JULY 2012

a GUIDE to COMPLIANCE

Providing Equal Athletic Opportunities
Title IX

Title IX of the Education Amendments of 1972

20 U.S.C. §§ 1681 et seq.

Title IX prohibits discrimination of the basis of sex in education programs and activities that receive Federal financial assistance from the U.S. Department of Education.

Title IX requires recipients which operate or sponsor interscholastic, intercollegiate, club or intramural athletics to provide equal athletic opportunities for members of both sexes.

The regulations implementing Title IX (34 C.F.R. Part 106) contain specific provisions for athletics programs and athletic scholarships.

Applies to interscholastic, intercollegiate, club and intramural athletic programs receiving federal funding from the U.S. Department of Education.

Minn. Stat. § 121A.04

Requires each school to provide equal opportunity for members of both sexes to participate in its athletic program.

Minnesota Rules Chapter 3535 contains specific provisions for equal opportunity in schools.

Applies to interscholastic and intramural athletic programs in public and private elementary and secondary schools.

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Title IX seeks true equality of opportunity for male and female student-athletes in America. (OCR Clarification 2003).

Nothing in Title IX requires the cutting, capping or reduction of teams in order to demonstrate Title IX compliance. (OCR Q & A 2010).

Schools have flexibility in providing nondiscriminatory participation opportunities to their students, and OCR does not require quotas. (OCR Clarification 1996).

There are no strict numerical formulas or “cookie cutter” answers to the issues that are inherently case – and fact – specific. (OCR Clarification 1996).

Participation must be real, not illusory. (OCR Clarification 1996).

Equality of opportunity in America is not rhetoric, but rather a guiding principle. (OCR Clarification 2010).

Participation in women’s sports is growing rapidly. This growth has not been at the expense of men’s programs. (OCR Policy Interpretation 1979).
Factors that must be considered to determine whether equal opportunities for members of both sexes to participate in athletic programs are available
(34 C.F.R. § 106.41 and Minn. Stat. § 121A.04)

OCR considers the effective accommodation of interests and abilities in conjunction with equivalence in the availability, quality and kinds of other athletic benefits and opportunities provided male and female athletes to determine whether an institution provides equal athletic opportunity as required by Title IX. These other benefits include coaching, equipment, practice and competitive facilities, recruitment, scheduling of games, and publicity, among others. A school’s failure to provide nondiscriminatory participation opportunities usually amounts to a denial of equal athletic opportunity because these opportunities provide access to all other athletic benefits, treatment, and services. (OCR Clarification 1996).

Under this equivalency standard, identical benefits, opportunities, or treatment are not required. If a comparison of program components indicates that benefits, opportunities, or treatment are not equivalent in quality, availability, or kind, the institution may still be in compliance with the law if the differences are shown to be the result of nondiscriminatory factors. Generally, these differences will be the result of unique aspects of particular sports or athletic activities, such as the nature/replacement of equipment and maintenance of facilities required for competition. This equivalency approach allows schools great flexibility in conducting their athletic programs and maintaining compliance without compromising the diversity of athletic programs among institutions. (OCR Policy Statement 1991).

Factors That Must be Considered

OCR Clarification 2010
OCR Q & A 2010
OCR Clarification 2003
OCR Clarification 1996
OCR Policy Statement 1991
OCR Policy Interpretation 1979
Minn. Stat. § 121A.04
Minn. R. 3525.3400

1. Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of both sexes

Further Explanation of Each Factor

OCR uses a three-part test as part of determining whether students of both sexes are provided nondiscriminatory opportunities to participate in athletics.

This three-part test provides schools three individual avenues to choose from when determining how it will provide individuals of each sex with nondiscriminatory opportunities to participate in athletics. If a school has met any part of the three-part test, OCR will determine that the school has met this requirement.

The three-parts of the test are:

1. Substantial proportionality: The number of male and female athletes is substantially proportionate to their respective enrollments; or

2. History and continuing practice: The school has a history and continuing practice of expanding participation opportunities responsive to the developing interests and abilities of the underrepresented sex; or

3. Fully and effectively accommodating interests and abilities of the underrepresented sex: The school is fully and effectively accommodating the interests and abilities of the underrepresented sex.
Factors That Must Be Considered

2. The provision and maintenance of equipment and supplies

Equipment and supplies include but are not limited to uniforms, other apparel, sport-specific equipment and supplies, general equipment and supplies, instructional devices, and conditioning and weight training equipment.

Compliance will be assessed by examining, among other factors, the equivalence for males and females of:
1) The quality of equipment and supplies;
2) The amount of equipment and supplies;
3) The suitability of equipment and supplies;
4) The maintenance and replacement of equipment and supplies; and
5) The availability of equipment and supplies.

