

Sex Equity in Athletics

Why we focus on sex equity in athletics

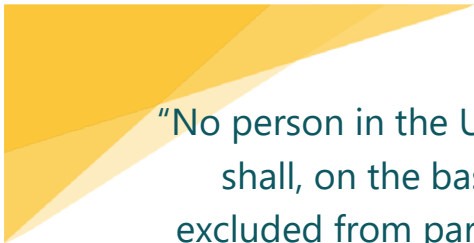
- **It's the law.** Title IX and Washington law require local educational agencies (LEAs) to ensure students are not discriminated against on the basis of sex in interscholastic athletic and recreational programs.
- **The associated benefits.** Students who play sports demonstrate improved physical, social, and emotional health; enhanced confidence; greater academic success, better employment outcomes; and heightened leadership skills.¹
- **There is still work to do.** Despite the exponential increase in girls' participation in sports since Title IX was passed fifty years ago, there is still a participation gap between girls and boys. For example, girls today still have fewer opportunities to participate in high school sports than boys did in 1972.²

Legal framework

Title IX of the Education Amendments of 1972

Under federal law, schools operating or sponsoring interscholastic, club or intramural athletics are required to provide equal athletic opportunities for members of both sexes.³ To make this determination, schools should consider:

- Whether the selection of sports and levels of competition effectively accommodate both sexes' interests and abilities;
- Equipment and supplies;
- Scheduling;
- Travel and per diem;
- Coaching and tutoring;
- Athletic, medical, and training facilities and services;
- Housing and dining facilities and services; and
- Publicity.⁴



"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."

20 U.S.C. § 1681 ("Title IX").

¹ Staurowsky, E.J., Flowers, C.L., Busivis, E., Darvin, L., & Welch, N., *50 Years of Title IX: We're Not Done Yet*. Women's Sports Foundation (2022). Available here: https://www.womenssportsfoundation.org/wp-content/uploads/2022/05/13_Low-Res_Title-IX-50-Report.pdf.

² *Id.* at 20 (showing that boys' high school sports participation numbers in 1972-73 were approximately 3.6 million, while girls high school sports participation opportunities in 2018-19 are approximately 3.4 million).

³ 34 C.F.R. § 106.41(c).

⁴ 34 C.F.R. § 106.41(c).

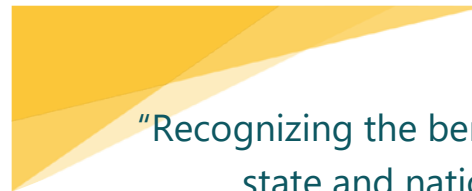


“Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with [Title IX], but [the U.S. Department of Education, Office for Civil Rights (OCR)] may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.”⁵

State law

Under state law, Washington public schools are also required to ensure that equal opportunities are available to members of both sexes with respect to any interscholastic, club, or intramural athletics they operate or sponsor.⁶

To determine whether they are providing both sexes with equal opportunities, each LEA must evaluate the recreational and athletic program at each school at least once each year using the same set of factors outlined in Title IX.⁷



“Recognizing the benefit to our state and nation of equal educational opportunities of all students, discrimination on the basis of sex for any student in grades K-12 of the Washington public schools is prohibited.”

RCW 28A.642.010

Additionally, each LEA is required to administer OSPI’s student athletic interest survey at least once every three years in each school and grade level where interscholastic, intramural, and other athletics are conducted.⁸ LEAs must then consider the survey results, disaggregated by building and by sex, when planning and developing school-sponsored recreational and athletic activities and when determining whether equal opportunities are available to boys and girls.⁹

Including transgender and nonbinary students

To date, most interscholastic sports in Washington public schools are offered separately for boys and girls. This can pose a unique challenge for some transgender and nonbinary students, who may not identify as either male or female but who still want to participate in school sports, as well as for district athletic directors who may be unsure how to accommodate transgender and nonbinary students in their athletic programs or include them when analyzing their athletic programs for sex equity.

⁵ *Id.*

⁶ WAC 392-190-030.

⁷ *Id.*

⁸ WAC 392-190-040.

⁹ *Id.*

In Washington, however, the law is clear. LEAs are required to allow **all** students, including transgender and nonbinary students, the opportunity to participate on the interscholastic sports team that most closely aligns with their gender identity.¹⁰ When analyzing their overall programs for sex equity under Title IX and state law, LEAs would then count the total number of students participating on boys' teams and girls' teams.

LEAs with further questions about transgender or nonbinary students' participation in athletics are encouraged to contact the Equity and Civil Rights Office and review the resources relating to gender-inclusive schools that are available on our [website](#).¹¹

Assessing athletic participation opportunities for sex equity

The Three-Part Test

Schools should use OCR's "Three-Part Test" to assess whether they are providing equal athletic participation opportunities to members of both sexes.¹² A school can demonstrate compliance by meeting any one part of the Three-Part Test.

