TITLE IX: An Overview of Athletic Compliance

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General Counsel

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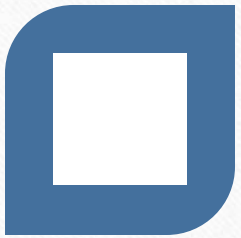


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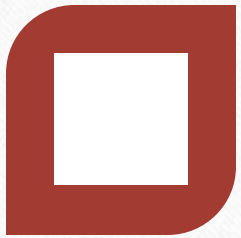
AGENDA



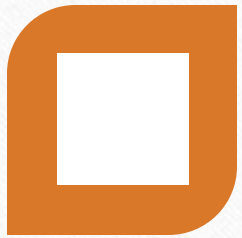
AN OVERVIEW OF TITLE IX IN ATHLETICS



EVOLUTION OF TITLE IX IN COURTS



THE THREE PRONG TEST



DISTRICT TITLE IX ATHLETIC PROCEDURES



QUESTIONS

Housekeeping- Updated Laws and Policy Guidance

- Alabama Law: Act 2025-3, Effective October 1, 2025
- https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/
- https://www.ed.gov/about/news/press-release/us-department-of-education-enforce-2020-title-ix-rule-protecting-women
- https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl-109477.pdf

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WHAT IS TITLE IX??

- **"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal Financial Assistance,"**
- **Title IX of the Education Amendments of 1972**
- **("Title IX"), 20 U.S.C. 168.**

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A BRIEF HISTORY OF TITLE IX IN ATHLETICS



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Prior to the implementation of Title IX, opportunities for women to participate in organized sports were limited to primarily intramurals and club teams.

1972

Statute Enacted

1974

Title IX regulations Implemented, Addressing Athletics

1980

After US DOE Established, Enforcement of Title IX shifts to OCR

1996

OCR and the 3 Prong Test



NOT JUST A SPORTS LAW

KEEP IN MIND TITLE IX ALSO COVERS:

SEXUAL HARASMENT

ACADEMIC DISCRIMINATION

WORKPLACE DISCRIMINATION AGAINST STUDENTS, EMPLOYEES, AND FACULTY

A Local Educational Agency Shall Not, On The Basis of Sex:

- Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;
- Provide different aid, benefits, or services; or provide aid, benefits or services in a different manner
- Deny any person any such aid, benefit, or service;
- Subject any person to separate or different rules of behavior, sanctions, or other treatment;
- Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;
- Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;
- Otherwise limit any person it the enjoyment of any right, privilege, advantage, or opportunity.
- 34 C.F.R. § 106.31(a) and (b). See, also, "Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities," U.S. Department of Education, Office of Civil Rights (December 1, 2014).

Statutory and Regulatory Framework

- 20 U.S.C. a 1681 prohibits gender discrimination in education programs that receive federal funds, ether directly or indirectly.
- Title IX does not reference athletic programs, but regulations promulgated by OCR at 34 CFR Part 106 do address athletics.

Enforcement and Potential Liability

OCR complaint

- Investigations
- Voluntary compliance-resolution agreements
- Loss of federal funding

Lawsuit

- Referral of the violation to the Department of Justice for judicial action
- Private Cause of action
- No administrative remedy requirement
- No cap on award

SOME EXAMPLES OF POSSIBLE SEX-BASED DISCRIMINATION:

Sex-based discrimination in a school's science, technology, engineering, and math courses and programs, i.e. Not allowing any females to participate in math field day: "Girls are bad at math; they will bring our scores down".

Criticizing male students when they speak up in class: "I find that boys disrupt class when I let them talk".

Making fun of a student based on stereotypes: "Ask him, he knows how girls feel about things".

Telling boys they cannot have long hair but girls can.

Not allowing a pregnant high school student, who has been ordered to stay on bed rest, to complete her schoolwork from home.

HOW IS TITLE IX APPLIED TO ATHLETICS?



Overall athletic program of a school- not just to specific sports or teams



Intramural sports, physical education courses, and other school-sponsored athletic programs

IMPACT ON ATHLETIC PARTICIPATION

1973- approximately 294,015 FEMALES (ONE OUT OF EVERY 27 HIGH SCHOOL)

TODAY- OVER 900% INCREASE IN FEMALES TO 3.2 MILLION

ATHLETIC OVERVIEW OF EQUIVALENCE

- Test of compliance is equivalence
- *I.e.* there must be no disparity between boys' and girls' programs
- Nondiscriminatory factors can account for differences, such as the different equipment needs for the football and field hockey teams.

