

A practical guide for evaluating your school's compliance with Title IX

A photograph of water polo players in a pool. In the foreground, a player in a blue cap and orange jersey is looking down at a yellow ball held by a player in a white cap with a blue 'S' logo. Another player in a red cap is visible in the background. The water is bright blue and splashing.

Time Out

Does Your School Play Fair?

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Preface

Time Out is designed to help students, coaches, parents and educators understand girls' rights under Title IX to equal athletic opportunities and benefits in school athletic programs. This guide is intended to provide general information only and is not intended, nor should it be relied upon, as legal advice. If you are interested in getting help with a particular legal problem involving Title IX and girls' athletics, contact the California Women's Law Center at (323) 951-9276 or info@cwlc.org

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The California Women's Law Center is a nonprofit policy and advocacy center dedicated to advancing the civil rights of women and girls.

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I. INTRODUCTION

In 1971, there was only one female high school athlete for every 12 males. Nationwide, only 294,000 girls were participating in school sports, while a whopping 3.6 million boys enjoyed spots on athletic teams.¹ Then in 1972, Congress passed Title IX, a federal law that prohibits sex discrimination in any school receiving federal money, which includes nearly all public schools, most private colleges, and many private secondary and elementary schools.²

Although the purpose of Title IX is to prohibit any type of sex discrimination in schools, it was quickly recognized as a tool to achieve gender equity in athletic programs. Since the passage of Title IX, female participation in high school athletics has increased tenfold, to nearly 3 million spots on school teams.³ Although this is great progress, girls still have some catching up to do, since the number of boys participating in high school sports is nearly 4 million.⁴ This means that even today, girls comprise 40% of high school athletes while boys comprise 60%.

Many people assume that Title IX applies only to colleges because most of the publicity has centered around university lawsuits; however this is not true. Title IX applies to any school receiving federal funds, which includes high schools, middle schools and elementary schools. It is important that athletes, coaches, parents, teachers and administrators learn about Title IX because a recent survey of California high schools revealed that the majority of schools are still not in compliance with Title IX.⁵

You can use this guide to inform yourself and assess whether your school treats girls as fairly in sports as it treats boys. If not, which is likely, we include steps you can take to help address any problems at your school. Take action now, speak up, and don't let discrimination persist in California schools!

TOP TEN LIST: WHY SPORTS ARE GREAT FOR GIRLS

We have come a long way since the 1950s, when the American Medical Association actually warned that strenuous competition might be harmful to girls.⁶ We know now that competition and athletic activity are not harmful to young women; instead they are important for their health, success and self-esteem. Here are 10 great reasons why girls should be encouraged to participate in sports, and why we need to create equal opportunities for them to do so!

1. Females who exercise regularly may reduce their lifelong risk of breast cancer by approximately 30%.⁷
2. Adequate weight bearing exercise, especially in a female's high school and college years, helps prevent osteoporosis.⁸
3. Female athletes are less at risk for diabetes, obesity and cardiovascular disease.⁹
4. Girls who participate in athletics are more than 50% less likely to experience an unwanted teen pregnancy than those who do not play sports.¹⁰
5. Teenagers who play sports are less likely to take up smoking.¹¹
6. Female athletes are more likely to get good grades, graduate and go on to college.¹²
7. Girls who play sports have better body images than girls who do not, and learn to appreciate their own power, strength and agility.¹³
8. Playing sports helps build young women's self-confidence and self-esteem.¹⁴
9. Participation in athletics helps promote a better overall state of mental health and helps decrease stress and depression.¹⁵
10. Sports teach girls important skills such as leadership, teamwork and focus that help them excel in the corporate world. Of the female CEO's of Fortune 500 companies, 80% participated in athletics as young women.¹⁶



II. RULES OF THE GAME: An Overview

The Law: Just What is Title IX?

Title IX of the Education Amendments of 1972 is a federal law prohibiting gender discrimination in any school receiving federal funds. The text of the law states:

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 educational program or activity receiving Federal financial assistance.¹⁷

All public schools, almost all private colleges and some private primary and secondary schools are covered under Title IX because they receive federal tax dollars.¹⁸ Although Title IX prohibits gender discrimination of any kind, it is best known for its role in expanding athletic programs for young women and girls.

As applied to athletic programs, Title IX requires schools to:

- Offer male and female students **nondiscriminatory opportunities** to play sports;
- Treat both male and female student athletes fairly, offering female athletes the **same treatment and benefits** offered to male athletes;
- Award college **athletic scholarship money** in proportion to the number of female and male athletes at the school.

A Note on Funding

The budgets for female and male teams do not have to be equal: sport-specific cost differences are allowable (for example, boys' football uniforms are more expensive than girls' volleyball uniforms). But, **benefits** must be equal – the football uniforms may not be new every year and top quality while the volleyball uniforms are several years old and made of shoddy materials.¹⁹

Where benefits are not equal, a school **may not** use the excuse that it does not have enough money to provide better equipment, supplies, facilities, etc. for female teams. If the boys' athletic program receives greater benefits but the school has limited funds, the school has only three choices to comply with Title IX:²⁰

- 1) Increase the benefits for girls;
- 2) Decrease the benefits for boys; or
- 3) Do some of both.

