



TIPS TOWARDS TITLE IX

Tips Towards Title IX is presented to athletic directors, particularly at the high school level. In particular, the **Tips Towards Title IX** follow a pattern to **Discover** (what's going on); **Dream** (what equity should look like, which is directly from the legal standards); **Design** (elements that lead to compliance) and then, all you need to do is **Deliver** and make it happen!

So, on to the **Tips Towards Title IX**, which target the highly specific questions ADs often ask us. Please contact the Women's Sports Foundation with further queries, and we'll work through an answer with you. Advocacy@WomensSportsFoundation.org Some of the questions (frequently asked by athletic directors like yourselves) have a clear Yes or No answer. Others will only be determined as you **Discover** more about your program's current status.

A. 'BASIC' COMPLIANCE

Discover: It is essential that schools perform their own internal assessment to evaluate whether they are in compliance with all of the Title IX standards. There are self audit materials available through WSF, NIAAA, and several state associations or departments of education.

1. A school sponsors an equal number of sports for girls and boys. Does this mean that they are automatically in compliance with Title IX?

No. Title IX requires an analysis of overall equivalence of opportunity to participate in sports that is much more complex than mere equality in the number of sports offered.

Dream: What would the numbers (and program) look like, across the spectrum of seasons and sports, to be acceptable? What alterations have been made in the recent and not to recent past? What plans are in the works for greater balance, if there is a gender disparity? What student interests and needs are met?

Designs for Compliance:

- Add more female levels of play (varsity, jv and 9th grade) during seasons so that participation opportunities will, overall, be fair.
- Add more female sports teams to intersect district, charter, independent or other school leagues.
- Have no-cut policies on teams except football.
- Intentionally open some sports to co-ed play (have the district golf programs "go" co-ed).

2. How does a school determine if it is "fully" and "effectively" accommodating the athletics interest and abilities of their female students?

Discover: One possibility is to use a written survey completed by your school's female enrollment to identify areas of athletic interests. However, a survey alone cannot be the only means of compliance. A second possibility is to review non-interscholastic sports programs, including intramurals, club sports, physical education courses, community sports programs and other area recreational sports programs to assess any trends in female sports interests. A third option is to review what other schools, leagues and state associations in your school's area of competition are doing to meet the growth and trends in athletics interests of their female students.

Dream: Compliance (and the *spirit* of the Title IX law) means girls (and boys) as part of their growth and development, are active and involved in athletics. Sport opportunities would match students expanding skill set and reflect their interests, culture, community and programming options.

Designs for Compliance:

- Develop an athletic survey for female athletes and have it completed during a daily homeroom period.
- Review results and compare with current programs offered.
- Investigate programs being offered in the community.
- Review programs being offered at other league schools at a monthly athletic director's meeting.

3. If Title IX requires overall equivalence of opportunity in educational opportunities to both genders, will participation the school's students in music, drama, debate and other extracurricular activities be considered in assessing whether the school is in overall compliance with Title IX?

No. Equity in athletics opportunities is evaluated independently of these other activities.

Discover: Other activities do fall within the jurisdiction of the anti-discrimination statutes and that participation in these other activities may not be limited by gender.

Dream: It is beneficial for all students when gender stereotypes are eliminated across the academic and co-curriculum. (The term co-curriculum is used to support the value of learning that parallels traditional coursework.)

Designs for Compliance:

- Have advisors of Fine Arts co curricular programs complete a form listing by gender the number of participants.
- Review the results compiled in the survey.
- If necessary, advertise to the student body the positive factors of joining these groups.
- At sophomore orientation, discuss membership in these groups to students new to the high school.

B. BUDGET

4. Does Title IX require that 50 percent of a school's athletic budget be spent on girls' programs and 50 percent be spent on boys' programs?

No. The key to allocating financial resources under Title IX is the overall impact of expenditures.

Discover: Does the school's allocation of financial resources provide equality of athletics opportunity and athletics benefits to both boys and girls. Title IX does not require a strictly proportional division of dollars with the exception of athletic scholarships which are not a high school issue.

