

Updated March 27, 2025

Title IX and Athletics: Legal Basics

Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination on the basis of sex in education programs and activities that receive federal financial assistance. The Department of Education (ED) has enforced the law in education programs it funds, including all K-12 public school districts and most colleges and universities (recipient schools). Although the statute does not mention athletics, long-standing regulations implementing Title IX provide that recipient schools may not discriminate based on sex in athletics programs or activities.

Drawing on Title IX's athletics regulations, a Policy Interpretation from 1979 (issued by the predecessor agency to ED, the Department of Health, Education, and Welfare) lays out three basic categories in which recipient schools face Title IX obligations with respect to their athletics programs and activities:

- Proportional Financial Assistance (i.e., scholarships)
- Equivalent Benefits and Opportunities
- Effective Accommodation of Interest and Abilities

While directed toward intercollegiate athletics, the general principles and standards in the Policy Interpretation often apply to interscholastic athletics programs at the elementary and secondary levels, as well as to club and intramural programs. This In Focus provides background on Title IX's athletics requirements, including the basics of how Title IX has been enforced, the legal obligations recipient schools face, and emerging legal questions relevant to athletics.

Enforcement

Title IX has been generally enforced in two ways: (1) through private lawsuits brought directly against recipients in federal court, and (2) by federal agencies that distribute funding to recipients. Federal agencies that distribute federal funds to education programs are responsible for promulgating regulations to implement Title IX and may terminate or suspend assistance in cases of noncompliance. Because ED has distributed substantial funding in the elementary, secondary, and postsecondary contexts, ED's Office for Civil Rights (OCR) has played a lead role in enforcing Title IX against schools that receive ED funding. OCR was established in the Department of Education Organization Act, along with various other offices in the Department.

On March 20, 2025, President Trump issued an executive order directing the Secretary of ED, to the maximum extent consistent with the law, take steps to close the Department. ED recently initiated a reduction in force that, according to news reports, cut OCR's staff by about half. A pending

lawsuit argues that these reductions impede OCR's ability to enforce civil rights laws.

Separate Athletics Teams

While Title IX prohibits sex discrimination in recipient schools' athletics programs, this prohibition does not mean all sex-based distinctions are banned. According to Title IX regulations, schools may offer separate athletics teams for each sex where selection is based on competitive skill or the activity is a contact sport. In addition, subject to the obligations described below, while schools must provide equal athletics opportunity to members of both sexes, they do not necessarily need to offer the same sports for each sex. Even so, if a school only offers a sport for one sex, and opportunities for the other sex have been previously limited, a student from the excluded sex must be allowed to try out for the team unless it is a contact sport. (Contact sports include boxing, wrestling, rugby, ice hockey, football, and basketball.) In addition, Title IX does not require equal aggregate expenditures for men's and women's athletics programs.

Three Categories of Obligations

Proportional Scholarships

When colleges and universities award athletics scholarships, they must offer reasonable opportunities for awards for members of each sex in proportion to the number of students participating in intercollegiate athletics. This obligation does not mean the dollar amount of scholarships for men and women must be perfectly equal. Instead, total assistance awarded to each sex must be substantially proportionate to the participation rates of men and women. Put another way, if 60% of an institution's intercollegiate athletes are women, then the total amount of aid to women athletes should be approximately 60%. Disparities can be justified by certain legitimate, nondiscriminatory factors.

Equivalent Benefits and Opportunities

Title IX regulations require recipients that operate athletics programs to provide "equal athletic opportunity for members of both sexes." In determining whether this standard is met, a range of factors are relevant, including equipment and supplies; scheduling; travel expenses; coaching and tutoring, including compensation thereof; practice and competitive facilities; medical and training facilities and services; and publicity, as well as recruitment and support services.

Institutions must provide equivalent treatment, benefits, and services for women's and men's teams overall. The availability, quality, and kinds of opportunities can be relevant considerations. According to this standard,

identical benefits or treatment are not required, as long as the overall effects of any differences are negligible. Compliance issues can arise if “disparities of a substantial and unjustified nature exist” in the benefits and opportunities in the athletics program as a whole. Occasionally, disparities in individual segments of a program can deny equal athletic opportunity as well. Equality of opportunity is not measured through a sport-specific comparison. Instead, schools have flexibility in distributing athletics resources.

