

# GENDER EQUITY IN ATHLETICS

## A GUIDE FOR FAMILIES & STUDENTS





# **Gender Equity in Athletics: A Guide for Families and Students**

This guide is designed to help students, parents and guardians understand students' rights concerning gender equity in athletics in Washington. This guide is not meant to provide legal advice.

The primary focus of this guide is on K-12 public schools, colleges and universities. Different rules may apply to tribal schools or private schools that receive no federal funding.

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# LET THEM PLAY

## An Introduction to the Gender Equity in Athletics Movement

Females have always been interested in athletic participation. When females were excluded from the Olympics in 776 B.C., they created their own version, the Games of Hera.<sup>1</sup> American female participation in organized athletics dates back to the mid-1800s.

In 1866, Vassar College fielded the first two female amateur baseball teams.<sup>2</sup> In 1875, “feminine ball-tossers” played the first game of baseball in public where spectators paid to watch.<sup>3</sup> From 1890 until 1934, the “Bloomer Girls” baseball era provided an opportunity for hundreds of female athletes.<sup>4</sup>

In 1896, Stanford and the University of California at Berkeley faced off in the first female intercollegiate basketball championship. Stanford won 2-1 before a crowd of 700 women.<sup>5</sup> Today, more than 28% of the almost 3 million females participating in high school athletics play softball or basketball.<sup>6</sup>

Despite their interest in athletics, females were systematically excluded from sports and physical activity over the last century. In the early 1900s, physical education instructors strongly opposed competition among females.<sup>7</sup> As late as 1972, only one in 27 females participated in high school athletics compared to one in two males.<sup>8</sup> In 1971, the University of Washington had only one female varsity sports team, tennis.<sup>9</sup>

At the time Title IX passed, females were making their athletics capabilities known. In the late 1960s through the 1970s, Billie Jean King became a household name, winning a record 20 Wimbledon titles. In 1967, Katherine Switzer entered the Boston Marathon as “K. Switzer” because females were not allowed to participate in the marathon. Race officials tried to forcibly remove her from the competition, but she stayed the course and became the first female to officially run the Boston Marathon.

During the late 1960s and early 1970s, a growing movement for gender equity in athletics changed people’s perspectives on female participation in athletics. In the public arena, females were accomplishing amazing athletic feats, challenging notions that females were incapable or uninterested in athletics. In the courts across the U.S., female athletes sued their schools for spending public school resources on male athletes and not also providing these benefits to female athletes. They successfully challenged

their schools' denial of athletic opportunities under the Equal Protection Clause of the U.S. Constitution, and courts required schools to end their discriminatory practices.<sup>10</sup>

Law makers also responded. In 1972, the U.S. Congress enacted Title IX, banning discrimination on the basis of sex in educational institutions that receive federal funds.<sup>11</sup> That same year, Washington amended its constitution to add the Equal Rights Amendment ("ERA"), guaranteeing equal rights to females.<sup>12</sup> In 1975, Washington passed the Sexual Equality in Common Schools Act, which prohibits sex discrimination in K-12 public schools. The Washington ERA and Sexual Equality Act create stronger protections against discrimination than Title IX alone.

These changes have had a profound impact on the number of female athletes participating in athletics. Since the passage of Title IX, the number of females participating in high school athletics increased tenfold, from 294,015 to 2,956,358.<sup>13</sup> In collegiate athletics, the number of female athletes increased from 32,000 to 171,000.<sup>14</sup>

Female athletes of color are still grossly underrepresented in athletics, but participation is on the rise, from 137 female high school athletes of color in 1971 to 22,541 in 2000, an increase of 955%.<sup>15</sup> The 2004 College Sports Racial Gender Report Card found that 14.9 percent of NCAA Division I female athletes were African-American, an all-time high.<sup>16</sup>

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Sometimes students are subjected to discrimination on the basis of both sex and race or ethnicity. Additional state and federal laws also protect students from discrimination on the basis of race or ethnicity. You can learn more about your rights in the ACLU of Washington's publication, *Know Your Rights: A Guide for Public Students in Washington*, available at [www.aclu-wa.org](http://www.aclu-wa.org).

