

2025 Title IX Summer Summit

Title IX and Athletics

Kelleigh Fagan, JD

*Presented by Church, Church, Hittle + Antrim
July 24, 2025*



Meet the team.

Kelleigh Fagan, JD

+ **Founded the sports law practice group at CCHA.**

- Represents colleges + universities, student-athletes, coaches + administrators
- Advises on NCAA infractions, waivers, NIL, revenue sharing + how to navigate the new landscape of college athletics
- Investigates NCAA violations + allegations of hazing or misconduct

+ **Title IX Experience.**

- Investigator
- Adjudicator
- Coordinator Support
- Gender equity in athletics
- TIX + House Implementation



Agenda

I. TITLE IX, GENDER EQUITY, AND ATHLETICS

II. PARTICIPATION OPPORTUNITIES

III. FINANCIAL ASSISTANCE

IV. TREATMENT AREAS

V. RETALIATION

**VI. TRANSGENDER
ISSUES**



Disclaimer on language.

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

Gender Equity + Athletics

Title IX

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

34 C.F.R. §106.31

Overview of Title IX: Regulatory Structure

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



Overview of Title IX: Impact

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



Why Compliance Matters

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



Three Primary Areas of Title IX Compliance

**PARTICIPATION
OPPORTUNITIES**

**FINANCIAL
ASSISTANCE**

**TREATMENT
AREAS**



Participation Opportunities

- Three Prong Test
- Separate Teams



Participation Opportunities

Three Prong Test

Prong 1. Substantial Proportionality

**Prong 2. History and Continuing
Practice of Program Expansion**

**Prong 3. Fully Accommodating
Interests and Abilities
("Survey Prong")**

Participation Opportunities

Prong 1: Substantial Proportionality

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

Participation Opportunities

of Female Students
of Total Students



of Female Participation Opportunities
of Total Participation Opportunities

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

Participation Opportunities

Prong 1: Substantial Proportionality

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

Participation Opportunities

What Counts as a Sport

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

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

