expenses

Opportunity to Receive Tutoring

Assigning and Compensation
of Coaches

Opportunity to Receive
Coaching

Locker Rooms and Competition
Facilities

Medical and Training Services

Housing and Dining
Services

Support Services

Recruiting

Publicity

Equitable Treatment + Benefits

Source of Funds

“Title IX requires that equitable benefits, including equipment and supplies, be provided to both male and female team[s] irrespective of the source of the funds for those benefits.”

Equitable Treatment + Benefits

Source of Funds

- Student-led fundraiser
- Booster club funds
- Head coach provided
- Private donations

Women's
Sports

Men's
Sports

opportunity
to receive
COACHING

SCHEDULING

PUBLICITY

FACILITIES

equipment +
SUPPLIES



Equitable Treatment + Benefits

Equipment and Supplies

- **Quality** (e.g., how nice are the uniforms?);
- **Suitability** (e.g., are the sizes appropriate? Should a woman wear a male wrestling singlet?);
- **Amount** (e.g., how many uniforms? Does one team get access to specialized equipment?);
- **Maintenance and replacement** (e.g., how often are uniforms replaced?); and
- **Availability of equipment and supplies** (e.g., Does one team get access to specialized equipment?).

Equitable Treatment + Benefits

Scheduling of Practice and Games

- Number of competitive events per sport;
- Number and length of practice opportunities;
- Time of day competitive events are scheduled (e.g., how many games does each sex play in “primetime?”);
- Time of day practice opportunities are scheduled (e.g., are the practice times for one sex more convenient than for another?); and
- Opportunities to engage in available pre-season and post-season competition.

Equitable Treatment + Benefits

Travel and Per Diem



Equitable Treatment + Benefits

Opportunity to Receive Tutoring

- The availability of tutoring; and
- Procedures and criteria for obtaining tutorial assistance.



Equitable Treatment + Benefits

Assignment of Coaches

- Training, experience, and other professional qualifications; and
- Professional standing.



Equitable Treatment + Benefits

Compensation of Coaches

- **Rate of compensation (per sport, per season);**
- **Duration of contracts;**
- **Conditions relating to contract renewal;**
- **Experience;**
- **Nature of coaching duties performed;**
- **Working conditions**
- **Other terms and conditions of employment.**

Equitable Treatment + Benefits

Provision of Locker Rooms and Practice + Competition Facilities

- Quality and availability of the facilities provided for practice + competitive events;
- Exclusivity of use of facilities provided for practice + competitive events;
- Availability of locker rooms;
- Quality of locker rooms;
- Maintenance of practice and competitive facilities
- Preparation of facilities for practice + competitive events



Equitable Treatment + Benefits

Medical and Training Services + Facilities

- Availability of medical personnel + assistance;
- Health, accident + injury insurance coverage;
- Availability + quality of weight/training facilities;
- Availability + quality of conditioning facilities;
- Availability + qualifications of athletic trainers.



