

Title IX Athletics HANDBOOK

TITLE IX OVERVIEW

Title IX:

- prohibits sex discrimination in education programs
- is a federal law, enacted by Congress in 1972
- covers all aspects of education programs including:
 - admissions and recruitment
 - access to academic courses and extracurricular activities
 - treatment of students
 - employment

Title IX is enforced nationwide by the Office for Civil Rights (OCR) within the U.S. Department of Education, which has 12 enforcement offices nationwide and a headquarters office in Washington, D.C. OCR investigates complaints, conducts compliance reviews (agency-initiated investigations), and provides technical assistance. The Title IX statute was written by the U.S. Congress. Subsequent policy documents were written by OCR. The major policies for athletics are:

- 1972 Title IX statute
- 1975 Title IX regulation (implementing the statute)
- 1975 Memorandum—Elimination of Sex Discrimination in Athletics Programs
- 1979 Intercollegiate Athletics Policy Interpretation
- 1990 Title IX Athletics Investigator's Manual
- 1996 Policy Clarification for the Three-Part Test
- 1998 Athletics Scholarship Guidance

The 1979 Intercollegiate Athletics Policy Interpretation is OCR's major policy for athletics; this document also applies to high school and middle school athletics programs.

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Intercollegiate, Interscholastic, Club, and Intramural Programs. Title IX views intercollegiate, interscholastic, club, and intramural programs as four separate programs. Although the same access and treatment policies apply to all four types of athletics programs, the opportunity to become a participant and the treatment of those participants within each program are reviewed separately for compliance. The opportunities and treatment of athletes in club programs do not affect compliance for interscholastic or intercollegiate programs; for example, offering a club team for lacrosse does not relieve the institution of an obligation to consider offering an interscholastic or intercollegiate lacrosse team. This Handbook addresses interscholastic athletics programs.

Total Program Approach Determines Compliance. Title IX does not require identical programs for boys and girls or identical benefits for girls' and boys' teams in the same sports. Title IX imposes no requirements related to the level of quality of that program; in effect, whether the school offers an excellent, mediocre, or poor quality program. Title IX only requires that the program be equally excellent, equally mediocre, or equally poor for male and female students. This requirement concerns the overall athletics program, as Title IX imposes no requirements by sport, such as for basketball, football, or volleyball.

Title IX ***does not require*** educational institutions to:

- offer an athletics program
- offer a good athletics program
- be a member of an athletics conference
- offer certain sports
- provide coaches
- provide facilities
- provide equipment, scheduling, transportation or any other benefits

The Title IX perspective – quite simply – is that school administrators choose: whether to offer an athletics program; how many teams to offer; how many coaches to hire; what facilities to provide; what equipment each team will receive; the modes of transportation; how many contests to schedule; the quality of benefits; and whether to become a member of a national, state, regional, and/or local athletics association. In making all of these choices, school administrators are not at liberty to choose noncompliance with Title IX. The obligation to comply with the Title IX requirements for equal access and equivalent treatment does not evaporate because: school officials choose to operate their athletics program as a business; or some sports are more popular than others; or some teams make money and others do not; or some coaches choose to fundraise, while others do not; or because donors donate to some teams but not other teams, etc. The bottom line for Title IX compliance does not change.

Title IX is a federal civil rights law. Civil rights laws have two major provisions: equal access to get in to the program; and equivalent treatment of those who have gained access. The Title IX athletics policies follow this same pattern; the equal access provision is the three-part test within the program component of the "accommodation of interests and abilities." Equivalent treatment requirements for "other athletic benefits and opportunities," at the interscholastic level, are addressed by eleven other Title IX program components. In effect:

The access issue:

- **accommodation of interests and abilities (includes the three-part test)**

The treatment issues:

- **equipment**
- **scheduling**
- **travel**
- **tutoring**
- **coaching**
- **facilities**
- **medical services**
- **housing, dining services**
- **publicity**
- **support services**
- **recruitment**

Different sports may be emphasized for boys and girls. This means that schools may provide benefits for the boys' basketball team that are superior to those for the girls' basketball team if this is offset, for example, by providing benefits to the girls' lacrosse team that are superior to those for the boys' wrestling team.

Offsetting benefits refers to situations where students of one gender are provided an advantage in some aspect of the program, while students of the other gender are provided an advantage in a different aspect of the program. If the benefits are of equivalent weight or importance, they may "offset" each other or provide a balance of benefits; in effect, comply with Title IX. School officials have the flexibility to provide offsetting benefits within a factor, within a program component, or among the combined eleven program components for: equipment; scheduling; travel; tutoring; coaching; facilities; medical and training services; housing and dining services; publicity; support services; and recruitment. For example, if the overall girls' program is disadvantaged in the program area of equipment, this may be offset by providing girls' teams with benefits superior to boys' teams in scheduling games and practices. Determining whether benefits are truly offsetting requires judgment that is within OCR's purview. (Compliance findings for the accommodation of interests and abilities, which incorporates the three-part test, are independent of all other findings.)

Generally, it is simpler to provide offsetting benefits within a program component rather than between program components, as providing offsetting benefits presents a continuous administrative challenge to ensure gender equity. Furthermore, it is unusual for a review of the benefits for all boys' and girls' teams in any single Title IX program area to reveal advantages for girls. When one gender is disadvantaged, it is usually girls.

Sport-to-sport comparisons are useful for analysis and identifying differences in benefits, but again, compliance determinations are dependent upon comparing the total girls' program to the total boys' program. For example, for a program with fifteen boys' teams and sixteen girls' teams, the benefits provided to all fifteen boys' teams must be compared to those provided to all sixteen girls' teams before a compliance determination can be made. A review of benefits for the more popular sports, varsity sports, revenue-producing sports, highest tier sports or any other subdivision is incomplete, and therefore, inaccurate. Also, compliance is based on what the students actually receive, not what is planned or budgeted for them. Title IX compliance is based on actions, not intent.

MONEY

Title IX DOES NOT REQUIRE EQUAL FUNDING for:

- the girls' and boys' overall athletics programs
- girls' and boys' teams in the same sport
- the same benefit, such as equipment or transportation, for boys' and girls' teams in the same sport

However, **Title IX DOES NOT PERMIT DISPARATE BENEFITS** due to:

- lack of funds
- fundraising efforts of coaches and staff
- donations
- booster club contributions
- student fees
- endowments

Fundraising. Title IX neither requires nor prohibits fundraising. Title IX only requires that fundraising opportunities not be limited or imposed discriminatorily; for example, boys' teams are allowed to fundraise for additional benefits while girls' teams are not; or boys' teams are provided priority for the more lucrative fundraising opportunities; or boys' teams are given benefits that girls' teams must pay for through fundraisers. If girls' coaches must conduct more extensive fundraising to purchase the same level of benefits provided to boys' teams, this affects the availability of coaches who must spend inordinate time fundraising to supplement the funding for their teams. Such imbalances create compliance problems. Athletes may not receive lesser benefits based on gender because their coach is not as successful at fundraising as other coaches. In other words, the benefits for student-athletes cannot be dependent upon coaches' ability to fundraise. Schools should ensure that equitable benefits are provided program-wide for female and male athletes, regardless of coaches' fundraising success. If the athletes conduct a fundraiser, such as a car wash, with minimal to no supervision from school staff, the money raised is nearly tantamount to the athletes purchasing benefits for themselves out of their own pockets. The school is not obligated to offset benefits purchased individually by the students.

Booster Clubs. In September 1975, OCR issued a nationwide memorandum to Chief State School Officers, Superintendents, College and University Presidents and others providing general guidance on Title IX athletics requirements, per the Title IX regulation issued two months before. Among other provisions, the September 1975 Guidance states specifically:

“[T]he fact that a particular segment of an athletic program is supported by funds received from various other sources (such as student fees, general revenues, gate receipts, alumni donations, booster clubs, and non-profit foundations) does not remove it from the reach of the statute and hence of the regulatory requirements.”

In other words, the source of funding may not justify sex discrimination. Booster clubs, athletic foundations, or similar organizations may provide financial support to specific teams or the entire interscholastic athletics program. Booster clubs may be independent and not subject to Title IX. Regardless, any benefits provided by a booster club are viewed under Title IX as provided by the school, and are subject to Title IX. If booster clubs provide benefits that create disparities based on gender, the school is responsible for offsetting those disparate benefits. For example, the school district’s coaching assignments are equitable, but the booster club pays stipends for additional football and boys’ basketball coaches. The school district is then liable for the disparate coaching availability disadvantaging girls. In this example, the school district may address this compliance problem by hiring additional coaches for girls’ teams, or by not allowing the additional coaches to work with the football and boys’ basketball teams.

