



Play Fair

A Title IX Playbook for Victory



Authorship and Acknowledgments

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Please note: This guide provides general information on Title IX and is not intended as legal advice. Consult a competent attorney for legal advice concerning any specific situation.

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Introduction

“I think there’s something that’s just not fair here, but what could I do about it?”

You’ve possibly asked yourself that question, whether you voiced it as an athlete, parent, coach or spectator. What prompted your concern? Your high school schedules the girls’ basketball games on Thursday at 4:00 p.m. while the boys’ games are always on Friday evenings at 8:00 p.m.? Maybe the school restricts the best facilities (the big gym) for use by the boys’ teams? Or the athletic department has been saying for years that there is just not enough money for the girls’ intramural soccer team to become a varsity team, even though they keep coming up with the money for other things? Your questions (and that queasy feeling of unfairness) are what lead us to create this Title IX playbook. And indeed, we’ll use the frequently asked questions we’ve heard over the years to frame our answers.

So, back to the original question prompt: “I think there’s something that’s just not fair here, but what could I do about it?” There may be something wrong, and it might be against the law. Girls in elementary and secondary schools and women in higher education have the right to equal opportunity in sports; it’s written in a federal law, Title IX of the Education Amendments of 1972.

Yet many girls and women are denied opportunities or treated like second-class citizens despite this protection. The more we all know about the rights of our young people in sports, the more we will be able to ensure their opportunities.

We suspect you’ve at least heard of Title IX. But maybe you didn’t even realize that it’s not written Title 9. We’ll work you through it (that’s why it’s a playbook) slowly but surely. We aim to make certain that girls and women receive equal opportunities in high school and college sports. We’ll concentrate on explaining Title IX rules and regulations so that you can sort out your school’s athletic program. Once you have a better idea of what is and is not allowed under Title IX, you will be able to use this knowledge

to ask the athletic department, school board or other authority for change. This will even help you to decide if you wish to file a Title IX administrative complaint or a lawsuit. When Title IX and our female athletes are supported, we all win.

After a few questions and explanations, we’ll provide a little cue card called “So, go ahead and consider...” This targeted analysis will help you discover the good or the problematic news at your school. You’ll be able to see what compliance looks like or you’ll spot patterns of non-compliance that need your attention.

That’s why we say, without reservation, **V is for Victory. So is IX.** Your attention and action on Title IX compliance means, in this case, winning is everything!

What Is Title IX?

Title IX is the portion of the Education Amendments of 1972 that prohibits sex discrimination in educational institutions that receive any federal funds. In brief (only 37 words), Title IX states:

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.¹

Title IX applies to **any educational program at an institution that receives any federal funds**, which means the majority of schools in this country, from elementary schools through colleges. Almost all private colleges, for example, are covered because they receive federal funding through financial aid programs such as Pell grants. Athletic associations may also be covered under Title IX if they receive federal funds.²

If educational institutions are found to violate Title IX, **their federal funding can be withdrawn**. In all cases to date, however, institutions found to violate Title IX have agreed to specific plans to comply with the law rather than lose funding. An institution's agreement to specific plans does not ensure that it will fulfill them. Therefore, after such agreements are made, all of us must continue to monitor Title IX compliance.

Title IX is not just a "sports" law. It also covers sexual harassment, academic discrimination and workplace discrimination against students, employees and faculty at educational institutions.³ Title IX prohibits unequal educational opportunities throughout the entire educational environment and has, in time, created extraordinary possibilities that were not available to our grandparents or even parents.

So, go ahead and consider...

- Do I have any friends or relatives I can talk to about what happened before Title IX passed in 1972? What are their memories about girls and women in sports?
 - Are there both women and men sports heroes in my life today?
 - What if there was no Title IX law, not just in sports but in any school programs or services? How would my education be the same? How would it be different?
-

How about a short history of Title IX?

Congress enacted Title IX of the Education Amendments on June 23, 1972. On December 11, 1979, the Department of Health, Education and Welfare issued a Title IX “Policy Interpretation” on intercollegiate athletics, which further spelled out the way in which the federal government would enforce Title IX.⁴ Information in this playbook is drawn from the Policy Interpretation.

In 1971, only 294,015 girls were participating in high school sports, while there were more than 3.6 million boys participating. Picture it. For every single girl playing a varsity sport, there were a dozen boys. The opportunities for females in high school and college sports multiplied during the years after Title IX was passed.

Participation numbers for boys and girls have increased since then, and by 2007-08, both the girls’ participation rate of 3,057,266 and the boys’ participation rate of 4,372,115 set all-time highs.

Girls comprise 49 percent of the high school population; however school female athletes received only 41 percent of participation opportunities, which means 1.3 million fewer participation opportunities than male high school athletes receive.⁵

Although not as spectacular, gains also occurred for women in intercollegiate sports. In 1971, 29,997 women took part in college sports, compared to 170,384 men. That means only one in five college athletes were women. By 1977, the number of women athletes had more than doubled to 62,886. In 2005-06, female students comprised 54 percent of their college student populations, yet only 45 percent of all athletic participation opportunities.⁶ The percentages have remained very steady over the last several years.

Athletic scholarships for women were almost non-existent before Title IX. Now there are more than 10,000 scholarships for women athletes. However, those female athletes receive only 45 percent of college athletic scholarship dollars, which is

\$166 million less in scholarship dollars than male college athletes receive.⁷

So, how would you summarize this history lesson? Things are better for girls and women in sports, but things are far from equal. Significant disparities, in both participation and money, persist.

How does Title IX apply to athletic programs?

The Title IX regulations focus on “equal opportunity” when reviewing individual club, intramural, interscholastic or intercollegiate athletic programs that are provided separately for males and females. The components of the overall athletic program and activities are generally known as “program areas.”

For a school to be in violation of Title IX, female athletes generally must receive less than male athletes. For example, a women’s softball team may have to use a city field several miles away from school. A Title IX investigation conducted by the Office for Civil Rights (OCR) would look not only at whether the men’s baseball team had a convenient field but also at all the men’s teams and all the women’s teams and the facilities they used. It could turn out, for example, that all the men’s teams except soccer and all the women’s teams except softball had good fields on campus. The OCR would not consider this example to be a violation since overall, there was equal treatment of the men’s and women’s programs.

So, go ahead and consider...

- Do our examples about softball, baseball or soccer bring up any similar examples? What incidents come to mind?
- Since we mentioned the OCR (Office for Civil Rights), what if you decided not to contact them with a question about Title IX, where would you go in your school or community?

We’re just asking now; we’ll help you find useful resources later, as you move through this playbook.

Does Title IX apply to non-school, city or privately run recreational sports programs?

Probably No. This does not mean, however, that discrimination in recreational sports programs is permissible. Since recreational sports programs are generally not educational programs that receive federal funds, Title IX usually will not be applicable. Therefore, it is necessary to consider other laws that may apply. For example, almost all states have public accommodation laws that prohibit certain types of discrimination, including sex discrimination, in public facilities. The Equal Protection Clause (EPC) of the 14th Amendment of the U.S. Constitution may also apply. The 14th Amendment states that “no state shall...deny to any person within its jurisdiction the equal protection of the laws.” Cases brought to court under the 14th Amendment must show state or city involvement in the discrimination.

What does it mean to comply with Title IX?

Schools are not allowed to discriminate in interscholastic, intercollegiate, club or intramural sports. One of the easiest ways to see whether discrimination exists at a school is to look at the number of female and male athletes. Yet, schools must do more than provide female athletes with the opportunity to play. Schools must also provide a similar quality of experience. That would be labeled as “compliance.”

In order to be in compliance, an institution must be accommodating three components of Title IX:

1. Participation,
2. Treatment in Program Areas and
3. Athletic Financial Assistance.

But compliance is not the only word you will need to add to your vocabulary. For all of the program components except financial aid offered in the nature of athletic scholarships,⁸ the basic test of compliance is “equivalence.” That is, the benefits, opportunities

and treatment of each sex must be equal or equal in effect. That does not mean they must be the same. Nondiscriminatory factors can account for differences, such as the different equipment needs for the football and the field hockey teams.

To determine if differences are caused by discrimination, the OCR looks for what it calls a “disparity” between the male and female programs. The OCR defines disparity as a difference, on the basis of sex, in benefits or services that has a negative impact on athletes of one sex when compared with benefits or services available to athletes of the other sex.⁹ Being treated differently is not enough.

How do I determine if my school is in compliance with Title IX?

There are several resources that are helpful in determining whether or not your school is in compliance with Title IX. First, use the “Grade Your School” feature at www.WomensSportsFoundation.org/GradeYourSchool.

Next, access the Equity in Athletics Disclosure Web site at <http://ope.ed.gov/athletics>. This site will allow you to access athletics participation data reported by nearly 2,000 colleges and universities.

Finally, see The Case Processing Manual (CPM) provided by the OCR with the information regarding how they investigate complaints and compliance reviews, issue findings, and secure resolution agreements to remedy discriminatory policies or practices (at www.ed.gov/about/offices/list/ocr/docs/ocrspm.html).

Here's a visual overview that may help you to see the whole approach to Title IX compliance. Clicking on each item will take you right to that section of the text.