To determine if differences are caused by discrimination, OCR looks for a "disparity" between the boys' and girls' programs.

DISPARITY OVERVIEW

DISPARITY

- Difference, on the basis of sex, in benefits or services, which negatively impacts athletes of one sex compared to athletes of the other sex.

SIGNIFICANCE OF THE DISPARITY?

- Compare the disparities of the men and women's programs
- Female disparities > men disparities = Finding of overall noncompliance under Title IX.

EQUIVALENCE AND DISPARITY 3 MAJOR ATHLETIC AREAS

- Effective accommodation of student interests and abilities- *i.e.* OPPORTUNITIES
- Athletic Financial Assistance
- Other Program Component, *i.e.* BENEFITS



EQUIVALENCE AND DISPARITY
3 MAJOR ATHLETIC AREAS

3-PRONG TEST

Proportionality

Program Expansion

Interest and Abilities-
Full Accommodations

Effective Accommodations of Student Interests, i.e **OPPORTUNITIES**



- **Scholarships**

Other Funding Issues:

Municipal Contribution
Booster Clubs
Donations

Athletic Financial Assistance



- Facilities
  - •Equipment
  - •Schedules
  - •Publicity
  - •Coaching
  - •Travel/Allowance
  - •Recruitment
  - •Tutoring
  - •Medical/Training
  - •Housing/Dining

Other Program Components, i.e. **BENEFITS**



AREA 1- Effective Accommodations of Student Interests OPPORTUNITIES

- TITLE IX'S 3-PRONG TEST (ONLY REQUIRED TO SATISFY 1 OF THE TESTS)
- TEST ONE: PROPORTIONALITY: Are opportunities substantially proportionate?
- TEST TWO: PROGRAM EXPANSION: Can the system show a history and continuing practice of program expansion? OR
- TEST THREE: FULL ACCOMMODATION: Can it be demonstrated that the interests and abilities have been fully and effectively accommodated by the present program?

IN OTHER WORDS…

Schools are providing "equivalency" in participation, i.e. equal participation opportunities to their male & female students if:

01

PRONG 1: Athletic participation opportunities for males and females are substantially proportionate to their respective enrollments; OR