Effective Accommodation of Interests and Abilities

Title IX regulations require schools that offer athletics programs to “effectively accommodate the interests and abilities of members of both sexes.” Whether an institution has effectively accommodated the athletic interests and abilities of students sufficient to provide equal athletic opportunities is assessed by using a “Three-Part Test.” Under this test, an institution is in compliance with the effective accommodation requirement if

1. “Intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments”; or
2. “[T]he institution can show a history and continuing practice of program expansion” responsive to the interests of an underrepresented sex; or
3. The institution is “fully and effectively” accommodating the interests and abilities of an underrepresented sex.

Recipient schools need to meet only one of the prongs to comply with the effective accommodation requirement.

Substantially Proportionate: An inquiry into whether participation opportunities are substantially proportionate to male and female enrollment is conducted on a case-by-case basis, with consideration of the specific circumstances and size of a program. If an institution’s enrollment percentages for each sex match participation rates, this prong is satisfied. Institutions may also satisfy the test if the number of additional opportunities “required to achieve proportionality would not be sufficient to sustain a viable team.” In other words, if the participation rate for a given sex is less than the enrollment figures but the difference in prospective additional athletes would not be enough to sustain a viable intercollegiate team, the test may be satisfied.

Program Expansion: The second prong of the test asks if an institution can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of an underrepresented sex. Program expansion could be shown through adding new teams, upgrading existing teams to intercollegiate status, or increasing the number of participants for the underrepresented sex. Evidence of a continuing practice of expansion may be shown through factors such as current implementation of a nondiscriminatory policy for requesting the addition or elevation of sports and communication of this policy to students.

Full and Effective Accommodation: The third prong of the test can be satisfied if a school can show that students of an underrepresented sex are not denied opportunities because their interests and abilities are fully and effectively accommodated. OCR has considered whether there is an unmet interest in a sport, ability to sustain a team in that sport, and “a reasonable expectation of competition for the team.” If all of these factors are present, then a recipient has not satisfied the third prong.

Two Emerging Legal Issues

One emerging legal issue under Title IX is how compensation for collegiate athletes should interact with Title IX’s requirements. In 2021, the National Collegiate Athletic Association (NCAA) adopted a new policy allowing student athletes to earn compensation for the commercial use of their name, image, and likeness (NIL). While most NIL deals are between private parties and student athletes, it appears that some universities directly facilitate these deals. Further, under the terms of a proposed joint settlement agreement in an antitrust lawsuit involving current and former athletes, the NCAA will begin to allow universities to pay their athletes a portion of the school’s athletics revenue. How compensation for athletes in these contexts will interact with Title IX requirements raises novel legal questions yet to be addressed by courts. ED addressed how it interpreted Title IX to apply to NIL compensation in guidance issued near the end of the Biden Administration. The guidance explained that a school could violate Title IX by failing to provide equivalent benefits, opportunities, and treatment in the aspects of its athletics program that “relate to NIL activities.” Further, the guidance observed that when a school provides financial assistance to athletes in forms other than scholarships or grants, including NIL compensation, it must be proportionally available to females and males. The second Trump Administration withdrew this guidance. Going forward, novel questions remain concerning how courts and ED will interpret Title IX’s application to student-athlete compensation and revenue-sharing and whether such legal interpretations will result in facilitating current or past administration priorities.

Another developing issue is the participation of transgender athletes in school sports. Some state laws and policies permit transgender students to participate consistent with their gender identity, while others prohibit doing so. A number of girls and women athletes have challenged policies that permit transgender girls to participate in sports consistent with their gender identity, arguing that doing so deprives them of equal athletic opportunities. Likewise, transgender students prohibited from competing in sports consistent with their gender identity have challenged such policies as discrimination based on sex. The Biden Administration issued proposed regulations on the matter, but they were withdrawn before going into effect. President Trump has issued an executive order directing ED to enforce Title IX against institutions that allow transgender girls and women to participate in girls’ sports. For more on the legal considerations surrounding these challenges, see CRS Report R48448, *Gender and School Sports: Federal Action and Legal Challenges to State Laws*.

Jared P. Cole, Legislative Attorney

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