



**U.S. Department of Education
Office for Civil Rights**

**ADDITIONAL CLARIFICATION OF
INTERCOLLEGIATE ATHLETICS
POLICY: THREE-PART TEST –
PART THREE**

U.S. Department of Education

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Delegated the Authority of Assistant Secretary for Civil Rights

March 17, 2005

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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

March 17, 2005

Dear Colleague:

On behalf of the Office for Civil Rights (OCR) of the U.S. Department of Education (Department), and as a follow-up to OCR's commitment to providing schools with technical assistance on Title IX of the Education Amendments of 1972 (Title IX), I am sending you this "Additional Clarification of Intercollegiate Athletics Policy: Three-Part Test — Part Three" (Additional Clarification). Accompanying the Additional Clarification is a "User's Guide to Developing Student Interest Surveys Under Title IX" (User's Guide) and a related technical report. The Additional Clarification outlines specific factors that guide OCR's analysis of the third option for compliance with the "three-part test," a test used to assess whether institutions are effectively accommodating the interests and abilities of male and female student athletes under Title IX. The User's Guide contains a model survey instrument to measure student interest in participating in intercollegiate varsity athletics.

As you know, OCR enforces Title IX, an anti-discrimination statute, which prohibits discrimination on the basis of sex in education programs or activities by recipients of federal financial assistance. Specifically, OCR investigates complaints of such discrimination and may, at its discretion, conduct compliance reviews. The Department's regulation implementing Title IX, published in 1975, in part, requires recipients to provide equal athletic opportunity for members of both sexes and to effectively accommodate the interests and abilities of their male and female students to participate in intercollegiate athletics. In the Intercollegiate Athletics Policy Interpretation published in 1979 (Policy Interpretation), the Department established a three-part test that OCR will apply to determine whether an institution is effectively accommodating student athletic interests and abilities. An institution is in compliance with the three-part test if it has met any one of the following three parts of the test: (1) the percent of male and female athletes is substantially proportionate to the percent of male and female students enrolled at the school; or (2) the school has a history and continuing practice of expanding participation opportunities for the underrepresented sex; or (3) the school is fully and effectively accommodating the interests and abilities of the underrepresented sex.

OCR has pledged to provide further guidance on recipients' obligations under the three-part test, which was described only in very general terms in the Policy Interpretation, and to further help institutions appreciate the flexibility of the test. Based on OCR's experience investigating complaints and conducting compliance reviews involving the three-part test, OCR believes that institutions may benefit from further specific guidance on part three.

Today, in response, OCR issues this Additional Clarification to explain some of the factors OCR will consider when investigating a recipient's program in order to make a Title IX compliance determination under the third compliance option of the three-part test. The Additional Clarification reflects OCR's many years of experience and expertise in administering the three-part test, which is grounded in the Department's long-standing legal authority under Title IX and its implementing regulation to eliminate discrimination on the basis of sex in education programs and activities receiving federal financial assistance.

Under the third compliance option, an educational institution is in compliance with Title IX's mandate to provide equal athletic participation opportunities if, despite the underrepresentation of one sex in the intercollegiate athletics program, the institution is fully and effectively accommodating the athletic interests and abilities of its students who are underrepresented in its current varsity athletic program offerings. An institution will be found in compliance with part three unless there exists a sport(s) for the underrepresented sex for which *all* three of the following conditions are met: (1) unmet interest sufficient to sustain a varsity team in the sport(s); (2) sufficient ability to sustain an intercollegiate team in the sport(s); and (3) reasonable expectation of intercollegiate competition for a team in the sport(s) within the school's normal competitive region. Thus, schools are not required to accommodate the interests and abilities of all their students or fulfill every request for the addition or elevation of particular sports, unless all three conditions are present. In this analysis, the burden of proof is on OCR (in the case of an OCR investigation or compliance review), or on students (in the case of a complaint filed with the institution under its Title IX grievance procedures), to show by a preponderance of the evidence that the institution is not in compliance with part three.

Many institutions have used questionnaires or surveys to measure student athletic interest as part of their assessment under part three. To assist institutions, this Additional Clarification is being issued with a User's Guide prepared by the National Center for Education Statistics (NCES), as well as a detailed technical report prepared by the National Institute of Statistical Sciences (NISS). These documents were prepared after careful analysis of 132 of OCR's cases involving 130 colleges and universities from 1992 to 2002. They evaluate both the effective and problematic aspects of survey instruments. OCR intends this combined document to serve as a guide to facilitate compliance with part three of the three-part test.

Based on the analysis of the OCR cases and other information, the User's Guide provides a web-based prototype survey (the "Model Survey") that, if administered consistent with the recommendations in the User's Guide, institutions can rely on as an acceptable method to measure students' interests in participating in sports. When the Model Survey is properly administered to all full-time undergraduate students, or to all such students of the underrepresented sex, results that show insufficient interest to support an additional varsity team for the underrepresented sex will create a presumption of compliance with part three of the three-part test and the Title IX regulatory requirement to provide nondiscriminatory athletic participation opportunities. The presumption of compliance can only be overcome if OCR finds direct and very persuasive evidence of unmet interest

sufficient to sustain a varsity team, such as the recent elimination of a viable team for the underrepresented sex or a recent, broad-based petition from an existing club team for elevation to varsity status. Where the Model Survey shows insufficient interest to field a varsity team, OCR will not exercise its discretion to conduct a compliance review of that institution's implementation of the three-part test.

Although more than two-thirds of the institutions involved in the 132 cases complied with the three-part test using part three, OCR believes that some institutions may be uncertain about the factors OCR considers under part three, and they may mistakenly believe that part three offers less than a completely safe harbor. Therefore, for colleges and universities seeking to achieve Title IX compliance using part three, OCR intends that the Additional Clarification and User's Guide serve to facilitate an institution's determination of whether it is in compliance with part three of the three-part test. A recipient may choose to use this information to assess its own athletic programs and then take appropriate steps to ensure that its athletic programs will be operated in compliance with the Title IX regulatory requirements.

Despite the focus on part three, OCR strongly reiterates that each part of the three-part test is an equally sufficient and separate method of complying with the Title IX regulatory requirement to provide nondiscriminatory athletic participation opportunities. In essence, each part of the three-part test is a safe harbor. OCR will continue to determine that a school has met its obligations to provide nondiscriminatory participation opportunities in athletics so long as OCR finds that the school has satisfied any one of the three options for compliance under the three-part test. Schools are also reminded that nothing in Title IX or the three-part test requires the cutting or reduction of opportunities for the overrepresented sex, and OCR has pledged to seek remedies that do not involve the elimination of opportunities.

OCR hopes the Additional Clarification and User's Guide will help reinforce the flexibility of the three-part test and will facilitate application of part three for those schools that choose to use it to ensure Title IX compliance. OCR welcomes requests for individualized technical assistance and is prepared to join with institutions in assisting them to address their particular situations.

Thank you for your continuing interest in this subject.

Sincerely,

James F. Manning
Delegated the Authority of the
Assistant Secretary for Civil Rights

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ADDITIONAL CLARIFICATION OF INTERCOLLEGIATE ATHLETICS POLICY: THREE-PART TEST — PART THREE

BACKGROUND

The Office for Civil Rights (OCR) of the U.S. Department of Education (Department) enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, an anti-discrimination statute, which prohibits discrimination on the basis of sex in education programs and activities by recipients of federal funds.¹ The regulation implementing Title IX, at 34 C.F.R. Part 106, effective July 21, 1975, contains specific provisions governing athletic programs. In part, the regulation requires schools to “provide equal athletic opportunity for members of both sexes.” 34 C.F.R. § 106.41(c). In determining whether equal opportunities are available, the regulation provides that OCR will consider, among other factors, whether the selection of sports and levels of competition effectively accommodate the interests and abilities of students of both sexes.

To provide further clarification of the Title IX regulatory requirements, the Department published the Intercollegiate Athletics Policy Interpretation (Policy Interpretation) in the *Federal Register* on December 11, 1979 (44 Fed. Reg. 71,413 (1979)).² The Policy Interpretation provides that, as part of determining whether an institution is effectively accommodating the interests and abilities of male and female athletes, institutions must provide the opportunity both for individuals of each sex to participate in intercollegiate competition, and for athletes of each sex to have competitive team schedules that equally reflect their abilities.³ The Policy Interpretation permits three alternate ways of assessing whether institutions are providing nondiscriminatory opportunities to participate in intercollegiate athletics. In essence, each part of the three-part test is a safe harbor, and no part is favored by OCR. The three-part test is intended to allow institutions to maintain flexibility and control over their athletic programs. OCR does not preapprove or review compliance with these standards by every institution. OCR investigates complaints of discrimination and may, at its discretion, conduct compliance reviews.⁴

The Policy Interpretation specifically delineates the following three-part test and stipulates that compliance will be assessed in any one of the following ways:

¹ OCR does not enforce the Fourteenth Amendment to the U.S. Constitution. Furthermore, because the scope of the Equal Protection Clause of the Fourteenth Amendment may differ from the scope of the Title IX statute, this Additional Clarification does not regulate or implement constitutional requirements or constitute advice about the Constitution.

² The regulation implementing Title IX and the Policy Interpretation were originally published by the former Department of Health, Education, and Welfare, and were later adopted by the Department of Education, established in 1980.

³ This document does not address competitive team schedules that equally reflect student abilities.

⁴ There is a private right of action under Title IX, so that individuals may take legal action directly against the colleges or universities.

1. Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
2. Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; or
3. Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a history and continuing practice of program expansion, as provided above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

44 Fed. Reg. at 71,418.

On June 27, 2002, Secretary of Education Rod Paige created the Secretary's Commission on Opportunities in Athletics to investigate whether additional guidance on the Title IX requirements regarding intercollegiate athletics was needed and to provide recommendations on how to improve application of the current standards. The Commission's report, "Open to All: Title IX at Thirty," presented on February 26, 2003, found broad support throughout the country for the goals and spirit of Title IX.

Soon thereafter, in July 2003, OCR issued the Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance (2003 Clarification). It made clear that the elimination of teams is a disfavored practice and that, in negotiating compliance agreements, OCR will seek remedies that do not involve the elimination of opportunities. That policy remains in effect and is emphasized in this Additional Clarification.

In order to ensure that schools have a clear understanding of their options for compliance, OCR also promised in the 2003 Clarification to provide further information to help educational institutions appreciate the flexibility of the law, to explain that each part of the test is a viable and separate means of compliance, and to provide technical assistance to assist schools in complying with Title IX. Of the 130 institutions OCR investigated under the three-part test from 1992 to 2002, approximately two-thirds came into compliance with part three of the test. Based on OCR's experience investigating the three-part test and the fact that OCR has not investigated the vast majority of recipient institutions, OCR believes that institutions may be uncertain about the factors OCR considers under part three, and may be unaware that they may choose to assess the interests and abilities of their students through a variety of flexible nondiscriminatory methods.