Title IX Components

<u>Participation</u>	<u>Treatment</u>	<u>Athletic Financial Assistance</u>
<ul style="list-style-type: none"> • <u>Proportionality</u> • <u>History and Practice</u> • <u>Interests and Abilities</u> 	<ul style="list-style-type: none"> • <u>Facilities</u> • <u>Equipment</u> • <u>Schedules</u> • <u>Publicity</u> • <u>Coaching</u> • <u>Travel/Allowances</u> • <u>Support Services</u> • <u>Recruitment</u> • <u>Tutoring</u> • <u>Medical/Training</u> • <u>Housing/Dining</u> 	<ul style="list-style-type: none"> • <u>Scholarships</u> • <u>Other Funding Issues</u>

Note: While we will cover compliance in elementary, middle and high schools as well as in higher education, we will typically refer to K-12 athletes as boys and girls, and collegiate athletes as men and women. You may read these terms (and many others yet to come) with awkwardness, but stay with us as we cover a wide age range of participants.

Participation: Well, what does equal opportunity to participate mean?

Title IX does not require equal participation (50 percent female and 50 percent male athletes). It means that the programs must accommodate the needs and abilities of both sexes. To sort this out, there are three tests (often referred to as the “three-prong test”) to determine participation.

They are:

1. Proportionality,
2. History and Continuing Practice and
3. Effectively Accommodating Interests and Abilities.

Don't be anxious about test-taking. Passing any **one** of these tests will result in compliance for a school.

Proportionality

That's a big word and a chance for us to use a little math. The first test means to compare the ratio of female to male participants in the athletic program with the ratio of female to male full-time students (undergraduates for intercollegiate investigations). If the resulting ratios are close, the school is most likely in compliance in this area (prong) of Title IX.

For example, if the student body is 48 percent female and 52 percent male, and about 48 percent of the participants in the athletic program are female with 52 percent male, then the school is in compliance with the participation requirement of Title IX.

It should be stressed that equal numbers of teams do not always afford fair opportunities. Different teams may have greatly varying numbers of athletes. For example, a football team may have 95 players on its roster, while a women's gymnastics team may have seven. This illustrates the importance of looking at the total number of athletic participation opportunities and not the total numbers of teams.

So, go ahead and consider...

- What's the gender ratio of students at your school?
- How many athletes of each gender participate?
- How many teams for females and males?
- And how many students are on each team?
- Does each team only practice during its official season or do the teams have designated practices off-season? Do some teams describe this off-season time as training or physical education rather than sports?
- So what's your final answer on the number of athletes (and the gender ratio of participation) over a year? Is there substantial proportionality?

Now, consider these solutions:

- Add more female levels of play (varsity, JV and ninth-grade) during seasons so that participation opportunities overall will be fair.
- Have no-cut policies on teams except on football.
- Intentionally open some boys' sports to co-ed play (baseball, golf, tennis).

Is football a special case?

No. Football is part of the athletic program and cannot be considered separately. It must be included in all analyses of Title IX compliance. Here's a typical scenario: Women athletes ask for the addition of a women's soccer team. “They have seven men's teams, including football, and six women's teams. The athletic director says that football is a special case and that there are equal numbers of teams for men and women when you leave football out of the equation. This is incorrect. The athletic director must include the numbers of athletes on the football team when examining the school's sports offerings to males and females.

History and Continuing Practice

Has the institution shown a history and continuing practice of program expansion for the underrepresented sex?

The courts have been firm in noting that the word “continuing” is important when using the second test. Many schools added considerable numbers of women’s teams in the 1970s but either kept the status quo or decreased opportunities during the 1980s. Those changes occurred quite long ago and are not in themselves sufficient to comply with this test. Schools must also demonstrate that they are continuing to add programs and expand opportunities for girls.

So, go ahead and consider...

- What’s the sport history, by gender, at your school? Check old photos in yearbooks, banners in the gym or the trophy cabinet in the main hall. You may find some intriguing tales.
- Over the last few years, has the school added or removed female or male teams? If so, what effect did it have on the proportion of female to male athletes?
- Does the school have plans to add new sports for females or males?

Effectively Accommodating Interests and Abilities

Are the interests and abilities of the underrepresented sex fully and effectively accommodated by the current program?

In the third test, the key words are “fully and effectively.” Educational institutions that offer athletic programs are required to effectively accommodate the interests and abilities of their students. Under Title IX, these institutions must provide opportunities for individuals of each sex to participate in sports, as well as provide those individuals with competitive team schedules.¹⁰

So, go ahead and consider...

- Does your school conduct a survey every few years to determine students’ interest levels in sports?
- Have the females (who have a long history of being less than equal in sports) requested new or even bigger teams? What happened to those requests?
- Are there clubs or intramural teams that could become varsity-level teams?

Now, consider these solutions:

- Work to expand opportunities for everyone to ensure a level playing field.
- Develop an athletic survey for female and male students and have it completed during a daily homeroom period.
- Review the survey results and compare them with the current program offerings. Just know that surveys are not always a great measure of students’ interests and shouldn’t be used alone to prove compliance with this test.
- Investigate other programs already offered or gaining popularity in your community.
- Check in with your local athletic directors to review the district’s long range plans for sports.
- Develop a rationale for changing the status of a girls’ club team to a varsity team with the Title IX coordinator and principal if necessary.
- Forward this information to the director of secondary education and the superintendent (or similar authorities).
- Prepare a report to present at a school board meeting, calling for a vote.

Remember, if the school can show that it meets one of these “prongs” or tests, it complies with Title IX and is

accommodating students' interests and abilities. Now, look back at our questions and your answers in this section. Is your school doing well by meeting at least one of the test "prongs," or do you still have concerns about your school's fairness and compliance with the law? We're going to get a little more complex now and see what particular issues might be poking at your growing awareness.

What about adding a specific sport, one your school doesn't have?

First, you may want to gather information to gain a general idea of your school's participation. If the female-to-male ratio of the student body is not in proportion to the ratio for athletes, your school may not be in compliance with Title IX. In that case, your school should be responsive to adding a women's team. It is not enough for you and one or two friends to say you want to play soccer; there have to be enough females interested in forming a team. The more you can do to show your interest, the better.

For example, hold a meeting of interested females and ask them all to sign a petition stating that they will try out for the team if it is offered. Look for a potential coach and a field to play on. Connect with females who play weekend soccer or in competitive local leagues. If possible, start a club team and raise money to buy equipment. All of these efforts will help to demonstrate a need for the team.

Can a school count cheerleading in its proportionality calculations?

Maybe. It depends on whether the focus of the squad is for performance and student support or competition. Generally, cheerleading is considered to be an extracurricular activity when it is conducted in conjunction with sports contests and the primary purpose is to entertain or educate spectators or to increase audience enthusiasm and participation for those sports contests. However, if the primary purpose of the cheerleaders is to compete against other cheerleaders on a regular-season and post-season qualification basis, in much the same structure as basketball or gymnastics, and if the team conducted

regular practices in preparation for the competition while under the supervision of a coach, these activities could be considered sports.

These distinctions will help you begin to determine the nature or purpose of your current cheerleading squad. Review what is possible on your campus, given a thorough study of the opportunities to participate, the budget, and the needs and interests of the students (the three prongs). That's right. You start with meeting the compliance obligations of Title IX. Focus on dance and drill activities within the structure of physical education classes and after-school activities. Investigate the interest of sponsoring a competitive cheer team as well as a sideline cheer squad. Contact other league schools to determine if a competitive schedule can be established and whether there are regional and national competitions for participants. This information will help you all to make the right decision.

For more information, please read the Women's Sports Foundation's position on cheerleading as a sport: www.WomensSportsFoundation.org/CheerleadingPosition.

What if a girl (or woman) wants to play contact or co-ed sports?

While we noted earlier that Title IX applies to the entire athletic program, not to particular teams, there are certain situations in which a school must offer a specific girls' team, or allow her to tryout for the boys' team.

Title IX expressly requires schools to create single-sex teams for girls under specific circumstances.

- Where a school offers a team in a **non-contact sport** for members of one sex, it must also offer a team for members of the other sex when there's been historically limited opportunities in sports for one sex (in most cases, girls), and there is sufficient interest and ability to sustain a viable team and reasonable expectation of intercollegiate (or interscholastic) competition for that team,

and members of the excluded sex do not possess sufficient skill to be selected for a single integrated team or compete actively on such a team if selected.¹¹

- Where a school offers a team in a **contact sport** for members of one sex, it must also offer a team for members of the other sex when there's been historically limited opportunities in sports for one sex (in most cases, girls), and there is sufficient interest and ability to sustain a viable team and reasonable expectation of intercollegiate (or interscholastic) competition for that team.¹²

Too complicated? Imagine that a college has one rifle team, which is co-ed. Women could be able to make that team as there have been times in recent NCAA competition when women have won individual national championships. However, if a program has only one swim team, females might not have times that are fast enough to make the team or compete if selected.

Additionally, if a high school offers a contact sport such as lacrosse to boys, there are enough girls who want to field a team, and there are other teams for that potential girls' team to play, then the school must offer a girls' team. Make sense?

If, however, there are not enough girls who want to play or there are no other teams for them to play against, the school does not have to form a team. This situation would often be the case for sports like football and wrestling, where there may not be enough interested and able females to form their own team or any other teams to play. **In that case...**

A school must allow the girl to try out to participate on the boys' team when girls are underrepresented among a school's athletes and possess the interest and ability to participate.

For **non-contact sports**, Title IX requires that if no team exists for girls in that sport, then a school

must provide girls with the opportunity to try out to compete on the boys' team.

