

Playing Fair



A Women's Sports Foundation® Guide to Title IX in
High School & College Sports



Fifth Edition

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This publication was made possible by gifts made in honor of Judy Riddle, a superb athlete and a tireless advocate for equity for female athletes.

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Introduction

*“I know there’s something that’s just not fair here,
but I don’t know what to do about it.”*

Have you ever had that thought in relation to your school’s sports program? Your high school might schedule 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 your college restricts the best facilities for use by the men’s teams. Or the athletic department has been saying for years that there just is not enough money for the women’s intramural soccer team to become varsity team, even though they keep coming up with the money for other things.

Indeed there is something wrong here, and it may be against the law. Girls and women in high schools and colleges have the right to equal opportunity in sports because of a federal law, Title IX of the Education Amendments of 1972. States’ equal rights amendments, the Equal Protection clause of the Fourteenth Amendment to the United States Constitution and other laws may also apply.

Yet many girls and women are denied opportunities or treated like second-class citizens despite these protections. The more you know about the rights of girls and women in sports, the more you will be able to gain those opportunities.

This guide is aimed at helping athletes, coaches, parents, administrators and others to ensure that girls and women receive equal opportunities in high school and college sports. It concentrates on explaining Title IX rules and regulations so that you can do an informal analysis of 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. It will also help you to decide if you wish to file a Title IX administrative complaint or a lawsuit.

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. All schools cited in this guide as violating Title IX in a particular area agreed with the OCR to make specific changes to achieve compliance with the law.

Title IX: What Is It?

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, 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 — 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, citizens 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.

Brief History

Congress enacted Title IX of the Education Amendments on June 23, 1972. The deadline for elementary schools to comply with the Title IX athletics regulations was July 1976.⁴ High schools and colleges had until July 1978. Title IX regulations were originally issued in July, 1975. 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.⁵ The information in this guide includes this Policy Interpretation.

The opportunities for females in high school and college sports multiplied during the years after Title IX was passed. In 1971, only 294,015 girls were participating in high school sports, while there were more than 3.6 million boys participating. By the 1972-73 school year, just after passage of Title IX, the number of girls had more than doubled to 817,073. By 1977-78, that number had risen to 2,083,040. Data from 2002-2003 shows 2,856,358 girls participating in high school sports, while boys’ participation numbers were just below four million.⁶ Similar gains occurred in intercollegiate sports, although the gains were not as spectacular. In 1971, 29,997 women took part in NCAA sports, compared to 170,384 men. By 1977, the number of women had more than doubled to 62,886. By 2002, the number of NCAA female athletes was 157,740, still well below the number of male athletes in 1971. There were 212,140 male student-athletes in 2002.⁷ Athletic scholarships for women were almost non-existent before Title IX. Thirty years after the passage of Title IX, nearly three million females participate in interscholastic sports, while there are over 190,000 female intercollegiate athletics participants. Now there are more than 10,000 scholarships for women athletes.⁸

The power of Title IX was severely limited by the Supreme Court’s ruling in *Grove City College v. Bell*,⁹ where the Court held that only the College’s financial aid program was subject to the federal requirements of Title IX. However, the passage of the Civil Rights Restoration Act in March 1988 re-established Title IX’s institution-wide protection against discrimination.¹⁰

In February 1992, another Supreme Court ruling provided a new tool for enforcement of Title IX. In *Franklin v. Gwinnett County Public Schools*,¹¹ the Supreme Court ruled that monetary damages could be awarded in Title IX cases. Prior to this ruling, the only relief that courts provided was injunctive relief, that is requiring the school to stop the discrimination. By allowing courts to award monetary damages, schools that are found guilty of sex discrimination face a much harsher penalty. As a result, many schools now take Title IX much more seriously than in the past. In fact, monetary damages have already been awarded in several Title IX athletics cases. In response to claims from men’s secondary athletic programs that Title IX

compliance forced the elimination of men's sports such as wrestling and swimming, the George W. Bush administration appointed the Commission on Opportunity in Athletics to review that viability of Title IX in July of 2002. The Secretary of Education determined that the 30th anniversary of Title IX warranted a review of the law that has increased women's participation in sports more than 400 percent at the college level and 800 percent at the high school level since its inception.¹² In February of 2003, the Commission released a report that made recommendations to severely weaken Title IX. Two of the 15 commissioners, Donna de Varona, the first President of the Foundation and two-time Olympic gold medalist, and Julie Foudy, past president of the Foundation and co-captain of U.S. National Women's Soccer Team, filed a minority report defending Title IX. After the efforts of numerous individuals and organizations, the Bush administration announced in July of 2003 that there would be no changes made to Title IX. The Office of Civil Rights announced that the standards for complying with Title IX will remain the same.

The Office for Civil Rights (OCR) of the Department of Education is the primary government office that enforces Title IX. A lawsuit is one way to find relief from discrimination, while an administrative complaint is another. Administrative complaints concerning possible Title IX violations are filed with the OCR. A later section will cover the differences between each type of action. It is important to note that a court of law may look at a specific situation in a different way than the OCR.

How Is Title IX Applied To Athletic Programs?

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

As interpreted by the OCR, Title IX applies to the overall athletic program and not just to specific teams, in most instances. 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 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.

At the high school level, the OCR generally would limit its initial investigation of a complaint to the specific program component cited. Using the above example, that component is access to locker rooms, practice and competitive facilities. It is important in high school complaints to list all the areas in which there may be a potential violation. If a complaint is very narrow, the investigation will likely be narrow as well.

For a college complaint, however, the OCR probably would look not only at facilities but also at all of the program components. The OCR generally reviews the entire intercollegiate athletics program, even when it receives a very specific complaint. An intercollegiate investigation can be limited to one or two of the major areas only if there are unique circumstances.¹³

In case of an overall investigation, each program component is analyzed. The benefits and/or services provided to the men’s program are compared to those provided to the women’s program. Then, the OCR investigator balances any differences found that favor either gender. In the example above, the women’s softball team may not have a good field to play on, but that may be offset if the men’s tennis team does not receive any equipment or uniforms.

Keep in mind that application of Title IX to this example, like many others in this guide, is the application spelled out by the OCR. A court of law does not have to use the OCR’s interpretation of how to apply Title IX. If a lawsuit is filed, courts may have a different view. Depending on the specific situation, a lawsuit may or may not be more likely than an OCR complaint to produce the results you seek.

What is the difference?

For all of the program components except financial aid offered in the nature of athletic scholarships,¹⁴ 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 needs the football and the field hockey teams have for equipment.

To determine if differences are caused by discrimination, the OCR looks for what it calls a “disparity” between the men’s and women’s 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.¹⁵ Being treated differently is not enough.

In a complaint filed against the Agawam Public Schools and similar complaints against several school districts in Massachusetts, the OCR found a difference in opportunities for female and male swimmers to participate in post-season, state-level competition. The girls’ team competed during the winter season while state-wide competition was held in the fall. The OCR found that as a result the district failed to provide equal opportunity for girls to engage in post-season competition. The OCR did find, however, that the district provided, overall, comparable post-season competition opportunities for male and female athletes, with this one exception. The OCR ruled that this difference “does not rise to the level of a violation.”¹⁶ This interpretation is that of the OCR. A court of law might have looked at the situation differently.