ADDITIONAL CLARIFICATION AND NCES USER’S GUIDE

This Additional Clarification, User’s Guide to Developing Student Interest Surveys Under Title IX (User’s Guide), and related technical report are resources to assist institutions in meeting their compliance obligations. Taken together, they serve to clarify many of the factors OCR will consider under part three, and to facilitate compliance with part three for those schools that choose to comply with that part of the test. The User’s Guide was prepared by the National Center for Education Statistics (NCES), and the technical report was prepared by the National Institute of Statistical Sciences (NISS). These documents analyze 132 OCR complaints and compliance reviews involving 130 colleges and universities from 1992 to 2002. They discuss the effective and problematic elements of 52 survey instruments used in OCR cases⁵ and five survey instruments used by other institutions. Based on that analysis, the User’s Guide provides a prototype survey (“Model Survey”) to measure student interest under part three. The User’s Guide summarizes the information in the technical report that is most relevant to the practical concerns of institutions considering the use of a survey. The technical report provides the statistical analysis that is the basis for the User’s Guide and Model Survey.

Although the Additional Clarification, User’s Guide, and related technical report focus on part three of the three-part test, they are not intended to discourage compliance with the other parts of the test. Instead, they are designed to offer guidance to those schools that choose to comply with part three. Institutions have flexibility and choice regarding how they will provide nondiscriminatory participation opportunities, and each part of the three-part test is an equally sufficient means of compliance.

This combined document is designed specifically for intercollegiate athletics. However, these general principles will often apply to club, intramural, and interscholastic athletic programs, which are also covered by the Title IX implementing regulation.

THREE-PART TEST — PART THREE: IS THE INSTITUTION FULLY AND EFFECTIVELY ACCOMMODATING THE INTERESTS AND ABILITIES OF THE UNDERREPRESENTED SEX?

Under part three of the three-part test, an institution may provide proportionally fewer athletic participation opportunities to one sex, as compared to its enrollment rate, if the interests and abilities of the enrolled and admitted students of the underrepresented sex are being fully and effectively accommodated by the institution’s current varsity athletics program.⁶ Merely showing that there is disproportionality in the athletic opportunities provided to male and female athletes is not evidence of unmet interests and abilities of

⁵ The focus of the analysis is on the use of surveys. However, the institutions investigated by OCR may have used other means to assess interest in addition to surveys.

⁶ When determining whether an institution is fully and effectively accommodating the interests and abilities of its students of the underrepresented sex, OCR considers the interests and abilities of currently enrolled students, as well as students who have been admitted. References to the interests and abilities of “students” or “undergraduates” throughout this document are intended to include only enrolled students and admitted students.

the underrepresented sex. There must be actual evidence of unmet interests and abilities among the underrepresented sex. The burden of proof is on OCR (in the case of an OCR investigation or compliance review), or on students (in the case of a complaint filed with the school under its Title IX grievance procedures), to show by a preponderance of the evidence that the institution is not in compliance with part three.

The part three analysis centers on whether there are concrete and viable interests among the underrepresented sex that should be accommodated by the institution's athletic program. OCR has explained that an institution will be found in compliance with part three unless there exists a sport(s) for the underrepresented sex for which *all* three of the following conditions are met:

- a) unmet interest sufficient to sustain a varsity team in the sport(s);
- b) sufficient ability to sustain an intercollegiate team in the sport(s); and
- c) reasonable expectation of intercollegiate competition for a team in the sport(s) within the school's normal competitive region.

If the school decides to comply with part three of the three-part test, the assessment of each of the above three conditions is an essential prerequisite for determining a school's Title IX obligation to create a new intercollegiate varsity team or elevate an existing club team to varsity status.

When one or more of these conditions is absent, a school is in compliance with part three. It follows that schools are not required to accommodate the interests and abilities of all their students of the underrepresented sex or to fulfill every request for additions of new varsity teams or elevations of particular club sports to varsity status. However, when each condition is present, a school is under an obligation to accommodate the particular interests and abilities of its students of the underrepresented sex – not the interests and abilities of the general population – if the institution elects to comply with part three.⁷ Moreover, the school must accommodate these interests and abilities within a reasonable period of time.

As explained in the Policy Interpretation, OCR requires that the assessment of students' interests and abilities use "methods [which] are responsive to the expressed interests of students capable of intercollegiate competitions who are members of an underrepresented sex." 44 Fed. Reg. at 71,417. However, part three imposes no obligation on an institution to generate interest among its students of the underrepresented sex.

Schools choosing to comply with part three of the three-part test may continue to provide more athletic opportunities for the overrepresented sex than for the underrepresented sex,

⁷ When a school chooses to comply with part one of the three-part test, it is not required to accommodate the specific interests of all of its students of the underrepresented sex. An institution is in compliance with part one if it provides participation opportunities for male and female students at rates that are substantially proportionate to the rates of their respective enrollments. Under part one, an institution has discretion in selecting which sports to put in place; it does not necessarily need to provide a sport because there is higher interest in that sport than in another sport. OCR does not consider unfilled slots when determining the number of participation opportunities.

or even to add more opportunities for the overrepresented sex. Part three does not impose any limitations on the number of opportunities a school may add for the overrepresented sex or the amount of interest it may accommodate for that sex, provided the school is fully and effectively accommodating the interests and abilities of the underrepresented sex. Nothing in Title IX or the three-part test requires the cutting or reduction of opportunities for the overrepresented sex. In the event of a finding of noncompliance, OCR seeks remedies that do not involve the elimination of opportunities.

A. Assessment of Interest Sufficient to Sustain a Varsity Team

Under the Policy Interpretation, institutions have discretion and flexibility in choosing the nondiscriminatory methods to determine the athletic interests and abilities of the underrepresented sex. OCR has never required elaborate scientific validation of assessments. Schools may continue to use a variety of straightforward and inexpensive techniques, consistent with the standards set forth herein.

1. Model Survey and Proper Implementation to Assess Interest Sufficient to Sustain a Varsity Team

One method schools may use to measure student interest is the web-based Model Survey provided in the User's Guide. NCES's expert statisticians carefully designed the web-based Model Survey, after extensive analysis of the 57 survey instruments, to effectively measure student interest in a simple, straightforward manner. The Model Survey is an unbiased, standardized methodology that maximizes the possibilities of obtaining correct information and facilitating responses. It effectively captures information on interest, experience, and self-assessment of ability across multiple sports, while not unnecessarily complicating responses with superfluous or confusing questions. Since part two, like part three of the three-part test, involves the assessment of the interests and abilities of the underrepresented sex, the Model Survey may also be used by schools to help them comply with part two.

The User's Guide also provides specific guidance on the proper implementation of the Model Survey to measure student interest sufficient to sustain a varsity team. It recommends that institutions conduct a census, meaning that the survey is provided to all undergraduate students, or to all such students of the underrepresented sex. This contrasts with a sample survey, which is administered to only a subset of students from the target population. The User's Guide concludes that a census is superior to a sample survey in almost every respect for purposes of assessing student interest under part three of the three-part test. Using a census, rather than a sample survey, avoids several complex issues associated with sample surveys, including the selection of the sampling mechanism, selection of the sample size, and calculation of sampling error.⁸

⁸ National Center for Education Statistics, U.S. Department of Education, User's Guide to Developing Student Interest Surveys Under Title IX 10 (2005).

The User's Guide states that schools may assume that nonresponse to the census indicates an actual lack of interest if all students have been given an easy opportunity to respond to the census, the purpose of the census has been made clear, and students have been informed that the school will take nonresponse as an indication of lack of interest.⁹

The User's Guide also emphasizes that the census need only be conducted periodically to permit institutions to identify developing interests of the underrepresented sex in a timely and responsive manner.

2. Conduct a Census Using the Model Survey Consistent With the User's Guide

OCR will presume that the Model Survey is an accurate measure of student interest, absent other direct and very persuasive evidence of unmet interest sufficient to sustain a varsity team,¹⁰ if an institution administers the Model Survey in a manner consistent with the following recommendations in the User's Guide. First, the Model Survey must be administered periodically to permit schools to identify developing interests.

Second, an institution properly administers the Model Survey if it conducts a census whereby the Model Survey is provided to all full-time undergraduates, or to all such students of the underrepresented sex.¹¹ The regulation requires that institutions provide equal athletic opportunity for members of both sexes and effectively accommodate the interests and abilities of members of both sexes. OCR, consistent with the User's Guide, expects that the Model Survey ideally will be administered to students of both sexes. By doing so, a school can learn the degree to which unmet demand exists among male and female students, and use this information to help ensure obligations under the regulation continue to be met as the institution plans the future of its athletic program. It avoids any implication that the school is concerned only with the needs of the underrepresented sex and eliminates the need to restrict access to the survey to only a subset of the undergraduate student body, easing administration.

If an institution conducts a sample survey, rather than a census, OCR will not presume that Model Survey results indicating lack of interest are evidence of actual lack of interest, and the institution will not benefit from the presumption.

Third, schools must administer the census in a manner that is designed to generate high response rates, and students must have an easy opportunity to respond to it. Thus, schools may either require students to complete the census or provide the census in a context in which most students will complete it. For instance, a school may want to

⁹ Id. at 12.

¹⁰ Direct evidence is actual evidence that is not circumstantial. A recent broad-based petition from an existing club team for elevation to varsity status is direct evidence of interest in that sport by students on the club team. On the other hand, evidence that feeder high schools for the institution offer a particular interscholastic sport is circumstantial, not direct, evidence of interest by students at the institution.

¹¹ Schools are not required to meet the athletic interests of potential, part-time, or graduate students.

administer the Model Survey as part of the registration process whereby students must complete or actively bypass the Model Survey to register for courses. Alternatively, a school may send an email to the entire target population that includes a link to the Model Survey, provided the school has accurate email addresses, students have access to email, and the school takes reasonable steps to follow-up with students who do not respond. In either approach, students must also be advised of the purpose of the Model Survey and that a nonresponse to the Model Survey will indicate to the school that the student is not interested in additional varsity athletic opportunities. Although rates of nonresponse may be high with the email procedure, under these conditions, OCR will interpret such nonresponse as a lack of interest.¹²

Fourth, schools must include in the census at least the full list of sports recommended in the Model Survey. That list includes all varsity sports, including “emerging sports,” currently recognized by the three national intercollegiate athletic associations to which most schools belong.¹³ The Department will periodically modify the sports identified on the Model Survey to reflect any changes in varsity sports. Unless the Department notifies schools of any changes in the Model Survey, schools may presume that it accurately reflects all varsity sports currently recognized by these three national intercollegiate athletic associations.

When a school conducts a census using the Model Survey consistent with the User’s Guide, OCR will presume that Model Survey results indicating lack of interest sufficient to sustain a varsity team are evidence of such actual lack of interest, and an institution will therefore be determined to be in compliance with part three of the three-part test. The presumption that the results are an accurate measure of student interest can only be overcome if OCR finds direct and very persuasive evidence of unmet interest sufficient to sustain a varsity team, such as the recent elimination of a viable varsity team for the underrepresented sex or a recent, broad-based petition from an existing club team for elevation to varsity status. Where the Model Survey shows insufficient interest to field a varsity team, OCR will not conduct a compliance review of that institution’s implementation of the three-part test.¹⁴

Whether or not schools use the Model Survey consistent with the recommendations in the User’s Guide, schools cannot use the failure to express interest during a census or survey to eliminate a current and viable intercollegiate team for the underrepresented sex. Students participating on a viable intercollegiate team have expressed interest in

¹² NCES, User’s Guide, at 12.