- For **contact sports**, the Equal Protection Clause (EPC) requires that schools allow girls to try out for the boys' teams when no team exists for girls. Specifically, courts have held that because girls are underrepresented in athletics, the exclusion of females from participation on a boys' team, in non-contact and contact sports, violates the EPC. (The EPC in this case takes precedence over Title IX's contact sport exemption, which permits a school not to allow a girl to compete on boys' team for contact sports.)

Even when a school does offer a team for girls in a certain sport, a school must allow the girl to try out for the boys' team when girls are underrepresented among a school's athletes and possess the interest and ability to participate.

Girls must be allowed to try out for boys' teams, contact or non-contact sport, even if a team for girls exists. Schools are required to offer single-sex teams for girls in certain circumstances as a means to remedy the past and continued discrimination against girls in sport. However, these teams must be offered on a completely voluntary basis, meaning that girls have the right to play on the all-girls team or to try out to play on the boys' team.

Instead of adding teams, what about cutting a team to make the opportunities balance?

Given the economic difficulties of many schools in recent years, varsity teams are sometimes cut from the schools' offerings. Schools planning such cuts must keep Title IX regulations in mind to be sure that they do not place the school's compliance in jeopardy.

Unfortunately (and historically) some administrators misunderstand these requirements, and in trying to reach proportionality (or equal opportunities to participate) they make poor choices, such as

cutting a men's team. **We strongly feel that cutting a men's team should never be a method used to comply with the participation test (prong) of Title IX.** It is counter-productive. The intent of Title IX is to expand opportunity, not trade men's for women's opportunities.

Instead of cutting an entire program, schools have other options for compliance. For example:

- If limited funds are the problem, schools should look for ways to fundraise for both men's and women's teams.
- Schools can make partial cuts from several teams. For example, instead of having 100 football players, have 75. That saves a lot of money and numbers, often enough to keep a men's team.
- Some schools have opted to shorten the season of all of its sports. That saves money across the board, but still allows all student-athletes the opportunity for competition.

Cutting equal numbers of teams does not always mean equally cutting opportunities. In fact, cutting equal numbers of teams might decrease the percentage of female athletes, and women had fewer opportunities to begin with. **It is vital that all potential cuts be reviewed carefully for their effect on Title IX compliance.**

So, go ahead and consider...

- Have any male programs been cut under the pretext of being fair to female sports and Title IX? Did those cuts increase the participation, treatment and/or financial assistance for women's sports? (Keep reading for info on treatment and financial assistance.)
 - How about cuts to female programming without regard for Title IX?
 - What's the response to those cuts across the campus and from special interest groups? If the cuts impacted other teams or groups, by gender, would people be as frustrated (or furious)?
-

Treatment in Program Areas: What does fair treatment mean?

Here's another major subject area of the law: treatment. Female and male athletes should receive equal treatment, benefits and opportunities. The treatment doesn't need to be exactly identical, but any differences in the overall effect, or end result, must be negligible. In order to best describe what the "treatment of athletes" means, we usually look at several categories:

- Facilities (Practice and Competitive Facilities and Locker Rooms)
- Equipment (Equipment and Supplies)
- Scheduling
- Publicity
- Coaching
- Travel and Daily Allowance
- Support Services
- Recruitment of Students
- Academic Tutoring
- Medical and Training Facilities
- Housing and Dining

This section of the playbook is rather bulky—filled with just the right amount of detail if you need it, yet possibly weighty if you don't. So, select your topics then dig into the questions wisely.

What does Title IX require on the topic of *practice and competitive facilities and locker rooms*?

Title IX requires that schools provide comparable practice and competitive facilities to its women's and men's athletic programs.

So, to determine compliance with Title IX, go ahead and consider...

- Is the quality of the facilities provided for practice and competitive events similar for women's and men's teams?
- Are quality facilities shared equally between men's and women's teams, or do the men's teams have the exclusive use of the better facilities for practice and competitive events?
- Are time slots assigned for the use of facilities? Are the times given to men's and women's programs equally desirable?
- Are locker rooms also available? For whom? And, when? How about the quality of locker rooms?
- Are facilities prepared and maintained for practice and competitive events? By whom? And, to what degree of quality?

Notice any pattern as we look over facilities and locker rooms? Tight budgets force too many of us to be grateful for what we have and look away from what we don't.

SPORT SPECIFICS

Softball vs. Baseball Fields: Admittedly, a softball field and a baseball diamond don't look the same. However, there is a problem when amenities like batting cages, electronic scoreboards, fencing with warning tracks, dugouts and bleachers are not made available to both programs.

Solutions: While making improvements in a field can be a costly venture, many schools have developed a graduated process of renovation, with differences corrected on a designated time schedule with available annual funding. Additionally, schools can demonstrate a commitment to renovation via immediate action such as repainting dugouts, sharing batting cages and electronic scoreboards, and providing the women's teams with additional bleacher sections.

SPORT SPECIFICS
<p>Women’s Basketball vs. Men’s Basketball</p> <p>Facilities: It’s not unusual to find schools with two gymnasiums, one big and beautiful and the other small, old and perhaps a bit smelly. If the men’s basketball team plays and/or practices in the larger or “new” gym while the women’s basketball team plays and/or practices in the smaller or “old” gym, that is not a fairly shared use of space.</p>
<p>Solution: A cost-free answer is to divide space not by gender but by the hierarchy or levels of teams—varsity and junior varsity. The varsity teams (female and male) alternatively share the main gym, and the other teams (juniors, sub-varsity, ninth-grade) rotate through the smaller or older gym.</p>
<p>Male vs. Female Locker and Team Rooms: Imagine that a college just built a brand-new gym with fancy locker rooms for the men’s basketball and football teams. All of the women’s teams practice and play their games in the old gym, which has small, poorly furnished locker rooms that are shared by all the teams. Thus, only men’s teams use a superior facility, while all the women’s teams use an inferior one.</p>
<p>Solutions: The school must provide equivalent facilities for the men’s and the women’s programs. Sometimes called “fringe facilities,” these non-playing spaces must be equally shared among teams. One cost-effective idea is to redistribute locker rooms and team rooms so that “in-season” players for both genders have comparable locker space. Converting a near-by classroom to a team room could also be a viable option.</p>

What does Title IX have to do with equipment and supplies?

Title IX does not require that each team get exactly the same services and supplies. Instead, Title IX requires that the men’s and women’s programs receive the same quality of services and supplies. Variations within the men’s program and within the women’s program are allowed.

General equipment and supplies include, but are not limited to, uniforms and apparel, sport-specific equipment and supplies, instructional devices and conditioning and weight-training equipment. Specifically, Title IX applies to practice and game uniforms, shoes, rain gear and warm-up suits, but not to undergarments (that means athletic supporters and sports bras).

Equipment includes bats, sticks, rackets and equipment set up and taken down for practice. Conditioning and weight-training equipment includes weights, water bottles, sweatbands and braces.

So, to determine compliance with Title IX, go ahead and consider...

- What is the quality of equipment available to players? Is there a new leather volleyball for game days and heavy, old, rubber ones for practices?
- What amount of equipment is available to athletes? Do varsity teams in males’ major sports get new shoes and it’s “bring your own” for everyone else?
- What is the suitability of supplies and equipment for students? Is it officially sanctioned, meeting regulation requirements for each sport?
- What is the maintenance and replacement of supplies and equipment? Is everything kept in good order with a trained eye towards this responsibility?
- What is the availability of supplies and equipment? Do some athletes keep equipment throughout the year, ever-ready for workouts, but others only sign-out items during their season?
- How do your answers play out by gender? Is one sex of athletes advantaged over the other?

Now, consider this solution:

- Develop a spreadsheet that lists each athletic team.
- Each year enter the detailed amounts budgeted (then spent) for equipment, supplies and uniforms.
- Compare this amount on a yearly basis by gender to ensure compliance.
- For all teams, develop a three-year cycle for the purchase of uniforms and a five-year cycle for warm-ups.

What could be fair (or unfair) about the scheduling of games and practices?

The scheduling of practice times must also be nondiscriminatory. This issue often arises when two or more teams share the same practice facilities. One team cannot receive preferential treatment over another team on the basis of gender. A team that is in its competitive season, however, could (and likely should) receive preference over a team that is not in competition at the time.

Scheduling of games and practices is still a problem in high schools where teams share facilities. High schools that are in compliance follow strict schedules by which boys' and girls' teams alternate the "best" times for practices and games.

Season scheduling has been manipulated by athletic directors or even state-wide leagues to spread facility use under the guise of giving more opportunities to student-athletes. When a school has limited facilities, administrators may suggest that having the tennis courts filled with girls in the fall and boys in the spring is the best use of space and gives better or more opportunities to the girls. That's what the Michigan High School Athletic Association did by shifting the traditional season of six girls' teams (but no boys' teams) to compete in nontraditional or disadvantageous seasons. However, the end result was that girls did not have access (especially when compared with other girls across the country) to high-

level competitions, college scouting and scholarships. A lawsuit challenged girls' right to fair play, and as a result, girls and boys nationwide are scheduled to practice and play during a sport's typical season.¹³

So, to determine compliance with Title IX, go ahead and consider..

- What's the number of competitive events offered per sport? Now, what's the number and length of practices per sport?
- What time of day are competitive events scheduled? What time of day are practices scheduled?
- How many pre-season and post-season competitive opportunities exist for each team?
- Are there differences in the number of events offered per sport, the number and length of practices?
- To best analyze compliance, compare the information you've gathered for the men's and women's teams competing in the same or similar sport. What did you discover?