General Guidance. At many schools, the overall girls’ program is under funded in comparison to the boys’ program, and the disparate funding is manifested as compliance problems in different Title IX program areas. Those areas tend to be equipment and team travel to special locales, but also benefits such as pre-game and post-game meals and even assistant coaches’ stipends. Identifying the compliance concerns in each area will lead to identifying appropriate resolutions. Those resolutions may involve increasing funding for girls’ teams, reallocating funding from boys’ teams to girls’ teams, or reducing funding to boys’ teams.

IDENTIFYING COMPLIANCE PROBLEMS

A difference in benefits between girls’ and boys’ teams is not a compliance problem. A difference in benefits that creates a disadvantage for students based on gender is a compliance problem, or “disparity.” The higher the percentage of athletes affected by any disparity, the more serious the problem. The more important the benefit, the more serious the compliance problem when an imbalance in benefits exists. For example, the availability of coaches is more important than whether a team has t-shirts for weight room workouts, so a compliance problem for coaching is more serious than a compliance problem for t-shirts. The margin for error is smaller for the most important benefits, such as the opportunity to participate, coaching, and facilities. Some benefits are minor, such as socks or the pep band providing entertainment at the games, so the number of teams or percentages of athletes disadvantaged may be greater before significant disparities result.

A violation of Title IX is a denial of equal opportunity that disadvantages student-athletes on the basis of gender program-wide. For the accommodation of interests and abilities, failure to comply may violate Title IX. Compliance problems within the other eleven program

components do not by themselves violate Title IX unless the problems are egregious. However, disparities are reviewed collectively to determine whether they, in civil rights parlance, create a pattern and practice of discrimination. If so, a series of disparities may rise to the level of a violation. The distinction between a violation and a disparity is important. A violation — and continued refusal by education officials to correct it — is the point at which OCR may initiate proceedings to terminate federal funds to the school district.

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ACCOMMODATION OF INTERESTS AND ABILITIES

The Access Issue: THREE-PART TEST

Schools have three different ways to comply when deciding what sports to offer and how many participants there will be in the athletics program. Schools may:

- 1) offer participation opportunities at rates proportionate to enrollment rates; or
- 2) show continued program expansion for the underrepresented sex; or
- 3) offer every team for the underrepresented sex for which there is sufficient interest, ability, and competition in the school's competitive region

Schools only need to meet one of these methods, or tests for compliance. Administrators may choose which test, and may change which test from one year to the next. (Many programs choose to comply with test three, by fully accommodating the underrepresented sex, which is nearly always girls.)

TEST ONE — Proportionality

If choosing to meet test one, the school must offer participation opportunities proportionate to enrollment. So, if girls are 51% of the students, then 51% (or very close to 51%) of the interscholastic athletes should be girls.

OCR developed a working definition and counts as participants those athletes who are on the team and on the squad list as of the first date of competition. OCR also developed a mathematical analysis to determine how close is close enough between rates of participation and rates of enrollment. The analysis tolerates about a 1.0 to 2.0 percentage points difference between enrollment and participation rates for the very largest of high school athletics programs (for example, 800 or more participants) to as much as a 15 percentage points difference at the smallest of programs — most likely middle school programs where only one team each is offered to girls and boys (likely to be less than 50 total participants). Schools choosing to comply with test one should plan on two percentage points difference for most programs, and potentially, three and possibly four percentage points difference for programs with 200 or fewer total participants.

COUNT the following as participants:

- count an individual athlete for every team on which she/he competes
- on the squad list as of the first date of competition
- joining the team after the first game
- athletes receiving coaching and practice
- junior varsity, "B" teams, frosh teams, novice teams, etc.
- quit or cut from the team after the first game
- athletes on cooperative teams with participants from other schools (each school should count as participants only its own students)
- nontraditional season participants *only* if countable contests are held at that time and/or participation at that time uses a year of eligibility

DO NOT COUNT the following as participants:

- quit or cut from the team before the first date of competition
- slots – unfilled positions on the team
- club or intramural participants
- academically ineligible if athlete cannot receive coaching or practice with the team
- student managers, student trainers, or others who may be on the squad list
- athletes participating *only* in the nontraditional season who do not use a year of eligibility for participating only at that time

Option. Schools may employ "roster management" to meet test one. Roster management refers to adding or eliminating opportunities on existing teams. This method of adjusting participation — when adjustments are reasonable — may allow a school to meet test one (proportionality) without the expense of adding a team or the difficulties of discontinuing teams.

Caution. Counting an individual athlete multiple times for their participation in cross country, indoor track, and outdoor track is acceptable. The caution herein, however, is for multiple counts of individual athletes in one program to a much greater extent than the other program. For example, eliminating the boys' indoor track team so that boys are counted only twice for cross country and outdoor track, while maintaining the girls' indoor track team, so that individual female athletes are counted three times for cross country, indoor track, and outdoor track, might be interpreted as numbers manipulation that is inconsistent with the intent of the Title IX policy. Discontinuing the boys' indoor track team does not eliminate the male athletes from the track program, and might not reduce the number of regular season contests in which the athletes may compete (depending on state association rules, for example). Thus, if the only disadvantage for boys in discontinuing the boys' indoor track team is the elimination of indoor track championship opportunities, that would be viewed as a Title IX scheduling issue, not the all-important access issue for equitable participation opportunities under the three-part test.

TEST TWO — Program Expansion

For test two to apply, students of one sex must be underrepresented, in effect, participating at a rate less than their rate of enrollment. When one gender is underrepresented in the interscholastic athletics program, it is nearly always girls. Thus, the school can meet test two by showing that it has added opportunities for girls as their interests and abilities have developed and evolved. This usually means adding a girls' team or teams; however, this can also mean adding opportunities on existing teams, if athletes receive coaching and practice and are not just names added to a squad list. Program expansion means increasing the number of participants for the underrepresented gender; it does not mean improving the quality of benefits for the current participants. OCR has not issued any standards for how many opportunities must be added or in what time frames to meet test two. Schools that have not significantly increased girls' opportunities in the last five years, or that have discontinued one or more girls' teams in the history of the girls' athletics program, are unlikely to comply with test two. (This same approach would be true for boys in those rare cases where boys may be underrepresented.) It is unusual for schools to meet test two (past studies have shown that only about six percent of programs may be meeting test two).

TEST THREE — Full Accommodation

If school officials choose to meet test three, then the school must offer every team for girls (assuming girls are underrepresented) for which there is sufficient interest and ability for a viable team, and sufficient competition for that team in the school's normal competitive region. These three factors of test three — sufficient interest, ability, and competition — must exist before a school is required to add a team under test three. Often, a school can meet test three because there is insufficient competition in the school's normal competitive region.

Determining interest and ability means evaluating:

- club sports participation
- intramural sports participation
- elective physical education classes
- community programs – AAU, traveling teams, etc.
- results of any interest surveys

If evaluating all of these programs and any survey results suggests sufficient interest and ability for a team, then the final factor is determining sufficient competition in the school's normal competitive region. OCR has provided only general guidance that this region is the geographic area in which the school's athletes primarily compete and includes schools against which the school may not now compete. To provide some guidance, it is suggested herein that schools compute the one-way miles to each regular season away event for all teams. At that point, the mileage radius in which about 85% or more of the away trips occur can be a reasonable indicator of the school's normal competitive region. This is a gauge only; it is not a formal requirement or policy. Once identifying the normal competitive region, then whether competition is sufficient will be determined by the number of schools in the normal competitive region offering sports not currently offered at the school.

TWO-PART TEST — LEVELS OF COMPETITION

The purpose of the two-part test is to prohibit actions such as a school offering a real interscholastic program for boys while offering a recreational quality interscholastic program for girls. Many schools comply with the two-part test for levels of competition by meeting the first test.

TEST ONE — Levels of Competition: Equivalently Advanced Opportunities

Compliance is achieved when the same or similar percentages of the total contests for girls and boys are at the appropriate division level. For example, girls' teams compete in 11 of 142 total contests outside their school's Class 6-A competitive level, so 92% (131 of 142) are at the appropriate competitive level. Boys' teams compete in 17 of 173 contests outside the Class 6-A competitive level, so 90% (156 of 173) are at the appropriate competitive level. The two percentage points difference between 92% of girls' contests compared to 90% of boys' contests is not significant. While there is no percentage point difference that defines compliance, differences of five percentage points or more should be avoided. Differences up to five percentage points and sometimes more may be justified if coaches and athletes indicate satisfaction with the level of competition.