Schools often raise money for athletics through booster clubs supported by parents and/or alumni. If the school raises money for boys' teams through booster clubs, **the school is still responsible for making sure that girls' teams receive equal benefits.**²¹ A school may not use booster club funding as an excuse for providing greater benefits to boys than to girls. If booster club funds disproportionately benefit boys' teams, the school could:

- Ensure that booster club money goes to a General Athletic Fund for all teams;
- Refuse the donation, unless donors agree to provide equivalent benefit to girls' teams; or
- Reallocate monies from the General Athletic Fund to girls' teams that do not receive booster support.

The bottom line is that the school is responsible for Title IX compliance.

Example: If a school holds post-season banquets for only the boys' football and basketball programs (claiming that this is allowable because they were gifts from the booster clubs), but no girls' teams receive post-season banquets, this is a violation of Title IX.²² The school must ensure that the booster club funds do not result in discrepancies in benefits provided for the boys' and girls' teams.



III. FAIR GAME:

Nondiscriminatory Opportunities to Play Sports

Equal Opportunities to Compete

Although Title IX does not require “quotas” of female athletes, Title IX does require that girls have nondiscriminatory opportunities to play sports. The Office of Civil Rights (OCR), the federal government agency responsible for enforcing Title IX, established a “three part test” to determine whether schools are in compliance with the “equal opportunities” requirement of the law. Schools comply with Title IX by meeting **any one of the three parts** of the test:²³

Substantial Proportionality: A school complies with this prong of the test if the numbers of male and female athletes are substantially proportionate to the percentages of males and females enrolled at the school.

Example: If a high school's enrollment is 50% girls and 50% boys, but 57% of the school's athletes are boys and only 43% are girls, the school would not be in compliance with this part of the test. There is no set ratio that constitutes “substantially proportionate” or that, when not met, results in a Title IX violation.²⁴ However, as long as the percentages of athletes are close to the proportional enrollment, the school is probably in compliance.

History and Continuing Practice of Expansion: If the ratio of male to female athletes is not substantially proportionate, a school may still comply with the law if it has a history and continuing practice of expanding athletic opportunities for females, the historically underrepresented sex.

Example: If a school has **consistently and continuously** added opportunities for girls since the passage of Title IX (such as adding new girls' teams or increasing spots on existing teams), it may be in compliance with this aspect of the law. However, simply adding one or two girls' teams in the past 35 years would certainly not count as a history and continuing practice of expansion.

Fully and Effectively Accommodating Interests: Finally, a school complies with the "equal opportunities" component of Title IX by fully and effectively meeting female students' interests and abilities in sports. To determine if it is meeting all of the interest in girls' sports, a school should:

- Evaluate girls' requests to add teams
- Examine female student participation rates in club or intramural sports
- Analyze girls' participation in physical education classes that teach particular sports
- Conduct periodic student surveys to determine the interest levels in all sports for females and males
- Assess sports played by girls at nearby schools, feeder schools for universities, and local recreational athletic leagues

If these factors reveal that girls have an interest in sports that is not being met, the school should expand its sports program

Example: If a high school has a girls' club field hockey team with enough players to field a varsity team to compete against other varsity teams in the area, but the school refuses to honor the girls' request to be given varsity status, the school is not fully and effectively accommodating the female athletes' interests and abilities.

Equal Levels of Competition

A school must also provide equal levels of competition and opportunities for both male and female teams. There are two ways to comply with this aspect of Title IX:²⁵

- Provide equivalently advanced competition opportunities to a proportionate number of male and female athletes; **or**
- Demonstrate a history and continuing practice of upgrading the competitive opportunities available to female athletes.

Example: High School X fields varsity boys' water polo, but offers only club water polo for girls. Because High School X does not provide equal levels of competition for male and female teams, the school is in violation of Title IX.



IV. COVERING ALL THE BASES

Fair Treatment and Benefits

Overview

Although schools are not required to spend the identical amount of money on boys' and girls' programs, they must provide equal treatment and benefits. Some inequalities between teams **may** be acceptable if they are compensated for elsewhere. For example, so long as the school provides uniforms of similar quality and quantity for both the boys' football team and the girls' volleyball team, it is not a violation simply because the boys' uniforms are more expensive. To find out whether your school treats girls fairly, a variety of factors must be examined, such as:²⁶

- Equipment and Supplies
- Locker Rooms, Practice and Competitive Facilities
- Game Schedules and Practice Times
- Coaching Staff
- Travel and Related Expenses
- Publicity
- Access to Tutoring
- Medical and Training Facilities and Services
- Housing and Dining Facilities and Services
- Recruitment of Student Athletes
- Support Services



Equipment and Supplies

Title IX requires that both girls' and boys' programs receive the same level of services, facilities and supplies. Such factors as equipment quality, quantity, suitability, availability, maintenance and replacement should be considered when evaluating a school's athletic program.²⁷ In general, equipment and supplies include (but are not limited to):

- Uniforms and apparel such as game and practice uniforms, shoes and warm-up suits

Example: If apparel is provided for all male teams but for no female teams, the school is in violation of Title IX. If the school provides higher quality uniforms and/or replaces them more often for male teams than for female teams, the school is in violation of Title IX. However, it is not a violation of Title IX if the boys' wrestling uniforms happen to cost more than the girls' swimming uniforms; such sport-specific differences in cost are allowable as long as the uniforms are of the same quality and are replaced with the same frequency.