Now, consider this solution:

- Review the method of scheduling and the starting times of all athletic teams.
- Establish a schedule so that one team is away when the other is scheduled at home.
- Have all starting times be identical—so that similar conditions impacting play (weather, sunlight, crowd availability) are apparent.
- Schedule all league (and non-league) games in the same manner.
- Alternate starting times if boy-girl double-headers occur (make-up games, day-long tournaments).

SPORT SPECIFICS
<p>“Prime-time” Games for Boys vs. Girls: The high school’s basketball games are scheduled so that the girls’ varsity plays at 4:00 p.m., the boys’ JV plays when that game is completed, and the boys’ varsity plays last. It is more difficult for parents, friends and family to attend earlier games, making the later game times more valued.</p>
<p>Solutions: If boys’ teams are always scheduled for more valued times than girls’ teams, that is a significant difference in treatment. If both teams play on the same day, teams should alternate which plays at the preferred (or prime) time. Otherwise teams should swap which day they play. What time or day is considered “preferred” is determined by asking the athletes, coaches and fans at the specific institution.</p>
<p>Full Range of Schedule for Boys vs. Girls: Generally, a sports season, with a full schedule, includes pre-season training, a number of regular-season games and post-season tournaments and championships. Sometimes, in a sport like track and field, top individual athletes are invited to championships. There have been times when a school supports male athletes’ participation (by covering finances and sending a coach), but females (also invited with stellar times) are excluded.</p>
<p>Solution: Conscientious athletic directors and school administrators need only make an effort to examine and revise the full schedule to ensure male and female teams (and individuals) have equitable opportunities for competition, thus equally supporting their females and males athletes.</p>

Would differences in sports’ *publicity* count in a Title IX analysis?

There’s a long and jaded history in the publicity afforded females and males in sports. Many of us can recall a time when high schools revolved around male sports stars, cheering them on at pep rallies and promoting their stories in the school’s paper. Title IX

covers three factors when determining compliance in the publicity area:

- Quality of sports information personnel assigned to their teams,
- Background and experience of the assigned sports information personnel, and
- Number of personnel assigned.

The unique circumstances of a particular team, competitive event or athlete may create exceptional demands or imbalances. For example, a team that is in contention for a national championship may be of great interest to the community and media, generating many requests for information. The sports information staff may spend much more time on that team and neglect other teams as a result. Such disparities are not Title IX violations.

So, to determine compliance with Title IX, go ahead and consider...

- What is the availability and quality of sports information personnel? Is there balanced access to other publicity resources for men’s and women’s programs?
 - Are the publicized images and realities of students’ sport experiences fueling negative gender stereotypes—the men’s photos are actively engaged, the women are standing and posing?
 - Do teams have a comparable quantity and quality of publications and other promotional devices featuring men’s and women’s programs?
 - Are cheerleaders, pep bands and school administrators present at sports events in a manner that demonstrates their support for all teams?
-

SPORT SPECIFICS
<p>Cheerleaders, Pep Bands, Spirit Squads: Publicity also includes cheerleaders, pep bands and rallies. This area, in particular, is a problem in high school athletic programs when schools have no cheerleaders appearing at girls' athletic events, or they provide cheerleaders only at girls' home basketball games. Cheerleaders, bands and pep squads are considered publicity services. When they are provided for the boys' program, they must also be provided for the girls' program.</p>
<p>Solution: There will probably be some valuable discussion on breaking down gender stereotypes with this topic across the school community. Students (athletes and spirit squads) need reminding that everyone deserves the support of the school's publicity services. Institute a home-games-only policy for the spirit squads. Their presence and visibly must serve the school community fairly. This solution would probably be a significant money saver as well.</p>
<p>Publicity: Imagine that game programs are provided for all four men's team sports and only two of the three women's team sports. The women's basketball team handles its own tickets with parent or student volunteers. Three men's teams were photographed for pocket-sized school calendars versus none for women. One women's team appeared on posters advertising the season. Three men's teams were furnished with similar posters, and these were distributed campus-wide. The school's sports Web site is framed with photos of male athletes. These realities contribute to a larger pattern of inequitable publicity.</p>

Solutions: The school must provide similar publicity materials for men's and women's programs. If the athletic director is managing the budget, and the accounts are monitored for transparency and compliance with Title IX, inequities in publicity will be noticeable. So, each time a request for publicity is made, the communications officer (or school-district-level or on-site athletic director) must advocate for all student-athletes. This can apply to external publicity as well. If the media wants student interviews with star players, several females and males can be provided. If an outside contributor wants to advertise a restaurant and use photos of local sports teams, the school must make sure the product is appropriate and has an inclusive approach, by gender, to the total program.

Well, what about *coaching*?

The coaching component is important for both secondary schools and colleges. Remember, Title IX is examined by looking at the overall athletic programs rather than to specific individual coaches.

Female or male coaches who question whether they have suffered sex discrimination may wish to consult an attorney because their employment situations may also be covered under other statutes such as, Title VII of the Civil Rights Act, the Equal Pay Act or state employment statutes.

Coaches have the same protections and rights as their athletes and, initially, ought to follow the chain of command in the school district. Many successful cases (and thus legal precedents) have been initiated by female and male coaches on behalf of their athletes. Get advice from the Women's Sports Foundation and legal advocates. If you do have a case, yours could make a difference.

So, to determine compliance with Title IX, go ahead and consider...

- Are there differences in the salaries of head and assistant coaches in the men's program and the salaries of head and assistant coaches in the women's program?
- How many full-time coaches are hired for each team? Is the ratio of coaches to participants for the men's program equal to the ratio of coaches to participants for the women's program?
- Are the numbers of assistant coaches available to each team comparable in the men's and women's programs? Are these unpaid volunteers or hired support staff?
- What is the training, experience and additional professional qualifications of the coach (including her or his professional standing in the field)?
- Are the training and qualifications of the coaches assigned to the women's teams similar to those of the coaches assigned to the men's teams?
- Do some coaches have conditions for contract renewal (winning vs. losing records), entitlements and working conditions (special club memberships, commercial benefits) and under-the-table pay packages? Are those coaches only of men's teams?
- Discover what you can.

Now, consider these solutions:

- Contact nearby colleges and university teacher preparation/health and physical education departments to identify prospective both men's and women's team coaching candidates.
- Contact district personnel to target candidates from nearby schools.
- Advertise positions in local newspapers and online with a list of competencies that will be used to

hire (female and male) coaches. Include specific requirements pertaining to the time commitment of each position. Review the salary scale for discrepancies. (Meet with administrators and union leadership if discrepancies need resolution.)

- Meet with school faculty to determine their interests and qualifications. Their on-campus presence and knowledge of the study body and school culture are often very effective.
- Expect all candidates to meet the district's educational and legal obligations (including Title IX of course!).

Must all athletes get the same chance to receive coaching?

The primary focus for coaching under Title IX is on the *availability* of coaches. When determining compliance with Title IX for the opportunity to receive coaching, consider the relative availability of full-time coaches, part-time and assistant coaches and graduate assistants.¹⁴ Title IX requires that schools provide comparable coach-to-athlete ratios for its female and male athletes.

Let's try a little math assignment for your analysis. It is easy to add up the numbers of athletes from all female teams and the numbers of coaches for those teams. Divide the total number of athletes by the total number of coaches to get the coach-to-athlete ratio; four coaches for 80 athletes becomes a ratio of one coach to 20 athletes (1:20). Do the same for the male teams. Then compare the ratios for the boys' and girls' programs. Is there an inequity?

How does Title IX impact the assignment of coaches?

Compare the training and qualifications of the coaches assigned to the women's teams with the coaches assigned to the men's teams. Title IX requires that schools regularly assign similarly qualified coaches to the women's and men's athletic programs.

Years of coaching experience are not conclusive evidence in determining similar qualifications for compliance with Title IX. It is possible for a coach with three years of experience to be as effective as, or even more than, someone with 10 years of coaching experience.

Too frequently, the hiring and placement of coaches for male teams (especially in major sports) can become a higher priority than for female teams. The expectation for coaching male athletes, at the high school level, demands or implies a higher level of competence from a candidate (as both a past player and coach).

What about the compensation of coaches and Title IX?

Payment to faculty, administrators, staff and coaches is not easily transparent to outsiders. Determine whether any overall differences exist. Note whether or not these differences are the result of nondiscriminatory factors like extra duties, experience or a reward attached to an outstanding record.

Understand that dividing sports into different levels of support is not a violation of Title IX. However, schools must ensure that these levels are not used to discriminate. The schools cannot, for example, assign men's teams primarily to the highest level of support while relegating most women's teams to the lower levels. Nor can the schools pay coaches of women's teams with equal qualifications, experience and job requirements less than coaches of men's teams. Such actions could violate Title IX as well as other civil rights statutes such as Title VII or the Equal Pay Act.

Can a coach file a Title IX complaint on behalf of student-athletes?

Yes, anyone can file a complaint with the OCR. Some coaches may feel uncomfortable about filing a Title IX complaint out of fear of losing their jobs. Yet coaches are more likely to know the detail and extent of any discrimination that is occurring than athletes or parents. There are regulations aimed at preventing retribution or harassment. A school cannot fire a

coach just because they filed a complaint. If a coach is uncomfortable about filing, complaints can be made confidentially to serve as protection from retribution. A coach also may want to have an alumnus, representative from a women's group or even a group file the complaint.