The OCR’s 1990 *Title IX Athletics Investigator’s Manual* instructs investigators to determine if there is a disparity in each area and to consider the significance of each disparity. The investigator compares the disparities favoring the entire men’s program with those favoring the entire women’s program. The manual states, “If the disparities are greater for one sex than the other and the difference results in lack of equal opportunity for one sex, then an overall finding of noncompliance is made.”¹⁷ According to the OCR, the disparities between the men’s and women’s programs need not be equal in number to offset each other.¹⁸ One major disparity can offset several less significant ones.

In reviewing many of the OCR’s letters of finding for Title IX athletics complaints written in 1990 and 1991, there was very little evidence of disparities that favored female athletes. In almost all cases, this balancing of disparities between the two sexes was not required. Instead, the critical factor was whether or not the investigator judged that a difference favoring male athletes was great enough to be considered a disparity and thus a violation.

The OCR's approach to Title IX investigation leaves a lot of latitude to the investigator in some areas. The outcome of a specific complaint can depend on the investigator's perception of whether or not the differences between men's and women's programs result in a lack of equal opportunity.

Money

The budgets provided for male and female sports do not have to be equal — after all, those football pads cost more than field hockey sticks. Budgets can indicate where there might be a problem, especially in areas where needs cost the same. 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.

Budget levels are especially important where the dollar limits set by the school cause unequal services. For example, a lack of a recruiting budget that results in few recruiting efforts for the women's program would be considered 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 example, 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 their 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.

Ability to generate revenue also is not a legitimate reason for discrimination. In *Favia v. Indiana University of Pennsylvania*, Judge Maurice B. Cohill, Jr., wrote in his opinion, “We are also sympathetic with the fact that the football team represents a large portion of the dominance of men's teams over female teams at IUP. Football is a high-profile sport; it generates money through ticket sales and undoubtedly heightens the interest of students, alumni and potential students in the university. As a dangerous sport, it is also expensive. Unfortunately, however, Title IX does not provide for any exception to its requirements simply because of a school's financial difficulties. In other words, a cash crunch is no excuse.”¹⁹

Booster Clubs

Booster clubs often contribute to the budgets for athletic programs. Alumni may raise money for specific teams or for the overall athletic program. As a result, the school may have greater resources for specific 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, the booster clubs may provide benefits or services to the men's teams that the women's teams do not receive.

The OCR *Investigator's Manual* notes that a school still must make sure that equivalent benefits and services are provided to members of both sexes. If booster clubs provide benefits to male teams, the school must make sure that the female teams receive equal benefits. The *Investigator's Manual* goes on to say that if booster clubs provide benefits and services to athletes of one sex that the school cannot provide to athletes of the other sex, then the school has to take action to ensure that benefits and services are equivalent for both sexes.²⁰ The school could ask the booster club to provide those equivalent benefits, or it could refuse the booster club's donation.

For example, a high school in New Mexico held post-season banquets for only the boys' football and basketball programs. These were the only programs that generated enough revenue to help pay for banquets. The booster club paid for dinners for team members and coaches of these two teams. The girls' athletic program did not receive equivalent benefits, in terms of awards, banquets and/or services. The OCR found the school to be in violation of Title IX.²¹

Student Interests and Abilities

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 intercollegiate or interscholastic competition, as well as provide those individuals with competitive team schedules.²²

Competitive Opportunities

To determine compliance with Title IX in this area, there are three tests. Passing any one of these tests results in compliance. The first test is to compare the ratio of male to female participants in the athletic program with the ratio of full-time male to female students (undergraduates for intercollegiate investigations).²³ If the resulting ratios are close, the school is most likely in compliance in this area of Title IX.

For example, if the student body is 52 percent male and 48 percent female, and about 52 percent of the participants in the athletic program are male with 48 percent female, then the school is in compliance with Title IX.²⁴ To date, there has been no court decision indicating an acceptable minimum differential of students of one sex compared to the percentage of student-athletes of that same sex.

It should be stressed that equal numbers of teams do not always equal fair opportunities. Different teams may have greatly varying numbers of athletes. For example, a football team may have 95 players on their 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.

The other two tests for when the school does not have proportional representation of women in its athletic population consider:

- ✓ Has the institution shown a history and continuing practice of program expansion for the underrepresented sex?
- ✓ Are the interests and abilities of the underrepresented sex fully and effectively accommodated by the current program?

If the school can show that it meets either of these tests, it complies with Title IX in the area of accommodation of student interests and abilities.

The courts have been firm in noting that the word “continuing” is important when using the second test. Many schools added substantial numbers of women's teams in the 1970s but either kept the status quo or decreased opportunities during the 1980s. In *Roberts v. Colorado State University*, Judge Zita L. Weinshienk

wrote, “the program expansion prong of the effective accommodation test was not intended to stop the compliance inquiry as to any institution that can demonstrate that it has added a women’s sports team sometime in the last three decades. In this regard, the Court rejects as insufficient defendants’ assertion that they have demonstrated program expansion because women’s teams were added at CSU during the 1970s.”²⁵

In the third test, the key words are “fully and effectively.” In *Cohen v. Brown University*, the First Circuit Court of Appeals noted that the third benchmark of the accommodation test “sets a high standard: it demands not merely some accommodation, but full and effective accommodation. If there is sufficient interest and ability among members of the statistically underrepresented gender, not slaked by existing programs, an institution necessarily fails this prong of the test.”²⁶

The court went on to note that this interpretation does not require a school to provide a varsity team every time some female students are interested in a sport. It does mean, however, that opportunities must be provided when there is sufficient interest and ability among the underrepresented sex to sustain a viable team and a reasonable expectation of competition for that team.²⁷

The average NCAA institution has a ratio of about 59 percent males to 41 percent females for its athletes, which is usually not in proportion to its student body.²⁸ Factors other than discrimination may cause the lack of proportionality. For example, a specific school may attract a large population of older female students who are returning to school after having families. These women may be less interested in sports opportunities than younger students.

To determine if a school meets tests two or three, OCR investigators are instructed to determine the following information:

- ✓ When did each men’s and women’s team begin intercollegiate or interscholastic competition? How did the sports get started? Was there a club team first? Intramurals?
- ✓ Has the athletic department dropped any men’s or women’s sports? If so, why were they dropped?
- ✓ How many participants were on each team that was dropped and how did it affect the percentage of athletes who are male or female?
- ✓ If sports have been added, what was the effect on and the percentage of gain to each program?
- ✓ If there have been unsuccessful attempts to add new teams, why were the attempts unsuccessful?
- ✓ What plans are there for adding new sports?
- ✓ Are the written policies, procedures and/or criteria for adding new sports discriminatory in language or effect?
- ✓ Is there interest in any sport not currently being offered?²⁹

With this information, the OCR investigator must determine if the institution has shown a history and a continuing practice of program expansion or if it meets interests and abilities of the under-represented sex (females).³⁰ Additional investigation may be needed. The school may have done surveys to determine if there is interest in other sports teams or opportunities. A fact that can help in determining compliance includes if the school turned down a request from the underrepresented sex for competition in a specific sport. Programs such as club or intramural sports programs, community and regional sports programs, and physical education classes may also show interests that are not being met.

Adding Teams

What does all of this mean if you want to have a team in a specific sport and your school does not offer it? First, you may want to gather the information outlined above to gain a general idea of your school's compliance in this area. If the male to female 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. If they are not, consider a Title IX complaint or lawsuit to force compliance.

Remember, if a complaint is filed, the investigator must find if there is interest by the underrepresented sex in adding opportunities. 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 to form a team. The more you can do to show that 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. If possible, start a club team and raise money to buy equipment. All of these efforts will help to show a need for the team.

