

ARE SCHOOLS GIVING FEMALE ATHLETES A SPORTING CHANCE?



A GUIDE TO GENDER EQUITY IN ATHLETICS IN PENNSYLVANIA SCHOOLS



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Women's
Law Project

www.womenslawproject.org



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The Women's Law Project

The Women's Law Project is a legal advocacy organization based in Pennsylvania. Founded in 1974, the Law Project's mission is to create a just and equitable society by advancing the rights and status of all women throughout their lives. To this end, we engage in high-impact litigation, public policy advocacy and community education.

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INTRODUCTION



This guide is designed to help students, athletes, administrators, athletic directors, coaches, and parents understand the rights students have under Title IX, a federal law that requires schools to give young women and girls equal opportunities and benefits in their sports programs. This guide explains the legal requirements of Title IX and Pennsylvania laws that apply to athletic equity, provides tools for evaluating gender equity in your school's athletic program, and suggests strategies for addressing any unfair treatment you find.

The information in this manual applies to Pennsylvania middle schools, junior highs, high schools, and colleges.

Section I provides an overview of Title IX, describing the impact Title IX has had on creating equitable athletic opportunities for girls since its adoption in 1972. Also, this section explains the rights to gender equity in sports guaranteed to female athletes under Title IX.

Section II describes girls' rights under Pennsylvania law to equal athletic opportunities and benefits.

Section III outlines strategies that can help you find out if your school is treating female students fairly and actions you can take to stop unfair treatment.

The Appendix includes more detailed explanations of the law and provides resources to help you.

**This guide is intended to provide
general information
and is *not* intended as legal advice.**



I. TITLE IX'S PROMISE OF EQUALITY

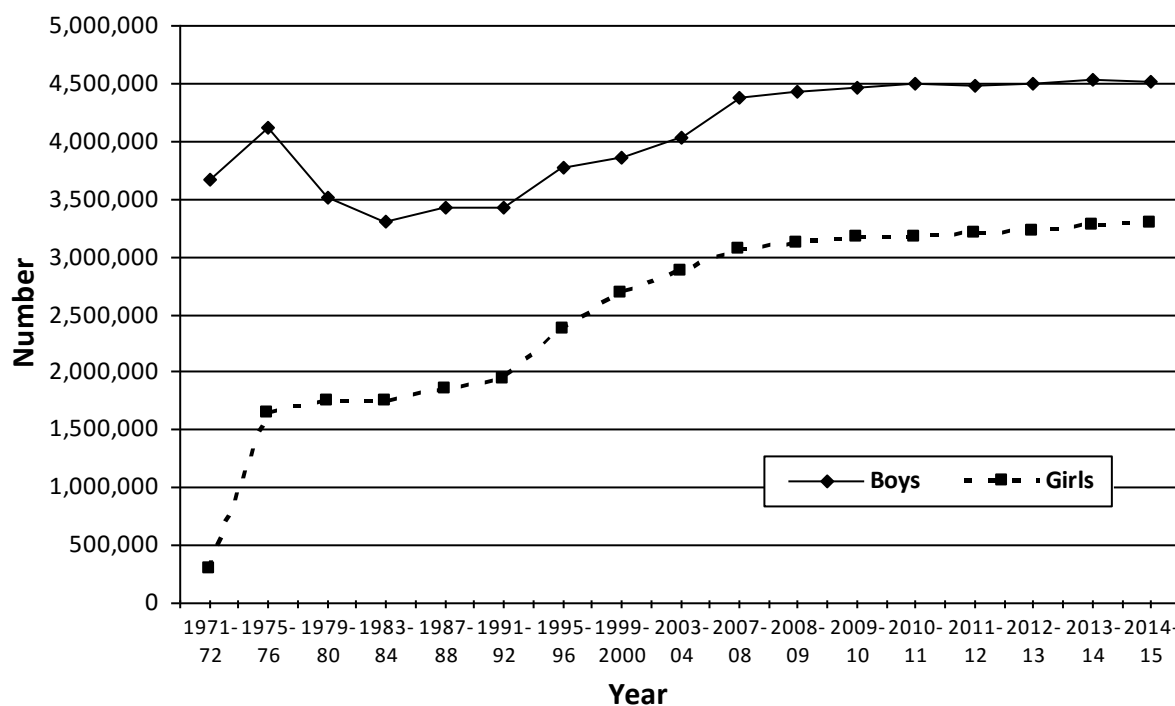
Overview of Title IX's Impact on Athletic Opportunities for Female Students

Title IX Has Improved Athletic Opportunities for Young Women and Girls

Title IX of the Education Amendments of 1972 is a federal law that prohibits sex discrimination in any school receiving federal funding. Since this law's enactment, there has been enormous progress in increasing female student participation in sports.

At the time Title IX became law, only 294,000 girls participated in interscholastic high school sports, representing just 7 percent of all high school athletes.¹ The number of girls playing high school sports has increased dramatically. By 2014-15, over 3.2 million girls were playing high school sports, making up 42 percent of athletes in U.S. high schools.²

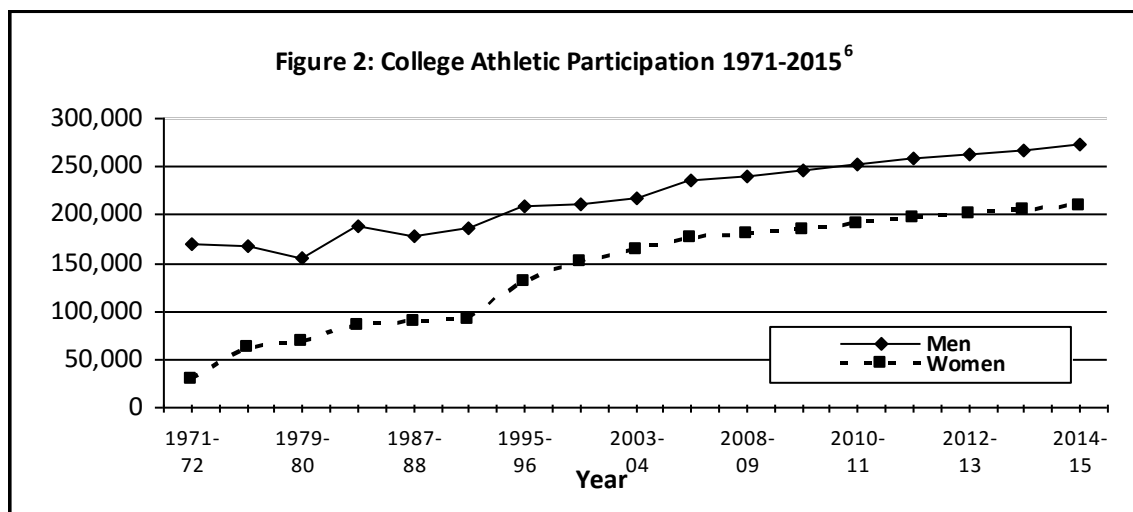
Figure 1: High School Athletic Participation 1971-2015³



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Title IX has also improved female participation in college sports. In 1972, fewer than 30,000 females played intercollegiate sports, accounting for just 15 percent of college athletes.⁴ By the 2014-15 school year, the number of women playing on intercollegiate sports teams increased to over 200,000, making up 43.4 percent of college athletes.⁵



The percentage of college athletic budgets spent on women's sports has also increased. Before Title IX, female college teams received only 2 percent of athletic budgets, and scholarships for female athletes were almost nonexistent.⁷ In 2010 the median proportion of expenses paid for female athletes was 39.6 at Division I schools and 42.5 percent at Division II; the median for women's athletic scholarships was 48 percent at Division I and 43.7 percent at Division II.⁸

Gender Inequities Persist for Female Athletes

Despite these huge gains in female participation in sports, much remains to be done to achieve equity.

While female participation in high school sports has grown, the number of girls playing high school sports has *still not* reached the level of male sports participation in 1971. Moreover, the number of males playing sports has reached all-time highs in recent years. As a result of this trend, the gap between girls and boys in opportunities to play sports not only persists, but has *widened* in recent years. In 2002, the gap between the number of male and female athletes in U.S. high schools was 1.15 million. The participation gap in 2014-15 was 1.2 million.⁹ The athletic gender gap is greatest in urban schools, where, in 2007, only 45 percent of the girls are involved in athletics compared to 73 percent of the boys in grades 3-12;¹⁰ particularly low rates of participation in organized sports were found among African-American, Hispanic, and Asian girls.¹¹

As figure 2 shows, a significant gap persists between the number of male and female college athletes. Men have higher participation rates than women both in terms of total



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number of athletes and relative to their respective enrollments.¹² Clearly there is room for growth in collegiate athletic opportunities for women.

In addition, significant gender disparities persist in the financial support of college athletics. While athletic expenditures for both men and women increased from 2003 to 2010, the lower proportion spent on women's athletics "has remained fairly steady during those years"¹³ in total expenses as well as scholarship, recruiting, and coach salary expense categories and in all sport divisions.

Establishing equity in the early years — in middle, junior high and high schools — will create a pipeline of student athletes into college and beyond.

Pennsylvania Colleges

Under the federal Equity in Athletics Disclosure Act (EADA),¹⁴ each college and university must publicly report athletic participation data by gender. As a result, it is easy to measure how Pennsylvania colleges are progressing with respect to offering women equal athletic opportunities and treatment.

The Women's Law Project studied EADA data for the three academic years from 2001 through 2004 in 112 Pennsylvania colleges and universities and released a report of its findings in 2005. While WLP found that some schools are meeting their obligations under Title IX, it also found that most Pennsylvania colleges and universities are failing to provide equal athletic opportunities for their female students.

Specifically, even though women made up 53.4% of Pennsylvania's college population, females had only 43% of the athletic opportunities offered by the 112 colleges and universities studied.¹⁵ In other words, the data showed that Pennsylvania colleges needed to create 8,000 more athletic opportunities for women in order to achieve equity.¹⁶

The WLP also found that Pennsylvania colleges spend less money on women's sports, focus fewer resources on recruiting female athletes, and offer less scholarship money on the whole to female athletes.¹⁷ In all three years studied, about 41% of Pennsylvania schools' athletics budgets went to football (27-28%) and men's basketball (13-14%), whereas 21% went to all other men's sports and only 38% went to all women's sports.¹⁸ Specifically, review of the budget expenditures showed:

- 11 million dollars more was spent on male athletic teams than female teams in operating expenses, which include lodging, uniforms and transportation;
- 6 million dollars more was spent on sports scholarships for male athletes than for female athletes;
- Twice as much money was spent on recruiting male athletes as on female athletes;

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- 60 cents were spent on female athletes for every dollar spent on male athletes;
- 50% more was spent on coaching men's sports than coaching women's sports.¹⁹

Pennsylvania High Schools

In 2012, Pennsylvania adopted a law requiring Pennsylvania secondary schools to publicly report student athletic participation by gender, race, and ethnicity, and information about athletic facilities, equipment, coaching, and athletic expenditures by gender.²⁰ By October 15 of each year, secondary schools must submit the disclosure reports to the Department of Education for the immediately preceding school year. The Department is to post the disclosure reports on its website and schools are to make the report publicly available by November 1 of each year, including on any publicly accessible Internet website of the school, with notice to the student community as to its availability.