¹³ The three associations are the National Collegiate Athletic Association (NCAA), the National Association of Intercollegiate Athletics (NAIA), and the National Junior College Athletic Association (NJCAA). Institutions may also be members of additional athletic associations, which may recognize other varsity sports that are not currently recognized by the NCAA, NAIA, or NJCAA. Schools may add additional varsity sports to the census if they so choose, provided the census, at a minimum, includes all the sports identified on the Model Survey.

¹⁴ Compliance reviews are initiated by OCR at its discretion, but OCR is required by regulation to investigate complaints of discrimination.

intercollegiate participation by active participation, and census or survey results, including those of the Model Survey, may not be used to contradict that expressed interest.

3. Conduct a Census Other Than the Model Survey Consistent With the User's Guide

If a school uses a census other than the Model Survey, OCR will presume that the census results accurately measure student interest sufficient to sustain a varsity team under part three if OCR finds that the census is of equivalent reliability to the Model Survey and is administered consistent with the conditions articulated in section two above. OCR evaluates any such census for reliability and compliance with these conditions by examining the following concerns raised in the User's Guide:

- contents of the survey;
- target population that is surveyed;
- response rates; and
- frequency of conducting the survey.

4. Other Means to Assess Interest Sufficient to Sustain a Varsity Team When a School Does Not Use the Model Survey or an Equivalent Census

OCR emphasizes that compliance with part three does not require use of the Model Survey or any other survey. Institutions continue to have discretion and flexibility when determining the athletic interests and abilities of students, and may do so through a variety of nondiscriminatory methods of their choosing that need not be elaborate or expensive as long as the process complies with the requirements of the Policy Interpretation. While surveys like the Model Survey provide a standard method by which to collect information on students' athletic-participation interests, experiences, and self-assessment of ability, surveys of this kind are only one method by which a school may obtain data on its students' interests. OCR is not mandating the use of this specific prototype or requiring that individual schools conduct elaborate scientific validation or assessment of student interest. Consequently, should a school already employ an effective set of procedures to assess student interest, OCR does not require the school to alter its assessment process to incorporate the Model Survey or any other survey.

When a school chooses not to use a survey, uses a survey other than the Model Survey that is not equivalent to the Model Survey, conducts a sample survey rather than a census, or does not otherwise administer the Model Survey consistent with the recommendations in the User's Guide, OCR will not presume that survey results (if any) alone are adequate to measure student interest under part three. Instead, OCR will look to a broader range of factors drawn from previous OCR guidance on the three-part test in determining whether the school has accurately measured student interest. Specifically, OCR will consider the following factors when assessing student interest under part three:

- requests for the addition of a varsity team or elevation of an existing club sport to intercollegiate varsity status;
- participation in club or intramural sports;
- participation rates in high schools, amateur athletic associations, and community sports leagues that operate in areas from which the institution draws its students; and
- intercollegiate varsity participation rates, as identified by national and regional intercollegiate sports governing bodies, in the institution's normal competitive region.

OCR also finds a recent broad-based petition to create and participate in a varsity team or elevate a club team to varsity status to be indicative of interest. Schools may wish to develop policies and procedures for accepting, handling and responding to such requests, and widely disseminate such policies and procedures to existing and newly admitted students, as well as coaches and other employees. The procedures available for requesting the addition or elevation of teams also play a role in compliance with part two of the three-part test, and effective implementation of these policies and procedures may facilitate compliance with part two, as well as part three. Since recipients are required to designate at least one employee to coordinate their Title IX responsibilities, recipients may wish to consider whether the processing of requests for the addition or elevation of teams should be part of those procedures or the responsibilities of their Title IX coordinators. (See 34 C.F.R. § 106.8.)

By participating on a club or intramural team, students have already expressed interest in a particular sport, though not necessarily in participation at the intercollegiate varsity level. Consequently, schools may wish to regularly monitor their club and intramural sports — including, but not limited to, participation rates and the extent to which the team engages in varsity competition — as part of their assessment of student interest.

B. Assessment of Sufficient Ability to Sustain an Intercollegiate Team

Because athletic directors and coaches have unique expertise when assessing athletic ability, their assessments will be presumed to be valid, provided the methods used to assess ability are adequate and evaluate whether the students have sufficient ability to sustain an intercollegiate varsity team.

OCR recognizes that students interested in a particular sport may have a broad range of athletic abilities. Schools are not required to create a varsity team or elevate a club team to intercollegiate varsity status unless there are a sufficient number of interested students that have the ability to sustain an intercollegiate varsity team. When OCR is required to make this determination, it may consider such factors as the following:

- the athletic experience and achievement — in interscholastic, club or intramural competition — of underrepresented students interested in playing the sport;
- participation in other sports, intercollegiate or otherwise, that may demonstrate skills or abilities that are fundamental to the particular sport being considered;

- self-assessment of ability to compete in a particular interscholastic varsity sport;
- if the team has previously competed at the club or intramural level, whether the competitive experience of the team indicates that it has the potential to sustain an intercollegiate team;
- tryouts in the particular sport in which there is an interest;
- other direct observations of participation in the particular sport being considered; and
- opinions of coaches, administrators, and athletes at the institution regarding whether interested students have the potential to sustain a varsity team.

When measuring students' athletic abilities, surveys, including the Model Survey, are generally limited to measuring a student's athletic experiences and self-assessment of ability. Although a student's experience in a particular sport may be a good indicator of ability, it does not necessarily reflect the student's ability to compete on a team at the higher level required of intercollegiate athletes. In particular, a survey such as the Model Survey does not capture information on the level of performance or competition of a team or a particular student. Conversely, a lack of experience or limited experience in a particular sport does not necessarily indicate the inability to compete in a particular sport at the intercollegiate level. For example, a student may have athletic skills, gained from experience in other sports, which are fundamental to the particular sport in which the student has expressed an interest.

If a school chooses to use the Model Survey or an equivalent survey, OCR will presume that a student's self-assessment of lack of ability to compete at the intercollegiate varsity level in a particular sport is evidence of actual lack of ability.

If an institution has a team that currently or previously competed at the club or intramural level, OCR will consider the competitive experience of the team, as well as the opinions of coaches and others within the institution that have observed or otherwise have knowledge of the team members' athletic abilities.

Because OCR considers participation in club and intramural sports to be an important indicator of interest and ability, schools that are unsure whether the interests and abilities they have measured will be sufficient to sustain a new varsity team are permitted – though not required – to create a club or intramural team to further assess those interests and abilities. We refer here, not to lack of confidence in the Model Survey or other results, but to whether the accurately measured interests and self-assessed abilities are sufficient to sustain a new varsity team. Just as an institution might conduct tryouts or hold organizational meetings after a survey or other initial assessment shows the potential interest and ability to create a new varsity team, an institution has the option to field a club or intramural team for a reasonable period of time to further assess the depth and breadth of the interests and abilities of the participating athletes. However, this option must be exercised as only a part of the assessment process, using standards that apply equally to male and female athletes. Once a school completes the assessment process by concluding that there is sufficient interest and ability to support a new varsity team, the school is under an obligation to create a varsity team within a reasonable period of time.

C. Assessment of Sufficient Number of Interested and Able Participants to Sustain a Team

To trigger an institution's obligation to create a team for the underrepresented sex under part three of the three-part test, the number of interested students with ability must be sufficient to sustain an intercollegiate team in that sport. Each of the various intercollegiate sports has a minimum number of athletes needed to compete in a contest. While it is theoretically possible to have teams with only these minimum numbers of athletes, OCR recognizes that the reality of how sports are played involves practical factors that schools must take into consideration in setting the minimum number of participants needed for a particular sport. Athletic directors and coaches for a particular sport will generally have the experience with the mechanics and realities of operating a team to determine the impact of these factors and decide the number of students needed to establish teams by sport. In general, OCR defers to decisions of the athletic directors and coaches. As a frame of reference, OCR may consider the average size of teams in a particular sport, a number that will typically vary by institution, sport, sex, and competitive region. When evaluating the minimum number of athletes needed, OCR may consider factors such as:

- rate of substitutions, caused by factors such as intensity of play or injury;
- variety of skill sets required for competition; and
- effective practices for skill development.

In particular, some sports require a higher rate of substitutions, both in intercollegiate competition and in practice because, for example, they involve a higher intensity of play or have higher frequency rates of injury than other sports. Some team sports may require an athlete in a certain playing position to develop a particular set of athletic skills that it may not be necessary for other team members to develop to the same degree of proficiency. For example, a baseball or softball pitcher, to be successful, must develop athletic skills very different from those of the catcher. Similarly, the skill set needed to play offensive positions in football are different from those in defensive positions. Additional players may be needed for purposes of practice and skill development. To have effective practice to simulate regulation play, a basketball team, for example, may need twice the number of participants than are permitted on the court at once during varsity competition. OCR may consider these factors when evaluating the minimum number of athletes needed to sustain a particular team.

D. Determining Whether There Is a Reasonable Expectation of Intercollegiate Competition for the Team

In addition to the requirement that students have an interest in athletics and sufficient ability to sustain a team, there must be a reasonable expectation of intercollegiate competition for the team in the institution's normal competitive region. OCR will look at available competitive opportunities in the geographic area in which the institution's athletes primarily compete.

Institutions are not required to create an intercollegiate varsity team or elevate teams to varsity status absent a reasonable expectation that intercollegiate competition in that sport will be available within the institution's normal competitive region. However, institutions may be required by the Title IX regulation to encourage the development of such competition as part of a resolution agreement or remedy.

If an institution's normal competitive region includes an area outside its own geographic area, OCR will not require the creation of a particular sport if, due to climate or topography, it would not be possible as a practical matter for students at the institution to practice that sport. For example, Institution A's normal competitive region includes the Rocky Mountains, although Institution A is located in the Plains. Students at Institution A are interested in and able to compete in skiing. Due to the geographic area in which Institution A is located, there are no mountains on which students at Institution A could practice. Thus, in order to prepare for competition, the skiing team would have to travel to the Rocky Mountains for each practice. Therefore, OCR would not require the school to create a ski team.

E. Implementation

When a school has sufficient unmet interest and ability in a sport to sustain an intercollegiate team in that sport, and a reasonable expectation of intercollegiate competition for a team in that sport within the school's normal competitive region, the school is under an obligation to create a varsity team in that sport or elevate the club team to varsity status, if it elects to comply with part three of the three-part test. Moreover, the school must accommodate those interests and abilities within a reasonable period of time.¹⁵ Thus, schools may wish to use the results of their assessment under part three, including the Model Survey, to inform and support budget decision-making.

OCR recognizes that, for practical and financial reasons, a school may be unable to immediately create a new varsity team or elevate a team to varsity status. When determining whether the period of time to create or upgrade a team is reasonable, OCR will account for the steps necessary to establish the varsity team, which will vary by sport and by school and may include obtaining necessary approval and funding to establish the team, building or upgrading facilities, obtaining varsity level coach(es), and acquiring necessary equipment and supplies. If a school must construct or renovate facilities for the varsity team, it may immediately accommodate the interests and abilities of the underrepresented sex by providing temporary facilities.

¹⁵ The addition of a new varsity team necessarily will increase the number of varsity athletes at the school, and the development of a new team may require a school to spread scholarships for these new varsity athletes over as much as four years. If a school takes such action, OCR will consider the creation of a new team to be a nondiscriminatory factor justifying the award of fewer scholarships in the first few years of the newly established team than would be necessary to create substantial proportionality between male and female athletes.