- 1. Substantial proportionality:** Whether interscholastic participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments.
- 2. History and continuing practice of program expansion:** Whether the school can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex.
- 3. Full and effective accommodation of interests and abilities:** Whether the school can demonstrate that the interests and abilities of the members of the underrepresented sex are fully and effectively accommodated by the current program.

Completing OSPI's Athletic Opportunities Worksheet each year can help LEAs ensure they are properly analyzing and documenting their compliance with the Three-Part Test.¹³

Providing equal athletic opportunities. Title IX and state law require LEAs to provide "equal" athletic opportunities to male and female students. In this context, "equal" does not mean identical—it means equivalent. For example, neither Title IX nor state law requires an LEA to offer boys and girls the same number of teams, or the same sports or number of sports. What is

¹⁰ See WAC 392-190-025. See also WIAA Rule 18.15.0-18.15.5 (Gender Identity Philosophy and Participation Procedure), available here:

<https://www.wiaa.com/results/translations/18.15%20Gender%20Identity%20WIAA.pdf>.

¹¹ OSPI's website on creating gender-inclusive schools: <https://www.k12.wa.us/policy-funding/equity-and-civil-rights/resources-school-districts-civil-rights-washington-schools/gender-inclusive-schools>.

¹² U.S. Dep't. of Educ., Office for Civil Rights, "Dear Colleague" Letter, Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (Jan. 16, 1996). Available here: <https://www2.ed.gov/about/offices/list/ocr/docs/clarific.html>.

¹³ OSPI's Athletics Opportunities Worksheet can be accessed here: <https://www.k12.wa.us/policy-funding/equity-and-civil-rights/consolidated-program-review-civil-rights> (scroll to Item 14.10).

instead required is for the LEA to meet the interests and abilities of both sexes to the same extent, even if the interests and abilities themselves are different.

Cutting or reducing teams. Nothing in Title IX requires a school to cut or reduce teams to demonstrate compliance with the Three-Part Test. OCR discourages this practice (as “contrary to the spirit of Title IX”) because it diminishes opportunities for students who are interested in competing, rather than enhancing opportunities for students who have experienced discrimination.¹⁴

Part One: Substantial proportionality

To demonstrate compliance with Part One of the Three-Part Test a school must show it provides interscholastic athletic participation opportunities for male and female students in numbers substantially proportionate to their respective total enrollment numbers in the school.¹⁵

Defining a “sport.”¹⁶ Countable athletic participation opportunities must take place in the context of a “sport.” However, OCR does not have a specific definition for the term “sport.” Instead, when determining if an activity can be counted as a “sport” under Title IX, OCR conducts a case-by-case evaluation of the activity, considering several factors, such as the activity’s structure and methods of administration, team preparation, and competition.

Cheer and dance: To date, OCR has never considered activities like competitive or sideline cheer and dance to be sports under Title IX.¹⁷ As a result, OSPI strongly encourages schools not to include competitive or sideline cheer and dance participants when counting a school’s athletic participation opportunities for purposes of Part One.

LEAs can use Part One of the Athletic Opportunities Worksheet to (1) count the number of athletic participation opportunities they are providing to male and female students and (2) determine whether either sex is over- or under-represented in athletics.

Counting athletic participation opportunities.¹⁸ A school determines the number of athletic participation opportunities it provides by counting

¹⁴ U.S. Dep’t. of Educ., Office for Civil Rights, “Dear Colleague” Letter, Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance (Jul. 11, 2003). Available here: <https://www2.ed.gov/about/offices/list/ocr/title9guidanceFinal.html>.

¹⁵ U.S. Dep’t. of Educ., Office for Civil Rights, “Dear Colleague” Letter, Athletic Activities Counted for Title IX Compliance (Sep. 17, 2008). Available online at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20080917.pdf>.

¹⁶ *Id.*

¹⁷ See, e.g., *Biediger v. Quinnipiac Univ.*, 691 F.3d 85 (2d Cir. 2012). Available online at <http://caselaw.findlaw.com/us-2nd-circuit/1608295.html>.

¹⁸ U.S. Dep’t. of Educ., Office for Civil Rights, “Dear Colleague” Letter, Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (Jan. 16, 1996). Available here: <https://www2.ed.gov/about/offices/list/ocr/docs/clarific.html>.

the number of male and female students who participate on the individual sports teams comprising the school's athletic program.¹⁹

Each spot that a student-athlete occupies on an individual sports team counts one time.

For example, a student who competes on the cross-country team in the fall, the ski team in the winter, and the track team in the spring would count as three athletic participation opportunities.

Substantially proportionate.²⁰ OCR considers athletic opportunities to be substantially proportionate when the number of opportunities that would be required to achieve proportionality would not be sufficient to sustain a viable team. OCR defines a "viable" team as one for which there is "a sufficient number of interested and able students and enough available competition to sustain an [interscholastic] athletic team".²¹

Part Two: History and practice of program expansion²²

If the school does not meet compliance under Part One, it can still meet compliance under Part Two by showing that it has a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex.