- Sport-specific equipment and supplies such as bats, sticks, rackets, gloves and balls
- Instructional devices such as pitching machines for softball or baseball and ball feeders for tennis
- Conditioning and weight training equipment²⁸



Locker Rooms, Practice and Competitive Facilities

The facilities and locker rooms used by boys' and girls' teams should be of equal quality and suitability. It violates Title IX to provide boys with better facilities than girls. If both boys and girls use the same facilities, they should have equal access and fair scheduling (see next section). Also, if new facilities are built they should not be for the exclusive use of boys, without facilities of equal quality being provided for the girls.

Example: If a school builds a state-of-the-art baseball facility for the boys, while the girls' softball team has to play on old rundown fields, the school is in violation of the law because the facilities are not of equal quality. If the boys play on a regulation size basketball court while the girls play on a smaller, older court, this would also be a violation of the law.

Another factor to consider is whether or not the practice and competitive facilities are maintained equally for boys' and girls' teams. Fixtures such as scoreboards, goals, nets, and bleachers should be of equal quality and quantity for all teams.

In addition to the competitive and practice facilities, locker rooms should be of equivalent size and quality. If male athletes are provided with lockers that are large enough to accommodate their equipment, then female athletes must be provided with similarly sized lockers. If the bathrooms and showers are well-maintained in the boys' locker room, then they must be comparably maintained in the girls' locker room.



Scheduling of Games and Practice Times

Scheduling of games and practice times is often a conflict in schools where both boys' and girls' teams share the same facilities. Often the boys' teams practice and compete at more desirable times than the girls' teams do. In order to avoid a Title IX violation, a school must ensure that the practice and competition times are equally desirable for both female and male teams. Schools should follow a strict schedule by which the boys' and girls' teams alternate the best game and practice times.

Example: A school violates Title IX if it always schedules the girls' swim meets at 3:30 p.m. and the boys' meets at 5:30 p.m., when parents get off work and are able to watch. The school could comply with Title IX by alternating times for the meets so the girls begin at 5:30 one week and at 3:30 the next, while the boys have the opposite schedule.

Factors to consider when determining Title IX compliance include:

- Number of competitive events offered per sport
- Number and length of practices

- Time of day competitive events are scheduled
- Time of day practices are scheduled
- Number of pre-season and post-season competitive opportunities²⁹

All teams should have approximately the same number of games per season **and** have similar opportunities to participate in off-season competition.

Example: If the boys' varsity soccer team at High School X competes in off-season tournaments and has more varsity games than the girls' team, the school is not in compliance with Title IX.



Coaching

When determining whether a school provides equal coaching benefits for girls' and boys' teams, such factors as coach availability, qualifications and pay should be considered.

1. Availability:

Are there as many coaches (including assistance coaches) for female teams as boys' teams?

What is the coach-to-athlete ratio for boys, and for girls? For example, take the total number of female athletes and divide by the number of girls' coaches at the school. Do this again for the boys. The numbers should be the same, or very close to the same. A school with a ratio of 22.7 male athletes per coach and a ratio of 44.9 female athletes per coach was found to be in violation of Title IX.³⁰

Are the coaches of female athletes as accessible as the coaches of male athletes? Coaches who are also full-time teachers are available to student athletes during school hours throughout the school year, while walk-on coaches may be available only during the season at practice and game times.

2. Qualifications:

Equally qualified coaches should be assigned to the boys' and girls' teams; it is a violation of Title IX to regularly assign the more qualified coaches to the boys' teams. When assessing a coach's qualifications, such factors as training, experience and professional standing should be considered. Although many years of coaching experience may be an indicator of qualification, remember that someone who has coached for three years can be as good as or better than someone who has coached for ten years.

3. Compensation:

To determine whether coaches of girls' teams are compensated fairly, the following should be considered:³¹

- Compensation or salary (per sport, per season)
- Duration of the coaching contract
- Conditions relating to contract renewal
- Coach's experience (i.e. head coach vs. assistant coach)
- Coaching duties performed

Note: If female coaches (of either boys' or girls' teams) believe that they have been discriminated against, or receive lesser pay than male coaches, they should seek legal advice as they may have grounds to bring a lawsuit.³²



Travel and Related Expenses

Sports teams often travel to a game, match or competition. For teams of the same size, transportation of the same quality should be provided.

