



**Webinar: U.S. Department of Education's
Office for Civil Rights Guidance on
Athletics Opportunity Under Title IX
Thursday, February 23, 2023
12:00pm-12:45pm**



About Us



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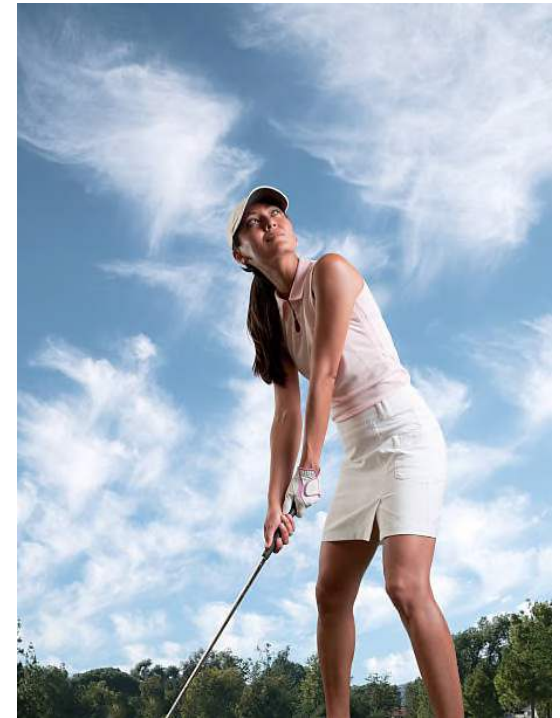
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Disclaimers

- We are not giving legal advice today.
- Please consult with your legal counsel regarding specific situations.
- Use chat function to ask general questions and hypotheticals. We encourage questions!
- Yes, we will send out the slides. If you used your email to register, look for a “Thank You For Attending!” email.
- We are recording the presentation today.

Today's Agenda

- Title IX & Athletics History
- What is this Resource?
- Why is it Important?
- The Resource & Evaluating your School's Athletic Program
 - Benefits, opportunities, and treatment
 - Meeting students' athletic interests and abilities
 - Athletic scholarship and financial assistance (colleges and universities)



More information

Athletic Compliance Resource Center

Our team is particularly experienced in:

- Title IX compliance and investigations, including the NCAA Policy on Campus Sexual Violence (check out our Title IX and athletics resource page here)
- Operationalizing Name, Image and Likeness
- Student-athlete safety and well-being
- Enforcement investigations
- Eligibility reviews
- Policy and procedure reviews including student-athlete handbooks
- Intellectual property portfolio development and management
- Multimedia streaming rights agreements, product licensing, and sponsorship
- Facilities compliance
- E-sports

Title IX Resource Center

K-12 Title IX Toolkit

The Bricker K-12 Title IX Toolkit is designed to assist school districts with their efforts to comply with the final Title IX Regulations published by the U.S. Department of Education on May 19, 2020, and effective on August 14, 2020.

[MORE](#)

Upcoming Training Events

- K-12 Training dates through January 22, 2023: [Title IX Regulations Training \(K-12\) >>](#)
- Higher Ed Training dates through May 5, 2023: [Title IX Regulations Training \(Higher Ed\) >>](#)
- For additional Title IX webinars: [Bricker Events Page](#)

Title IX Training

Our experienced attorneys are available to schools, colleges, universities and adult education programs to provide comprehensive Title IX employee training customized to your institution's policies, procedures and institutional culture.

[MORE](#)

Upcoming Events

- It's Game Time: Complying with the NCAA Policy on Campus Sexual Violence
 - Tuesday, March 7, 2023
 - 12:00 PM to 1:00 PM (EST)
- Higher Ed Athletics Compliance Update
 - Wednesday, March 15, 2023
 - 12:00 PM to 1:00 PM (EST)

Title IX & Athletics History

- Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.) prohibits discrimination on the basis of sex in education programs receiving Federal financial assistance.
- Athletics are considered an integral part of an institution's education program and are therefore covered by this law.