Equitable Treatment + Benefits

Dining Services + Housing Facilities

- **Housing provided**
- **Special services as a part of housing arrangements**



Equitable Treatment + Benefits

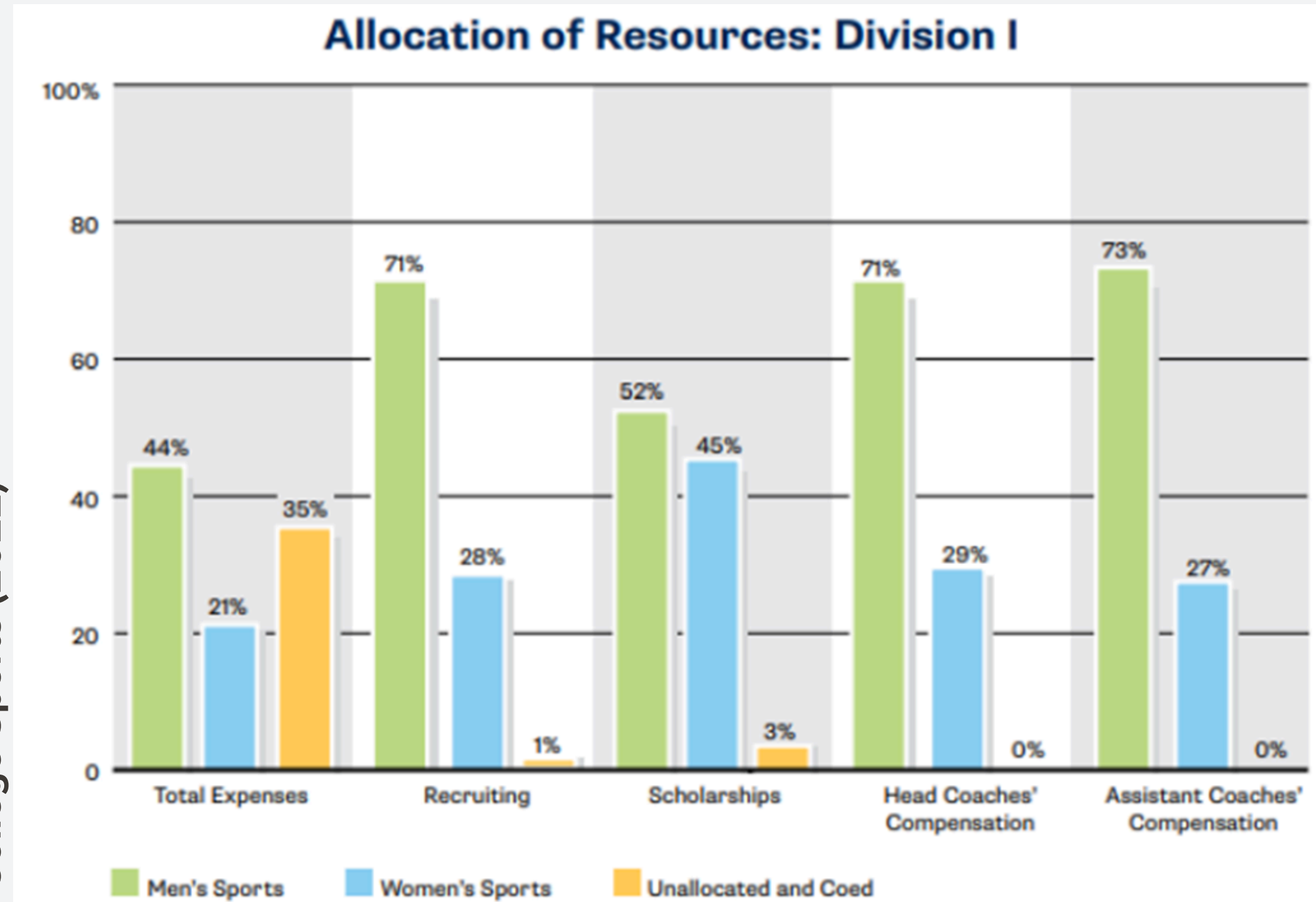
Publicity

- **Availability of quality sports information personnel;**
- **Access to other publicity resources for men's and women's programs; and**
- **Quantity and quality of publications and other promotional devices featuring men's and women's programs**



