



National Collegiate Athletic Association

## NCAA News Archive - 2010

[« back to 2010](#) | [Back to NCAA News Archive Index](#)

### OCR rescinds 2005 Title IX clarification

[Share](#) [Print](#)

Apr 20, 2010 3:05:24 PM

By **Michelle Brutlag Hosick**  
The NCAA News

The U.S. Department of Education's Office for Civil Rights on Tuesday rescinded a 2005 clarification that allowed institutions to use only Internet or e-mail surveys to meet the interests and abilities (third prong) option of the three-part test for Title IX compliance, including classifying a non-response as a lack of interest in sports participation.

NCAA Interim President Jim Isch said the decision, announced today by Vice President Joe Biden and Education Secretary Arne Duncan, was the best way to continue the progress made in women's athletics.

"This decision once again gives NCAA member schools the opportunity to more accurately determine the interest in women's athletics on their campuses," Isch said. "Much progress has been made over the past 38 years in women's athletics participation. Going back to the 1996 standard of measuring interest in women's sports will help ensure that continued progress is made and future generations of young women will have equal opportunities as young men."

The education department under the Bush administration issued the controversial clarification in 2005 that provided a "model survey" for institutions to determine whether the athletics participation interests of all students – and potential student-athletes – are accommodated in a gender-equitable manner.

Opponents of the clarification – including the NCAA Executive Committee, which issued a resolution soon afterward asking Association members not to use the survey – claimed the survey was flawed in part because of the way it counted non-responses.

Duncan issued a "Dear Colleague" letter that essentially wiped out the 2005 clarification. Biden said the 2005 action "slowed things down." [[Read the letter and Vice President Biden's statement here.](#)]

"It gave some colleges and universities an excuse not to be as aggressive in making sure that Title IX was in fact enforced, not only in the letter, but the spirit as well," he said. "What Arne (Duncan) did today was make it clear that that change is done – 2005 is wiped out. We're going to make sure that the best effort that can possibly be made is being made to ensure that women are given the opportunity that they deserve."

A coalition of women's groups, civil rights leaders and athletics organizations (including the NCAA) banded together to formally request the clarification be rescinded last fall. Late NCAA President Myles Brand, who was outspoken against the 2005 clarification immediately after it was issued, predicted at the time that the survey would not encourage young women to participate and "will likely stymie the growth of women's athletics and could reverse the progress made over the last three decades."

The rescission means that the 1979 and 1996 standards for Title IX will apply. Because those guidelines also include the opportunity for surveys to be used to meet prong three of the three-part test, the OCR guidance explains more thoroughly its expectations for survey structure and administration.

Joni Comstock, NCAA senior vice president for championships and senior woman administrator for the Association, applauded the rescission of the 2005 clarification.

"Title IX has provided opportunities for women students to participate and receive scholarship funding, resources and coaching in intercollegiate athletics," Comstock said. "Nearly 200,000 female student-athletes currently compete at NCAA institutions across all three divisions, and while progress toward equity has been made, it has not been fully realized. Using the 1996 standard will help our member institutions thoroughly evaluate the interests of women on their campuses."

Committee on Women's Athletics Chair Faith Shearer praised the OCR's recent decision, saying the change "brings the participation survey methodology back in line with what a commonly accepted practice would be in an educational setting."

"The Committee on Women's Athletics is glad to see that institutions will be instructed to follow the 1979 and 1996 clarification, which instruct schools to fully explore interests and abilities," said Shearer, an associate athletics director at Elon. "The decision is important to our member institutions' compliance efforts."

The OCR's three-part test for Title IX compliance involves the following options for providing participation opportunities:

- Male-female athletics participation that is proportional to the institution's fulltime undergraduate enrollment, or
- A history and continuing practice of expansion of athletics opportunities for the under-represented gender, or
- Accommodating the interests and abilities of the under-represented gender

According to a 2000 General Accounting Office evaluation of athletics and Title IX, more than two-thirds of institutions indicated they were pursuing the third prong as their method of compliance with Title IX. Since the 2005 clarification, the NCAA had expressed concern that following that flawed survey methodology would leave member institutions without a true and reliable picture of interests and abilities.

The NCAA joined a coalition of civil rights advocates urging the withdrawal and suggested that the 1996 clarification's "mandate to evaluate multiple factors provides the best approach for assessing whether female students' interests and abilities are being fully accommodated under prong three of the three-part test."

The 1996 clarification listed several methods an institution could implement to evaluate the third prong, including surveys, interviews, and club/intramural participation. More detailed information can be found in the [NCAA Gender Equity Manual](#).

Office for Civil Rights Assistant Secretary Russlynn Ali will be the keynote speaker at the [NCAA Gender Equity and Issues Forum](#) April 25-27 in Chicago. She is expected to address the OCR decision in her remarks.