Dream: Commit to fairness first and then explore and expand budgets from that starting place. A paucity of resources should not to be hidden from public scrutiny any more than an unbalanced distribution of resources. Focus on the equitable rights of every child to have a safe and successful sport experience.

Designs for Compliance:

- Develop a form that lists each athletic team.
- Each year enter the amount that is budgeted for equipment and uniforms.
- Compare these amounts on a yearly basis.
- Develop a three year cycle for the purchase of uniforms and a five year cycle for warm-ups for all teams.

5. A school offers a boys' varsity soccer team but only a girls' club soccer team. There is not enough money in the athletic budget or, the school board will not appropriate the money to upgrade the girls' soccer team to varsity status. Is this a violation?

Discover: Assuming that there has been a request for the club team to upgrade to varsity level, that adequate competition for a varsity team exists, and that girls are unlikely to make a boys' team in that sport, a violation may exist. If participation rates at the school are not already "substantially proportional," then failure to upgrade the club sport may constitute a failure to "fully and effectively accommodate women's athletics interests and abilities."

Dream: Budget constraints are not a valid excuse which will justify an overall lack of equivalent opportunity for female students. Since cutting the boys' team is not in keeping with Title IX, broaden the approach to the whole program to support overall compliance.

Designs for Compliance:

- Develop a rationale for changing the status from a club team to a varsity team.
- Forward this information to the Director of Secondary Education and the Superintendent.
- Prepare a report to present at a school board meeting, calling for a vote.

6. A school has a number of improvements that it would like to make to their girls' athletic programs, but they simply do not have the funds to make the changes. If the school is technically out of compliance with Title IX, but there is no way they can afford to remedy the situation, what can they do?

Discover: The Federal Courts and the OCR have consistently ruled that lack of money is not a valid excuse for discrimination and will not excuse a school's failure to remedy the inequities between programs. The school's athletic personnel should also essentially reevaluate as in a "zero-based budget" structure the present allocation of budgetary resources as if the school was creating an athletic program from scratch and allocating resource for the very first time. (The "this-is-the-way-we've-always-done-it" attitudes of self-interest and turf-protection will be a common barrier and interference with this process.)

Dream: Overall equivalence in opportunity is the key to compliance, thus the school should search for innovative methods of providing counterbalancing benefits to the girl's programs which might help to reestablish overall equity.

Designs for Compliance:

- Review a list of alumnae and special interest groups for solicitation of donations.
- Meet with community organizations for possible donations.
- Investigate corporate sponsorship. Names or company logos could appear at or on a facility.
- Obtain school board approval for these sponsorships.

C. BOOSTER CLUBS AND FUNDRAISING

7. How do booster clubs effect Title IX compliance?

Discover: Athletic directors and school officials as well as school boards have a difficult time understanding this concept. They generally do not "get" why a particular booster club that works hard to raise money for a particular sport can invoke a Title IX imbalance. With today's school budgets under so much pressure, this has become an increasingly stressful issue for ADs. School districts tend to AVOID overseeing sports (or other) booster clubs.

Sometimes, the only way people will "get" this is to imagine a scenario where every dollar spent is fueled solely by special interest groups. Taking a possibility to hyperbole (all the schools "extra" money goes into the Spellers Club just because last year's National Spelling Bee winner was from that school, we have a school legacy of great spellers and the teacher's very pushy) can demonstrate how funds can be driven by particular person or program. It is imperative that school districts have Board Policies governing booster clubs to the benefit of all students.

Dream: Schools must ensure that, in an overall sense, considering all athletic programs, that comparable benefits are provided to boys and girls. Booster club support must be included in this evaluation, therefore the school must take care to monitor and ensure that the extra booster club support does not create an imbalance between the boys' and girls' athletic programs.

Designs for Compliance:

- Contact the president of the state athletic director's association to determine if a school district has a comprehensive policy for booster club donations.
- Review this policy and see if changes should be made for your respective school.
- Submit to school district solicitor for possible changes.
- Have policy presented to school board for approval.

8. A school's athletic budget is divided equally between boys' and girls' programs, but the booster clubs provide more extra benefits to boys' football and boys' basketball than to any other boys' sports or to any girls' sports. Is this a violation?