Example: A school violates Title IX if it provides an air-conditioned chartered bus to transport the football team to the playoffs, but only provides a yellow school bus to transport the girls' basketball team to the playoffs.

If the school pays to house teams in hotels for an out-of-town competition, it should provide the same quality accommodations for both male and female teams. Furthermore, boys should not sleep two to a room while girls are required to sleep four to a similarly-sized room. Also, if any money is provided for meals, the amount should be the same for males and females. Factors to consider in assessing compliance are:³³

- Method of transportation
- Accommodations
- Daily dining allowances



Publicity

Under Title IX, schools are obligated to devote the same amount of publicity to both girls' and boys' sports. However, many schools promote boys' athletic events much more than girls' events. Examples of publicity include:³⁴

- School newspaper articles
- Pep rallies
- Cheerleaders, drill teams, pep bands, etc.
- Yearbook coverage
- Public address announcements
- Bulletin boards
- Website announcements
- School calendars
- Athletic awards and recognition

If varsity cheerleaders perform at boys' games, they should also perform at girls' games.³⁵ If the school has a Homecoming rally for the football team, it should have a similar rally for a girls' team, or include girls' teams in the same rally. It is very important to emphasize girls' sports because there is a long-standing tradition of favoring male teams. Publicizing girls' sports can help eliminate the stereotype that boys' sports are more important, and it can also help boost girls' confidence in themselves. Publicity can also help draw more spectators to girls' sports.



Access to Tutoring

If a school provides tutoring assistance for athletes, it must do so equally for both male and female athletes who desire such academic assistance. Tutoring conditions should be the same for both girls and boys. Factors to consider include:³³

- Qualifications of tutors
- Time tutors are available
- Compensation of tutors
- Process or criteria for requesting a tutor
- Number of student athletes tutored per session
- Availability of facilities and materials for tutoring

Example: If the school provides tutors for male student athletes, it must also do so for female athletes. Tutors for both male and female teams should be equally qualified and have access to similar equipment and tools (such as computers). Additionally, tutors for both males and females should receive equal compensation (if any). Male athletes should not be provided private tutoring sessions while female athletes are provided group tutoring sessions.



Medical and Training Services and Facilities

Factors to consider when determining Title IX compliance are:³⁷

- Availability and quality of weight and training facilities
- Availability and qualifications of athletic trainers
- Availability of medical personnel and assistance
- Insurance coverage (if any)

Example: Included in this section are weight rooms, which should be equally available to all teams. If the school has only one weight room, it should be equally open to all teams and be stocked with weights appropriate for all levels of training. A school should not favor boys' teams over girls' teams by providing boys' teams with better equipment than girls' teams. For example, many schools discriminate by maintaining separate "football" weight training rooms which are not open to girls. A better solution would be to have different weight rooms for "heavy training" and "moderate training," each of which is open to all students and is stocked with equipment of equal quality.³⁸



Housing and Dining Services and Facilities

This factor applies mainly to colleges and universities that provide housing and dining services for student athletes. The overall quality of services should be the same for male and female athletes. There may be allowable differences between sports; however, there should not be significant disparities between men's and women's teams.³⁶

Example: If a university provides special catering for the men's football and basketball teams, which is superior to the food provided to other athletic teams, but provides no such special catering for any women's team, the school is in violation of this aspect of Title IX. Similarly, if male athletes are consistently provided with larger or better dorm rooms than are female athletes, or receive other special treatment, such as laundry services that female athletes do not, this would be a violation of Title IX.

Recruitment of Student Athletes

This component of Title IX applies mainly to colleges and universities that recruit student athletes. Schools should not discriminate against women in the allotment of recruiting budgets. However, a straight dollar figure that is higher for men than women does not automatically indicate a Title IX violation. Nondiscriminatory differences may account for disparities in recruiting budgets, for example if a large number of male basketball players graduate the same year, creating a higher demand for recruiting dollars.⁴⁰ However, overall recruiting budgets should be approximately proportional to the percentages of male and female athletes at the school.⁴¹

Example: At University X, 45% of student athletes are women and 55% are men. However, out of the total recruiting budget, 75% is allocated for recruiting male athletes and only 25% is allocated for recruiting female athletes. Male recruits who come to visit the school are often given the royal treatment, including fancy dinners and nights at a hotel. Female recruits, on the other hand, usually eat at the school cafeteria and stay in the dorms with other female athletes. University X is in violation of Title IX because it does not offer the same treatment and benefits to males and females in its recruiting process.⁴²



Support Services

Schools sometimes provide administrative and clerical support to athletic teams, to give coaches more time to perform their coaching and recruiting duties. Although some teams may need more support than others, overall there should be no discrimination against female teams. For example, it would probably be a Title IX violation if the men's basketball team receives clerical support while the women's team does not.⁴³ This would leave the coach of the women's team with more duties, which detracts from time spent coaching and recruiting.