3. Scheduling of games and practice times

Compliance will be assessed by examining, among other factors, the equivalence for males and females of:
1) The number of competitive events per sport;
2) The number and length of practice opportunities;
3) The time of day competitive events are scheduled;
4) The time of day practice opportunities are scheduled; and
5) The opportunities to engage in available pre-season and post-season competition.

4. Travel and per diem expenses/allowance

Compliance will be assessed by examining, among other factors, the equivalence for males and females of:
1) Modes of transportation;
2) Lodging furnished during travel;
3) Length of stay before and after competitive events;
4) Per diem allowances; and
5) Dining arrangements.

5. Opportunity to receive coaching and academic tutoring

Compliance will be assessed by examining, among other factors, the equivalence for males and females of:
1) Relative availability of full-time coaches;
2) Relative availability of part-time coaches;
3) Relative availability of assistants;
4) The availability of tutoring; and
5) Procedures and criteria for obtaining tutorial assistance.
Factors That Must Be Considered

6. Assignment and compensation of coaches and tutors

In general a violation will be found only where compensation or assignment policies or practices deny male or female athletes coaching of equivalent quality, nature or availability.

Nondiscriminatory factors can affect the compensation of coaches. In determining whether differences are caused by permissible factors, the range and nature of duties, the experience of individual coaches, the number of participants for particular sports, the number of assistant coaches supervised, and the level of competition will be considered.

Compliance will be assessed by examining, among other factors, the equivalence for males and females coaches/tutors of:

1) Training, experience, and other professional qualifications;
2) Professional standing;
3) Rate of compensation (per sport, per season);
4) Duration of contracts;
5) Conditions relating to contract renewal;
6) Nature of duties performed;
7) Working conditions; and
8) Other terms and conditions of employment.

7. Provision of locker rooms, practice and competitive facilities

Compliance will be assessed by examining, among other factors, the equivalence for males and females of:

1) Quality and availability of facilities provided for practice and competitive events;
2) Exclusivity of use of facilities provided for practice and competitive events;
3) Availability of locker rooms;
4) Quality of locker rooms;
5) Maintenance of practice and competitive facilities; and
6) Preparation of facilities for practice and competitive events.

8. Provision of medical and training facilities

Compliance will be assessed by examining, among other factors, the equivalence for males and females of:

1) Availability of medical personnel and assistance;
2) Health, accident and injury insurance coverage;
3) Availability and quality of weight and training facilities;
4) Availability and quality of conditioning facilities; and
5) Availability and qualifications of athletic trainers.
Factors That Must Be Considered

9. Provision of housing and dining facilities

Compliance will be assessed by examining, among other factors, the equivalence for males and females of:

1) Housing provided; and
2) Special services as part of housing arrangement (e.g., laundry facilities, parking space, maid services).

10. Publicity

Compliance will be assessed by examining, among other factors, the equivalence for males and females of:

1) Availability and quality of sports information personnel;
2) Access to other publicity resources for male’s and female’s programs; and
3) Quantity and quality of publications and other promotional devices featuring male’s and female’s programs.

11. Expenditures

Under Title IX, unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a school operates or sponsors separate teams will not constitute noncompliance; however, the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex may be considered.

Under Minnesota law, when two teams in the same sport are in fact separated or substantially separated according to sex, the two teams shall be provided with substantially equal budgets per participant, exclusive of the salary of the coach, gate receipts and other revenues generated by that sport, and in all other respects shall be treated in a substantially equal manner. When an item(s) of expense are not separated, the expense shall be prorated to the teams according to the number of participants.
Frequently Asked Questions
Pertaining to Providing Equal Opportunity

Question 1: How do we determine if our school meets part one – substantial proportionality – of the three-part test?

OCR Clarification 1996
Minn. R. 3535.3000, subp. 5
Minn. R. 3525.3000, subp. 6
Minn. R. 3525.3000, subp. 7
National Women’s Law Center Checklist (2000)

Short Answer
By comparing the percentage of each sex participating in sports to their respective enrollment percentages.

The National Women’s Law Center provides the following checklist:

What is the TOTAL number of students in the school? ______

How many are female? ____
How many are male? ____

What are the percentages of female and male students? ___% female ___% male

What is the TOTAL number of athletes in the school? ______

How many are female? ____
How many are male? ____

What are the percentages of female and male students? ___% female ___% male

Compare the percentages of male and female athletes to the percentages of male and female students enrolled.

Explanation
Participate: means for interscholastic sports, a student has been selected by the coach to be a member of a particular athletic team, inclusive of varsity, junior varsity, and sophomore teams, after the tryout period has ended.

In determining the number of participation opportunities, an athlete who participates in more than one sport will be counted as a participant in each sport in which he or she participates (duplicate number).

The number of participation opportunities is the sum of the duplicate male participants number and duplicate female participants number.

To determine the percentage of females participating in athletic opportunities, divide the duplicate female participants number by the number of participation opportunities.

To determine the percentage of males participating in athletic opportunities, divide the duplicate male participants number by the number of participation opportunities.