When teams' travel and a daily allowance is involved, do cost differences count with Title IX?

This component most often applies to intercollegiate programs because interscholastic teams usually travel only within their school district or conference, except for special events and tournaments.¹⁵ Be sure to consider the treatment provided to the boys' and men's teams with the treatment provided to the girls' and women's teams.

Remember, some nondiscriminatory differences may exist. For example, the form of transportation may vary between teams because of team size, number of coaches and support staff, and/or amount of equipment.¹⁶ Distance to specific competitions also affects the mode of transportation as well. It would be discriminatory, however, if the men's team rides in a luxury bus to a competition while a women's team of the same size travels the same distance in cramped vans.

In OCR complaints, an area often found in violation is housing. For example, a female team had three to five athletes per hotel room while traveling to away games, while men's teams had two to three athletes per room.¹⁷ If these budget decisions are made with unconscious or inequitable attention to gender, compliance might be at risk.

So, to determine compliance with Title IX, go ahead and consider...

- How do students travel to games? Who is driving the bus or van? In fact, who is loading equipment onto the vehicles?

- Do some teams have extra preparation (and recovery) days on site for special events while others just show up, play and head back home?
- Is there a daily food and housing allowance for athletes on the road? Do these differ by gender?

Are even the *support services* for coaches and athletic directors part of Title IX?

The administrative and clerical support provided to an athletic program is extremely important because it gives coaches more time to perform their coaching and recruiting duties. When determining Title IX compliance, one must consider the amount of administrative, technical and clerical assistance provided to the men's and the women's programs.¹⁸ Quantity and quality of office space provided to support staff and coaches would also be included.

We know that the need for administrative, technical, secretarial and clerical support service may vary from team to team. Determine whether this need is satisfactorily fulfilled for the men's and the women's programs overall.¹⁹

So, to determine compliance with Title IX, go ahead and consider...

- Do the coaches' offices vary by their salary, seniority, sport status, win-loss record or gender? Is there good or bad news to report and what's newsworthy as it might relate to coaches?
 - Do some coaches have a full cadre of support personnel with clerical staff, film crew, IT statistical crew and a bevy of volunteers? Is there a pattern of support that might generate benefits to one gender, over the year, than another?
 - Are some high school coaches released from the obligations of their instructional day as teachers to better serve student-athletes? Does their teaching load, attendance at faculty workshops, absenteeism reflect the heightened role as coaches for one gender more than another?
-

What about *recruitment* of student-athletes?

It is rare that a secondary school will recruit student-athletes. Therefore, a high school athletics investigation most likely will not include this program component. We do hear stories about students moving to certain districts to "play up" to a better team or be seen by big-time recruiters. Stay alert to concerns as this could be a growing problem.

Certain nondiscriminatory differences are allowed. For instance, many students from one team graduating in a particular year may result in the need for an unusually large recruitment budget.²⁰ When this occurs, the program would probably not be in violation of Title IX.

At one university, the opportunity to recruit was affected by a lack of time on the part of the women's coaches. Line item budgets for recruitment for the men's and women's programs totaled \$36,000. Of that amount, \$28,500 (78 percent) was allocated to (and eventually spent by) men's teams and \$8,000 (22 percent) to women's teams. A few years later, only \$23,500 (66 percent) was allocated to men's teams and \$12,000 (34 percent) to women's teams. Women accounted for 45 percent of the participants. The OCR found a violation in the area of recruitment.²¹

So, to determine compliance with Title IX, go ahead and consider...

- Are coaches or other athletic personnel serving male and female athletes provided with substantially equal opportunities to recruit?
 - Are financial and other resources made available for recruitment purposes meeting the needs of the men's and the women's programs?
 - Are the differences in opportunities, benefits and treatment of prospective athletes of each gender affecting recruitment?
-

How might a student-athlete's tutoring or academic support be connected with Title IX?

An investigation of an academic tutoring program, typically found in higher education, is divided into three parts.

The first part examines the **opportunity to receive** academic tutoring. Specifically, the availability of tutoring and the procedures and criteria needed to obtain tutorial assistance are reviewed.

The second portion addresses the **assignment** of tutors. Here the tutor's training, experience and general qualifications are emphasized.

Finally, a thorough analysis focuses on the **compensation** provided to tutors.

These may seem far from your interest of concern, yet sports programs, imbedded in the collegiate academic culture, demand a great deal of participants. The pressure of time and talent on athletes can put their course achievement at risk. Females typically have higher grade point averages and graduation rates, so those who need academic support are too easily overlooked.

So, to determine compliance with Title IX, go ahead and consider...

- Is there an expectation of tutoring for some athletes and not for others? Are these differences evident by gender, scholarship and/or sport?
- Is the cost of academic support (such as tutoring) visible in athletic budgets?
- Are women told to help each other with their academics or "just go to student services" while men are partnered with trained tutors? Do high-profile male athletes on scholarship get extra academic support over their counterparts on women's teams?
- Are the expectations of hired tutors defined including the number of students tutored per session and per academic term?

What if the quality of *medical and training facilities* and services varies?

If any disparities exist, they must be significant. Certain nondiscriminatory factors might allow one team to have more qualified trainers than another. For example, the injury rate in a particular sport may justify the assignment of more qualified medical personnel. It would be advisable for any parent, coach, athletic director or athlete to look for injury patterns.

We support participation in sport because we know it's positive for individuals. Having opportunities to participate that get dashed by injuries is not our goal. Are players well-trained and monitored for conditioning and safety? We can only imagine how bothered you would be if your son had a full-time trainer working with his football squad while your daughter had no attention paid to her physical conditioning or therapy on the cross-country team.

So, to determine compliance with Title IX, go ahead and consider...

- What are the availability of medical personnel and assistance; health, accident and injury insurance coverage; availability and quality of weight and training facilities; availability and quality of conditioning facilities; availability and qualifications of athletic trainers and medical personnel?
- Do any medical policies or insurance coverage differ on the basis of sex?
- Are the trainers and medical personnel assigned equally and fairly? Is one team or more assigned a professional trainer as opposed to a student or part-time trainer?

Do even *housing and dining facilities* and services enter into Title IX compliance?

OK, nobody is required to compare the food and shelter of high school athletes, although their eating and living habits are certainly as varied as their families. In higher education, however, there are two factors to assess when determining Title IX compliance in the area of housing and dining facilities.

The first factor surveys the housing provided to members of each team. Second, the special services provided as part of housing arrangements, such as laundry facilities, parking spaces, etc. are reviewed. Note that special dining services may be provided even when there are no special housing arrangements.

Remember, the unique aspects of a particular sport may result in variations of types, timing and amounts of meals.²² Nevertheless, significant disparities between the services for women and men could be a violation.

So, to determine compliance with Title IX, go ahead and consider...

- When looking for differences in housing and services provided to the men's and women's teams, there are many factors to question. Do either the men's or the women's teams have housing different in quality from the other?
- Are the men's meals different from the women's meals? Are special dining arrangements made for any team during or outside of competitive seasons?

So, how would sexual harassment be a part of Title IX?

Sexual harassment is a recognized social problem in schooling and in sport. It deters girls (and women) from participating and developing as athletes. The implementation of policies regarding sexual harassment help to create organizational climates in which females feel free to report such incidents. Setting policy on sexual harassment is also believed to decrease the likelihood of such offenses.

Sexual harassment is a violation of U.S. law and impairs girls' and women's access to educational resources. In the United States, under Title IX of the Education Amendments Act of 1972, sexual harassment by staff or peers is illegal sex discrimination. There are other laws that also apply, including state civil laws that, like Title IX, prohibit sex

discrimination in schools and state criminal assault and abuse laws, which prohibit many of the physical forms of sexual harassment.

For example, a recent case involved a former female soccer player who sued her university, alleging sexual harassment by the coach. The coach made players partake in group discussions about their sexual activities and relationships with men and commented on the players' physical appearance. The court confirmed that it is illegal under Title IX for universities to ignore sexually hostile environments created by coaches. As a result of the ruling and settlement, the student will receive considerable money, the coach apologized to her and the players for misconduct, and the school will conduct a review of sexual harassment policy. The implication of this case for educational institutions and coaches guides the definition of sexually hostile environment and obligates schools to review harassment policies.

So, go ahead and consider...

- How can I ensure my daughter (or son) will not be harassed by coaches who should be leaders and mentors to young and often inexperienced athletes?
- Are high school and colleges requiring coaches to be trained in their legal responsibilities regarding Title IX and sexual harassment?
- If I needed to make a report about harassment, do I have a place to go with what could be an enormous problem? Can I count on other adult professionals supporting my concerns?

The Women's Sports Foundation's position paper on Sexual Harassment provides extensive information on this subject: www.WomensSportsFoundation.org/HarassmentPosition.

Athletic Financial Assistance: So now, what about money?

Contrary to common belief, **budgets provided for male and female sports do not have to be equal**—after all, football pads cost more than field hockey sticks. However, budgets are an important area of Title IX compliance because a great disparity in funding can indicate where there might be a problem in other compliance areas, like treatment and participation. Benefits provided must be equal. In other words, football equipment cannot be top-of-the-line while the field hockey team tapes together cheap, shoddy sticks. We have all learned that it's important to follow the money. If funding is unequal, the resulting consequences in participation and programming tend to be as well.

Budget levels are especially important when the dollar limits set by the school cause unequal services. For example, in higher education, a lack of a recruiting budget that results in few recruiting efforts for the women's program would be problematic if the men's program has a large budget and, therefore, conducted a lot of recruiting.