Junior Varsity, Frosh, "B" Teams. Junior varsity athletes, frosh participants, etc., are considered interscholastic athletics participants under Title IX. A compliance goal is for similar percentages of male and female athletes to be provided opportunities at the junior varsity level, and separately, at any frosh levels. Differences in percentages of female and male athletes provided junior varsity and frosh level opportunities may be justified by lack of interest or lack of competition. However, a much higher proportion of athletes for either gender participating at the junior varsity or lower levels raises compliance questions under the two-part test for levels of competition. Another caution is that schools should not plan to add junior varsity opportunities in lieu of viable varsity level opportunities in an attempt to meet test one (proportionality) or test two (program expansion) of the three-part test.

TEST TWO — Levels of Competition: Upgrading Competitive Opportunities

Compliance is achieved when a continual improvement in scheduling better competition is demonstrated for the historically disadvantaged sex (nearly always girls). Analyzing compliance under this method is often unnecessary since many schools comply with test one — levels of competition.

CAUTIONS — ELIMINATING TEAMS

If girls are underrepresented in the program, then the elimination of a viable girls' team would require the school to meet test one — proportionality of the three-part test, as that would be the only realistic option left for compliance. Once a viable girls' team is eliminated, the school would not be meeting test two, because it would be unable to demonstrate a history and continuing practice of program expansion for girls (unless the school simultaneously added other girls' teams to its interscholastic program); and, the school would not be meeting test three, because it just eliminated a girls' team for which there was sufficient interest and ability for the team and sufficient competition. The elimination of a boys' team might not create a compliance concern under Title IX — that is, unless boys are already underrepresented in the program or become underrepresented once discontinuing the team(s).

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OTHER ATHLETIC BENEFITS AND OPPORTUNITIES

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EQUIPMENT AND SUPPLIES

Factors reviewed:

- quality
- amount
- maintenance

Booster clubs often donate equipment and supplies to individual teams, and might do so through arrangements with the teams' head coaches. Equipment provided by booster clubs is viewed under Title IX as provided by the school, and the school is liable for any gender-based disparities that result from booster club donations. Consequently, schools should monitor all donations of booster clubs — and if necessary, establish formal oversight procedures — to ensure compliance.

Quality. Compliance is achieved when the same or similar proportions of female and male athletes are provided equipment of the same quality. For example, while medium quality equipment is provided to most teams, excellent quality equipment is provided to:

boys' basketball and football
(accounting for 126 of 300 male athletes = 42% of male athletes)

girls' basketball, lacrosse, soccer, softball, and volleyball
(accounting for 116 of 265 female athletes = 44% of female athletes)

In this example, compliance is achieved by providing two boys' teams and five girls' teams with excellent quality equipment, while the remaining boys' and girls' teams are provided with medium quality equipment. Differences between the overall boys' and girls' programs for the quality of equipment cannot be justified by staff fundraisers or donations. Common problems arise when disproportionately higher numbers of male athletes are provided better quality equipment; for example, two boys' teams (often football and basketball) accounting for 40% of male athletes, and two girls' teams (e.g., basketball and volleyball) accounting for 15% of female athletes, while all other teams are provided medium quality equipment. Providing a higher proportion of athletes with better quality equipment is a compliance problem when based on gender.

Amount. A simple compliance approach is to provide, for girls' and boys' teams in the same sport, the same numbers of equipment items for:

- game uniforms
- practice uniforms
- shoes
- sport-specific equipment items
- general equipment items

For dissimilar sports, equipment should be provided to the same extent as needed and desired, based on the nature of the sports. Schools may choose to emphasize certain teams and, for example, provide three sets of uniforms for boys' basketball and only two for girls' basketball. This can comply if offset elsewhere in the program; for example, the girls' soccer team has three sets of uniforms, while the boys' soccer team has only two sets. As noted above, disparate amounts of equipment based on gender cannot be justified by booster club or other donations.

Maintenance. The maintenance factor includes:

- storage
- professional and student managers
- laundry services

Equipment storage should be equivalently adequate and convenient when comparing the total girls' program to the total boys' program. Professional and student equipment managers are to be equally available based on the nature of sports. Because equipment needs are the same for girls' and boys' teams in the same sports, maintenance services should be the same. Common problems include: providing convenient and sufficient storage for boys' teams but not for girls' teams; and providing laundry facilities and/or services to boys' teams but to fewer or no girls' teams. Resolutions include reassigning storage space and balancing any available laundry services and equipment.

Some schools may have professional equipment managers assigned solely for the football teams and no other teams. Due to the nature of the sport of football and the equipment needs unique to the sport, this may be justified under Title IX. To avoid raising compliance questions, any professional equipment manager available to the football team might be available as needed for other sports, especially for safety related equipment needs.

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SCHEDULING OF GAMES AND PRACTICE TIMES

Factors reviewed:

- number of contests
- time of day, day of the week of contests
- practice times and days
- pre-season competition
- post-season competition
- length of season

Number of Contests. This factor includes those contests that count toward the maximum number of contests permitted by the governing athletics association for both the traditional and any nontraditional seasons. For example, if the maximum number of contests allowed for basketball is 24, then any game that counts toward the 24 contests should be reviewed.

The number of contests depends on the nature of the sport. For example, fifty games may be appropriate for baseball but not football. Thus, for this factor, schools should schedule the same number of regular season contests for girls' and boys' teams in the same sport. For dissimilar sports, the same proportion of the maximum events identified by the governing athletics association should be scheduled. For example, if the football team schedules 91%, or 10 of 11 of the maximum number of contests permitted, then the girls' volleyball team should schedule 91%, or close to that proportion, such as 92%, or 22 of the 24 contests allowed by the governing athletics association. Offsetting benefits are permissible for the total program, and even for consecutive academic years. The home and away schedules that may differ annually for certain sports, and the academic calendars in certain years might affect the number of contests without creating compliance concerns. A difference of a couple of games program-wide should not create concerns. A difference of a handful of games, if not offset in consecutive academic years, should be addressed.

An acceptable reason for differences in the number of contests may be lack of competition for a specific team; however, schools should take a proactive approach to ensure compliance. For example, due to significant interest, a school creates a new girls' lacrosse team for which 17 contests is appropriate for the nature of the sport. However, only five other schools in the school's normal competitive region offer girls' lacrosse teams. Rather than schedule the other five schools one time only, or even twice, the proactive approach would be to schedule the other five schools three times each. This schedule may be maintained until such time as other schools in the area add girls' lacrosse teams.

Game Times and Game Days. The time of day and day of the week for contests may vary significantly and be dependent on the nature of the sport. Class schedules, meal schedules, and the opportunity to compete before an audience may affect the preferred time of day and day of the week. Bottom line, contests should be scheduled at times that are equally convenient (or equally inconvenient) for boys' and girls' teams. Double-header events, where the girls' team always competes first, is a concern if the girls' teams want to schedule the later game, or if

the boys' teams want to schedule the earlier game. Game times may be alternated weekly or annually to address this concern. Friday night contests, which may be considered prime time for some sports, should be scheduled equally for girls' and boys' teams.

Practice Times and Days. Compliance is achieved when practice schedules are equivalently convenient and sufficient (or equivalently inconvenient and insufficient) program-wide. When compliance problems occur, it is usually due to shared facility usage. A common compliance challenge arises when the boys' and girls' basketball and girls' volleyball teams use the same practice facilities. Often, the result is that all three teams do not have their preferred schedule. When all teams have minor disadvantages, the result can be a compliance concern, because it affects two girls' teams and only one boys' team. If all three teams prefer the same time, then administrators should consider providing the preferred time to the volleyball team throughout its season, while the basketball teams alternate the remaining times. At the conclusion of the fall volleyball season, the basketball teams may then alternate times to incorporate the preferred times vacated by the volleyball team. The basketball teams may alternate the preferred times weekly, monthly, or annually to comply with Title IX. The preferred times might change annually depending on the class schedules of the athletes.

Some schools may schedule the varsity teams to practice at the preferred times, while junior varsity and frosh teams have the less convenient practice schedules. Other schools may do the reverse, to avoid evening practices for the younger students who tend to be on the frosh and junior varsity teams. Title IX does not consider the interests of the junior varsity and frosh athletes to be less important than those of the varsity athletes; Title IX concerns equity based on gender. Thus, administrators should monitor the proportions of female and male athletes who may be practicing at less preferred times, and adjust practice times as necessary so that equivalent proportions of female and male athletes practice at equivalently convenient times. Any imbalances that might result from prioritizing the safety of the students would be viewed as "reasonable professional decisions" under Title IX.

Pre-Season Competition. The simplest compliance method is to schedule the same number of pre-season events for boys' and girls' teams in the same sport, while scheduling an equivalently appropriate number of events for dissimilar sports, based on the nature of the sports. To simplify Title IX analyses, exhibition games, scrimmages with other teams, and alumni contests should be evaluated as pre-season contests.

