

Title IX Athletics Compliance In the Age of Full Cost of Attendance Scholarships and Perpetual Budgetary Pressures

**Daniel A. Cohen, Esq.
Baker Donelson**

dcohen@bakerdonelson.com

Office: (404) 589-3404

Cell: (404) 697-9237

Speaker, Dan Cohen



Chair, Baker Donelson Higher Ed Team

Daniel A. Cohen, Esq.
Baker Donelson

dcohen@bakerdonelson.com

Office: (404) 589-3404

Cell: (404) 697-9237

Title IX: Today's Webinar

- The Three-Prong Test
 - Legal Compliance Options Under Each Prong
 - Pick Your Prong
- Scholarships
 - Legal Compliance
 - Trends and Opportunities
- Enforcement Trends
- Practical Tips for Your Program

Title IX: 13 Program Areas

- Equality of Opportunity
- Equality of Scholarships
- Provision of Resources
 - Equipment and Supplies
 - Scheduling of Games and Practice Times
 - Travel and Per Diem Allowance
 - Tutors
 - Coaches
 - Locker Rooms, Practice and Competitive Facilities
 - Medical and Training Facilities and Services
 - Housing and Dining Facilities and Services
 - Publicity
 - Support Services
 - Recruitment of Student-Athletes

Title IX: The Three-Prong Test

- Equality of Opportunity
 - ***The Three-Prong Test***
 - ***Prong One: Proportionality***
 - Prong Two: Progress towards proportionality
 - Prong Three: Fully and effectively accommodating the interests and abilities of the members of the underrepresented gender
- Equality of Scholarships
- Provision of Resources

Prong One Compliance

NCAA All Divisions (1,072 total schools)

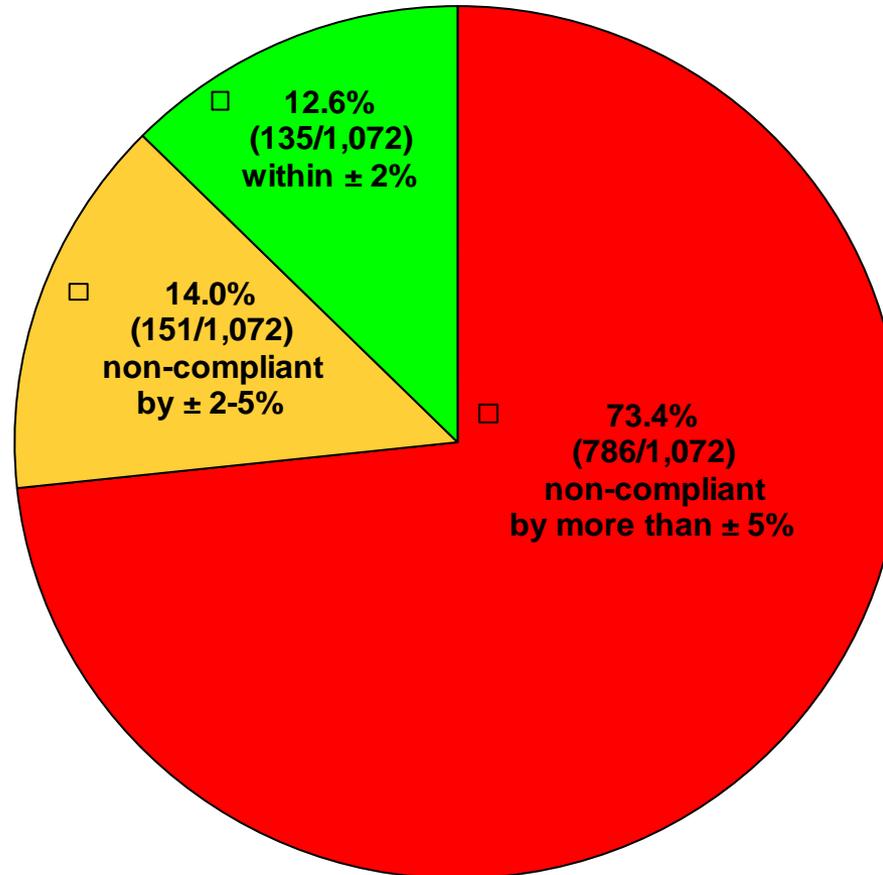
- **< = -5%: 751 schools (70.1%)**
- **Between -5% and -2%: 111 schools (10.3%)**
- **Between + -2%: 135 schools (12.6%)**
- **Between +2% and +5%: 40 schools (3.7%)**
- **> = +5%: 35 schools (3.3%)**

579 schools (54.0%) are -10% or worse.

Statistics were self-reported by schools to the Department of Education for the 2013-2014 school year.

Prong One Compliance

NCAA All Divisions (1,072 total schools)



Prong Two Compliance

- Equality of Opportunity
 - ***The Three-Prong Test***
 - Prong One: Proportionality
 - ***Prong Two: Progress towards proportionality***
 - Prong Three: Fully and effectively accommodating the interests and abilities of the members of the underrepresented gender
- Equality of Scholarships
- Provision of Resources

Prong Three Compliance

- Equality of Opportunity
 - ***The Three-Prong Test***
 - Prong One: Proportionality
 - Prong Two: Progress towards proportionality
 - ***Prong Three: Fully and effectively accommodating the interests and abilities of the members of the underrepresented gender***
- Equality of Scholarships
- Provision of Resources

OCR's 2010 Policy Clarification

1. Requests by students and admitted students that a particular sport be added;
2. requests that an existing club sport be elevated to intercollegiate team status;
3. participation in particular club or intramural sports;
4. interviews with students, admitted students, coaches, administrators and others regarding interest in particular sports;
5. results of surveys or questionnaires of students and admitted students regarding interests in particular sports;
6. participation in interscholastic sports by admitted students; and
7. participation rates in sports in high schools, amateur athletic associations, and community sports leagues that operate in areas from which the institution draws its students.
8. In addition, the 2010 Policy Clarification states that OCR will look at participation in intercollegiate sports in the institution's normal competitive region as a measure of potential interest at the institution.