Example: Your school’s enrollment is 52% male and 48% female and 52% of the participants in your athletic program are male and 48% female, your school would clearly satisfy part one of the three-part test.

However, because in some circumstances it may be unreasonable to expect a school to achieve exact proportionality — for instance because of natural fluctuations in enrollment and participate rates or because it would be unreasonable to expect a school to add athletic opportunities in light of the small number of students that would have to be accommodated to achieve exact proportionality — OCR examines whether participation opportunities are “substantially” proportionate to enrollment rates.
### Questions

**Question 2:**
*If the percentage of female representation in athletic opportunities is within 5% of the percentage of females in the student enrollment, are we in compliance?*

**Short Answer**

Maybe.

**Explanation**

“Substantial proportionality” is not a statistical test. Rather, the determination of compliance is made on a case-by-case basis. OCR has clarified that opportunities may be considered substantially proportionate when the number of opportunities that would be required to achieve proportionality would not be sufficient to sustain a team. However, keep in mind the option of cooperating with another nearby school.

**OCR Clarification 1996**

**Probably yes, if …**

For example, at your school girls make up 52% of the school’s enrollment, 47% of the athletes, and the athletic program consists of only 60 participants. If the school provided girls with 52% of athletic opportunities, approximately 6 additional girls would be able to participate. Since 6 participants are unlikely to support a viable team, the school would meet part one.

**Probably no, if …**

For example, at your school girls make up 52% of the school’s enrollment, 47% of the athletes, and the athletic program consists of 600 participants. If the school provided girls with 52% of athletic opportunities, approximately 62 additional girls would be able to participate. Because this is a significant number of unaccommodated girls, it is likely that a viable sport could be added. If so, your school would not meet part one.

**Question 3:**
*How do we determine if our school meets part two — history and continuing practice — of the three-part test?*

**OCR Clarification 1996**

**By showing your school has a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the underrepresented sex.**

This part looks at a school’s past and continuing remedial efforts to provide nondiscriminatory participation opportunities through program expansion.

OCR will assess whether the program expansion was responsive to developing interests and abilities of the underrepresented sex. In addition, your school must demonstrate a continuing (i.e., present) practice of program expansion as warranted by developing interests and abilities.

OCR will consider the following factors, among others, as evidence that may indicate a history of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex:

1. A school’s record of adding teams for the underrepresented sex;
2. A school’s record of increasing the number of participants in athletics who are members of the underrepresented sex; and
3. A school’s affirmative responses to requests by students or others for addition or elevation of sports.
Questions

Question

Question 3: (continued)

Short Answer

OCR will consider the following factors, among others, as evidence that may indicate a continuing practice or program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex:

1) A school’s current implementation of a nondiscriminatory policy or procedure for requesting the addition of sports and the effective communication of the policy or procedure to students; and

2) A school’s current implementation of a plan or program expansion that is responsive to developing interests and abilities.

OCR would find persuasive a school’s efforts to monitor developing interests and abilities of the underrepresented sex, for example, by conducting periodic nondiscriminatory assessments of developing interests and abilities and taking timely actions in response to the results.

OCR would not find a history and continuing practice of program expansion where an institution increases the proportional participation opportunities for the underrepresented sex by reducing opportunities for the overrepresented sex alone or by reducing participation opportunities for the overrepresented sex to a proportionately greater degree than for the underrepresented sex.

OCR will not find that a school satisfies part two where it established teams for the underrepresented sex only at the initiation of its program for the underrepresented sex or where it merely promises to expand its program for the underrepresented sex at some time in the future.

OCR will assess the following three questions:

1) Is there unmet interest in a particular sport?
   a) Whether the school uses nondiscriminatory methods of assessment when determining the athletic interests and abilities of its students;
      i) The processes take into account the nationally increasing levels of females’ interests and abilities;
      ii) The methods of determining interest and ability do not disadvantage the members of an underrepresented sex;

OCR will consider the following factors, among others, as evidence that may indicate a continuing practice or program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex:

1) A school’s current implementation of a nondiscriminatory policy or procedure for requesting the addition of sports and the effective communication of the policy or procedure to students; and

2) A school’s current implementation of a plan or program expansion that is responsive to developing interests and abilities.

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      i) The processes take into account the nationally increasing levels of females’ interests and abilities;
      ii) The methods of determining interest and ability do not disadvantage the members of an underrepresented sex;
Question 4: How do we determine if our school meets part three – fully and effectively accommodating interests and abilities of the under-represented sex — of the three-part test? (continued)

**Short Answer**

In determining compliance with part three, OCR considers all of the following three questions:

1. Is there unmet interest in a particular sport?
2. Is there sufficient ability to sustain a team in the sport?
3. Is there a reasonable expectation of competition for the team?

If the answer to all three questions is "yes," OCR will find that a school is not fully and effectively accommodating the interests and abilities of the underrepresented sex and therefore is not in compliance.

