



Title IX Athletics 101

Kate Hildebrandt (she/her)
Civil Rights and Title IX Specialist
Oregon Department of Education

Monica Maxwell (she/her)
Assistant Executive Director
Oregon School Activities Association

This training is not intended as legal advice and should not be taken as such; we advise you to consult with your legal counsel before making policy or process changes.

ODE and OSAA are available to support with individual technical assistance following this training.



What is Title IX?

Title IX of the Education Amendments of 1972

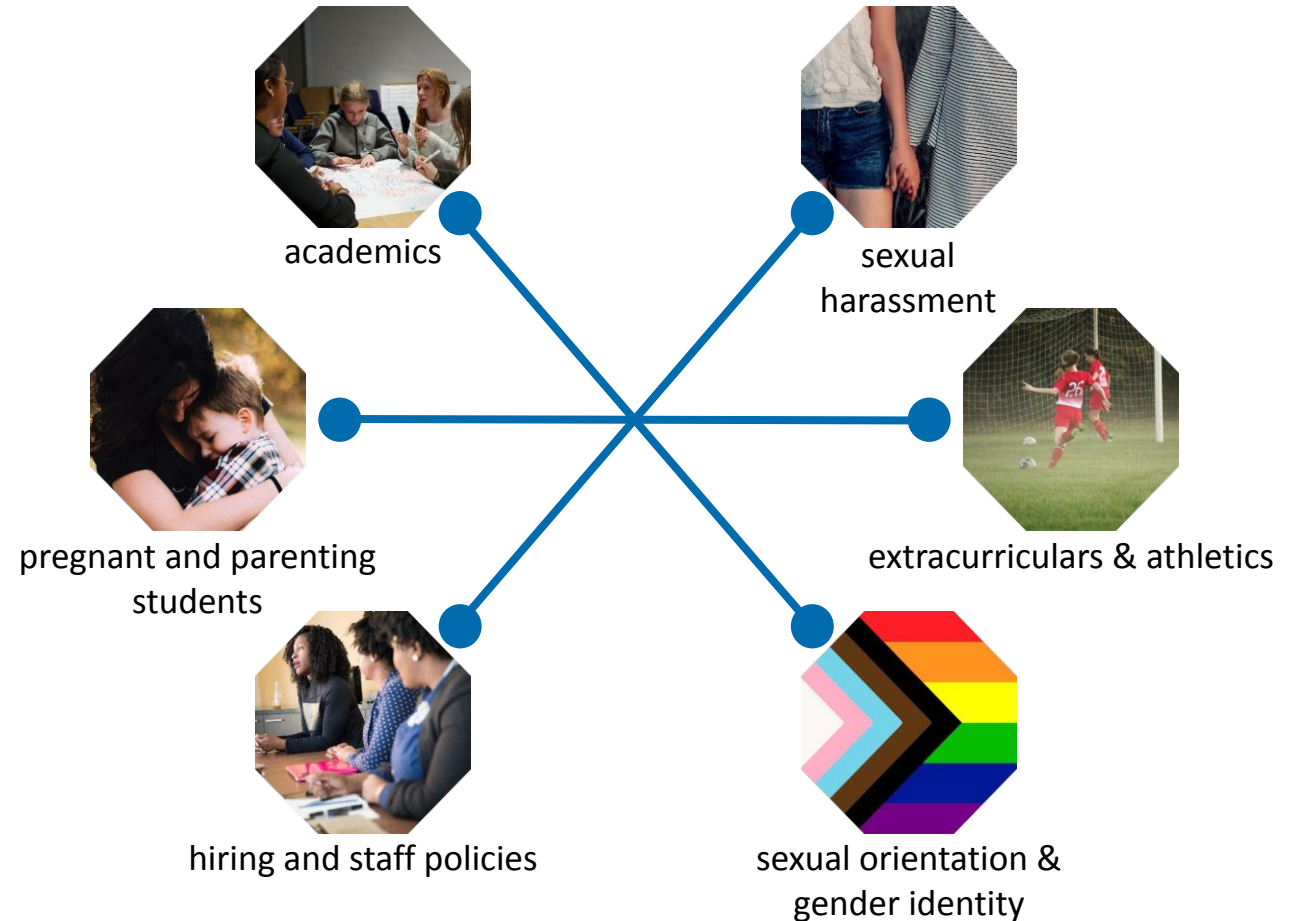
"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

- Civil rights law passed in 1972
- Protects **all** students and employees from sex discrimination, including discrimination based on sexual orientation and gender identity
- Enforced by the Office of Civil Rights

What is covered by Title IX?