If that need is not clearly shown, the OCR is not likely to require the institution to form additional teams. In a complaint filed against the University of Arkansas at Pine Bluff, the OCR's investigation revealed that females made up 61 percent of the students but only 28 percent of the athletes.³¹ The university showed that it had a history of adding opportunities for women and decreasing those for men. It also showed there had been no requests for additional opportunities by female students. The OCR found the school in compliance with Title IX because the interests and abilities of the students were being met. Remember that a court of law may apply Title IX and other laws very differently.

The issue of females trying to prevent elimination of their varsity teams came to the forefront on the collegiate level in the 1990s. However, this period has also coincided with female college athletes seeking judicial relief to elevate club teams to varsity status. Lawsuits filed at the University of Texas, Auburn University, Virginia

Polytechnic Institute and State University and Colgate University resulted in settlements that involved adding women's varsity teams.³² The women's ice hockey team at Colgate University won their case to gain varsity status at the federal district court level, but it was thrown out on appeal on a procedural issue.³³ The students who filed the case lacked standing because they had exhausted their eligibility and would not have benefited from the court's ruling for varsity status. However, a new lawsuit was filed by current students and a settlement was successfully reached in 1998.

Contact Sports

While we noted earlier that Title IX applies to the entire athletic program, not to specific teams, there are certain situations in which a school must offer a specific women's team. The OCR's Policy Interpretation notes that 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 opposite sex under the following conditions:

- ✓ Opportunities for members of the excluded sex have historically been limited.
- ✓ There is sufficient interest and ability to sustain a viable team and reasonable expectation of intercollegiate (or interscholastic) competition for that team.³⁴

For non-contact sports, the following condition is added:

- ✓ 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.³⁵

In other words, if the school offers a contact sport such as basketball to men, there are enough women who want to play to field a team, and there are other teams for that new women's team to play, then the school must offer a women's team.

If, however, there are not enough women 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 females to form their own team or any other teams to play.

For non-contact sports, females need to show that they would not be able to make a coed team. For example, women won both of the NCAA rifle individual national championship titles in 1991 in a coed competition.³⁶ Therefore, women would have a hard time making a case that they need a separate women's rifle team. On the other hand, female swimmers might be able to show that their times would not be fast enough to get on a coed swimming team.

Cutting Teams

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.

For example, the University of Oklahoma planned to drop its women's basketball team, citing that the program was not very successful. There had been a team, which had been able to find enough women to play and other teams to play. Oklahoma planned to continue to have a men's basketball team. Therefore, under the rules just outlined, Oklahoma would have to continue offering women's basketball. The university subsequently reversed its decision.³⁷

On the other hand, if a school decided to drop both men's and women's basketball, that might have been feasible under Title IX. That would depend on their overall sports offering. If the male to female ratio of the athletes was disproportionate with that of the student body, it would be difficult to justify cutting female opportunities. This is especially true coupled with the fact that females have shown their interest and ability by actually playing the sport.

In fact, women's teams that were cut at Indiana University of Pennsylvania (IUP), Colorado State University and Brown University won their court cases. At IUP, for example, the women's gymnastics and field hockey teams were cut and the men's tennis and soccer teams were eliminated. Prior to the cutback, women were 37.77 percent of athletes and 55.61 percent of students. After the cutbacks, women were 36.51 percent of the athletes. The court found that IUP did not meet any of the three possible tests in the area of opportunities to play sports before the cutbacks. "The 1991 cuts simply exacerbated an already existing Title IX violation," wrote the court.³⁸

As the IUP example shows, cutting equal numbers of teams does not mean equally cutting opportunities. In fact, cutting equal numbers of teams decreased the percentage of female athletes at IUP, 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.

Levels of Competition

Title IX does not just cover the quantity of teams and athletes. The quality of competitive opportunities for men and women is also a concern. When determining the quality of competitive opportunities provided to each sex:

- ✓ Compare the number of competitive events provided for each team at the school's declared competitive level (NCAA Division I, Division II, etc.).
- ✓ Determine the percentage of men's and women's events below that level.

There may be a significant difference between the competitive opportunities provided to men and to women. If so, see if the institution has a history and continuing practice of upgrading the competitive opportunities available to the disadvantaged sex.³⁹

Athletic Financial Assistance

Institutions must provide reasonable opportunities for individuals of both sexes to receive athletic scholarships. Scholarships must be awarded in proportion to the number of students of each sex participating in athletics.⁴⁰ Proportionately equal amounts of financial aid must be available to the men's and women's athletic programs.

To determine if this is the case:

- ✓ Determine the proportion of athletes who are female and who are male.
- ✓ Determine the proportion of financial aid that goes to female athletes and to male athletes.
- ✓ Compare the results.

For this section, count athletes if they receive the support normally provided to athletes competing at that school, are participating in organized practice sessions and team activities on a regular basis, and are listed on the eligibility or squad lists maintained for each sport. Also, count athletes if, because of injury, they cannot meet these tests but still receive athletic financial aid.⁴² Count each individual only once even if they compete for more than one team.⁴³

If the comparison is substantially equal, or if a legitimate, nondiscriminatory factor can explain the resulting disparity, the institution is most likely in compliance with Title IX.⁴¹ For example, if two-thirds of the athletes are male and two-thirds of the scholarship money goes to males, that is acceptable under Title IX. The OCR does allow deviation from strict proportionality. The OCR has devised specific statistical tests that determine if that deviation is within its acceptable range, which is

approximately plus or minus one percent or one scholarship.⁴⁴ Note that this range is specifically the one used by the OCR. Although, in the consent decree of an earlier lawsuit, a deviation of only two percent was allowed.⁴⁵

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.⁴⁶ *None of these reasons can be used to offer less financial aid to women.*

At Furman University, an investigation showed that males, who were 74 percent of the athletes, received 80 percent of the aid (\$1,201,896). Whereas, females accounted for 26 percent of the athletes and received 20 percent of the aid (\$308,967). The average award to male athletes was \$4,807.58, with females athletes averaging \$3,432.97. These differences were found to be statistically significant, and thus constituted a violation of Title IX.⁴⁷

This section underscores the importance of making sure that a school is meeting the interests and abilities of its female students. If the school is discriminating by offering inadequate opportunities for females, it will also be able to offer less scholarship money to females. As a result, male athletes in the NCAA receive \$133 million more in athletic scholarships *each year* than female athletes.⁴⁸ *It is therefore doubly important for females to express interest and ask for the opportunities they need.*

An elementary school, junior high or high school probably does not provide athletic financial aid. Therefore, an interscholastic Title IX investigation will not include this program component.⁴⁹

Other Program Components

The third major area of Title IX is composed of the following components:

- 1) Equipment and Supplies
- 2) Scheduling of Games and Practice Times
- 3) Travel and Daily Allowance
- 4) Access to Tutoring
- 5) Coaching
- 6) Locker Rooms, Practice and Competitive Facilities
- 7) Medical and Training Facilities and Services
- 8) Housing and Dining Facilities and Services
- 9) Publicity
- 10) Recruitment of Student Athletes
- 11) Support Services

These areas will be described in detail in the following sections. Remember that the entire men's and women's programs are to be compared, not just one team with another. Also, remember that different teams in different sports have very different requirements.

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 level of services, facilities and supplies. Variations within the men's program and within the women's program are allowed.

Equipment and Supplies

In 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 (athletic supporters, sports bras, etc.). Equipment includes bats, sticks, rackets and equipment set up and taken down for practice. Conditioning and weight-training equipment includes weights, water bottles, sweatbands, braces, etc.