In other words, Part Two examines a school's continuing and present efforts to increase the underrepresented sex's participation opportunities through program expansion. Program expansion can include actions such as adding teams or squads, or elevating club or intramural teams to interscholastic status, among others.

To determine whether a school meets compliance under Part Two, a school must establish:

1. A record of adding new sports or expanding current opportunities in response to the existing and emerging interests of students of the underrepresented sex;
2. A clear and effective method for requesting new sports; and
3. That a plan (to add more sports in response to known interest) is currently being implemented.

LEAs can use Part Two of the Athletics Opportunities Worksheet to document their efforts over the past five years to expand athletics participation opportunities for the underrepresented sex.

¹⁹ To count, a student must be listed on the team's roster and be on the team as of the first competitive event.

²⁰ U.S. Dep't. of Educ., Office for Civil Rights, "Dear Colleague" Letter, Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (Jan. 16, 1996). Available here: <https://www2.ed.gov/about/offices/list/ocr/docs/clarific.html>.

²¹ In its 1996 policy clarification (cited above), OCR wrote that average team size could be considered as a frame of reference when assessing whether a school's participation opportunities are substantially proportionate. However, OCR recently indicated it is departing from average team size as a measure, and Washington LEAs are thus encouraged to instead use viable team size when determining their compliance under Part One.

²² *Id.*

OCR will *not* find that a school satisfies Part Two if it merely promises to expand its program for the underrepresented sex at some point in the future; compliance with Part Two instead hinges upon actual and continuing program expansion.

Part Three: Full and effective accommodation of interests and abilities²³

If the school does not meet compliance under Parts One or Two, it can still meet compliance under Part Three by showing that its athletic program “fully and effectively accommodates the interests and abilities” of the underrepresented sex.

In other words, even if a school has disproportionately low athletic participation rates for the underrepresented sex, it can still satisfy Part Three by showing that it is not discriminating against or denying opportunities to that sex, *i.e.*, that their interests and abilities are already being fully and effectively accommodated through the school’s current athletic offerings.

When analyzing Part Three, the school should consider, explain, and document its responses to the following three questions:

1. *Is there an unmet interest in a particular sport?*
2. *Is there sufficient ability to sustain a team in the sport?*
3. *Is there a reasonable expectation of competition for a team?*

LEAs can use Part Three of the Athletics Opportunities Worksheet to document their responses to these questions for each of the top five sports requested by the underrepresented sex.

If the answer to all three questions is yes, then the current program is not fully and effectively accommodating the interests and abilities of the underrepresented sex and is unlikely to meet compliance under Part Three.

Identifying unmet interests. To determine whether the underrepresented sex has an unmet interest in a particular sport, schools should evaluate the underrepresented sex’s responses to the student athletic interest survey²⁴ and any other requests for sports.

Consider:

- *Are requested sports already offered?* If so, do the teams have a no-cut policy? Could the school add additional levels of competition, *i.e.*, a C team or JV II team?
- *Are students participating in a sport elsewhere?* For example, in community club or amateur leagues, or in the school’s club or intramural program? This could indicate the school’s program is not fully meeting their interests.

²³ U.S. Dep’t. of Educ., Office for Civil Rights, “Dear Colleague” Letter, Guidance on Accommodating Students’ Athletic Interests and Abilities: Standards for Part Three of the Three-Part Test (Apr. 20, 2010). Available here: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100420.pdf>.

²⁴ Guidance on the student athletic interest survey is found on page 8.

- *Could non-WIAA sports be offered?* Schools are not limited to offering sports sanctioned by the Washington Interscholastic Activities Association (WIAA), provided they align with the factors OCR considers when analyzing whether an activity counts as a “sport”.²⁵

Sufficient interest and ability to sustain a team. To determine whether there is sufficient ability to sustain a team in a particular sport, evaluate whether enough students of the underrepresented sex are interested in and able to sustain a team and whether those students have the athletic abilities necessary to participate.

Consider:

- *Would enough students turn out for a team?* Follow-up on possible unmet interests by holding informational meetings, administering targeted surveys, or organizing informal opportunities for students to try out the sport (e.g., PE class, intramurals, etc.)
- *Would students have the athletic abilities they need to participate?* Assess whether students may already use similar skill sets in other sports that could transfer to the new sport.

Reasonable expectation of competition. To determine whether there is a reasonable expectation of competition for the team, consider whether there are enough available opportunities for competition in the geographic region where the school typically competes.

Consider:

- *Are there any available competitive opportunities in the school’s existing geographic region?* Also consider those schools against whom the LEA does not always compete.

Are students from other schools also interested in the same sports? A school may also need to confer with athletic directors from other districts and actively encourage the development of competition for a particular sport.

Additional Three-Part Test Guidance and Resources from OCR

Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (1996).

www2.ed.gov/about/offices/list/ocr/docs/clarific.html.

Athletic Activities Counted for Title IX Compliance (2008).

www2.ed.gov/about/offices/list/ocr/letters/colleague-20080917.pdf.

