

# Conducting a Title IX Self-Audit – A Proactive Measure

By Peg Pennepacker, CAA on September 12, 2016

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As conversations continue about Title IX pertaining to school athletic programs, the focus is clearly at the K-12 level. In fact, it could be argued that the conversations are becoming more frequent and the relative importance of schools assessing their athletic programs for compliance is now an expectation of stakeholders.

The United States Congress has enacted a number of laws that provide for fair and equal treatment. Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973 are among the many equity statutes that have an impact on school programs including athletics.

In 1972, Congress enacted Title IX with two principle objectives in mind – first, to avoid the use of Federal resources to support discriminatory practices in educational institutions and secondly to provide citizens effective protection against those practices.

The increased incidences of Title IX complaints and lawsuits at the K-12 level illustrate the need for schools and athletic administrators to ensure that they have a thorough understanding of the Title IX regulatory framework. This would include the requirements that the Office for Civil Rights (OCR) and the federal court system have put forth with regard to Title IX compliance.

The first step to ensure that your athletic program complies with Title IX is to perform a self-audit or review. The self-audit will take a frank look at the school district's entire athletic program and determine if it accommodates the interests and abilities of the students as a whole, and if specific program components detailed in the Title IX regulations are equal for girls and boys.

It is most important for a school's Title IX coordinator and athletic director to have a solid grasp of the two major areas of the Title IX compliance framework relative to a school's athletic program: 1) Accommodations of Interests and Abilities, and 2) Other Athletic Benefits and Opportunities.

While the first area uses the "three-prong test" to determine whether a school provides adequate athletic opportunities for its female students, the second area evaluates a "laundry list" of athletic benefits with regard to:

- athletic equipment and supplies
- locker rooms and practice/competition facilities
- allocation of travel/transportation/per diem benefits
- years of experience, quality and salaries of coaches
- institutional housing/dining facilities and services
- game/practice times

- scheduling
- facilities for and access to training and medical services
- academic tutoring services for student-athletes
- institutional support services
- recruiting resources provided to student-athletes

It is out of this 11-program area where the majority of Title IX complaints appear to arise.

The focus of Title IX is on overall program comparability and quality of athletic programs, not exact component comparisons between specific sports. Title IX does not require that male and female athletes receive identical support and services. Instead, it requires that male and female athletes receive the same quality of support and that the program for each gender equally meets the needs of the athletes involved.

### **Recommendations for Conducting a Title IX Self-Audit**

1. A Gender Equity Committee is an important vehicle in determining the current compliance picture and developing recommendations to move toward compliance. It is important to obtain the commitment of a school's higher-level administration as well as identifying interested and knowledgeable individuals who are willing to "buy-into" the process. The number of committee members may be reflected by the size of the school and should also include student representation.

The Title IX coordinator of the school district should be a member of the committee and should educate the committee members. This would be done by providing all Title IX-related written materials and resources so that members may clearly understand the duties they have agreed to perform.

2. Choose an in-depth document resource to guide the self-audit process. The National Interscholastic Athletic Administrators Association (NIAAA) Leadership Training Course 506 and manual is a great resource that can provide guidance in understanding the law itself, the implementing regulations, the OCR policy interpretations and application. In addition, Title IX and Interscholastic Athletics How It All Works – In Plain English written by Valerie Bonnette, is a comprehensive self-evaluation manual available online at [titleixspecialists.com](http://titleixspecialists.com).

3. A self-audit should look at the program prospectively. Look clearly at the current program and develop policies for expenditures and commitments that ensure a non-discriminatory future for the school's program. Unlike an OCR's investigation, proactive changes can be discussed in more detail and can be carried out in a more deliberate manner.

4. Develop a procedure for complaints and dissatisfactions within the athletic program to be resolved in a timely manner. The highest level of administration should set the expectation of non-discrimination and fairness. Schools should look beyond the requirements of Title IX to the overall "tone" of the program. Are all athletes, regardless of gender and income production, treated as equally valued members of the program?

5. Address the issue of outside funding resources that will affect the school's athletic program, such as booster clubs, alumni and community donations. All benefits provided to a school's athletes, regardless of the funding source, are subject to Title IX compliance. The school is responsible for any disparities created by outside funding sources coming into the school's athletic program.

6. Present the committee's report to the school board and administration. Develop expectations and mechanisms to factor equity considerations into all program decisions throughout the normal operations of the athletic program.

It is in a school's short and long-term interest to know whether it is in compliance with Title IX law. A self-audit will, at a minimum, answer the institutional question, "How are we doing under Title IX and our own goal of gender equity?" This should be an ongoing concern to the school district – school board, superintendent, principal, faculty, students, coaches, athletic director, state athletic/activity association and others.

Periodic self-audits are more meaningful than a "one-shot" complaint-driven OCR investigation. A school's compliance with Title IX is not static. Equal opportunities for both genders should be constantly monitored throughout the evolution of the entire athletic program. Anticipated change should always be analyzed for the impact on the entire program's compliance.

It is important for school officials to understand and fully embrace this law and not fear it. The vital point to remember is that it is critical to continue to support the athletic ambitions of girls and boys while not curtailing the progress of one over the other. For schools, this will call for good governance, fairness and ethical judgment from educational leaders and decision-makers to ensure that girls and boys share the classroom and playing fields.

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