IV. GETTING IN THE GAME:

Proportional Scholarship Awards

If colleges and universities provide scholarships to student athletes, they must do so on a basis substantially proportional to the numbers of male and female athletes at the school.⁴⁴ For example, if 53% of athletes are male, only 52-54% of scholarship money should go to male athletes.⁴⁵ Although secondary schools rarely offer athletic scholarships, they must provide similar help to male and female students in securing an athletic scholarship for college.⁴⁶ To determine your school's compliance:⁴⁷

- 1. Calculate the percentages of male and female athletes at your school.** Count the total number of female athletes and divide by the total number of athletes at the school; do the same for male athletes. Count each individual only once even if she competes for more than one team.⁴⁸
- 2. Determine the proportion of financial aid provided to male and female athletes.** Find out the total dollar amount of scholarship money given to female athletes (you can check with the athletic department) and divide by the total dollar amount of athletic scholarship money provided to student athletes; do the same for male athletes. Note: It is important to find the total dollar amount, not simply the number of scholarships given, because male athletes often receive higher dollar amounts even if the total number of scholarships given is proportional.

3. **Compare the results.** The proportion of scholarship money given to female athletes should be within approximately $\pm 1\%$ of the proportion of female athletes at the school. For example, if females are 44% of the athletes at the school, the proportion of scholarship money awarded to female athletes should be between 43-45%.⁴⁹ Also, male and female athletes should receive a proportionate amount of non-grant assistance, such as work-study opportunities.

Although a school may have some justifiable reason for disparities in scholarship awards (for example, a college may coincidentally have more out-of-state male athletes who require more financial aid, or it may make reasonable choices for program development) there is often no excuse for disproportionate awards.⁵⁰ **NONE of the following reasons can be used as an excuse to offer less financial assistance to female athletes:**⁵¹

- Revenue-producing capabilities of certain teams
- Sources of funds (e.g., booster club funds or alumni donations)
- Athletic association rules
- Differing levels of spectator interest or community and student support



V. KNOW THE SCORE: Judge Your School's Title IX Compliance

Now that you know more about Title IX and other applicable laws, you can determine whether your school is in compliance. Complete the following worksheets to find the problem areas at your school. You can find the relevant information from the athletic director, administrators, coaches, athletes, and the school's website.

Do girls have equal opportunities to play sports?

A school has three different options to fulfill the “equal opportunities” requirement of Title IX. Therefore, if you answer “yes” to any one of the three following options, your school is providing equal opportunities to play sports.

1. Are the percentages of male and female athletes the same (or very close to the same) as the percentages of males and females enrolled at the school?

YES

NO

What is the total number of students in the school? _____

How many are female? _____

How many are male? _____

Divide the number of female students by total students _____%

Divide the number of male students by total students _____%

What is the total number of athletes per team at the school? (count all levels - varsity, junior varsity, etc.; do not include club or intramural athletes) _____

How many are female athletes? _____

How many are male athletes? _____

Divide the number of female athletes by total athletes _____%

Divide the number of male athletes by total athletes _____%

2. Does the school have a history and a continuing practice of expanding athletic opportunities for female students?

YES

NO

In order to show a continuing practice of expanding athletic opportunities for females, the historically underrepresented sex, a school must either add new teams for females, or add spots to existing female teams. Simply capping the size of boys' teams or cutting boys' teams does **not** count as expanding opportunities for girls. Furthermore, a school must show that it is **continuing** to add new teams or spots; if it had added teams in the past but is doing nothing presently, the school does not fulfill this aspect of the equal opportunities test.

The following can help you determine whether your school has a history and continuing practice of expanding athletic opportunities for girls (if you answer "**false**" to any of the following, the answer to this question is **no**):

Over the last few years, my school has added female teams:

True

False

Over the last few years, my school has not cut any female teams:

True

False

My school has the same policies for adding new athletic teams for both genders; boys are not favored over girls:

True

False

3. Is your school fully and effectively accommodating female students' interests and abilities in athletics?

YES

NO

A school's third option for complying with the "equal opportunities" component of the law is to show that it is already fully and effectively accommodating the interests of female students. In order for a school to prove this, it must demonstrate that it offers a varsity team for every sport in which there is:

- 1) Sufficient interest and ability for a viable team; and
- 2) A reasonable expectation of competition for that team in the institution's normal competitive region.⁵²

To determine whether there is sufficient interest and ability for a viable varsity team, a school should review its on-campus and feeder programs.⁵⁴ On-campus programs may include club sports, intramural sports and physical education courses.⁵⁵ If your school has any female club teams for which there is no corresponding varsity team, such as a club lacrosse team, this may indicate that the school is not currently meeting the interests and abilities of female student athletes. The same is true for intramural teams or physical education classes that teach a particular sport. Feeder programs include high school programs (for colleges), junior high school programs, and recreational programs in the school's vicinity.⁵⁵ If girls elsewhere in the vicinity, but not at your school, are playing a particular sport, there may be unmet interest in that sport at your school.