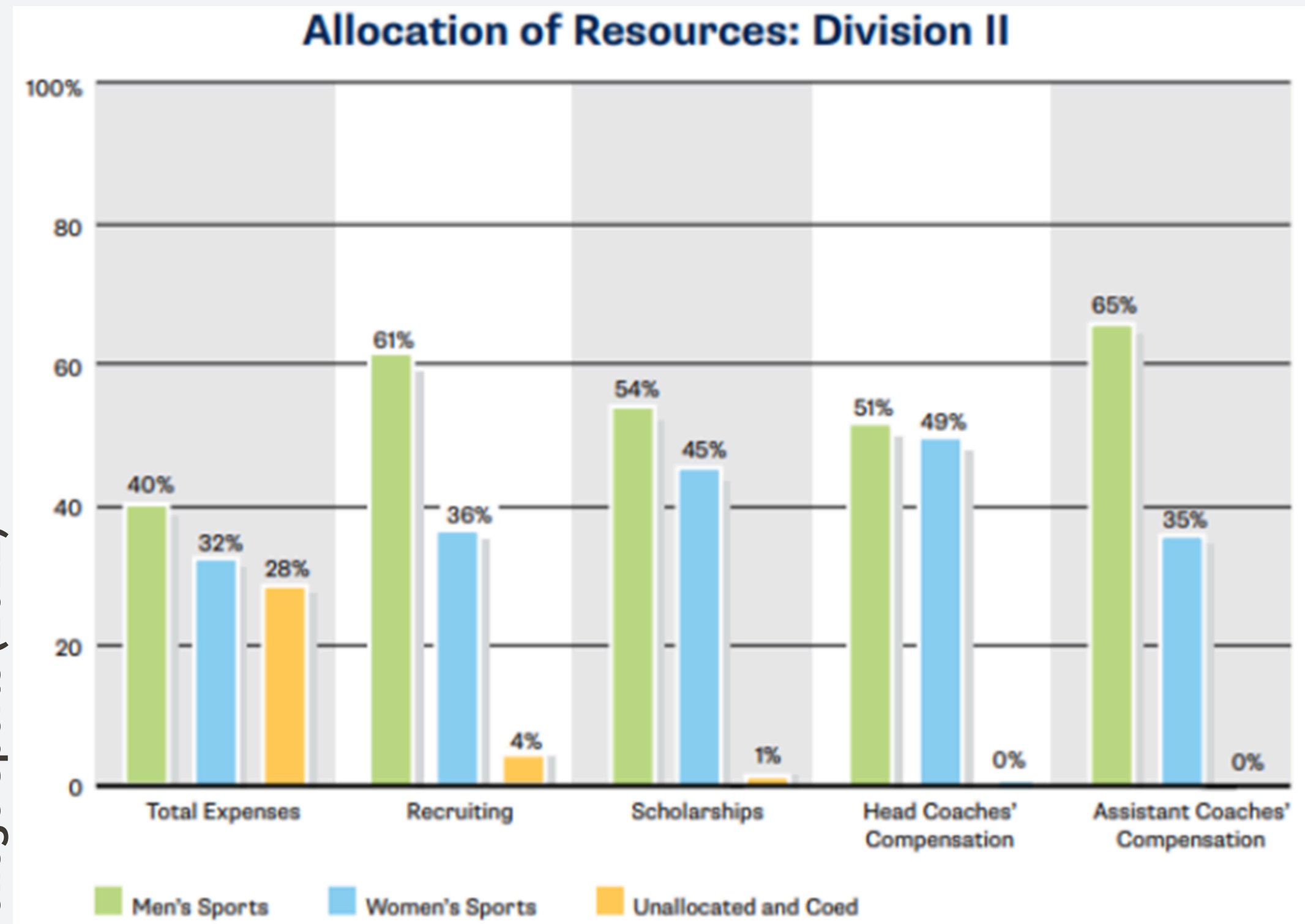
Equitable Treatment + Benefits

Source: NCAA, The State of Women in College Sports (2022)