Discover: Booster club support must be included in any transparent financial evaluation, therefore the school must take care to monitor and ensure that the extra booster club support does not create an imbalance between boys' and girls' athletic programs.

Dream: Schools must ensure that, in an overall sense, considering all athletic programs as a whole, that comparable benefits are provide to boys and girls.

Designs for Compliance:

- Have one school booster club fund, supporting co-curricular activities.
- Appoint the school bookkeeper to oversee all submission of funds.
- Review of all funds should be accomplished by a school-wide administrator *with* the athletic director and other professional colleagues.

9. Several coaches and teams work very hard carrying out fund-raising activities of their own to raise extra money to buy new uniforms, pay for extra equipment and finance extra team trips. If boys' teams raise more money with such fund-raising activities, will this create a Title IX violation?

Discover: It is important to remember that all athletics benefits and resources, whatever their source, must be considered in evaluating compliance with Title IX. Therefore, technically, even money from team fund-raising activities and the items purchased with that money, must be considered in assessing overall equivalence between programs. Again, school district personnel have a difficult time understanding how money raised by a coaching staff or team can create an imbalance. Many schools 'look the other way' when it comes to this issue.

Dream: The source of funds is irrelevant. Booster funds, outside donations, alumni contributions do not relieve a school district from the obligation to provide equal benefit.

Designs for Compliance:

- Have coaches of the same sex teams meet to plan joint fund raising activities.
- Combine the efforts of both booster clubs and interested parents.
- Organize a joint event and review the results.

D. COACHES

10. Does Title IX require that a school hire women to coach girls' athletic teams?

No. Title IX mandates that the school's female student-athletes should have access to a comparable quality of coaching as the male student-athletes.

Discover: There are also a variety of Federal and state employment laws that exist which are separate and distinct from Title IX and which make it clear that you may not discriminate on the basis of gender in the recruitment and hiring of coaches.

Dream: The relevant criteria are the expertise, experience, success of your coaching candidates, not their gender. Expertise is not just specific to sport skills however. Awareness of adolescent psychology

and the patterns of gender differences and similarities are also important. It can be valuable for female (and male) athletes to have gender affirming role models during their adolescent years.

Designs for Compliance:

- Contact nearby colleges/universities Health and Physical Education Departments to identify prospective candidates.
- Contact district personnel to target candidates from nearby schools.
- Advertise positions in local newspapers.
- Meet with students' teachers to determine interest and qualifications.

11. What is a school's obligation to hiring coaches and compensating coaches for girls' and boys' teams?

Discover: The OCR will look at the opportunity to receive coaching and the assignment and compensation of coaches. The focus of the OCR inquiry is whether female athletes at a school have access to the same quality and expertise of coaching as the male athletes at the school. If assignment of coaches to girls' teams is an "afterthought" not involving the same level of recruitment effort, evaluation, compensation, support as the coaches of the boy's teams, the school is facing a potential Title IX compliance problem.

Dream: The overall key is whether female athletes have access to the same quality of coaching as male athletes.

Designs for Compliance:

- Develop a list of competencies that will be used to hire male and female coaches.
- Develop the specific requirements pertaining to time commitment for each position.
- Review salary scale for discrepancies.
- Meet with union leaders to resolve any discrepancy.

E. CHEERLEADERS

12. Is there a violation if a school provides cheerleaders, a pep band, or a drill team at all home boys' basketball games, but nothing for the girls' basketball home games?

Yes. This has been evaluated by the OCR as part of the other benefits area dealing with publicity and support services. Unless some counterbalancing extra benefit is being provided to the girls' team (some other form of publicity) then a violation probably occurs.

Dream: The key is overall equivalence of benefits. The safest strategy for athletic directors is to avoid glaring differences regarding the same type of benefit between same-sport teams.

Designs for Compliance:

- For all same sex teams have the cheerleaders remain home for all games.
- There will probably need to be some discussion on the topic of breaking down gender stereotypes with this topic. Often comments will be made by both girl's teams and cheerleaders that they think it is weird or "gay" to cheer for girls. Or, they may see male cheerleaders as "gay."
- Several schools in PA solve this issue by requiring their cheerleading squads to cheer at only home games for both the boys' and girls' teams.