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Despite the increase in participation opportunities, female athletes still face discrimination. Male athletes still have more opportunities to participate and receive more funding, better equipment, preferential scheduling and more scholarship opportunities. This guide provides information on how to determine if your school is in compliance with gender equity laws. It also provides steps to take when you feel like your school may be discriminating against female athletes or athletic teams.

## MYTHS ABOUT GENDER EQUITY LAWS

*Myth:* Title IX reduces the number of athletic opportunities available for male athletes.

*Fact:* The number of males playing high school and collegiate sports has actually increased since the passage of Title IX. More than 4.2 million males participate in high school sports;<sup>17</sup> almost 400,000 more than in 1972.<sup>18</sup> In colleges, over 200,000 males compete in athletics; 30,000 more than did in 1972.

*Myth:* If a team raises money through a booster club or other fundraising activity, those funds are not included in evaluating compliance with Title IX.

*Fact:* If a booster club raises money for a sport, this amount must be taken into consideration when evaluating the allocation of resources within the school's entire athletics program. A school must make sure that female and male sports receive equitable funding. Booster club funding resulting in unequal funding and publicity for female and male athletics violates Title IX and state law.

*Myth:* Title IX only covers athletics.

*Fact:* Title IX bans all sex discrimination in schools. Prior to Title IX, females were routinely denied admission to college and graduate programs because of their sex. Title IX opened the door for females to obtain higher education degrees. Title IX has also been used as a tool to improve the treatment of female students in the educational system. Sexual harassment (including same-sex sexual harassment), discrimination based on pregnancy or marital status are all prohibited under Title IX. For more information about these Title IX protections, check out the ACLU of Washington's publication "Know Your Rights: A Guide for Public School Students in Washington."

## TITLE IX

### The Federal Ban on Sex Discrimination

The U.S. Department of Education Office for Civil Rights ("OCR") is charged with administering Title IX. Over the past 35 years, OCR has provided regulations and policy interpretations on how to apply Title IX to interscholastic and intercollegiate athletic programs.

The U.S. Supreme Court has also provided clarification on the scope of Title IX. In 1979, the Supreme Court held that if a school is discriminating against athletes based on sex, the athletes can go to court to enforce their rights under Title IX.<sup>19</sup> The Court also said that private parties can seek monetary damages for violations of Title IX.<sup>20</sup> In 2005, the Court made it clear that if a coach or other school employee complains on behalf of female athletes, Title IX protects that coach or teacher from retaliation by their employer.<sup>21</sup>

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“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving federal financial assistance.”

- Title IX, 20 U.S.C. §1681(a)

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## What Does it Mean to Comply with Title IX?

Schools are not allowed to discriminate in interscholastic, intercollegiate, club, or intramural sports. One of the easiest ways to see whether discrimination exists at a school is to look at the number of female and male athletes participating in athletics. However, schools must do more than provide female athletes with the opportunity to play. Schools must also provide a similar quality of athletic experience.

## Participation

Title IX does not require equal participation (50% female/50% male) in athletics, rather it requires that athletic programs “accommodate the interests and abilities of members of both sexes.”<sup>22</sup> A school complies with the participation requirement of Title IX if it meets any one part of a three-part test established by OCR.<sup>23</sup> This three-part test applies to all schools that receive federal funds.

### *Part One: Substantial Proportionality*

This part of the test is satisfied if participation opportunities for females and males are “substantially proportionate” to their respective enrollments.<sup>24</sup> To determine if your school is in compliance with the first part of the test, look at the following:

Some critics of Title IX argue the reason for the disparity in college athletics is that females are not interested in athletics. That is hard to believe when there are 2.9 million female high school athletes and only 171,000 opportunities to play on the collegiate level. This means that fewer than 6% of high school female athletes have an opportunity to compete in college.