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

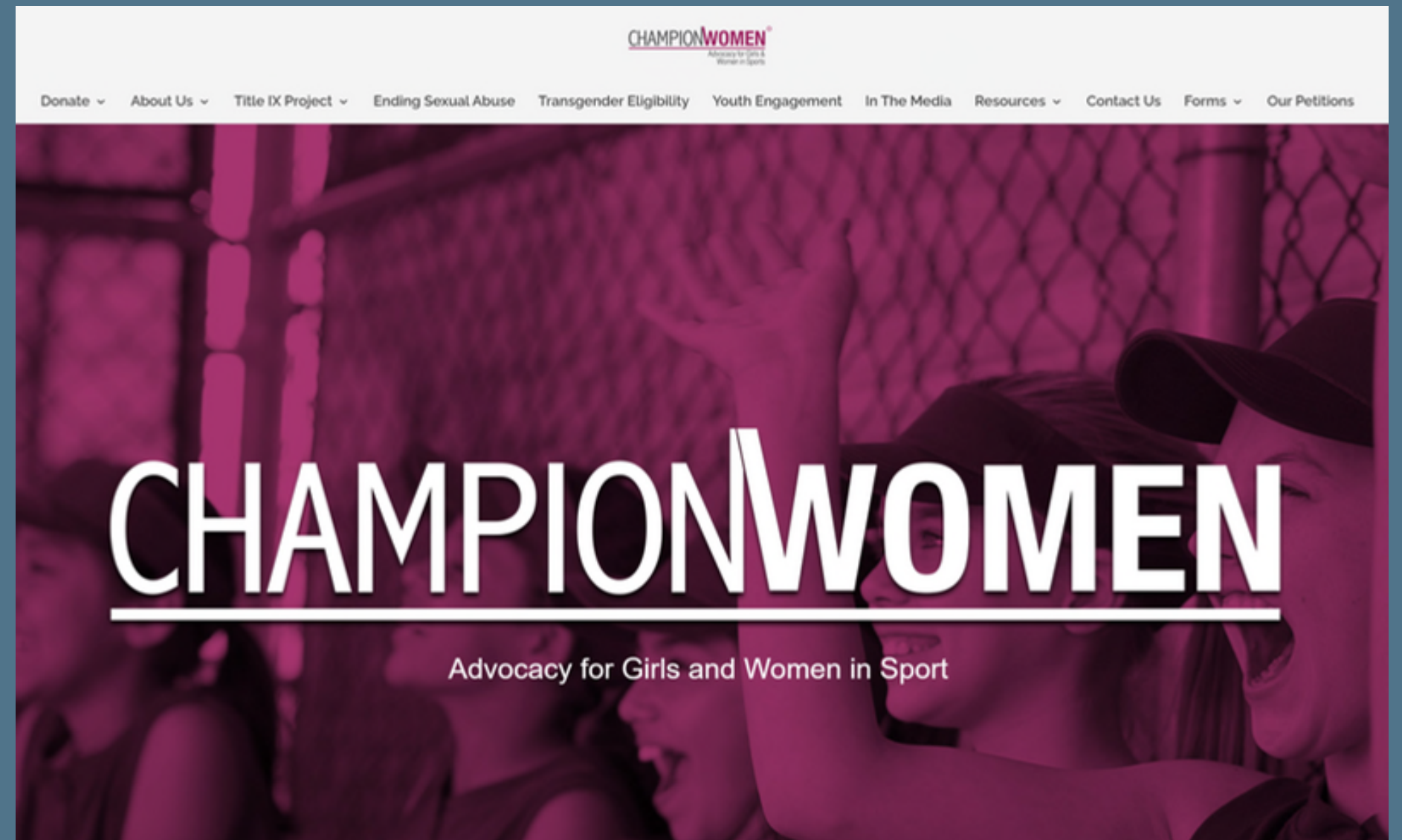
Participation Opportunities

Prong 1: Substantial Proportionality

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

Participation Opportunities

Prong 1: Substantial Proportionality



Participation Opportunities

Prong 2: History + Continuing Practice

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

Participation Opportunities

Prong 2: History + Continuing Practice

OCR will review:

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

What does history mean?

What is a “continuing practice”?

Participation Opportunities

Prong 2: History + Continuing Practice

Prong 2 History + Continuing Practice Best Practices

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

Participation Opportunities

Prong 3: Full + Effective Accommodation of Interests + Abilities

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

Participation Opportunities

Prong 3: Full + Effective Accommodation of Interests + Abilities

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

Participation Opportunities

Separate Teams

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

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

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

Financial Assistance

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

34 C.F.R. § 106.37(c)





What does this mean?

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



What does this mean?

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

Financial Assistance

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

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



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

1% Discrepancy:

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

Equitable Treatment + Benefits

AKA “The Laundry List”

cch+a
ATTORNEYS AT LAW



Equitable Treatment + Benefits

AKA “The Laundry List”

Equipment and Supplies	Scheduling of Games and Practice Time	Travel and Per Diem Expenses
Opportunity to Receive Tutoring	Assigning and Compensation of Coaches	Opportunity to Receive Coaching
Locker Rooms and Competition Facilities	Medical and Training Services	Housing and Dining Services
Support Services	Recruiting	Publicity