All federally funded educational programs are covered by Title IX, including public schools, charter schools, colleges and universities, state agencies, and education service districts.

All parts of a recipient organization's educational programs are covered by Title IX, including academics, extracurricular clubs and activities, ***athletics***, field trips, etc.



Title IX Obligations

Schools are required to designate one (or more) employees to coordinate Title IX compliance, the Title IX Coordinator.

Schools must also

- notify students, employees, and the public that they do not discriminate
- respond to all discrimination complaints
- maintain records of compliance

Title IX - 34 CFR § 106.8

Three Analytical Standards for Athletics

1. Schools must offer male and female students equal athletic opportunities and effectively accommodate students' athletic interests and abilities.



The “three-part test”

2. Schools must allocate athletic financial assistance equitably.

3. Schools must provide male and female athletes with equal benefits and opportunities.



The “laundry list”

Athletic Participation: Gender Expansive Students

Oregon law prohibits discrimination in educational programs based on gender identity.

Transgender and gender expansive students can participate in athletics in accordance with the gender identity they consistently assert at school.

Nonbinary, gender fluid, and other students who exist outside the gender binary may participate on teams of either gender, provided they do not participate on teams of more than one gender in a particular season.

What sports “count” for Title IX?

- 1. Program Structure and Administration. *Is the sport structured and administered in a manner consistent with other varsity sports?***
 - Operating budget, staff, medical/training support, and other support
 - Participants eligible to receive athletic scholarships and awards
- 2. Team Preparation and Competition. *Does the team practice and compete in line with other varsity sports?***
 - Practice opportunities
 - Competitive schedule
 - Defined season determined by a governing athletics organization, conference, or consortium
 - Preseason/postseason
 - Primary purpose to provide athletic competition
 - Adopted set of rules (state)
 - Resources based on competitive needs of team
 - Selection of teams/participants is based on factors related to athletic ability

[2008 Dear Colleague Letter](#)

Total Program Comparison

Title IX compares the entirety of the athletics offered for boys to the entirety of the athletics offered for girls, not just one team to another.

- Title IX does not require schools to create “mirror” programs.

Schools can offer different girls and boys athletic teams in accordance with student abilities and interests.

- This allows for variation in the type of number of sports programs offered to different genders.



ALL sources of resources and funding count!

Every benefit and opportunity provided to your athletes and athletic teams counts towards your Title IX compliance, regardless of source, including:

- funds and resources provided by the school
- facilities rented for practice or competitive events
- fundraising done by booster clubs
- funds or resources provided by private donors
- fundraising done by individual teams
- donations solicited by individual teams
- facilities built or improved by individual teams

What is (and isn't) Title IX

Is (or may be) Title IX

- Discrimination based on sex, sexual orientation, or gender identity
- Sexual harassment
- Pregnancy discrimination
- Sex or gender equity issues in athletics, including different treatment for girls vs. boys teams
- Bullying (including cyberbullying) or hazing when it involves comments about sex, gender identity, sexual orientation, and/or sexual conduct
- Retaliation related to any of the above

Is NOT Title IX

- Disability discrimination (ADA, Section 504)
- Discrimination based on race, color, or national origin (Title VI)
- Employment discrimination based on a protected class that is **not** sex, sexual orientation, or gender identity (Title VII)
- Age discrimination (ADEA-1967)
- Athletics complaints not related to sex or gender equity (for example, complaints about coaching techniques or individual student playing time)



The Three-Part Test

Measuring Equity: Opportunities



Part 1: Athletic participation opportunities for males and females are substantially proportionate to their respective enrollments; **OR**

Part 2: The school has a history and continuing practice of expanding athletic participation opportunities for the underrepresented sex; **OR**

Part 3: The school has fully and effectively accommodated the interests and abilities of the underrepresented sex.

Part 1: Substantially Proportionate

A school can demonstrate compliance with the first part of the three-part test if it can show that the **athletics participation rate of the each sex is substantially proportionate to the school's enrollment.**

EXAMPLE:

49% of students
enrolled at the high
school are girls



49% of
student-athletes play
on girls teams

The Office of Civil Rights does not define “substantially proportionate” using concrete percentage points, but rather has stated that it is to be determined on a case-by-case basis. Consider:

- the size of the school and the athletic program
- whether the actual difference in number of students could make an athletic team

Part 2: Expanding Opportunities

Compliance with the second part of the three-part test is demonstrated through a history and continuing practice of expanding participation opportunities responsive to the developing interests and abilities of the underrepresented sex.