- Determine the number of female and male students enrolled in the school.
- Determine the number of female and male athletes participating in school sports.
- Determine the percentage of females and males in the school (i.e., total number of female students / total number of students = percentage of female students).
- Determine the percentage of female and male athletes in the school (i.e., total number of female athletes / total number of athletes = percentage of female athletes).
- Compare the percentages of student athletes versus the overall student enrollment to determine whether or not female and male students participate in sports in numbers that are proportional to the enrollment in their school.

While there is no set ratio, if the percentages are fairly close, the school is in compliance with Title IX. If athletes of either sex are underrepresented, a school may still be considered in compliance if they satisfy one of the other two parts of the test.

### *Part Two: History and Continuing Practice*

This part of the test is satisfied if an institution has a history and continuing practice of program expansion that responds to the developing interests and abilities of the underrepresented sex (typically female).<sup>25</sup> To determine compliance under part two of the test, look at the following:

- Over the last few years, has the school added or removed female teams? If so, what effect did it have on the proportion of female to male athletes?
- Does the school have plans to add new sports for females?
- Is there interest in any sport that is not currently being met?

In order for a school to pass this part of the test, it must show that it has a continuing history of program expansion for the underrepresented sex and that the interests and abilities of the underrepresented sex have been fully and effectively accommodated.

### *Part Three: Effectively Accommodating Interests and Abilities*

This part of the test is satisfied if an institution is meeting the interests and abilities of the underrepresented sex even if the underrepresented sex disproportionately participates less in sports.<sup>26</sup> When

determining whether your school meets this part of the three part test, look at the following:

- Does your school conduct a survey every few years to determine students' interest levels in sports?
- Have the underrepresented sex asked the school to add any particular sports? If yes, did the school grant their requests?
- Are there club or intramural sports that could become varsity teams?

A school fails this part of the test if its underrepresented athletes demonstrate their interest in a sport and the school does not meet that interest.

## **Funding**

Spending different amounts on individual female and male sports teams or on the totality of the female and male sports programs does not automatically create a violation of Title IX. Instead, the first question is whether the school is providing adequate funding to meet the needs of each sport.

For example, a football team incurs more expenses than a volleyball team. So long as the school ensures the equipment for the volleyball team is in similar condition as the equipment for the football team, it is not considered a violation of Title IX that the football team receives more money. However, if there were two basketball teams and the male team received new jerseys every year but the female team had to re-use their jerseys or pay for their own, this would be evidence of sex discrimination.

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Booster Club funding is not an excuse for discrimination. In 2006, a football head coach of a Washington public high school received a \$60,000 stipend from the school's booster club, in addition to the \$5,600 stipend from the school district. The school district reported this to the WIAA. In April 2007, the WIAA responded by capping the amount of booster club stipends at \$500.

Unless the booster club provided a similar amount of money to female athletics, this use of booster funding was unlawful. Regardless of the source of funding, schools must make sure that all male and female athletic teams are funded equitably.

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Female and male athletic programs must receive equitable funding even if one of the teams raises money through a booster club. If booster

clubs or other fundraising organizations help only members of one sex, the school must compensate for the spending differences. Schools must ensure that equivalent benefits and services are provided to members of both sexes. Booster funds cannot be used as an excuse for inequitable funding.<sup>27</sup>

### **Athletic Scholarships**

Title IX regulations establish that athletic scholarships or grants-in-aid must be provided in proportion to the students of each sex participating in athletics.<sup>28</sup> For example, if a school is 51% female and 49% male, but the athletic program is 46% female and 54% male, then 46% of the athletic scholarships need to go to female athletes to satisfy the requirements of Title IX.