Post-Season Competition. Most schools allow whichever teams that qualify for post-season to compete in post-season contests, which complies with Title IX. An occasional compliance concern arises when an athletics association allows more boys' than girls' teams (or vice versa) to qualify for post-season competition even though there are the same or very similar numbers of schools offering girls' and boys' teams.

Length of Season. Season lengths should be the same number of weeks for boys' and girls' teams in the same sport and as appropriate to the nature of the sport for dissimilar sports. League and/or association rules may create occasional compliance concerns when a season-ending tournament for girls is scheduled a couple of weeks before the boys' tournament in the same sport, creating a more compressed schedule for the girls' teams, and limiting practices and potentially limiting the number of contests for girls.

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TRAVEL AND PER DIEM ALLOWANCES

Factors reviewed:

- modes of transportation
- housing during travel
- meal arrangements and per diem
- length of stay — arrival and departure times

Modes of Transportation. Teams may travel by bus, van, car, plane, and even by subway, train, and ferryboat. Acceptable, nondiscriminatory factors that may affect the modes of transportation include: distance to be traveled; size of the travel squad; others accompanying the team; the amount of equipment; and the time of day of the away event.

The different levels of quality for each mode of transportation may also affect compliance. Charter buses may have better seating, wifi, lavatory, music and video systems, and luggage compartments that school-bus quality buses do not. Vans are often driven by coaches, and many coaches prefer not to drive; thus, a bus with a professional driver is often preferred to van transportation. Similarly, cars are often driven by coaches, or even athletes, and are a less preferred mode of transportation. A compliance gauge, but not a requirement, is for girls' and boys' teams to use the same mode of transportation for the same proportion of trips, absent acceptable justifications for differences. The simple compliance solution when problems are identified is to reassign modes of transportation.

Some teams may travel by aircraft, and charter flights are usually preferred to commercial flights due to convenient scheduling; however, charter flights may be justified due to the difficulty in scheduling commercial flights for the size of the travel squad, such as for football or track teams. Otherwise, any charter flights should be scheduled to the same extent for girls' and boys' teams program-wide. When teams travel by aircraft, secondary modes may create compliance problems when some teams use vans for ground transportation, while others use buses; if this affects teams for one gender more than the other, it creates a compliance concern.

Housing During Travel. Usually, the quality of the hotels or other housing provided during travel is comparable. The common compliance problem arises for the different number of athletes assigned per hotel room. Compliance is achieved when equivalent percentages of female and male travel squad athletes are assigned two per hotel room, three per room, or four per room. For example, if the football and boys' basketball teams are the only boys' teams assigning athletes two per hotel room, and they are 50 percent of the male travel squad athletes, then 50 percent of the female travel squad athletes should be assigned two per room. Half of the female travel squad athletes may account for four or five girls' teams, not just two teams.

Meal Arrangements, Per Diem. The nature of sports and the time and length of competition may determine when meals take place and whether pre-game or post-game meals are appropriate during travel. Compliance is analyzed by comparing the quality of the food and dining establishments, such as fast food, buffet/family style, or fine dining. Pre-arranged meals for large team sports, such as football or track, may be necessary at some locales. Golf teams may benefit from special arrangements provided by the tournament sponsor at the host country club. A simple compliance approach for those few schools that may provide per diem is to provide the same dollar amount for meals for all athletes. Otherwise, if some teams are provided a higher per diem than other teams, this should be equitable for the girls' and boys' programs. The school that provides the same per diem for all athletes does not comply if coaches may supplement per diem amounts with other funds, and the result is better quality dining for one gender in the overall program. For example, all athletes are provided with \$20 per diem. Coaches for two boys' teams supplement the \$20 with booster club monies, providing the athletes on those two boys' teams with superior dining arrangements. The result is noncompliance. A common compliance problem for this Title IX factor is for boys' basketball and football teams to be provided higher quality meal arrangements than girls' teams.

Length of Stay. The nature of the sport may determine the time of day contests are scheduled, which may in turn dictate travel times. Most interscholastic teams depart and return on the same day as the contests. Occasionally, overnight stays are necessary or desired. Cross country teams may compete in the morning, and travel to the away site the day before. Golf teams may play a practice round before the competitive rounds of golf begin, and travel the day before. Teams often leave immediately after an event. There can be acceptable reasons for differences for arrival and departure times that include: accommodating class schedules; weather; available transportation, such as air travel schedules; and the contest ending too late to travel back to the campus safely. Compliance problems arise when, for example, boys' teams travel the day before contests while girls' teams travel the same day, or boys' teams stay overnight after events while girls' teams travel late night hours to save funds.

Cautions for Administrators and Coaches. Team travel is one of the most expensive benefits provided for student-athletes. The more discretion coaches have in regard to modes of transportation, the per diem amounts for athletes, the quality of any housing and the number of athletes per hotel room, the greater the likelihood for Title IX compliance problems. Some coaches may choose to save funds by teams using a van instead of a bus, providing athletes with \$15 per diem rather than the \$25 per day budgeted by administrators, or assigning four athletes per room instead of two. Unless coaches make the same choices program-wide, compliance problems are likely.

To ensure compliance, administrators should identify equitable travel benefits, including determining the modes of transportation for each trip, the number of athletes assigned per hotel room, and the per diem amounts for athletes, and instruct coaches to adhere to the compliance strategy. Team travel records should be monitored to ensure that coaches are complying with the decisions of administrators. It is not unusual for coaches to deviate from the instructions of administrators, thereby creating compliance problems. Also, if some teams have foundation or fundraising accounts that coaches use to supplement travel benefits, this may create compliance problems based on gender when some teams: assign two athletes per room while all other teams assign three or four athletes per room; provide better dining arrangements; and/or provide better modes of transportation.

IX IX IX IX IX IX IX

TUTORING

Factors reviewed:

- availability
- qualifications
- compensation — as it affects athletes, not the tutors
- academic services

This issue applies only to those tutoring programs offered separately to athletes, and to those athletics programs that assign academic counselors specifically for athletes. It does not apply to the tutoring programs available to the general student body. Some private and public schools may have separate tutoring programs for athletes; otherwise, such benefits are uncommon in most interscholastic programs, so schools do not need to evaluate this issue. Compliance problems for tutoring are unusual. When problems occur, it is usually because certain teams, often boys' basketball and football, are provided with special tutoring arrangements, priority in services, and/or tutors or academic advisors with superior qualifications.

Availability. A simple compliance method is to set the same hours and locations for tutor availability, such as the school library or study hall sessions that are equally convenient for female and male athletes for times of day and days of the week. Another nondiscriminatory policy is to provide tutors on a first-come, first-serve basis. Any special tutoring arrangements should be equally available to female and male athletes. Availability also considers whether tutors provide services one-on-one or in group sessions. One-on-one sessions are usually preferred, and should be equally available to female and male athletes.

Qualifications. Tutors may be upper class students, graduate students from the local college, faculty, or other professional educators. The occasional compliance concern may arise when more qualified tutors are provided more often for teams of one gender, such as the football and boys' basketball teams.

Compensation. This factor is not the employment issue comparing rates of pay between male and female tutors. Rather, this factor is evaluated for its effect on the student-athletes. It concerns whether more qualified tutors, as may be reflected by compensation, are assigned more often to athletes based on gender. The red flag to avoid is for tutors receiving higher pay to be assigned to boys' teams more often than girls' teams, or vice versa.

Academic Services. This factor is not included specifically in OCR policy documents, but is a simple way to categorize services or benefits such as computer labs, career planning, and pre-registration for classes. Such benefits are to be equally available to female and male athletes.

IX IX IX IX IX IX IX

COACHING

Factors reviewed:

- availability
- qualifications
- compensation — as it affects athletes, not the coaches

Availability. This factor includes the number of coaches per team, lengths of contracts, and the percentage of time, such as half-time assigned to coaching. Most coaches are assigned for the season of the sport, and season lengths may vary by sport. Generally, volunteer coaches should be excluded from compliance analyses unless: they receive incentives that affect their availability to teams; there are rare circumstances, such as the head coach who is a volunteer; or an assistant coach has years of coaching experience and longevity with the team. A simple compliance approach is to provide the same number of coaches for girls' and boys' teams in the same sports, and equivalently appropriate numbers of coaches for dissimilar sports. For example, if the boys' varsity basketball team has a head coach and two assistant coaches, then the girls' varsity basketball team should have the same. For dissimilar sports, schools should aim for a comparable coach to participant ratio, such as one coach for every ten participants; this analysis is not required but may provide a useful gauge. It might be appropriate to have slightly greater coaching availability for contact or collision sports, and for team sports rather than individual sports such as golf and tennis. A common compliance problem for coaching availability is that more boys' than girls' teams have assistant coaches.