CONCLUSION

OCR intends that the Additional Clarification and User's Guide will serve to facilitate compliance with part three of the three-part test for those institutions that choose to use part three to ensure Title IX compliance. Although the focus of this combined document is on part three, OCR reiterates that each part of the three-part test is an equally sufficient and separate method of complying with the Title IX regulatory requirement to provide nondiscriminatory athletic participation opportunities, and institutions maintain flexibility and control over their athletic programs.



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March 2005

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USER'S GUIDE

TO DEVELOPING

STUDENT INTEREST SURVEYS UNDER TITLE IX

The purpose of this report, prepared by the National Center for Education Statistics (NCES) for the Office for Civil Rights of the U.S. Department of Education, is to provide a guide for conducting a survey of student interest in order to satisfy Part 3 the Three-Part Test established in the 1979 Policy Interpretation of the intercollegiate athletic provisions of Title IX of the Higher Education Act of 1972.

Introduction to Title IX

Title IX (20 U.S.C. §§ 1681-1688), enacted in 1972, addresses issues of gender discrimination in colleges and universities. Specifically, it states that

“...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 education program or activity receiving Federal financial assistance...” (20 U.S.C. § 1681 (a)).

In 1975, the former U.S. Department of Health, Education, and Welfare issued regulations implementing Title IX (34 CFR Part 106). The regulations pertaining to athletics require that a recipient which sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes (34 CFR 106.41(c)).

Enforcement of Title IX is primarily the responsibility of the Office for Civil Rights (OCR) of the U.S. Department of Education. Courts, however, have resolved some cases. The associated body of case law has addressed legal issues ranging from the standing of plaintiffs to whether Title IX violates the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.

The Three-Part Test

Postsecondary educational institutions may be required to demonstrate compliance with Title IX in response to either specific complaints or OCR's compliance reviews.

The 1979 Policy Interpretation of Title IX established, among other things, three means by which institutions can demonstrate compliance with the interests and abilities factor, which is one of the factors for determining equivalence in athletic benefits and opportunities. Collectively, these are known as the “Three-Part Test” or, alternatively, as the “Three-Prong Test.” An institution may demonstrate compliance in any one of the following ways (44 Fed. Reg. 71,418 Dec. 11, 1979):

1. Demonstrate that intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; *or*

2. Where the members of one sex have been and are underrepresented among intercollegiate athletes, show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; *or*
3. Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion such as that cited above [in Part 2], demonstrate that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

The Title IX Commission and the Assistant Secretary's letter

On June 27, 2002, then Secretary of Education Rod Paige created the Commission on Opportunity in Athletics to investigate whether further guidance on Title IX requirements regarding intercollegiate athletics was needed. On February 26, 2003, the 15-member Commission issued its final report entitled "*Open to All*": *Title IX at Thirty*.

In response to the Commission's report, on July 11, 2003, OCR issued a Dear Colleague letter providing further clarification on the intercollegiate athletics policy guidance regarding Title IX compliance. The letter reaffirmed that each of the three parts was a valid means of compliance and that "institutions have flexibility in providing nondiscriminatory participation opportunities to their students, and OCR does not require quotas." Further, OCR encouraged schools to request individualized assistance from OCR to meet the requirements of Title IX. OCR also indicated that it would share information on successful approaches with the broader scholastic community.

Background on This User's Guide

Pursuant to the July 11, 2003 clarification letter, OCR desired assistance in providing technical guidance to schools on meeting the requirements of Title IX. At OCR's request, NCES produced this guide and commissioned a related technical report by the National Institute of Statistical Sciences (NISS). The intent of this report is to provide guidance on conducting a survey of student interest with respect to Part 3 of the Three-Part Test.

To lay the foundation for the guide, NISS conducted an historical analysis of the use of surveys for Part 3 within the legal and regulatory context of OCR. The history of the use of surveys to comply with Title IX provides a context for identifying good existing practices as well as desirable improvements. To conduct this analysis, OCR provided files to NCES of the 132 cases of possible noncompliance with Title IX that OCR investigated during the period of 1992–2002. These cases involved 130 colleges and universities in 43 states. Such cases either resulted from complaints or arose from compliance reviews conducted by OCR; all were resolved.

In order to ascertain the unique needs of institutions attempting to demonstrate Title IX compliance using Part 3, the files were examined with two general questions in mind. The first was the degree to which the institutions in the OCR Title IX compliance case files, and the subset of those institutions that used Part 3, were similar to the universe of postsecondary institutions that offer intercollegiate sports programs. To the extent that the

institutions in the OCR case files are similar to the larger universe of institutions, it is easier to generalize from their history.

The second question was with regard to the specific survey practices that were used by those institutions that employed a survey. For instance, what kind of data collection process was used? How did institutions ask about student interest in various sports? How was nonresponse handled? NISS examined the survey instruments that have been employed to date and considered the technical challenges to conducting a survey that will be both easy to implement and adequate to ascertaining whether the interests and abilities of the underrepresented sex have been effectively accommodated.

Once the analyses were conducted, it was possible to develop suggestions for an improved process for conducting a Part 3 interest survey. The next sections of this report summarize the analysis of the OCR case files. The final section of this report provides guidance on how to conduct a Part 3 interest survey. It includes procedures that represent the best of the practices found in the OCR case files and further improvements. The practices that are recommended in this guide do not, in some particulars, meet the standards that would govern the collection and analysis of data by a federal statistical agency such as NCES. The goal was to identify and provide guidance on ways to improve practice within the context of compliance with Part 3 of the Three-Part Test.

This User's Guide draws extensively from a technical report, *Title IX Data Collection: Technical Manual for Developing the User's Guide* (Karr, A.F., and Sanil, A.P., 2005), that is provided as a companion to this User's Guide. The technical report was prepared for NCES by the National Institute of Statistical Sciences, a highly respected independent research institute. This User's Guide presents the information in the technical report that is most relevant to the practical concerns of institutions considering the use of a survey to comply with Title IX.

The OCR Case Files

Findings on institutional differences and similarities

There were 130 unique institutions in the OCR case files ("OCR institutions"). The cases were initiated and resolved during the years from 1992 to 2002. Of these, 95 were the subject of a complaint and 35 were the subject of an OCR-initiated compliance review.

About two-thirds of the 130 OCR institutions opted to use Part 3 (n = 86) rather than Parts 1 or 2 (n = 44) to comply with Title IX. There were so few attempts to comply using Part 2 (n = 8) that separate analysis of Part 2 cases was not conducted. About three-fourths of the 86 institutions that achieved compliance using Part 3 did so by means of a student interest survey (n = 67). The remainder achieved compliance with Part 3 in some other manner (n = 19).

In order to gain a sense of how representative the 130 OCR institutions are, they were compared to a base population of 1,723 institutions that include every institution that is a member of at least one of the intercollegiate athletic organizations: the National

Collegiate Athletic Association (NCAA), the National Association of Intercollegiate Athletics (NAIA), and the National Junior College Athletic Association (NJCAA).

The comparisons were made using 14 different characteristics. These are divided into three groups. The first group, Institutional Characteristics, consists of Sector, Geographical Region, Urbanicity, Carnegie Classification, Selectivity, In-State Cost, and Out-of-State Cost. The second group, Student Body Demographics, consists of Enrollment, Percent Female, Percent Black, and Percent Out-of-State. The third group, Athletic Program Characteristics, contains Association Membership, Football, and Number of Sports. Complete details describing the full set of characteristics and a complete set of tables displaying the results summarized here are given in the accompanying technical report.

Although the OCR cases consist of institutions of all types located in 43 states, there are some differences between them and the comparison population. OCR cases tend to involve large state colleges and universities (including doctoral universities) that are highly involved in intercollegiate sports. More specifically, relative to the comparison institutions, they are more likely to have football as one of their conference membership sports, are more likely to participate in all four major conference sports (i.e., baseball, football, basketball, and track), and are more likely to belong only to the NCAA than to one of the smaller sports associations. In addition, they are more likely to be located in the Southeast and the Far West than are the comparison institutions.

The OCR institutions that used Part 3 to achieve compliance, compared to Part 1 and Part 2 users, are more likely to be public, 2-year institutions and to have a greater percentage of female students and Black students. They are also more likely to be small, less expensive, and located in the Southeast. In contrast, they are less likely to be doctoral universities, belong to the NCAA, participate in conference sports, and to have out-of-state students than those institutions that opted to use Parts 1 or 2.

About three-fourths of the institutions that achieved compliance using Part 3 did so by means of a student interest survey (n = 67).¹ The differences among institutions using Part 3 that employed an interest survey and those that did not are few and are detailed in the technical report.

Finally, there is some evidence that use of Part 3 and the use of surveys to achieve Part 3 compliance have increased over time.

In summary, the OCR institutions tend to be those that educate large numbers of undergraduates. However, the OCR institutions that used Part 3, including those that used a student interest survey, tend to be smaller institutions that are not as involved at the

¹ Following the completion of the NISS analysis, OCR provided documentation showing that 10 of the 29 institutions identified as not having surveys in the NISS report had, in fact, used a survey. However, copies of the survey instruments used were not available for analysis. The numbers in this guide have been adjusted to reflect the change in these 10 cases.

most competitive levels of intercollegiate athletics. We have no way of ascertaining why institutions that use Part 3 differ from those that do not. There is no reason, however, from a statistical and measurement perspective, for student interest surveys to be more appropriate for one type of institution than another.

Current Survey Practices

In this section, we summarize the information obtained from the 52 OCR files containing survey instruments.² This information was used as the foundation for the guidance we provide in the last section on how to conduct a Part 3 interest survey.

The 52 instruments were classified along 20 categorical dimensions.

The first set of dimensions consists of the following properties of the survey itself:

- Whether the case is the result of a complaint against the institution or routine monitoring activities of OCR.
- The target population, which may consist of the entire student body, only females, or some other group. This is the group whose interests and abilities the survey purports to describe.
- The sampling mechanism, which indicates whether there is explicit selection of a subset of the target population or whether the survey is meant to be a census, that is, completed by all students.
- The degree of proactivity in conducting the survey. This is the extent to which the institution exerted effort to secure a reasonable response rate.

The second set of dimensions consists largely of characteristics of the survey instrument. Most of these are the presence or absence of specific kinds of questions:

- Age: are respondents asked their age?
- Class: are respondents asked which class (i.e., freshman, ...) they are a member of?
- Gender: are respondents asked their gender?
- Spectator interest: are respondents asked about their interest as spectators, either in person or via television or radio, of athletic events?
- Attitudes about athletics: are respondents asked explicitly about their attitudes regarding athletics in general or intercollegiate athletics?
- Opinion about the institution's athletic programs: are respondents asked explicitly for opinions regarding whether the institution's athletic programs address their needs (as opposed to implicit questions associated with whether their personal interests and abilities are satisfied)?
- Identifying information: are respondents asked for information that identifies them?
- Ability: are respondents asked explicitly about their athletic ability?

² There were a total of 15 OCR case files that did not contain an instrument despite being recorded as having carried out a survey.

- Recruiting: are respondents asked whether they had been recruited as athletes by a postsecondary institution?

The third set of dimensions is the global characteristics of the instrument:

- Caveats and benefits: are questions regarding intercollegiate athletics accompanied by a statement of the potential disadvantages (for example, time spent in practice or missed classes) and advantages (for example, financial aid)?
- Reasons for the survey: are respondents told why the survey is being conducted?
- Statement of confidentiality: are respondents promised explicitly that their responses will be kept confidential?