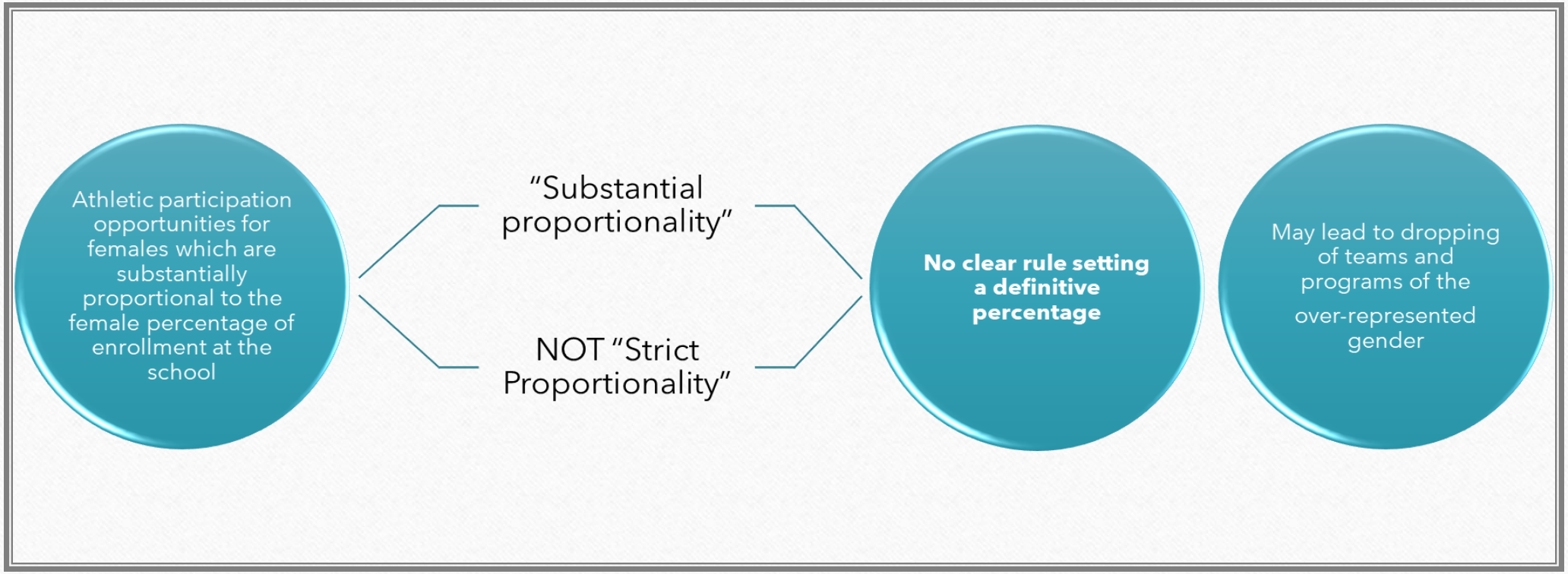
02

PRONG 2: The school has a history and continuing practice of expanding athletic participation opportunities for the underrepresented sex; OR

03

PRONG 3: The school has fully and effectively accommodated the interests and abilities of the underrepresented sex.

TEST 1 OF OPPORTUNITIES: PROPORTIONALITY



TEST 1 EXAMPLE

TOTAL STUDENTS
11,005

FEMALE STUDENTS
6,676 (61%)

MALE STUDENTS
4,329 (39%)

TOTAL ATHLETES
303

FEMALE ATHLETES
119 (39%)

MALE ATHLETES
184 (67%)

22%

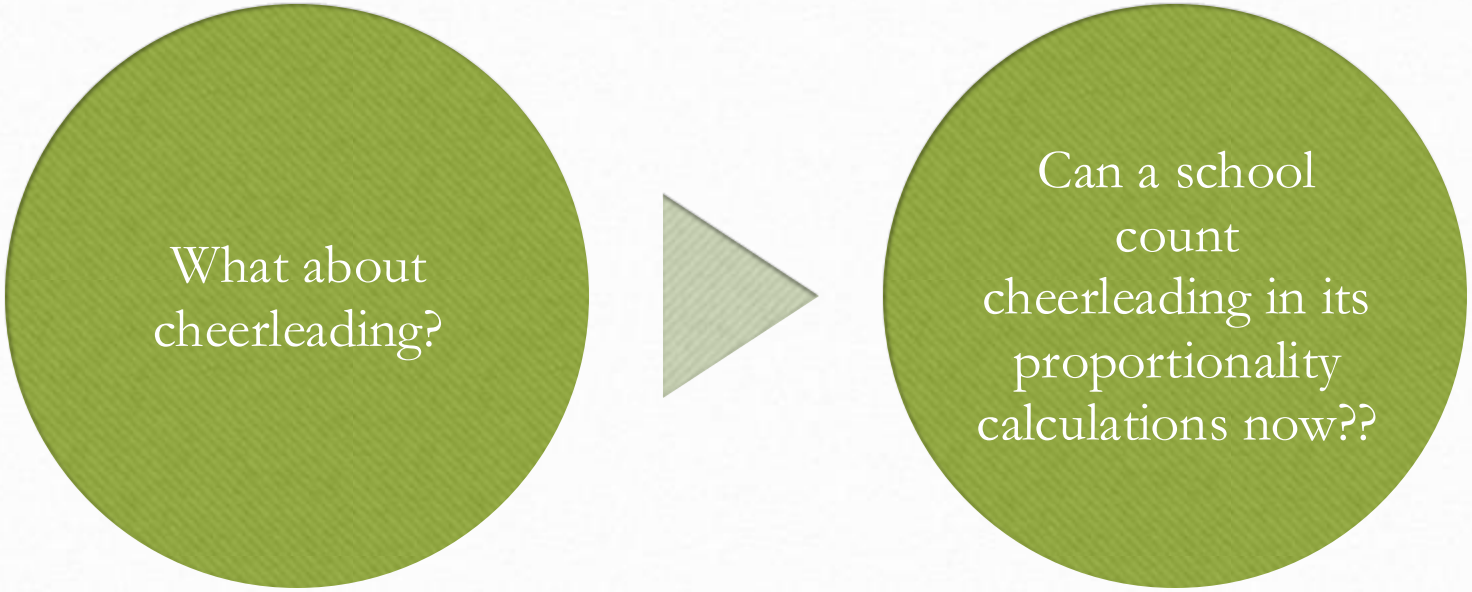
DIFFERENTIAL
Between female enrollment and
Athletic participation

TEST 1
EXAMPLE…

- Percentage of athletes who are female should substantially mirror percentage of students who are girls.
- So, if 50% of students are girls, then about 50% of athletes must be girls.