Providing the same number of coaches for boys' and girls' teams in the same sports and an appropriate number of coaches for dissimilar sports often achieves compliance. However, an additional compliance consideration concerns the proportions of girls' and boys' coaches otherwise employed at the school. This analysis is not in OCR's policy documents, but is suggested herein as appropriate for coaching availability; in effect, coaches who are otherwise employed by the school as teachers, administrators, or staff are likely more available to the athletes than those who are otherwise employed in the community. Thus, if there are 45 total boys' coaches, and 22 of them are otherwise employed on-campus, then 49% (22 of 45) of boys' coaches may be viewed as on-campus staff. To comply with this suggested analysis, approximately 49% of girls' coaches should be otherwise employed on-campus. Schools might evaluate differences greater than five percentage points, such as 49% of boys' coaches and 43% or fewer girls' coaches employed on-campus, and make adjustments as necessary.

Dual coaching responsibilities may affect coaching availability depending on the assignments. The individual who is the head coach of the volleyball team in the fall season and the head coach of the basketball team in the winter season may be less available to both teams when the seasons overlap; this might limit both practice and competitive opportunities for these teams. Dual coaching responsibilities are not a compliance concern if they occur to the same extent in the boys' and girls' programs; this includes considerations that head coaching responsibilities are presumed to be greater than assistant coaching responsibilities.

Administrative and teaching duties may also affect coaching availability. Avoid the concern where boys' coaches for some sports have reduced teaching loads or more limited duties than normal in comparison to girls' coaches.

Qualifications. The qualifications of coaches are assessed by analyzing the average years of experience and levels of success. As a total program approach, the average years for head coaches may be calculated, and separately, the average years for assistant coaches. For example, the 11 boys' varsity head coaches have a total of 187 years of experience, for an average of 17 years per coach, while the 12 girls' varsity head coaches have 168 total years for an average of 14 years per coach. This three year difference between girls' and boys' coaches should not create concerns, as fourteen years of experience is significant. Similar calculations may be conducted for the assistant boys' and girls' coaches, which may include the head coaches for junior varsity and frosh teams.

Regardless of years of experience, levels of success at the league, district, regional, and state levels, win-loss records, and/or a significant record of improvement may demonstrate equivalent coaching qualifications and negate any significant differences in years of experience. In effect, a coach with five years of coaching experience may be a much better coach than someone with 20 years of experience, as demonstrated by levels of success.

Compensation. Compliance with this factor is achieved when total dollars for coaches' salaries are at a rate proportionate to boys' and girls' rates of participation. For example, if girls are 49% of the participants, then approximately 49% of the coaches' salaries should be paid to girls' coaches. This should include the stipends paid for coaching duties to head and assistant coaches. There is no percentage points difference that constitutes noncompliance. The purpose of this analysis is to identify whether the school has allocated sufficient resources to assign coaches who are equally available and equally qualified for the overall girls' and boys' programs. Coaches' compensation under the athletics provisions of Title IX is analyzed for its effect on students, not coaches. Compliance problems for this factor would not be cited unless there are also compliance problems for the availability and/or qualifications of coaches. Also, OCR policy states that ". . . there may be unique situations in which a particular person may possess such an outstanding record of achievement as to justify an abnormally high salary." (1979 Intercollegiate Athletics Policy Interpretation). This permissible situation could result in total compensation that is disproportionate to participation.

Employees are protected by the subpart of the Title IX regulation addressing employment, not the section addressing athletics. Thus, comparisons of individual coach's salaries to identify sex discrimination are not part of an athletics review. Employment discrimination for coaches' salaries is based on the gender of the coaches, not the gender of the athletes.

Cautions for Coaching

Availability. The availability of coaches is one of the most important benefits for student-athletes. Minor differences in coaching assignments can quickly add up to a significant compliance problem. School districts often establish equitable coaching assignments for girls' and boys' teams. However, booster clubs may pay stipends for additional coaches, and the result can be disparate assignments, often disadvantaging the girls' programs. Under Title IX, the stipends paid by booster clubs are viewed as stipends paid by the schools, and the schools are responsible for providing equitable coaching availability to the overall girls' and boys' programs. Schools should monitor the availability of coaches who are paid by booster clubs or others — and adjust coaching assignments as necessary — to ensure compliance with this most important benefit for student-athletes.

Similarly, schools should monitor any gifts given to volunteer coaches. A gift certificate, or for example, a head coach paying for the gas money for a volunteer coach, may compromise that coach's status as a volunteer. The "volunteer" coach might then be viewed as a compensated coach whose availability is evaluated for compliance. Schools would be obligated to provide offsetting coaching assignments in the total girls' and boys' programs to ensure compliance.

Employment Considerations. High schools may create the employment position of athletic director/head football coach. Head football coaches are predominantly men. Combining the head football coaching position with that of the director of athletics effectively excludes women from the position of director of athletics. As apparent from the assignments at many postsecondary and secondary education institutions, performing duties as the director of athletics is not contingent upon the ability to coach football. Thus, the exclusion of women from the position of athletics director, inherent in creating the combined position of athletic director/head football coach, may raise compliance questions under the employment provisions of the Title IX regulation and Title VII of the Civil Rights Act of 1964, which is enforced by the Equal Employment Opportunity Commission (EEOC). See the summary and full text of the EEOC's 1997 enforcement guidance for coaches' salaries at www.TitleIXSpecialists.com.

Some coaches may host sports camps at the school, teaching skills to younger students. Camps may allow coaches to supplement their incomes, in addition to providing an opportunity to recruit student-athletes. The preferred scheduling for camps, and any administrative and clerical support provided, are to be equitable for girls' and boys' coaches.

IX IX IX IX IX IX IX

LOCKER ROOMS, PRACTICE AND COMPETITIVE FACILITIES

Factors reviewed:

- availability
- quality
- preparation
- maintenance

All facilities are reviewed for their availability and quality, which includes exclusivity of use. Practice and competitive facilities are also reviewed for the maintenance and preparation of facilities, while maintenance of locker rooms may affect quality.

Practice and Competitive Facilities

Quality and Availability. Compliance may be achieved when roughly equivalent percentages of female and male athletes have facilities of equivalent quality. Some latitude is appropriate based on natural fluctuations in participation and the nature of the facilities. The availability of facilities may be directly related to the scheduling of facilities, and equitable scheduling may resolve availability concerns.

The analysis for practice and competitive facilities is an overall approach that compares all of the facilities for girls' teams to all of the facilities for boys' teams. Schools can emphasize different teams for boys and girls. There is no requirement that boys' and girls' teams in the same sports or like sports have facilities of the same quality. However, the reality for many programs is that the girls' and boys' teams in the same sports often use the same facilities. Boys' and girls' teams in such sports as basketball, cross country, golf, soccer, swimming, tennis, and track may all use the same facilities. If volleyball is offered only to girls, that team often uses the same facilities as the basketball teams. If the school has a football team, the soccer teams may use the same fields as the football team or the football facilities may be comparable quality to the soccer facilities and/or facilities for most other teams. In many programs, most boys' and girls' teams use the same facilities, which is equitable; the only unshared facilities remaining for comparison are the baseball and softball fields.

If the softball field is lesser quality than the baseball field, a school can still comply if, for example, the girls' soccer field is better quality than the boys' soccer field. However, if all other facilities are equitable and the comparison falls solely on the baseball and softball fields, which are not equitable, a compliance problem is likely for the Title IX program component of locker rooms, practice, and competitive facilities. The many features to be reviewed at baseball and softball fields include: field surface quality; dugouts, including dugout size and construction, and any amenities such as double-tiered seating, bat racks, helmet racks, protective screens, lighting, and lavatory; scoreboards, including video/replay features; fencing, including permanent versus portable outfield fencing and perimeter fencing; batting cages; bullpen areas; lights; equipment storage; spectator seating, including bench versus seatback/armrest seating; press boxes; concessions; restrooms; locker rooms; and umpire locker rooms. There is no requirement that identical features be at the softball and baseball facilities, but the same overall analysis applies. For example, if one facility has several features, while the other has very few, or several individual features are higher quality at one field than the other field, a compliance problem is likely. Schools may eliminate compliance questions by providing the same features, and the same quality of features, at the softball and baseball fields. This list of features at softball/baseball fields demonstrates the detail of review for equitable facilities under Title IX.

