



Playing Fair: Title IX & Gender Equity in K-12 Athletics

Association of Title IX Administrators (ATIXA)
2020 Annual Conference

Agenda

- **Introduction & Benefits of Sport & Issues**
- **Basics of Title IX** - re: gender equity in athletics (participation, treatment and benefits, anti-retaliation)
- **Title IX within K-12 athletics**
elementary, middle, and high schools, including charters
- **Brief review of the law and regulations**
- **Title IX case examples and settlements (throughout)**
- **Tools for examining athletic programs**



Introductions

- **Fair Play for Girls in Sports**
 - Project of Legal Aid at Work (SF)
 - 104 year old legal services non-profit
 - Focus on low-income girls of color
 - Gender Equity & LGBTQ Rights Program
- **Kim Turner**
 - Sr. Staff Attorney, Director + Athlete
- **Presentation Focus on K-12 Interscholastic Athletics**
- **Note: This presentation does not constitute legal advice** and is general information! Consult an attorney if you need help in your specific situation.



Benefits for Girls that Play

- **Health**

- Lower rates of depression
- Lower rates of breast cancer as adults



- **Academic**

- Higher rates of graduation, especially among girls of color, at high school and college level



- **Employment**

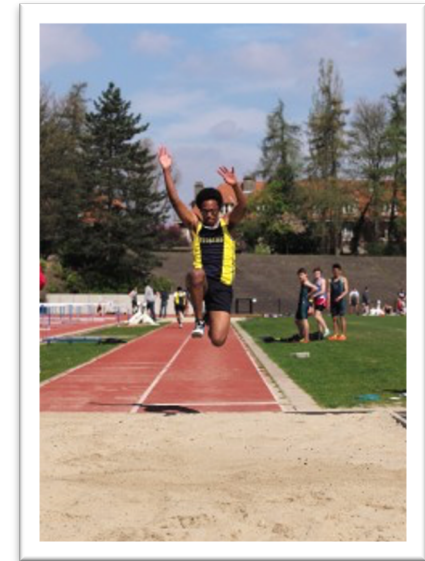
- 90% of “C-Suite” women played sports growing up
- Female athletes in high school → 7% higher wage as adults



Issue: Gender Inequity in School Sports

- **Schools – K-12**

- Before Title IX, 1972, less than 300,000 girls playing HS sports
- Now, **over 3,000,000 girls playing**
- **Still, a 1 million+ gender gap (at HS level)**
~4.5 million+ boys playing nationwide and just ~3.4 million girls, despite girls' interest
- **Persistent programmatic gender inequities exist**
 - *E.g.*, softball field in far worse shape to baseball field



Law – Title IX

- **Federal law**
 - Prohibits gender discrimination
- **Became law in 1972**
 - Equity mandate in place for half a century
 - Applies in every state of the U.S.
- **Applies to**
 - K-12 schools (including charter schools)
 - Colleges and universities
 - Educational entities accepting federal funds (even just \$1)
- **Students must be treated equally** in academics and athletics, regardless of gender + not just the law, **right thing to do!**



Law – Title IX

Text of Title IX

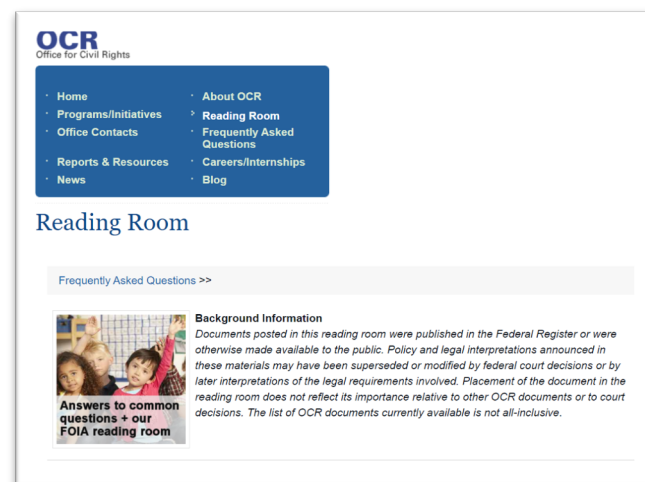
Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681)

“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 educational program or activity receiving federal financial assistance.”