The law is new and data has only been submitted for two years to date. While no comprehensive study of the data has yet been conducted, on a school by school basis, significant gaps between the athletic opportunities to which young women are entitled under Title IX and those provided have been found in random samplings of the reportings.

Until the Pennsylvania disclosure law was adopted, the only publicly reported athletic participation data are available from the National Federation of State High School Associations (NFSHSA), which annually publishes the number of athletic participation opportunities for girls and boys at the high school level by state.

For the 2007-08 school year, the NFSHSA data show that, in Pennsylvania high schools, 53.5% of sports opportunities were offered to boys (153,443 opportunities) while 46.5% were provided to girls (133,549 opportunities).²¹ If you compare the number of athletic opportunities for girls and boys, there were 19,894 fewer opportunities for girls to play sports in Pennsylvania high schools than there were for boys.²²

The Pittsburgh Tribune-Review looked at gender equity in 129 public high schools in southwestern Pennsylvania during the 1999-2000 school year.²³ In 2001, the Tribune-Review reported its results, which showed that in those 129 schools:

- Two out of three athletes were male.
- Of every dollar spent on sports, schools spent 69 cents on male athletes.
- On average, schools spent \$493 on each male athlete and \$350 on each female athlete.
- Only 14 of 129 schools offered girls athletic opportunities in numbers substantially proportionate to their numbers in the student population, as required by part one of the three-part Title IX participation test. (This test is described on pages 9-11.)
- School districts paid for nice locker rooms, competitive facilities, and shoes for male athletes while female athletes bought their own shoes and played on poorly

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maintained fields lacking basics like dugouts and outfield fences for softball. Girls' fields were located as far as five miles off campus.

- Only 49 of 129 schools could provide the name of their Title IX coordinator. Schools are required to designate a Title IX coordinator to whom the unfair treatment of female athletes can be reported and who is required to investigate alleged violations of Title IX.²⁴

Appendix D describes advocacy efforts to achieve athletic equity in Pennsylvania.

Physical Activity Is Important for Girls and Young Women

There is extensive evidence of the benefits of sports and physical activity for girls and young women:

1. Physical activity early in life can help prevent major diseases, including cancer, cardiovascular disease, diabetes, osteoporosis, obesity-related diseases, and Alzheimer's disease. Females who regularly exercise four or more hours a week may reduce the risk of breast cancer by almost 60%.²⁵
2. Girls who participate in sports are less likely to take up smoking, or use illicit drugs. Female athletes are also 50% less likely to experience unintended pregnancy.²⁶
3. Playing sports helps promote better overall mental health among teenage girls. Regular exercise builds self-confidence, promotes healthy body image, reduces stress, and lowers rates of depression among teenagers.²⁷
4. Girls involved with school sports are more likely to graduate from high school, have higher grades, and have higher educational aspirations. Studies show that athletes spent more time on homework and applied to more universities than non-athletes.²⁸
5. Financial support available to girls through athletic scholarships makes college more accessible to students of all economic backgrounds.



While athletic activity is enormously beneficial to the health, success, and self-esteem of girls, some girls are not encouraged or given the opportunity to participate in sports and fitness activities.

Your school may or may not be treating its young women fairly. The information on the following pages will help you figure that out and take action to address any problems you discover.

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Title IX: What Does It Guarantee?

Title IX 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 education program or activity receiving Federal financial assistance.²⁹

Title IX prohibits sex discrimination in a wide range of areas of school life, but is best known for its role in expanding athletic opportunities for young women. As applied to athletics, Title IX guarantees female and male students:

1. Non-discriminatory opportunities to participate in athletics;
2. Equal treatment and the same benefits; and
3. Equal athletic scholarship money.³⁰

Non-Discriminatory Opportunities to Play Sports

Title IX requires schools to provide equitable opportunities for male and female students to participate in sports. To comply with Title IX, a school must show that it meets *one* of the following tests:

Equal Treatment and Benefits

Substantial Proportionality

A school is in compliance if the number of male and female athletic participation opportunities are substantially proportionate to the number of male and female students enrolled in the school; *or*

History and Continuing Practice of Expansion

If the athletic opportunities offered to female students are not proportionate to the number of females in the student body, the school may still be in compliance if it has a history of continuously and consistently adding athletic opportunities for female students; *or*

Full and Effective Accommodation of Interests and Abilities

Where one sex is underrepresented in athletics and the school does not have a history and continuing practice of program expansion, the school may be in compliance if its current program fully and effectively accommodates the interests and abilities of the members of the underrepresented sex.



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Male and female athletes must receive the same benefits and services from the school in all areas of athletics. Equitable treatment must extend to equipment and supplies, game and practice schedules, travel and per diem expense allowances, coaching, locker rooms and practice facilities, trainer services, housing and dining services, and publicity.³¹ Title IX requires overall equality in the athletic programs that are offered to female and male athletes, and does not require sport-by-sport equivalence.³²

Equal Athletic Scholarship Money

Schools must provide male and female student athletes equal opportunity to obtain athletic scholarships. For schools that give scholarships to student athletes, the amount of scholarship aid awarded to male and female athletes must be substantially proportionate to the number of male and female athletes at the school.³³

Other Title IX Requirements

Title IX also requires schools to:

1. Designate a Title IX coordinator to investigate any complaints made claiming Title IX violations and develop and publicize Title IX complaint procedures,³⁴ and
2. Adopt and distribute a non-discrimination policy.³⁵

The Schools and Programs to Which Title IX Applies

Title IX applies to all schools receiving federal funds and to all levels of schooling, including university and colleges, high schools, junior high schools, middle schools, and elementary schools.³⁶ If any single department or program within a school receives federal funding, the entire school must comply with Title IX.³⁷ For example, schools receiving aid for federal lunch programs are subject to Title IX. All public schools and most private schools are covered under Title IX, because most schools receive some sort of federal funding.

Title IX has limited exceptions. The law does not apply to schools controlled by a religious organization or to military and merchant marine educational institutions.³⁸

Appendix A describes the regulations and other regulatory documents adopted by the Office for Civil Rights (OCR) of the Department of Education, which is the federal agency responsible for enforcing Title IX.

The next section provides a detailed description of Title IX requirements.

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What Does It Mean to Provide Equal Opportunity to Participate?

Schools must offer female students equal opportunities to participate in sports. The three-part test described in the following pages is used to find out whether a school complies with Title IX. If a school passes ***any one of the three parts*** of the test, it complies with the requirement to offer equal participation opportunities.³⁹

Remember, the requirement to offer equal opportunities to participate in sports has nothing to do with the number of teams a school offers. Schools need not offer the same number of teams for girls and boys and need not offer the exact same sports to the boys and girls. Instead, this requirement has to do with the number of spots available for girls and boys to participate in sports.

In the following pages you will find a series of calculations to help you evaluate your school's compliance with Title IX's requirements. You will need data about your school's athletic program in order to do the calculations.

To help you with these calculations:

- ✓ See **Section III** for information about how to get your school to provide you with the number of athletes and enrolled students.
- ✓ See **Appendix B.1** for information on who counts as an athletic participant.
- ✓ See **Appendix B.2** for what activity counts as a sport.
- ✓ See **Appendix C** for a sample request for information.

The Three-Part Test

A school must meet ***one*** of the following parts:

Part One: Substantial Proportionality. A school complies with Title IX if sports participation opportunities for male and female students are “substantially proportionate” to male and female enrollment.⁴⁰



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Follow these easy steps to determine whether your school provides female students with athletic opportunities that are substantially proportionate to their enrollment:

1. How many full-time students are enrolled in the school? _____
2. How many students are female? _____
3. How many students are male? _____
4. Divide the number of female students by total students. _____%
(divide line 2 by line 1)
5. Divide the number of male students by total students. _____%
(divide line 3 by line 1)

For questions 6, 7, & 8, if an athlete plays on more than one team, count that athlete once for each team on which he or she plays.

6. What is the total number of athletes on **all** teams at the school?
(include varsity, junior varsity, and freshman athletes,
but not club or intramural athletes) _____
7. How many athletes are female? _____
8. How many athletes are male? _____
9. Divide the number of female athletes by total athletes. _____%
(divide line 7 by line 6)
10. Divide the number of male athletes by total athletes. _____%
(divide line 8 by line 6)
11. Subtract the percent of female athletes from the percent
of female students enrolled. (line 4 minus line 9) _____%

The difference, if there is one, is the Title IX gap.

Whether a gap violates Title IX may depend on the size of the athletic program and the number of opportunities that would have to be added to achieve proportionality. If the number of opportunities that would have to be added would be sufficient to support another team, then there would be a significant number of unaccommodated women. In such a case, it is likely that a viable sport could be added and the school would be in violation of part one of the Title IX test.⁴¹

Example: If women make up 52 percent of the students but only 47 percent of the athletes and the athletic program has 600 athletes, the school would have to add 62 opportunities to provide women with 52 percent of the athletic opportunities.

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62 opportunities is a significant number of unaccommodated women that makes it likely that a viable sport could be added and the school would not be in compliance with part one. If this school had only 60 athletes in its athletic program, it would only have to add 6 additional opportunities for women to provide women with 52 percent of the athletic opportunities. As 6 participants are unlikely to support a viable team, this school would not be in violation of part one.⁴²

In the Pennsylvania case, *Choike v. Slippery Rock University*, the court found the school in violation of part one where there was a 15% gap. Women made up 56% of the full-time student body, but only 41% of the athletes, in a school with enrollment in the thousands and athletes numbering in the hundreds.⁴³

In addition, although part one of the three-part test focuses on whether male and female students have “substantially proportionate” opportunities to participate in sports, schools should not cut male teams in order to meet this test.⁴⁴ Cutting teams takes opportunities away from male students who are interested in participating in sports rather than increasing opportunities for female students who have been hurt by discrimination. Schools should develop policies to promote female athletes that do not include cutting male teams.⁴⁵

Part Two: History and Continuing Practice of Expansion. If the athletic opportunities offered to female students are not proportionate to the female enrollment, the school may still comply with Title IX if the school shows a **history** and **continuing** practice of expanding athletic programs for female students.⁴⁶

To determine whether a school has a history of athletic program expansion , get answers to the following questions: ⁴⁷	To find out whether a school has a continuing practice of expanding athletic programs, answer these questions: ⁴⁸
<p>Over the last few years, has the school:</p> <ul style="list-style-type: none"> ■ Added or upgraded any female teams? ■ Increased the number of female participants in sports? ■ Cut any female teams? ■ Granted requests by students or others to add a new sport or upgrade a female team? If a request was not granted, does the school’s reason seem fair? 	<ul style="list-style-type: none"> ■ Has the school consistently added opportunities for girls to play sports? ■ Is the school currently putting into effect a plan of athletic program expansion that responds to developing interests and abilities of female students? ■ Does the school have a procedure for students to request a new sport or upgrade an existing team sport? Does the school clearly communicate this procedure to students? ■ Does the school have a procedure for deciding whether to add a new sport that applies equally to males and females?