Another common concern is when the football team is provided the highest quality competitive and practice facilities, providing a higher proportion of male athletes with the best facilities. For example, the football and girls' and boys' soccer teams use the same facilities. The football and boys' soccer teams represent 25% and 11% of the male athletes, respectively; the girls' soccer team represents 15% of the female athletes. The result is that 36% of the male athletes, compared to only 15% of the female athletes, are assigned to the highest quality facilities. One partial remedy is to assign the boys' soccer team to another facility. Also, the girls' soccer team may be given preference to compete and practice on the game field, while the football team practices elsewhere. This can reduce, and potentially eliminate, the concern for these facilities.

On-Campus Versus Off-Campus. It does not violate Title IX to provide a facility off-campus, while others are on-campus. Many schools use community golf courses and swimming pools, and local parks for cross country meets. However, whether a compliance problem exists depends on quality, availability, and convenience, and the proportions of male and female athletes using off-campus facilities. For example, compliance questions are raised, and compliance problems may result, when most girls' teams use off-campus facilities, while most boys' teams have facilities on-campus. But, factors such as quality, priority use, and degree of inconvenience can affect compliance — a facility across the street is more convenient than a

facility across town and 30 minutes drive in traffic. If a facility is community-owned, then teams may not be able to use a facility at their convenience, but must schedule practices and games around community events. This can influence a school's compliance in scheduling games and practice times. However, community facilities may have features, such as lights, that on-campus facilities do not, and this can offset the inconvenience of the off-campus location.

Portable Versus Permanent Facilities. Some "permanent" restrooms and concession facilities are on the verge of crumbling, while some portable facilities — for example, large trailers — may serve as concession stands complete with stoves, ovens, sinks, etc., or restroom facilities with all plumbing in full operation. In other words, portable facilities may be comparable to and even better than permanent facilities. The quality of the facilities is the more significant factor, rather than whether facilities are permanent or portable.

Preparation and Maintenance. The preparation and maintenance of facilities should be the same for girls' and boys' teams in the same sports, and provided to the same extent necessary for girls' and boys' teams in dissimilar sports. This may include lining fields; taping boundary lines for volleyball; cleaning mats for wrestling; sweeping floors, setting out team benches or chairs, scorer's tables, and media areas for basketball teams; cutting grass fields, etc. Coaches and athletes may choose to perform minor chores as a team-bonding activity; otherwise, school maintenance staff should be performing facility preparation and maintenance chores to the same extent for girls' and boys' teams.

Locker Rooms

Quality and Availability. Compliance may be achieved when roughly equivalent percentages of female and male athletes have locker rooms of the same quality. Calculating the percentages of athletes can be complicated by the fact that some teams, for example, cross country, golf, and tennis, may choose not to use locker rooms even when space is available. Also, some latitude for fluctuations in annual participation is appropriate.

Quality involves a review of: the size of the room and adequacy for the number of athletes using the room at one time; the location of locker rooms in relation to practice and/or competitive facilities, training, weight, and equipment rooms; the number, size and quality of lockers; seating; lighting; flooring; maneuvering space; numbers of toilets, showers, and sinks; meeting space; lounge areas and furniture, including televisions, video, music systems, refrigerators, microwaves or stoves; and adjoining rooms such as team video rooms, training rooms, and laundry rooms. Quality also considers whether a team has exclusive use of the locker room for the entire academic year, just the sports season, or whether the room is shared during the regular season.

Compliance problems for locker rooms are common, including: providing locker rooms to the boys' basketball and football teams that are higher quality than those provided to all girls' teams; providing the football and boys' basketball teams and no other teams with exclusive use of their locker rooms; arranging for visiting teams to share the girls' locker rooms but not the boys' locker rooms; and assigning locker rooms to girls that are inconveniently located in relation to practice and competitive facilities, while boys' locker rooms are conveniently located. Compliance problems for locker rooms may be easily resolved on most campuses simply by reassigning the available locker rooms. Locker rooms may be reassigned by season, or alternated annually to achieve compliance.

IX IX IX IX IX IX IX

MEDICAL AND TRAINING FACILITIES AND SERVICES

Factors reviewed:

- availability and qualifications of medical staff
- availability and qualifications of athletic trainers
- weight rooms
- training rooms
- insurance

The availability and qualifications of medical and athletic training staff are based on the nature of the sport; thus, assignments of staff should be the same for boys' and girls' teams in the same sport. For dissimilar sports, compliance is determined by the extent to which benefits and services are provided based on needs identified by coaches, athletic trainers, and medical professionals. Athletics staff may determine the extent of weight training and conditioning for athletes, and weight training programs may differ by sport. Training rooms for treating injuries and taping for injury prevention, etc., should be equivalent quality and equally available for female and male athletes. Any insurance available through the school for athletics participation should be the same for male and female athletes. Most compliance problems for medical and training facilities and services are readily resolved by reassignments of staff and/or facilities.

Medical Personnel and Services. Medical personnel and services should be equally available to female and male athletes for physical examinations, evaluations of injured athletes or medical procedures, or any transportation to medical assistance off campus. The assignment of medical personnel to home games, away games, and practices is dependent on the nature of the sport and should be the same for girls' and boys' teams in the same sport, and as appropriate to the nature of the sport for dissimilar sports. The nature of the sport of football can justify the assignment of a medical doctor or other medical staff even when no other sports have this benefit. Schools should avoid obvious compliance problems such as: assigning a doctor or other medical staff to boys' basketball games but not girls' basketball games; and arranging priority for medical evaluations for boys' basketball and football athletes.

Athletic Trainers. Under Title IX, the assignment of athletics training staff is based on the nature of the sport. Although offsetting benefits are permitted, the best compliance approach is identical assignments of athletic trainers for girls' and boys' teams in the same or similar sports at home events, away events, and practices. Occasionally, additional staff may be appropriate based on the number of participants; for example, if a girls' soccer team has 40 participants and a boys' soccer team has 20 participants, the school might assign an additional athletics trainer to the girls' soccer team practices. Barring evidence to the contrary, certified staff athletic trainers are assumed to be more qualified than certified intern or graduate student athletic trainers, who are more qualified than non-certified student athletic trainers. There is also greater assurance of continuity of services with staff athletic trainers rather than intern or graduate student athletic trainers. For dissimilar sports, rates of injury and rates of serious injury may guide the assignment of athletics training staff.

Weight Rooms. Boys' and girls' teams may be assigned to different weight rooms without creating compliance problems, if the rooms are equivalently adequate in quality with equivalently convenient scheduling. Different weight rooms for boys and girls do not have to be the same size and have the same equipment. Adequate space and equipment are evaluated by how many athletes need to use the weight room at one time and the extent to which desired equipment is available.

When a school has only one weight room, then the quality is the same (rare exceptions may concern the availability of equipment for specific sports and not other sports). Thus, compliance is based on teams' schedules, and the focus should be for equivalently sufficient and convenient scheduling. Due to the nature of the sport and the number of participants, it is common for football teams to schedule more time in the weight room than many other teams. However, scheduling times that are convenient and sufficient for a football team may not result in less convenient or less sufficient times than desired by girls' teams.

Strength and conditioning coaches may be employed by some schools and may spend considerably more time with football teams than other teams. This is permissible when strength coaches are available to girls' teams to an extent that is equivalently adequate.

Training Rooms. Girls' and boys' teams may be assigned to different training rooms without creating compliance problems if the rooms are equivalent for: adequacy; quality, including age and type of equipment for treating injuries and injury prevention; and accessibility to locker rooms, practice and competitive facilities. If there is only one training room, then the focus for compliance is for equivalently convenient and sufficient schedules.

A simple compliance approach is to allow all athletes to use all training rooms on a drop-in basis. If schedules must be set, then the preferred times should be shared or alternated to ensure equitable scheduling. The common compliance problems include providing boys' teams with better training rooms, better scheduling, and/or more conveniently located training rooms.

Insurance Coverage. Schools might provide secondary insurance that covers the costs for athletics participation. Often, premiums are not charged to the students for the secondary insurance. If athletes must pay premiums, those costs should be the same for female and male athletes to avoid raising compliance questions. Compliance concerns for insurance are unusual. The main compliance concern that may arise is a policy that excludes gynecological care when health problems requiring such care are the result of athletics participation.

IX IX IX IX IX IX IX

HOUSING AND DINING FACILITIES AND SERVICES

Factors reviewed:

- housing and dining for the regular academic year
- pre-game, post-game meals
- housing and dining during term breaks

Housing and Dining During Academic Year

Housing. Housing is rarely provided at public schools, but may be provided at private secondary schools. Housing during the regular academic year is often not a concern, as student-athletes residing on-campus are housed in the same dormitories as all other students. When housing problems arise under Title IX, it is because athletes of one gender are provided higher quality housing that may be available on some campuses. Any special housing arrangements or accommodations, including priority in housing assignments, or unique or special off-campus housing that may be arranged with an outside agency, must be equally available to female and male athletes.