The final set of dimensions concerns how athletic interest, experience, and ability are represented in the survey instrument.

- For interest, representation of sports (i.e., type of sports activity)
- For interest, number of levels (i.e., amount of interest)
- For experience, representation of sports
- For experience, number of levels.

In examining these surveys, it was found that close to two-thirds (44 of the 67) were administered in response to a complaint being filed. Detailed data were available on three-fourths of these surveys (52 of the 67). Of the institutions with available surveys, a majority included the entire student body in its purview rather than some other group (e.g., campus visitors or applicants for admission). Also noteworthy is that a majority of these surveys included all students rather than just women, as might be expected from the language in Part 3 of the Three-Part Test, which refers only to the interests of the underrepresented sex as being relevant to compliance. Nearly two-thirds of these surveys used a census approach, which attempted to ascertain the responses of all students rather than those of only a sample of students.

As best as could be determined, few if any institutions made an effort to obtain high response rates. The typical institution simply distributed the questionnaires in a central place. Only a few provided incentives for students to complete the survey or provided any indication that they attempted to contact nonrespondents in order to induce them to complete the survey.

A majority of institutions included questions on student age, class (freshman, sophomore, etc.), and gender. More than three-fourths did not ask respondents to provide identifying information.

Most did not ask about student interest as athletic spectators, or their attitude towards intercollegiate athletics in general. Less than one-half of the surveys included a question about their institution's athletic program, and less than 20 percent (10 of 52) of survey instruments contained direct questions about whether interests as spectators are being met. One example of a direct question about interests being met is the following:

“Are your desires for participation in [recreational, intramural, intercollegiate, club] sports met at XXX?”

Less than one-third of the 52 institutions explicitly asked respondents to rate their athletic abilities. Many institutions asked about previous high school experience or previous collegiate experience as a surrogate for asking about athletic ability.

Only a few institutions asked students whether or not they had been recruited as athletes. Less than one-third reported that students were told the purpose of the survey. Less than 20 percent of surveys promised student confidentiality to potential respondents.

Given the purpose of the study, every survey contained some question or questions concerning student interest. There are two separate issues: (1) how were individual sports represented, and (2) how many levels of interest were offered to respondents as part of the question wording.

The most substantive of the differences among the survey instruments are in how they operationalize these concepts. These differences are of two kinds. The first is how sports are represented, which occurs in the instruments three ways:

- By fixed entries (e.g., archery, baseball, basketball, ...) in the “Sport” column.
- By blank entries in the “Sport” column, in which respondents are asked to write in the names of sports for which they wish to provide information.
- By blank entries in the “Sport” column, into which respondents are to place numerical codes for sports of interest, which are listed somewhere in the instrument.

Nearly two-thirds of surveys provided fixed entries for individual sports as a way of representing them in the questionnaire.

The second difference is the number of levels provided to respondents as response categories, which ranges from one (“some interest”) to ten levels. The dominant practice is to offer simply one (non-zero) level of interest for respondents, treating this as a yes/no question. In contrast to the limited variation in questions about interest, questions about previous experience varied widely. There was no predominant pattern of question wording and type, even though every survey contained questions about previous experience. Similarly, the number of levels of experience varied widely, suggesting an absence of a standardized format for response.

Several (15 of 52), albeit a minority, of the instruments contained statements of caveats and benefits associated with participation in intercollegiate athletics. The following statement appeared in several of the instruments:

“Intercollegiate athletics usually requires athletes to devote 20 hours of practice each week during the season. The athlete is expected to follow an individual regimen of training during the off-season. Many intercollegiate athletes receive financial awards that cover all or a portion of school expenses. Athletes are

required to travel and occasionally miss classes. They are given access to academic support services, including tutoring, counseling and study tables.”

It is inherent in Part 3 surveys that questions of interest and ability need to be asked of respondents with respect to many different sports. A number of surveys struggled with this problem unsuccessfully, in that they did not use a format that both maximized the possibilities of obtaining correct information and facilitated responses because it was easy to use. Some of the questionable procedures include insufficient definition of the number of levels of interest, unnecessary forced-choice response categories, and insufficient space for free-form responses. In addition, surveys that use only free-form responses may lead to underreporting of levels of interest in sports that do not immediately occur to respondents as they are filling out the questionnaire.

Many questions included on these surveys appeared to be irrelevant to the purpose of Title IX, including questions about race and ethnicity and student living arrangements. Eliminating superfluous questions would improve these survey instruments.

A major problem with these surveys is that response rates reported by the OCR institutions are typically low. One-half of these institutions reported the data needed to compute their survey response rates; the range varied from 8 percent to 70 percent. Coupled with the problem of low response rates is the lack of attention to questions of nonresponse bias. While it is a reasonable conjecture that most student nonresponse is due to the lack of interest in athletics on the part of those students, there is no evidence that any institution sought to test this view or, alternatively, that they informed students that nonresponse would be interpreted as lack of interest.

On a positive note, while some of the question wording is awkward, there was little or no attempt to slant the responses on the part of the 52 survey institutions by biasing question wording.

In order to see whether student athletic interest surveys have been done more generally, an Internet search for additional survey instruments identified a number of institutions that reported such surveys, including five for which survey instruments were obtained. They are similar to the surveys conducted by the OCR institutions in that they were used to survey the student body rather than applicants, they tend to be complete censuses rather than based on samples, they use questions about experience as surrogates for questions of ability, they do not take steps to deal with any nonresponse problem they may have faced, and they include a question on gender.

A major difference between these five surveys and the instruments used by the OCR institutions is that four of the five were conducted using the Web. In part, this reflects the evolution of survey technology, since these surveys were conducted between the years 2000 and 2004, while the surveys conducted by OCR institutions were carried out between 1992 and 2002 at the latest. However, the additional surveys failed to exploit the full potential of Web interactivity and of Web technology that excuses respondents from unnecessary responses and can help guarantee respondents' confidentiality.

In summary, the 52 surveys conducted by OCR institutions and the five Internet surveys exhibit a mixture of strengths and weakness. Lack of explicit bias is one of the great strengths of these instruments, as is the tendency of more recent surveys to explicitly use the Web for their data collection process. One weakness of many of these instruments is that their representation of interest, ability, and experience across many sports is often confused and unnecessarily complex, while another weakness is the inclusion of irrelevant information on the questionnaire. The most serious problem, though, is the inattention to low response rates. A complete discussion and summary of these issues is contained in the technical report.

How to Conduct a Survey of Student Interest

A survey instrument and data collection process that improves on current practice by utilizing the newest Internet technologies and adopting procedures that will generate high response rates is presented below. It avoids many of the problems found in the examination of current practice and seeks to simplify the process for institutions that might wish to comply with Part 3 of the Three-Part Test by means of a student interest survey.

The technical requirements of such a survey, which is designed to measure whether the “interests and abilities of the members of that underrepresented sex have been fully and effectively accommodated by the present program,” indicate that certain choices will make it easier to conform to legal requirements as well as the technical requirements of surveys. All of the criteria for doing so are set out in the technical report.

Problem formulation

In order to simplify the presentation, attention is restricted to a single sport not currently offered at the varsity level for women. We assume that women are the underrepresented sex. An institution employing Part 3 is attempting to determine, using data collected from a student survey, whether the interests and abilities of women have been fully and effectively accommodated by the present program.

An operational formulation of the problem is as follows: There are a minimal number of team members necessary to “field” a team in the given sport. The institution must specify this number. It depends on the sport and possibly contextual factors. For instance, a basketball team cannot play with fewer than five players, but this is not the minimal number of players needed for basketball. Instead, the minimal number is presumably in the range 10–15. NCAA or other association rules may provide other bounds for the number of players, but prevailing values in the conference to which the institution belongs are also relevant.

There is, conceptually, some number of women students who possess the interest and ability to compete in the sport at the varsity level. If that number were known with certainty, then determination of compliance by OCR would be straightforward:

- If the number of women with interest and ability is equal to or greater than the minimum number of players required to field a team, then the institution must take additional steps that could lead to offering the sport at the varsity level.

- If the number of women with interest and ability is less than the minimum number of players required to field a team, then the institution does not have to take steps to offer that sport.

It is the “known with certainty” qualification in this formulation that creates challenges for a survey. In particular, it raises questions about the target population to be surveyed, whether a census or sample is to be used, how frequently the survey should be conducted, and most importantly, how to deal with the problem of students not responding to the survey and the possible bias introduced by such nonresponse.

Target population

The ideal implementation of this kind of survey should fix the population to be surveyed to be the entire undergraduate student body. Even though compliance with Title IX for intercollegiate athletics is restricted to accommodating the interests of full-time undergraduates of the underrepresented sex, a survey of the entire undergraduate population can provide institutions with evidence related to the degree to which unmet demand differs for males versus females and full-time versus part-time students; it avoids the suggestion that the institution is concerned only with the needs of the underrepresented sex and eliminates the need to restrict access to the survey to only a subset of the undergraduate body. Even though the entire undergraduate student body is surveyed, the determination of the number with interest and ability for purposes of compliance with Part 3 should be restricted to full-time students of the underrepresented sex.

An alternative to surveying the entire student population is to survey a catchment population consisting of both the entire student population and potential applicants. However, the use of a catchment population is very problematic. The size of the catchment area is dependent on the student population served by a specific institution. The catchment area might be local for a rural community college, national for a small state college, and international for large 4-year and doctoral institutions. Even if definable, such a large target population is almost surely unreachable in any meaningful way and thus is not recommended here.

Census versus sample

There are two alternative possibilities for selecting cases. The first would be to conduct a census whereby all undergraduates are asked to provide information regarding whether their interests and abilities are accommodated by the present program. The second possibility would be to conduct a sample survey: only a subset of students is asked to provide information regarding whether the present program accommodates their interests and abilities.

While a census is a larger scale undertaking than a sample survey, it is superior in almost every respect for Part 3 interest surveys. Using a census avoids several difficult issues associated with sample surveys: selection of the sampling mechanism, selection of the sample size, and calculation of sampling error. In fact, a majority of the OCR institutions using a survey attempted to conduct a census. For those OCR cases not using a census approach, a few institutions selected a random sample while others used a non-random

purposive sample of what the institution took to be an interested population, such as students in physical education classes. For technical reasons, if an institution intends to select a sample, it is necessary to select an extremely large sample in order to get a precise estimate of interested students of the underrepresented sex. Further, even with technically sophisticated sampling and analysis procedures, the compliance implications of sample estimates are unclear. For instance, how is an institution to handle the margin of error in a sample survey that generates an estimate of 15 interested and able women (with a margin of error of ± 3) in a sport that requires 18 people to form a team? In contrast, the implications of a census in which 15 women identify interest and ability in a sport that requires 18 are clear – the institution has determined that there are an insufficient number of interested females on campus to field that sport. Thus, the recommended data collection strategy is to conduct a census (i.e., to survey all students) rather than to select a sample of respondents.

Periodicity

How frequently should a survey of student interests be conducted? Since most cases of survey use in the OCR files were in response to complaints being filed, there is little case history to indicate how frequently an institution acting proactively should administer a survey. A survey of the entire undergraduate student body that generates high response rates and demonstrates that the interests of the underrepresented sex are fully accommodated might serve for several years if the demographics of the undergraduate population at the institution are stable and if there are no complaints from the underrepresented sex with regard to a lack of athletic opportunities. In contrast, an institution with rapidly changing demographics, or whose previous survey detected levels of student interest and ability in particular sports that were close to the minimum number of players required to field a team, or an institution receiving complaints with regard to unmet needs should consider more frequent surveys.