- adding new teams, emerging sports, etc. periodically
- adding spots on teams (spaces, levels)
- elevating sports to varsity-level



“This option is not available if girls are underrepresented and your school has not added or expanded teams for girls or added girls to existing teams since the early years of its girls athletic program. It is also not available if your school cut or capped boys teams without adding or expanding teams for girls.”

[Title IX and Athletic Opportunities in K-12 Schools](#)

Part 3: Accommodating Interests and Abilities

To demonstrate compliance with part three, the school must demonstrate that they are fully and effectively accommodating the interests and abilities of the underrepresented sex.

Interest could be assessed by:

- Requests by students to add sports or elevate a club sport
- Participation rates in middle or others schools and community leagues in areas from which school draws students
- [Surveying students](#) (athletes and non-athletes) regarding interests in sports
- Other areas as necessary

Schools only need to comply with one part of the three-part test to be in compliance.

- Which part a school is complying with can change year to year.
- Striving for multiple levels of compliance is a best practice, but OCR only requires compliance with one part.

Schools should document their compliance calculations each year.

- Keep in mind which sports count for the purposes of Title IX
- If claiming part two, recommended to document history for at least 10 years
- If claiming part three, document efforts to assess interests and abilities of students.



The Laundry List

Measuring Equity: Benefits

- ❌ Equipment and supplies
- ❌ Facilities
- ❌ Assignment and compensation of coaches
- ☐ Support services
- ❌ Medical and training facilities
- ☐ Recruitment
- ❌ Scheduling of games and practices
- ❌ Travel and Per Diem
- ☐ Housing and dining
- ❌ Publicity
- ☐ Opportunity to receive academic tutoring

Equipment and Supplies

OCR's Evaluation Factors

- 1) The quality of equipment and supplies:
- 2) The amount of equipment and supplies;
- 3) The suitability of equipment and supplies:
- 4) The maintenance and replacement of the equipment and supplies; and
- 5) The availability of equipment and supplies.

- OCR does not expect schools to spend the exact same amount of money for each sport or for each student; costs may vary based on the amount or cost of required equipment.
- “Extras” also count! Apparel, swag, etc. are part of the benefits accrued to teams.

Equipment: Assessment Questions to Ask

- ❑ Are there differences between what is provided for girls teams versus boys teams?
- ❑ Are the “extra” items provided (bags, towels, jackets, etc.) of similar quality and quantity for girls and boys teams?
- ❑ Are the practice and competitive uniforms provided of similar quality and quantity for girls and boys teams?
- ❑ Is there a written policy in place to designate how resources for equipment and supplies will be distributed?
 - ❑ Including replacement and maintenance schedules?

Facilities

OCR's Evaluation Factors

- 1) Quality and availability of the facilities provided for practice and competitive events;
- 2) Exclusivity of use of facilities provided for practice and competitive events;
- 3) Availability of locker rooms;
- 4) Quality of locker rooms;
- 5) Maintenance of practice and competitive facilities; and
- 6) Preparation of facilities for practice and competitive events.

Consider all elements of the facilities, including (but not limited to):

- playing surface
- spectator seating
- scoreboard
- announcing capabilities
- concession ability
- restroom access
- locker room access
- team room access
- distance to facility

Facilities: Assessment Questions to Ask

- ❑ Are the locker rooms and team rooms of the girls teams comparable to the boys teams?
- ❑ Are the practice and competition facilities of the girls teams comparable to the boys teams?
 - ❑ Including spectator seating, scoreboards, concessions, restrooms and other venue-specific benefits?
- ❑ Are the conditions of playing fields, courts and pools equal for girls and boys teams?
- ❑ Which teams have the newest and best-equipped facilities?
- ❑ Is there a facilities development and management plan?
 - ❑ Have you shared the plan with the public?

