

AREAS OF SCHOOL OPERATIONS IMPACTED BY TITLE IX

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Applicability of Title IX

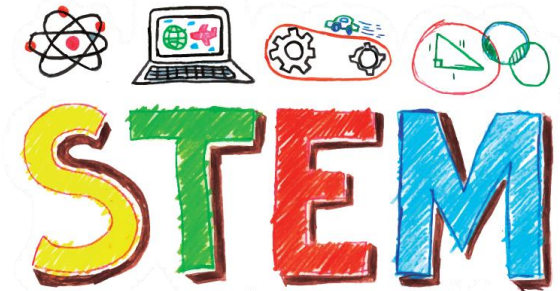
- Title IX impacts **many** aspects of school district operations
 - Not limited to athletics (although this is the context in which most people think of the regulations)
- Also has applicability to:
 - Recruitment, admissions and counseling
 - Funding (including booster groups)
 - Athletics and extra-curricular activities
 - Pregnant and parenting students
 - Discipline





Recruitment, Admissions and Counseling

- School districts must be on the lookout for issues related to:
 - vocational schools
 - STEM schools
 - open enrollment
 - assignment of guidance counselors
 - content of counseling (schools, career options)





Funding

- School districts are responsible to ensure
 - “that benefits, services, treatment and opportunities overall, regardless of funding sources, are equivalent for male and female athletes.”
- This is true even if the funds are raised by the student-athletes themselves or by a booster club and then “donated” to the school district.
- “Equivalent” does not mean “identical” per Regulations and OCR Policy Interpretation. Comparable standard.



Funding from Booster Groups

- Booster group donations may result in Title IX liability for a district if the funds are *not* equally distributed among boys' and girls' teams
- Booster groups often generate and designate money for a specific sport, which leads to an imbalance among sexes
- It is the responsibility of the BOE to correct any imbalance, which may entail allocating its own resources
- Consider facilities and playing time!





- OCR states in the *Title IX Athletics Investigator's Manual*:
 - *Where booster clubs provide benefits and services that assist only teams of one sex, the institution shall ensure that teams of the other sex receive equivalent benefits and services. If booster clubs provide benefits and services to athletes of one sex that are greater than what the institution is capable of providing to athletes of the other sex, then the institution shall take action to ensure that benefits and services are equivalent for both sexes*





Funding and Facilities

- Locker number, size, and quality relative to team size
- Number, size and quality of shower stalls, restroom facilities, mirrors, chairs, benches.
- Material, paint
- Team rooms- size and amenities, including entertainment





Funding and Facilities (Quality)

- Location
- Aesthetics: appearance should be similar in quality from the outside, dimensions
- Playing surface quality, turf, materials used in infields and warning tracks, field surface uniformity.
- Weather related concerns. E.g. did seasonal flooding affect mostly one group?
- Age
- Lighting
- General conditions
- Restroom facilities
- Coaching evaluation locations
- Videotaping locations
- Quality and capacity of score boards, spectator seating, spectator restrooms, concessions, public address systems, press boxes, and media.





Facilities and Facilities (Availability)

- Is there any limit in using the field that applies more to girls than boys? For example, are the boys able to use their field more often and more freely because it is on campus?
- Does the district provide transportation to both teams? Neither?
- Consider the proximity of practice or work out areas- if any - to the fields. Is shelter available at only one field?
- In general, compare teams' seasons, schedules, and practice times and locations.



Athletics and Extracurricular Activities

- Sex discrimination prohibited on basis of:
 - student interests and abilities, and
 - benefits and opportunities.
- Standard for non-discrimination based on interests and abilities: equal athletic opportunities for members of both sexes, effectively accommodating interests and abilities.





Athletics and Extracurricular Activities

- OCR 3-part test for assessing nondiscriminatory athletic participation based on interests and abilities:
 - Participation opportunities substantially proportionate to respective enrollments;
 - Members of one sex underrepresented, district show history and continuing practice of program expansion which is demonstrable responsive to developing interests;
 - Members of one sex underrepresented, if continuing practice not established, district show interests and abilities fully and effectively accommodated by present program.



Athletics and Extracurricular Activities

- OCR factors for determining non-discrimination based on benefits and opportunities:
 - Equipment and supplies
 - Scheduling of games and practice times
 - Travel and per diem allowances
 - Coaching and tutoring
 - Compensation of coaches and tutors
 - Locker rooms
 - Practice facilities and training facilities
 - Publicity





Pregnant and Parenting Students

- Discriminating against any student on the basis of pregnancy, child birth, termination of pregnancy or recovery therefore is prohibited
 - This includes EXCLUDING any student from an education program (including vocational education) or ACTIVITY (including extra-curricular activity)



Discipline

- Separate or different rules of behavior, sanctions, or other treatment based on sex prohibited.
 - Includes: no discipline based on gender identity, or failure to conform to stereotypical notions of masculinity or femininity in behavior OR appearance (dress codes)
- Recommendation: record review for disproportionality, disparate impact, systemic problems/trends.





Classes and Extracurricular Activities

- Narrow categories where intentional separation based on sex **is permitted** under Title IX:
 - Contact sports in PE class
 - Classes or portions of classes on human sexuality
 - Other miscellaneous catch-all category: class/activity based on one of two important objectives, 1) to improve students' educational achievement, or 2) to meet the particular, identified educational needs of students



Title IX and New Guidance on Gender Identity and Sexual Orientation

- New guidance released means:
 - School districts cannot discriminate against an individual based on the individual’s sexual orientation or gender identity.
 - This includes issues such as access to restrooms that conform with the individual’s gender identity, use of preferred pronouns and use of preferred name.
 - This is not a change in Ohio as school districts have been bound by the *Board of Education of Highland v. Dep. of Ed* case, which held that students are able to use the restroom that conforms with their gender identity and preferred pronouns, since 2016.



Title IX and GI/SO (cont'd)

- Additional information
 - The district's Title IX policy will be applicable and all applicable procedures must be followed.
 - Districts must treat complaints of sexual harassment or sex discrimination based on an individual's sexual orientation or gender identity in the same manner as any other Title IX complaint.
 - Students can now file a complaint with OCR in addition to filing in federal court.



TITLE IX AND ONLINE CONDUCT



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Online Conduct & School Operations

- Online conduct occurring:
 - School’s computer hardware
 - School’s internet networks
 - School’s digital platforms
 - School’s computer software
 - Personal electronic device used on campus, in school program or activity, or in other locations that are part of school’s operations including online learning platforms, off-campus settings if the school exercised substantial control over the respondent and the context in which the alleged sexual harassment occurred