Title IX & Athletics History

- The best-known way in which Title IX protects students is through its requirement that schools provide the historically underrepresented gender in sports – females – with equal opportunity to participate in athletic activities. And, that is true; however, Title IX covers a lot more—including sexual harassment which was addressed by the 2020 regulations.
- The U.S. DOE plans to issue a separate notice of proposed rulemaking to address whether and how the Department should amend the Title IX regulations to address students' eligibility to participate on a particular male or female athletics team. **The guidance released last week does not address that topic.**
- Our focus today is on athletics compliance in terms of providing equal athletic opportunities to all students, regardless of sex.

What are these Recently Released Resources?

General

K-12

Colleges and Universities

 **U.S. Department of Education**
Office for Civil Rights
February 2023

Supporting Equal Opportunity in School Athletic Programs

A Resource for Students and Families


Title IX of the Education Amendments of 1972 ("Title IX") prohibits discrimination based on sex in education programs and activities, including athletic programs, that receive Federal funds. For over 50 years, Title IX has dramatically increased athletic opportunities for generations of girls and women. Despite this progress, girls and women across the country continue to face pervasive barriers in sports, from unequal funding, resources, and coaching for girls and women's sports teams to worse facilities, sex-based harassment on and off the field, and fewer scholarship opportunities.

Public elementary and secondary schools, as well as colleges and universities that receive Federal funding (collectively "schools"), have a responsibility under Title IX to provide equal athletic opportunities to all students, regardless of sex. Title IX requires schools to effectively accommodate the athletic interests and abilities of their students, regardless of sex, and provide equal opportunity in the benefits, opportunities, and treatment provided for their athletic teams. The law also requires that colleges and universities must not discriminate on the basis of sex in the provision of any athletic scholarships and financial assistance to students.

Examples of the kinds of situations that could, depending upon facts and circumstances, raise Title IX concerns at any education level, include:

- At a high school, the boys' baseball team plays on a turf field of excellent quality. But the girls' softball team plays on a poorly maintained grass field, which has holes and drainage problems. The girls' softball field also lacks proper fencing and lighting needed for evening practices and games.
- The men's teams at a college receive new athletic apparel and gear each year, while the women's teams must use old apparel and purchase some of their own equipment.
- A school district offers a boys' and girls' varsity ice hockey team and a boys' junior varsity ("JV") ice hockey team but does not offer a JV ice hockey team for girls. The district also provides many more athletic opportunities overall for boys than girls. The district repeatedly denies requests to create a JV girls' ice hockey team even though many girls play ice hockey for local clubs and would like to play on a district team, and there are other JV girls' ice hockey teams in area districts that would be available for local competition.
- Across its entire athletic program, a college awards disproportionately more athletic financial assistance to men than women.
- A university provides funds for its coaches to recruit athletes for its men's football and basketball teams because it considers those teams to be "flagship sports." It provides no funds for coaches to recruit women athletes. As a result, the school has difficulty attracting women to participate in its athletic program.

A Resource for Students, Parents, Coaches, Athletic Directors, and School Communities 1

 **U.S. Department of Education**
Office for Civil Rights
February 2023

Title IX and Athletic Opportunities in K-12 Schools

A Resource for Students, Parents, Coaches, Athletic Directors, and School Communities

INCLUDED IN THIS RESOURCE

- Background on Title IX 2
- Evaluating Your School's Athletic Program 3
 - Benefits, opportunities, and treatment for boys and girls teams 3
 - Meeting students' athletic interests and abilities 5
- What to Do If You Think Your School's Athletic Program Violates Title IX 9

This resource is designed by the [Office for Civil Rights \("OCR"\)](#) of the U.S. Department of Education ("Department") to help K-12 school communities ("schools"), including students, parents, coaches, athletic directors, and school officials, evaluate whether a school is meeting its legal duty to provide equal athletic opportunity based on sex consistent with Title IX of the Education Amendments of 1972 ("Title IX") and the Title IX regulations.¹

This resource explains the rights that students have to participate in interscholastic, intramural, or club athletic programs free from discrimination based on sex and may help you evaluate whether your school's athletic program is providing equal opportunity consistent with Title IX.