Equitable Treatment + Benefits

Source of Funds

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

Equitable Treatment + Benefits

Source of Funds

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

Women's
Sports

Men's
Sports

opportunity
to receive
COACHING

SCHEDULING

PUBLICITY

FACILITIES

equipment +
SUPPLIES



Equitable Treatment + Benefits

Equipment + Supplies

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

Equitable Treatment + Benefits

Scheduling of Practice + Games

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

Equitable Treatment + Benefits

Travel + Per Diem Expenses



Equitable Treatment + Benefits

Opportunity to Receive Tutoring

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



Equitable Treatment + Benefits

Assignment of Coaches

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



Equitable Treatment + Benefits

Compensation of Coaches

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

Equitable Treatment + Benefits

Provision of Locker Rooms and Practice + Competition Facilities

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

Equitable Treatment + Benefits

Medical and Training Services + Facilities

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

Equitable Treatment + Benefits

Dining Services + Housing Facilities

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

Equitable Treatment + Benefits

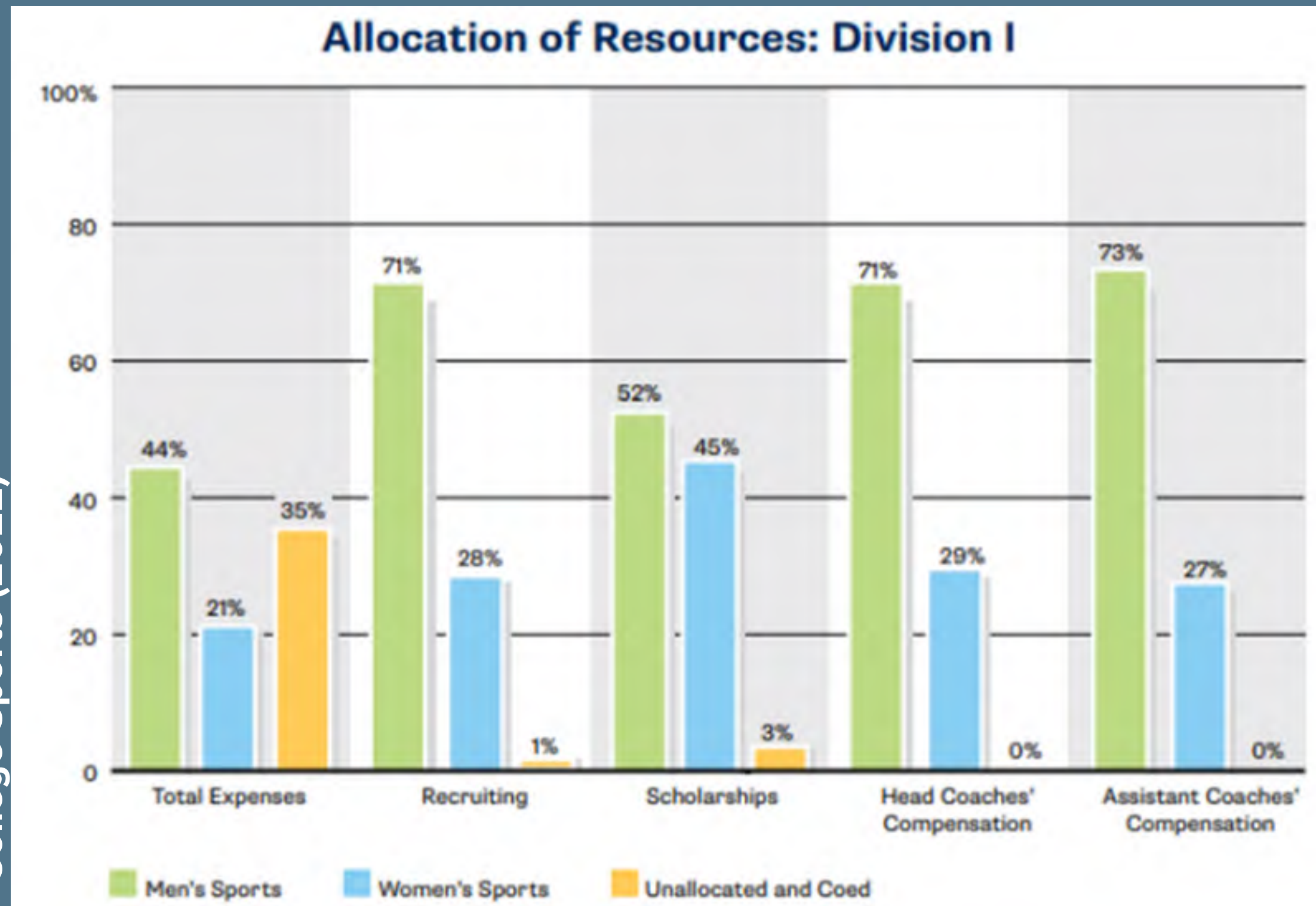
Publicity

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



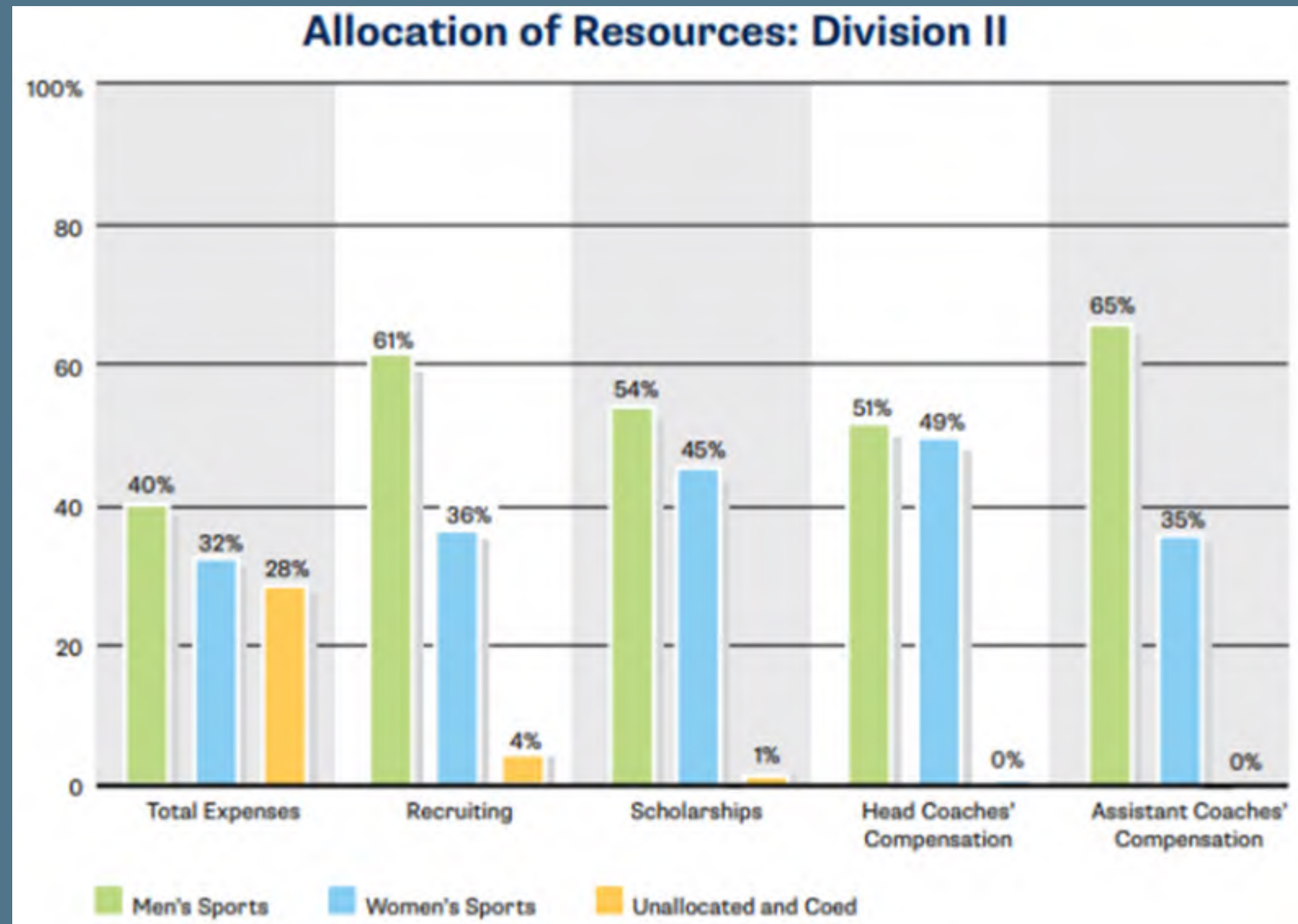
Equitable Treatment + Benefits

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



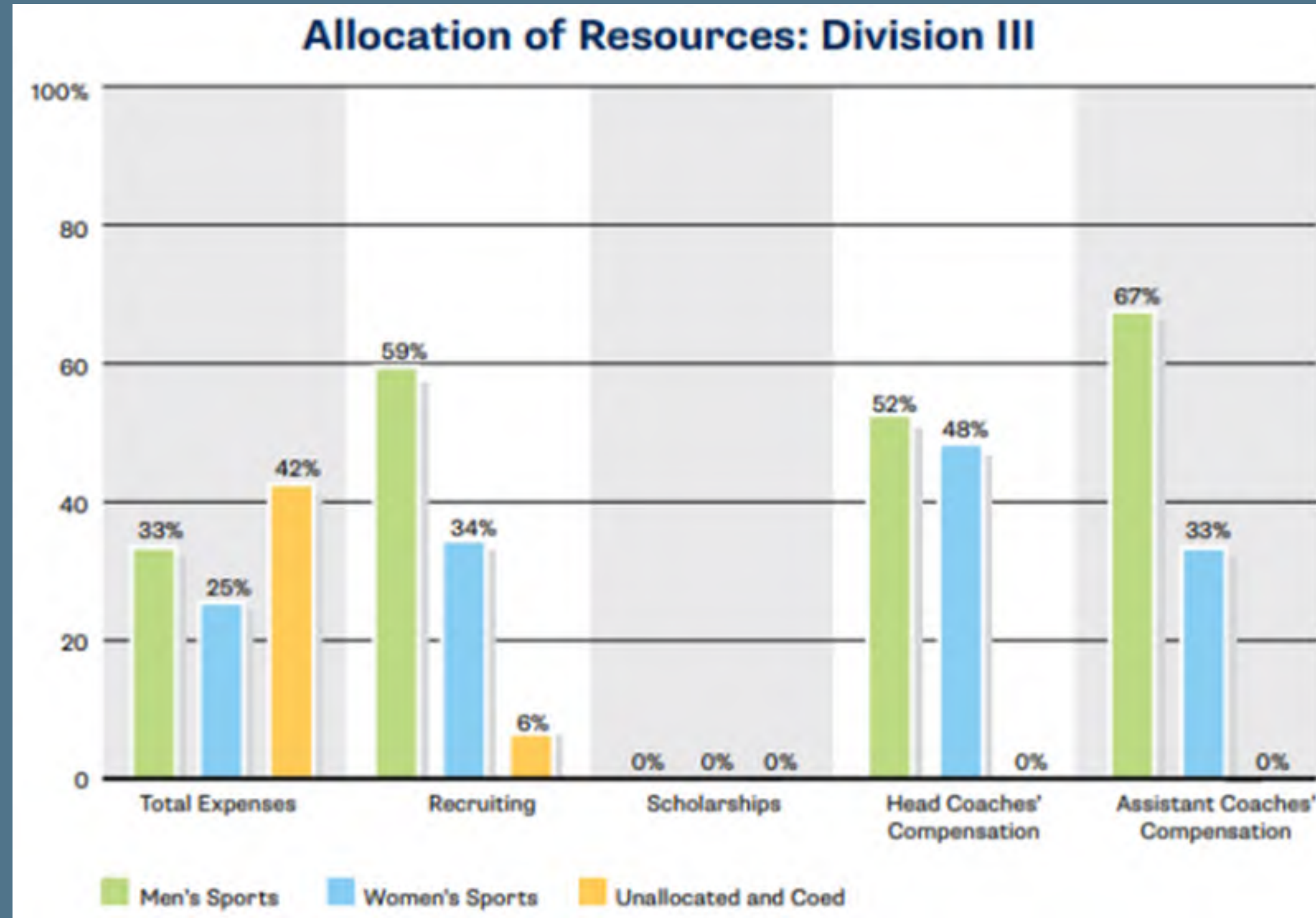
Equitable Treatment + Benefits

Source: NCAA, The State of Women in
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Equitable Treatment + Benefits

Source: NCAA, The State of Women in
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Retaliation

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Retaliation

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



Transgender Participation

Three petitions (two granted cert) now pending before the Supreme Court could tee up what might be the most high-profile culture war clash since Dobbs v. Jackson Women's Health Organization: the constitutionality of state laws excluding transgender athletes from girls' + women's sports teams. The petitions in the cases were filed by West Virginia, Idaho + a group of Arizona officials, each defending their state's version of a "Save Women's Sports" Act. They are supported by 26 states as "friends of the court."



Transgender Participation

Opposing review are transgender athletes identifying as female who challenge these laws on equal protection grounds (and in one case, also under Title IX of the Civil Rights Act, which prohibits sex discrimination in federally funded education programs), arguing that categorical bans on their participation in school sports consistent with their gender identity are unlawful.



Transgender Participation

The cases – West Virginia v. B.P.J., Little v. Hecox (involving Idaho), and Petersen v. Doe (Arizona) – present variations on a theme: whether states may exclude transgender athletes from girls' and women's teams based on the sex that they were assigned at birth, regardless of medical transition status or athletic ability.

The Court has granted cert on the West Virginia and Idaho cases.



Transgender Participation

- Trump Executive Order
- Penn Resolution
- New Indiana law
- Mountain West Conference



Hazing

- Crossover with Title IX
- Stop Campus Hazing Act (amends the Clery Act)
 - Inclusion of hazing statistics in annual security report
 - Implementation of hazing policies, including those specific to hazing prevention
 - Compilation of a Campus Hazing Transparency Report
 - *December 23, 2025*: The Campus Hazing Transparency Report, which includes the violations that institutions begin documenting in July, must be publicly available

So you receive an OCR complaint...