Stationary equipment such as soccer goals, basketball hoops and tennis nets will be reviewed in the section, "Locker Rooms, Practice and Competitive Facilities." Major conditioning equipment such as Nautilus and Universal machines are addressed under "Medical and Training Facilities and Services."⁵⁰

There are five factors to examine when determining compliance with Title IX in the area of program components:

- ✓ Quality
- ✓ Amount
- ✓ Suitability
- ✓ Maintenance and replacement
- ✓ Availability

Here are some additional questions to consider:

- ✓ What is the condition of the equipment?
- ✓ Is the equipment durable?
- ✓ Is the equipment well-manufactured?
- ✓ How much equipment and supplies are provided?
- ✓ Are the materials officially sanctioned?
- ✓ Do the equipment and supplies meet regulation requirements?
- ✓ How is the upkeep and repair service for the equipment and supplies?
- ✓ Are the supplies and equipment always available or only available sometimes?

In assessing the situation, compare the findings with the situation faced by one gender's entire athletic program with that of the other gender. Determine whether any differences are significant.

For example, the Cypress-Fairbanks Independent School District in Houston provided all the equipment and supplies for all levels of male athletes with a few exceptions (shoes for some subvarsity basketball teams, travel bags and practice shoes for soccer, and gloves and shoes for baseball). For the girls' athletic program, all equipment and supplies were provided for all levels of female athletes, but there were more exceptions. Items not provided to girls included shoes, socks, practice uniforms and warm-ups for junior high volleyball teams, practice shirts for all levels of girls' basketball, plus warm-ups and practice uniforms for softball.

There were other specific needs at various high schools within the district. At Cypress Creek High School, girls' track and cross country coaches stated that the girls' program needed shoes, jump pits and bars, starting blocks, hurdles and pace watches. The boys' program had all of this equipment. In addition, the boys' athletic program had a VCR camera and tripod, while the girls' program did not. At Langham Creek High School the quality of the softball bats were not suitable, according to the coach.

Overall, the school district's expenditure in 1988-89 was \$59.30 per female athlete and \$91.84 per male athlete. They also noted that the booster clubs helped only boys' teams. The OCR came to the conclusion that the girls' teams were not provided

the quality or the amount of equipment and supplies the boys' teams were provided.⁵¹ Remember, nondiscriminatory differences based on a unique aspect of a particular sport are acceptable.⁵² At Towson State University, for example, the OCR inquired as to whether or not the high cost of football uniforms and equipment caused the large difference between the average equipment expenditure per male athlete and per female athlete.⁵³ The OCR found that the expenditures for male athletes were still much higher than for female athletes even when football uniforms were not taken into consideration. As a result, the school was found to be in violation of Title IX.

Scheduling of Games and Practice Times

Based on a review of OCR "letters of findings," which are issued in response to complaints, 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 in getting the best times for practices and games.

When determining compliance with Title IX, consider the following:

- ✓ Number of competitive events offered per sport
- ✓ Number and length of practices
- ✓ Time of day competitive events are scheduled
- ✓ Time of day practices are scheduled
- ✓ Number of pre-season and post-season competitive opportunities⁵⁴
- ✓ Are there differences in the number of events offered per sport, the number and length of practices?
- ✓ Are teams competing in pre-season and post-season competition?
- ✓ Compare the information recorded for the men's and women's teams competing in the same or similar sport.⁵⁵

One issue that often arises in high school is game times for boys' teams versus girls' teams. Always scheduling the boys' team in a particular sport for a preferred time, one that makes it easier for parents and friends to attend, is not permissible if the girls' team plays at less convenient times. If both teams play on the same day, teams should alternate which plays at the preferred time. Otherwise teams should alternate which day they play. What time or day is considered "preferred" is determined by asking the athletes, coaches and fans at the specific institution.

Investigation of a complaint against the Jackson School District in Ohio showed that over the course of the year 64 boys' games were scheduled on Friday evenings or Saturdays. Only six girls' games were scheduled on Friday evenings or Saturdays. The OCR found this practice to be a Title IX violation.⁵⁶

Again, nondiscriminatory differences based on the unique aspects of a particular sport are allowed. For example, a justified scheduling disparity would result if few games are scheduled because of a lack of competition for a particular sport in the normal competitive region. Fewer scheduled events may in turn affect practice schedules, pre-season and post-season opportunities.⁵⁷

Note that institutions are not required to schedule the same number of games or practices for men's and women's teams. However, differences favoring men's teams should be offset by differences favoring women's teams in other sports.⁵⁸

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, should receive preference over a team that is not in competition at the time.

In the Clawson School District in Michigan, the five boys' middle and high school basketball teams were permitted to use the facility at which they played their games. As a result, the four girls' volleyball teams could not use the facility where they played their games. The boys' varsity basketball team had most of the prime practice times, right after school. The girls had more inconvenient times, sometimes starting as much as three hours after school ended. The facility was not available to the girls' teams for the same duration. The OCR found a violation, noting the boys' teams clearly had preferential treatment in scheduling of practice times.⁵⁹ The solution to this type of problem is to create a schedule that equally inconveniences both boys' and girls' teams. For example, teams can alternate practicing right after school.

Travel and Daily Allowance

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.⁶⁰

There are five factors to consider when determining Title IX compliance in this area:

- ✓ Method of transportation
- ✓ Housing furnished during travel
- ✓ Length of stay before and after competitive events
- ✓ Daily allowance provided to the teams
- ✓ Dining allowance provided to the teams⁶¹

Be sure to compare the treatment provided to the men's teams with the treatment provided to the women's teams. As noted, some nondiscriminatory differences

may exist. For example, the form of transportation may vary between teams because of team size, number of coaches, support staff and/or amount of equipment.⁶² Distance to specific competitions also affects the mode of transportation as well. It would be discriminatory, however, if a 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.

The area most often found in violation in recent complaints is housing. For example, female teams from Southern Utah State College had three to five athletes per hotel room while traveling to away games, while men's teams had two to three athletes per room.⁶³

Academic Tutoring

The investigation of an academic tutoring program 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 examined. The second portion addresses the assignment of tutors. Here the tutor's training, experience and general qualifications are emphasized. Finally, the investigation focuses on the compensation provided to tutors.

In determining compliance with Title IX, compare:

- ✓ Tutoring available to the women's program with the tutoring available to the men's program
- ✓ Amount of time tutors are available to the women and to the men
- ✓ Qualifications and experience of the tutors provided to the women and to the men
- ✓ Amount of pay given to the tutors of the women's and men's programs
- ✓ Employment conditions of the tutors, including the number of students tutored per session and per academic term
- ✓ Terms and length of any tutorial contracts⁶⁴

After making these comparisons, look for significant disparities. Again, remember that nondiscriminatory differences are permitted. Not all athletes, after all, may want or need tutors.⁶⁵

At the University of Nebraska at Lincoln, an OCR investigation found that academic counselors for female athletes were located in a separate building from academic equipment and computers. Females only had access to three computers. The academic counselors and equipment for male athletes were located in the same building, which included 10 computers. The OCR found this to be a violation of Title IX.⁶⁶

Coaching

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

Female coaches who believe they personally have suffered sex discrimination may wish to consult an attorney because their situations may also be covered under other statutes. For example, women's basketball coach Sanya Tyler sued Howard University under Title IX, Title VII of the Civil Rights Act, the District of Columbia Human Rights Act and the Equal Pay Act. She alleged disparities in pay, offices and locker room facilities and other areas. Tyler had no full-time assistant while the men's coach had two full-time assistants. Tyler had the same job description as the men's coach but was paid substantially less. Tyler was awarded \$2.4 million by the jury in the case, later reduced to \$1.1 million by the judge because of overlapping awards. This case was ultimately settled for an undisclosed amount.⁶⁷

Opportunity 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.⁶⁸

The following questions need to be asked:

- ✓ 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 number of assistant coaches available to each team comparable in the men's and women's programs?