If you believe that your school may not be providing equal athletic opportunities based on sex, you may file a complaint through your school's grievance procedures or directly with OCR, as described on page 9.

¹ Title IX says: "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." You can find the full Title IX statute at [20 U.S.C. §§ 1681-1688](#). You can find the Department's Title IX regulations at [34 C.F.R. Part 106](#). The Title IX athletics regulation is at [34 C.F.R. § 106.81](#). In addition, the Department has published several guidance documents on Title IX and athletics that are linked in the Appendix. The examples and questions in this resource draw in part from those guidance documents but are not intended to be comprehensive of all of the guidance documents linked in the Appendix. While this resource focuses on boys and girls teams, please note that schools must also ensure equal opportunity based on sex on coeducational teams.

A Resource for Students, Parents, Coaches, Athletic Directors, and School Communities 1

 **U.S. Department of Education**
Office for Civil Rights
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- Evaluating Your School's Athletic Program 3
 - Benefits, opportunities, and treatment for men's and women's teams 3
 - Athletic scholarships and financial assistance 6
 - Meeting students' athletic interests and abilities 8
- What to Do if You Think Your School's Athletic Program Violates Title IX 12

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A Resource for Students, Coaches, Athletic Directors, and School Communities 1

What are these Recently Released Resources?

- Designed by OCR to help schools, including students, coaches, athletic directors, and school officials evaluate whether it is meeting its legal duty under Title IX
- Listed as a “publication” on its website
- It’s not legally binding but gives a road map of what an OCR complaint might reveal

You can learn more about Title IX and athletics by visiting OCR’s [Title IX Athletics Overview page](#) or by accessing the following guidance documents issued by OCR:

- [Dear Colleague Letter: Part Three of the Three-Part Test](#) (2010)
- [Dear Colleague Letter: Athletic Activities Counted for Title IX Purposes](#) (2008)
- [Dear Colleague Letter on the Title IX Athletics Three-Part Test](#) (2008)
- [Dear Colleague Letter on Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance](#) (2003)
- [Dear Colleague Letter on Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test](#) (1996)
- [Policy Interpretation: Title IX and Intercollegiate Athletics](#) (1979)

Why Is this Important?

- OCR Complaints happen at BOTH the K-12 and Higher Ed levels— see this search: https://ocrcas.ed.gov/ocr-search?f%5B0%5D=ocr_issues%3A536&f%5B1%5D=ocr_statutes%3A527&sort_order=DESC&sort_by=field_resolved

Why Is this Important?