Excluding students

With respect to varsity participation, part-time students and members of the overrepresented sex should not be included in the calculation of the number of students in the underrepresented sex who have interest and ability. Should institutions exclude seniors from the calculation of this number if the survey is conducted at a point in time when it is too late for the seniors who have completed the survey to participate in the sport in which they have expressed interest and ability? The inclusion of seniors in the calculation of this number is recommended, particularly for those institutions that do not plan to implement an annual survey. The inclusion of seniors provides the best estimate for future years of the number of students in the underrepresented sex who have the interest and ability, and acknowledges the reality that creating a new sports team at the intercollegiate level may be a multiyear process.

Confidentiality

When asking for any personal or potentially individually identifiable data, protecting the respondents' confidentiality is essential to obtaining high quality data and to achieving acceptable response rates. The recommendation to use e-mail and the Internet to improve on current practices may seem to some as increasing the risks of violating confidentiality. However, by utilizing the newest Internet technologies, there are readily available

alternatives (such as one-way hashed keys) that make it possible to track who has responded, while at the same time protecting the confidentiality of their responses. One such alternative would be to embed an encrypted ID within the link to the URL of the data collection instrument. The encrypted ID would be severed from the response itself and used in the database file containing respondents' e-mail addresses to mark that a response had been received. The software would then use the encrypted ID to record that a person has responded without being able to link to that person's response. This strategy allows an institution to track responses, conduct nonresponse follow-up and to protect against multiple responses by a single individual. For example, the institution could use the database with encrypted IDs and e-mail address (but no individual responses to survey items) to send e-mail messages to nonrespondents.

Nonresponse

The final issue is the question of nonresponse. Most OCR institutions that included surveys either did not report their response rates or reported them as low. None explicitly considered any kind of nonresponse bias analysis to determine whether those students who did not respond to the survey differed in interests and abilities from those who responded.

In general, institutions have treated nonresponse as indicating no interest in future sports participation. This assumption is defensible if all students have been given an easy opportunity to respond to the survey, the purpose of the survey has been made clear, and students have been informed that the institution will take nonresponse as an indication of lack of interest.

The procedures for conducting an analysis of nonresponse bias and generating statistically valid adjustments to the original data based on such an analysis are complicated and beyond the capacity of some institutions. Thus we conclude that the best method for dealing with nonresponse is to generate high enough response rates that nonresponse can safely be ignored for the purposes of Title IX compliance. A web-based survey instrument, which is described in detail below, can accomplish that goal, either by being made mandatory or by being provided in a context in which most students will complete it. For instance, a web-based survey that students have to complete or actively by-pass to access the web screens that allow them to register for courses is likely to produce very high response rates. Another possibility is for institutions to send an e-mail to all students that describes the purpose of the survey, includes a link to the web-based survey, and includes a disclaimer that states that if a student does not respond to the survey, the institution will understand that the student is not interested in additional athletic participation. Although rates of nonresponse may be high with this procedure, nonresponse is interpretable as a lack of interest.

In addition, a data collection instrument suitable for gathering information regarding whether "interests and abilities of the members of the underrepresented sex have been fully and effectively accommodated by the present program" with minimal respondent effort is best implemented on the Web. This allows effective implementation of skips and other selection devices through which a respondent can go to a list of sports and choose those that the respondent wishes to respond to in detail.

The prototype

Our proposed survey instrument, a prototype, consists of eight screens. Not all respondents need to proceed through all eight screens.

Screen 1 introduces the survey and informs respondents of the purposes of the census, provides an explicit confidentiality statement, and provides an explanation of the structure of the instrument.

Screen 2 requests four items of demographic information—age, year in school, gender, and whether the student is full-time. The dropdown boxes and radio buttons constrain responses to those allowed by the institution conducting the census.

Screen 3 explains the next set of questions—on athletic experience, participation, and ability. It allows respondents with no interest in future participation in athletics to so indicate and complete the instrument without having to view any of the other screens.

Screen 4 of the proposed instrument is reached only by respondents who wish to enter information concerning athletic experience, interests, and abilities. It lists the responses that will be allowed when the information is requested (on screen 6), and contains a neutral statement of the burdens and benefits associated with participation in intercollegiate athletics. A more sophisticated version of the instrument might contain hyperlinks to definitions of various terms.

Screen 5 allows respondents who wish to enter information concerning athletic experience, interests, and abilities to *select the sports for which they wish to provide information*. The purpose of this is to reduce the size and complexity of screen 6, on which the information is actually entered. Only those sports selected on screen 5 are listed on screen 6. The NCAA administers championships in 23 sports for its member institutions. In addition, it recognizes 7 “emerging sports” that are intended to provide additional athletics opportunities to female student-athletes. The number of intercollegiate sports sanctioned by the NAIA and NJCAA is smaller. We recommend listing all the NCAA championship and “emerging sports” on screen 5.

Screen 6 is where actual information regarding experience, current participation, interest in future participation, and self-assessed ability is entered. These four categories appear side-by-side, which is sensible conceptually and psychometrically but was not done in any of the 57 survey instruments in the OCR case files. The allowable responses, which are constrained by radio buttons that also prevent multiple responses, are as follows:

- For experience at the high school level, “Recreational,” “Intramural,” “Club,” “Junior Varsity” and “Varsity.”
- For current participation, “Recreational,” “Intramural,” “Club” and “Varsity.”
- For interest in future participation at the institution: “Recreational,” “Intramural,” “Club” and “Varsity.”
- For ability: “Yes, I have the ability” and “No, I would need to develop the ability.”

The reason for inclusion of four separate categories is that a determination of interest and ability is related to the pattern of response across these categories. For example, to determine the number of students of the underrepresented sex with interest and ability in a varsity sport, the students to be counted could be those who express an interest in future participation at the varsity level, indicate that they have the ability to do so, and have current or high school experience beyond the recreational level.

Although not shown in screen 6, hyperlinks could be used to provide access to definitions of these terms (or any other terms, for example, sports with which not all respondents may be familiar). Placing the definitions in a separate window avoids impeding the flow of the survey instrument.

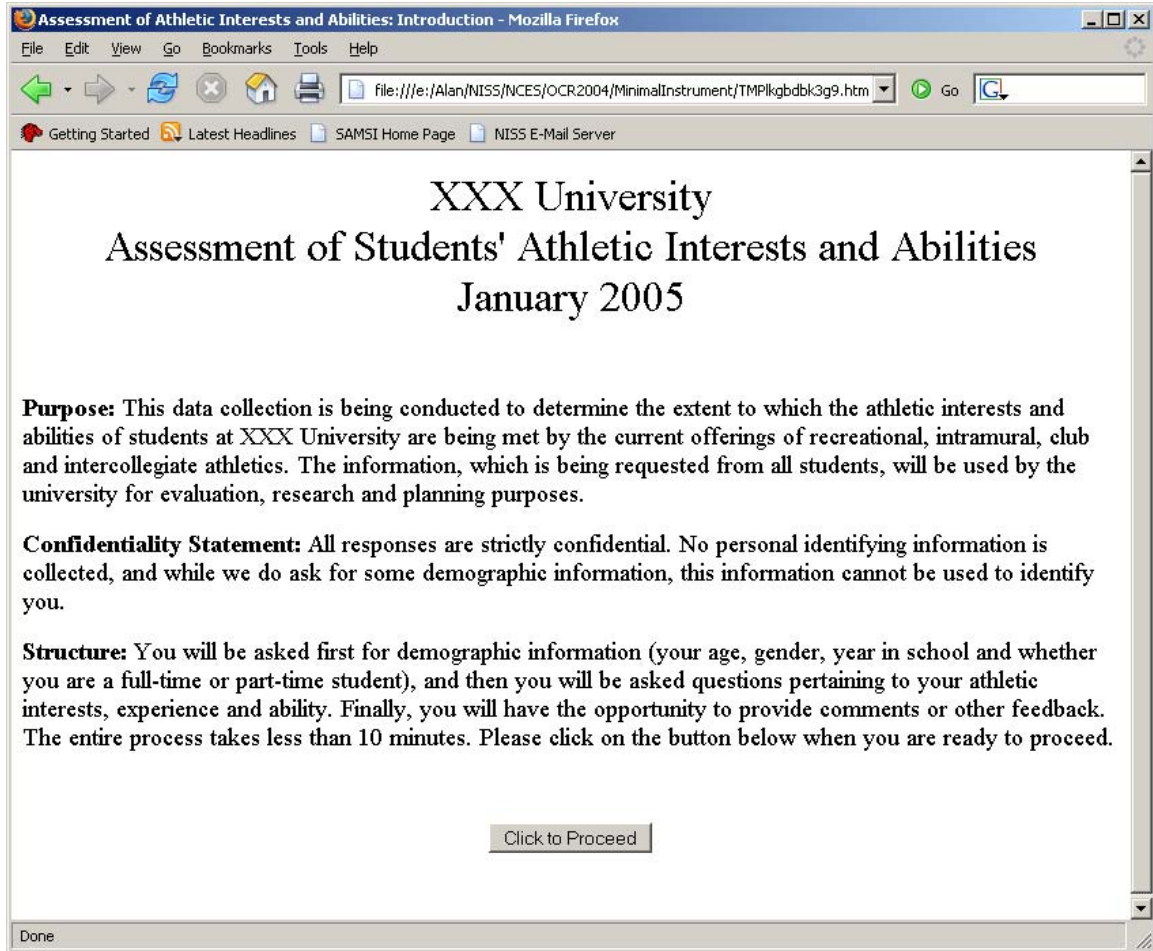
Screen 7 offers respondents the opportunity for comments or other feedback, asks them to click a button to record their responses, and thanks them for participating.

Screen 8 is a pop-up screen that appears only for full-time students of the underrepresented sex who have expressed an interest and ability to participate at a higher level. It lists the sport(s) in which the student has indicated an ability and interest in future participation, and asks the student to provide contact information if the student wishes to be contacted by the athletics department or some other organization in the university with respect to her interests. The student can exit this screen without providing the requested information by indicating that she does not wish to be contacted.