OCR considers multiple indicators in evaluating compliance with part three and will not accept a school’s reliance on a survey alone, regardless of the response rate, to determine compliance.

OCR does not consider nonresponses to surveys as evidence of lack of interest or ability in athletics.

**Explanation**

iii) The methods of determining ability take into account team performance records;

iv) The methods are responsive to the expressed interests of students capable of competition who are members of an underrepresented sex.

b) Whether a viable team for the underrepresented sex recently was eliminated;

i) If a school recently has eliminated a viable team for the underrepresented sex from the program, OCR will find that there is sufficient interest, ability, and available competition to sustain a team in that sport and thus there would be a presumption that the school is not in compliance with part three. This presumption can be overcome if the school can provide strong evidence that interest, ability, or competition no longer exists.

ii) OCR does not consider the failure by students to express interest during a survey under part three as evidence sufficient to justify the elimination of a current and viable team for the underrepresented sex. In other words, students participating on a viable team have expressed interest by active participation, and OCR does not use survey results to nullify that expressed interest.

c) Multiple indicators of interest;

i) Requests by students that a particular sport be added;

ii) Requests for the elevation of an existing club sport to interscholastic status;

iii) Participation in club or intramural sports;

iv) Interviews with students, admitted students, coaches, administrators and other regarding interests in particular sports;

v) Results of surveys or questionnaires of students and admitted students regarding interests in particular sports; and

vi) Participation rates in amateur athletic associations and community sports leagues that operate in areas from which the school draws its students.
Questions

Question 4:
How do we determine if our school meets part three – fully and effectively accommodating interests and abilities of the under-represented sex — of the three-part test? (continued)

Short Answer

OCR evaluates the overall weight it will accord the results of a survey by examining the following factors, among others:

1) Content of the survey;
2) Target population surveyed;
3) Response rates and treatment of nonresponses;
4) Confidentiality protections; and
5) Frequency of conducting the survey.

Explanation

d) Multiple indicators of ability;
   i) The athletic experience and accomplishments of underrepresented students in playing the sport;
   ii) Opinions of coaches, administrators, and athletes at the school regarding whether interested students have the potential to sustain a team;
   iii) If the team has previously competed at the club or intramural level, whether the competitive experience of the team indicates that it has the potential to sustain an interscholastic team; and
   iv) OCR has indicated that neither a poor competitive record, nor the inability of interested students to play at the same level of competition engaged in by the school’s other athletes, is conclusive evidence of lack of ability. For the purposes of assessing ability, it is sufficient that interested students and admitted students have the potential to sustain a team.

and

e) Frequency of conducting assessments;
   i) Whether a school assesses interest and ability periodically so that the school can identify in a timely and responsive manner any developing interests and abilities of the underrepresented sex;
   ii) The degree to which the previous assessment captured the interests and abilities of the school’s students of the underrepresented sex;
   iii) Changes in demographics or student population at the school; and
   iv) Whether there have been complaints from the underrepresented sex with regard to a lack of athletic opportunities or requests for the addition of new teams.
Questions

Question

Question 4: How do we determine if my school meets part three – fully and effectively accommodating interests and abilities of the underrepresented sex — of the three-part test? (continued)

Short Answer

Explanation

f) Effective procedures for evaluating requests to add teams and assessing participation;
   i) OCR recommends that schools have effective ongoing procedures for collecting, maintaining, and analyzing information on the interests and abilities of students of the underrepresented sex, including easily understood policies and procedures for receiving and responding to requests for additional teams, and wide dissemination of such policies and procedures to existing and newly admitted students, as well as to coaches and other employees;
   ii) OCR also recommends that schools develop procedures for, and maintain documentation from, routine monitoring of participation of the underrepresented sex in club and intramural sports as part of their assessment of student interests and abilities; and
   iii) OCR further recommends that schools develop procedures for, and maintain documentation from, evaluations of the participation of the underrepresented sex in amateur athletic associations, and community sports leagues that operate in areas from which the school draws its students.

   g) Survey may assist in capturing information on students’ interests and abilities.

2) Is there sufficient ability to sustain a team in the sport?

   a) Minimum number of participants needed for a particular sport;

   b) Opinions of athletic directors and coaches concerning the abilities required to field a team; and

   c) Size of a team in a particular sport at schools in the governing athletic association or conference to which the school belongs or in the school’s competitive regions.

3) Is there a reasonable expectation of competition for the team?

   a) OCR considers available competitive opportunities in the geographic area in which the school’s athletes primarily compete.
Questions

Question 5:
How do we measure the students’ interests in athletic activities?

Minn. R. 3535.3300

As described above, schools must use multiple indicators to determine students’ interest.

One method used to determine unmet interests in a particular sport is the required biennial determination of student interest, the student interest survey.