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Good faith and continuing expansion of the female athletic program are key to complying with Part Two of Title IX's participation requirement. Part Two will **not** be met if:

- A school cuts opportunities for boys to play sports in order to give girls a greater share of athletic opportunities;
- A school's program expansion occurred many years ago but does not continue into the present;⁴⁹ or
- A school merely promises to expand its sports program for girls at some time in the future.⁵⁰

Example: A high school added some girls' teams about 30 years ago when Title IX was first passed. However, the school then cut some girls' and boys' teams to reduce its athletics budget. The school has not increased opportunities for girls to play sports in over 15 years. This high school would **not** be able to show a **history and continuing practice** of program expansion that responds to the developing interests and abilities of female students.⁵¹

Part Three: Effectively Accommodate Interests and Abilities. If one sex is underrepresented in sports and the school does not have a history and continuing practice of program expansion, the school may still comply with Title IX if it can show that its current athletic program fully and effectively accommodates the interests and abilities of female students.⁵²

To find out whether a school is responding to the interests and abilities of female students, look at two factors:

1. Is there an unmet interest and ability in a particular sport?
2. Is there a reasonable expectation of competition for that sport?⁵³

If these conditions exist but a school has not expanded its sports program for girls, then the school has not fully and effectively met the interests and abilities of female students, and the school fails part three of the test.

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<p>1. <u>Unmet Interest in a Particular Sport:</u> There are many ways to find out if a school is meeting all of the interest in girls' sports:</p>	<p>2. <u>Reasonable Expectation of Competition:</u> If female students have the interest and ability to maintain a team not currently offered, the team must also be able to compete in the school's normal competitive region.</p>
<ul style="list-style-type: none"> ■ Evaluate requests by students to add a sport or upgrade a team to varsity status. ■ Examine female participation in club, intramural, or community sports. ■ Look at whether the school has cut a girls' team with full participation. ■ Assess participation in particular sports at nearby schools. ■ Interview students, admitted students, coaches, and administrators about interest in particular sports.⁵⁴ ■ Conduct surveys of students about interest in particular sports.⁵⁵ <p>If there is evidence showing female students have interest in adding or expanding a sport, and the school does not respond to meet this interest, there is unmet interest in a particular female sport.</p>	<ul style="list-style-type: none"> ■ Does your school currently compete against schools that field a team in the sport under consideration? ■ Are there schools that do not currently compete against your school, but are in the same geographic area and field the sport you are interested in?⁵⁶ <p>Example: A group of female students asked their school to sponsor a girls' basketball team. These girls have the ability to play on the team, as shown by their participation in community or club teams. Other schools in this school's area field girls' basketball teams. If the school is not providing equal opportunities for girls and refuses to honor their request to add a basketball team, the school is not likely to be accommodating the interests and abilities of its female athletes.</p>

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Equal Levels of Competition

Title IX also requires schools to provide equal levels of competition for male and female athletes.

To find out if your school offers equal levels of competition, compare the number of male and female teams at each competitive level.⁵⁷ Secondary schools should compare the number of teams that compete at the varsity, junior varsity, and freshmen levels. Colleges should compare the number of teams that compete at the school's stated level of competition (*e.g.*, NCAA Division I).⁵⁸ If more male teams are playing at a higher competitive level, find out if there is a non-discriminatory reason for this disparity and whether the school is taking steps to upgrade the competitive opportunities for the women's teams.

Schools are not required to upgrade teams to intercollegiate level if there is not a reasonable expectation that intercollegiate competition will exist within the school's region. Schools may have to actively encourage the development of more competitive opportunities in the area where they compete if overall athletic opportunities within that region have been historically limited for female students.⁵⁹

In addition to equal levels of sports competition, schools must make sure that the types of sports offered to their female athletes equally accommodate their interests and abilities. **Appendix B.3** explains how schools should decide what selection of sports teams to offer girls and whether schools must integrate a sports team or sponsor a separate girls' team.



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What Does it Mean to Provide Equal Treatment and Benefits?

Schools must provide equal treatment and athletic benefits to boys' and girls' teams. To find out whether a school's athletic program offers equal benefits and treats female athletes fairly, eleven program components should be considered:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Equipment and supplies; | <input checked="" type="checkbox"/> Medical and training facilities and services; |
| <input checked="" type="checkbox"/> Scheduling of games and practice times; | <input checked="" type="checkbox"/> Housing and dining facilities and services; |
| <input checked="" type="checkbox"/> Travel and related expenses; | <input checked="" type="checkbox"/> Academic tutoring; |
| <input checked="" type="checkbox"/> Coaching; | <input checked="" type="checkbox"/> Support services; and |
| <input checked="" type="checkbox"/> Locker rooms, practice and competitive facilities; | <input checked="" type="checkbox"/> Resources for recruiting student athletes. ⁶⁰ |
| <input checked="" type="checkbox"/> Publicity; | |

Remember that Title IX requires *overall* equality in the athletic program and not sport-for-sport equivalence. Some differences between teams may be acceptable if *overall* the school provides equal treatment, benefits, and services to female and male athletes.⁶¹

Note: Not all schools will need to look at all eleven areas. For example, secondary and elementary schools normally do not recruit student athletes or provide athletic scholarships, tutoring, or housing services, and therefore these schools may not need to examine those factors.⁶²

Equipment and Supplies: This includes uniforms, warm-up suits and other apparel, sport-specific equipment and supplies, instructional devices, and conditioning and weight training equipment.

To figure out whether equal equipment and supplies are provided to female athletes, compare how your school satisfies the equipment and supply needs of girls and boys in terms of quality, quantity, suitability, maintenance and replacement, and availability.⁶³

Quality: Look at the condition and durability of the equipment. Note which teams have top-of-the-line equipment and supplies and which have cut-rate.



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Quantity: Evaluate the amount of equipment and supplies provided to teams (*i.e.*, are there too few bats, balls, shoes, uniforms, wrist weights, or water coolers?). Look at which teams share equipment and which athletes must purchase their own equipment.

Suitability: Consider whether equipment and supplies (*i.e.*, balls, racquets, uniforms, nets or gymnastic equipment) meet regulation requirements and whether materials are officially sanctioned.

Maintenance and replacement: Look at upkeep and repair services for equipment, such as laundry service for uniforms, equipment storage, etc. Also, compare replacement schedules for equipment and supplies (*i.e.*, is equipment replaced semi-annually, annually, or every two years?).

Availability: Look at when and for how long equipment and supplies are available to female athletes (*i.e.*, always available, not on Sundays, restricted to hours equipment rooms are open, etc.). Also, consider where equipment is stored to see if it is less accessible to female athletes (*i.e.*, is the equipment for females kept at a greater distance from locker rooms and from practice and competitive facilities than equipment for male athletes?).⁶⁴

After making your evaluation, compare your findings for female athletes and male athletes to see if there are significant differences between the athletic programs.

Example: If a school provides the boys' team higher quality practice uniforms, shoes, and warm-up suits, or replaces uniforms more often for male athletes than female athletes, the school violates Title IX. However, if the school spends more on football uniforms or replaces them more frequently than girls' volleyball uniforms, the school may not violate Title IX if football uniforms cost more or wear out more quickly due to the nature of play and the uniforms are of the same quality and are replaced as needed.⁶⁵

Scheduling of Games and Practice Times: Title IX requires schools to schedule games and practice times fairly for boys' and girls' sports.⁶⁶ Factors that help determine equal treatment in scheduling of games and practice times include:

- Number of competitive events offered per sport;
- Number and length of practices;
- Day of the week and time of the day competitive events are scheduled;
- Time of day practices are scheduled; and
- Opportunities for pre-season and post-season competition.⁶⁷

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Scheduling of games and practice times often presents an equity concern in high schools where male and female teams share facilities. Male teams may be scheduled to practice and compete at a preferred time, when it is easier for parents, friends or college scouts to attend, while female teams are scheduled to play at a less convenient time. Always giving male teams priority practice and game times violates Title IX. Schools must take steps to make sure female teams have equal access to shared facilities, equal opportunity to practice at a convenient time, and equal visibility within the school and community.

If both male and female soccer teams play on the same day, it is not equal treatment if the female team is always playing in the early afternoon, when parents are still at work. Some schools have solved this problem by alternating when boys and girls play. If both teams play an equal number of evening games, parents may attend and support all of the athletes.

In addition, all teams should have about the same number of games per season and similar opportunities to participate in off-season competition. Because the average number of competitive events varies from sport to sport, compare the female and male teams of the same or similar sport whenever possible.⁶⁸

Example: If the male baseball team competes more than the female swim team, this does not necessarily mean the school treats female athletes unfairly. But, if the male soccer team competes in off-season tournaments and has more games than the female soccer team, the female team does not have an equal opportunity to play.

Travel and Related Expenses: When athletes travel for competitions and games, schools must offer female athletes transportation of the same quality, similar housing arrangements, and the same budget for meals.⁶⁹

Factors to consider are:

- Method of transportation;
- Housing during travel;
- Length of stay before and after competitive events;
- Daily allowances; and
- Dining arrangements.⁷⁰





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When looking at whether your school is treating male and female athletes equally, look at the following:

- Are the boys' teams traveling in more comfortable buses with more space for their equipment and on-board bathroom facilities?
- Are male athletes getting more money for daily food budgets or eating at better quality restaurants?
- Do female teams return home late at night instead of staying overnight after competitions?
- Is the quality of overnight accommodations superior for the male teams?

If the answer to any of these questions is yes, the school is not treating female athletes equitably.

Coaching: Schools must provide male and female athletes with equal opportunity to benefit from coaching.⁷¹ Look at availability, qualifications, and compensation to see if your school provides equal coaching benefits.

Availability:

Find out if female students have equal access to coaching by comparing the numbers:

- ☒ Are the numbers of coaches (head, assistant, volunteer and student coaches) for comparable sports, such as softball and baseball, equal?
- ☒ Is the ratio of coaches to students equal for male and female athletes? To calculate this ratio:
 1. Divide the total number of female athletes by the number of coaches of female teams _____
 2. Divide the total number of male athletes by the number of coaches of male teams _____
 3. The ratios for female and male athletes should be the same, _____%

Find out how accessible coaches are to female and male student athletes:

- ☒ Are coaches full-time for both male and female teams?
- ☒ Are coaches available to both male and female teams equally throughout the academic year?

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Coaches who are also full-time high school teachers are available to student athletes throughout the year and during most of the school day. Coaches who are part-time are generally only available during the regular season and only during practice and game times. Also, coaches who perform administrative duties, such as hiring referees and scheduling games, have less time to spend coaching athletes.⁷²

Colleges usually have a mix of full-time and part-time coaches. In elementary and secondary schools, coaches are almost always part-time, making it easier to compare availability of coaches.

Qualifications: Compare the training, experience, and professional standing of coaches for the boys' and the girls' teams. A school violates Title IX if it regularly assigns more qualified coaches to the male teams.