This prototype web-based data collection instrument has the following properties:

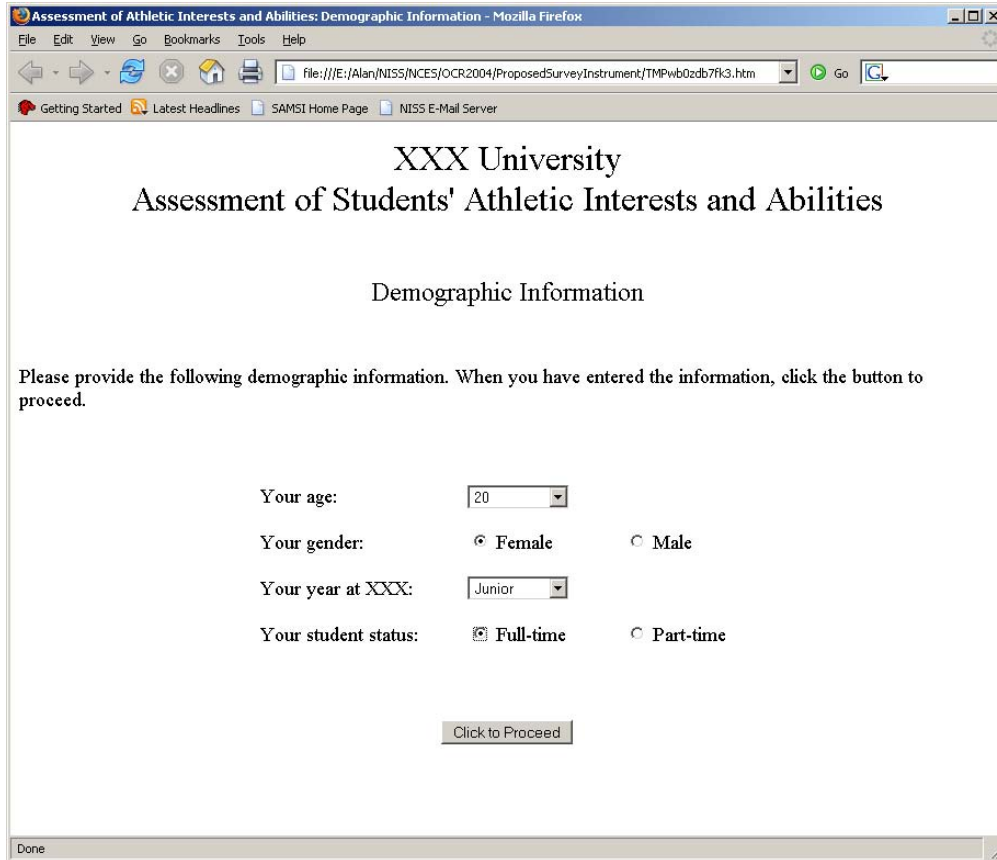
- Simplicity;
- Explicit explanation of reasons for the data collection;
- Explicit confidentiality statement;
- Opportunity for global “no interest or ability” response;
- Opportunity to filter sports for which detail is provided;
- Nonprejudicial wording of items;
- Inclusion of all of experience, current participation, interest in future participation, and ability; and
- Fixed-form responses.

Screen 1: Initial screen of the prototype data collection instrument, containing the purposes of the survey, a confidentiality statement, and an explanation of the structure of the instrument.



SOURCE: NISS-produced prototype.

Screen 2: Second screen of the prototype data collection instrument, in which respondents provide four items of demographic and student status information. This example shows a respondent who is 20 years old, female, a junior, and a full-time student.



The screenshot shows a Mozilla Firefox browser window with the title "Assessment of Athletic Interests and Abilities: Demographic Information". The address bar shows a file path: "file:///E:/Alan/NISS/NCES/OCR2004/ProposedSurveyInstrument/TMPwb0zdb7fk3.htm". The browser's bookmark bar includes "Getting Started", "Latest Headlines", "SAMSI Home Page", and "NISS E-Mail Server".

The main content area of the browser displays the following text and form elements:

XXX University
Assessment of Students' Athletic Interests and Abilities

Demographic Information

Please provide the following demographic information. When you have entered the information, click the button to proceed.

Your age:

Your gender: Female Male

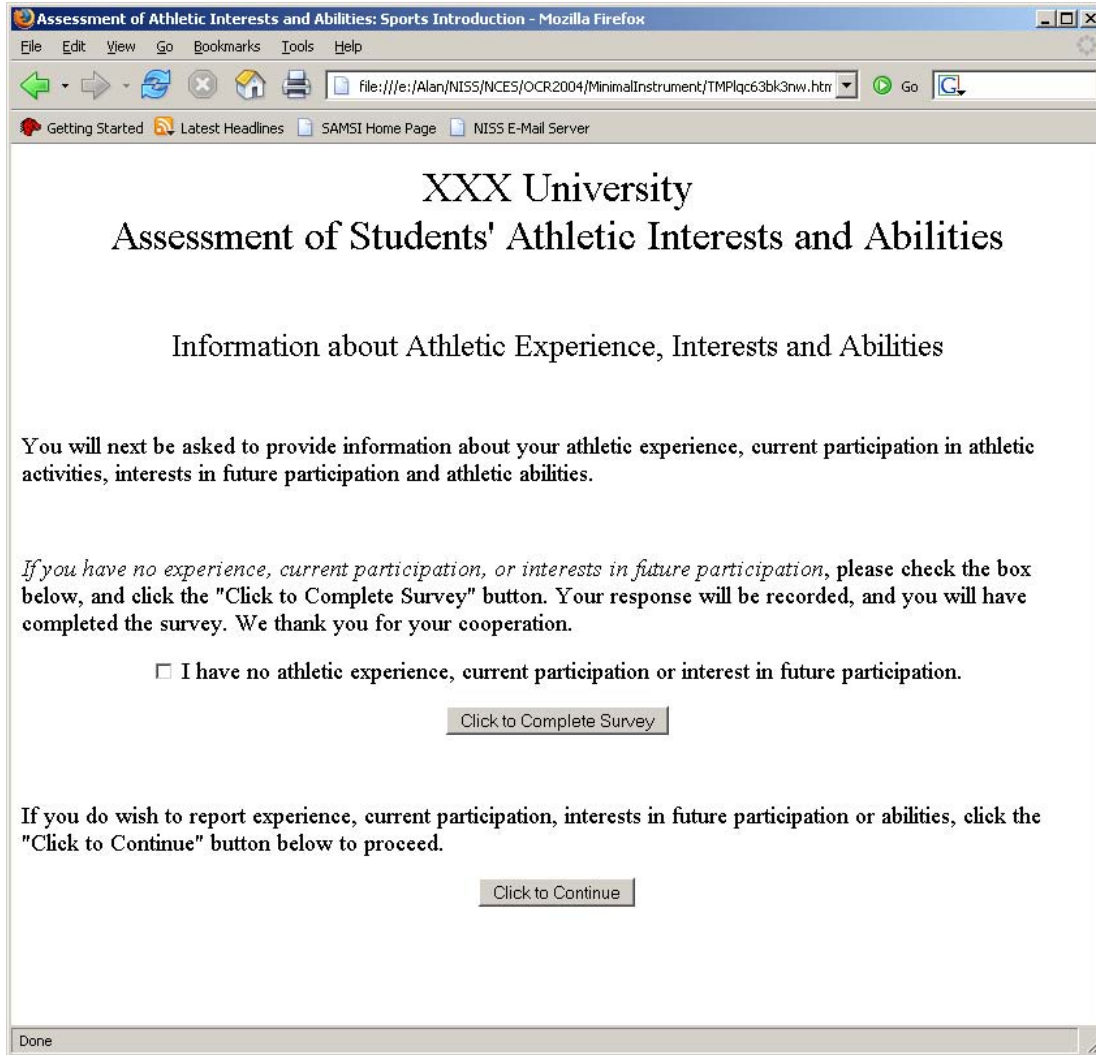
Your year at XXX:

Your student status: Full-time Part-time

Done

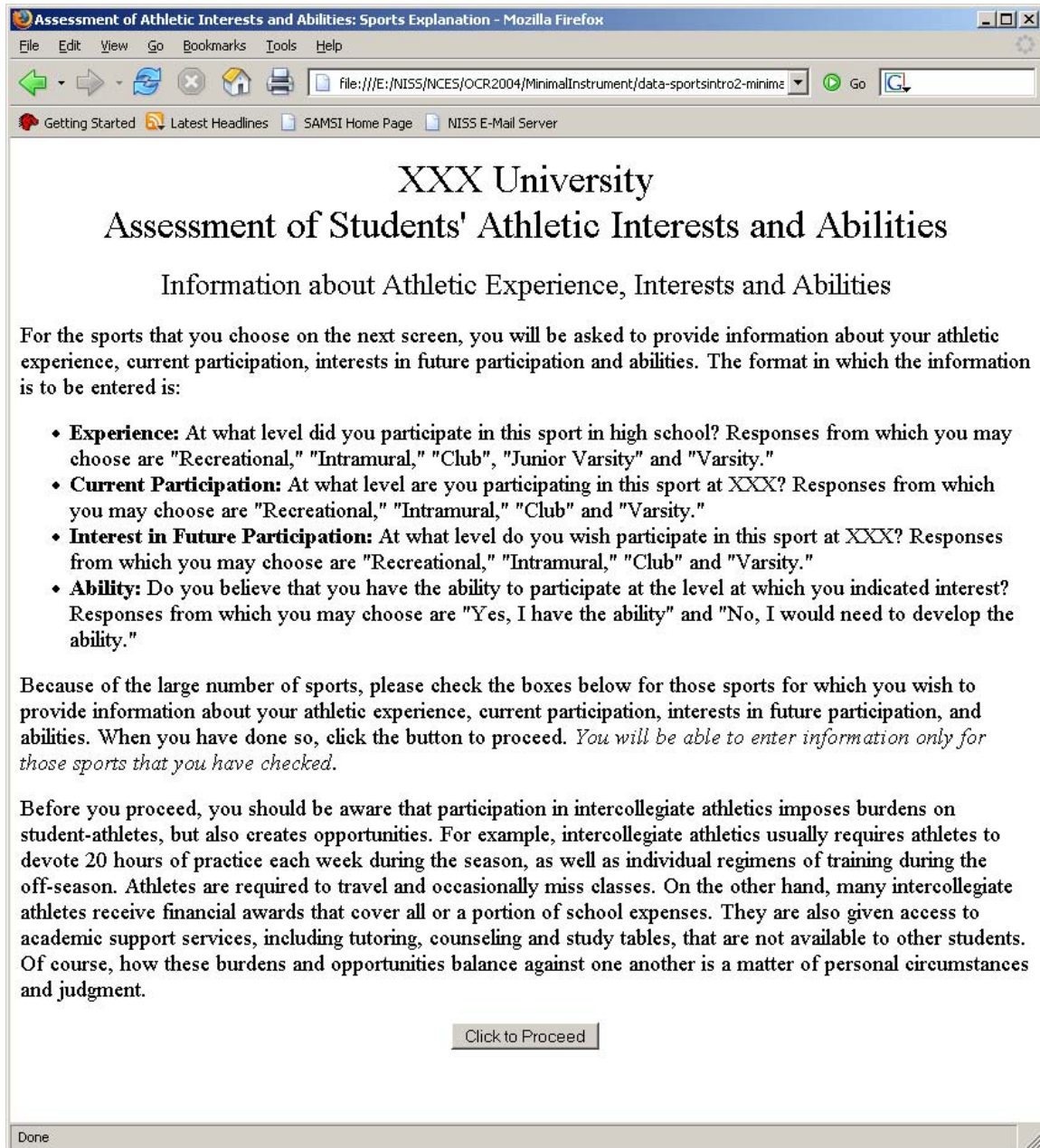
SOURCE: NISS-produced prototype.

Screen 3: Third screen of the prototype data collection instrument, on which respondents with no experience, current participation, or interest in future participation can so indicate and complete the process.



SOURCE: NISS-produced prototype.

Screen 4: Fourth screen of the prototype data collection instrument, which is reached only by respondents who wish to enter information concerning athletic experience, interests, and abilities.



SOURCE: NISS-produced prototype.

