

Title IX

Oregon Department of Education and
Oregon School Activities Association

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Disclaimer

This session is intended to provide general information. The contents do not constitute legal advice and should not be relied upon as such.

This presentation does not discuss the entirety of requirements for Title IX Compliance.

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Title IX Language

"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 of the Education Amendments of 1972
Implementing Regulations at:
20 U.S.C. § 1681 & 34 C.F.R. Part 106

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Title IX Athletics Specifically

106.41 No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in **any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.**

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Who is protected by Title IX?

Title IX protects all students including:

- Male, Female and Non-Binary students;
- Students with disabilities;
- International or undocumented students;
- English language learners;
- All students, regardless of their sexual orientation or gender identity.

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What Institutions Are Covered by Title IX

- Any institution receiving federal funding.
- Covered institutions include local school districts, colleges and universities, charter and for-profit schools, state agencies, education service districts, as well as athletic associations.
- Educational programs offered by non-educational institutions that receive federal funds, such as libraries, prisons, and museums, are also covered.

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The Living Law

1972: Title IX passed as a law that requires gender equity in every educational program that receives federal funding.

Since it was passed, there have been over 30 proposed amendments, reviews, Supreme Court cases and other political actions. As a result, it is a living, breathing law.

- Title IX law and regulations
- Court Case Law
- OCR Guidance Documents

Even now, more than 40 years since it was passed, thousands of schools are deemed to not be in compliance with the law.

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Title IX Coordinator and Notice Obligations

- 1) Educational institutions must designate at least one Title IX Coordinator
- 1) Educational institutions must notify students, parents/legal guardians, employees, employee unions/CBOs:
 - a. the Title IX Coordinator's name, address, phone number, and email address
 - b. that the institution does not discriminate, and that Title IX requires the institution to not discriminate, and that the institution has a policy
- 1) Display on the website and in any handbooks/catalog:
 - a. Title IX Coordinator contact information
 - b. Notice of nondiscrimination

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Title IX: Athletics

Three Analytical Standards

1. Schools must offer male and female students equal athletic opportunities and effectively accommodate students' athletic interests and abilities. (three-part test)
2. Schools must allocate athletic financial assistance equitably. (scholarships)
3. Schools must provide male and female athletes with equal benefits and opportunities. (laundry list)

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Total Program Comparison

In other words, the entire men's and women's programs are to be compared, not just one men's team to the women's team in the same sport. (example comparing just baseball and softball)

- ❑ This broad comparative provision was intended to emphasize that Title IX does not require the creation of mirror image programs.
- ❑ Males and females can participate in different sports according to their respective interests and abilities.
- ❑ This allows for variations in the type and number of sports opportunities offered to each gender.

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Participation: The Three-Part Test

Schools can demonstrate equal participation opportunities for their athletics if:

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.

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Part One

- ❑ 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 under-represented sex is substantially proportionate to the school's enrollment.
- ❑ The OCR 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.

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Part Two

The institution has a history and continuing practice of expanding participation opportunities responsive to the developing interests and abilities of the underrepresented sex.

Part Three

The institution is fully and effectively accommodating the interests and abilities of the underrepresented sex.

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Assessing Unmet Interests

The following indicators should be evaluated:

- Requests by students to add a sport or elevate a club sport
- Participation rates in middle or others schools and community leagues in areas from which school draws students
- Results of questionnaires regarding interests in particular sports
- Other areas as necessary

One recommendation: Surveys

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Recommendation: Surveys

- One tool; not evaluated alone
- Overall weight to give survey results
- Content of the survey
- Target population surveyed (e.g., all full-time students of underrepresented sex)
- Response rates and treatment of non-responses
- Frequency of conducting the survey

Survey Available on OSAA Website:
[Title IX Student Athletic Interest and Abilities Survey](#)

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Questions



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2008 Dear Colleague Letter: Factors to be considered for a sports program to be counted for Title IX compliance

Program structure and administration – structured and administered in a manner consistent with varsity sports

- Operating budget, staff, medical/training support, and other support
- Participants eligible to receive athletic scholarships and awards

Team Preparation and Competition

- 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

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Assessment Procedures and Policies

Title IX Coordinator duties include in this process:

- Ensure compliance with three-part test
- Routine monitoring of club and intramural sports
- Laundry-list compliance
- Process requests for new teams
- Evaluate participation in feeder high schools, amateur athletic associations, and community sports leagues
- Monitor compliance when building/leasing new facilities, etc.