On the high school level, coaches are almost always part-time. Therefore, 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 — 80 athletes coached by four coaches becomes a ratio of one coach to 20 athletes. Do the same for the male teams. Then compare the ratios for the boys' and girls' programs.

It gets more complicated on the college level since there are often both full-time and part-time coaches. Part-time coaches must be converted into Full-Time Equivalents (FTEs). For example, a part-time coach who works half the time of a full-time coach is a .5 FTE. If a school had four such part-time coaches ($4 \times .5 = 2$) and six full-time coaches, they would have eight FTEs. Again, divide the total number of athletes by the total number of FTEs for both men's and women's programs. In determining

full-time equivalents, think both of how many hours they work per week during the season and how many months out of the year they work. Do not include graduate or student assistant coaches in this calculation unless they are head coaches.

**Table 1: Southern Utah State College
Men’s & Women’s Coaches**

| | Men’s Coaches | Women’s Coaches |
|---------------------|--------------------------|----------------------------|
| Basketball | 3.0 | .5 |
| Football | 2.5 | — |
| Golf | .2 | — |
| Gymnastics | — | .5 |
| Softball | — | .6 |
| Track/Cross Country | .25 | .25 |
| Total | 5.95 | 1.85 |

At Southern Utah State College, the OCR conducted such an analysis (See Table I). For women, there were no full-time coaches. Note that the same half-time person coached men’s and women’s cross country, indoor and outdoor track, for an FTE of .25 for each program. The analysis showed that men’s athletics had 5.95 coaches for 135 participants. Women’s athletics had 1.85 FTE for 83 participants. The ratio of participants to coaches for men’s athletics was 22.7 athletes per coach and 44.9 athletes per coach for women. The college was found to be in violation of Title IX.⁶⁹

Assignment of Coaches

When determining compliance for the assignment of coaches, look at:

- ✓ The training, experience and additional professional qualifications of the coach
- ✓ The professional standing of the coach

Compare the training and qualifications of the coaches assigned to the women’s teams with the coaches assigned to the men’s teams. To be discriminatory, the institution must regularly assign less-qualified coaches to either the women’s or men’s athletic program. Years of coaching experience, however, are not conclusive evidence in determining compliance with Title IX. It is possible for a coach with three years of experience to be as effective, or even more so, as someone with 10 years of coaching experience.

At Mercer University in Georgia, the coaches of female teams were found to have higher-quality participation experience overall, whereas the coaches of men’s teams had more coaching experience. The head coach of the women’s volleyball team was a graduate assistant. In fact, different graduate assistants or unqualified personnel

have been assigned to volleyball since its origin. Volleyball had 19 percent of the women's program participants in 1989-90. As a result, the OCR found that the assignment of coaches was not equivalent because less qualified coaches were regularly assigned to a women's team and to none of the men's teams.⁷⁰

Compensation of Coaches

In determining Title IX compliance for the compensation of coaches, assess:

- ✓ Rate of compensation (per sport, per season)
- ✓ Existence and duration of the coaching contract
- ✓ Conditions relating to contract renewal
- ✓ Coach's experience
- ✓ Nature of the coaching duties performed
- ✓ Working conditions
- ✓ Additional terms and conditions of employment

Also compare:

- ✓ Salaries of head coaches in the men's program with salaries of head coaches in the women's program
- ✓ Assistant coaches' salaries

Determine whether any overall differences exist. Note whether or not these differences are the result of nondiscriminatory factors like extra duties, experience, an outstanding record, etc.

In the South Iron County School District, the high school advertised the boys' head basketball coach position along with a supplemental athletic director position. That position provided 15 days extra duty pay. The boys' coaches as a group were paid more than the girls' coaches. The OCR found a violation due to the overall disparity in coaching salaries and because the boys' basketball coach was automatically given the athletic director position.⁷¹

Note that pairing the athletic director's position with a specific coaching position was cited as a problem. There is no reason why the athletic director must be the coach of a specific male team. In fact, this type of job pairing can make it difficult for the athletic director to allocate the department's resources in a fair manner. The temptation to give the lion's share to one's own team or program is great.

Metropolitan State College classified sports by whether they are "priority sports." Yet the coaches of "priority I" sports for men received 12-month contracts while the "priority I" women's team coaches received 10-month contracts. The "priority I" women's coaches also had more assignments in addition to these coaching duties than did the men's "priority I" coaches. The OCR found this practice to be a violation

of Title IX.⁷² Moreover, this description of a sport being designated a “priority” sport is a label given by schools, not one specified under Title IX.

Note 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.

When dealing with problems in this area, it may be particularly worthwhile to consult an attorney. The OCR has stated that if availability and assignment of coaches is equivalent in the women and men’s programs, it is difficult for the OCR to assert that lower pay negatively affects the athletes.⁷³ It may be argued that coaching positions that offer the most pay will logically be the most desirable and therefore will most likely be filled by the best applicants. Furthermore, it is possible that coaches who get less pay will have less enthusiasm and diligence for the job. Unfortunately, the current OCR policy makes this difficult to prove.

As noted at the beginning of this section, individual female coaches who believe they are victims of sex discrimination in employment should inquire about their rights under other statutes, including Title VII, the Equal Pay Act and state fair employment laws.

Locker Rooms, Practice and Competitive Facilities

This area is related to the section previously covered in scheduling of practice and competitive facilities. A Title IX problem arises when good facilities are limited; one sex may get preferential scheduling of the better facilities. In determining compliance with Title IX, consider:

- ✓ Quality and availability of the facilities provided for practice and competitive events
- ✓ Exclusivity of use of the facilities provided for practice and competitive events
- ✓ Availability and exclusivity of locker rooms
- ✓ Quality of the locker rooms
- ✓ Maintenance of practice and competitive facilities
- ✓ Preparation of facilities for practice and competitive events

Ask the following questions:

- ✓ Do any of the policies, procedures or criteria used for assigning locker rooms, practice and competitive facilities differ on the basis of sex?
- ✓ Are the men’s locker room facilities, as well as men’s rights to use them, different from the women’s locker room facilities and women’s rights to them?
- ✓ Are there differences in women’s and men’s rights to use the general facilities, including the fields and the gyms?⁷⁴

When new facilities are built, Title IX concerns often arise. If only men's teams use the new facilities while women's teams use the old facilities, there may be a Title IX violation. For example, in the Sentinel Public Schools in Oklahoma, the boys used a newer gym to practice. The girls used the older physical education building, which did not have locker rooms. The girls were only permitted to practice in the newer gym at 4:30 p.m. one day per week. In addition, the baseball field was better maintained and had better facilities, including bleachers and concession stand, than did the softball field. The OCR found the school in violation of Title IX.⁷⁵

Medical and Training Facilities and Services

Five factors to be reviewed in determining compliance with Title IX:

- ✓ 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

Consider:

- ✓ Do any medical policies or insurance coverages differ on the basis of sex?
- ✓ Is the quality and availability of medical personnel the same for men's teams and women's teams?
- ✓ Is the quality and availability of weight conditioning and training facilities the same for men's and women's teams?
- ✓ Are the trainers assigned equally and fairly?
- ✓ Is the quality and availability of trainers equal for men's and women's teams?
- ✓ Is one team or more assigned a professional trainer as opposed to a student trainer?
- ✓ Do any of the teams have trainers who only work part-time?⁷⁶

If any disparities exist, they must be significant. Certain nondiscriminatory factors might allow one team to have more qualified trainers, etc. For example, the injury rate in a particular sport may justify the assignment of more qualified medical personnel. Organizations like the NCAA keep track of injury rates (the number of injuries recorded per a standard number of athletes) in different sports: past rates can be used to determine which sports may have greater needs.