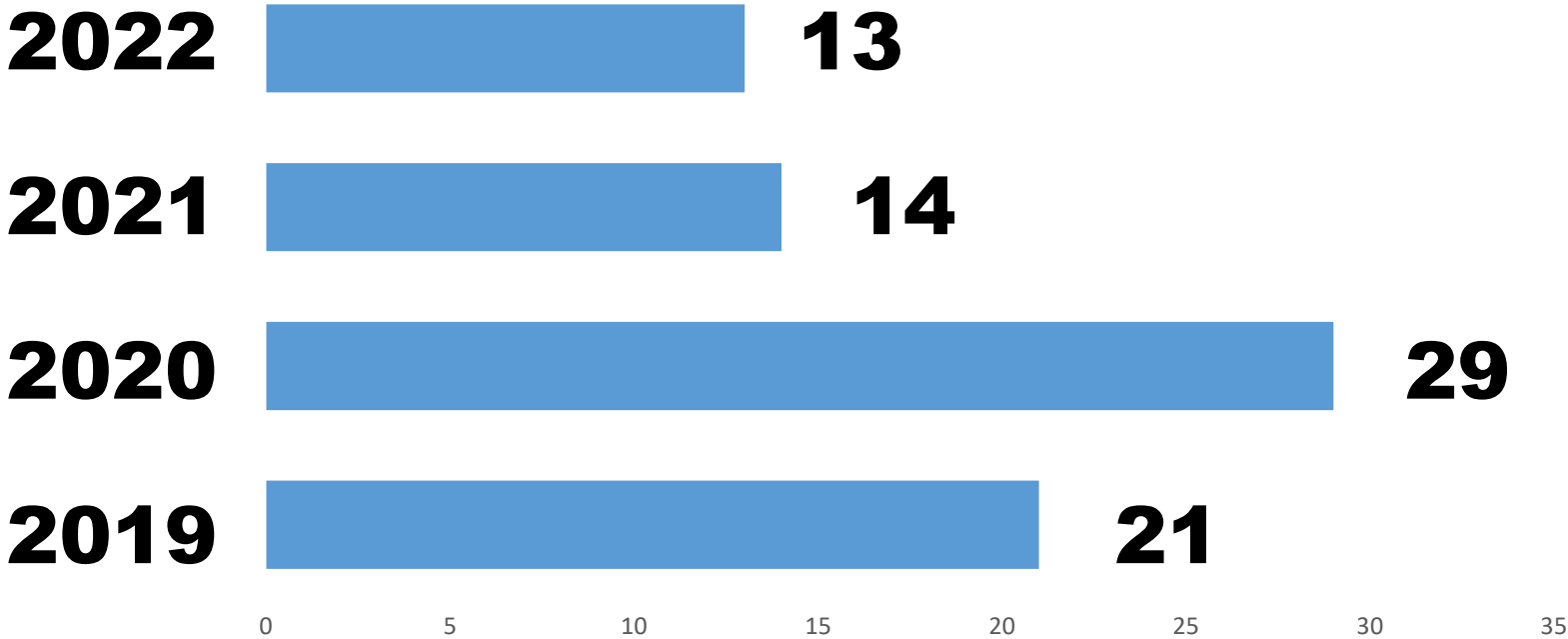
- Example Resolution Agreement:
 - District must develop written guidelines to ensure equivalent athletic opportunities for boys and girls
 - Reporting requirements (draft guidelines to be reported to OCR)
 - Internal Assessment Report
 - Ongoing reporting
 - Training of administration

1. By **December 31, 2022**, the District will draft written guidelines (the Guidelines) to ensure the District provides equivalent athletic opportunities for boys and girls in its high school athletics programs pertaining to:

- a) the quality, amount, suitability, maintenance and replacement, and availability of equipment and supplies (uniforms and other apparel, sport-specific equipment, general equipment);
- b) travel and per diem allowances (modes or methods of transportation, per diem allowance for athletes by team, size of squad/team and additional personnel who travel with the team, hotels); and
- c) publicity (availability, quantity and quality of all District-sponsored publications and promotional materials and availability and quality of sports information personnel for each girls' and boys' athletic program). It is understood that this provision does not apply to independent actions of non-District-sponsored publications such as local newspapers, local newsletters, or other communications sent out by local journalists, and/or individuals and non-District staff who are not authorized to speak on behalf of the District, but applies to District efforts to generate public interest and media demand.

To develop the Guidelines, the District will complete a comprehensive equity assessment of its boys' and girls' athletics programs in areas (a), (b), and (c) at the high school. The assessment will include, at a minimum, a review of District records (e.g., budget documents, purchase orders), interviews of relevant administrators and coaches, a survey issued to high school student athletes where appropriate, and a review of the benefits and opportunities provided to student athletes through District-approved booster clubs and other outside entities (i.e., individuals and organizations that donate money or provide equipment to the District for its athletic programs).

Numbers of Resolution Agreements Posted



Evaluating Your School's Athletic Program

- What does Title IX require for schools' athletic programs?
 - The Title IX regulations require schools to provide equal opportunity based on sex. This requirement applies to school's athletic programs, including club, intramural, and interscholastic teams.
- **Equal opportunity in K-12 and IHE is measured by:**
 - **The benefits, opportunities, and treatment given to boys/men's and girls/women's teams**
 - **How a school is meeting student's athletic interests and abilities**
 - **IHE: Athletic scholarships and financial assistance**



