



Oregon School Activities Association

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TITLE IX – Equal Opportunity

The overall determination of compliance under Title IX considers the school’s “program as a whole.”

In determining equal athletic opportunities for male and female athletic programs, several factors are assessed by comparing:

1. Availability
2. Quality
3. Kind of Benefits
4. Kind of Opportunities
5. Kind of Treatment

The factors assessed are:

1. Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of both sexes;
2. The provision of equipment and supplies;
3. Scheduling of games and practice times;
4. Travel and per diem allowance;
5. Opportunity to receive coaching and academic tutoring;
6. Assignment and compensation of coaches and tutors;
7. Provision of locker rooms, practice and competitive facilities;
8. Provision of medical and training facilities;
9. Provision of housing and dining facilities;
10. Publicity; and
11. Expenditures.

THREE PART TEST:

1. Substantial proportionality; or
 - Participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments.
 - Affords a “safe harbor” for establishing that the school provides nondiscriminatory participation opportunities.
 - “Substantially proportionate” is not a statistical test; instead, it is determined on a case-by-case basis depending on specific circumstances and the size of the athletic program (exact proportionality is not required).
2. History of Continuing Practice; or
 - Must show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the underrepresented sex.
 - Reviews the entire history of the athletic program focusing on the underrepresented participation opportunities and continuing remedial efforts to provide nondiscriminatory participation opportunities.
 - Promises to expand the program some time in the future are not sufficient to meet this test.
3. Fully and effectively accommodating interests and abilities of the underrepresented sex.
 - Focuses on whether there are concrete and viable interests among the underrepresented sex that should be accommodated.
 - Factors taken into consideration include: unmet interest in a particular sport; sufficient ability to sustain a team in the sport; and, a reasonable expectation of competition for the team.
 - Method for determining interest, biennial student interest survey, must reach a wide audience and be open ended.

OCR has repeatedly clarified that this three-part test provides schools three individual avenues to choose from when determining how it will provide individuals of each sex with nondiscriminatory opportunities to participate in athletics. If a school has met any part of the three-part test, OCR will determine that the school has met this requirement.

The OCR Office for Oregon is located at: Seattle Office, 206-220-7900, email OCR_Seattle@ed.gov

**Three Suggestions for
Improving Equal
Opportunity in
High School Athletics**

Suggestion 1

Understand the *Interest and Abilities* Component of Title IX

The interests and abilities component of Title IX includes a three-prong evaluation. Successfully meeting any of the three prongs can constitute compliance.

- A. **Proportionality** – Are the number of interscholastic male and female athletic opportunities substantially proportionate to the number of female and male students enrolled?

Use the formula below to evaluate proportionality. When counting the number of athletes, count the total number of opportunities or filled slots. For example, one male athlete who participates in football in the fall and track in the spring would count as two opportunities.

Do not include cheerleaders, drill team, pep band, or other participants whose activity is not an interscholastic athletic activity.

	BOYS	GIRLS	TOTAL
Number Enrolled			
Percentage Enrolled			100%
Number of Athletes			
Percentage of Athletes			100%
Variance			

Sample

<i>Sample</i>	BOYS	GIRLS	TOTAL
Number Enrolled	1600	1525	3125
Percentage Enrolled	51%	49%	100%
Number of Athletes	235	165	400
Percentage of Athletes	59%	41%	100%
Variance	8%	-8%	

- B. **District's History of Adding Sports** – When is the last time your district added a sport or a level of a sport for the underrepresented gender? Have sports or levels of sports been added on a regular basis, demonstrating that the district is improving the ratio between enrollment and athletic participation?
- C. **Athletic Interests Are Met by the Current Programs** – Has the district recently conducted an athletic interest survey of all high school students to determine whether interests are being met by the current athletic program?

Has the district gathered other reports or information providing justifiable, non-discriminatory explanations for the current athletic program, which may not be meeting the substantially proportionate ratio requirement? Lack of available competition in the area or not enough athletes to field a team might be valid factors. Budgetary restrictions or lack of booster support are not justifiable explanations.

Ideas for achieving compliance include, but are not limited to:

- Adding a sport for the underrepresented gender
- Adding another level to a presently offered sport (JV or other sub-varsity team)
- Reducing the number of players presently being cut, whenever retention of these players can give them a meaningful team experience.

Suggestion 2 **Know What Defines a “Sport”**

The Office for Civic Rights (OCR) can review, on a case-by-case basis, any information pertinent to the determination of whether an activity should be considered an interscholastic sport. Answer the following questions:

Is the Activity:

- Recognized and governed by the state association?
- Sponsored for the primary purpose of preparing for and engaging in athletic competition against other similar teams?
- Scheduled during a regular season with definite starting and ending dates as set by the state association?
- Governed by a specific set of rules published by a state or national organization?

Does the Activity:

- Prepare for and engage its participants in competition the same way other teams in the interscholastic athletic program prepare and engage participants?
- Require that students meet eligibility requirements?
- Require that participants receive coaching?
- Require team tryouts, regular practice sessions and regularly scheduled athletic competitions?
- Base selection for the team on factors related primarily to athletic ability?
- Assign trained and certified officials/judges who have met a certification standard?
- Follow a competition structure like other sports to the state championship level?
- Stand alone as the primary event without being scheduled simultaneously with another event?

Questions most often arise in the evaluation of cheerleading (spirit). The governance of cheerleading varies by state association.

Suggestion 3

Identify the Areas that Have the Greatest Potential for Disparity

From the smallest district to the largest, every school has its share of "hot button" issues. State associations are no different. There are some issues that afford a great deal of room for disparity and/or discrimination. Below are just two examples:

A. Facilities

The first thing to note about facilities is that the OCR Investigators' Manual lists "facilities" under the component of LOCKER ROOMS, PRACTICE AND COMPETITIVE FACILITIES. Here are some points to review when evaluating facilities:

- Do the policies, procedures or criteria used for allocating locker rooms, practice and competitive facilities differ by gender?
- Are there any differences in the quality and availability of practice and competitive facilities for males and females?
- Are there any differences in the quality and availability of locker rooms for males and females?
- Compare the number of male teams that have exclusive use of practice and/or competitive facilities with the number of female teams that have exclusive use of practice and/or competitive facilities.
- Compare the number of male teams that have exclusive use of locker rooms with the number of female teams that have exclusive use of locker rooms.
- Are the maintenance and preparation of practice and competitive facilities equivalent for both genders?

Do any of the above answers indicate disparity or significant disparity?

B. Boosters

Private fundraising is permissible under Title IX regulations. But regardless of the source of funds, districts must take action to ensure that benefits, services, treatment and opportunities are equivalent for males and females.

Remember that outside donations, such as contributions from businesses, community members or parents, are treated as private funds even if the school doesn't have a formal "booster club." School districts (and state associations) should affirmatively encourage boosters and similar groups to devote comparable attention to both genders.

It's also important to check your state regulations regarding private contributions to public school districts. Laws vary from state to state.

For OCR contact information, please see the following page.