Title IX – Guidance Sources

- **Office for Civil Rights, Dept. of Ed. (federal agency)**
 - Policy Interpretation
 - Regulations
 - Dear Colleague Letters
 - Misc. Publications & Resolutions
- **Note: School and District Handbooks**
Distill law and regulations for students, staff, and families
- **Note: State Laws, State Athletic Associations, and State Depts. of Education – Provide Further Mandates / Guidance**
yet, e.g., state athletic association rules do not override Title IX



Title IX - Components

- **Equal Participation Opportunities**
- **Equal Treatment and Benefits**
- **Anti-Retaliation**



Participation – 3 Compliance Prongs

- **Prong 1: Proportionality** –
Male to female ratio of athletes is “substantially proportionate” to the male to female ratio of student enrollment; **OR**
- **Prong 2: History AND Continuing Practice of Expansion** –
The school has a history and continuing practice of expanding athletic participation opportunities for the underrepresented sex; **OR**
- **Prong 3: Full Accommodation** –
The school has fully and effectively accommodated the interests and abilities of the underrepresented sex.



Participation Opportunities – Prong 1

Prong 1:

Substantial Proportionality - “Safe Harbor”

**Share of girls in school
substantially proportionate to
Share of girls in school competitive youth athletic
program** (actually playing – across all sports *not* about
slots offered or # of teams)

Example School (1000 students)

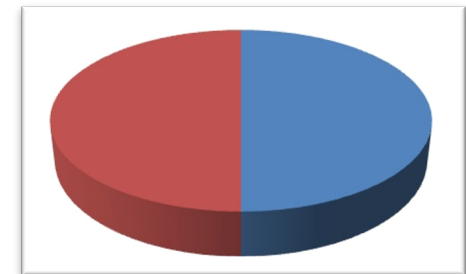
50% girls enrolled (500 females)

50% boys enrolled (500 males)

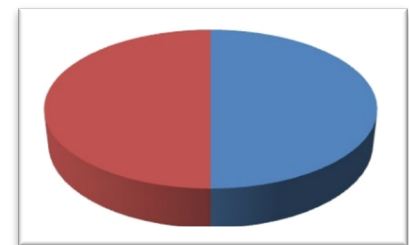
50% female student-athletes (50 females)

50% male student-athletes (50 males)

SCHOOL ENROLLMENT



SPORTS PROGRAM



Prong 1- Example

Hilltopper High School Example

2000 students

1000 female (50% student body)

1000 male (50% student body)

200 athletes

120 males athletes (3 teams) (60%)

80 female athletes (10 teams) (40%)



Participation Gap? Yes – 10% (50-40% = **10%**) Not proportional

How many to add for proportionality? 40 female students

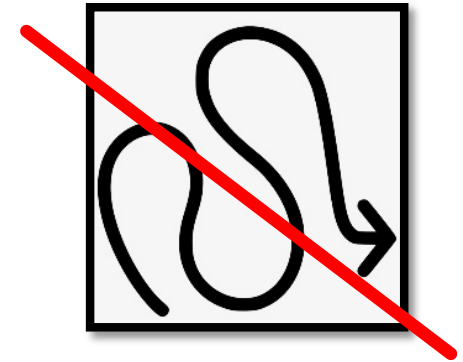
****Courts: 6.7% and 3.2% gaps are not substantially proportional****

Prong 1- Example

Description	Number	
Total Number of Students	2,000	
Number of Female Students	1,000	
Percent of Female Students	50.00%	
Number of Male Students	1,000	
Percent of Male Students	50.00%	
Total Number of Athletes	200	
Number of Female Athletes	80	
Number of Male Athletes	120	
Percent of Female Athletes	40.00%	
Percent of Male Athletes	60.00%	
Participation Gap (% female students - % female athletes)	10.00%	
Number of total female athletes needed for proportionality, without cutting anyone	120	FINAL TOTAL
Number of additional female athletes needed to add, maintaining same # male athletes	40	NEED TO ADD

Participation Opportunities – Prong 2

- Prong 2: The school has a history AND continuing practice of expanding athletic participation opportunities for the underrepresented sex
- **Note:** Title IX passed 48+ years ago – initial notion that schools needed time to balance athletic offerings for girls
- **Case Example / Standard:** “[f]emale athletic participation at Castle Park [HS] over time looks nothing like the upward trend line that Title IX requires. . . these ‘dramatic ups and downs’ are far from the kind of ‘steady march forward’ that an institution must show to demonstrate Title IX compliance under the second prong of the three-part test.” *Ollier v. Sweetwater Union* (2014)



Participation Opportunities – Prong 3

- **Prong 3: Full Accommodation**

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



- **Example:** School regularly surveys (*e.g.*, yearly) underrepresented gender and girls do not want to play sports in greater numbers – note, in Fair Play project experience, surveys always show girls want to be playing in greater numbers and experience play barriers.
- **Note:** Cases show that where viable girls' teams are eliminated due to a lacking coach for example, this can show unmet interest; also note try-out lists, local competition, feeder schools, etc.