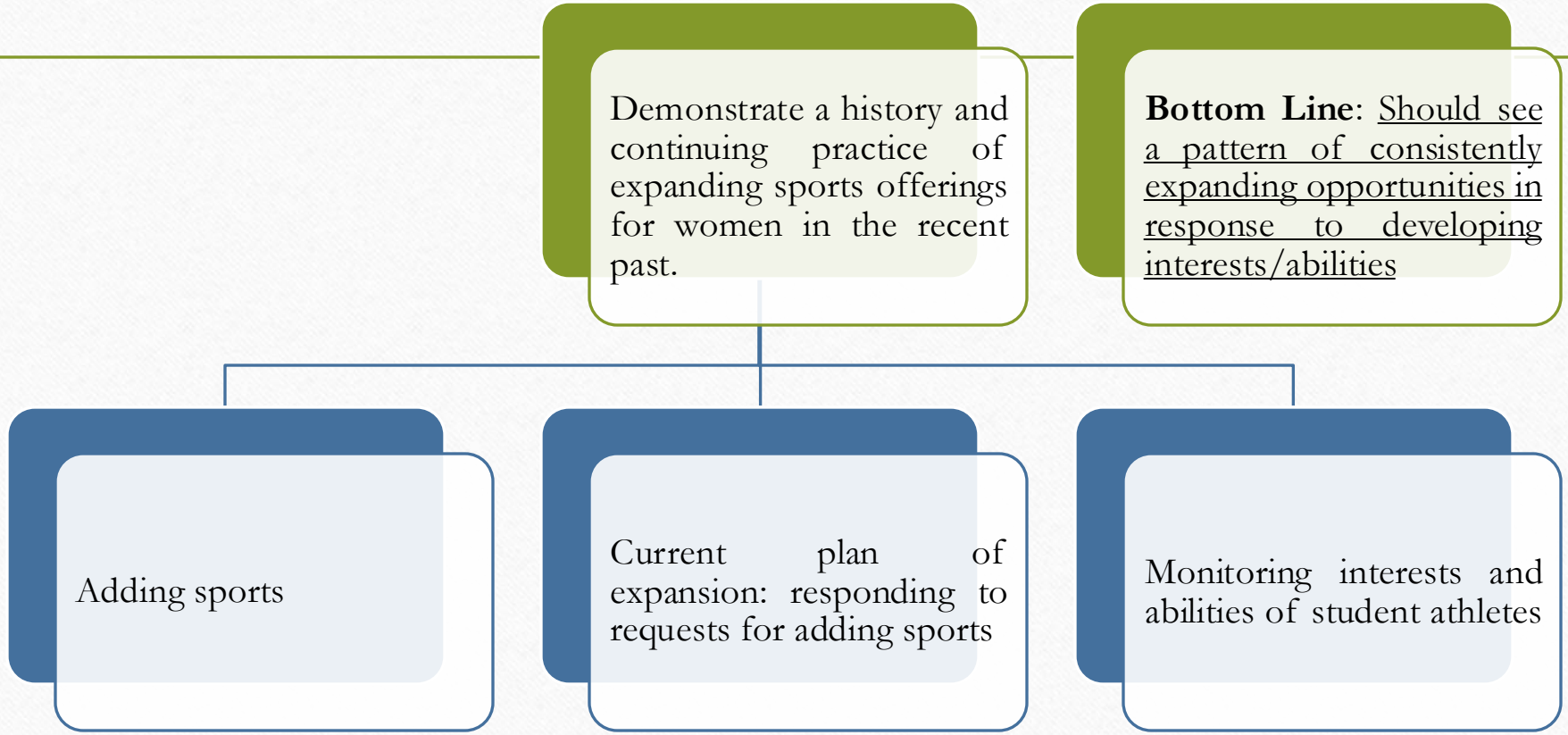
Example: Quinnipiac University Case:

- Cut volleyball and counted cheerleading as a sport to increase participation numbers and to get closer to enrollment percentage.
- Court said reinstate volleyball and can't count cheerleading because too underdeveloped to count as competitive sport.
- Without cheer, 3.62% participation gap (equaling 38 women positions), which does not meet Prong 1.