Standards for Part Three of the Three-Part Test (2010).

www2.ed.gov/about/offices/list/ocr/letters/colleague-20100420.html.

²⁵ See page 4 for an explanation of the factors OCR considers when assessing whether an activity is a sport.

Student Athletic Interest Survey

Schools that operate or sponsor athletics and recreational programs must administer OSPI's student athletic interest survey at least once every three years.²⁶ This survey helps schools determine whether the school's athletic program fully and effectively meets students' interests and abilities. Critically for purposes of analyzing Part Three of the Three-Part Test, it asks students to share the sports they are interested in playing, those they participate in outside of school, and the reasons why they are not participating in the school's current athletic program.

Step 1: Survey students using the OSPI survey questions

LEAs must use the survey questions developed by OSPI.²⁷ LEAs can make formatting changes, add questions, or adapt the survey for Scantron or online application without OSPI approval. However, if an LEA wants to modify the survey more substantively, it must request advance approval from the Equity and Civil Rights Office.

Survey all students in schools that operate or sponsor athletic or recreational programs.²⁸ Some schools choose to also survey the next incoming class (e.g., rising 6th graders or 9th graders, etc.) and skip the graduating class (e.g., graduating 8th graders or 12th graders, etc.).

To ensure higher response rates, schools could administer the survey as part of a mandatory student activity, such as during course registration or advisory periods.

Step 2: Disaggregate the survey results by sex and by building

To identify possible unmet interests of male and female students in each school, the survey results must be disaggregated by building and by sex.

Consider using OSPI's "Survey Results Worksheet" to ensure that survey results are properly broken down by sex *and* by building.

In other words, separate the results of the survey so that each school can identify how female students in a particular building responded and how male students in that same building also responded.²⁹

²⁶ The OSPI survey was revised in August 2018. The survey is translated into multiple languages and is available online at <https://www.k12.wa.us/policy-funding/equity-and-civil-rights/student-athletic-interest-survey>.

²⁷ The OSPI survey includes a list of possible sports that students can select from. While many of these options may not be currently offered or available at each school or may not be sanctioned by WIAA, they must be included in the survey to comply with federal guidance. The survey includes sports sanctioned by WIAA, sports sanctioned by K-12 interscholastic activity associations in adjacent states (Oregon and Idaho), and emerging K-12 sports.

²⁸ Larger schools may choose to survey a sample of students but should carefully consider and document the process of selecting the sample populations to ensure that the survey accurately represents student interest.

²⁹ OSPI's Survey Results Worksheet is available here: <https://www.k12.wa.us/policy-funding/equity-and-civil-rights/resources-school-districts-civil-rights-washington-schools/sex-equity-athletics>. (Scroll to Student Athletic Interest Survey, click on "Disaggregate the survey results", and open the Word document).

Step 3: Analyze the survey results

Consider the results of the survey when evaluating each school's athletic programs under Part Three the Three-Part Test. If enough students of the underrepresented sex request a sport to sustain a team, plan next steps to determine the feasibility of adding the sport or adding levels of competition if the school already offers the sport. Follow up with students about their interest in specific sports, assess if there are enough interested students in a new sport or squad to sustain a team, and research available competition.

Equivalent Benefits and Treatment

Annual Athletic Evaluation³⁰

In addition to analyzing whether they are providing equal participation opportunities to male and female student-athletes each year (via the Three-Part Test), LEAs must also determine whether they are providing male and female student-athletes with equal benefits and treatment. This determination is made by conducting an annual athletic evaluation.

When completing the annual athletic evaluation, LEAs must consider the following required components (often referred to as the Title IX "Laundry List"):

- Accommodating student interest and abilities (*measured via the Three-Part Test*)
- Scheduling
- Facilities
- Equipment and supplies
- Publicity and awards
- Travel and per diem
- Coaching
- Medical and athletic training services.

General Rule

Any difference in benefits and treatment between the girls' and boys' athletic programs that results in a disadvantage for one sex *and* is not offset could be a compliance concern.

Compliance is determined by collecting information about every component for every team, making a compliance conclusion for every component, and finally, making an overall compliance determination for the girls' and boys' athletic programs. In other words, schools should compare the benefits and treatment received by *all* male athletes to the benefits and treatment received by *all* female athletes to determine if any differences exist.

For example, if a school's athletic program offers 10 sports for girls and 8 sports for boys, the benefits and treatment provided to all 10 girls' teams must be compared to those provided to all 8 boys' teams. To be in compliance, any difference in benefits or treatment that exclusively disadvantages one sex must be offset somewhere in that sex's program.

Girls' and boys' athletics programs do not have to be identical. Neither Title IX nor state law require identical athletic programs for boys and girls or identical benefits for girls' and boys'

³⁰ 34 C.F.R. § 106.41(c); WAC 392-190-025(3).

teams in the same (or similar) sports, as long as the benefits between the overall girls' and boys' programs are equitable. Benefits for specific teams can differ based on factors such as the nature of the sport, coaches' professional decisions, athletes' preferences, and others, and still be consistent with Title IX.