A budget can also affect the number of athletes on a team. For instance, a softball coach may only carry the minimum number of players because the budget for the team is not enough to supply the equipment, uniforms and travel costs for more athletes. At the same time, the baseball team may have a full roster with plenty of players on the bench because its budget is much larger.

So that time-honored excuse, "we don't have the money," is not a good enough answer. If the men's athletic program receives greater benefits than the women's, the institution has three choices: increase the benefits for the women, decrease the benefits for the men or some of both. **Simply telling the women there is not enough money does not relieve the institution of its responsibilities under Title IX.**

So, go ahead and consider...

- Now, think about what you've just read about money and what's fair. Can you think of any circumstances where the expenditures for females and males are unequal in your program?
- Since it doesn't have to be exactly equal, can you identify some areas where a variance in funding might lead to problems in other program areas?

I just found out that our college spends 80 percent of its budget on men's sports. Is this college in violation of Title IX?

Maybe. How much of the budget goes to men's sports versus women's sports does not answer the question by itself. What is important is what that money buys. If the small budget forces the women's program to offer less in the way of benefits and services, then it is a problem. The additional money for the men's program might be necessary depending on the exact needs of the specific sports offerings. A large discrepancy between the budgets should, however, be examined carefully to determine the reasons and whether they are discriminatory.

There is a women's team at our school that has existed as a club for five years. There is a men's varsity team for the same sport, but the athletic director says there is not enough money to turn the women's club team into a varsity team. Is this a violation of Title IX?

Most likely. Lack of money is not a valid justification for discriminatory practices. As explained earlier, an athletic program must effectively accommodate the interests and abilities of its female students. In this particular instance, a legitimate Title IX violation would exist under the following conditions: a lack of substantial proportionality between the percentage of female students and female athletes at the school, and the school failing to demonstrate a history and continued practice of expanding opportunities for women. Under those conditions, a school would need to demonstrate compliance with participation

through the third prong: interests and abilities. Here there is a demand for the club team to turn varsity, and assuming there is adequate competition to field a team and league, the school would not be in compliance.

Sometimes the women's club sport is not the same as the men's varsity sport, as is the case with softball and baseball. In this situation, look at the "Student Interests and Abilities" section of this Playbook to determine the school's overall compliance in that area. If the school is not in compliance with that section, the school may elevate a particular women's club team to varsity status to increase opportunities for females and achieve compliance. Lack of funding to elevate the team would not excuse the school's failure to comply with Title IX in this area.

Scholarships are money, right?

Title IX requires that scholarships be awarded in proportion to the number of students of each sex participating in athletics.²³ Proportionately equal amounts of financial aid must be available to the men's and women's athletic programs. For example, if 51 percent of the athletes in the program are women, then 51 percent of the scholarship dollars must go to women.

Some specific factors that might be used to justify disparities in financial aid have been ruled out by the OCR. Among them are revenue-producing capabilities of particular teams, sources of funds, athletic association rules, differences in interest or ability between male and female students, and differing levels of spectator interest and student or community support.²⁴ **None of these reasons can be used to offer less financial aid to women.**

So, go ahead and consider...

- What's the percentage of athletes who are female and who are male?
- What proportion of financial aid goes to female athletes and to male athletes?

- How do they compare?
- Has anyone you know justified inequitable funding using some of these statements: "But it's football!" "Their attendance certainly covers their costs." "They are winners—that's enough reason for support."?

Can booster clubs and other special interest groups just raise money and give it to the programs they choose?

Booster clubs and sport-specific alumni groups often contribute to the budgets for athletic programs. Parents and alumni may raise money for certain teams or for the overall athletic program. As a result, the school may have greater resources for some teams or programs. Men's sports programs typically receive more donor support because they have been around longer and men earn more than women on average in this country. As a result, booster clubs may provide benefits or services to the men's teams that the women's teams do not receive.

Under Title IX, budgets for boys' and girls' teams do not have to be equal, but the bottom line is that the benefits provided must be equal. According to the interpretation of Title IX by the Office for Civil Rights, **educational institutions cannot use an economic justification for discrimination.** When an institution accepts money from an outside source (fundraising, sponsors, booster clubs, private donations) the institution can use the money in the manner specified by the outside source, yet cannot use the circumstances as an excuse for discrimination.

If the school uses the outside source to give benefits to the boys' sports programs, the school has an obligation to find resources from somewhere else to make sure that the girls' programs have the same benefits. These benefits do not have to match by sport (i.e., boys' baseball and girls' softball) because "equal opportunity" as defined by Title IX is determined by looking at boys' and girls' entire programs rather than at single teams.

On the whole, considering all boys' and girls' sports, the educational institution is obligated to distribute all of its resources (and the outside funding is a resource once the school accepts it) in a non-discriminatory manner. Stated rather clearly...

- Outside sources of funding and donations are acceptable.
- They cannot result in disparities between the boys' and girls' programs.
- If the money results in an inequity along gender lines, the district must correct the inequity, using its own funds if needed.

According to OCR:

"The private funds that are used to support District athletic programs, although neutral in principle, are likely to be subject to the same historical patterns that Title IX was enacted to address. In the experience of OCR, sponsors, as a whole, are more interested and willing to assist boys' teams than girls' teams and male-oriented "booster" activities generate more public interest than girls' activities. If all benefits are not considered in examining interscholastic athletics, the purpose and effective of the Title IX requirements could be routinely undermined by the provision of unequal benefits through private financial assistance."²⁵

"While it may appear that this policy is discouraging private initiatives (which are unquestionably valuable to recipients and students), we cannot diminish the protection of Title IX by exempting benefits, treatment, services or opportunities provided to athletes through the use of private funds. Private fundraising, including student-initiated fundraising, has been, and continues to be, permissible under Title IX. It should also be noted that this does not

mean that teams must "share" proceeds from fundraising activities. It does, however, place a responsibility on the district to insure that benefits, services, treatment and opportunities overall, regardless of funding sources, are equivalent for male and female athletes."²⁶

So, go ahead and consider...

- Are there booster clubs for sports teams at your school? Or, is there one school-wide booster group, energizing and funding all programs across campus?
- Is the booster club part of the school's parent network or structure, or is it run in an ad-hoc manner with limited oversight or transparency?
- If you wanted to track the booster club funding and bureaucracy, would you be able to?

Now, consider these solutions:

- Design a school-wide sports booster club (drawn from a quality and equitable district policy) that creates one booster club for all athletics with all contributions and going through the athletic department.
- Have coaches of the same gender and same season meet jointly to plan fund-raising events together. It's good for the student-athletes and the budget.
- Have the district booster and fund-raising policies presented to school board for approval.
- Appoint the school bookkeeper to oversee all submission of funds.
- Review of all funds (an audit) should be accomplished by a school-wide administrator with the athletic director and other professional colleagues.

- Review a list of alumnae and special interest groups for solicitation of donations.
- Meet with community organizations for possible funding sources.
- Investigate corporate sponsorships. Names or company logos could appear on or at a facility, in keeping with the district's mission. (School candy sales and soft drinks are not always aligned with district nutrition policies.)
- Obtain school board approval for these sponsorships and special interest funds. Lobby the board often, with tales of team and individual success stories. Let them know the overall benefits of athletics for students.

My daughter plays high school basketball. At the end of the season she receives a letter certificate, as do all the girls' teams. Meanwhile, the boys' basketball team receives letter jackets as a gift from the booster club, as do the boys' football and baseball teams. Is this a Title IX violation?

Yes. Such a practice is a violation of Title IX according to the OCR. The athletic department has the ultimate responsibility to ensure that its male and female athletes receive the same quality of equipment and supplies. The source of the funding (booster club or school funds) does not diminish or change this obligation. If permission is given by the athletic director for an act that benefits the boys' program, a similar benefit must be provided to the girls' program.

SPORT SPECIFICS
<p>Banquets: When a high school holds a post-season banquet for just the boys' football and basketball programs, the rationale has been that those were the only programs that generated enough revenue to help pay for dinner and/or their booster clubs paid for the meals for the team and coaches. That's a blatant message to other athletes, especially females, about their value.</p>
<p>Solution: In this actual case, the OCR found the school to be in violation of Title IX that engaged in these practices.²² The girls' athletic program did not receive equivalent benefits, in terms of awards, banquets or services. The answer, already evident in many schools today, is to have seasonal or annual school-wide sports banquets, reinforcing the value of athletics for all students. A co-ed event values sport for its highest goals and avoids promoting rigid and historic gender stereotypes or a misuse of funds.</p>

Action Planning: What next?

Do you know enough about Title IX to proceed in some useful direction?

Now that you know more about Title IX, you may know of a situation at your school that falls under these regulations. If you believe that your school is in violation of Title IX, you have several options on how to proceed. We have abundant materials that will take you through the process of defining and then acting on your Title IX concerns. In particular, use the [Step-by-Step: A Practical Guide to Assess and Achieve Gender Equity in School Sports](http://www.WomensSportsFoundation.org/StepbyStep) (www.WomensSportsFoundation.org/StepbyStep) to channel your actions.

You may want to consult an attorney or your regional office of the Office for Civil Rights to confirm your understanding of the requirements of Title IX. Or, you might contact the Advocacy Department of the Women's Sports Foundation (800.227.3988 or Advocacy@WomensSportsFoundation.org) and run your query by us.