Screen 5: Fifth screen of the prototype data collection instrument, which is reached only by respondents who wish to enter information concerning athletic experience, interests, and abilities. Here, respondents select the sports for which they wish to provide information. The list is illustrative, consisting of the 23 sports in which the NCAA conducts championships and 7 “emerging sports.” The respondent illustrated here has chosen basketball, lacrosse, and volleyball, which appear in screen 6.

Assessment of Athletic Interests and Abilities: Sports Selection - Mozilla Firefox

File Edit View Go Bookmarks Tools Help

file:///E:/Alan/NISS/NCES/OCR2004/MinimalInstrument/TMPigwbracy0.h

Getting Started Latest Headlines SAM51 Home Page NISS E-Mail Server

XXX University

Assessment of Students' Athletic Interests and Abilities

Information about Athletic Experience, Interests and Abilities

Because of the large number of sports, and since any one person is unlikely to have experience, current participation, or interest in future participation in more than a few, please check the boxes below for those sports for which you wish to provide information about your athletic experience, current participation, interest in future participation, and abilities. When you have done so, click the button to continue. *You will be asked to enter information only for those sports that you have checked.*

Sport	Sport	Sport
<input type="checkbox"/> Archery	<input type="checkbox"/> Golf	<input type="checkbox"/> Squash
<input type="checkbox"/> Badminton	<input type="checkbox"/> Gymnastics	<input type="checkbox"/> Swimming and Diving
<input type="checkbox"/> Baseball	<input type="checkbox"/> Ice Hockey	<input type="checkbox"/> Synchronized Swimming
<input checked="" type="checkbox"/> Basketball	<input checked="" type="checkbox"/> Lacrosse	<input type="checkbox"/> Team Handball
<input type="checkbox"/> Bowling	<input type="checkbox"/> Rifle	<input type="checkbox"/> Tennis
<input type="checkbox"/> Cross Country	<input type="checkbox"/> Rowing	<input type="checkbox"/> Indoor Track and Field
<input type="checkbox"/> Equestrian	<input type="checkbox"/> Rugby	<input type="checkbox"/> Outdoor Track and Field
<input type="checkbox"/> Fencing	<input type="checkbox"/> Skiing	<input checked="" type="checkbox"/> Volleyball
<input type="checkbox"/> Field Hockey	<input type="checkbox"/> Soccer	<input type="checkbox"/> Water Polo
<input type="checkbox"/> Football	<input type="checkbox"/> Softball	<input type="checkbox"/> Wrestling

Done

SOURCE: NISS-produced prototype.

Screen 6: Sixth screen of the prototype instrument, on which respondents enter information concerning experience, current participation, interest in future participation, and ability *only for those sports selected on screen 5.*

XXX University
Assessment of Students' Athletic Interests and Abilities
 Information about Athletic Experience, Interests and Abilities

The sports listed below are those you selected on the previous screen.

- *If the list is not correct, please use your browser's back button to return to the previous screen and modify your choices.*
- *If the list is correct, please fill in all applicable responses. You do not need to respond to every question, and missing responses will be treated as (depending on category) "No Experience," "No Current Participation," "No Interest in Future Participation" and for Ability, "Not applicable." When you have completed all answers that you wish to complete, click the button to record your responses and proceed to the final part of the survey.*

Sport	Experience: At what level did you participate in this sport in high school?	Current Participation: At what level are you participating in this sport at XXX?	Interest in Future Participation: At what level do you wish to participate in this sport at XXX?	Ability: Do you believe that you have the ability to participate at the level at which you indicated interest?
Basketball	<input type="radio"/> Recreational <input type="radio"/> Intramural <input type="radio"/> Club <input type="radio"/> Junior Varsity <input type="radio"/> Varsity	<input type="radio"/> Recreational <input type="radio"/> Intramural <input type="radio"/> Club <input type="radio"/> Intercollegiate	<input type="radio"/> Recreational <input type="radio"/> Intramural <input type="radio"/> Club <input type="radio"/> Intercollegiate	<input type="radio"/> Yes, I have the ability <input type="radio"/> No, I would need to develop the ability
Lacrosse	<input type="radio"/> Recreational <input type="radio"/> Intramural <input type="radio"/> Club <input type="radio"/> Junior Varsity <input type="radio"/> Varsity	<input type="radio"/> Recreational <input type="radio"/> Intramural <input type="radio"/> Club <input type="radio"/> Intercollegiate	<input type="radio"/> Recreational <input type="radio"/> Intramural <input type="radio"/> Club <input type="radio"/> Intercollegiate	<input type="radio"/> Yes, I have the ability <input type="radio"/> No, I would need to develop the ability
Volleyball	<input type="radio"/> Recreational <input type="radio"/> Intramural <input type="radio"/> Club <input type="radio"/> Junior Varsity <input type="radio"/> Varsity	<input type="radio"/> Recreational <input type="radio"/> Intramural <input type="radio"/> Club <input type="radio"/> Intercollegiate	<input type="radio"/> Recreational <input type="radio"/> Intramural <input type="radio"/> Club <input type="radio"/> Intercollegiate	<input type="radio"/> Yes, I have the ability <input type="radio"/> No, I would need to develop the ability

[Click to Proceed](#)

SOURCE: NISS-produced prototype.

Screen 7: Seventh and potentially final screen of the prototype data collection instrument, which offers respondents the opportunity to provide comments or other feedback, or to request being contacted by the athletic department. Only respondents who check the box are taken to screen 8.

Assessment of Athletic Interests and Abilities: Completion - Mozilla Firefox

File Edit View Go Bookmarks Tools Help

file:///e:/Alan/NISS/NCES/OCR2004/MinimalInstrument/TMPy5k1nbpyk.

Getting Started Latest Headlines SAMSI Home Page NISS E-Mail Server

XXX University

Assessment of Students' Athletic Interests and Abilities

If you *do not* wish to provide comments or other feedback, simply click the "Click to Record Responses" button.

If you *do* wish to provide comments, please enter them in the box below, and then click the "Click to Record Responses" button.

Some students who have indicated interest and ability in one or more sports will be taken to one final screen, on which they may request to be contacted by the athletic department regarding these interests. If you expressed interest but do not wish to be contacted, check the box below.

Check here if you do not wish to be contacted.

Thank you very much for your cooperation and support!

Done

SOURCE: NISS-produced prototype.

Screen 8: Eighth and final screen of the data collection instrument, reached only by respondents who expressed interest and ability in specific sports, to ask whether they wish to be contacted by the athletic department and if so, to provide contact information.

Assessment of Athletic Interests and Abilities: Demographic Information - Mozilla Firefox

File Edit View Go Bookmarks Tools Help

file:///E:/Alan/NISS/NCES/OCR2004/MinimalInstrument/TMP7gxdeball7.htm

Getting Started Latest Headlines SAMSI Home Page NISS E-Mail Server

XXX University

Assessment of Students' Athletic Interests and Abilities

Request to Be Contacted by Athletic Department

You have indicated interest and ability in one or more sports, as summarized below:

Age:	20
Gender:	Female
Year in school:	Junior
Status:	Full-time
Sport(s):	Lacrosse Experience = Varsity Current Participation = Intramural Interest in Further Participation = Intercollegiate Ability = "Yes, I have the ability"

If you would like to be contacted by the athletic department regarding these interests, please fill in the information below, and then click the "Click to Submit Request" button. This request is optional; your responses have already been recorded. Thank you.

Name:	<input type="text"/>
E-mail address:	<input type="text"/>
Telephone:	<input type="text"/>

Done

SOURCE: NISS-produced prototype.

Technical Details

The above screens are static HTML prototypes. There are at least two paths to create the software for a full-blown implementation.

The first of these is commercial tools for web surveys. The extent to which commercial products support functionality such as confidentiality-preserving nonresponse follow-up is not clear. They may also involve significant hardware and software overheads that are really not necessary in the setting of this chapter.

The second path is to create CGI or Java or Visual Basic scripts that

- Allow movement from each screen to the next, including dynamic generation of all screens other than the initial one in screen 1; and
- Record responses (see additional discussion below).

Implementation of these scripts, together with appropriate security and support, would be a straightforward programming task.

The screens and scripts would be customized with such items as

- The institution's name;
- Details of wording, with defaults provided that can be edited as necessary;
- The list of sports on screen 5; and
- The sport-dependent responses on screen 6.

Storage of responses is straightforward. Other than the free-form text response on screen 7, the instrument generates only a small number of data items for each respondent:

- Four items of demographic information from screen 2;
- One Yes/No global “no athletic interest, current participation, or interest in future participation” from screen 3;
- K Yes/No responses for each sport from screen 5, where K is the number of sports listed there; and
- At most $4K$ categorical responses from screen 6, one each for experience, current participation, interest in participation in the future, and ability.

The total number of items is $5K + 5$. To illustrate, for the 30 sports shown in the example in figure 5, the survey generates 155 items.

There are, of course, constraints on the item values. First, the instrument itself permits only predefined responses to all items (other than on screen 7). This guarantees that responses are interpretable and analyzable. Second, if the value of the global Yes/No response on screen 3 is “No,” then the remaining $5K$ responses are empty. Similarly if the screen 5 response for a sport is “No,” meaning that it is not listed on screen 6, then its four items associated with screen 6 are empty.

Finally, the software could store the data in a comma-separated-variable (CSV) file, with one (5K + 5) item line for each response. Since no identifying information is stored, confidentiality of responses is guaranteed. The CSV data file can then be read and manipulated by tools ranging from Microsoft Excel to more powerful statistical packages such as SAS, SPSS, STATA, or S-Plus.

The results from screen 8, the pop-up for students meeting the criteria of interest and ability, can be sent directly to a designated e-mail address without being stored in the CSV file, thereby insuring that the analytic file contains no personally identifiable information.

Once the data are collected, analysis is quite straightforward. The numbers are simply tabulated and compared to the levels of interest needed to field various varsity teams in particular sports. If the number is less than the minimum, no additional effort is necessary, and if the number is equal to or greater, then the institution must take additional steps that could lead to offering particular sports at the varsity level.

Additional Steps

The purpose of this guide is limited to providing guidance on conducting and interpreting an interest survey. However, institutions should be aware that although findings from a survey can indicate that there are unmet interests and there may be sufficient numbers and ability to field a new sport, additional steps would be necessary before such a sport could be offered. We provide here a brief example of what an institution might do next with survey results. For intercollegiate athletics, OCR enforcement of Title IX is generally related to interest, ability, and competitive opportunity with the institution's competitive region (or sports conference). Within this context, suppose an institution in which women were the underrepresented sex conducted a survey that disclosed that the number of women expressing both interest and ability to play lacrosse at the varsity level was greater than the number of women necessary to field a lacrosse team. If there is competitive opportunity for women's lacrosse by virtue of it being a varsity sport within the institution's conference, or failing that, a varsity sport at other colleges within the institution's competitive region, a next step might be for the institution to call a meeting of women students to see if there is enough interest to field a team. A desirable practice in obtaining attendance at the meeting would involve both direct contact with those women who had self-identified and provided contact information through the survey, as well as advertising the meeting through flyers or announcements in the campus paper. Given sufficient turnout, coaches could then conduct tryouts to evaluate the ability of prospective athletes. An evaluation of ability through a tryout would take precedence over a student's self-appraisal of ability on a survey. Details and authoritative guidance are provided in OCR's own policy guidelines that are distributed with this guide.