Compensation: To see if coaches for female teams are compensated fairly, look at:

- ✓ Amount of compensation or salary (per sport, per season);
- ✓ Duration of coaching contracts;
- ✓ Conditions relating to contract renewal;
- ✓ Assignment as head coach or assistant coach;
- ✓ Nature of coaching duties performed;
- ✓ Working conditions; and
- ✓ Other terms and conditions of employment.⁷³



If coaches for the girls' teams are equally qualified, available, and compensated compared to coaches for the boys' teams, the school provides equity in coaching.

Locker Rooms, Practice and Competitive Facilities: Boys' and girls' teams must be provided the same quality athletic facilities and locker rooms and have equal access to comparable facilities.⁷⁴ To see if female teams are given equal facilities, consider these factors:

Practice and Competitive Facilities

Quality of the facilities for practices and games: Are fields, scoreboards, goals, nets, bleachers, and concession stands of equal quality for all teams?

Example: If a school builds a state-of-the-art baseball facility for the boys, but the girls' softball team practices on a field that has poor drainage and lacks a dugout, bleachers, and fencing, the school violates Title IX because the facilities are not of equal quality.⁷⁵



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Maintenance of facilities: Are the conditions of playing fields, courts, and pools for female and male teams equal? ⁷⁶

Availability of facilities for practice and competitions:

- ✓ If the male and female teams share the same gymnasium, do the girls have equal access to use the gym at desirable times?
- ✓ If a new stadium is built, do the male and female teams have equal use of it ?
- ✓ Are the facilities equally convenient to all teams or do girls' teams have to travel to a distant field or gym?

Example: If the facilities for the girls' team are more run-down or not as well-maintained as those for the boys' team, or if male athletes have exclusive or priority right to use new athletic facilities, the school violates Title IX's requirement to provide equal practice and game facilities to its female athletes.

Locker Rooms

Availability of locker rooms: Do policies, procedures, and criteria for assigning locker rooms differ based on sex?

Quality and maintenance of locker rooms: Are male and female athletes given lockers of similar size and sturdiness? Are the bathrooms and showers in the male and female locker rooms equally maintained?⁷⁷

Example: If the boys' locker rooms are better maintained, and have bigger lockers and more showers than the girls' locker rooms, the school does not provide equal benefits and services to female athletes in violation of Title IX.

Publicity: Schools must publicize boys' and girls' sports equally.⁷⁸ More visibility for girls' teams could increase the fan base for girls' sports and help change the stereotype that girls' sports are not as important as boys' sports.⁷⁹ Consider the following factors:

- Availability and quality of sports information staff;
- Access to other publicity resources for boys' and girls' programs; and
- Quantity and quality of publications featuring boys' and girls' programs.⁸⁰

Elementary and secondary schools probably do not have sports information staff,⁸¹ but a school must still make sure female teams are equally publicized through other methods.

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Examples of other types of publicity include:

- ✓ School announcements
- ✓ Yearbook coverage
- ✓ School newspaper articles
- ✓ School bulletin boards
- ✓ School website announcements
- ✓ School calendars
- ✓ School assemblies and awards ceremonies
- ✓ Press releases
- ✓ Schedule cards
- ✓ Game programs
- ✓ Posters

Cheerleaders, pep squads, and bands are considered publicity services. Under Title IX, if any of these groups perform at men's athletic events, they must also perform at the women's events.

Example: If a school holds a pep rally for the boys' basketball team, it should include the girls' basketball team or hold a separate pep rally for the girls' team. Also, if the boys' baseball team is given publicity in the school newspaper, the girls' softball team should get similar newspaper coverage.

Medical and Training Facilities and Services: Consider the following factors to find out if a school complies with Title IX:

Availability of medical personnel: Consider the doctors, therapists, nurses, paramedics, strength coaches, and sports psychologists who are available during games and practice times and for physicals.

- ✓ Are female and male athletes offered equal access to medical staff for practice and competition?

Health, accident, and injury insurance coverage: If offered, compare the policies available to male and female athletes

Availability and quality of weight training and conditioning facilities:

- ✓ Do male teams have separate weight rooms, exclusive use of weight equipment, or priority in using shared facilities?
- ✓ If teams use separate training rooms, is the equipment of equal quality and as well maintained?
- ✓ If teams share training rooms, is there a system in place to ensure that male and female athletes have equal access to equipment at convenient times?

Example: A school violates Title IX by setting up separate "football" weight rooms that are not open to female athletes.



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Availability and qualifications of athletic trainers:

- ✓ Do female and male teams have equal access to trainers?
- ✓ Are the qualifications of the trainers serving female and male teams equal?
- ✓ Is the female team assigned a student trainer while the male team is assigned a professional trainer?
- ✓ Do female teams have only part-time trainers while male teams have full-time trainers?⁸²

There may be acceptable reasons for differences in this category. For example, some sports have higher injury rates than others, so they may require more athletic trainers and/or medical personnel. Also, larger teams may require more trainers than smaller teams. Wherever possible, compare the boys' and girls' teams of the same or similar sport.⁸³

Housing and Dining Facilities and Services: This category applies mostly to colleges and universities. A school must provide dining and housing of overall equal quality to its male and female athletes.⁸⁴ Consider the following:

Quality of housing: If special housing is provided to athletes:

- ✓ Are the location, size, and quality of housing equal or similar?
- ✓ Are furniture, parking, laundry and other services equal or similar?

Dining services: If special catering is provided to athletes:

- ✓ Is it provided to athletes of both genders?
- ✓ Are pre-game meals and drinks offered equally to male and female athletes before home games?
- ✓ Are there big differences between the types, timing, and amount of meals provided to male and female athletes?⁸⁵

Academic Tutoring: Schools that provide tutoring for athletes must make those services available equally to male and female athletes.⁸⁶ It is important to compare availability of tutoring, assignment of tutors, and compensation given to tutors. Look at the following factors:

- Procedures and criteria for athletes to obtain a tutor;
- Amount of time tutors are available;

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- Availability of facilities and materials for tutoring;
- Format of tutoring sessions (individual tutoring, group sessions);
- Qualifications, experience, and training of the tutors assigned to athletes;
- Amount of pay given to the tutors.⁸⁷

If conditions of academic tutoring are not equal for the female and male athletes, the school is not providing equal benefits and services as required.

Support Services: Some schools provide administrative support to sports teams so that coaches have more time to devote to student athletes. Although some teams need more support services than others, a school should not give preference to male teams.⁸⁸

- Compare the amount of administrative, secretarial, and clerical aid provided to similar boys' and girls' programs to see if schools are giving more services to male teams.
- If support services are provided to male and female teams by different staff, compare the office space, equipment, staff qualifications, and supplies provided for the boys' and girls' programs. Also, compare the number of boys' and girls' coaches who do clerical work.

If a school provides more administrative support for the boys' teams, it is not providing equal benefits and services to female athletes and is in violation of Title IX.

Recruitment of Student Athletes: Title IX requires schools to provide male and female teams with equal recruiting resources.⁸⁹ Recruitment policies and resources affect the opportunities available to female students to participate in sports. Not all elementary and secondary schools recruit athletes.

If your school recruits athletes, answer the following questions to see if your school provides equal recruiting opportunities:

- Do the coaches and other athletic staff for the boys' and girls' teams have substantially equal opportunities to recruit athletes?
- Are the recruiting budgets for the boys' and girls' teams equivalent?⁹⁰



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Funding and Equity in Benefits and Treatment

Title IX requires *overall* equity in the school's athletic program, but schools are not required to spend exactly the same amount of money on male and female programs.⁹¹

Schools are responsible for making sure the girls' teams are provided equal athletic benefits and services as a whole.⁹² As disparities in funding may indicate that the school is not treating the male and female athletes equitably, you will want to examine the school's athletic budget.

Booster Club/Non-School Funding and Equal Benefits

Parents and alumni often raise money through booster clubs to support specific teams or sports, resulting in more money going to those teams. Sometimes outside organizations fund facilities or other aspects of a school's athletic program. Availability of this non-school funding is not an excuse for discrimination. Where booster clubs or other outside groups assist only boys' teams, the school is responsible for making sure that the girls' teams receive equivalent benefits and services.⁹³ To insure that non-school funding does not result in unequal treatment, schools may:

- Distribute such funds equally between female and male programs;
- Deposit all outside donations into a general athletic fund for all teams instead of allowing them to be given directly to particular or primarily male teams;
- Refuse the donation, unless the donors agree to offer similar benefits to girls' teams;
- Give financial support from the general athletic fund to those female teams that do not receive non-school support.⁹⁴

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What Does It Mean to Provide Equal Athletic Scholarships?

For schools that offer scholarships to student athletes, Title IX requires that the total amount of scholarship aid awarded to male and female athletes be substantially proportionate to the number of female and male athletic participants in the school.⁹⁵

To be substantially proportionate, the percentage of scholarship money available to male and female athletes must be within one percentage point of the percentages of males and females playing sports.⁹⁶ For example, if 48% of a school's athletes are female, then female athletes should receive between 47% and 49% of the total athletic scholarship funds. Scholarship awards include any money awarded to students because they are athletes. Grants-in-aid, loans, and work-study grants are considered scholarship awards.

To find out if scholarship money is equitably distributed to female athletes, follow these steps:

A. Calculate the percentage of female athletes:

1. What is the total number of athletes participating in varsity and junior varsity school sports? _____
2. How many athletes are female? _____
(If a student competes for more than one team, make sure you count each student only once. This differs from the participation calculation on page 10.)
3. Divide the number of female athletes by the number of total athletes.
(i.e., divide line A. 2 by line A.1) _____%

B. Determine the percentage of scholarship aid awarded to female athletes:

1. Find the total dollar amount of scholarship money available to student athletes: \$_____
2. Find the total dollar amount of scholarship aid given to female athletes: \$_____
3. Divide the amount of scholarship money for female athletes by the total amount of scholarship funds _____%
(divide line B.2. by line B.1.)

Remember: count the total dollar amount of scholarship aid, not the number of scholarships for girls and boys.

- C. Compare the percentage of scholarship money given to the female athletes with the percentage of female athletes (compare line B.3 to line A.3) to see if any difference is within 1%.



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Non-discriminatory reasons may explain gaps of more than one percent between the amount of scholarship aid awarded to male and female athletes.⁹⁷ For example, if a school adds a new sports team, it may offer more scholarships to members of that team in order to develop the new program. Such temporary differences in awards to male and female athletes that result may be acceptable as long as they are not the result of policies that limit female athletes.⁹⁸

Discrimination in scholarships cannot be excused because:

- The funding was raised by or on behalf of the team; or
- The teams make money for the school.



II. PENNSYLVANIA LAW



In addition to Title IX, Pennsylvania state laws provide additional protection for gender equity in athletics.

Pennsylvania Equal Rights Amendment

The Equal Rights Amendment (ERA) to the Pennsylvania Constitution states:

*Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual.*⁹⁹

The Pennsylvania ERA may prove useful in challenging unequal treatment of male and female athletes by a school, school district or athletic association.