Explanation

In Minnesota, all public and private elementary and secondary schools are required to make a biennial determination of student demonstrated interest. The method used to make the determination must be reported to MDE, via the athletic program report. Student demonstrated interest must be considered in the selection of athletic activities provided in the athletic program for the purpose of providing separate teams or sports for members of the previously excluded sex.

The method used to determine student interest must reach a wide audience and be open ended.

The MSHSL has a sample student interest survey on its website at www.mshsl.org.

Question 6:
In determining if our school is providing equal opportunity in athletics, do we review interscholastic and intramural athletic activities together?

Minn. R. 3535.3300
Minn. R. 3535.3000, subp. 3
Minn. R. 3535.3000, subp. 4

No.

Public and private elementary and secondary schools shall provide equal opportunity for members of each sex to participate in both their intramural and interscholastic athletic program.

Under Minnesota law, the number of opportunities for females to participate on teams is to be comparable to the number of opportunities for males to participate on teams in each school year in the interscholastic athletic program and comparable, as well as in the intramural athletic program. The equipment, supplies, and uniforms for each sport are to be comparable for both sexes. The locker rooms, practice, and competitive facilities are to be comparable for both sexes. The medical services are to be comparable for both sexes. The participation rates for members of both sexes are to be comparable while recognizing the voluntary nature of student involvement in interscholastic and intramural activities.

Interscholastic athletic program: means all athletic activities offered within a school the purpose of which is to provide opportunities for students to compete with other students on like teams in other schools within an organized conference under the auspices of the MSHSL or with other teams in other schools operating under separate jurisdictions. A complete list of MSHSL sponsored activities may be found at http://www.mshsl.org.

Intramural athletic program: means all non-interscholastic activities offered within a school, which are not a part of the regular physical education curriculum, designed to provide students athletic opportunities, experiences, and the development of competencies in a variety of sports.

Participation rate for a particular sex in the interscholastic athletic program: means the ratio of the number of participants of that sex in the athletic program to the number of students of that sex in the student body.
### Questions

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<tr>
<th>Question</th>
<th>Short Answer</th>
<th>Explanation</th>
</tr>
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<tbody>
<tr>
<td>Question 6: If our school provides an equal number of male and female sports, does that mean we are in compliance with providing equal opportunity?</td>
<td>Not necessarily.</td>
<td>Participation rate for a particular sex in the intramural athletic program: means the ratio of the number of participations of that sex in the athletic program to the number of student of that sex in the student body.</td>
</tr>
<tr>
<td></td>
<td>Probably yes, if …</td>
<td>Providing the same number of male and female sport teams does not, in and of itself, guarantee compliance.</td>
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<td></td>
<td>Probably no, if …</td>
<td>The sports offered are representative of the students’ interests and abilities (see the first factor that must be considered in determining whether equal opportunity in athletic programs is available above).</td>
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<tr>
<td></td>
<td>Not the recommended answer.</td>
<td>The sports offered are not representative of the interests and abilities and therefore, there are few participants on the teams.</td>
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OCR Policy Interpretation 1979

OCR Clarification 2003

OCR has repeatedly stated that nothing in Title IX requires the cutting or reduction of teams in order to demonstrate compliance with Title IX and that the elimination of teams is a disfavored practice. Because the elimination of teams diminishes opportunities for students who are interested in participating in athletics instead of enhancing opportunities for students who have suffered from discrimination, it is contrary to the spirit of Title IX for the government to require or encourage a school to eliminate athletic teams.
### Questions

#### Question 9:  
**May we include dance team as a sport?**

**Short Answer**
- Historically, no.
- Currently determined on a case-by-case basis.

**Explanation**
- Despite OCR's longstanding position that dance teams are in the same extracurricular category as cheerleaders, rather than athletic programs, OCR has recently provided guidance to schools to conduct their own assessments and make their own determinations of whether dance team, as conducted by the school, falls within its athletic program. OCR has provided several factors for the schools to review in order to make this determination.
- The primary purpose of dance team is athletic competition; it is a stand-alone activity and administered by the school's athletic department; coaches are selected/compensated in the same manner as other current sports; coaches/judges are certified in a comparable manner as other current sports; a primary selection criteria for making the team is based on athletic ability; it has a defined season with a practice schedule and competitive opportunities that are comparable to other sports; it has post-season opportunities; participants are eligible for varsity letters and similar awards available to other athletes in the interscholastic athletic program; the activity falls within an organized conference under the auspices of the MSHSL and is governed by a specific set of published rules.
- The primary purpose of dance team is the support or promotion of other athletes; the selection criteria for making the team is not based on athletic ability; and it does not have a defined season, practice schedule or competitive opportunities that are comparable to other sports.

**How do I make this assessment and determination?**
- Contact Sara Winter at MDE, 651-582-8237, and an Assessment and Determination Worksheet will be sent out to you.