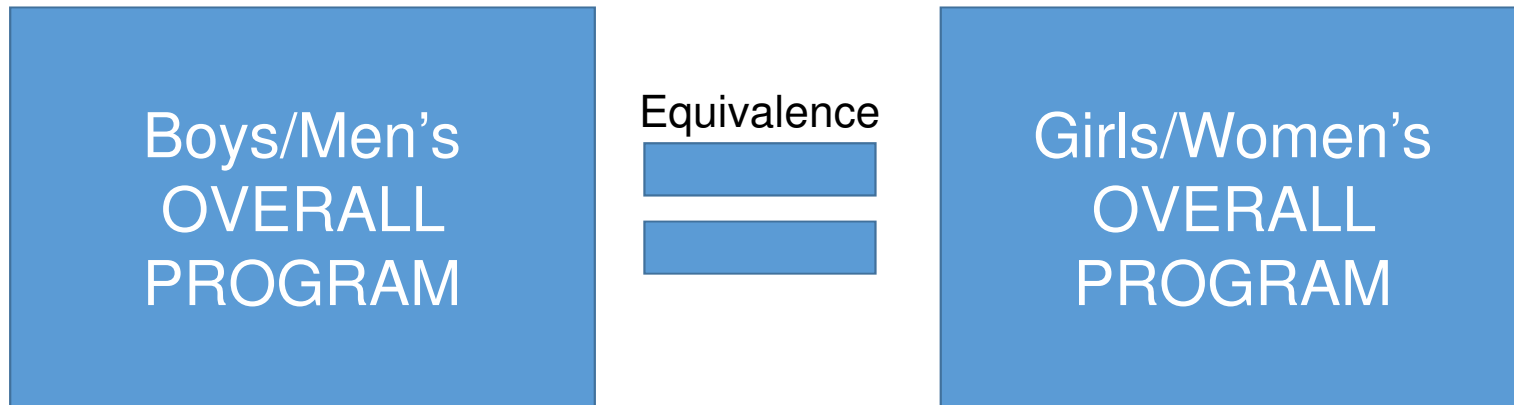
Benefits, Opportunities, and Treatment



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Overall program, not sport-to-sport

- Title IX regulations require that the school offer equivalent benefits, opportunities, and treatment to its boys and girls teams overall.
- Not sport-to-sport comparison (e.g., men's basketball to women's basketball, baseball to softball)



The “Laundry List”

- Equipment and Supplies
- Scheduling Games and Practice Time
- Travel and Daily Allowance
- Coaching
- Locker Rooms and Fields, Courts, or Other Facilities for Practice and Competition
- Medical and Training Facilities and Services
- Publicity

PLUS for Colleges & Universities

- Academic Tutors
- Housing and Dining Services
- Recruitment*



Equipment and Supplies

- **Equipment and Supplies**

- Does your school provide athletic gear of equivalent quality, quantity, suitability, condition, and availability for athletes on boys and girls teams? (*For example, uniforms, apparel, sports equipment, general supplies*)



Scheduling Games and Practice Times

- **Scheduling Games and Practice Time**

- Do boys and girls teams both have a reasonable opportunity to compete before an audience? *(For example, Sunday morning games may be less likely to generate attendance and interest than Friday night games. So, scheduling all girls teams' games for Sunday mornings and all boys teams' games for Friday nights would likely not provide the girls teams the same opportunity to compete before an audience as the boys teams.)*
- Do the boys and girls teams play an adequate number of regular season games or other competitions for the team's division level?
- Are scheduled practice times equally convenient for both boys and girls teams? *(For example, always scheduling practice for the girls swim team at 5am and the boys swim team at 7am, would likely not provide equally convenient practice times.)*
- Are the number and length of practice sessions equivalent for girls and boys teams in the same or similar sports?