Example: A Pennsylvania Interscholastic Athletic Association bylaw that excluded girls from practicing or competing with boys in intramural sports was found to violate the Pennsylvania ERA and invalidated in *Commonwealth vs. Pennsylvania Interscholastic Athletic Ass'n*.¹⁰⁰

Pennsylvania Human Relations Act

The Pennsylvania Human Relations Act¹⁰¹ is a state law that prohibits discrimination against individuals or groups by reason of their sex in public accommodations, which include all educational institutions under the supervision of the Commonwealth.¹⁰² This Act is enforced by the Pennsylvania Human Relations Commission.¹⁰³ Complaints must be filed with the Commission within 180 days of the discrimination. The Commission has the authority to investigate complaints, assist in informal resolution of problems, conduct public hearings and, if necessary, issue orders to end the discriminatory practices.¹⁰⁴ If the matter is not resolved by the administrative process within one year, the complainant may file a lawsuit in the local court of common pleas seeking redress.¹⁰⁵

Pennsylvania Fair Educational Opportunities Act

The Pennsylvania Fair Educational Opportunities Act¹⁰⁶ is a state law that prohibits sex discrimination in post-secondary grade educational institutions and any secretarial, business, vocational or trade school of secondary or post-secondary grade. This Act is enforced by the Pennsylvania Human Relations Commission by the same process as set forth in the paragraph above.¹⁰⁷



III. STRATEGIES FOR WINNING EQUALITY

If you suspect your school is short-changing female students, there are a number of ways to determine if your suspicions are correct and steps to take to address the problems. You can take many of these steps on your own, while other steps require legal counsel. We encourage you to seek legal counsel at the outset. You may contact the Women's Law Project at 215-928-9801 (info@womenslawproject.org) (Philadelphia office) or 412-227-0301 (infopitt@womenslawproject.org) (Pittsburgh office), for a free and confidential consultation with our expert attorneys.

How to Spot a Title IX Violation:

The first step is to gather information to help you determine whether your school is violating Title IX. You will want to use the answers to the questions asked and the areas of investigation suggested in this manual to assist you in this process.

For high schools and junior high/middle schools

1. Check the most recent Interscholastic Athletics Disclosure Report for data by gender either on the Pennsylvania Department of Education's website <http://www.education.pa.gov/Teachers%20-%20Administrators/Interscholastic%20Athletic%20Opportunity/Pages/default.aspx#.VqfnrLUo45s> or on your school's website. If you cannot find the report on the school's website, request it from your school.
2. If you need more information than you find in the disclosure report or the school has not prepared a report, collect numbers of students and athletes by gender and compare them to determine whether your school is providing enough sports opportunities for girls:
 - a. Check out the school's annual athletic disclosure to the Pennsylvania Department of Education (DOE) which should be found on the school's website as well as on the DOE's website at: http://www.education.state.pa.us/portal/server.pt/community/school_services_office/9153/disclosure_of_interscholastic_athletic_opportunities/1419362

Under Pennsylvania law, starting with the 2012-13 school year, all public schools with student athletes in grades 7-12 are required to disclose the following information about each varsity, junior varsity, and freshmen athletic team by gender by October 1 of each year: number of athletic opportunities, seasons of competition, expenditures, including travel, uniforms, equipment and supplies, coach compensation, facilities, and athletic trainers, number of coaches and trainers per team, number of competitions, and the name and contact information of the Title IX coordinator. Effective October 1, 2014, the schools must also disclose total value of contributions and purchases made on behalf of each team by booster or other non-school sources.

- b. If the school has not disclosed the information required by Pennsylvania law, ask the school administration for numbers of boys and girls in the school for the last school year.

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Ask the athletic director for numbers of boys and girls on each team. You will want to know which teams the school considers to be sports so you can decide whether they have all been properly included. See **Appendix B.3**.

- c. If the school won't give you the data voluntarily, make a formal request under Pennsylvania's Right to Know Law.¹⁰⁸ This statute requires that most public records compiled by Pennsylvania state, local, judicial or legislative agencies be available for inspection and copying. You should consult your school's website or contact the school administrative offices to find out the name and address of the designated Open Records Officer and determine if the school has created its own form for use in making such a request. If the school has not created its own request form, you should use the form created by the Pennsylvania Department of Records, available at its website: http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS_0_190926_343432_0_18/Pennsylvania_OCR_Standard_RTKL_Request_Form.pdf. A sample request is in **Appendix C**.
 - d. If you have any doubts about the numbers you collected, talk to coaches and athletes to verify the information you were given.
2. Collect information about the way athletes are treated in all of the categories described in pages 15-26 of this guide:
- a. Look at the practice and competition facilities and locker rooms that are accessible to you. Take pictures and compare the boys' and girls' facilities.
 - b. Ask the Title IX coordinator for information you need. Your school is required to have a Title IX coordinator who is responsible for investigating complaints related to Title IX. Even though the Title IX regulations require schools to designate a Title IX coordinator, your Title IX coordinator might be difficult to find or might not exist. To locate the Title IX coordinator's contact information, search your school's website or ask a member of your school's administration or athletic department.
 - c. If your school does not have a Title IX coordinator, ask administration or athletic staff for the information you need.
 - d. If school staff does not provide the information you need, send a Right to Know request to the school. A sample request is in **Appendix C**.
 - e. Ask for athletic budgets. While Title IX does not require schools to spend the same amount of money on boys and girls, budgets will give you an idea about whether the school is providing the same quality of athletic experience to girls and boys.



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- f. Look on the school's website for competition schedules so you can compare the number of games, number of pre-season opportunities, and who gets to play under the lights at night when family members can attend.
- g. Talk to the student athletes and coaches.
- h. Check school bulletin boards and school newspapers.

For colleges

1. By October 15 each year, colleges make available some information you will need. You can ask your school for a copy of the Equity in Athletics Disclosure Act (EADA) report or view it online at <http://ope.ed.gov/athletics/main.asp>. The information you will find on the report includes the student population by sex, number of athletes on each team by sex, number of coaches per team, revenues and expenses, and scholarships given by sex.
2. Follow the suggestions given above for secondary schools, including contacting the college administrators, the athletic director, or the Title IX coordinator and sending Right to Know requests.

Once you have gathered information on your school's athletic opportunity and treatment of female athletes, apply the various tests discussed in Part I of this manual to determine whether your school is in violation of Title IX. The *Title IX Investigator's Manual* used by the Office of Civil Rights (OCR) includes some charts that can help you organize the information you have collected. It is available at http://eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/14/c1/26.pdf.

Choosing Your Approach:

There are many ways to advocate for fair athletic opportunities and treatment at your school. You could:

- advocate at the school or school board level

Building support at your school

Encourage female athletes, coaches, students, and parents to join your efforts by educating your community about the unfair athletic conditions and Title IX requirements.

Talking to school administrators

Sometimes schools do not know they are out of compliance with Title IX, and school administrators may correct the problems voluntarily. One individual you could contact is your school's Title IX coordinator.

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Talking to school Administrators For middle, junior high, and high schools you could also contact the school principal, and for colleges you could contact the school president. Your school's athletic director may also be a valuable ally and a source of information about the athletic program.

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Filing a complaint through your school's grievance procedure Title IX requires schools to adopt and distribute a non-discrimination policy and implement an internal grievance procedure to remedy problems related to Title IX. Talk to your Title IX coordinator to learn more about this process.

Making your case to the school board or, in the case of colleges, to your school's alumni or board of trustees You could express your concerns about unfair athletic opportunities and treatment to the school board or to college alumni or board of trustees. Before taking this step, it is helpful to build support in your school Community and to consult your Title IX coordinator or an attorney to review your school's athletic program in light of Title IX's requirements. You can write a letter, submit petitions signed by parents and students, and make presentations to the school board, alumni association or trustees during public sessions.

Penns Valley High School

In 2007, a Penns Valley parent worked with the Women's Law Project to assess the school's Title IX compliance, write advocacy letters to administrators, and present at school board meetings. Susan Dawson, who wanted to ensure equitable athletic opportunities for her daughter, says that "persistence was key" to obtaining a girls' volleyball team. "It was the right thing to do, and it's a big success. The gym is packed with spectators."

Downingtown Area School District

Three families with daughters who participated in athletics in the Downingtown Area School District contacted WLP after the district failed to respond to their complaints about unequal treatment. WLP sent a letter to the school asking them to address the Title IX violations and helped the families prepare a presentation to the school board and gather 1200 signatures of parents and students on petitions demanding equal athletic opportunities and treatment of female student athletes. As a result, the district added girls' soccer and softball at both junior high schools, girls' volleyball at the high school, and other improvements to the girls' athletic program. Katie Maxwell, currently a college assistant soccer coach and a high school lacrosse coach, remembers collecting petition signatures with her father outside the grocery store and the library when she was 12. "My parents really fought hard for me and the other girls at the school."

Publicity in your local newspaper Newspaper articles highlighting your school's unfair athletic program could educate your community about Title IX and encourage your school district to stop the discrimination.

- file a complaint with Office of Civil Rights, or



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- file a lawsuit.

Advocacy in Your School

These suggestions may help you reach an amicable resolution with your school. This result benefits everyone by solving the problem without lengthy and potentially divisive litigation.

Complaint to the Office for Civil Rights

The Office for Civil Rights (OCR) is an agency within the U.S. Department of Education that enforces Title IX. Anyone who believes that an act of sex discrimination has occurred in violation of Title IX may file a complaint with OCR. The person who files the complaint does not have to be a student, parent of a student, or a victim of discrimination.

If you choose to file a complaint with OCR, you must file within 180 calendar days of a specific discriminatory act. In cases of ongoing discrimination, you can file at any time. If you are using the school's internal grievance process and you choose to file a complaint with OCR, you must file your complaint within 60 days after the last act of the grievance process.

You can file a complaint with OCR by submitting a written statement or filling out a complaint form that is available online. You may send in your complaint by mail, fax, or email. With your complaint, you must include a consent form, which is available at the bottom of the online complaint form. If you are filing by email, you must mail a "consent form" to OCR. You can get a copy of the complaint form from the OCR website at: <http://www.ed.gov/about/offices/list/ocr/complaintintro.html>.¹⁰⁹

Include the following information in your letter:

- Who was discriminated against;

University of Pennsylvania

In 1994, women on the University of Pennsylvania (Penn) softball team had to pay their own way to a spring training program and sold pretzels and tee shirts to reduce the cost. The men's baseball team trip to California for spring training was paid mostly by donated funds. This and many other inequities led five female athletes and nine coaches of women's sports to contact the Women's Law Project. With the WLP's assistance, they filed an OCR complaint against Penn that alleged a wide range of Title IX violations. The dispute was successfully resolved by a brokered negotiation that substantially increased funding for women's sports and greatly improved coaching and athletic facilities for female athletes. Carol Bower, then head coach of Penn's women's crew team called the settlement, "one of the most satisfying moments of my career. A major achievement of the settlement was improving treatment for women athletes without taking anything away from male athletes."