QUESTION SINCE *QUINNIPIAC*

TEST 2
PROGRAM EXPANSION



TEST 2
CONSIDERATIONS



Past and continuing remedial efforts to provide nondiscriminatory participation opportunities through program expansion



No fixed intervals of time within which a school or institution must have added participation opportunities



Whether program expansion was responsive to developing interests and abilities of female students



An institution must show more than a history of program expansion; it "must demonstrate a continuing *(i.e,* present) practice of program expansion as warranted by developing interests and abilities"

TEST 3 FULL ACCOMODATIONS

School may show it is fully and effectively accommodating female students' athletic interest and abilities:

- Is there unmet interest in a particular sport? Yes/No
- Is there sufficient ability to sustain a team in the sport? Yes/No
- Is there a reasonable expectation of competition for the team? Yes/No

Varsity Team is not required every time female students are interested in a sport.

TEST 3
FULL ACCOMODATIONS

- If the answer to all three questions is "YES," OCR will find that an institution is NOT fully and effectively accommodating the interests and abilities of the underrepresented sex and is NOT in compliance with TEST 3.

TEST 3 CONSIDERATIONS

To determine "Fully and Effective," evaluate:

- Requests by students to add or elevate a sport;
- Participation in particular club or intramural sports;
- Interviews with students, coaches and administrators;
- Participation rates in high schools and community leagues in areas from which school draws students; and
- Results of questionnaires regarding interests in particular sports: Student Athletic Interest Survey at least Every Three Years

DO THESE SCHOOLS MEET THE TEST?

TEST 1: Hogwarts High's student body is 49% male, and 51% female. Its athletes are 51% male, 49% female. The 2% gap translates to 40 students.

TEST 2: Potter Regional High last added a team for girls in 2003; there's been no other expansion of girls' opportunities.

TEST 3: Snape High does not offer proportionate opportunities to girls and does not have a history and practice of adding opportunities for them, It sent a survey to female students asking about their athletic interests but got few responses.

BUT WAIT: ARE THESE ADEQUATE DEFENSES?

"Girls are less interested in sports than boys, and boys need them more to stay engaged in School."

"Giving girls additional opportunities to play would require cutting boys' teams."

"Boys' sports bring in more money than girls' sports."

AREA 2
ATHLETIC FINANCIAL ASSISTANCE

Participation/ Accommodation

- 3-Prong Test
- 1. Proportionality
  2. Program Expansion
  3. Full Accommodation

Athletic Financial Assistance

- **Scholarships**
- **Other Funding Issues**
  Municipal Contribution
  Booster Clubs
  Donations

BENEFITS

- Facilities
- Equipment
- Schedules
- Publicity
- Coaching
- Travel/Allowance
- Recruitment
- Tutoring
- Medical/training
- Housing/Dining

AREA 2
ATHLETIC FINANCIAL ASSISTANCE



- MONEY SPENT ON PROGRAMS
- Budgets **do not** have to be equal.
- NOT $ girls = $ boys
- **BUT rather**: Overall impact of expenditures.
- **BUT** if budget levels not being equal causes unequal benefits, then it may be a factor in a Title IX violation.
- **Boys program benefits > girls program benefits:**
  - Increase the benefits for the girls
  - Decrease the benefits for the boys
  - Some of both

AREA 3
BENEFITS

Participation/Accommodation

3-Prong Test

1. Proportionality
2. Program Expansion
3. Full Accommodation

Athletic Financial Assistance

Scholarships

Other Funding Issues
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BENEFITS

Facilities
Equipment
Schedules
Publicity
Coaching
Travel/Allowance
Recruitment
Tutoring
Medical/training
Housing/Dining

AREA 3 BENEFITS, *I.E.* OTHER PROGRAM COMPONENTS



EQUIPMENT AND SUPPLIES

Not $ girls = $ boys

Equivalent amount, quality and suitability of equipment

LOCKER ROOMS, PRACTICE, AND COMPETITIVE FACILITIES

Availability, exclusivity, quality

AREA 3 BENEFITS, *I.E.* OTHER PROGRAM COMPONENTS

TRAVEL AND DAILY ALLOWANCE Method: length of stay, per diem amounts

SCHEDULING OF GAMES AND PRACTICE TIMES: Number of events, length of practices, time of day

COACHING: Opportunity to receive, assignment, compensation

AREA 3: SPACE AND EQUIPMENT



Teams may receive different benefits if the balance of benefits in women's programs is equal to balance in men's programs



Example: Boys' football requires more equipment and storage space than girls' tennis.