#### Question 10:  
**Our district is facing substantial budget cuts and must cut sports from our athletic program; how do we ensure we continue to provide equal athletic opportunities?**

**Short Answer**
- By continuing to assess your program under all the factors listed above.
- Lack of funds does not excuse discrimination.

**Explanation**
- Schools should, in advance of proposed budget cuts, develop a mechanism to ensure that equivalent benefits, treatment, services and opportunities are provided for males and females as programs face elimination or as resources are reallocated.
- While determining which sport(s) to eliminate from your program, continue to assess each of the factors outlined above that must be considered in determining whether equal opportunity still exists in your athletic program.
Question 11: May our school accept private funds, including student-initiated fundraising or booster club money?

Short Answer: Maybe.

Each school has a responsibility under Title IX to ensure that males’ and females’ programs are provided with equivalent benefits, treatment, services or opportunities regardless of their source.

Explanation: When determining equivalency, benefits, services or opportunities attained through the use of private funds, such funds are considered in combination with all benefits, services or opportunities.

Private fundraising, including student-initiated fundraising, has been, and continues to be, permissible under Title IX. This does not mean that teams must “share” proceeds from fundraising activities. It does, however, place a responsibility on the school to insure that benefits, services, treatment and opportunities overall, regardless of funding sources, are equivalent for male and female athletes.

In the experience of OCR, sponsors, as a whole, are more interested and willing to assist male teams than female teams. Further, male-oriented “booster” activities generate more public interest than female-oriented activities. If all benefits are not considered in examining athletics, the purpose of Title IX requirements could be routinely undermined by the provision of unequal benefits through private financial assistance.

Probably yes, if …

The school has a mechanism in place to ensure that equivalent benefits, treatment, services and opportunities are provided to males and females despite large portions of funding being raised specifically for one team.

Probably no, if …

The school has no mechanism in place to ensure equivalency and the money is being given solely to the football or wrestling teams.

Question 12: Our school has two teams in the same sport that are separated according to sex, i.e., basketball; must the two teams have substantially equal budgets per participant?

Short Answer: Yes.

When two teams in the same sport are in fact separated or substantially separated according to sex, the two teams shall be provided with substantially equal budgets per participant, exclusive of gate receipts and other revenues generated by that sport, and in all other respects shall be treated in a substantially equal manner.

Explanation: When determining equivalency, benefits, services or opportunities attained through the use of private funds, such funds are considered in combination with all benefits, services or opportunities.

Private fundraising, including student-initiated fundraising, has been, and continues to be, permissible under Title IX. This does not mean that teams must “share” proceeds from fundraising activities. It does, however, place a responsibility on the school to insure that benefits, services, treatment and opportunities overall, regardless of funding sources, are equivalent for male and female athletes.

In the experience of OCR, sponsors, as a whole, are more interested and willing to assist male teams than female teams. Further, male-oriented “booster” activities generate more public interest than female-oriented activities. If all benefits are not considered in examining athletics, the purpose of Title IX requirements could be routinely undermined by the provision of unequal benefits through private financial assistance.

The school has a mechanism in place to ensure that equivalent benefits, treatment, services and opportunities are provided to males and females despite large portions of funding being raised specifically for one team.

When two teams in the same sport are in fact separated or substantially separated according to sex, the two teams shall be provided with substantially equal budgets per participant, exclusive of gate receipts and other revenues generated by that sport, and in all other respects shall be treated in a substantially equal manner.
**Questions**

**Question 13:**
*This year our school had to replace major equipment for a male sport, i.e., wrestling mats, and that made our expenditures seem disproportionate; does that mean our school is now out of compliance?*

**Short Answer**
Probably not.

Some aspects of athletic programs may not be equivalent for males and females because of unique aspects of particular sports or athletic activities.

**Explanation**
Generally, these differences will be the result of factors that are inherent to the basic operation of specific sports. Such factors may include rules of play, nature/replacement of equipment, rates of injury resulting from participation, nature of facilities required for competition, and the maintenance/upkeep requirements of those facilities.

If sport-specific needs are met equivalently in both males’ and females’ programs, differences in particular program components will be found to be justifiable.

**Question 14:**
*Must our school have identical female and male locker rooms in order to be in compliance?*

**OCR Policy Interpretation 1979**

**OCR Policy Statement 1991**

**Short Answer**
No. However, the overall effect of any differences must be negligible.

OCR will look for overall “equivalence” which is interpreted as “equal or equal in effect.”

**OCR Policy Interpretation 1979**

OCR recognizes and permits differences in locker rooms that are the result of factors “inherent to the basic operation of specific sports.” Such factors may include the nature of equipment, nature of facilities required for competition, and the maintenance/upkeep of those facilities. If sport-specific needs are met equivalently in both male and female programs, these differences may be found to be justifiable.

For example, because of the nature of football equipment, it may be justifiable for football players to have larger lockers and for the football team to have more extra lockers (e.g., to store large football equipment). Generally, these differences are acceptable provided the locker rooms and facilities meet the sport-specific needs of other males’ teams and females’ teams equivalently.