A school may also conduct a thorough survey of enrolled students to determine unmet interest in a particular sport; however, the school should not rely on this method alone to determine interest and ability. Surveys can be a useful tool to measure the female student body's interests in athletics, but they should not be the school's only method of assessment.⁵⁶

In summary, compliance with this third method is unlikely if there is a sport not currently offered to females **but** for which there is competition in the region and 1) a club team; **or** 2) an intramural team; **or** 3) a physical education class which teaches that sport.⁵⁷ Compliance is also unlikely if the school has refused requests by female students to add a varsity or junior varsity team.

Are girls provided equal levels of competition?

1. *Does your school provide both male and female athletes with similar competitive opportunities?*

YES

NO

Title IX covers more than just the quantity of teams and athletes; it also applies to the quality of competitive opportunities for male and female athletes.⁵⁸ For colleges, both men's and women's teams should compete at the same NCAA division level. The same is true for high school teams; boys' and girls' teams in the same sport should compete at the same levels (e.g., club, junior varsity, varsity).

When determining whether your school provides similar competitive opportunities for males and females, consider the following:⁵⁹

- Number of competitive events provided for each team at the school's competitive level (i.e. CIF division for high school)
- Number of off-season competitive opportunities provided for each team

Note: If your school does not provide similar competitive opportunities for males and females, it may still be in compliance with Title IX if it has a history and continuing practice of upgrading the competitive opportunities available to females.

Do girls receive equal treatment and benefits?

Please refer to the preceding chapters on fair treatment and benefits to determine whether your school treats girls the same as boys in these respects. Then check either “yes” if your school treats girls equally for that aspect, or “no” if it does not.

1. Equipment and Supplies (For example, game apparel, bats, balls, pitching machines, weights, etc.)

YES NO

2. Locker Rooms (For example, boys’ and girls’ locker rooms should have comparable amenities such as showers, toilets, lockers to accommodate equipment, etc.)

YES NO

3. Practice and Competitive Facilities (For example, scoreboards, goals and bleachers should be of equal quality for all teams)

YES NO

4. Scheduling of Games (For example, dates, times and numbers of scheduled games, number of pre-season and post-season opportunities, etc.)

YES NO

5. Scheduling of Practice Times (For example, dates, times, length and numbers of scheduled practices)

YES NO

6. Coaching (For example, availability and ratio of coaches, including assistant coaches, their qualifications and compensation)

YES NO

7. Travel and Related Expenses (For example, methods of transportation, dining allowances, accommodations, etc.)

YES NO

8. Publicity (For example, school newspaper articles, cheerleaders in attendance at games, public address announcements, school calendars, pep rallies, etc.)

YES NO

9. Access to Tutoring (For example, qualifications of tutors, availability of tutors, number of students per tutor per session, facilities and materials available, etc.)

YES NO

10. Medical and Training Facilities and Services (For example, availability and quality of weight-training facilities, athletic trainers and medical personnel, etc.)

YES NO

11. Housing Facilities and Services*

YES NO

12. Dining Facilities and Services*

YES NO

13. Recruitment of Student Athletes* (For example, substantially proportionate to numbers of male and female athletes at the school)

YES NO

14. Support Services* (For example, clerical or administrative support provided to the teams)

YES NO

* Applies mainly to colleges and universities

Are girls offered proportional scholarship awards?

1. Do female athletes receive their fair share of athletic scholarship money?

YES

NO

Institutions must provide financial aid in proportion to the number of students of each sex participating in intercollegiate athletics.⁶⁰ The law does not require that the total **number** of scholarships be proportionate to the number of participants of each gender or that individual scholarships be **of equal dollar value, but it does require** that the total dollar amount of scholarship aid given to females must be **substantially proportionate** to their participation rates.

To determine whether proportionately equal amounts of financial assistance are available to men's and women's athletic programs, divide the amounts of aid available for the members of each sex by the numbers of male or female participants, and compare the results. Financial assistance includes not only grants, but also work-study aid and loans.⁶¹

Example: University X provides \$450,000 in financial assistance to male athletes and \$400,000 to female athletes. There are 360 male athletes and 320 female athletes at the school.

$\$450,000/360 = \$1,250$ per male athlete

$\$400,000/320 = \$1,250$ per female athlete

Because the amount of scholarship money is proportional to the number of athletic participants of each gender, this school is in compliance with this component of the law. Note, however, that the school does not actually have to give \$1,250 to every athlete; some athletes may receive more, and some athletes may receive no scholarship money at all.



VI. ASK THE OFFICIAL: Questions and Answers

I think my school is in violation of Title IX. What do I do now?

The first step would be to alert your school that it is in violation – many schools do not know the law and what Title IX requires of them. Your school may be willing to make voluntary changes. Each school is required by law to have a Title IX coordinator. Find out who that person is and tell her about the Title IX problem. If your school is a high school or junior high school, you should notify the principal and the athletic director, and the coaches as well. You may also want to notify the school board.

Put your complaint in writing and be sure to keep a copy of your complaint. Students can voice their concerns by writing letters school officials and school board members, voicing their concerns. Parents may also advocate for their children, and coaches for their athletes. Anyone can make a Title IX complaint!