Special housing arrangements, such as on the night before home events, can be a compliance concern when available for teams for one gender but not teams for the other gender desiring such housing. Many coaches do not want special housing on the night before home events, as coaches consider that athletes are better rested when staying in their regular housing arrangements. If the football team or the football and boys' basketball teams are provided special housing, this is not a concern if no girls' teams want this benefit; however, it is a concern if denied to girls' teams desiring this benefit.

Dining. Regular dining arrangements are usually not a compliance concern. Special dining arrangements, such as more nutritious or greater quantities of food, and/or nutrition stations, should be equally available to female and male athletes. If such benefits are provided to the boys' basketball and football teams, and those two teams constitute half of the male athletes, then half of the female athletes should be provided special benefits; half of the female athletes may be the participants on four or five girls' teams, not just two teams. Special arrangements may include making boxed meals available or arranging special dining hall hours to accommodate practice and/or competitive schedules.

Training table meals, which may be rare at the secondary education level, are to be equally available to girls' and boys' teams. Avoid the common problems of providing training table meals to just the football and boys' basketball teams. If no other teams want training table meals, this is not a concern. However, if girls' teams want training table meals, which they do not receive, this creates a compliance problem.

Pre-Game/Post-Game Meals

The provision of pre-game and post-game meals is a common compliance problem. This is often because more boys' than girls' teams are provided the meals of those teams desiring this benefit. Whether the funding for such meals is from team operating accounts, fundraised, or booster club monies is irrelevant under Title IX — schools are still obliged to provide equitable

benefits. Basic compliance strategies include: provide pre-game and/or post-game meals to all boys' and girls' teams desiring this benefit; provide pre-game and/or post-game meals to the same extent for the girls' and boys' teams desiring this benefit; or discontinue pre-game and post-game meals for all teams.

Housing and Dining During Term Breaks

The housing and dining program component also covers compliance problems that may arise when athletes are on campus when classes are not in session, such as before classes in the fall, during winter and spring breaks, and after classes end in the spring. Avoid the obvious compliance problems, such as providing boys' teams but not girls' teams with sufficient funds for meals and any housing that may be provided; this includes the availability of fundraised monies for boys' teams that cover meal costs, when girls' teams do not have the resources to pay for meals. The lack of funds during term breaks can also affect the scheduling of teams' practices and even competitions.

Some teams prefer to travel during winter and spring breaks, and travel opportunities would be analyzed under the Title IX program component of travel and per diem allowances. Some coaches, even when adequate funding is available, choose to give athletes a break or plan conditioning schedules that athletes may do on their own. Thus, determining compliance involves analyzing the extent to which the girls' and boys' teams that want housing and dining benefits during term breaks receive them. Even when all teams that want to be on campus during these times can make such arrangements, compliance problems may still arise when, for example: more per diem is provided to male athletes than female athletes; and boys' teams are provided better housing than girls' teams.

IX IX IX IX IX IX IX

PUBLICITY

Factors reviewed:

- availability and qualifications of sports information personnel
- publications
- other publicity resources — includes in-game promotions and support groups, such as cheerleaders, pep band, and mascot

For many program component areas, equivalent percentages of female and male athletes should be provided comparable benefits. In general, however, benefits under the publicity program component may be provided to the same number of boys' and girls' teams, or for example, more girls' than boys' teams when a school offers more girls' than boys' teams.

Sports Information Personnel. Generally, a good approach for compliance is to provide the same number of girls' and boys' teams with equally qualified sports information personnel at home events, and separately, at away events. Barring evidence to the contrary, professional staff are viewed as better qualified and more available than intern or graduate student staff, who in turn, are considered more qualified than undergraduate student staff. In many programs, the athletic director or other staff members may provide sports information services, and those services would be analyzed for compliance.

Publications. Publications may include media guides, game programs, schedule cards, posters, press releases, newspaper ads, websites, and social media posts. Many schools produce publications online. Any special features for online publications, such as interactive websites or graphics, should be provided to the same extent for boys' and girls' teams. Any printed publications should be produced for the same number of girls' and boys' teams, or for example, for more girls' than boys' teams when more girls' than boys' teams are offered. Media guides are usually the most significant publication, and they do not need to contain identical information to be comparable, but information in the same detail is appropriate. If girls' teams have competed fewer years and have fewer statistics, girls' guides may have fewer pages, which does not create a Title IX concern. Any publications produced by booster clubs would be viewed under Title IX as provided by the school, and the school would be liable for providing offsetting benefits as necessary to ensure compliance.

Other Publicity Resources. Schools must make an equivalent effort to publicize and promote their boys' and girls' programs. This is required even if the result of a school's equivalent efforts may be that only boys' teams receive media coverage. Newspapers, radio and television enterprises have no obligation to comply with Title IX or provide equitable coverage. The policy for equivalent effort is to ensure that schools do not presume less interest in girls' sports, and therefore, publicize and promote girls' teams less. Even when media coverage has been denied in the past, schools are expected to make reasonable efforts at reasonable intervals to obtain radio, newspaper, and television coverage for girls' teams when such coverage is otherwise provided to boys' teams.

Promotional activities such as give-aways and prize contests should be provided at home events for the same or similar numbers of girls' and boys' teams. Sideline cheerleaders, pep bands, marching bands, mascots, drill teams, dance teams, etc., are viewed as support groups under the publicity program component. A good compliance approach is to provide such groups at home events for the same number of boys' and girls' teams and at away events for the same number of boys' and girls' teams. Some teams at some venues may prefer music and video board presentations to cheerleaders and the pep band, and such choices are acceptable. Compliance concerns for support groups are common and usually arise when girls' teams do not have the preferred performances by the cheerleaders, pep band, and mascot that are provided to the boys' teams. Compliance concerns may be resolved by increasing performances by support groups at girls' games or reducing them at boys' games.

IX IX IX IX IX IX IX

SUPPORT SERVICES

Factors reviewed:

- administrative support
- clerical support
- office space

Administrative and Clerical Support. The purpose of the support services program component is to ensure that administrative and clerical chores that coaches may perform do not affect coaches' availability to athletes based on gender. Title IX does not require that the same number of equally qualified support staff be assigned to the boys' and girls' program or boys' and girls' teams in the same sport. The analysis focuses on the amount of time that coaches spend performing these chores, which can vary by the nature of the sports. This includes considerations of whether needed support functions are not accomplished due to lack of staff, which can affect the success of the team. Occasionally, student staff or part-time clerical staff may provide the support necessary to achieve the end goal — coaches in the girls' and boys' programs spending comparable hours performing administrative and clerical chores for their teams. When compliance problems arise, it is usually the girls' program that is disadvantaged; consequently, options to achieve compliance generally include assigning support staff more often for girls' teams, reassigning staff currently available for boys' teams to girls' teams, or discontinuing the availability of staff for some boys' teams.

Office Space. As with administrative and clerical assistance, office space is reviewed only to the extent that it allows coaches to be more effective in serving the student-athletes; it is the students who are protected by the Title IX athletics requirements, not the coaches. Office space, to the extent that it benefits coaches, is a Title IX employment issue, not a Title IX athletics issue. As an employment concern, office space is a secondary issue to salary and benefits such as health insurance and retirement.

At many schools, coaches have access to the office space provided for physical education teachers, and the quality of office space is not significantly different. Office space is reviewed for equipment that can affect coaching efficiency, such as televisions and video equipment, computers, and printers. Overall, offices and the features reviewed include: private versus shared space; size; furnishings such as desks, chairs, credenzas, bookcases, conference tables etc.; and amenities such as refrigerators, microwaves, lounge furniture, lavatories, and adjoining locker rooms. The specific quality of furnishings is usually a secondary consideration to private office space and equipment used for coaching duties. Avoid compliance problems such as assigning a much larger space to boys' coaches than girls' coaches, providing more boys' than girls' coaches with office space and/or extra amenities, and providing private offices to one or two boys' coaches but no girls' coaches. Compliance concerns for office space may be resolved by reassigning space and/or reallocating features and equipment, such as televisions, video equipment, computers, and printers.

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RECRUITMENT OF STUDENT-ATHLETES

Factors reviewed:

- opportunity to recruit
- financial resources
- treatment of prospective student-athletes

Opportunity to Recruit

The opportunity to recruit is the same issue as the availability of coaches, as discussed on pages 17-19. To summarize, this factor considers the number of coaches per team, lengths of contracts, and whether coaches are otherwise employed on-campus or off-campus. A simple compliance approach is to provide: the same number of coaches for girls' and boys' teams in the same sports; and equivalently appropriate numbers of coaches for dissimilar sports. Also, similar proportions of girls' and boys' coaches should otherwise be employed on-campus. A coach's length of contract, on-campus or off-campus duties, including teaching and administration, and dual coaching responsibilities all affect the opportunity to recruit.