**Question 15:**
*Must our school’s baseball fields and softball fields be equivalent?*

**OCR Success Stories 2005**

**Short Answer**
Yes.

OCR reports the following scenario: A brand-new high school included a state-of-the-art baseball facility for males, including dugouts, generous seating, lockers, a storage room and PA system. In addition, the field was large enough for both the junior and senior players to practice and play.

In contrast, the girls were told there was no softball field for them: instead, the school had made arrangements with a local church to share their field. This field had no seating, locker room, dugout, storage room or PA system, and the field itself was not comparable in quality or size to the one provided to males.

After OCR’s intervention, the school district not only built a comparable softball facility for females but it also reviewed facilities for females at other schools to determine any needed upgrades.
**Question 16:**
*Must our school provide the same sports for both males and females?*

**Short Answer**
Probably not.

Schools are not required to offer particular sports or the same sports for each sex. However, schools must accommodate to the same degree the athletic interests and abilities of each sex in the selection of sports.

**Explanation**
In the selection of sports, schools are not required to integrate their teams nor to provide exactly the same choice of sports to males and females. However, where the school sponsors a team in a particular sport for members of one sex, it may be required either to permit the excluded sex to try out for the team or to sponsor a separate team for the previously excluded sex.

Schools may sponsor separate teams for males and females where selection is based on competitive skill or when the activity is a contact sport.

Contact sports: if a school sponsors a team for members of one sex in a contact sport, it must do so for members of the other sex under the following circumstances:

1) The opportunities for members of the excluded sex have historically been limited; and
2) There is sufficient interest and ability among the members of the excluded sex to sustain a viable team and a reasonable expectation of competition for that team.

Contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports in which the purpose or major activity involves bodily contact.

When an equal opportunity to participate in the elementary or secondary school level athletic program of an educational institution or public service is not provided to members of a sex whose overall athletic opportunities have previously been limited, that educational institution or public service shall, where there is demonstrated interest, provide separate teams for members of the excluded sex in sports which it determines will provide members of that excluded sex with an equal opportunity to participate in its athletic program and which will attempt to accommodate their demonstrated interests.

Any public or private elementary or secondary school may provide in the same sport two teams which are separated according to sex when overall athletic opportunities for one sex have previously been limited, but the team for the other sex may only be substantially separated by sex.

When an equal opportunity to participate is not provided to members of a sex whose overall athletic opportunities to participate have previously been limited, the school, where there is a demonstrated interest, shall provide separate teams in sports which it determines will provide members of the excluded sex with an equal opportunity and which will attempt to accommodate their demonstrated interest.
Question 18: When does our school have to allow females to try-out for male teams and vice-versa?

OCR Policy Interpretation 1979
OCR Policy Statement 1991
Minn. Stat. § 121A.04, Subd. 3(d)
Minn. R. 3525.3200, subp. 4

Where a school sponsors a team in a particular non-contact sport for members of one sex, it must allow athletes of the other sex to try-out for the team, if historically, there have been limited athletic opportunities for members of the other sex.

Non-contact sports: if a school sponsors a team for members of one sex in a non-contact sport, it must do so for members of the other sex under the following circumstances:

1) The opportunities for members of the excluded sex have historically been limited;
2) There is sufficient interest and ability among the members of the excluded sex to sustain a viable team and a reasonable expectation of competition for that team; and
3) Members of the excluded sex do not possess sufficient skill to be selected for a single integrated team, or to compete actively on such a team if selected.

If two teams are provided in the same sport, one of these teams may be restricted to members of a sex whose overall athletic opportunities have previously been limited, and members of either sex shall be permitted to try out for the other team.

When overall athletic opportunities for one sex have previously been limited, members of that sex shall be permitted to try out and, if successful, to participate on any team in any sport. This part does not prohibit any elementary or secondary school from making participation on a team in a sport dependent upon a demonstrated level of skill and ability. When an educational institution has established a team exclusively for members of the sex whose overall athletic opportunities have previously been limited, members of the other sex may not try out for or participate on that team.
Question 19: What is the athletic program report?

Minn. R. 3525.3600
Minn. R. 3525.3700
Minn. Stat. § 127A.42

Short Answer

A report you are required to submit to MDE on or before October 15 of each year containing information about both intramural and interscholastic athletics your school provides.

Explanation

MDE is to assure schools/school districts provide an equal opportunity for members of both sexes to participate in athletic programs.

Annually, on or before October 15, all public and private elementary and secondary schools that offer interscholastic and intramural sports must submit, to MDE, an elementary and secondary athletic program report containing information about both interscholastic and intramural athletics provided.