In addition, the Office of Civil Rights (OCR) at the U.S. Department of Education is responsible for enforcing Title IX. You can file a complaint with the OCR regarding your school. The OCR has 12 regional enforcement offices, with one located in San Francisco. The OCR website is www.ed.gov/about/offices/list/ocr.

If you have legal questions regarding your school and Title IX, or if you have been unsuccessful in resolving your claim yourself, you can contact the California Women's Law Center (CWLC) at (213) 951-9276 or info@cwlc.org.

I am a coach of a girls' high school basketball team that is being discriminated against by the high school in violation of Title IX. Is it legal for the school district to fire me for filing a Title IX complaint?

No. The Supreme Court has ruled that it is illegal for a school district to retaliate against **any person** for complaining about sex discrimination in violation of Title IX.⁶²

Coaches and teachers are often in the best position to advocate for the rights of their students because they are often better able to identify discrimination and bring it to the attention of administrators.⁵⁹

There is a female club field hockey team at our school with enough female players to field a varsity team. The club has repeatedly asked to be given varsity status, but the school claims there is not enough funding. Is this legal under Title IX?

If your school provides boys with a greater number of slots on athletic teams than their proportion of the school population, then refusing to add another girls' team is most likely a violation of Title IX. Lack of funding is never a valid justification for discrimination under Title IX. If there is a club team that has enough members to field a varsity team, has teams at other schools in the region to play, and has repeatedly asked to be awarded varsity status, then the school is not currently meeting female athletic interest and ability and is probably violating Title IX.

My school is a private school that does not receive any type of federal funding. Does this mean I have no recourse under Title IX?

If it is true that your school receives no federal funding, Title IX does not apply to your school. Be aware that almost all private colleges receive federal funding through financial aid programs. Private high schools or junior high schools may receive some benefit from federal tax dollars (e.g., federal lunch programs).

Even if your school truly receives no federal funding, there are separate California laws which mirror Title IX but apply to schools that receive state funding. California Education Code § 221.5 and California Education Code § 66271.7 prohibit gender discrimination in schools. The requirements are almost identical to Title IX's requirements, so this manual will still be helpful in helping you determine whether your school is in compliance with California law.

I have heard that Title IX requires schools to cut boys' teams. Is this true?

Definitely not. Title IX does not require schools to cut boys' teams to comply with its requirement that schools provide girls with opportunities to play sports in proportion to their enrollment in the school. Individual schools may choose to cut boys' teams, rather than add more girls' teams, as a means to comply with Title IX. However, this is the decision of individual schools rather than a mandate of Title IX.

A better way to comply with Title IX is to raise additional money to fund additional girls' teams, to trim the fat from bloated "big sport" budgets such as football or basketball, or to cut funding equally from all boys' teams rather than eliminating a boys' sport altogether. The decision to cut teams is school specific and in no way should be blamed on Title IX.

Does Title IX apply to parks and recreation teams?

No. Title IX is an educational law which applies only to **schools** that receive federal funding. However, California recently enacted a Government Code § 53080, which prohibits gender discrimination in community youth athletic programs or parks and recreation facilities. Like Title IX, this law requires community recreational departments providing the same level of services, facilities and supplies.