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- In what way;
- By whom or by what institution;
- When the discrimination occurred;
- Who can be contacted for further information;
- Your name, address, and phone number;
- The name, address, and phone number of the school/institution; and
- As much background information as possible about the alleged discriminatory act.¹¹⁰

Be sure to keep a copy of your letter or email complaint form for your records!

OCR will review your letter to check whether it has the authority to investigate based on whether you filed within the required timeframe and whether the school is covered by Title IX. If OCR investigates your complaint, OCR will collect and evaluate evidence from you, the school, and other relevant sources. If OCR determines that the school is not in compliance with Title IX, it will work with your school to develop a plan to correct the violations.

When considering whether to file a complaint with OCR, keep in mind that it may be a good option for people who recognize the school's Title IX violations but are not personally affected by the discrimination. For example, a teacher can file a complaint with OCR even though she is not directly suffering from the discrimination. In addition, there are no costs involved in filing an OCR complaint and you can choose to remain anonymous throughout the process. One drawback of filing a complaint with OCR is that OCR is a small office and may not have sufficient resources to promptly investigate and make a decision on your complaint. Although OCR has the power to punish noncompliant schools by suspending their federal funding, it has never done so, and some women's advocates believe that schools may regard an OCR complaint as a less serious matter than a Title IX lawsuit. In addition, if the violations are so serious and widespread that you are contemplating bringing litigation, speak to your attorney first.



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If you are making a complaint about discrimination in Pennsylvania, contact the OCR Enforcement Office in Philadelphia for additional information on filing Title IX complaints:

Philadelphia Office / Office for Civil Rights

U.S. Department of Education
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Telephone: 215-656-8541
FAX: 215-656-8605; TDD: 877-521-2172
Email: OCR_Philadelphia@ed.gov

Litigation

An individual who is harmed by a Title IX violation may file a civil lawsuit against her school.¹¹¹ She does not need to have filed a complaint with OCR first.¹¹² A student may bring a Title IX claim as an individual or as part of a class. If you want to take legal action to address Title IX violations in your school, you should seek advice from a lawyer with experience in civil rights litigation.

You may be able to get an immediate order from a court to stop a school from mistreating young women if you can prove to the court that you are likely to succeed in proving a Title IX violation. A temporary restraining order or preliminary injunction can prevent a school from eliminating an athletic team or taking actions that would harm the students while the court is deciding whether the school has violated Title IX and what the final relief should be. Fully resolving the lawsuit will take more time and a lot of work.

Being part of a lawsuit to change the way female athletes are treated can be an exhilarating and exciting experience. Here are some things to keep in mind when considering litigation:

- **It requires your time and some work:** You will need to be prepared to spend time working with your lawyer and appear for court or other scheduled events in the lawsuit.

Slippery Rock University

Faced with plans to eliminate three women's sports teams, twelve female students at Slippery Rock University fought back and won the permanent reinstatement of one team, the temporary reinstatement of two others, and an array of significant improvements in the treatment of female athletes. Represented by the Women's Law Project, they filed a lawsuit which quickly stopped the proposed team cuts. A negotiated settlement led to improvements in the number of athletic slots for and treatment of female athletes. Beth Choike, lead plaintiff, found that "litigation can be difficult, but it's worth it when the cause you're fighting for is something you hold close to your heart. The experience brought our teammates together. We were like a family with the common purpose of working towards gender equity."

IV. APPENDIX



- **It may affect how your friends, neighbors and classmates treat you.** Some will support and admire you for what you are doing, and some may disagree with you.
- **It is illegal for a school to retaliate against any person who complains about discrimination in violation of Title IX.**¹¹³ You may want to talk to your lawyer about how the school might respond to the lawsuit and what you should do if you believe the school is retaliating against you.

Appendix A: Office for Civil Rights Title IX Regulations and Policy Statements

Since the passage of Title IX in 1972, the Department of Education and its predecessor, the Department of Health, Education and Welfare, have adopted regulations and other documents providing guidance on the requirements of Title IX.

- 1975 Title IX Regulations.** The regulations that implement Title IX set forth specific requirements for athletics.¹¹⁴ The regulations list areas in which schools must provide equal benefits to male and female athletes and provide guidance for compliance.
- 1979 A Policy Interpretation: Title IX and Intercollegiate Athletics.** In 1979, the Department of Health, Education and Welfare issued a Policy Interpretation to provide guidance on compliance with the three-part test used to determine whether a school offers male and female students equal opportunities to participate in sports, the test to determine equity in athletic financial aid, and how equivalence in other benefits, opportunities, and treatment will be evaluated.¹¹⁵
- 1990 Title IX Athletic Investigator's Manual (1990).** The Office for Civil Rights (OCR) within the Department of Education published a manual in 1990 that OCR investigators use to guide their investigations of compliance with Title IX's equity in athletics requirements.¹¹⁶
- 1996 Clarification of Intercollegiate Athletics Policy Guidance, The Three-Part Test.** In 1996, the OCR issued a clarification providing additional guidance on the three-part test for determining equal opportunity to participate in sports. It emphasizes that schools may satisfy the three-part test by satisfying *any one* of the three parts, and lists factors to examine when measuring interest and ability.¹¹⁷
- 2003 Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance.** The OCR issued another clarification in 2003, reaffirming the three-part test, stressing its flexibility and lack of quotas, and making clear that "nothing in the Clarification requires that an institution cap or eliminate participation opportunities for men."¹¹⁸



Appendix B.1: Participation: Who Counts as a Participant?

Finding out which students count as athletic participants is important to properly calculate the number of athletic opportunities a school offers and any gender gap in opportunities. Under Title IX, a “participant” in athletics is defined as an athlete who:

- (1) Is receiving the school-sponsored services normally offered to athletes competing at the school. For example, students who receive coaching, equipment, and medical and training room services on a regular basis during a sport’s season are participants; and
- (2) Is taking part in organized practices and other team meetings and activities on a regular basis during a sport’s season; and
- (3) Is listed on the eligibility or squad list kept for a sport, or
- (4) Because of injury, cannot meet (1), (2), or (3) above, but continues to receive financial aid because of athletic ability.¹²⁰

In applying this definition of “participant,” please note:

- ✓ An athlete who participates in more than one sport is counted separately for *each* team or sport in which he or she participates.¹²¹
- ✓ As a general rule, all athletes who are listed on a team’s squad or eligibility list and are on the team as of the team’s first competitive event are counted as athletic participants.¹²²
- ✓ Participants do *not* include equipment managers, student athletic trainers, and student scorekeepers.
- ✓ Athletes are counted even if they do not actually compete in games.¹²³
- ✓ Unfilled slots on a team, which are available but not filled, ***may not be counted*** to meet the requirement of equal participation opportunities. The goal of Title IX is to provide ***real*** opportunities to participate in sports, so schools are not allowed to avoid the requirements of the law by making slots available but not recruiting and filling them.
- ✓ When calculating the number of participants in varsity sports, participants on club teams will not be considered varsity players unless they regularly participate in varsity competition. Therefore, schools cannot argue that female athletes on club teams should be counted as part of the female share of varsity opportunities in order to meet the three-part test.¹²⁴

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**Appendix B.2: Participation: Is an Activity a Sport?**

Only participants in those activities classified as sports are counted to calculate whether there are equal athletic participation opportunities. The school's classification of whether an activity is a sport is not determinative. Whether an activity is a sport is evaluated on a case-by-case basis, based on whether the activity functions as a sport in the following ways:

- ✓ selection for the team is based on objective factors related primarily to athletic ability;
- ✓ the activity is limited to a defined season;
- ✓ the team prepares for and participates in competition in the same way as other teams in the athletic program, with respect to coaching, recruitment, budget, tryouts and eligibility, and length and number of practice sessions and competitive opportunities;
- ✓ the activity is administered by the athletic department;
- ✓ the primary purpose of the activity is athletic competition, rather than support or promotion of other athletes.¹²⁵

Additional evidence that may weigh in favor of counting the activity as a sport includes:

- ✓ organizations knowledgeable about the activity agree that it should be recognized as an athletic sport;
- ✓ the activity is considered a sport by the athletic conference to which the school belongs and by organized state and national athletic associations;
- ✓ state, national, and conference championships exist for the activity;
- ✓ a state, national, or conference rule book or manual exists for the activity;
- ✓ there is state, national, or conference regulation of competition officials along with standards upon which the competition may be judged; and,
- ✓ participants are eligible to receive scholarships and athletic awards for participation.¹²⁶

Cheerleading, danceline, pom pom squads, and drill teams are not considered sports for purposes of Title IX unless their main purpose is competition.¹²⁷



Appendix B.3: Participation: What Selection of Sports Should a School Offer?

Schools must offer a choice of sports that accommodates the interests and abilities of male and female students in an equivalent manner.¹²⁸ A school has some discretion in deciding what sports to offer each sex. For example, schools are not required to offer the exact same sports to girls and boys or to integrate sports teams. However, if a school offers a sport to the boys, the school may be required either to allow girls to try out for the team or to add a separate girls' team.¹²⁹

The actions a school must take in order to comply with Title IX depend on whether the sport is considered a contact sport. A contact sport as defined by Title IX is any sport which has bodily contact as its purpose or one of its major activities.¹³⁰ A sport may be a contact sport even if contact is technically a violation of the sport's rules, if bodily contact inevitably occurs during play.¹³¹ Boxing, wrestling, rugby, ice hockey, football, and basketball are all contact sports under Title IX, though this list is not exclusive.¹³²

For Contact Sports: if the school fields a boys'-only team, the school must sponsor a separate girls' team if:

- (1) opportunities for girls to compete have historically been limited,
- (2) there is sufficient interest and ability among female students to maintain a team, and
- (3) there is a reasonable expectation of competition for that team.¹³³

For Non-contact Sports: if the school sponsors a team for male athletes, the school must allow female students to try out for the team. Title IX requires a school to offer a *separate* girls' team if:

- (1) opportunities for girls to compete have historically been limited,
- (2) the female students do not have sufficient athletic skill to be selected for an integrated team or to compete actively on such a team,
- (3) there is sufficient interest and ability among female students to maintain a team, and
- (4) there is a reasonable expectation of competition for that team.¹³⁴

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Appendix C: Sample Right-to-Know Act Information Request Form

TIP: CHECK YOUR SCHOOL'S WEBSITE FOR THE NAME AND ADDRESS OF THE SCHOOL DISTRICT'S OPEN RECORDS OFFICER. If your school district does not have an Open Records Officer, send this form to the Superintendent with a cover letter requesting that the form be forwarded to the person assigned to respond to Right to Know Requests. If your school district has prepared its own Right-to-Know Request form, complete that form and use the any of the suggested requests set forth below, as may apply to your situation. Schools may differ in the costs for copying, but now Pennsylvania law mandates that the fees charged can be no more than \$0.25 per page.