In the Cypress-Fairbanks Independent School District in Houston, football took priority over other sports for training services. Trainers did not attend volleyball or softball games. Two coaches stated that boys' sports had priority over girls' sports for training services. Male athletes at both Cypress Creek and Langham High Schools had priority in use of the large weight room while females had access to a

small weight room with deficient equipment. The OCR found this practice violated the provisions of Title IX addressing training services and weight and conditioning facilities.⁷⁷

Provision of Housing and Dining Facilities and Services

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.

When looking for differences in housing and services provided to the men's and women's teams, consider:

- ✓ 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?

Remember, the unique aspects of a particular sport may result in variations of types, timing and amounts of meals, etc.⁷⁸ Nevertheless, significant disparities between the services for women and men could be a violation.

For example, at the University of Nebraska at Lincoln, a special training table was available to male athletes only. Both the setting and the food were judged superior to the food served to female athletes in the regular dining halls. Although both male and female athletes had to eat late due to practice and game schedules, the dining services for male athletes were superior and, thus, a violation.⁷⁹

Publicity

There are three factors to consider when determining Title IX compliance in the area of publicity:

- ✓ Availability and quality of sports information personnel
- ✓ Access to other publicity resources for men's and women's programs
- ✓ Quantity and quality of publications and other promotional devices featuring men's and women's programs⁸⁰

Determine whether or not there are any differences between the publicity services provided to the men's program and to the women's program. Specifically, compare the quality of sports information personnel assigned to the men's teams and to the

women's teams. The background and experience of the assigned sports information personnel should be included in this investigation, as well as the number of personnel assigned.

Also look into:

- ✓ The availability and amount of time the sports information personnel spends on the men's teams and on the women's teams
- ✓ Whether there any other sports information services available to either the men's or the women's teams

The unique circumstances of a particular team, competitive event or athlete may create unique demands or imbalances. For example, a team that is in contention for a national championship may be of great interest to the press, 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.

At Furman University, two full-time personnel covered the 20 sports sponsored by the university. One of these individuals is also the coach and recruiter for the women's volleyball team. He was responsible for servicing all women's sports except for golf. Game programs were provided for all four men's team sports and only two of the three women's team sports. Women's basketball handled their own tickets. Three men's teams were provided pocket-sized schedule cards versus none for women. One women's team received posters, while three men's teams were furnished with posters. As a result, the OCR found a violation of Title IX.⁸¹

Publicity also includes cheerleaders, pep bands and assemblies. This area, in particular, is a problem with high school athletic programs. For example, in the Warren School District, one school had no cheerleaders appear at girls' athletic events and an other high school cheerleaders only cheered at girls' home basketball games. At each school, cheerleaders provided support for both home and away football and boys' basketball games. This was found to be a violation of Title IX.⁸²

Recruitment of Student-Athletes

It is unlikely that a secondary institution will recruit student-athletes. Therefore, a high school athletics investigation most likely will not include this program component.

In determining Title IX compliance, consider the following:

- ✓ Whether coaches or other athletic personnel serving male and female athletes are provided with substantially equal opportunities to recruit
- ✓ Whether financial and other resources made available for recruitment purposes meet the needs of the men's and the women's programs
- ✓ Whether the differences in opportunities, benefits and treatment of prospective athletes of each sex affect recruitment⁸³

Note that 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.⁸⁴ When this occurs, the program would probably not be in violation of Title IX.

At Mercer University in Georgia, the opportunity to recruit was affected by a lack of time on the part of the women's coaches. Total line item budgets for recruitment for the men's and women's programs in 1989-90 totaled \$36,000. Of that amount, 78 percent (\$28,500) was allocated to men's teams and 22 percent (\$8,000) to women's teams. Actual expenditures were 76 percent by men's teams and 24 percent by women's teams. In 1990-91, only \$23,500 (66 percent) was allocated to men and \$12,000 (34 percent) to women. Women accounted for 45 percent of the participants. The OCR found a violation in the area of recruitment.⁸⁵

Support Services

The administrative and clerical support provided to an athletic program are extremely important because they give coaches more time to perform their coaching and recruiting duties. When determining Title IX compliance, consider the amount of administrative, secretarial and clerical assistance provided to the men's and the women's programs.⁸⁶ Quantity and quality of office space provided to support staff and coaches are also included.

Be aware that the need for administrative, 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.⁸⁷

What Next?

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. First, 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.

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; 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 guide as possible. Another reason why a group may be more effective than an individual is that other supporters may have additional sources of information.

Each educational institution that receives federal funds is required to designate a Title IX officer. Be sure to ask your school who is the Title IX officer. You or someone from your group may wish to review some of this information with the school's Title IX officer. The school or school district must also have their own internal Title IX complaint procedure. Each individual may use the internal procedures or file a complaint directly with the Office for Civil Rights or proceed to court with a Title IX lawsuit.

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. Here are a few options:

- ✓ Contact your institution's designated Title IX officer and present the situation to them. That officer may decide to bring the situation to the institution's attention.
- ✓ 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 and the school board.
- ✓ 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.
- ✓ Suggest to the athletic department that they request technical assistance from the OCR to determine if they are in compliance with Title IX.
- ✓ Find out about your school's grievance procedure and consider filing a complaint through that process.
- ✓ File an administrative complaint with the Office for Civil Rights.
- ✓ Seek legal representation and consider filing a lawsuit.

Note that these options 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. Once you file a complaint or a lawsuit, however, the first five options generally will not apply. It must also be noted that there are time frames that may apply to taking action, such as statutes of limitations.

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

The Women's Sports Foundation may also be able to help. Contact the Women's Sports Foundation Advocacy Department at 1-800-227-3988 for more information or with questions that you may have.

Complaint vs. 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. 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.⁸⁸

Within 15 calendar days of receipt of a complaint, the OCR must notify the institution involved.⁸⁹ The OCR will determine if the school is covered by Title IX and then assign an investigator or investigative team. The school will be asked to submit certain information pertaining to gender equity. The investigator may visit the school and ask the types of questions that were covered earlier in this guide. 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.

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, they 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 parent most likely will not have standing to bring a Title IX lawsuit on behalf of their adult daughter.

While an individual may proceed *pro se* (on their own), the assistance of an attorney is highly recommended when filing a lawsuit. All testimony will be sworn under oath. Lawsuit 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. If you are successful in a Title IX case, the court has the discretion to award the prevailing party attorney's fees. The Women's Sports Foundation provides an attorney referral service (see pg. 40 for details). In addition, Appendix B lists additional legal resources that may be available.