Consideration: Are benefits given to the other girls' teams, when aggregated, equal to benefits given to the football team?

AREA 3: FACILITIES AND EQUIPMENT

SOFTBALL VS. BASEBALL FIELDS
The boys' team updated its practice facilities thanks to booster club funds and the team has an enclosed batting cage and electronic scoreboard.
The girls' softball field has no batting cage, and the scoreboard is still manually entered.

YOU DECIDE…

- The girls' softball team must use a city field several miles from school. The boys' baseball team has a convenient field next to campus.
- An OCR investigation of entire athletic program reveals:

  All boys' teams EXCEPT soccer have good fields near campus.

  All girls' teams EXCEPT softball have a good field near campus.

  Is treatment of the men's and women's programs equal?

You Decide…

Girls' basketball vs. boy's basketball facilities

Two gymnasiums- one new, the other smaller and older

The boys use the larger, newer gym because it is closer to the boys' fieldhouse and locker rooms

---

The girls use the older gym for practices.

TREATMENT IN SCHEDULING

1

PRIMETIME GAMES FOR BOYS VS GIRLS

2

The varsity boys' basketball games are at 7 p.m. each Friday

3

The girls' varsity team plays at 4 p.m. each Friday.

TREATMENT IN PUBLICITY

The booster club provides the game programs for the boys' Baseball team.
Three boys' teams were Photographed for pocket-sized School calendars vs. one for the Girls.
The school sports' website is framed with photos of male athletes.

AREA 2 & 3 OVERLAP:

Compliance may mean equivalent benefits can only be established by providing equivalent benefits to more girls' teams than boys' teams.

Example: New uniforms
Wanting to buy 2 of 8 boys' teams new uniforms
(football and baseball teams)
Say 50% of boy athletes participate on those two team

Equivalence
Need new uniforms for 50% of girls' participation or
4 of 9 girls' teams or 5 of 9 girls' teams

AREA 2 & 3 OVERLAP BOOSTER CLUBS



Financial Assistance and Treatment



Football booster provides brand new weight room



"Other athletic benefits" isn't limited to benefits paid directly by the school.



Booster clubs, team fund-raising activities and by any other source.



Municipal complexes? Joint ventures?

ADEQUATE DEFENSES TO UNEQUAL TREATMENT?

"There aren't enough fields or facilities to allow girls and boys to play in the same season."

"More people come to the boys' games so they deserve the better schedule."

COMPLIANCE RECOMMENDATIONS: New Guidelines



- **Designation of Title IX Coordinator**
- **Student Athletic Interest Survey**
  - At least once every three years
- **Title IX Campus and Team Athletic Benefits Worksheet**
  - Each School Year
  - September 30
- **Gender Equity Review Committee**
  - Title IX Coordinator, administrators, AD, Coaches, boosters,
  - Parents, Student
  - Meet Three times
  - Review expenditures/create action plans
- **Permanent Title IX File**
- **Annual Verification**

COMPLIANCE KEY SUGGESTED DEADLINES

August

Selection of Title IX Coordinator and Identification of GERC Committee

1 Sep.

Submission of campus Title IX Coordinator and GERC Membership list to BCPSS Title IX Coordinator

30 Sep.

Recommended completion of Title IX Campus Athletic Benefits Worksheet

Sep.–Oct.

First Fall Meeting of GERC

15 Oct.

Submission of title IX Campus Athletic Benefits Worksheet to BCPSS Title IX Coordinator

1 Dec.

Submission of GERC Annual Title IX Campus Action Plan to BCPSS Title IX Coordinator

Feb.–Mar.

Winter Sports Review Meeting of GERC

May

Final Review Meeting of GERC

QUESTIONS???