**STANDARD RIGHT-TO-KNOW REQUEST FORM**

DATE REQUESTED: _____

REQUEST SUBMITTED BY: E-MAIL U.S. MAIL FAX IN-PERSON

NAME OF REQUESTOR: _____

STREET ADDRESS: _____

CITY/STATE/COUNTY(Required): _____

TELEPHONE (Optional): _____

RECORDS REQUESTED:

- *Provide as much specific detail as possible so the agency can identify the information.*
- Documents containing the number of fulltime students of each sex enrolled at [**Name of School**] _____ for the [**insert years**] _____ academic years;
- Documents identifying the athletic teams sponsored by the school, including documents identifying athletic teams by sex, for each year since the [**insert years**] _____ academic year;
- Documents setting forth the number of participants of each sex on each of the varsity, junior varsity and freshman teams for the [**insert years**] _____ academic years;
- The athletic budgets, and records of expenditures by or for each of the athletic teams at [**Name of School**] _____ for the [**insert years**] _____ academic years, including expenditures by booster clubs and contributions from any other non-school sources;
- Documents setting forth the number and identity of any athletic teams added or removed from those available to students in each academic year since [**insert years**] _____.



- Any publications promoting or otherwise concerning the school's athletic teams that were developed by or for the school or the school district that have been made available to the general public for the past **[insert number of years]** _____ completed academic years such as game programs, calendars and schedule cards;
- Minutes, notes, records, or determinations in any form related to the addition or cutting of any sports for the past **[insert number of years]** _____ completed academic years;
- Any documents related to the competition and practice schedules and assignments to competition and practice fields or facilities for each of the boys' and girls' athletic teams for the past **[insert number of years]** _____ completed academic years;
- Documents containing the names and positions of coaching and other athletic department personnel, including whether each person so identified holds a full or part time position, for the past **[insert number of years]** _____ completed academic years;
- Any current policies or procedures of the athletic department related to purchase and replacement of athletic uniforms and equipment;
- Documents setting forth the school's policies with regard to the use or distribution of funds collected by booster clubs or other non-school sources to benefit athletic teams at the school;
- Documents related to the salaries and compensation packages of coaches and other athletic department personnel (full or part time) for the past **[insert number of years]** _____ completed academic years.

DO YOU WANT COPIES? YES or NO

[If you are willing to pay for copies, add the following information] I confirm in advance my willingness to pay the applicable fees incurred in connection with this request up to \$**[insert amount you are willing to pay for copying]**. Kindly contact me if the fees will exceed this amount. I look forward to your making this information available to me within 5 business days.

DO YOU WANT TO INSPECT THE RECORDS? YES or NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? YES or NO

RIGHT TO KNOW OFFICER:

DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5)-DAY RESPONSE DUE:

***Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)*

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Appendix D: Efforts to Achieve Athletic Equity in Pennsylvania

Pennsylvania has seen many challenges to unequal treatment on the basis of sex in educational athletic programs. Not all of these efforts have reached the courts; many times, there is resolution prior to any court involvement. Cases have arisen under Title IX as well as the Equal Protection Clause of the U.S. Constitution and the Pennsylvania Equal Rights Amendment. Below is a sample of some successful legal challenges that have led to increased athletic equity in Pennsylvania:

- ☑ *Commonwealth v. PIAA*, 334 A.2d 839 (Pa. Cmwlth. 1975): Pennsylvania sued the Pennsylvania Interscholastic Athletic Association (PIAA), challenging a bylaw prohibiting girls from competing or practicing against boys in any athletic contest. The court invalidated the bylaw under the Pennsylvania Equal Rights Amendment because excluding girls solely due to their sex denied them equality under the law.

- ☑ *Haffer v. Temple University*, 678 F. Supp. 517 (E.D. Pa. 1987): In one of the first major Title IX challenges to an entire intercollegiate athletic program, this class action challenged unequal opportunities, resources, and financial aid for student athletes at Temple University under Title IX, the Equal Protection Clause of the U.S. Constitution, and the Pennsylvania Equal Rights Amendment. Fifty percent of the student body was female, but only about 34% of student athletes were female, and women's sports received only about 22% of total athletic funding over the previous ten years. The parties reached a settlement in which Temple agreed to: (1) add a women's crew team and a women's swim team, increasing female athletic participation to 42 – 45%; (2) allocate athletic scholarships funding to women making total awards within two percent of their participation rate; and (3) allocate non-scholarship expenditures to be within 10% of the participation rate.

- ☑ *Favia v. Indiana Univ.*, 812 F. Supp. 578 (W.D. Pa. 1993), *aff'd*, 7 F.3d 332 (3d Cir. 1993). Female athletes brought this class action after the university eliminated the women's field hockey and gymnastic teams as well as two men's teams due to budget cuts. Finding that the cuts reduced the number of women participating in athletics at the university and that the resulting proportion of female athletes (38%) was disproportionate to the number of women in the student population (55%), and that the university did not meet any part of the three-part test, the court granted a preliminary injunction restoring the women's field hockey and gymnastics teams.



- ☑ *University of Pennsylvania* (OCR, 1995). This complaint was filed with the Office for Civil Rights, Department of Education by a group of coaches and student athletes seeking equitable support of women's athletics. The complaint was resolved through a negotiated settlement in which the university agreed to increase its funding for women's sports, hire more full-time coaches for women's sports, and provide better facilities (locker rooms, weight and training rooms, boathouse, and equipment) for the women's teams.

- ☑ *Barrett v. West Chester University*, No. 03-CV-4978, 2003 U.S. Dist. LEXIS 21095 (E.D. Pa. Nov. 12, 2003). Eight members of the former West Chester University women's gymnastics team brought a class action challenging the university's elimination of women's gymnastics and disparate treatment of women in coaching and recruiting budgets. The court held that the university failed all three parts of the three-part test and also failed to provide women athletes with the same treatment as men athletes. The court entered a preliminary injunction ordering reinstatement of women's gymnastics with coaching staff, funding, facilities, and equipment necessary for training and competition. The parties ultimately agreed to a settlement that included permanent reinstatement of the gymnastics team with improvements in its treatment.

- ☑ *Choike v. Slippery Rock University*, No. 06-622, 2006 U.S. Dist. LEXIS 49886 (W.D. Pa. July 21, 2006), *settled by* 2007 U.S. Dist. LEXIS 57774 (W.D. PA. Aug. 8, 2007). Twelve female athletes brought a Title IX class action after the university announced plans to eliminate women's field hockey, swimming, and water polo teams. Slippery Rock reversed its decision to cut field hockey after lawyers for the students notified the school of their intent to challenge the cuts under Title IX. Holding that Slippery Rock did not fully and effectively accommodate the interests of female athletes, the district court ordered the university to reinstate the women's swimming and water polo teams. The parties later enter into a negotiated settlement providing for future equity in athletic opportunities and treatment, including additional funding for women's athletics, improvements to the women's athletic fields and facilities, and the adoption of policies setting forth gender-equitable treatment regarding uniforms, travel, equipment, publicity, trainers, and access to automobiles for recruitment by coaches.

ENDNOTES



- 1 Nat'l Fed'n of State High Sch. Ass'n, 2014-15 High School Athletics Participation Survey 55 (2015), http://www.nfhs.org/ParticipationStatistics/PDF/2014-15_Participation_Survey_Results.pdf [hereinafter NFSHSA Participation Survey].
- 2 *Id.*
- 3 *Id.*
- 4 Office for Civil Rights, U.S. Dep't of Educ., Dear Colleague Letter on the 35th Anniversary of Title IX, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20070622.html>.
- 5 Nat'l Collegiate Athletic Ass'n, Sports Sponsorship and Participation Rates Report 1981-82 – 2014-15, at 80 (2015), <http://www.ncaa.org/sites/default/files/Participation%20Rates%20Final.pdf> (includes data collected from only those colleges participating in the NCAA) [hereinafter NCAA Participation Report].
- 6 NCAA Participation Report, *supra* note 5, *passim*.
- 7 See Nat'l Coal. for Women & Girls in Educ., Title IX at 30: Report Card on Gender Equity 14 (June 2002), <http://www.ncwge.org/PDF/title9at30-6-11.pdf>.
- 8 Nat'l Collegiate Athletic Ass'n, Gender-Equity Report 2004-2010 at 8, 11-12 (2012), <http://www.ncaapublications.com/productdownloads/GEQS10.pdf>.
- 9 NFSHSA participation Survey, *supra* note 1, at 55.
- 10 D. Sabo & P. Veliz, Go Out and Play: Youth Sports in America 26 (Women's Sports Foundation 2008).
- 11 *Id.* at 15-16
- 12 U.S. Gov't Accountability Office, Intercollegiate Athletics: Recent Trends in Teams and Participants in National Collegiate Athletic Association Sports 2 (2007), <http://www.gao.gov/new.items/d07535.pdf>.
- 13 Nat'l Collegiate Athletic Ass'n, *supra* note 8, at 8-11.
- 14 20 U.S.C. § 1092(g) (2008).
- 15 Women's Law Project, Gender Equity in Intercollegiate Athletics: Where Does Pennsylvania Stand? 8 (2005).
- 16 *Id.*
- 17 *Id.*
- 18 *Id.*
- 19 *Id.*
- 20 24 Pa Stat. § 16-1603-C (2016).
- 21 NFSHSA Participation Survey, *supra* note 1, at 49.
- 22 *Id.*
- 23 *Second String: Gender Inequality in High School Sports*, Pittsburgh Tribune-Review, Oct. 15, 2001, available at <http://www.pittsburghlive.com/x/pittsburghtrib/news/specialreports/titleix>.
- 24 *Id.*
- 25 D. Sabo et al., Her Life Depends On It 8-12 (Women's Sports Foundation 2004); see also Leslie Bernstein et al., *Physical Exercise and Reduced Risk of Breast Cancer in Young Women*, 86 J. National Cancer Inst. 1403 (1994).
- 26 Sabo et al, *supra* note 25, at 13-21.
- 27 *Id.* at 22-29.
- 28 *Id.* at 30-31; see also H.W. Marsh & S. Kleitman, *School Athletic Participation: Mostly Gain with Little Pain*, 25 J. Sport and Exercise Psychology 205 (2003) (nationwide study of young people between sophomore and senior years in high school and for four years after high school, 1988-1994).
- 29 20 U.S.C. § 1681(a) (2008).
- 30 A Policy Interpretation: Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71413 (Dec. 11, 1979) (codified at 45 C.F.R. pt. 86) [hereinafter 1979 Policy Interpretation].
- 31 *Id.* at 71415.
- 32 *Id.*
- 33 *Id.*
- 34 34 C.F.R. § 106.8(a) & (b) (2008).
- 35 34 C.F.R. § 106.9(a) (2008).
- 36 20 U.S.C. § 1682 (2008).
- 37 20 U.S.C. § 1687 (2008).
- 38 20 U.S.C. § 1681(a)(3)-(4) (2008).
- 39 1979 Policy Interpretation, *supra* note 30, at 71418.
- 40 *Id.*