13. Can a school count cheerleading in their substantial proportionality calculations?

No. Despite the fact that cheerleading, dance team, and other related activities are competitive activities requiring a high degree of athleticism and which provide regularly scheduled "contests" very similar to any other sport, the OCR does not at this time consider these activities as sports for purposes of complying with Title IX.

Discover: A few states are challenging this issue. Illinois and Virginia's (to name two), state interscholastic athletic associations recognize competitive cheerleading as a sport and consequently

allow schools to count them. Pennsylvania (PIAA) is looking into sponsorship of cheerleading as a competitive sport. (Also, refer to the OCR's definition of a sport.)

Dream: The key factor here is that sport opportunities are considered different from cheerleading, pep squads, poms, drill and dance teams and so on. This is not to diminish a student's right to participate in a myriad of programs that schools provide and we encourage co-curricular activities for all adolescents.

Designs for Compliance:

- Investigate the interest of sponsoring a competitive cheer team as well as a sideline cheer team.
- Contact other league schools to determine if a competitive schedule can be established.
- Investigate competitions sponsored by national groups.

F. BOYS PLAYING ON GIRLS' TEAMS

14. A school offers volleyball for girls but not for boys. Does Title IX require that a school allow boys to play on the girls' team?

No. Although there have been a few, isolated lawsuits where boys have obtained injunctions to allow them to participate on girls' teams for which their schools offered no same-sport equivalent, the courts generally rule that the purpose of Title IX is to remedy past inequities of athletic opportunities for the "historically underrepresented gender" – females – and that if boys are allowed to participate on girls' teams, they will because of height, weight, and strength advantages come to dominate the membership of those teams, and thereby decrease the competitive opportunities for girls.

Discover: Therefore, in the vast majority of cases, the courts have not permitted boys to play on girls' teams, even if there exists no same-sport boys' equivalent. Also reference WSF position paper on boys' playing on girls' teams.

This is a particular challenging topic for states like Pennsylvania where a state Equal Rights Amendment exists. Pennsylvania also must consider the permanent injunction imposed on the PIAA (Pennsylvania Interscholastic Athletic Association) in 1975 that has virtually tied the PIAA's hands in lending its member schools any assistance with this issue.

Dream: The big picture goal is to provide positive athletic experiences for all youth, including students with disabilities. So, having inclusive programs, during the instructional part of the day is an important introduction to physical activity. This is where the accommodations of good and differentiated teaching matter the most. Sports, an extension of those learning opportunities, have an extended goal. Wouldn't it be wonderful if all (most!) students had a competitive experience that worked for their size, shape, skill level, interest and gender?

Designs for Compliance:

- Connect interested parties with the site and state Title IX Coordinators.
- Investigate the possibility of a parent issuing a law suit about this situation.
- Work to expand opportunities for everyone, following the assurance of a level playing field.
- Sometimes, actions taken on behalf of Title IX equity end up revealing patterns of inequity. One can't use the law to support some fairness over other unfairness.

G. GIRLS PLAYING ON BOYS' TEAMS

15. A school offers soccer for boys but not for girls. Does Title IX require that the school allow girls to play on the boys' team?

Discover: Title IX requires that in non-contact sports where a same-sport girls' team is not offered, girls must be allowed to tryout and participate on the same basis as boys.

Again, this is a particular challenging topic for states like Pennsylvania where a state Equal Rights Amendment exists. Pennsylvania also must consider the permanent injunction imposed on the PIAA

(Pennsylvania Interscholastic Athletic Association) in 1975 that has virtually tied the PIAA's hands in lending its member schools any assistance with this issue.

Dream: This does not mean that a girl automatically gets to be on the team. She has to tryout and make the team on the same basis as any boy would have to tryout and make the team. She can also be withheld from participation on the same basis as a boy – a lack of ability, or a mismatch of size or strength affecting safe participation, or any disciplinary reason.

Designs for Compliance:

- Meet with the female who expressed interest in participating on the boys' team.
- Meet with the coach of the team to discuss issues.
- Conduct a meeting with the athlete, coach and parents. The coach should be ready to discuss the specific abilities needed to be a member of the team.
- Meet with prospective team members to discuss the positive points of the situation.
- Evaluate results of the tryout.
- Meet with the coach and the female team member to discuss specific needs (locker room needs, traveling accommodations, etc.).