As a result of the 1992 Supreme Court ruling in *Franklin v. Gwinnett County*, you may be able to receive an award of monetary damages if intentional sex discrimination is proven. This means the school would not only have to stop discriminating, it might also have to pay the victim(s) of that discrimination. In order to have legal standing (the right to bring suit), a lawsuit must be filed by someone who is directly affected by the discrimination. For example, an academic advisor cannot file on behalf of the athletes.

However, 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.

Lawsuits have been very effective in some cases. For example, athletes at Auburn University were successful in gaining damages that awarded small amounts to the individual athletes in addition to recovering their legal fees. As noted in earlier sections, there may be situations where it is difficult to prove discrimination under Title IX. A court of law may find that there is discrimination when the situation is considered under both Title IX and other state or federal laws. Note that there are no specific time limitations on reaching a final judgement and cases have lasted years before being ultimately decided.

Common Questions

? *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 alumni, representative from a women's group, or even a group file the complaint.

? *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: lack of substantial proportionality between the percentage of female students and female athletes at the school, a demand for the club team to turn varsity, adequate competition in the area, and women being unlikely to make a coed team in the sport. The last condition would not be necessary in the case of a contact sport.

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 guide 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.

? *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. Because the athletic department allowed the booster club to raise money for the boys' jackets, this act falls under the component of "Provision of Equipment and Supplies." 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.

? *Is it a violation of Title IX when cheerleaders, pep squads and/or bands are provided for men's athletic events but not for women's athletic events?*

Yes. Cheerleaders, bands and pep squads, etc., are considered publicity services. If they are provided for the men's program, they must also be provided for the women's program.

? *We have repeatedly asked for the addition of a women's soccer team. We 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. Can you leave out football when considering Title IX?*

No. Football is part of the athletic program and cannot be considered separately. It must be included in all analyses of Title IX compliance. The athletic director must include the numbers of athletes on the football team when examining the school's sports offerings to males and females.

? *Our 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. Is that a Title IX violation?*

Absolutely. It is more difficult for parents, friends and family to attend earlier games, making the later game times more valued. If boys' teams are always scheduled for more valued times than girls' teams, that is a significant difference in treatment.

? *Our 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. Is this a violation of Title IX?*

Yes. The school has to provide equivalent facilities for the men's program and the women's program. In this example, all the men's teams use a superior facility while all the women's teams use an inferior facility.

? *I just found out that our college spends 80 percent of its budget on men's sports. Is this a 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. The men's basketball team may sell out the arena every game thereby creating the need for a ticket office and staff, all of which may then be attributed to the men's budget. A large discrepancy between the budgets should, however, be examined carefully to determine the reasons and whether they are discriminatory.

? *Our athletic director is telling the parents of members of the boys' teams that adding a girls' team will require the school to drop a boys' team. Is this true?*

No. Title IX does not require institutions to drop sports or to reach compliance by cutting boys' teams. If funding is an issue and no new funds are available to add a women's sport, necessary funding can be derived from small percentage cuts from the budgets of all men's and women's teams. These savings can be used for the new women's team. Institutions that drop a small men's sport are usually making the choice to keep one or two men's sports, like football or basketball, at high levels of funding rather than asking those sports to reduce their standards of living so that all boys retain their participation opportunities.

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

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. Unlike Title IX, which the Office for Civil Rights of the U.S. Department of Education is charged to enforce, there is no government agency that is a “watchdog” for recreational sports leagues. 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 in public facilities. The Equal Protection clause 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.

? 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.GeenaTakesAim.com. Next, access the Equity in Athletics Disclosure Web site at <http://ope.ed.gov/athletics/Search.asp>. This site will allow you to access athletics participation data reported by nearly 2,000 colleges and universities. Finally, read the 1990 Office of Civil Rights Investigator’s Manual. The manual can be downloaded from the NCAA Web site at http://www.ncaa.org/gender_equity/resource_materials/AuditMaterial/Investigator’s_Manual.pdf

? I currently do not have the resources to bring a Title IX lawsuit. What else can I do?

Plenty. You can start by reading “Steps to Take to Get Gender Equity,” available on our Web site www.WomensSportsFoundation.org. This article describes the importance of documentation, group support, the power of writing letters, and media and political pressure. Also, this will help you set up a good plan of action in getting gender equality at your school.

Appendix A

OFFICE FOR CIVIL RIGHTS REGIONAL OFFICES

U.S. Department of Education, Office for Civil Rights National Headquarters

Mary E. Switzer Building
330 C Street, SW
Washington, DC 20202
(800) 421-3481
OCR@ed.gov

EASTERN DIVISION

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
(617) 289-0111
FAX: (617) 289-0150

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
(646) 428-3900
FAX: (646) 428-3843

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
(215) 656-8541
FAX: (215) 656-8605

SOUTHERN DIVISION

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
(404) 562-6350
FAX: (404) 562-6455

Arkansas, Louisiana, Mississippi, Texas

Office for Civil Rights, Dallas Office
U.S. Department of Education
1999 Bryan Street, Suite 1620
Dallas, TX 75201-6810
(214) 661-9600
FAX: (214) 661-9587

North Carolina, Virginia, Washington, D.C., South Carolina

Office for Civil Rights, DC Office
U.S. Department of Education
P.O. Box 14620
Washington, D.C. 20044-4620
(202) 786-0500
FAX: (202) 208-7797

MIDWESTERN DIVISION

**Illinois, Indiana, Minnesota,
Wisconsin, Iowa, North Dakota**
Office for Civil Rights, Chicago Office
U.S. Department of Education
111 North Canal Street, Suite 1053
Chicago, IL 60606-7204
(312) 886-8434
FAX: (312) 353-4888

Michigan, Ohio
Office for Civil Rights, Cleveland Office
U.S. Department of Education
600 Superior Avenue East, Suite 750
Cleveland, OH 44114-2611
(216) 522-4970
FAX: (216) 522-2573

**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
(816) 268-0550
FAX: (816) 823-1404

WESTERN DIVISION

**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
(303) 844-5695
FAX: (303) 844-4303

California
Office for Civil Rights, San Francisco
Office
U.S. Department of Education
Old Federal Building
50 United Nations Plaza, Room 239
San Francisco, CA 94102-4912
(415) 556-4275
FAX: (415) 437-7783

**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
(206) 220-7900
FAX: (206) 220-7887

LEGAL RESOURCES AND OTHER ORGANIZATIONS

Legal Resources

These organizations may be of assistance in handling Title IX situations. Some organizations can take on cases without charging fees so be sure to ask about their policy. Also, contact the Women's Sports Foundation for its list of individual attorneys who are interested in Title IX cases.

American Civil Liberties Union

125 Broad Street
18th Floor
New York, NY 10004
(212) 549-2585
www.aclu.org

National Women's Law Center

11 Dupont Circle, NW
Suite 800
Washington, DC 20036
(202) 588-5180
www.nwlc.org

Northwest Women's Law Center

3161 Elliott Avenue, Suite 101
Seattle, WA 98121
(206) 261-7691
www.nwwlc.org

NOW Legal Defense and Education Fund

395 Hudson Street
5th Floor
New York, NY 10014
(212) 925-6635
www.nowldef.org

Trial Lawyers for Public Justice

1717 Massachusetts Ave.
Washington, DC 20036
(202) 797-8600
www.tlpj.org

Resource Organizations

These organizations may be able to offer help in other ways, such as writing letters of support, calling on your behalf, or offering names of others who may be able to help.