Assignment and Compensation of Coaches

OCR's Evaluation Factors

- 1) Assignment of Coaches
Training, experience, and other professional qualifications; Professional standing.
- 2) Assignment of Tutors
- 3) Compensation of Coaches
Rate of compensation (per sport, per season); Duration of contracts; Conditions relating to contract renewal; Experience; Nature of coaching duties performed; Working conditions; and Other terms and conditions of employment.
- 4) Compensation of Tutors

If compensation offered for coaches is different, reasons must be for nondiscriminatory factors such as:

- 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

Coaches: Assessment Questions to Ask

- ❑ Are there an equitable number of coaches in the girls and the boys programs?
 - ❑ What is the relative experience and quality of those coaches?
- ❑ Is there an equitable approach to contracts and compensation for your coaches?
 - ❑ Is there a basis for any compensation differences among the coaches?
- ❑ When you look at the actual duties being performed, have you assigned any non-coaching duties in an equitable manner?
- ❑ Is administrative, clerical, or other assistance provided equitably provided for mens and womens sports?
- ❑ Do all coaches have an open line of communication to the Athletic Director?
- ❑ Do any of your coaches have an office space? If so, are office spaces provided equally amongst all coaches?

Scheduling of Games and Practice Times

OCR's Evaluation Factors

- 1) The number of competitive events per sport;
- 2) The number and length of practice opportunities;
- 3) The time of day competitive events are scheduled;
- 4) The time of day practice opportunities are scheduled; and
- 5) Opportunities to engage in available pre-season and post-season competition.

Ideal number and length of competitive and practice opportunities may differ sport to sport.

Any differences in practice or competitive opportunities or schedules must be able to be justified by nondiscriminatory reasons.

Schedules: Assessment Questions to Ask

- ❑ Are the number and length of practice sessions equivalent for girls and boys teams in the same or similar sports?
 - ❑ Are boys and girls teams being provided an equal opportunity for “prime-time” practice times?
 - ❑ Are scheduled practice times equally convenient for both boys and girls teams?
- ❑ Are the lengths of the season equivalent for boys and girls 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 both boys and girls teams being scheduled the same number of competitions? Are boys and girls teams receiving the maximum possible number of competitions in each season per sport?
 - ❑ Are boys and girls teams being provided an equal opportunity for “prime-time” games?
 - ❑ Do boys and girls teams both have a reasonable opportunity to compete before an audience?
- ❑ Do boys and girls teams lose similar amounts of academic time due to practices and games?
- ❑ Is the allocation of preseason and postseason opportunities being provided equitably?
- ❑ Is there a master scheduling program for all athletic facilities?
 - ❑ Is the control of the use and access of facilities being determined by coaches or does the athletics department (or some other entity) control use?

Travel and Per Diem

OCR's Evaluation Factors

- 1) Modes of transportation;
- 2) Housing furnished during travel;
- 3) Length of stay before and after competitive events;
- 4) Per diem allowances; and
- 5) Dining arrangements.

Remember that travel benefits include those provided by donors or booster clubs, and those that occur in the off season.

Travel: Assessment Questions to Ask

- ❑ Do athletes on girls and boys teams use equivalent modes of transportation when traveling to away games, competitions, training camps, etc?
 - ❑ Buses, parent carpools, charter buses, planes, etc
- ❑ Does you have a formal travel policy that outlines equitable expectations for all teams?
- ❑ Do athletes on girls and boys teams have equivalent accommodations when traveling overnight?
 - ❑ Quality of hotels, number of athletes per room, opportunity for family to also travel
- ❑ Do boys and girls have opportunities to stay for equivalent lengths of time before and after the competitions?
- ❑ When athletes on girls and boys teams travel to games, are they offered equivalent meals or meal allowances?
 - ❑ Pre-game meals, set allowance per meal or per day, etc.

Medical and Training Facilities and Services

OCR's Evaluation Factors

- 1) Availability of medical personnel and assistance;
- 2) Health, accident and injury insurance coverage;
- 3) Availability and quality of weight and training facilities;
- 4) Availability and quality of conditioning facilities; and
- 5) Availability and qualifications of athletic trainers.

Medical and Training: Assessment Questions to Ask

- ❑ How do we assign athletic trainers to teams for practices and competitions?
- ❑ Do we apply the same policy on the travel of athletic trainers and medical personnel to away competitions?
- ❑ Is there equal access among girls and boys teams to the newest and best-equipped athletics training rooms?
- ❑ Are any teams given the preferred times for athletics training or medical services?
- ❑ Are the strength and conditioning facilities equally available to girls and boys teams?
- ❑ Is the quality of strength and conditioning coaching that is provided equal for teams from girls and boys programs?
- ❑ Are the burdens of any understaffing in the training area shared equitably among the teams?