Travel and Daily Allowance

- **Travel and Daily Allowance**

- Do athletes on girls and boys teams use equivalent modes of transportation when traveling to away games or competitions? *(For example, carpool, school bus, charter bus, airplane)*
- Do athletes on girls and boys teams have equivalent accommodations when traveling overnight? *(For example, quality of hotels, number of athletes per room)*
- When athletes on girls and boys teams travel to games, are they offered equivalent meals or meal allowances? *(For example, pre-game meals, set allowance per meal or per day)*



Coaching

- **Coaching**

- Do boys and girls teams have coaches with equivalent qualifications? *(For example, experience coaching, teaching, or playing at the high school, college, amateur, or professional level)*
- Are coaches available to girl and boy athletes for equivalent amounts of time?
- Do coaches of boys and girls teams receive equivalent compensation?
 - If not, can differences in pay be justified by factors that could be nondiscriminatory? *(For example, experience, number of athletes, extra responsibility to supervise other coaches, outstanding record of achievement, nondiscriminatory factors related to the context of recruiting and hiring coaches for specific sports)*
- Do coaches of girls and boys teams have equivalent “other duties”? *(For example, teaching versus full-time coaching)*

Locker Rooms and Fields, Courts, or Other Facilities for Practice and Competition

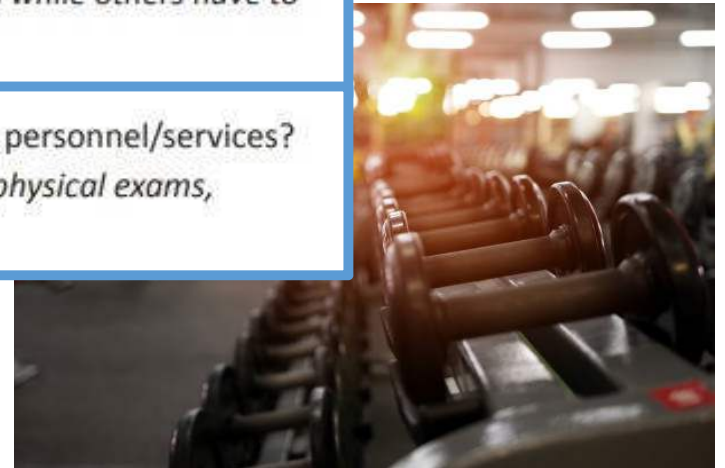
- **Locker Rooms and Fields, Courts, or Other Facilities for Practice and Competition**
 - Do athletes on boys and girls teams have locker rooms of equivalent quality and size?
 - Are the conditions of playing fields, courts, pools, and other practice/game facilities for boys and girls teams equivalent? *(For example, quality, maintenance, access to restrooms, availability of spectator seating, scoreboards, lighting, and other amenities)*



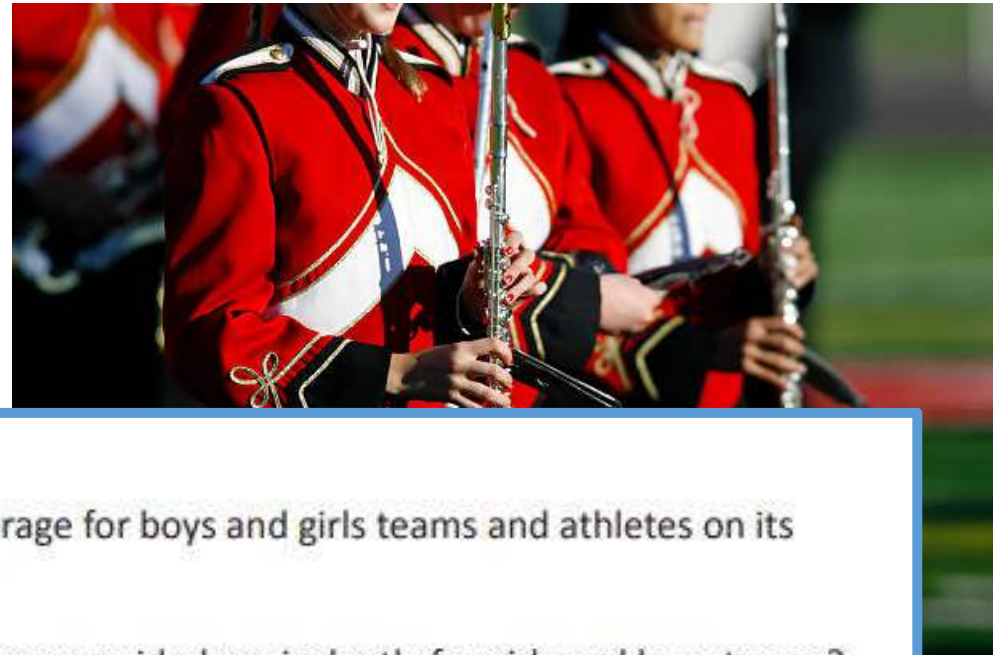
Medical and Training Facilities and Services