Treatment & Benefits Elements

“Laundry List” re: program of school

- **(1) Equipment and Supplies**
- **(2) Scheduling** – Practices / Games
- **(3) Travel**
- **(4) Coaching** – Assignment + Compensation
- **(5) Fundraising Opportunities**
- **(6) Facilities** – Locker Rooms, Team Rooms, Practice + Competitive Spaces
- **(7) Medical + Training Services & Facilities**
- **(8) Publicity**
- **(9) Support Services**
- Note: College - recruiting; housing & dining; scholarships



Equal Treatment and Benefits Inequity Example



Girls' Softball Field



Boys' Baseball Field

(Veronica Ollier et al. v. Sweetwater Union HS - 9th Circuit)

Setting Record Straight re: Title IX

- **Program-wide analysis**, not just 1-2 teams
- **Equal for all athletes** – maintain boys' sports AND equalize girls' sports (not cut); creative solutions!
- **Cheer can constitute a sport if treated as a sport** (coaching, schedule, play-offs – see Dear Colleague Letter)
- **Title IX is about ALL benefits** – *e.g.*, yearbook, pep rallies, bus quality, cheer presence, uniforms, bathrooms, meals, etc.
- **Booster club activities covered** – no football exceptions, etc.
- **Girls want to play in greater #s, especially if treated equally**



Equity Focus in Pandemic “Time-Out”

- **With athletics paused / modified in many areas utilize down-time to assess inequity + keep it up!**
 - *E.g.*, Analyze participants + resources for teams
- **Audit and improve gender equity – now and always**
 - *Check It Out* – National Women’s Law Center
<https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2015/08/Checkitout.pdf>
- **Train up staff, coaches, students, families re: gender equity**
 - Videos; toolkits; invite gender equity experts to present
- **Upon re-opening, ensure gender equity in sports**
and install short- and long-term systems for lasting equality



Tools for Instilling Equity

- Audit programs (**count girls/boys/etc.**)
- **Survey** underrepresented gender
- Use **active recruitment** strategies
- Utilize **female role model students, coaches, and alums**
- **Develop and support solid, experienced coaches for girls' teams**
- **Make complaint procedures re:**
equity issues widely available and encourage feedback



Tools for Instilling Equity

- Utilize **men and boys as equity champions / allies** for girls + be **inclusive of all genders / identities**
- **Identify and remove barriers** to girls' sports participation (*e.g.*, focus groups)
- **Try new ideas and think outside the box!** Borrow best practices from other schools and districts (*e.g.*, task force + coordinate with park and recreation)
- Be **persistent!** Change takes time + dedication



Title IX Equity Impact - Example

“My [sports program] had been **lacking resources for girls, while putting boys on a pedestal** and giving them the best resources.” [leading to a TIX complaint]

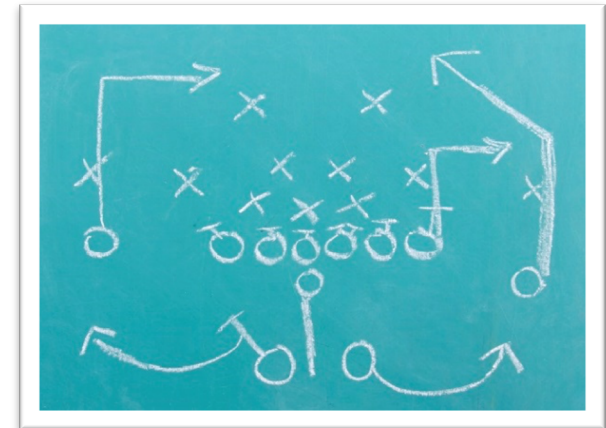
“Soon my school got new locker rooms for girls, team rooms, renovations for the girls’ gym, and new sports teams—this allowed girls to feel motivated to join more teams. Our newly-added girls’ water polo team ended up setting records in our county. **Title IX gave girls the opportunity to shine just as much as the boys.**”

- HS female student, Title I school, exercising Title IX rights



Title IX Coordinator re: Athletics

- **Touch base with athletic director(s), principals, etc.** at site and district-wide
- **Create clearinghouse / checkpoints** re: athletics decisions (*e.g.*, new teams, apportioning resources, new construction / modification of facilities, coaching issues, centralizing donations process; etc.)
- **Make athletic program decisions through Title IX gender equity lens**
- **Prominently post Title IX Coordinator information** re: person(s), how to contact, and complaint procedure



Thank You & Questions / Input

- **Thank you** for your time, engagement, and interest in these issues!
- **Questions?**
- **Resources:** *E.g.*, OCR; State Depts. of Ed.; National Women's Law Center, Women's Sports Foundation; CA Women's Law Center
- **Follow Fair Play** www.fairplayforgirlsinsports.org
fairplay@legalaidatwork.org fairplay4girls (FB / Twitter/ IG)