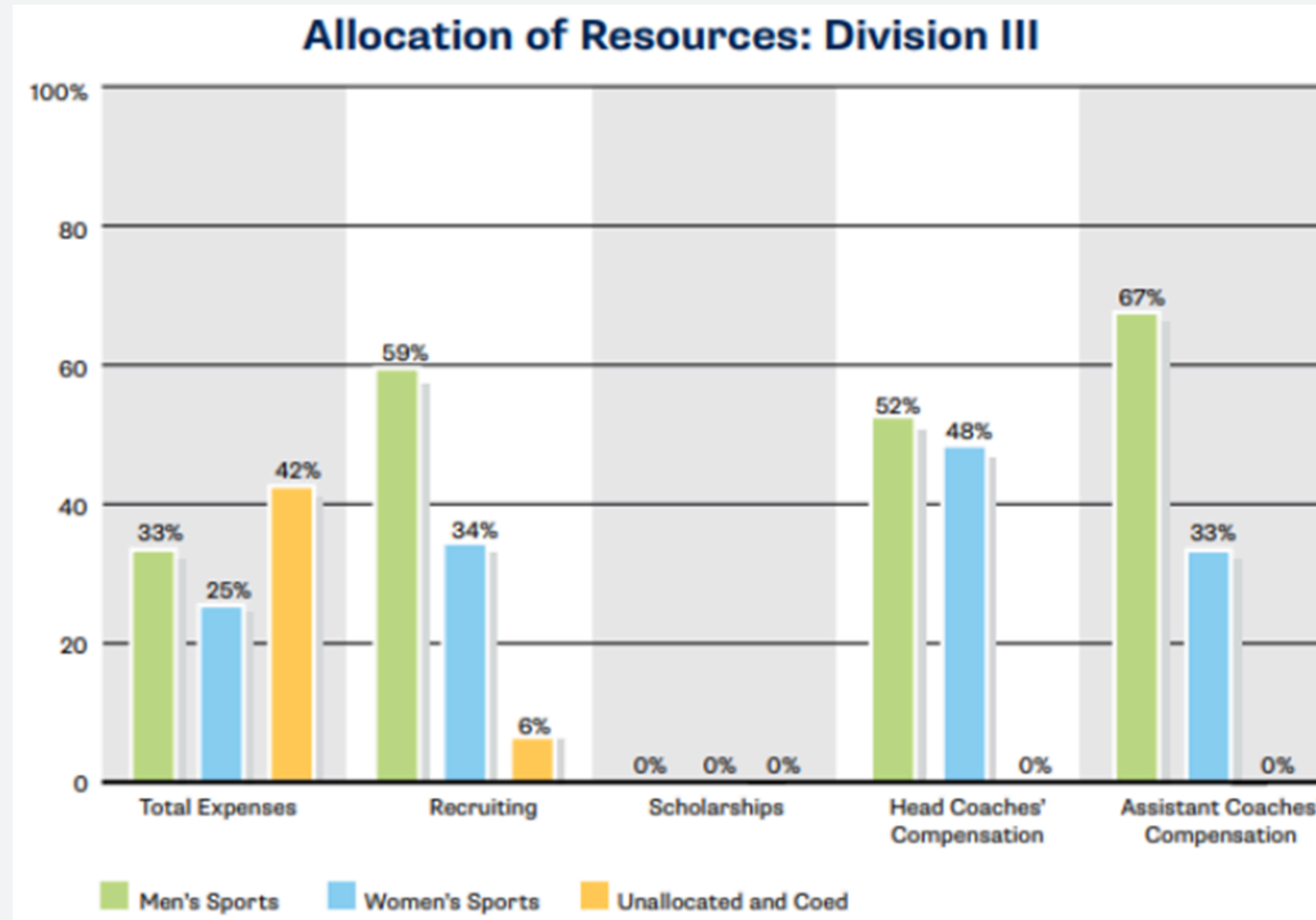
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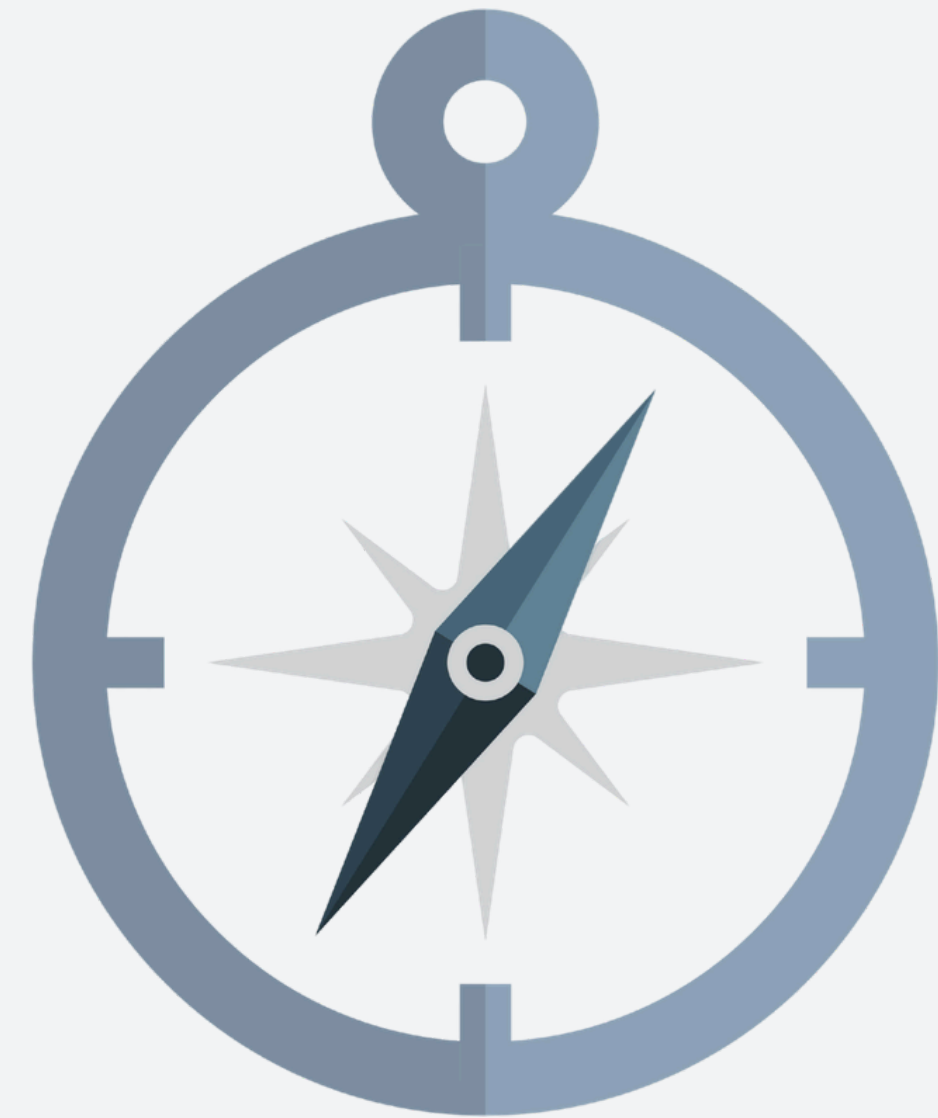
Equitable Treatment + Benefits