If you think the situation at your school is not fair, it is probably a good idea to find others who agree with you. **Your school is not permitted to retaliate** against you for filing a complaint; yet it may be easier to make change happen with a group. A single individual may find it difficult to get the attention of the institution. It is also easier for the school to pressure a single individual to drop a complaint. On the other hand, a group of people voicing their disapproval about a given situation will more likely illicit a response.

- **Sources of support** include athletes, coaches, parents of athletes, administrators, other students, women's groups (especially those on campus) and alumni. Remember that coaches and administrators may have concerns about their jobs, and they may not feel comfortable taking an active role and risk appearing as a troublemaker. Sympathetic coaches

or administrators may be able to supply some of the information needed to see whether the overall athletic program is in compliance with Title IX.

- **The more information you can gather** the better. Since Title IX covers the entire program, the experience of an athlete on a single team may not reflect the overall situation. There may be male athletes in situations as bad as female athletes. Find the answers to as many of the questions outlined in this playbook as possible. Another reason why a group may be more effective than an individual is that other supporters may have additional sources of information.

Once you have gathered as much information as you can and you believe the school is in violation of Title IX, you must then decide how to proceed.

So, go ahead and consider these solutions:

1. After finding your institution's designated Title IX officer, present the situation to them. That officer may decide to bring the situation to the institution's attention.
2. Ask a sympathetic member of an athletic council, a faculty member for example, to present the information to that group, noting that this situation may put the institution into legal danger. For high schools, present the information to the PTA, school site council or even the school board.
3. Outline the requirements of Title IX for the athletic department, noting where you believe the school may be at risk for violating the law. Be sure to note the ways in which the department can make changes to come into compliance, such as a list of requests from the female athletes. Document that these requests have been made.
4. Suggest to the athletic department that they request technical assistance from the OCR to determine if they are in compliance with Title IX.

5. Find out about your school's grievance procedure and consider filing a complaint through that process.
6. File an administrative complaint with the Office for Civil Rights.
7. Seek legal representation and consider filing a lawsuit.

NOTE: Once you file a complaint or a lawsuit, however, the first five steps above generally will not apply. It must also be pointed out that there are time frames that may apply to taking action, such as statutes of limitations.

Note that the posted options above are not mutually exclusive. You may, for example, want to hold off on filing a complaint or a lawsuit while presenting the institution with the information you have. The athletic department may decide to make changes based on your requests. On the other hand, if your requests are refused, you may then want to file a complaint or lawsuit.

The more allies you can find, the better. Large donors, alumni or the school president, for example, may have particular ties to girls' and women's sports. Letter-writing, e-mail and blog campaigns by parents, alumni or publicity in school, local Web sites, newspapers or alumni magazines are tools that can be used to put pressure on the institution to listen to your requests.

What's the difference between a complaint and a lawsuit?

A **complaint** filed with the Office for Civil Rights is not a lawsuit. Rather, it is an administrative complaint that can be filed by anyone: a parent, an athlete, a team or even a total stranger. All that is required is a letter to the OCR.²⁸

That letter must:

- be signed,
- contain the name and address of the complainant,

- describe the person or group injured by the alleged discrimination,
- identify the institution that is alleged to have discriminated,
- describe the alleged discrimination and
- provide information about when the discrimination occurred.

The complaint should be filed with one of the 11 regional offices ([See Appendix A](#)). Although the complaints must be signed, you may request that your identity be kept confidential.

In cases of specific instances of discrimination, the complaint must be filed within 180 days of the discrimination taking place. If a school's internal grievance procedure is followed, the complaint must be filed within 60 days of the last action of that procedure. Complaints involving a continuing violation may be filed at any time.

The OCR must resolve all complaints in a "timely manner." The OCR says that each case is dealt with on a case-by-case basis, but that on average these are the steps they will mount, as a result of your action:

- Within seven days, the OCR will acknowledge receipt of the complaint.
- Within about 30 days of receiving the complaint, a decision on an investigation is made.
- Over the next month, data is gathered from the school.
- About a month later, the OCR will set up school interviews and go onto campus for investigation.
- The OCR will then decide if the school is in compliance with Title IX. If they find there is discrimination, they will work with the school to come up with a plan to come into compliance.
- Within six months, the OCR attempts to have all complaints resolved.

If you are not satisfied with the result of your OCR complaint, you can appeal the results. Unfortunately, the appeal will most likely be sent to the office that conducted the investigation. **Historically, such appeals have not been effective without substantial new information.**

In past OCR investigations, school attorneys have been present while the OCR investigator is interviewing coaches or athletes. The presence of a school official can have a chilling effect on the information provided by employees or students. Some of the information requested is subjective, and answers may be tempered if the individual interviewed does not wish to appear disloyal. For example, a coach whose team's equipment is marginal may say that it is satisfactory when a school attorney is present but may call it less than satisfactory on another occasion. You may wish to let coaches and athletes know that a school official may be present so they are not surprised. If an attorney is working with you on the complaint, he or she may also request to be present during interviews.

A **lawsuit** is quite different than an OCR complaint, namely lawsuits are filed in a court of law. In order to file a lawsuit, you must have legal standing. Standing is the legal right to bring a lawsuit. Only an individual with a legal right at stake has standing to bring a lawsuit. For example, a coach or athlete impacted by violations of Title IX will have standing to bring a lawsuit.

Interestingly, a lawsuit can provide immediate relief in one way that an OCR complaint cannot. An attorney can ask a court for a temporary restraining order, which can immediately stop an athletic department from carrying out such plans as cutting a team. Additionally, the court can award monetary damages to successful plaintiffs; whereas the OCR does not have this authority. Consult an attorney for more information about whether or not this type of action might be applicable to your situation.

While an individual may proceed pro se (on their own), the assistance of an attorney is highly recommended when filing a lawsuit. Lawsuits can be costly, though some attorneys will accept cases on a pro bono basis. If an attorney takes your case on a pro bono basis you will not have to pay attorneys' fees, although you may have to pay filing costs or other fees. The Women's Sports Foundation provides an attorney referral service, so please contact our Advocacy Office (800.227.3988 or Advocacy@WomensSportsFoundation.org). In addition, [Appendix B](#) lists legal resources that may be available.

If you've come to this point in the playbook, you are quite an informed advocate for girls' and women's sports. The Advocacy Department of the Women's Sports Foundation is available to you via phone (800.227.3988) and e-mail (Advocacy@WomensSportsFoundation.org). Your next best step will be to get into our [Step-by-Step: A Practical Guide to Assess and Achieve Gender Equity in School Sports](#) (www.WomensSportsFoundation.org/StepbyStep). It will guide you on your route to Title IX compliance.

In the meantime, **count down for Title IX:**

It's not enough to just talk about Title IX. Here are IX (9) things you can do!

- IX. Get 9 people to Grade Your School.
www.WomensSportsFoundation.org/GradeYourSchool
8. Call our hotline 800.227.3988 with questions about Title IX.
7. Using only 7 sentences, e-mail us your Title IX sport stories.
Advocacy@WomensSportsFoundation.org
6. E-mail 6 photos, showing fair (or unfair!) practices at your school.
Advocacy@WomensSportsFoundation.org
5. Give 5 Title IX Media Helpers to individuals.
www.WomensSportsFoundation.org/Positions
4. View our video and forward it to 4 of your friends.
www.Vis4Victory.org
3. Check out Step-by-Step: A Guide to Access and Achieve Gender Equity in Sports and take 3 steps to compliance.
www.WomensSportsFoundation.org/StepByStep
2. Contact 2 of your elected officials and ask them to speak up for girls' sports.
1. Be the next 1 to take our [online survey](#) and sign up for the V is for Victory. So is IX. campaign.

Appendix A: Office for Civil Rights Regional Offices

U.S. Department of Education
Office for Civil Rights National Headquarters
Mary E. Switzer Building
400 Maryland Ave. SW
Washington, DC 20202
t 800.421.3481
TDD 877.521.2172
f 202.245.6840
e OCR@ed.gov

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
Office for Civil Rights, Boston Office
U.S. Department of Education
33 Arch Street, Suite 900
Boston, MA 02110-1491
t 617.289.0111
f 617.289.0150
e OCR.Boston@ed.gov

New Jersey, New York, Puerto Rico, Virgin Islands
Office for Civil Rights, New York Office
U.S. Department of Education
32 Old Slip, 26th Floor
New York, NY 10005-2500
t 646.428.3900
f 646.428.3843
e OCR.NewYork@ed.gov

Delaware, Maryland, Kentucky, Pennsylvania, West Virginia
Office for Civil Rights, Philadelphia Office
U.S. Department of Education
Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
t 215.656.8541
f 215.656.8605
e OCR.Philadelphia@ed.gov

Alabama, Florida, Georgia, Tennessee
Office for Civil Rights, Atlanta Office
U.S. Department of Education
61 Forsyth Street, S.W., Suite 19T70
Atlanta, GA 30303-3104
t 404.562.6350
f 404.562.6455
e OCR.Atlanta@ed.gov

Arkansas, Louisiana, Mississippi, Texas
Office for Civil Rights, Dallas Office
U.S. Department of Education
1999 Bryan Street, Suite 1620
Dallas, TX 75201-6810
t 214.661.9600
f 214.661.9587
e OCR.Dallas@ed.gov

North Carolina, Virginia, Washington, D.C., South Carolina
Office for Civil Rights, DC Office
U.S. Department of Education
1100 Pennsylvania Ave., NW., Rm. 316
P.O. Box 14620
Washington, D.C. 20044-4620
t 202.786.0500
f 202.208.7797
e OCR.DC@ed.gov

