

Title IX Compliance – Part II: The Eleven Areas of Other Athletics Benefits

By Lee Green, J.D. on March 14, 2022

[hst](#)

Preface

Throughout the spring of 2022, as HST celebrates the upcoming 50th anniversary of the enactment of Title IX on June 23, each monthly sports law article in the magazine will address a component of Title IX compliance for high school athletic programs with respect to the legally-mandated equal treatment of female and male student-athletes. Title IX is, of course, a broadbased statute prohibiting gender discrimination in all aspects of educational programs and activities, not merely a law governing athletics.

However, for want of the space for a book-length treatment to discuss Title IX's full application to other topics such as academic curriculum, fine arts programs, school clubs and activities, sexual harassment, hazing, bullying, and LGBTQ rights, this series of articles will address only the law's impact on school sports programs, specifically the development and implementation of compliance strategies to avoid gender-based inequities between girls and boys teams: Part I (February) – Title IX's Three-Prong Test; Part II (March) – Title IX's 11 Areas of Athletics Benefits & Opportunities; Part III (April) – Title IX's Definition of a Sport; and Part IV (May) – Frequently Asked Questions About Title IX Law.

Following the conclusion of the four-part series, to print out the articles and compile a comprehensive guide to compliance for your athletic program, visit www.nfhs.org/resources/highschool- today.

The Title IX Compliance Framework

In the HST February 2022 issue's sports law article, the following Title IX Compliance Framework providing an overview of all of the sources of Title IX law was set forth as a tool that could be used by school and athletic administrators as the infrastructure to conduct a self-audit to determine whether a school's sports programs were in compliance with the law:

TITLE IX COMPLIANCE FRAMEWORK

COMPONENT I: SPORTS PARTICIPATION OFFERINGS

A. Participation Opportunities – The Three-Prong Test

- Substantial Proportionality or
- History & Continuing Practice of Program Expansion or
- Full & Effective Accommodation of Athletic Interests

B. Levels of Competition – The Two-Prong Test • Equivalently Advanced Competitive Opportunities or • History & Continuing Practice of Improvement

COMPONENT II: FINANCIAL AID FLOWING TO ATHLETES

COMPONENT III: OTHER ATHLETICS BENEFITS/ OPPORTUNITIES

P - L - A - Y - I - N - G - F - A - I - R

The February article explained the nuances of Component I of the Framework and the application of both the Participation Offerings “three-prong test” and the Levels of Competition “two-prong test.” Component II of the framework, the analysis of whether any financial aid related to athletics is being distributed on an equitable basis, typically is relevant only in college-level Title IX disputes and is rarely an issue in high school cases.

Component III, evaluating whether the “amenities” tied to sports participation are being allocated fairly, involves 11 categories referred to by the OCR as its “laundry list” and includes types of benefits represented by the acronym PLAYING FAIR, the details of which are the subject of this article.

The Eleven Areas of Other Athletics Benefits

P - L - A - Y - I - N - G - F - A - I - R

- P protective athletic equipment, uniforms, & athletic supplies
- L locker rooms and practice/competition facilities
- A allocation of travel/transportation/per diem benefits
- Y years of experience, quality & salaries of coaches

- I institutional housing/dining facilities & services
- N nature of publicity, marketing & media services
- G game/practice times & scheduling
- F facilities for & access to training & medical services
- A academic tutoring services for student-athletes
- I institutional support services for athletic programs
- R recruiting resources provided to athletic programs

For each of the 11 categories of benefits in the “laundry list,” the OCR and the federal courts have established a set of specific compliance factors that are to be evaluated in determining whether a school is equitably allocating resources between boys teams and girls teams.

It is important to note that providing equity between female and male student-athletes in each of the 11 categories involves financial outlays for school sports programs, but that the source of that funding is irrelevant to the obligation to correct inequities that arise because of “outside” financial resources enhancing the benefits flowing to boys teams.

In responding to Title IX complaints filed with the OCR and lawsuits filed in federal court, districts often attempt to assert as a defense the fact that the funding responsible for creating the inequities did not come from the school, but rather an outside source such as fundraising by a team, resources provided by a booster club, a contribution from a donor, an investment by a corporate sponsor, or from some other source independent of the district’s budget for athletics. Yet the OCR and federal courts have consistently ruled that the origins of the money that created the inequities does not serve as a defense for the district and does not mitigate the obligation to remedy those inequities. This does not mean that schools must strictly share, dollar-for-dollar, 50 percent of outside funding between girls teams and boys teams – rather, schools need to ensure that the qualitative nature of the “benefits” created by the outside funding are distributed between female and male athletes in an equitable manner.

The following is a summary of the specific factors established by the OCR and federal courts for evaluating compliance in each of the 11 categories of “Other Athletic Benefits and Opportunities.” For more details regarding these criteria and numerous examples of “red flags” indicating possible violations within each category, see the [OCR Athletics Investigator’s Manual](#).