Source: NCAA, The State of Women in College Sports (2022)



Retaliation

“No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.”



Transgender Participation

Transgender Participation



⌕ PRESIDENTIAL ACTIONS

Keeping Men Out of Women's Sports

The White House | February 5, 2025

Transgender Participation

January
2025



Executive Order 14168

President Trump signs Executive Order 14168 establishing a federal “biological sex” framework for agency interpretation of federal law.

February 5,
2025



Executive Order 14201

President Trump signs Executive Order 14201, “Keeping Men Out of Women’s Sports,” directing agencies to interpret Title IX as barring transgender women from women’s athletics.

February 6,
2025



Dep’t of Ed

U.S. Dep’t of Ed OCR opens Title IX investigations into San Jose State University, the University of Pennsylvania, and the Massachusetts Interscholastic Athletic Association

February 6,
2025



NCAA

NCAA changes its transgender participation policy following the executive order.

March
2025



HHS

HHS OCR finds Maine education entities violated Title IX by allowing transgender participation in girls’ athletics.

Transgender Participation

April
2025

May 6,
2025

June 25,
2025

January 15,
2026

March 30,
2026

University of Pennsylvania

Department of Education concludes the University of Pennsylvania violated Title IX over transgender athlete participation.

Saratoga Springs

OCR opens investigation into Saratoga Springs City School District, New York, regarding transgender participation policies.

California ED

Department of Education finds the California Department of Education and CIF violated Title IX for permitting transgender participation in girls' sports.

CCCAA

Department of Education and DOJ launch investigation into the California Community College Athletic Association's transgender participation policy.