Recruitment activities at secondary schools may be quite limited. Activities may include encouraging students at the school to try-out for the teams, visiting local middle schools to discuss available opportunities at the high school, sponsoring special activities held at the school's athletic facilities, and operating sports camps that teach athletic skills to younger students. All of these, and any other recruitment activities are to be equitable for the overall girls' and boys' programs.

Financial Resources

This factor considers the funding more associated with postsecondary, rather than secondary programs, and compliance is based on dollars spent, not dollars budgeted. OCR policy presumes that recruitment funds will be proportionate to women's and men's rates of participation, absent a nondiscriminatory justification for disproportionate funding. OCR has set no parameters regarding what constitutes "proportionate" funds for recruitment. It is suggested herein that differences greater than five percentage points be reviewed and addressed as necessary. Financial resources for recruitment include: transportation, lodging, and meal expenses for off-campus and on-campus recruitment; printing; photocopying; telephone; and subscriptions to recruitment services.

For interscholastic athletics programs, financial resources for recruitment include any expenditures associated with the recruitment activities outlined above in regard to visiting local middle schools and sponsoring special activities, and/or on-campus activities. Any expenditures for printing, photocopying, telephone, and subscriptions to recruitment services should be included when those costs are related to recruitment. The financial resources for recruitment encompass funding from all sources, including booster clubs. Any disproportionate spending for recruitment activities for girls' and boys' programs should be adjusted as necessary to achieve compliance.

Courtesy Cars, Allowances. Courtesy cars and car allowances are rarely provided in interscholastic athletics programs. OCR does not have set policy regarding courtesy cars or allowances, and the availability of cars or allowances can be both Title IX athletics and Title IX employment considerations. If courtesy cars are provided to any coaches, it is recommended herein that courtesy cars or car allowances be provided to a proportionate number of girls' and boys' coaches to navigate considerations under the Title IX athletics and employment requirements.

Treatment of Prospective Student-Athletes

The Title IX factor of the treatment of prospective student-athletes concerns benefits more associated with intercollegiate rather than interscholastic programs. There are four basic benefits provided to prospective student-athletes: transportation; housing; meals; and entertainment. A prospective student-athlete's visit may be fully subsidized (all costs paid by the institution) or partially subsidized (some costs paid by the institution). Usually, coaches choose the extent to which they subsidize the visit for each prospective athlete. Unofficial visits, where the prospective athletes pay all costs, are not analyzed for compliance. To the extent that any interscholastic programs provide such benefits, transportation, lodging, meals, and entertainment are to be equivalent for female and male prospective athletes.

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RESOLVING COMPLIANCE PROBLEMS

Resolutions for most compliance problems are self-evident once the problems are identified. Generally, Title IX compliance problems may be resolved in one of three ways: add benefits for the disadvantaged gender; reallocate benefits from the advantaged gender to the disadvantaged gender; or reduce benefits to the advantaged gender. Again, Title IX does not require that schools have programs of any specific quality, so the option to reduce benefits for one gender is an acceptable option, even if it is an undesirable option.

There are no-cost solutions to all Title IX compliance problems, and most problems can be resolved within a year. Significant remedies that school officials may choose, such as renovating or constructing facilities, hiring staff, or adding teams, should be completed as quickly as possible, but officials should plan on two or three years at the most. Interim compliance measures, such as reassigning existing facilities, should be implemented while significant long-term remedies are in progress. Delaying any relief for the disadvantaged gender for three years or more might be viewed as dilatory. Officials who choose to delay compliance for as long as five years invite speculation regarding their intentions to comply.

NOTES AND REFERENCES

Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (20 United States Code section 1681) *et seq.* (Title IX), is a federal statute created to prohibit sex discrimination in education programs that receive federal funds. Nearly all postsecondary and many secondary institutions are recipients of federal funds, and thus, required to comply with Title IX. The regulation implementing the Title IX statute is at 34 C.F.R. (Code of Federal Regulations) Part 106. Title IX is enforced nationwide by the Office for Civil Rights (OCR) of the U.S. Department of Education. OCR has authority to develop policy on the regulations it enforces. In regard to athletics programs, OCR developed an Intercollegiate Athletics Policy Interpretation that was issued December 11, 1979, 44 *Fed. Reg.* 71413 *et seq.* (1979). The 1979 Policy Interpretation remains current policy. Generally, courts defer to the policies of the agencies with enforcement authority.

Title IX Statute – enacted June 23, 1972 (20 U.S.C. § 1681 *et seq.*).

This document is the statute written by the U.S. Congress and provides 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[.]”

Title IX Regulation – effective date July 21, 1975 (34 C.F.R. Part 106)

This document implements the statute and contains provisions for athletics programs at 34 C.F.R. § 106.41 and for athletic scholarships at 34 C.F.R. § 106.37(c).

September 1975 Guidance:

“Elimination of Sex Discrimination in Athletics Programs”

Issued by OCR to Chief State School Officers, Superintendents, College and University Presidents and others; provides general guidance on Title IX athletics requirements. Among other provisions, this document clarifies that different sources of funds may not justify sex discrimination. Specifically:

“[T]he fact that a particular segment of an athletic program is supported by funds received from various other sources (such as student fees, general revenues, gate receipts, alumni donations, booster clubs, and non-profit foundations) does not remove it from the reach of the statute and hence of the regulatory requirements.”

Intercollegiate Athletics Policy Interpretation (December 11, 1979)

Issued by OCR, this document is OCR’s major policy for athletics programs. This document elaborates on the provisions of the 1975 Title IX regulation and creates the three-part test for participation opportunities. (*Federal Register*, volume 44, pages 71413 to 71423)

Title IX Athletics Investigator's Manual (April 2, 1990)

Issued by OCR, the 1990 Title IX Athletics Investigator's Manual updates, implements, and/or confirms certain procedures and/or practices. The Manual, designed for OCR investigators, includes: procedures for Title IX athletics investigations; the scope of data collection; and instructions for analyses. The Manual also creates new policy and confirms internal policy. This Manual was signed by the Assistant Secretary for Civil Rights and is formal policy of the Office for Civil Rights, U.S. Department of Education.

Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test
(January 16, 1996)

Issued by OCR, the Clarification explains the three-part test used to analyze compliance for the accommodation of students' athletics interests and abilities (participation opportunities). This document contains the mathematical analysis designed by OCR for determining how close is close enough to constitute rates of athletics participation that are substantially proportionate to rates of enrollment (test one of the three-part test). This document also establishes a working definition for counting participants that identifies the first date of competition as an appropriate point to count participants.

Clarification — Athletic Scholarship Guidance (July 23, 1998)

Issued by OCR, this document creates a new compliance standard — one percentage point — for athletic scholarships; in effect, to establish a presumption of compliance, rates of awards should be at or within one percentage point of rates of participation. OCR disseminated this new policy nationwide in fall 1998.

Additional Clarification of the Three-Part Test: Test Three (April 20, 2010)

On March 17, 2005, OCR issued policy that created a model survey, which institution officials could use at their discretion to gauge compliance with test three of the three-part test for participation opportunities. Non-response to the survey was interpreted as lack of interest. OCR rescinded the 2005 policy in the policy document issued April 20, 2010. The 2010 policy essentially reinforced the guidance in OCR's 1996 Policy Clarification for the three-part test.

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"Title IX and Interscholastic Athletics: How It All Works—In Plain English" is a self-evaluation manual and desk reference that provides step-by-step instructions and tools for conducting a self-evaluation (including questionnaires for coaches, athletes, and staff, and charts for recording information). This comprehensive manual and desk reference is available for purchase at www.TitleIXSpecialists.com.

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This Handbook was written by Valerie McMurtrie Bonnette, Founder of Good Sports, Inc., Title IX and Gender Equity Specialists. Good Sports, Inc., assists educational institutions in complying with the athletics provisions of Title IX. Prior to founding Good Sports, Inc., in 1994, the Author was employed for fifteen years at the Office for Civil Rights, U.S. Department of Education, Washington, D.C., headquarters office and co-authored OCR's 1990 Title IX Athletics Investigator's Manual. She conducted federal investigations of complaints alleging sex discrimination in athletics programs, provided technical assistance to national and regional athletics organizations, provided on-site technical assistance to individual institutions, and provided guidance on Title IX athletics policy and procedure to OCR's enforcement offices, education officials, students, and parents.

The Author has created this publication to provide accurate and authoritative information concerning the subject matter covered. This publication is not legal advice; it is intended as technical assistance.