Protective athletic equipment, uniforms, & athletic supplies: The specific compliance factors regarding benefits flowing to girls teams versus boys teams to be evaluated in this category are 1) quality of athletic equipment; 2) suitability of athletic equipment; 3) amount of athletic equipment; 4) maintenance of athletic equipment; and 5) availability of athletic equipment. Typical red flags for school sports programs in this category are girls teams that have one uniform, while boys teams have multiple home and away uniforms or girls teams that receive new uniforms once every five years while the apparel for boys teams is upgraded every two years.

Locker rooms and practice/competition facilities: The specific compliance factors to be evaluated in this category are 1) quality and availability of facilities; 2) exclusivity of use of facilities; 3) event preparation in facilities; 4) maintenance and repair of facilities; 5) locker room quality; and 6) locker room availability. Typical red flags are boys teams that have exclusive use of main gyms while girls teams are relegated to auxiliary gyms and boys teams with large, modern locker rooms while girls teams have small, outmoded locker facilities.

Allocation of travel/transportation/per diem benefits: The specific compliance factors are: 1) modes of transportation; 2) housing during overnight travel; 3) length of stay before and after events; 4) per diem and meal allowances; and 5) dining arrangements. Typical red flags include boys teams that travel by charter bus while girls teams travel by van, and boys teams that receive superior meals during road trips compared to those provided to girls teams.

Years of experience, quality & salaries of coaches: The specific compliance factors are: 1) availability of coaches; 2) assignment of coaches; and 3) compensation of coaches. The typical red flag in this category is female athletes being denied access to the same quality of coaching as that received by male athletes.

Institutional housing and dining facilities & services: The specific compliance factors are: 1) housing quality and arrangements; 2) dining quality and arrangements; and 3) special services related to housing and dining arrangements. This is a category rarely implicated in Title IX disputes at the high school level and more typically applies in college level cases involving inequities in athletic dormitories and training tables.

Nature of publicity, marketing & media services: The specific compliance factors are: 1) sports information personnel; 2) sports program-related publications; 3) other publicity resources for your interscholastic athletics program. Typical red flags are greater efforts to publicize boys sports to media outlets, more elaborate game programs for boys teams, or more extensive publicity activities at boys games (e.g., cheerleaders, bands and halftime entertainment).

Game and practice times and scheduling: The specific compliance factors are: 1) number of competitive events; 2) time of day and nights of the week events are scheduled; 3) number and length of practice opportunities; 4) time of day practices are scheduled; and 5) chances for pre-and-post season competition. Typical red flags are boys teams that play more of their games on “prime nights of the week” and girls teams that because of a lack of funding do not get to play in the same types of preseason or holiday tournaments as boys teams.

Facilities for & access to training & medical services: The specific compliance factors are: 1) availability of medical personnel; 2) availability of athletic trainers; 3) availability of weight-training facilities; 4) availability of conditioning facilities; 5) equitable provision of health-accident-injury insurance coverage. Typical red flags are schools that provide athletic trainers only for boys sports or schools that provide priority of access to weight rooms to male athletes.

Academic tutoring services for student-athletes: The specific compliance factors are: 1) opportunity to receive tutoring; 2) assignment of tutors; and 3) compensation of tutors. This is another category rarely implicated in Title IX disputes at the high school level and more typically applies in college level cases involving inequities in university academic support services for student-athletes.

Institutional support services for athletic programs: The specific compliance factors are: 1) administrative assistance such as office space and equipment; and 2) secretarial-clerical assistance. A typical red flag is the provision of offices to coaches of boys teams, but not to coaches of girls teams.

Recruiting resources provided to athletic programs: The specific compliance factors are: 1) equal opportunity to recruit; 2) equivalent resources to recruit; and 3) effect of athletics program benefits on the ability to effectively recruit. At the high school level, this category refers to the ability not to recruit athletes to attend the school, but rather on the ability to internally recruit students to participate in the school's sports programs. In numerous Title IX cases, the OCR and federal courts have identified inequities in the first 10 categories of benefits that have resulted in a lack of prestige for girls teams and which have made it difficult to recruit girls to play sports and stay involved in sports throughout high school.

A Court Case Example:

In *Ollier v. Sweetwater Union School District*, a dispute originating in 2006 focused on facility inequities between softball and baseball at Castle Park High School (CA) and regarding which the 2009 federal court decision discussed in the February 2022 article set forth findings on the application of the three-prong test to the case, was followed three years later by a second federal court ruling on the application of the 11 areas of other athletics benefits to the dispute. The 2012 federal court decision identified inequities for the girls sports teams at Castle Park High School in locker rooms, practice and competition facilities, equipment and supplies, travel and transportation, access to quality coaching, scheduling of games and practice times, coaching facilities, and marketing-publicity.

The [full-text of the case](#), an excellent example of the detailed application by a court of all the evaluative criteria in the 11 areas of other athletics benefits.