Creating a sustainable, flexible documentation system. It is critical for schools to document their annual athletic evaluations using a system that is sustainable (able to survive changes in institutional leadership) and flexible (able to be adjusted to reflect changing student interests and abilities).

To help schools with this, OSPI has developed three worksheets that schools may opt to use to document the results of their annual athletic evaluations.

Consider using OSPI's team, building, and district worksheets to document the results of the LEA's annual athletic evaluation.

1. **Team worksheets**, which solicit feedback from individual team coaches on the benefits and treatment provided to their individual teams.
2. **Building worksheets**, which are used by the building athletic director to compile and analyze the results of the team worksheets; and
3. **District worksheets**, which are used by the district athletic director to compile and analyze the results of the building worksheets, and ultimately, to assess whether the district, as a whole, is in compliance.

Additional sources of information to collect. When preparing for the annual athletic evaluation, the following documents may be helpful:

- Questionnaires and interviews with coaches, student athletes, parents, athletic trainers, administrators, and support staff, etc.
- Practice and competitive schedules for each team (includes pre- and post-season play)
- Student support group performance schedules (e.g., for cheerleaders, bands, dance teams)
- Budget information
- Facilities tours
- Team publications
- Media coverage (outside and inside)
- Insurance policies
- School website
- Other

Analyzing each Component

When analyzing each component in the Laundry List, remember the general rule: Differences between individual components are not compliance concerns until they create a disadvantage,

and disadvantages are not a compliance concern until they only affect students of one sex *and* are not offset by other advantages provided elsewhere in that sex's athletic program.

Scheduling

Scheduling is not simply about the number and times of competitions and practices held by a particular team during a sports season. Rather, the overriding concern is the impact that unequal scheduling may have on students' opportunities to participate, compete, attract media coverage, play in front of spectators, and develop strong overall programs. These same factors should also be considered when analyzing pre- and post-game competition.

Factors to consider:

- Number of competitive events per sport
- Number and length of practice opportunities
- Time of day that competitive events are scheduled
- Time of day that practices are scheduled
- Opportunities to engage in available preseason and postseason competition

Nondiscriminatory scheduling differences are permissible. The law allows for some nondiscriminatory differences in scheduling, including, but not limited to:

- **The nature of the sport.** For example, scheduling 25 games in a season might be reasonable for a softball team, whereas that same number of games could be dangerous for a football team.
- **A coach's reasonable professional decisions.** Such decisions are permitted to influence the length of practice sessions and number of practice hours per week. For example, holding a three-hour practice session four days a week might be reasonable for a golf team, whereas these hours could be excessive for a cross-country team.
- **A lack of competition in normal competitive region.** Fewer competitive contests may affect practice schedules and pre- and post-season play.
- **Coach availability.** Schools may accommodate an individual coach's personal schedule (e.g., a coach who works off-campus), provided that any resulting inconvenience to the student-athletes affects both boys' and girls' teams to the same extent.
- **Facility availability.** For example, a school whose swim team uses a community pool or whose bowling team uses a local bowling alley might necessarily be required to fit its practices and competitions around the facility's existing schedule.

Schools are not required to schedule the same number of competitions or practices for boys' and girls' teams in the same or similar sport (e.g., girls'/boys' basketball, baseball/softball, etc.). However, any differences favoring a boys' team in a certain sport, for example, should be offset by differences favoring a girls' team in another sport.

Scheduling "prime time" events. The times for competition that are considered "prime time" are those that are most desirable. This may vary from school to school. Some schools, for example, may consider Friday night games to be "prime time." When determining whether the

school is in compliance, an *overall* program assessment is needed. For example, a schedule that favors a boys' basketball team over a girls' basketball team is only part of the determination. If the difference is offset by scheduling prime time matches for other sports that favor girls, the school may still be in compliance.

When to be concerned. Remember, scheduling differences are not compliance concerns until they create a disadvantage, and disadvantages are not a compliance concern until they affect only students of one sex and are not offset by other advantages provided to that sex in another sport. Disparities between the programs that are not offset should be remedied through a corrective action plan.

For example, if a school learns that several of its girls' teams are negatively impacted by inconsistent practice times due to facility availability, and this disadvantage is not offset, the school should develop and implement a plan to remedy the disparity. The athletic director, building administrators, and coaches should meet to plan a resolution. Schools should document these efforts and communicate them with their school district, as well as with the student-athletes who are impacted by the scheduling issues.

Facilities

Facilities may include, but are not limited to, locker rooms, playing fields (including scoreboards, dugouts, lighting, etc.), gyms, courts, and swimming pools, whether on-campus or off-campus. The annual athletic evaluation should allow an LEA to assess whether boys and girls receive equal benefits and treatment related to competitive and practice facilities.