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Comparison of Benefits: "The Laundry List"

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

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OCR Evaluation Factors: Equipment

- 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.

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Questions to Ask: Equipment

- Are there differences between what is provided for the men's program and the women's program?
- Are the "extra" items provided (bags, towels, jackets, etc.) of similar quality and quantity for female and male athletes?
- Are the practice and competitive uniforms provided of similar quality and quantity for female and male athletes?
- Is there a written policy in place to designate how resources for equipment and supplies will be distributed?
- Including replacement and maintenance schedules?

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Equipment Rotation Excel

Castle High School Athletic Uniform Rotation Schedule

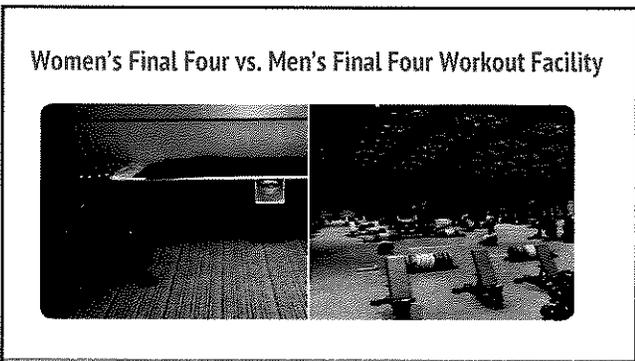
	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023
Fall Sports						
Football	New Uniforms	Old	Old	Old	Uniforms	Old
Boys Soccer	Old	Uniforms	Old	Old	Old	Uniforms
Girls Soccer	Uniforms	Old	Old	Old	Uniforms	Old
Volleyball	Old	Old	Uniforms	Old	Old	Uniforms
Boys Soccer	Old	Old	Old	Uniforms	Old	Old
Girls Golf	Old	Old	Old	Old	Old	Old
Cross Country	Old	Old	Old	Old	Old	Old
Winter Sports						
Boys Basketball	Old	Old	Uniforms	Old	Old	Uniforms
Girls Basketball	Uniforms	Old	Old	Old	Uniforms	Old
Wrestling	Old	Old	Old	Old	Old	Old

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OCR Evaluation Factors: 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.

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Questions to Ask: Facilities

- Are the locker rooms and team rooms of the women's teams comparable to the men's teams?
- Are the practice and competition facilities of the women's teams comparable to the men's teams?
- Including spectator seating, scoreboards, concessions, restrooms and other venue specific benefits?
- Are the conditions of playing fields, courts and pools equal for female and male 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?

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OCR Evaluation Factors: Coaching & Support Services

- A) Assignment of Coaches**
Training, experience, and other professional qualifications; Professional standing.
- B) Assignment of Tutors**
Tutor qualifications; Training, experience, and other qualifications.
- C) 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.
- D) Compensation of Tutors**
Hourly rate of payment by nature subjects tutored; Pupil loads per tutoring season; Tutor qualifications; Experience; Other terms and conditions of employment.

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Questions to Ask: Coaching and Support Services

- Is there an equitable number of coaches in the men's and the women's programs?
- What is the relative experience and quality of those coaches?
- Is there an equitable approach 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?
- Administrative, secretarial and clerical assistance- Is it equitably provided for mens and womens sports?
- Do your 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?