Illinois, Indiana, Minnesota, Wisconsin, Iowa, North Dakota
Office for Civil Rights, Chicago Office
U.S. Department of Education
Citigroup Center
500 W. Madison Street, Suite 1475
Chicago, IL 60661
t 312.730.1560
TDD 312.730.1609
f 312.730.1576
e OCR.Chicago@ed.gov

Michigan, Ohio

Office for Civil Rights, Cleveland Office
U.S. Department of Education
600 Superior Avenue East, Suite 750
Cleveland, OH 44114-2611
t 216.522.4970
f 216.522.2573
e OCR.Cleveland@ed.gov

Kansas, Missouri, Nebraska, South Dakota, Oklahoma

Office for Civil Rights, Kansas City Office
U.S. Department of Education
8930 Ward Parkway, Suite 2037
Kansas City, MO 64114-3302
t 816.268.0550
f 816.823.1404
e OCR.KansasCity@ed.gov

Arizona, Colorado, New Mexico, Utah, Wyoming

Office for Civil Rights, Denver Office
U.S. Department of Education
Cesar E. Chavez Memorial Building, Suite 310
1244 Speer Boulevard
Denver, CO 80204-3582
t 303.844.5695
f 303.844.4303
e OCR.Denver@ed.gov

California

Office for Civil Rights, San Francisco Office
U.S. Department of Education
50 Beale Street, Suite 7200
San Francisco, CA 94105
t 415.486.5555
f 415.486.5570
e OCR.SanFrancisco@ed.gov

*Alaska, Hawaii, Idaho, Nevada, Oregon, Montana,
Washington, American Samoa, Guam, and the
Northern Mariana Islands*

Office for Civil Rights, Seattle Office
U.S. Department of Education
915 Second Avenue, Room 3310
Seattle, WA 98174-1099
t 206.220.7900
f 206.220.7887
e OCR.Seattle@ed.gov

Appendix B: Legal Resources and Other Organizations

ACLU-National Capital Area
1400 20th St. NW, Suite 119
Washington, D.C.
202.457.0800
www.aclu.org

American Alliance for Health, Physical Education,
Recreation and Dance (AAPERD)
1900 Association Dr.
Reston, VA 20191
800.213.7193
www.aahperd.org

American Volleyball Coaches Association
2365 Harrodsburg Road, Suite A325
Lexington, KY 40504
859.226.4315
Toll-free: 866.544.AVCA (2822)
www.avca.org

Black Women in Sport Foundation
4300 Monument Avenue
Philadelphia, PA 19131-1690
215.877.1925, ext. 320
www.blackwomeninsport.org/who.html

California Women's Law Center
6300 Wilshire Boulevard, Suite 980
Los Angeles, CA 90048
t 323.951.1041
f 323.951.9870
www.cwlc.org

Feminist Majority Foundation
1600 Wilson Boulevard, Suite 801
Arlington, VA 22209
703.522.2214
<http://feminist.org>

Feminist Majority Foundation
433 S. Beverly Drive
Beverly Hills, CA 90212
310.556.2500
<http://feminist.org>

Legal Momentum
395 Hudson Street, 5th Floor
New York, NY 10014
212.925.6635
www.legalmomentum.org

National Association for Girls and Women in Sport
1900 Association Drive
Reston, VA 20191
703.476.3450
www.aahperd.org/nagws

National Association of Intercollegiate Athletics
1200 Grand Blvd.
Kansas City, MO 64106
t 816.595.8000
f 816.595.8200
NAIA Rules Hotline: 816.595.8180
<http://naia.cstv.com>

National Collegiate Athletics Association (NCAA)
700 W. Washington Street
P.O. Box 6222
Indianapolis, Indiana 46206
www.ncaa.org

National Federation of State High School Associations
PO BOX 690
Indianapolis, IN 46206
t 317.972.6900
f 317.822.5700
www.nfhs.org

National Women's Law Center
11 Dupont Circle NW, Suite 800
Washington D.C. 20036
202.588.5180
www.nwlc.org

Northwest Women's Law Center
907 Pine St., Ste. 500
Seattle, WA 98101
Administration: 206.682.9552
Legal Information & Referral: 206.621.7691
TTY 206.521.4317
www.nwwlc.org

Public Justice National Headquarters
1825 K Street, NW
Suite 200
Washington, DC 20006
202.797.8600
www.tlpj.org

Southwest Women's Law Center
1410 Coal Avenue SW, Albuquerque, NM 87104
t 505.244.0502
f 505.244.0506
www.swwomenslaw.org

U.S. Olympic Committee National Headquarters
1 Olympic Plaza
Colorado Springs, CO 80909
719.632.5551
www.usoc.org

Women's Basketball Coaches Association
4646 Lawrenceville Highway
Lilburn, GA 30047
770.279.8027
www.wbca.org

Women's Law Project
125 S. 9th Street, # 300
Philadelphia, PA 19107
t 215.928.9801
f 215.928.9848
www.womenslawproject.org

Women's Sports Foundation
1899 Hempstead Turnpike, Suite 400
East Meadow, NY 11554
516.542.4700
800.227.3988
www.WomensSportsFoundation.org

Appendix C: Online Resource Organizations

The National Coalition for Women and Girls
in Education
www.ncwge.org

The National Organization for Women
<http://now.org>

National Women's Law Center
Level the Playing Field
www.fairplaynow.org

Title IX Info
www.titleix.info

U.S. Department of Education: Equity in Athletics
Disclosure Act (US Department of Education)
www.ed.gov/inaid/prof/resources/athletics/eada.html

Endnotes

- 1 20 U.S.C. §§1681-87 (2000), as amended by the Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. (1988) (codified at 20 U.S.C. §1687).
- 2 See *Horner v. Kentucky High School Athletic Association*, 43 F.3d 265 (6th Cir. 1994). *Communities for Equity v. Michigan High School Athletic Association*, (459 F.3d 676) (6th Cir. 2006).
- 3 While the language of the statute states “no person,” rather than “no student,” nevertheless certain courts have either rejected use of Title IX to cover employment related sexual discrimination in education institutions or have instead directed compliance with another federal statute. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(i) (2000), which prohibits sex discrimination by employers that employ a minimum number of employees. See also the Equal Pay Act of 1963, as amended, 29 U.S.C. § 206(d), (d)(1) (2000).
- 4 Title IX Policy Interpretation, 44 fed. Reg. 71,413 [hereafter cited as Policy Interpretation].
- 5 2007-2008 Participation Survey, National Federation of State High School Associations. <http://nfhs.org/core/contentmanager/uploads/2007-08%20Participation%20Survey.pdf>
- 6 2005-2006 NCAA Gender Equity Report National Collegiate Athletic Association. www.ncaapublications.com/Uploads/PDF/GenderEquityRept-Final6f8612fc-aacf-4cf1-859a-0b556c6124f9.pdf
- 7 See *supra* notes 4, 5
- 8 34 C.F.R. §106.37(c) (2002).
- 9 U.S. Department of Education, Office for Civil Rights, Title IX Athletics Investigator’s Manual (1989) at 10 [hereinafter cited as Investigator’s Manual].
- 10 Investigator’s Manual at 21.
- 11 *Id.*
- 12 Policy Interpretation at 71, 413.
- 13 *Communities for Equity* 459 F.3d at 676.
- 14 Investigator’s Manual at 55.
- 15 Investigator’s Manual at 43.
- 16 *Id.* at 46.
- 17 Letter of Finding, Office for Civil Rights, Denver Regional Office, 22 (January 30, 1990) (Ref: 08-89-2019) [hereinafter cited as Jan. 30, 1990, Letter of Finding].
- 18 Investigator’s Manual at 91.
- 19 *Id.* at 93.
- 20 *Id.* at 100.
- 21 April 29, 1991, Letter of Finding at 23-24.
- 22 Investigator’s Manual at 80-82.
- 23 *Id.* at 14.
- 24 National Collegiate Athletic Association, Guide to Title IX & Intercollegiate Athletics (2d ed. 1991), at 14-15.
- 25 See *Jurupa Unified School Dist.*, OCR File No. 09-91-1222 (Feb. 7, 1995).
- 26 *Id.*
- 27 Letter of Finding, Office for Civil Rights, Dallas Regional Office (April 22, 1991) (Ref: 06-91-1056).
- 28 US Department of Education, (May 9, 2008). How to File a Discrimination Complaint with the Office for Civil Rights. Retrieved March 27, 2009, from Office for Civil Rights Web site: www.ed.gov/about/offices/list/ocr/docs/howto.html?src=rt

About the Women's Sports Foundation

The Women's Sports Foundation—the leading authority on the participation of women and girls in sports—advocates for equality, educates the public, conducts research, and offers grants to promote sports and physical activity for girls and women.

Founded by Billie Jean King in 1974, the Women's Sports Foundation builds on her legacy as a champion athlete, advocate of social justice, and agent of change. We strive for gender equity and fight discrimination in all aspects of athletics.

Our work shapes public attitude about women's sports and athletes, builds capacities for organizations that get girls active, provides equal opportunities for girls and women, and supports physically and emotionally healthy lifestyles.

The Women's Sports Foundation is recognized worldwide for its leadership, vision, strength, expertise, and influence.

For more information, please call the Women's Sports Foundation at 800.227.3988 or visit www.WomensSportsFoundation.org.



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