- **Medical and Training Facilities and Services**

- Are the training and conditioning facilities for athletes on boys and girls teams of equivalent quality? *(For example, type of equipment in each training facility/weight and conditioning room)*
- Do members of boys and girls teams have equivalent access to training facilities? *(For example, whether certain teams have priority or exclusive use of facilities while others have to share facilities)*
- Do boys and girls teams have access to equivalent medical and training personnel/services? *(For example, presence at away or home games, availability of annual physical exams, qualifications of personnel who conduct physical exams)*



Publicity



- **Publicity**

- Does your school provide equivalent coverage for boys and girls teams and athletes on its website, social media, or other publicity?
- Are cheerleaders, pep bands, and drill teams provided equivalently for girls and boys teams?

Colleges and Universities: Academic Tutors

- **Academic Tutors**

- Do men's and women's teams have academic tutors with equivalent qualifications?
- Are academic tutors available to athletes on women's and men's teams for equivalent amounts of time?
- Do academic tutors for men's and women's teams receive equivalent compensation? (*For example, hourly rate of pay, length of contract*)
- Are the rules for qualifying for and getting tutoring equivalent for athletes on women's and men's teams?

Colleges and Universities: Housing and Dining Services



● Housing and Dining Services

- Is special housing provided to athletes on men's and women's teams in an equivalent manner? *(For example, location, process for arranging housing, housing arrangements during breaks, furniture)*
- Are equivalent special housing services available to athletes on women's and men's teams? *(For example, laundry facilities, parking, location of showers and restrooms, kitchen facilities)*
- Are equivalent special dining services available to athletes on men's and women's teams? *(For example, meal plan type and quality, provision of meals during breaks and before competition, location of dining halls)*

Colleges and Universities: Recruitment

● Recruitment⁸

- Are coaches and other personnel given substantially equal opportunities to recruit women and men for athletic teams? (*For example, amount of time coaches have to recruit, similar and appropriate geographic range for recruiting*)
- Is recruitment for men and women athletes funded in a way that is equivalently adequate to meet the needs of each men's and women's athletic program? (*For example, funds for outreach, brochures, visiting campuses*)
- Do the differences in benefits, opportunities, and treatment afforded to women or men who are prospective athletes have a disproportionately limiting effect upon the recruitment of students based on sex?



Booster Clubs, Parents, and Other Outside Support

Please also note that your school can accept **voluntary support for teams from booster clubs, parents, and others**. Those donations cannot justify discrimination under Title IX in your school's benefits, opportunities, and treatment offered to its boys and girls teams. If booster clubs provide support for only boys teams, for example, your school must ensure that girls teams receive equivalent benefits, opportunities, and treatment. In addition, if booster clubs provide more support to boys than girls in your school's athletic program or vice versa, then your school must ensure that the benefits, opportunities, and treatment are equivalent for both boys and girls in its athletic program. Failure to do so may indicate a possible Title IX violation.⁷



Evaluating Your School's Athletic Program: Case

- Ruling Sides with Female Athletes at Hawaii High School
- <https://apnews.com/article/sports-hawaii-gender-discrimination-discrimination-lawsuits-4d0fbd4a8596845ced44abd837caa270>
- Their 2018 lawsuit said they were discriminated against because Campbell High School — Hawaii's largest public high school — didn't have a girls locker room. They also argued girls at the Ewa Beach school had inferior practice and game facilities compared to boys.



Meeting students' athletic interests and abilities



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