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Questions to Ask: Tutoring Services

- Availability of tutoring
- Does the institution have a policy regarding the provision of tutoring services to student athletes?
- If so, does it define how students may access the services and how tutors are hired and assigned?
- If tutoring services are offered, there should be a nondiscriminatory policy setting forth the criteria for accessing tutors and for the assignment of tutors.
- Policy for athletes passing classes? Consistent Enforcement

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OCR Evaluation Factors: Scheduling

- 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) The opportunities to engage in available pre-season and post-season competition.

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Questions to Ask: Scheduling

- Are both sexes being provided an equal opportunity for "prime-time" games?
- Are both sexes being provided an equal opportunity for "prime-time" practice times?
- Is any team being treated less favorably in any way?
- Do male and female athletes lose similar amounts of academic time due to practices and games?
- Is the allocation of preseason and postseason opportunities being provided equitably?
- Are the lengths of the season equivalent for both the men's and women's teams?
- Are both genders being scheduled the same number of competitions?
- 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?
- Is there a master scheduling program for all athletic facilities?

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OCR Evaluation Factors: Travel and Per Diem

- 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.

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Questions to Ask: Travel and Per Diem

- Mode(s) of transportation:
 - Buses vs. parents/car pools
- Best to have a formal travel policy that sets forth guidelines for travel.
 - Such a policy should set forth the authorized mode of transportation.
- Travel housing
- Length of stay - before or after the competition
- Per diem
- Dining

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OCR Evaluation Factors: Publicity

- 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.

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Questions to Ask: Publicity

- Do we provide the same level of support (band, cheer, half-time) to both genders of 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 men's and women's programs? (example: printed programs, pictures, etc.)
- Have we used scheduling and other events to help generate interest and attendance?
- Do we use social media, websites, radio, tv, etc to highlight both programs?
- Are we producing digital and online content equitably for men's and women's teams?

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OCR Evaluation Factors: Medical & Training Facilities

- 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.

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Questions to Ask: Medical and Training Facilities

- 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 the sexes 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 the women's teams?
- Is the quality of strength and conditioning coaching that is provided equal for teams from both programs?
- Are the burdens of any understaffing in the training area shared equitably among the teams?

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Questions



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Online Resources Self Audits and Reflective Practices

Self Audits:

Team Worksheet: » [Fillable Form](#) | » [PDF](#)

Building Worksheet: » [Fillable Form](#) | » [PDF](#)

District Worksheet: » [Fillable Form](#) | » [PDF](#)

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Supporting Transgender, Non-binary, and Gender Expansive Students

Gender identity discrimination is prohibited in Oregon and federal law

- OR 659.850 - Discrimination Prohibited
- Title IX - Notice of Interpretation

Transgender, non-binary, and gender-expansive (TNGE) students can access athletics and activities in Oregon in alignment with their gender identity.

We want all students to have the benefit of participating in athletics and activities!

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Why is this important?

About 8% of Oregon youth are trans or gender-expansive
8% of 6th, 8th, and 11th Graders. OHA 2020 SHS Survey

About 1 in 3 Oregon youth state a LGB+, other, or unsure sexual orientation
34.4% of 8th Graders OHA 2020 SHS Survey
 28.7% of 11th Graders OHA 2020 SHS Survey

61% of LGBTQ+ students reporting being bullied
43% of transgender students report seriously considering suicide
OHA 2020 SHS Survey

LGBTQ+ students are 3x as likely to miss school due to fear
LGBTQ+ students are 2-3x as likely to experience sexual assault
OSSCC 2020 Oregon Safe Schools Report

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Non-binary and Gender Fluid Student Participation

“once a nonbinary or intersex student has notified the student’s school of their gender identity, the student shall be treated as either gender for purposes of eligibility for athletics and activities that are gender-segregated or gender-specific, provided that if the student has tried out or participated in athletics or an activity that is gender-specific or gender-segregated, the student may not participate during that same season on a team of the other gender”

-OSAA Gender Identity Participation Policy

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Supporting TNGE Students on Teams

LGBTQ youth who live in a community that is accepting of LGBTQ people reported significantly lower rates of attempting suicide compared to those who do not.
Trevor Project LGBTQ+ Youth Mental Health Survey, 2022

- Set the tone and expectations for your athletes that your team is supportive, inclusive, and
- TNGE students can access restrooms and locker rooms in alignment with their asserted identity
- Intervene on any biased, harassing, or discriminatory comments; even small comments should be taken seriously

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TNGE Student Best Practices

- Create an individualized safety and support plan for any student that needs it.
- Use a student's asserted name and pronouns, regardless of what their student record/legal name reflects
- Keep student information private and confidential
- Assume you interact with TNGE students!