Minnesota

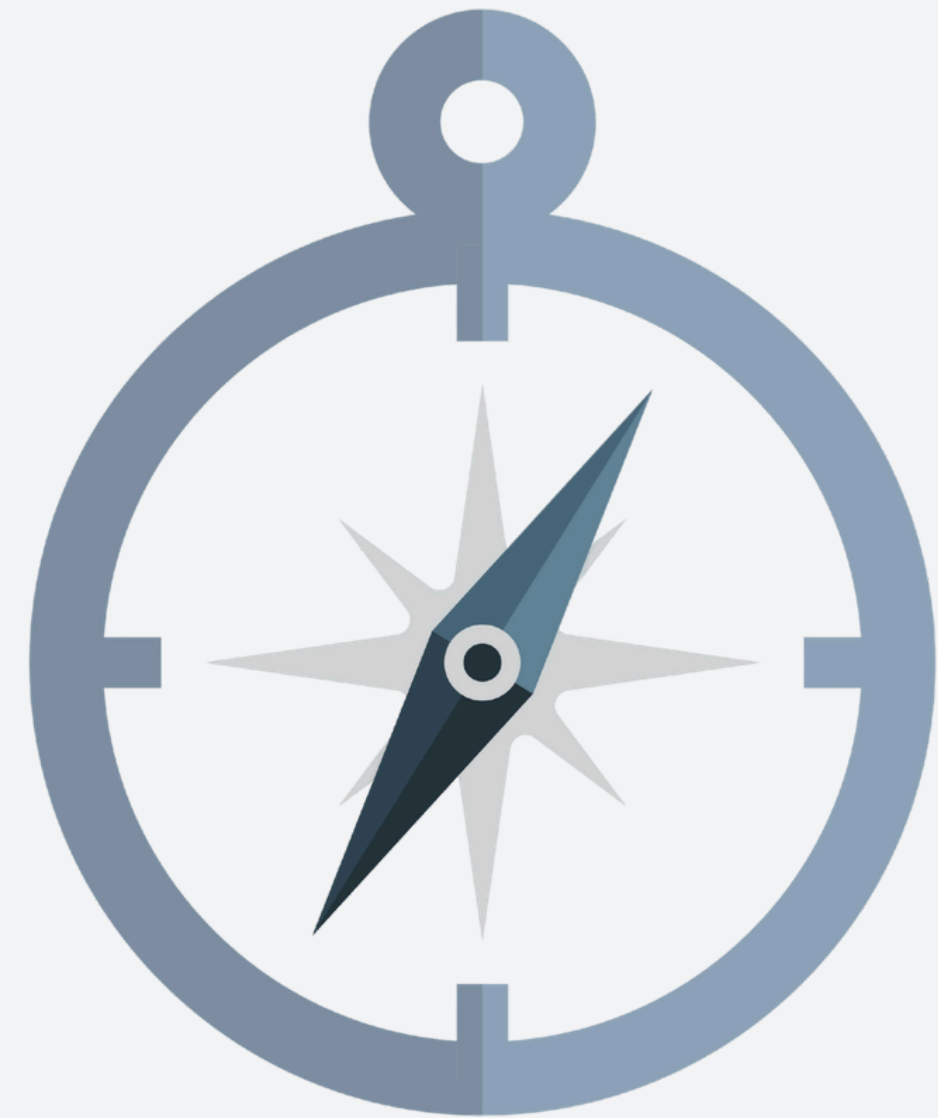
DOJ files lawsuit against Minnesota Department of Education and Minnesota State High School League alleging transgender participation policies violate Title IX.

Transgender Participation

Indiana statute related to trans participation expanded to higher education effective July 1, 2025.

“ A state educational institution or private postsecondary educational institution that organizes, sanctions, or sponsors an athletic team or sport ... shall expressly designate the athletic team or sport as [male, female, or coed].”

“A male, based on a student's biological sex at birth...may not participate on an athletic team or sport designated under this section as being a female...”



Transgender Participation

Separate Teams

“[A] recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.”

§ 106.41(b)

West Virginia v. B.P.J.

Under Title IX and the Equal Protection Clause of the Fourteenth Amendment, may schools maintain women's and girls' sports for biological females?

In other words, may schools determine eligibility for women's and girls' sports based on biological sex?

West Virginia v. B.P.J.

“The term ‘sex’ in the 1972 Title IX statute, the 1974 Javits Amendment, and the 1975 Title IX regulations cannot plausibly be interpreted to refer to anything other than biological sex.”

West Virginia v. B.P.J.

- **Physical differences between the sexes make it reasonable to have separate teams:**
 - **Because of health and safety risks; and**
 - **To ensure fair competition**

West Virginia v. B.P.J.

- What about *Bostock*?
- “Title VII concerns employment, whereas Title IX as relevant here focuses on sports. The two factual contexts are vastly different.”

West Virginia v. B.P.J.

“Sports are different from, say, a typical employment or educational opportunity where equal protection often may require that the government generally treat an individual without regard to the individual’s sex.

In the sports context, by contrast, everyone agrees that the States may maintain separate women’s and men’s teams—in other words, that the States may make distinctions based on sex—because of the inherent physical differences between women and men.”