NOTES

- 1 Kathryn M. Reith, *Playing Fair: A Women's Sports Foundation Guide to Title IX in High School & College Sports* 6 (4th ed. 2004), available at <http://www.womenssportsfoundation.org/cgi-bin/iowa/issues/rights/article.html?record=195> [hereinafter *Playing Fair*].
- 2 Title IX is a gender-neutral statute and prohibits sex discrimination of any kind; therefore the statute protects boys as well as girls. Historically, girls have been the underrepresented sex at most schools, so this manual focuses on girls' rights. However, if boys are underrepresented in a school's athletic program, such as at a previously all-girls school that has become co-ed, the rules of Title IX would apply to boys' athletic teams as well.
- 3 *Playing Fair*, supra note 1, at 6.
- 4 *Id.*
- 5 RMC Research Corp., California Postsecondary Educ. Comm'n and California Dep't of Educ., *Title IX Athletics Compliance at California's Public High Schools, Community Colleges, and Universities* 5 (2004), available at <http://women.ca.gov/UserFiles/641.TitleIXFinalReport.pdf>.
- 6 Karen Blumenthal, "Title IX's Next Hurdle," *Wall St. J.*, Jul. 6, 2005, at B1.
- 7 Esther M. John et al., "Lifetime Physical Activity and Breast Cancer Risk in a Multiethnic Population: The San Francisco Bay Area Breast Cancer Study," 12 *Cancer Epidemiology Biomarkers & Prevention* 1143 (2003).
- 8 Dorothy Teegarden et al., "Previous Physical Activity Relates to Bone Mineral Measures in Young Women," 28 *Med. & Sci. in Sports and Exercise* 105 (1996).
- 9 Mercedes R. Carnethon et al., "Cardiorespiratory Fitness in Young Adulthood and the Development of Cardiovascular Disease Risk Factors," 290 *JAMA* 3092, 3098-99 (2003).
- 10 The Women's Sports Found., *The Women's Sports Foundation Report: Sport and Teen Pregnancy* 7 (1998), available at <http://www.womenssportsfoundation.org/cgi-bin/iowa/issues/body/index.html>.
- 11 Luis G. Escobedo et al., "Sports Participation, Age at Smoking Initiation, and the Risk of Smoking Among US High School Students," 269 *JAMA* 1391, 1394 (1993).
- 12 Ralph McNeal, "Extracurricular Activities and High School Dropouts," 68 *Sociology of Education* 62, 74 (1995).
- 13 Korey Capozza, "Team Sports Give Girls an Edge: Your Future CEO Could Get Her Start in Athletics," *Prevention Online* Aug. 11, 2005, <http://msn.prevention.com/article/0,5778,s2-6-73-87-3629-1,00.html>.
- 14 The Women's Sports Found., *Benefits – Why Sports Participation for Girls and Women: The Foundation Position* (Aug. 14, 2001), <http://www.womenssportsfoundation.org/cgi-bin/iowa/issues/body/article.html?record=577>.
- 15 *Id.*
- 16 Capozza, supra note 13.
- 17 20 U.S.C. § 1681 (2000).
- 18 *Playing Fair*, supra note 1, at 5.
- 19 *Id.* at 10.
- 20 *Id.*
- 21 U.S. Dep't of Educ., Office for Civil Rights, *Title IX Athletics Investigator's Manual* 5 (1989), available at http://www.eric.ed.gov/ERICDocs/data/ericdocs2/content_storage_01/0000000b/80/23/24/ef.pdf [hereinafter *Investigator's Manual*].
- 22 *Playing Fair*, supra note 1, at 11.
- 23 "A Policy Interpretation: Title IX and Intercollegiate Athletics," 44 *Fed. Reg.* 71,413 (Dep't of Health, Educ. & Welfare Dec. 11, 1979) (codified at 45 C.F.R. pt. 86) [hereinafter 1979 Policy Interpretation].
- 24 *Investigator's Manual*, supra note 21, at 24.
- 25 *Id.* at 22.
- 26 1979 Policy Interpretation, 44 *Fed. Reg.* at 71,415.
- 27 1979 Policy Interpretation, 44 *Fed. Reg.* at 71,416.
- 28 1979 Policy Interpretation, 44 *Fed. Reg.* at 71,416.
- 29 1979 Policy Interpretation, 44 *Fed. Reg.* at 71,416.

- 30 *Playing Fair*, *supra* note 1, at 24.
- 31 1979 Policy Interpretation, 44 *Fed. Reg.* at 71,416.
- 32 *Playing Fair*, *supra* note 1, at 27.
- 33 *Id.* at 22.
- 34 *Id.* at 30.
- 35 *Id.*
- 36 1979 Policy Interpretation, 44 *Fed. Reg.* at 71,416-417.
- 37 *Playing Fair*, *supra* note 1, at 28.
- 38 *Id.*; see also NCAA, *Achieving Gender Equity*. 17-18 (3d ed.), http://www.ncaa.org/library/general/achieving_gender_equity/ [hereinafter *Gender Equity*].
- 39 *Playing Fair*, *supra* note 1, at 29.
- 40 *Id.* at 29.
- 41 *Gender Equity*, *supra* note 38, at 23.
- 42 *Id.*
- 43 *Id.* at 21.
- 44 1979 Policy Interpretation, 44 *Fed. Reg.* at 71,415.
- 45 Linda Bunker et al., Nat'l Women's Law Ctr., *Check it Out: Is the Playing Field Level for Women and Girls at Your School?* 12 (2000), available at <http://www.nwlc.org/pdf/Checkout.pdf>.
- 46 *Id.*
- 47 *Id.*
- 48 *Playing Fair*, *supra* note 1, at 17; see also *Gender Equity*, *supra* note 38, at 5.
- 49 *Playing Fair*, *supra* note 1, at 17-18.
- 50 1979 Policy Interpretation, 44 *Fed. Reg.* at 71,415.
- 51 *Gender Equity*, *supra* note 38, at 4-5.
- 52 U.S. Dep't of Educ., Office for Civil Rights, *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test* (1996), available at <http://www.ed.gov/about/offices/list/ocr/docs/clarific.html>.
- 53 *Gender Equity*, *supra* note 38, at 7.
- 54 *Id.*
- 55 *Id.*
- 56 *Id.*
- 57 *Id.*
- 58 *Playing Fair*, *supra* note 1, at 17.
- 59 *Id.*
- 60 *Id.*
- 61 1979 Policy Interpretation, 44 *Fed. Reg.* at 71,415.
- 62 *Jackson v. Birmingham Bd. of Educ.*, 125 U.S. 1497 (2005).

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works to ensure that life opportunities for women and girls are free from unjust social, economic, and political constraints.