Factors to consider:

- Quality and availability of the facilities provided for practice and competitive events, including on-campus and off-campus facilities
- Exclusive use of facilities provided for practice and competitive events
- Maintenance of practice and competitive facilities
- Preparation of facilities for practice and competitive events
- Availability and quality of locker rooms

Identical facilities are not required. A school must ensure that the facilities used by boys' teams and girls' teams are comparable with respect to the above-listed factors. The availability and adequacy of facilities is often dependent upon the number of athletes who need to use a facility at any one time. If many groups use a particular facility, it can also affect the quality of the facility or the necessary maintenance and preparation of the facility. Facilities are often a hot-button issue for families and student-athletes, who may not understand that the law does not necessarily require facilities for "like" teams to be identical. However, schools should nonetheless take the time to listen to such concerns and respond appropriately.

Exclusive use of facilities is discouraged. "Exclusive use" refers to any team's exclusive or priority use of a facility (e.g., gym, weight room, locker room, etc.) during specific times, and can

impact whether equal opportunities are provided for all student-athletes. For example, a school cannot only allow the football team to access the weight room every day after school during pre-season activities.

Analyzing outside facilities. If a school uses facilities they do not own (e.g., city soccer fields, local bowling alley, community swimming pool, etc.) for school-sponsored practice or competitions, it must ensure that, overall, the facilities used by the girls' teams and the facilities used by the boys' teams are comparable.

Equipment and Supplies

Equipment and supplies include, but are not limited to, practice and game uniforms, shoes, rain gear, warm-up suits, sport-specific equipment such as bats, balls, nets, gymnastics equipment, and general equipment and supplies such as instructional devices and strength and conditioning equipment. Stationary equipment, however, such as basketball hoops, field goals, and tennis nets are reviewed under the facilities program component.

Schools are not required to provide equipment and supplies for their student-athletes. However, if they choose to provide them, they must do so in a way that meets the needs of the boys' and girls' athletic programs equally.

Factors to consider:

- Quality
- Quantity
- Suitability (i.e., whether they meet sport-specific rules or specifications)
- Maintenance and replacement schedules
- Availability

Developing a purchasing cycle and tracking system. Schools are encouraged to develop a cycle for the purchase of equipment and supplies as well as a system to track past and planned purchases. If there are immediate disparities between the girls' and boys' programs, schools will then be able to prioritize purchases to ensure equity. There is no need for all "like" sports (e.g., boys' basketball and girls' basketball) to be on the same schedule for receiving new equipment. However, as coaches, students, and parents often compare the purchases for like sports, it can be helpful to communicate the school's rationale and process when making purchasing decisions.

Identical equipment and supplies not required. The law does not require that schools provide identical equipment, as long as the overall effect of any differences in equipment is negligible. Schools are also permitted to account for real differences between the costs of girls' and boys' sports that may justify a difference in the amount spent on their equipment and supplies. For example, if it costs more to buy boys' football uniforms than girls' volleyball uniforms, then a school is permitted to spend more on the boys' program, as long as the girls' uniforms are of equal quality.

Publicity and Awards

Here, a school must consider the efforts it has made to provide equal publicity, promotions, awards, and the support of certain student groups—for example, cheerleaders, pep bands, and dance teams—for boys' and girls' teams. Equal publicity and awards are significant because they help schools to grow their athletic programs, encourage students to participate, and communicate to student-athletes that their hard work is valued.

Media coverage. Schools are not responsible for inequities that result from outside media that provides greater coverage of girls' or boys' sports, so long as equal efforts have been made to obtain coverage. That said, schools are responsible for internal school publicity and media coverage which includes:

- School newspaper articles and photographs
- Yearbooks
- Posters and banners on school grounds
- Pep assemblies and rallies
- Trophy cases and displays
- Athletics banquets and awards ceremonies

Scenario: Post-Season Banquets

A high school has a long-standing tradition of hosting a post-season banquet for the boys' basketball team. This banquet is paid for by donations from the boys' basketball booster club. The team attends a fancy dinner and receives individual awards (e.g., Most Improved) during the banquet. Due to a lack of funds, the girls' basketball team does not have a post-season banquet. Is this a compliance concern?

Here, the girls' basketball team is being disadvantaged by not receiving equivalent benefits in publicity and awards. If an equivalent offsetting benefit is not provided elsewhere in the girls' program, this could create a compliance concern.

One way the school could resolve this inequity is to instead host an end-of-season banquet for all male and female athletes who played basketball that year, which would allow *everyone* who participated to be honored for their efforts.

Student support groups. Schools are not required to provide student support groups like cheerleaders, pep bands, or dance teams for every athletic contest. However, schools are required to ensure that when cheerleaders, pep bands, and dance teams are provided for boys' teams, they are equally provided for girls' teams. For example, if the school band travels to boys' athletic events, it should also travel to girls' athletic events.

Travel and Per Diem

Different teams will have different travel and per diem needs, and the law allows for such flexibility. However, the general rule is that travel and per diem must be provided in a way that equally meets the overall needs of the boys' and girls' teams.