- 41 Office for Civil Rights, U.S. Dep't of Educ., Clarification of Intercollegiate Athletics Policy Guidance: the Three Part Test (Jan. 16, 1996), *available at* <http://www.ed.gov/about/offices/list/ocr/docs/clarific.html> [hereinafter 1996 Policy Clarification].
To calculate the number of athletic opportunities for women that would need to be added to achieve proportionality, insert the following variables into this formula:
$$x = (z - P(y+z))/(P-1)$$

P = target percentage of women as athletes (the percentage of women enrolled full-time in the school or undergraduate program)
z = number of current women athletes
y = number of current male athletes
x = number of women athletes that need to be added to achieve proportionality
- 42 *See id.*
- 43 *Choike v. Slippery Rock University*, No. 06-622, 2006 U.S. Dist. LEXIS 49886, at *19 (W.D. Pa. July 21, 2006).
- 44 Office for Civil Rights, U.S. Dep't of Educ., Further Clarification of Intercollegiate Athletics: Title IX Compliance (July 11, 2003), *available at* <http://www.ed.gov/about/offices/list/ocr/title9guidanceFinal.html>. [hereinafter 2003 Policy Clarification].
- 45 *Id.*
- 46 1979 Policy Interpretation, *supra* note 30, at 71418.
- 47 1996 Policy Clarification, *supra* note 41, at 4.
- 48 *Id.* at 5.
- 49 *See Roberts v. Colo. State Univ.*, 998 F.2d 824, 830 (10th Cir. 1993) (program expansion in the 1970s followed by steady decline in the 1980s fails to satisfy the “continuing expansion” component of the three-part test); *Cohen v. Brown Univ.*, 991 F.2d 888, 903 (1st Cir. 1993) (“While a university deserves appreciable applause for supercharging a low-voltage athletic program in one burst rather than powering it up over a longer period, such an energization, once undertaken, does not forever hold the institution harmless.”); *Barrett v. West Chester Univ.*, No. 03-CV-4978, 2003 U.S. Dist. LEXIS 21095, at *23 (E.D. Pa. Nov. 12, 2003) (finding “that periods in excess of a decade are too long to constitute continued expansion”).
- 50 *See Roberts*, 998 F.2d at 830; *Barrett*, 2003 U.S. Dist. LEXIS 21095, at *23; *Cohen*, 991 F.2d at 903.
- 51 *See* 1996 Policy Clarification, *supra* note 41, at 6 (describing examples of what actions do not comply with part two of the test, and detailing actions a school can take to meet this test).
- 52 1979 Policy Interpretation, *supra* note 30, at 71418.
- 53 Office for Civil Rights, U.S. Dept. of Educ., Intercollegiate Athletics Policy Clarification: The Three-Part Test – Part Three (April 20, 2010), *available at* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100420.pdf> [hereinafter 2010 Policy Clarification]; 1996 Policy Clarification, *supra* note 41.
- 54 2010 Policy Clarification, *supra* note 53, 1996 Policy Clarification, *supra* note 41.
- 55 2010 Policy Clarification, *supra* note 53 (withdrawing a controversial 2005 OCR policy clarification that permitted a school to rely solely on a survey to determine whether it is “fully and effectively accommodating the interests and abilities of underrepresented students,” and reasserting that, consistent with the 1996 Policy Clarification, whether an institution has unmet interest and ability to support a team is to be determined by evaluating a broad range of indicators; while a survey may be one component of an assessment, the survey must be designed and implemented to maximize the possibility of obtaining accurate information and facilitating responses).
- 56 2010 Policy Clarification, *supra* note 53; 1996 Policy Clarification, *supra* note 41.
- 57 1979 Policy Interpretation, *supra* note 30, at 71415.
- 58 Office for Civil Rights, U.S. Dep't of Educ., Title IX Athletics Investigator's Manual 21 (1989) [hereinafter Investigator's Manual].
- 59 *Id.* at 21; see also Office for Civil Rights, U.S. Dep't of Educ., Equal Opportunity in Intercollegiate Athletics Pamphlet (1991).
- 60 1979 Policy Interpretation, *supra* note 30, at 71416.
- 61 *Id.*
- 62 *See* Investigator's Manual, *supra* note 58, at 10, 20.
- 63 1979 Policy Interpretation, *supra* note 30, at 71416.
- 64 *See* Investigator's Manual, *supra* note 58, at 29-30.
- 65 Vicky Barker, Time Out: Does Your School Play Fair? 8 (California Women's Law Center 2006), http://www.cwlc.org/files/docs/Title_Nine_School_Compliance.pdf [hereinafter Time Out].
- 66 1979 Policy Interpretation, *supra* note 30, at 71416.
- 67 *Id.*

ENDNOTES



- 68 Investigator's Manual, *supra* note 58, at 35.
- 69 1979 Policy Interpretation, *supra* note 30, at 71416.
- 70 *Id.*
- 71 *Id.*
- 72 Investigator's Manual, *supra* note 58, at 55.
- 73 1979 Policy Interpretation, *supra* note 30, at 71416.
- 74 *Id.*
- 75 Time Out, *supra* note 65, at 9.
- 76 Investigator's Manual, *supra* note 58, at 64-65.
- 77 *Id.*
- 78 1979 Policy Interpretation, *supra* note 30, at 71417.
- 79 Time Out, *supra* note 65, at 12.
- 80 Investigator's Manual, *supra* note 58, at 85.
- 81 While large schools and colleges may have a full-time sports information director or other personnel, smaller schools and interscholastic programs may assign publicity duties to an athletic director or coaches. See Investigator's Manual, *supra* note 58, at 86.
- 82 1979 Policy Interpretation, *supra* note 30, at 71417.
- 83 See Investigator's Manual, *supra* note 58, at 76.
- 84 1979 Policy Interpretation, *supra* note 30, at 71417.
- 85 Investigator's Manual, *supra* note 58, at 80-82.
- 86 1979 Policy Interpretation, *supra* note 30, at 71416.
- 87 Investigator's Manual, *supra* note 58, at 49-50.
- 88 1979 Policy Interpretation, *supra* note 30, at 71417.
- 89 *Id.*
- 90 *Id.*
- 91 *Id.* at 71415.
- 92 *Id.*; see also Time Out, *supra* note 65, at 4.
- 93 Investigator's Manual, *supra* note 58, at 5.
- 94 Time Out, *supra* note 65, at 4.
- 95 34 C.F.R. § 106.37(c) (2008); 1979 Policy Interpretation, *supra* note 30, at 71415.
- 96 Letter from Dr. Mary Frances O'Shea, National Coordinator for Title IX Athletics, Office for Civil Rights, Dep't of Educ., to Nancy Footer, General Counsel, Bowling Green State Univ. (July 23, 1998), *available at* <http://www.ed.gov/about/offices/list/ocr/docs/bowlgrn.html>.
- 97 1979 Policy Interpretation, *supra* note 30, at 71415.
- 98 *Id.*
- 99 Pa. Const. art. I, § 28.
- 100 *Commonwealth v. Pennsylvania Interscholastic Athletic Ass'n*, 334 A.2d 839, 843 (Pa. Commw. Ct. 1975) (holding that denying female athletes the same opportunity to practice and compete available to males in interscholastic athletics constituted a violation of the Equal Protection Clause of the U.S. Const. amend. XIV, § 1 and Pa. Const. art. I, § 28 because girls were excluded solely because of their sex).
- 101 43 Pa. Stat. Ann. §§ 951–963 (2008).
- 102 43 Pa. Stat. Ann. § 954(l) (2008).
- 103 43 Pa. Stat. Ann. § 956 (2008).
- 104 43 Pa. Stat. Ann. §§ 957, 959 (2008).
- 105 43 Pa. Stat. Ann. § 962(c)(1) (2008).
- 106 24 Pa. Stat. Ann. §§ 5001–5010 (2008).
- 107 24 Pa. Stat. Ann. §§ 5005, 5006, 5007 (2008).
- 108 65 Pa. Stat. Ann. §§ 67.101-67.3104 (2008).
- 109 Office for Civil Rights, U.S. Dep't of Educ., Complaint Form, *available at* <http://www.ed.gov/about/offices/list/ocr/complaintintro.html> (last visited November 10, 2008).
- 110 Office for Civil Rights, U.S. Dep't of Educ., Questions and Answers on OCR's Complaint Process, *available at* <http://www.ed.gov/about/offices/list/ocr/qa-complaints.html> (last visited November 10, 2008).
- 111 *Cannon v. Univ. of Chicago*, 441 U.S. 677, 709 (1979).
- 112 *Id.* at 707.
- 113 *Jackson v. Birmingham Bd. of Educ.*, 125 U.S. 1497 (2005).



- 114 34 C.F.R. § 106.41 (2008).
- 115 1979 Policy Interpretation, *supra* note 30, at 71413.
- 116 Investigator's Manual, *supra* note 58.
- 117 1996 Policy Clarification, *supra* note 41.
- 118 2003 Policy Clarification, *supra* note 44.
- 119 2005 Policy Clarification, *supra* note 55.
- 120 1979 Policy Interpretation, *supra* note 30, at 71415.
- 121 1996 Policy Clarification, *supra* note 41.
- 122 *Id.*
- 123 *Id.* at ¶ 12.
- 124 1979 Policy Interpretation, *supra* note 30, at 71413 n.1.
- 125 See Letter from Harry A. Orris, Director, Cleveland Office, Midwestern Division, Office for Civil Rights, U.S. Dep't of Educ., to Suzanne M. Martin, Assistant Director, Mich. High Sch. Athletic Ass'n (Oct. 18, 2001) [hereinafter 2001 Cheerleading Letter]; see also Letter from Dr. Mary Frances O'Shea, National Coordinator for Title IX Athletics, Office for Civil Rights, Dep't of Educ., to David V. Stead, Executive Director, Minn. State High Sch. League (Apr. 11, 2000) [hereinafter 2000 Cheerleading Letter]; Office for Civil Rights, U.S. Dep't of Educ., Dear Colleague Letter: Athletic Activities Counted for Title IX Compliance (Sept. 19, 2008), *available at* <http://www.ed.gov/about/offices/list/ocr/letters/colleague-20080917.html> [hereinafter 2008 Clarification Letter] (clarifying OCRs existing compliance policies to help institutions determine what activities can be counted as sports when assessing Title IX compliance but not changing OCR policy).
- 126 2001 Cheerleading Letter, *supra* note 126; 2000 Cheerleading Letter, *supra* note 125; see also 2008 Clarification Letter, *supra* note 125.
- 127 See 2001 Cheerleading Letter, *supra* note 125 (stating that cheerleading and drill teams are not sports, but classification of these activities is done on a case-by case basis by the OCR, and outlining the factors to consider in determining whether competitive cheerleading is classified as a sport).
- 128 1979 Policy Interpretation, *supra* note 30, at 71417.
- 129 *Id.*
- 130 1979 Policy Interpretation, *supra* note 30, at 71418.
- 131 *Williams v. School Dist. of Bethlehem*, 998 F.2d 168, 173 (3d Cir. 1993).
- 132 *Id.*
- 133 1979 Policy Interpretation, *supra* note 30, at 71418.
- 134 *Id.*

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