Publicity

OCR's Evaluation Factors

- 1) Availability and quality of sports information personnel;
- 2) Access to other publicity resources for men's and women's programs; and
- 3) Quantity and quality of publications and other promotional devices featuring men's and women's programs.

Publicity includes:

- support at games (cheer, band, halftime performances, spectator giveaways)
- social media (including reposts)
- flyers, posters, and banners
- website updates and highlights

Publicity: Assessment Questions to Ask

- ❑ Do we provide the same level of support (band, cheer, drill team, half-time) to both girls and boys teams?
 - ❑ Do we have a policy for support at home and away competitions?
- ❑ Are all of the team websites maintained properly and promptly updated?
- ❑ Do we make available the same quality and amount of promotional material to the girls and boys programs?
 - ❑ Printed programs, posters, pictures, flyers, etc.
- ❑ Do we use social media, websites, radio, tv, etc to highlight both programs?
- ❑ Are we producing digital and online content equitably for girls and boys teams?
- ❑ Have we used scheduling and other events to help generate interest and attendance?



Assessment Practices and Resources

What should I track and document?

Three-part test compliance (yearly)

- Calculations needed to show compliance
- Documents demonstrating compliance as needed (surveys, evaluations, expansion efforts, etc)

Benefits analysis (yearly)

- Analysis for each category of the laundry list
- Where inequities identified, how are you addressing them?

Complaints received, and responses

- Was in investigation done? What was the result?
- What resolutions were provided, if any?

Responding to Complaints

Complaints may come in formally (e.g., through a submitted discrimination or other complaint process) or informally (e.g., parent phone call to AD discussing equity concerns for their child's team, students meeting with school admin to discuss lack of resources for girls teams, etc).

Recommendation: respond to (and document) ALL notice of equity concerns through either a formal complaint process or an informal inquiry

Your district Title IX Coordinator should be looped in to any Title IX equity complaints

What if I identify a benefits equity issue?

“When disparities are identified between the men’s and the women’s teams, e.g., if a men’s team received a superior benefit in some way, **OCR considers whether the benefit provided to the men’s program was offset by an unmatched benefit to any of the teams in the women’s program.** In making this “program-wide” comparison, and before OCR concludes that a benefit to one of the teams in the women’s program offsets a benefit provided to one of the teams in the men’s program, OCR considers whether the offsetting benefits were equivalent or equal in effect. **OCR only finds the benefit offsetting if it had the same or a similar effect on the student-athlete(s) or team within the same program component.”**

[OCR, 2022](#), pg. 2

Offsetting Benefits: An Example

- offsetting benefits must be within the same category (e.g., equipment and supplies, publicity, etc)
- they could be in consecutive years or seasons (e.g., a benefit to girls teams in year 1 and a benefit to boys teams in year 2), or within the same year
- they should be minimal or minor in and off themselves, not egregious

EXAMPLE: In Year 1, all sports had approximately 75% of games scheduled at ideal times for their sport, with the exception of volleyball with only had 50% of games scheduled at the ideal time. In Year 2, all sports had approximately 90% of games scheduled at ideal times, with the exception of boys wrestling which had only 60% of matches at the ideal time.

Striving for equality will always be better than utilizing offsets, but where equality is not possible, offsets can help you justify overall total program equity.

Addressing Identified Equity Concerns

Compare your opportunities and benefits analysis

What programs or teams are impacted? Where to the equity concerns centered? What will be needed to bring teams up to equity?

Solicit input

From impacted students, coaches, etc., as well as the community as a whole.

Make a plan

What is your budget? How long will it take? What can you do now versus later? Do you have a short-term and long-term fix?

Keep the community informed

Being transparent maintains trust and communication.

OCR and OSAA **Regulations and** **Guidance**



[Policy Interpretation: Intercollegiate Athletics \(1979\)](#)

[Guidance on Determining which Athletic Activities can be Counted for Purposes of Title IX Compliance \(2008\)](#)

[Title IX Three-Part Test \(and application to high schools\) \(2008\)](#)

[Standards for Part Three of the “Three Part Test” \(2010\)](#)

[Title IX and Athletic Opportunities in K-12 Schools \(2022\)](#)

[OSAA Guidance and Resources](#)



CONTACT US

Kate Hildebrandt

Civil Rights and Title IX Specialist

Oregon Department of Education

katherine.hildebrandt@ode.oregon.gov

503-551-5713

Monica Maxwell

Civil Rights and Title IX Specialist

Oregon School Activities Association

monicam@osaa.org

503.682.6722 x229