Factors to consider:

- **Modes of transportation.** Schools should compare the types of transportation used by each team, particularly when teams are traveling similar distances. Some differences in transportation may be explained by nondiscriminatory factors such as the number of athletes traveling with the team, amount of equipment that needs to be transported, length of stay, or number of additional travelers (e.g., support staff like athletic trainers, managers, etc.)
- **Overnight accommodations.** If a school provides housing accommodations for teams on travel, the school should compare two factors—the overall quality of the accommodations and the number of athletes assigned to each room.
- **Length of stay.** With some exceptions, interscholastic competition requires nothing more than same-day travel. With all travel, schools should consider whether girls' and boys' teams are provided comparable opportunities to arrive at away games with time to rest, have meals, or practice.
- **Per diem allowances.** Schools have different ways of handling meal allowances for teams at away events. Regardless of how a school covers these costs (e.g., set allowances for each player or for each meal, a set amount for the whole team, etc.), the measure should be the quality and quantity of the meals, not whether a certain amount was spent per athlete. Overall, the quality and quantity of meals should be comparable.
- **Dining arrangements.** The start time, length of a competitive event, and the nature of the sport can affect dining arrangements. For example, track meets can begin early in the morning and last all day, with athletes competing at different times, thus resulting in a need for more flexible dining options (as opposed to providing a single large meal for the entire team). The bottom line is that if a school makes dining arrangements for athletes, the convenience and quality of the arrangements should meet the needs of girls' and boys' teams equally.

Coaching

When assessing this component, consider the following:

- **Availability of coaching.** Includes considerations such as the number of coaches assigned to each team, their full- or part-time status, and any other duties or employment that could affect a coach's time. Above all, schools should provide comparable coach-to-athlete ratios for its male and female athletes, including assistant coaches.
- **Assignment of coaches.** Generally measured by training, experience (e.g., number of years of experience each coach has), and any additional qualifications. Schools must assign similarly qualified coaches to the boys' and girls' athletic programs.
- **Compensation of coaches.** Includes coach salaries and/or stipends. Schools are not required to pay the same salary/stipend to boys' and girls' coaches of like sports. However, schools should compare the overall allocation of funds for coaching in the boys' and girls' programs. If overall differences exist, consider whether or not these

differences are the result of nondiscriminatory factors, such as extra duties, experience, number of assistant coaches supervised, etc.

Medical Services and Athletic Training

In many middle and high schools, medical and/or athletic training services will be minimal. Even so, schools must consider this component in the annual evaluation of their athletic programs, if applicable.

Factors to consider


- Access to medical and emergency personnel and assistance
- Qualifications of medical personnel available
- Coverage and type of accident and medical insurance
- Access to trainers
- Access to and quality of weight, conditioning, and training facilities

Outside Sources of Funding³¹

Outside sources of funding can include booster clubs, donations, and fundraisers, and donations from outside sources can take many different forms, including cash, equipment, or services. Schools may accept outside sources of funding to support their athletic programs.

However, any benefit provided to student-athletes by an outside source of funding is viewed under Title IX as having been provided by the LEA itself. Note, that until the LEA actually spends the donated funds, there is no Title IX concern, because there has been no benefit provided to either sex's program.

However, if an LEA accepts a donation from an outside source and *uses it to provide a benefit*, it must determine if that benefit has created a disparity along gender lines. If so, the LEA must then find and use other resources—often its own—to offset it.



Any benefit provided to student-athletes by a booster club, donation, or fundraiser is viewed under Title IX as having been provided by the school itself.

If the resulting benefit creates a disparity that disadvantages one sex, then the school is responsible for offsetting it.

Developing a tracking system. Although Title IX provides districts with a tremendous amount of flexibility when resolving such disparities, it can be challenging to track and document the

³¹ U.S. Dep't. of Education's Office for Civil Rights, Letter to Gilyard (Feb. 7, 1995). Available here: <https://www2.ed.gov/about/offices/list/ocr/letters/jurupa.html>.

offsetting benefits to each program. This is why it is critical for LEAs to have a system for tracking and monitoring outside sources of funding. The system does not need to be unduly complicated, but it should collect basic information, such as where a particular donation came from, how it was spent, and which program—girls' or boys'—it benefited.

Correcting disparities. Looking to the previous scenario from the Publicity and Awards section (found on page 14 and involving a post-season banquet funded by a booster club for the boys' basketball team) as an example, the school would need to correct this disparity by finding and using other resources—perhaps from its own funds—to provide a similar benefit somewhere in the overall girls' athletic program.

Even though this scenario focuses on balancing the benefits provided to “like” teams (boys' and girls' basketball, respectively), remember that benefits and treatment for like teams do not have to be identical. This is because the LEA should be comparing the benefits and treatment provided to the overall boys' and girls' athletic *programs*. Thus, if the school provided an equivalent benefit somewhere within the girls' program—either by using additional fundraising dollars raised or its own funds—the school would likely still be in compliance.