OCR process for Athletics Issues

- OCR Title IX Athletics Investigator's Manual
- Complaint filed
- OCR determines jurisdiction and opens a case

Lifecycle

- Phase 1: Document Request
- Phase 2: On-Site Review
- Phase 3: Report/Remediation/Voluntary Resolution Agreement

Gender Equity

Best Practices



Gender Equity

Best Practices

- Understand Gender Equity
 - NCAA requirements
 - Title IX requirements
- Assess your institution's current level of compliance
 - Collaborate with Athletics
- Develop a plan to achieve compliance
- Measure, monitor, and report on progress
- Regularly reassess compliance



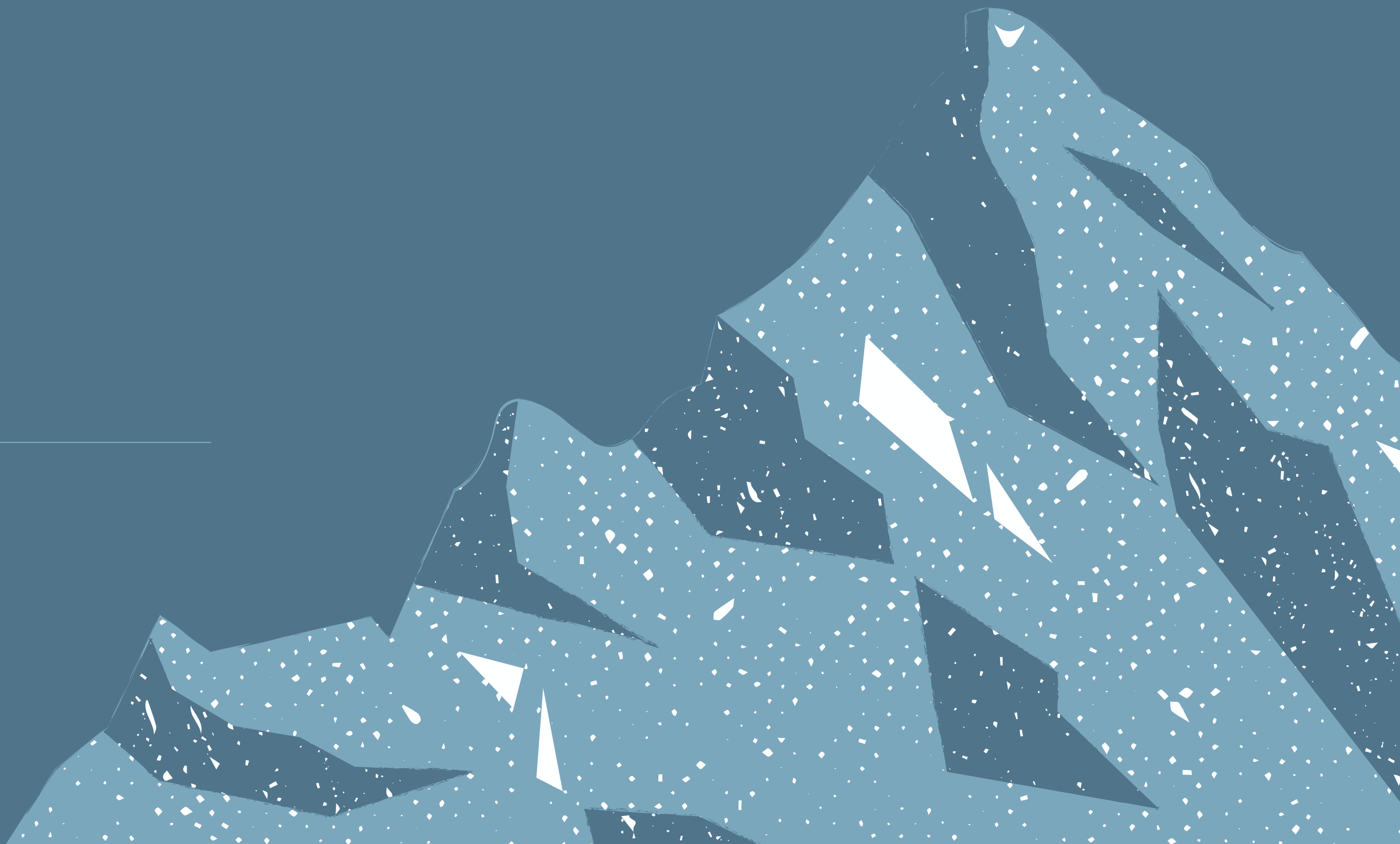
Questions?

Thank you.

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An abstract illustration of a mountain range in the bottom right corner. The mountains are composed of various shades of blue and white, with white dots scattered across the blue areas, giving it a textured, crystalline appearance. The peaks are sharp and angular, creating a modern, geometric look.