

**From:** Porter, Rhonda  
**Sent:** Tue, 18 May 2021 11:51:00 +0000  
**To:** T9PublicHearing  
**Subject:** Concern regarding choice of burden of proof (college/university sports)

With colleges and universities making decisions with regards to incoming freshman sports scholarships by considering students' high school discipline records, including any Title IX responsibility findings, my concern is that the burden of proof chosen by some high schools, i.e., "clear and convincing" and not others, i.e., "preponderance of the evidence," may result in creating a disparate impact with students either receiving sports scholarships or even being able to try out for a college or university sports team.

If a high school chooses the "clear and convincing" standard, then a student who engages in the same sexual misconduct as another student who attends a different high school where the burden is "preponderance of the evidence" may likely be found to be not responsible and therefore eligible for the sports scholarship upon application to college. The student from the high school with the lower "preponderance" standard (for the same conduct) could be found responsible due to the lower burden of proof. Because colleges and universities are more and more disallowing students with past Title IX responsibility findings in high school from even "walking on" to try out for sports, maybe there should be at least a conversation about this potential disparity issue?

Rhonda Porter  
Attorney  
U.S. Department of Education  
Office for Civil Rights  
400 Maryland Avenue, SW  
Washington, DC 20202

(b)(6)