American Volleyball Coaches Association

1227 Lake Plaza, Suite B
Colorado Springs, CO 80906
(719) 576-7777
www.avca.org

National Association of Collegiate Women Athletics Administrators

4701 Wrightsville Avenue
Oak Park D-1
Wilmington, NC 28403
(910) 793-8244
www.nacwaa.org

National Association for Girls and Women in Sport

1900 Association Drive
Reston, VA 22091
(703) 476-3450
www.nagws.org

National Fastpitch Coaches Association

100 GT Thames Drive, Suite D
Starkville, MS 39759
(662) 320-2155
www.nfca.org

National Organization for Women

1000 16th Street, #700
Washington, DC 20036
(202) 331-0066
www.now.org

Women's Basketball Coaches Association

4646 B Lawrenceville Highway
Lilburn, GA 30047
(770) 279-8027
www.wbca.org

Women's Sports Foundation

Eisenhower Park
East Meadow, NY 11554
(516) 542-4700
(800) 227-3988
www.WomensSportsFoundation.org

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).
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. 34 C.F.R. § 106.41(d)(2002).
5. Title IX Policy Interpretation, 44 Fed. Reg. 71,413 [hereinafter cited as Policy Interpretation].
6. *2002-2003 Participation Survey*, National Federation of State High School Associations. http://www.nfhs.org/nf_survey_resources.asp
7. *2001-2002 NCAA Participation Survey*, National Collegiate Athletic Association. http://ncaa.org/library/research.html#participation_rates
8. *See supra* notes 5, 6.
9. *Grove City College v. Bell*, 465 U.S. 555 (1984).
10. Civil Rights Restoration Act of 1987 (1988 Amendments), 20 U.S.C. § 1687, Pub.L. 100-259, 102 Stat. 28 (1988).
11. *Franklin v. Gwinnett County Public Schools*, 112 S. Ct. 1028, 1033 (1992).
12. *See supra* notes 5, 6.
13. U.S. Department of Education, Office for Civil Rights, *Title IX Athletics Investigator’s Manual* (1989) at 7 [hereinafter cited as *Investigator’s Manual*].
14. 34 C.F.R. § 106.37(c) (2002).
15. *Investigator’s Manual* at 10.
16. Letter of Finding, Office for Civil Rights, Boston Regional Office, 11 (February 8, 1991) (Ref.: 01-90-1062).
17. *Investigator’s Manual* at 8.
18. *Id.* at 7.
19. *Favia v. Indiana University of Pennsylvania*, 7 F.3d 332 (3rd Cir. 1993).
20. *Investigator’s Manual* at 5.

21. Letter of Finding, Office for Civil Rights, Dallas Regional Office (April 22, 1991)(Ref: 06-91-1056).
22. *Investigator's Manual* at 21.
23. *Id.* at 24.
24. *Id.*
25. *Roberts v. Colorado State Bd. of Agriculture*, 998 F.2d 824 (10th Cir. 1993).
26. *Cohen v. Brown University*, 991 F.2d 888, 898 (1st Cir. 1993).
27. *Id.*
28. *2000-2001 NCAA Gender Equity Report*, National Collegiate Athletic Association.
29. *Investigator's Manual* at 23-25.
30. *Id.*
31. Letter of Finding, Office for Civil Rights, Dallas Regional Office (September 1, 1989)(Ref: 06-89-2050).
32. *Sanders v. University of Texas at Austin*, Civil No. A-92-CA-405 (W.D. Tex.).
33. *Cook v. Colgate University*, 992 F.2d 17 (2d Cir. 1993).
34. Policy Interpretation at 71, 413.
35. *Id.*
36. *The NCAA News*, March 20, 1991.
37. *The NCAA News*, April 11, 1990, at 12.
38. *Favia*, 7 F.3d 332 (3d Cir. 1993).
39. *Investigator's Manual* at 25.
40. *Id.* at 14.
41. *Id.* at 14.
42. *Id.* at 17.
43. See OCR Clarification Letter 1998.
44. *Id.*
45. *Haffer v. Temple University*, No. 80-1362 (E.D. Pa. filed September 6, 1988).
46. National Collegiate Athletic Association, *Guide to Title IX & Intercollegiate Athletics* (2d ed. 1991), at 14-15.
47. Letter of Finding, Office for Civil Rights, Atlanta Regional Office (November 18, 1990) (Ref: 04-90-2044) [hereinafter cited as November 18, 1990, Letter of Finding].
48. *1999-2000 NCAA Gender Equity Report*, National Collegiate Athletic Association.
49. *Investigator's Manual* at 14.

50. *Id.* at 29.
51. Letter of Finding, Office for Civil Rights, Dallas Regional Office (May 20, 1991) (Ref: 06-89-1184) [hereinafter cited as May 20, 1991, Letter of Finding].
52. *Investigator's Manual* at 32.
53. Letter of Finding, Office for Civil Rights, Philadelphia Regional Office (August 24, 1990) (Ref: 03-89-2045).
54. *Investigator's Manual* at 35.
55. *Id.* at 36.
56. Letter of Finding, Office for Civil Rights, Chicago Regional Office (November 8, 1988) (Ref: 15-88-1075).
57. *Investigator's Manual* at 38.
58. *Id.*
59. Letter of Finding, Office for Civil Rights, Chicago Regional Office (February 3, 1989)(Ref: 15-88-1070).
60. *Investigator's Manual* at 43.
61. *Id.*
62. *Id.* at 46.
63. 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].
64. *Investigator's Manual* at 49-50.
65. *Id.* at 52.
66. Letter of Finding, Office for Civil Rights, Kansas City Regional Office, 17-19 (July 10, 1989) (Ref: 07882508) [hereinafter cited as July 10, 1989, Letter of Finding].
67. *Tyler v. Howard University*, No. 91-CA 11239 (D.C. Sup. Ct. Sept. 15, 1995)(mem.op.)(case settled).
68. *Investigator's Manual* at 55.
69. January 30, 1990, Letter of Finding at 25-27.
70. Letter of Finding, Office for Civil Rights, Atlanta Regional Office, 16-17 (April 29, 1991) (Ref: 04-90-2082) [hereinafter cited as April 29, 1991, Letter of Finding].
71. Letter of Finding, Office for Civil Rights, Kansas City Regional Office, 2-3 (November 16, 1988) (Ref: 07-88-1051).
72. Letter of Finding, Office for Civil Rights, Denver Regional Office, 24-25 (April 12, 1989) (Ref: 08-89-6001).
73. *Investigator's Manual* at 58.

74. *Id.* at 64-65.
75. Letter of Finding, Office for Civil Rights, Dallas Regional Office, 10-11 (September 8, 1988) (Ref: 06-88-1113).
76. *Investigator's Manual* at 72-75.
77. May 20, 1991, Letter of Finding at 34-35.
78. *Investigator's Manual* at 80-82.
79. July 10, 1989, Letter of Finding at 33-34.
80. *Investigator's Manual* at 85.
81. Nov. 18, 1990, Letter of Finding at 31-35.
82. Letter of Finding, Office for Civil Rights, Chicago Regional Office, 10-11 (December 23, 1988) (Ref: 15-88-5017)(SRB).
83. *Investigator's Manual* at 97.
84. *Id.* at 100.
85. April 29, 1991, Letter of Finding at 23-24.
86. *Investigator's Manual* at 91.
87. *Id.* at 93.
88. *See* 34 C.F.R. §106.71, 34 C.F.R. §§100.6-100.11 and 34 C.F.R. §101.
89. *Id.*
90. *Franklin*, 112 S.Ct. 1033 (1992).

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