



# Title IX Community Of Practice

**October 19, 2023**

# Agenda



Introductions and Connections

Title IX Athletic Complaints

- Athletics Overview
- Scenarios: Responding to Athletic Equity Complaints

Resource Sharing

Upcoming Meeting Topics

# Introduce yourself in the chat!

Name

School District or School

Role/Job Title





# Title IX Athletics Overview

# 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”

# 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.

- Title IX does not create or require quotas.
- This allows for variation in the type of number of sports programs offered to different genders.



# 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

# Is this a Title IX athletic equity concern?

Three students in a “freshman skills” class choose to do their end-of-year project on support for girls sports at school. They do a presentation to the class showing that fewer students report having seen advertisements, social media posts, or heard announcements about girls sports versus boys sports at school. They also counted the number of times that girls teams and boys teams were advertised on the school instagram account or were given time in morning announcements during the months of March and April, and found that boys teams were talked about and posted about twice as often.



# Is this a Title IX athletic equity concern?

A parent writes an email to the school Principal and Athletic Director stating that they would like to file a Title IX complaint against school for hiring the girls basketball coach. The parent states that the coach, who is new this year, is not qualified to coach the team; the girls team has made it to the state championships the past two years, but did not qualify this year. The parent blames the coach's skills and qualifications, and states that the school did not go through a thorough hiring process to ensure they had a qualified coach for the team.

# 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)

# 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**

The Title IX Coordinator and Athletic Director will likely want to work together to address complaints (along with coaches and other district staff as needed).

Analyzing equal **opportunities**  
for students to play =  
three-part test analysis

- [Guidance on Determining which Athletic Activities Can Be Counted for Purposes of Title IX Compliance](#) (OCR, 2008)
- [Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test](#) (OCR, 1996)
- [Guidance on Accommodating Students' Athletic Interests and Abilities: Standards for Part Three of the "Three-Part Test"](#) (OCR, 2010)
- [OSAA Title IX Resources](#)

Analyzing equal **benefits**  
provided to teams =  
laundry list analysis

- [1979 Policy Interpretation: Intercollegiate Athletics](#) (OCR)
- [Title IX and Athletic Opportunities in K-12 Schools](#) (OCR, 2022)
- [Title IX Benefits Analysis](#) (ODE and OSAA, 2023)
- [OSAA Title IX Resources](#)

Analyzing **sex-based harassment, bullying, or different treatment** = sexual harassment and/or discrimination analysis

- [2020 Sexual Harassment Regulations](#) (34 CFR 106.30, 44-45)
- [Guidance on Schools' Obligations to Protect Students from Student-on-Student Harassment](#) (OCR, 2010)

# 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 better than utilizing offsets, but where equality is not possible, offsets can help you justify overall total program equity.

# What if I identify a benefits equity issue?

---

“If OCR identifies disparities, and if it finds no evidence of offsetting, we consider whether the differences between the benefits provided to the men’s and women’s programs are negligible. Where the disparities are not negligible, OCR examines whether they were the result of **legitimate, nondiscriminatory factors**. If OCR finds no legitimate, nondiscriminatory reasons for the disparities, OCR then determines whether the identified disparities resulted in the denial of equal opportunity to male or female athletes, either because the disparities collectively were of a substantial and unjustified nature or because the disparities in the program component were substantial enough by themselves to deny equal athletic opportunity.”

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

# You've received a complaint!

A parent submits a complaint that the girls softball team is treated unfairly compared to the boys baseball team because the baseball team has a turf field while the softball team plays on a grass field, and that the baseball team has nicer uniforms and newer equipment than the softball team. The parent also states that the softball only has a Varsity and JV team, both of which cut students, while baseball has a Varsity, JV, and freshman team and no cuts.

1. What kind of analysis is needed - opportunities, benefits, and/or discrimination and harassment?
2. What elements of athletic equity do you need to analyze? What will you investigate, what questions will you ask about your teams? Be specific!



# What kind of analysis is needed?

A parent submits a complaint that the girls softball team is treated unfairly compared to the boys baseball team because the baseball team has a turf field while the softball team plays on a grass field, and that the baseball team has nicer uniforms and newer equipment than the softball team.

**Benefits: provision of locker rooms, practice, and competitive facilities**

**Benefits: equipment and supplies**

The parent also states that the softball only has a Varsity and JV team, both of which cut students, while baseball has a Varsity, JV, and freshman team and no cuts.

**Opportunities: three-part test**

# Conducting your analysis

What elements of athletic equity do you need to analyze? What will you investigate, what questions will you ask about your teams?

- Remember to do a total program comparison, not just sport-to-sport.
- Yearly documentation of three-part test compliance will ease your investigation of this complaint!
- For each program component of the necessary benefits analysis, remember to analyze ALL SUB-COMPONENTS

# Conducting your analysis

## Equipment and Supplies

- 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.

## Provision of Locker Rooms, Practice, and Competitive Facilities

- 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.

# 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.



# Resource Sharing

[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](#)

**Other resources or updates to share?**

# Upcoming COP Dates and Topics

---

Tuesday, November, 14, 10-11 am

- Topic TBA

***NO DECEMBER MEETING***

2024 Dates - TBD!



# CONTACT US

Kate Hildebrandt

Civil Rights and Title IX Specialist

24

Oregon Department of Education

[katherine.hildebrandt@ode.oregon.gov](mailto:katherine.hildebrandt@ode.oregon.gov)

503-551-5713