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OCR Updates

Summer 2022: OCR released a Notice of Proposed Rulemaking (NPRM) outlining proposed changes to Title IX.

The NPRM did **NOT** explicitly address athletics. Instead, OCR stated that they would address athletics regulations in a **separate, future proposal**.

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What's in the Summer 2022 NPRM?

- Updated definition of sex discrimination and sex-based harassment
- Updated process for responding to incidents of sex discrimination and sex-based harassment
- Explicit inclusion of gender identity and sexual orientation
- Requirements for supporting pregnant students
- Requirement for schools to monitor for barriers to reporting sex discrimination, and address those barriers

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OCR Updates: Sexual Harassment Reminders

April 2022 OCR Case Resolution: Chino Valley Unified School District Athletics

- Pattern of hazing and sexual harassment on an athletic team
 - Students took pictures of other students' private body parts in the locker room and on team buses
 - Students "held other students down" and "pretended to assault them" in locker rooms
- Coaches attempted to handle this internally; treated it as "locker room talk" and "joking around," told students to "cut it out"
- When an incident of harassment was eventually reported, coaches and district admin did not share the other incidents that has occurred

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OCR Updates: Sexual Harassment Reminders

OCR's investigation established a pattern of sexual harassment of which school employees were aware, that was not taken seriously.

- Hazing, "team bonding," and "initiation traditions" are sometimes actually sexual harassment
- Minor incidents can add up to a serious situation; don't wait to intervene
- Check-in with teams and Title IX district staff if you have any suspicions or concerns about responding to possible harassment

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Booster Club and Fundraising

Common Sources of Funds

- Institution
- Corporation
- Foundation
- Advertising Revenue
- Sports Revenue
- Donations
- Fundraising
- Booster Clubs

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Booster Club and Fundraising Best Practices

The Institution's duty to provide equitable benefits doesn't change in situations where certain sports or coaches are more popular or work harder to fundraise.

No matter in what form donations arrive - cash, equipment, endowments, services - once expended or provided to teams, those donations must be considered in the institution's evaluation of its equity obligations.

Finally, schools and districts must be aware that even though targeted donations are received for a particular purpose, all of the money that comes in is considered the institution's money as a whole.

As a result, the institution may need to reallocate some budgeted money from men's programs to women's programs in order to offset the effect of a targeted donation.

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Booster Club and Fundraising Best Practices

- When a school accepts funding from an outside source such as fundraising, corporate sponsors, booster clubs or private contributions, the school can use the money in the manner specified by the outside source.
 - Schools/Districts cannot use the circumstances or condition as the reason of excuse for discrimination.
 - If the school accepts funds from any of these outside sources and the source benefits a boys sports program, the school is obligated by law to find resources somewhere to ensure that the girls program has the same benefit.

According to OCR: "...It does, however, place a responsibility upon the district to insure that benefits, services, treatment and opportunities overall, regardless of funding sources, are equivalent for male and female athletes."

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Booster Club and Fundraising Best Practices

A school administrator or athletic director should be on the board of directors. They should not be an officer, but should guide the club on policies and procedures.

Before the school year starts, administrators and club officials should discuss goals for the year, what support the club can provide, and how to get more parents involved.

Administrators should offer the clubs some training on risk liability and financial management. The National Booster Club Training Council or Parent Booster USA can provide training materials and advice

Administrators should have transition plans to replace parents who leave when kids graduate. For example, parents of sophomores or juniors should be encouraged to become officers so they can mentor new parents coming in.

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Questions



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