Educating your booster clubs and private donors. Many booster clubs or private donors are adamant that donations go to a particular team or be used for a particular purpose. This can be a tricky situation, because the LEA likely does not want to turn down the donation, but it must also ensure that the donation (or the impact of that donation) does not result in a disparity based on sex.

Educating booster clubs and private donors about the LEA's Title IX obligations is therefore key, and might involve taking proactive steps such as:

- **Developing and distributing policies and procedures** for:
 - Forming and governing booster clubs
 - Accepting outside sources of funding from booster clubs
 - Organizing booster club fundraisers
 - Requesting funding
 - Reporting donations

Having clear policies and procedures in place can allow for better school and district oversight and avoid donations going directly to individual coaches or teams without the school's knowledge.

- **Establishing an inclusive, school-wide sports booster club**, ensuring that all donations go into one fund and that athletic director controls and tracks any and all subsequent distributions to a particular sport or program.

- **Establishing a booster club advisory committee comprised** of booster club members, parents, coaches, and athletic director(s) to encourage communication and collaboration.
- **Developing a consistent system for tracking booster club donations.** Even something as simple as an Excel spreadsheet can work for this purpose. The keys are that the system is able to track where the donation came from, how much was donated, how it was spent, when it was spent, and which athletic program (girls' or boys') received the benefit.
- **Providing ongoing training for all coaching staff** in the areas of equal opportunity in fundraising and donations, as well as in federal and state nondiscrimination laws.
- **Educating private donors** about the impact of donations that benefit only one sex's program on the school's obligation to comply with Title IX.

Scenario: Football Scoreboard

A former Seahawk decides to donate \$20,000 to his high school alma mater for a state-of-the-art, football-specific scoreboard for the school stadium. If the school accepts this donation, will it create a Title IX compliance concern?

It depends. These are always highly fact-specific situations, but in general, if the money is used strictly as the Seahawk intended, then the resulting football-specific scoreboard is likely to only benefit the boys' athletic program. To avoid creating a Title IX compliance concern, the athletic director would need to ensure that this benefit to the boys' program is offset somewhere within the girls' program (*i.e.*, that the girls' program is provided with an equivalent benefit within a reasonable time).

Another solution might be for the athletic director to reach out to the Seahawk to see if he would consider allowing the school to use his donation to fulfill a need that would benefit *both* the boys' and girls' athletic programs, thereby eliminating the need for offsetting. For example, perhaps the donation could instead be put toward a different type of scoreboard that could be used for the boys' football games *and* the girls' field hockey games, which are both played in the stadium.

Possible models. The following are possible booster club models that may help schools ensure that donations do not create disparities:

- Single "umbrella" club, where all donations go into one fund and the school decides where money should be funneled after taking equity into consideration.
- Sport-specific clubs where the athletic director's approval is needed before any funds may be distributed.
- Combination of the above.

Keys to success. When working with outside sources of funding such as booster club or private donations, schools should: (1) educate them about how Title IX applies; (2) develop and consistently implement a process for managing and tracking all donations; (3) anticipate and prepare for complications (*e.g.*, situations where outside funding is used to provide benefits to a specific team *without* the athletic director’s knowledge and consent); and (4) document the process used and the reasons behind any decisions made.

Records retention. The Washington Secretary of State (SOS) publishes a records retention schedule for all school districts—which includes an entire section devoted to athletic records.³² Because these records are subject to public records requests (and public disclosure) is critical that each building manage its own athletic records effectively and in accordance with the SOS’s retention schedule.

Additional OSPI Tools and Resources

OSPI’s Sex Equity in Athletics webpage. Available at:

<https://www.k12.wa.us/policy-funding/equity-and-civil-rights/resources-school-districts-civil-rights-washington-schools/sex-equity-athletics>

OSPI’s Student Athletic Interest Survey and Instructions. Available at:

https://www.k12.wa.us/sites/default/files/public/equity/pubdocs/SurveyInstructions_FINAL.pdf

OSPI’s Athletics Opportunities Worksheet. Available at:

<https://www.k12.wa.us/policy-funding/equity-and-civil-rights/consolidated-program-review-civil-rights> (scroll to Item 14.10).

OSPI’s Annual Athletic Evaluation Worksheets

<https://www.k12.wa.us/policy-funding/equity-and-civil-rights/resources-school-districts-civil-rights-washington-schools/sex-equity-athletics> (scroll to Annual Athletic Evaluations, Team, Building, and District Worksheet Samples).

³² The most recent version of the athletics record retention schedule can be accessed on the Secretary of State’s website at: [https://www.sos.wa.gov/assets/office/public-schools-\(k-12\)-records-retention-schedule-v.8.4-\(april-2021\).pdf](https://www.sos.wa.gov/assets/office/public-schools-(k-12)-records-retention-schedule-v.8.4-(april-2021).pdf) (updated April, 2021).