Case Update

Niblock v. University of Kentucky

- Female students alleged the University of Kentucky failed to effectively accommodate women's athletic interests by not sponsoring varsity women's lacrosse, field hockey, and equestrian.
- Plaintiffs argued the university was not meeting the Title IX effective accommodation requirement.
- After a bench trial, the district court—and later the Sixth Circuit—found the plaintiffs failed to prove there was sufficient unmet interest and ability to support additional Division I varsity teams.

Niblock Prongs 1& 2 Analysis

Participation Gap: UK Participation Counts w/o Cheer, Dance, and JV Soccer								
Univ. of Kentucky Full-Time Undergrad Enrollment					Univ. of Kentucky Student-Athlete Participation			
Year	Male	Female	Total	% female	Male Student-Athletes	Female Student-Athletes	% of Female Student-Athletes	Participation Gap
2012-13	9,445	9,733	19,178	50.75%	354	212	37.46%	153 women
2013-14	9,627	10,258	19,885	51.59%	397	225	36.17%	198 women
2014-15	9,857	10,833	20,690	52.36%	385	239	38.30%	184 women
2015-16	9,860	11,339	21,199	53.49%	352	237	40.24%	168 women
2016-17	9,446	11,387	20,833	54.66%	363	235	39.30%	203 women
2017-18	9,238	11,419	20,657	55.28%	331	226	40.57%	183 women
2018-19	9,042	11,442	20,484	55.86%	338	257	43.19%	171 women
2019-20	9,031	11,591	20,622	56.21%	354	280	44.16%	174 women
2020-21	8,688	11,551	20,239	57.07%	374	288	43.50%	209 women
2021-22	8,469	11,360	19,829	57.29%	363	348	48.95%	139 women
2022-23	8,743	12,009	20,790	57.76%	328	333	50.38%	116 women

*In 2022-23, 38 full-time undergraduate students identified as not male or female.

**Athletic Participation Numbers for 2012-13 to 2019-20 are UK's self reported numbers to the NCAA for participants.
(UK809-10, UK874, UK948-49, UK1028-29, UK1109-10, UK1190-91)

Niblock Prong 3 Analysis

- “Since at least 2017, UK has had a procedure in place for monitoring the interests and abilities of its female students and for adding female varsity participation”
 - Sport Review Committee
 - Annual survey since 2006
 - sport-specific questions about ability
 - question regarding abiding by rules
 - can’t register until its completed
 - contact information if interested
 - Club Interest

Niblock v. University of Kentucky

- Affirms the three prong test
- Substantial proportionality is not the only path to compliance.
- Institutions relying on the third prong ("fully and effectively accommodating interests and abilities") must be able to demonstrate:
 - Regular assessment of student interest;
 - Consideration of regional competition;
 - A thoughtful process for evaluating sport sponsorship.

Fisk v. San Diego State University

- 15 women's track and rowing student-athletes alleged that SDSU failed to provide athletic financial aid proportionate to participation opportunities.
- The case settled on April 20, 2026, with SDSU agreeing to pay \$1.6M (\$300,000 in class-wide damages; \$1.3M in attorneys' fees).
- SDSU also agreed to:
 - Retain an external expert to conduct a gender equity review;
 - Develop and implement a gender equity plan;
 - Ensure equitable athletic financial aid, treatment, and benefits; and
 - Achieve full Title IX compliance by May 2027.

Schroeder v. University of Oregon

- Female beach volleyball athletes challenged the University of Oregon's treatment of the women's beach volleyball program.
- The litigation focused on whether female athletes received equal athletic benefits, including facilities, scheduling, coaching support, and resources, including NIL.
- The case illustrates that Title IX extends well beyond participation opportunities to the quality of the athletic experience.

Perez v. Quinnipiac University

- Quinnipiac announced it would eliminate varsity women's rugby and convert it to a club sport while adding men's indoor and outdoor distance track.
- Twenty-three current and prospective athletes sued, alleging:
 - Reduction of participation opportunities for women;
 - Retaliation following complaints about gender inequities;
- The litigation remains pending. A federal court declined to issue a preliminary injunction restoring varsity status before trial, but expedited the case.

Questions?

Thank you.

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