H. FILING A COMPLAINT/RETAILIATION

16. Can a coach file a Title IX complaint?

Yes. Players, parents, coaches, and any other third parties may file a Title IX complaint with the OCR (Office for Civil Rights).

Discover: Title IX investigations have been initiated by public interest groups, etc. on behalf of female athletes at a particular school or in a particular state.

Dream:

Designs for Compliance:

- Coaches should follow the chain of command in the school district.
- List complaints and their rationale.
- Meet with athletic director to discuss these points.
- Forward all information to the principal, director of secondary education and superintendent.
- Alert school board members if success does not occur with above mentioned personnel.

I. FILING A COMPLAINT/RETAILIATION

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Discover: Title IX investigations have been initiated by public interest groups, etc. on behalf of female athletes at a particular school or in a particular state.

Dream: Every athlete deserves the best coaching available. Coaches deserve to be trained and informed about their sport and their athletes.

Designs for Compliance:

- It is crucial that coaches have the same protection and rights as their athletes.
- Many successful cases (and thus legal precedents) have been initiated by male and female coaches on behalf of their athletes.
- Knowing the law and understanding the sport specific applications are the first steps.
- Get advice from our PPOs and legal advocates. If you *have a case*, you will make a difference.

18. A school has a coach who has filed several complaints with the OCR because they were unhappy with their team's budget and they felt like their team was not receiving its fair share of the school's total athletic benefits. Can the school fire the coach for filing the complaint with the OCR?

No. Retaliation by a school against a coach, administrator, or any employee for filing a Title IX complaint is unlawful under Federal law and a variety of individual state "whistleblowing" statutes. - Reference *Jackson v. Birmingham*

Discover: Make sure all individuals (including coaches) know that retaliation is not legal.

Dream: *Whistle blowers* are really crucial to advocacy and civil rights work. It makes so much sense (to us) that findings of inequity are identified and rectified. And, the person who brought the information to light, should be acknowledged—even honored. This is sometimes the result. Please know, however, that the effort and energy involved with achieving fairness are not always rewarded. Gratefully, thanks to Title IX, there should never be retribution.

Designs for Compliance:

- Determine the facts—the concrete information that supports your case.
- Review the resources provided by the Women's Sports Foundation.
- Contact your teacher's union, if you are full time faculty in the system.
- Connect with advocates for advice as you move carefully yet directly through grievance procedures.
- Let the media work **for** you by working effectively **with** them.

J. "PRIME TIME" PRACTICE/GAME TIME – NON-TRADITIONAL SEASONS

19. A school's high school varsity basketball games are scheduled as girls' varsity game – boys' varsity game doubleheaders with girls' games always played at 5:00 p.m. and the boys' games in "prime time". Is this a violation?

Discover: This is one factor within the overall assessment of the "game and practice times and scheduling" program area. However, if the school's boys' teams are always scheduled for the more valued times than the girls' teams, then a violation probably exists. The fact that so many schools are resistant to switching to a format where, one-half of the time the boys' games are played first, says much about the still-prevailing attitudes as to which teams is the "most important." This is another difficult stereotype to break at the high school level. Apply the putting the "shoe on the other foot" rule.

Dream: Many schools have resisted making this change because, they argue, the girls' team enjoys playing the second half of their game before the huge crowd arriving for the boys' game. Ironically, many of the schools which have made the change have discovered that when the girls play in "prime time," most of the crowd from the boys' game stay to watch anyway and that the implicit message communicated by the school in this scheduling arrangement – that the girls' game is an equally exciting event – carries over into the attitude of the student body towards the games and towards the women's athletics program as a whole.

Designs for Compliance:

- 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 identical.
- Schedule all league and non-league games in the same manner.
- Alternate starting times if boy/girl doubleheaders have to occur.

This compilation of **TIPS** was created by Women's Sports Foundation Title IX Project Staff (Phyllis Lerner, Sheila Murphy and Peg Pennypacker).