The report shall contain by building:

1. Number of sports offered for each sex;
2. The season each sport is offered for each sex;
3. Number of weeks each sport is offered;
4. Number of teams in each sport;
5. Number of coaches assigned each sport;
6. Number of students by sex participating in each sport;
7. Dollar expenditure per sport;
8. Total unduplicated count of student participation in the interscholastic program by sex; and
9. Total unduplicated count of student participation in the intramural program by sex.

The report is submitted to MDE electronically, via the internet, at https://education.state.mn.us/Athletics. Upon receipt of a school's athletic program report, MDE must evaluate the data contained in the report and forward reports requiring additional attention to the commissioner of human rights. MDE may reduce or withhold the school's/school district's state aid for any school year for noncompliance with state laws prohibiting discrimination because of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance or disability.
Questions

Question 20: For the athletic program report required to be submitted to MDE, what sports are considered co-ed sports?

Short Answer
Co-ed sports are generally limited to adapted sports or intramural sports.

Explanation
Co-ed: means a team that is open to both sexes. Co-ed teams are generally limited to adapted athletic programs or intramural athletic programs.

If both your female team and male team share a coach, for example in golf, that does not make your sport a co-ed sport and each team must be listed out separately in your athletic program report.

Question 21: Our school is in a cooperative for one or more sports, how do we report this information on the athletic program report required to be submitted to MDE?

Report the information as it pertains to the students participating from your school only.

Submit the information on the athletic program report as it pertains only to the students/staff in your school building.

For example, if your school building is not providing a coach, put 0 for the number of coaches.

Question 22: Do we have to report athletic numbers to the MSHSL?

Yes.

You are asked to submit participation numbers, by sport and by gender, to MSHSL on or before June 1 of each year.

MSHSL gathers participation numbers by sport and by gender and forwards them to the National Federation of State High School Associations to compile nation-wide participation numbers.

Athletic administrators are asked to access the administrative side of the MSHSL’s web site at the conclusion of the fall and winter activities and on May 1 each spring. The form used to collect participation data is entitled Activity Participation Survey, and each school is required to provide the data not later than June 1 of each school year.
Resources

The United States Department of Education, Office for Civil Rights (OCR) enforces the Federal Title IX law. The OCR office for Minnesota is located at:

**Chicago Office**
Office for Civil Rights  
U.S. Department of Education  
500 W. Madison Street, Suite 1475  
Chicago, IL 60661-4544

Customer Service Hotline:  
1-800-421-3481
Telephone: 312-730-1560  
FAX: 312-730-1576

Email: OCR.Chicago@ed.gov  
Website: www.ed.gov/ocr

The Minnesota Department of Education (MDE) reviews school compliance with state and federal anti-discrimination laws. MDE is located at:

**Minnesota Department of Education**
Division of Compliance and Monitoring  
Telephone: 651-582-8237
Attention: Sara Winter  
1500 Highway 36 West  
Roseville, MN 55113

FAX: 651-582-8725

Email: sara.winter@state.mn.us  
Website: www.education.state.mn.us

The Minnesota Department of Human Rights (MDHR) enforces state anti-discrimination laws and investigates all charges alleging sex discrimination in athletic programs in schools. MDHR is located at:

**Minnesota Department of Human Rights**
Freeman Building  
625 Robert Street North  
Saint Paul, MN 55155

Telephone: 651-539-1100  
TTY: 651-296-1283  
Toll Free: 1-800-657-3704

Website: www.humanrights.state.mn.us

The Minnesota State High School League (MSHSL) is a 501-c(3) nonprofit corporation that is a voluntary association of high schools. The MSHSL controls contests by and between Minnesota High Schools, and the eligibility rules for such competitions are developed by the member schools themselves. The MSHSL Board of Directors administers post-season tournaments and develops policies which direct MSHSL initiatives. MSHSL is located at:

**Minnesota State High School League**
Attention: Dave Stead  
2100 Freeway Blvd.  
Brooklyn Center, MN 55430-1735

Telephone: 763-560-2262  
FAX: 763-569-0499

Email: dstead@mshsl.org  
Website: www.mshsl.org
Legal Resources and Documents Cited

20 U.S.C. §§ 1681 et seq.

34 C.F.R. § 106.41. Athletics.


Minn. Stat. § 127A.42. Reduction of Aid for Violation of Law.

Minn. Stat. § 363A.23. Exemption Based on Education.

Minn. R. 3535.3000. Definitions.

Minn. R. 3535.3200. Separation by Teams.

Minn. R. 3535.3300. Biennial Determination of Student Interest.

Minn. R. 3535.3400. Creating Equal Opportunity for Two Teams.

Minn. R. 3535.3600. Compliance Reports and Submission of Data.

Minn. R. 3535.3700. Duties of the Commissioner of Education.


Athletic Equity Success Stories (March 9, 2005) (OCR Success Stories 2005).

OCR Letter to Aitkin (March 18, 2004) (regarding whether dance team is a “sport” for purposes of Title IX) (OCR Letter to Aitkin).

Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance (July 11, 2003) (OCR Clarification 2003).