Prong Three Compliance: Practical Advice

- Legal and Practical Considerations
- Keys to Prong Three Compliance
 - Proactive Steps
 - Documentation
 - Measure Incrementally
 - Involve your General Counsel
 - Support from Administration

Title IX Compliance

**Pick Your Prong.
Make it work on your campus.**

- Practical Tips
- Protection of Attorney-Client Privilege

Second Title IX Program Area: Scholarships

- Equality of Opportunity
- ***Equality of Scholarships***
 - ***Scholarship dollars to be awarded to women and men in same proportion as their respective rates of participation in the intercollegiate athletics program***
 - **Within 1.0%**
 - **Legitimate, non-discriminatory justifications for any larger disparity**
- Provision of Resources

Scholarship Compliance

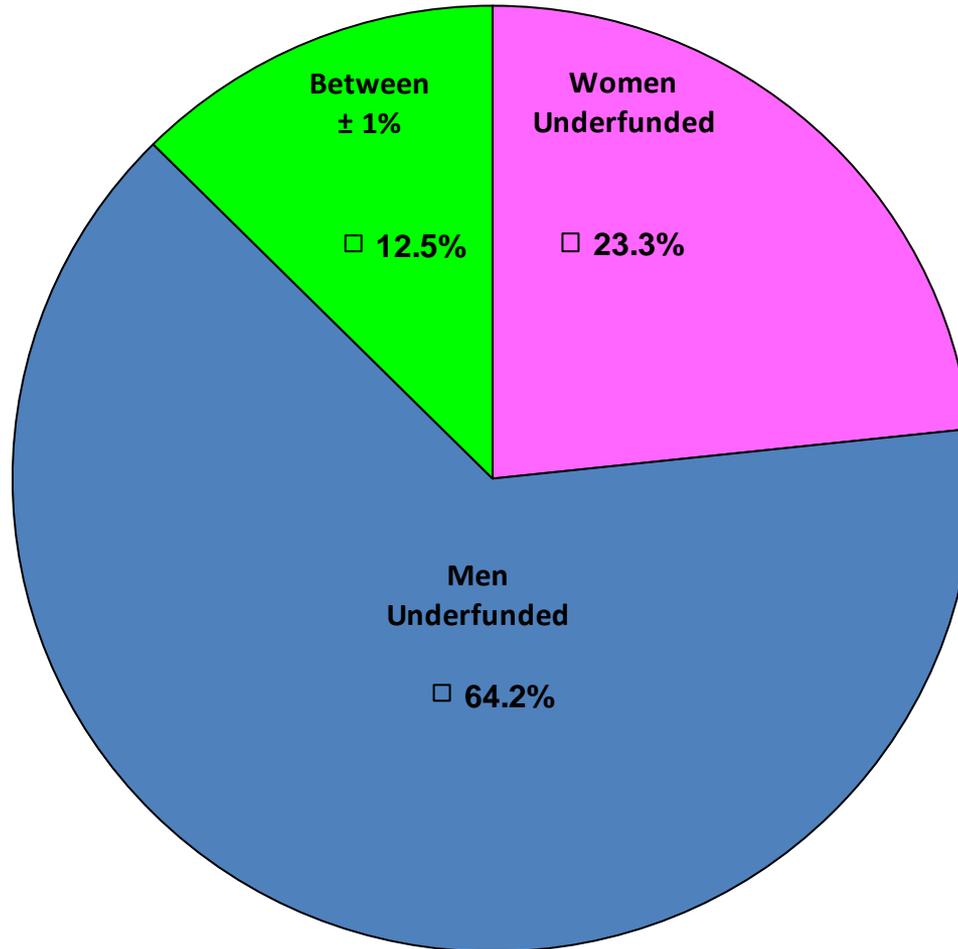
NCAA Divisions I and II (656 total schools)

- $\leq -5\%$: 46 schools (7.0%)
- $\leq -1\%$: 153 schools (23.3%)
- **Between $\pm 1\%$: 82 schools (12.5%)**
- $\geq +1\%$: 421 schools (64.2%)
- $\geq +5\%$: 229 schools (34.9%)
- $\geq +10\%$: 69 schools (10.5%)

Statistics were self-reported by schools to the Department of Education for the 2013-2014 school year.

Scholarship Compliance

NCAA Divisions I and II (656 total schools)



Scholarship Compliance: Options and Strategies

- Enforcement Trends
- Legal Considerations and Practical Tips
 - Roster Management Strategies
 - Full Cost of Attendance Opportunities

**Title IX Athletics Compliance
In the Age of
Full Cost of Attendance Scholarships and
Perpetual Budgetary Pressures**

Questions?

**Daniel A. Cohen, Esq.
Baker Donelson**

dcohen@bakerdonelson.com

Office: (404) 589-3404

Cell: (404) 697-9237