In Washington, female athletes attending a public university have additional financial aid opportunities. In 1989, the state legislature adopted a tuition and fee waiver program for female athletes to help Washington universities achieve gender equity in intercollegiate athletics.<sup>29</sup>

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### *No Exceptions for College Football*

During the 1980-81 school year Washington State University's budget for its female athletic program was roughly 23% of the male budget. The male athletic budget for the year was \$3,017,692, while entire the budget for the female program was \$689,757.

Student athletes and coaches challenged the school's unequal treatment in court. The trial court agreed that the school's programs were not equal. But when the court calculated how funds should be divided, it excluded football altogether. The Washington State Supreme Court overruled this exclusion in *Blair v. Washington State University* (1987). The court said that excluding football – an all-male program – from the scope of the Equal Rights Amendment would only serve to perpetuate discriminatory policies and diminish opportunities for female athletes. In 2007, WSU got an "A" from the Women's Sports Foundation on compliance with Title IX.

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## Program Areas

Female and male athletes should receive equivalent treatment and benefits in the following program areas:

- The provision of equipment and supplies
- Scheduling of games and practice time
- Travel and per diem allowance
- Opportunity to receive coaching and academic tutoring
- Assignment and compensation of coaches
- Provision of locker rooms, practice and competitive facilities
- Provision of medical and training facilities and services
- Provision of housing and dining facilities and services
- Publicity

Do you ever feel like you do not get treated as well as the boys? You are not alone. According to a recent study of Title IX complaints to the government, the most common complaint in athletics is unequal treatment.

Below are some questions to ask to determine whether or not your school is meeting the requirements in each program area.

## Equipment and Supplies

Title IX requires that female and male sports be treated equally with regard to equipment and supplies. This does not mean that the same amount of money must be spent on female and male athletic programs; rather, the quality, quantity, suitability, availability, and maintenance of the equipment and supplies must be equal. When determining whether your school is treating female and male athletes equally look at the following:

- If the school provides uniforms or warm-ups for the male athletic teams, does it provide the same for the female athletic teams? Are the uniforms of comparable quality?
- For the equipment, bats, rackets, softballs/baseballs, etc., does the school provide them to female and male athletes in similar numbers? Are they in similar working condition? Are they of similar quality?
- Do female and male athletes have similar access to weight training facilities? If the weight training facilities are separated by sex, is the equipment type, quantity, and working condition similar?

## **Scheduling of Games and Practice Times**

Providing equitable treatment in scheduling games and practice times requires equity in the number and the times of games and practices. Schools must provide female and male teams the opportunity to compete in a similar number of games and have a similar number of practices. In addition, the time the games and practices are scheduled must also be equitable. Certain times are more convenient for participating in an activity. For example, Friday night games are considered prime-time games because larger crowds attend. Friday night games are more convenient for athletes because there are no classes the next day.

Whether it is a practice or a game, the more desirable time slots must be distributed equally between female and male teams. When determining whether your school is treating female and male athletes equally, look at the following:

- What time and day of the week are the competitive events and practices scheduled?
- How many practices do female and male teams have, and how long are these practices?
- Are the sports for female and male athletes played during the traditional season (i.e. basketball in the winter, softball and baseball in the spring)? If not, are the sports scheduled in nontraditional seasons equally distributed between the female and male teams?

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### *The Impact of Traditional or Advantageous Seasons*

Scheduling games in a non-traditional season disadvantages student athletes by making it more difficult and sometimes impossible to practice in club activities and to compete with neighboring teams. Participation in the club activities helps improve the quality of play. For some sports, particularly volleyball, club tournaments provide a key time when female athletes are scouted for college scholarships. Because neighboring states play during the traditional season, towns and cities on the border lose opportunities to compete closer to home, increasing the travel and expense of competition.

In Michigan, the state high school athletics association scheduled many of the female sports teams in the non-traditional seasons while scheduling the male teams in the traditional seasons. For example, female basketball was scheduled in the fall, even though male and female basketball in 48 states and in the NCAA is scheduled in the winter.

Female athletes challenged the practice. In 2001, a federal court in *Communities for Equity v. Michigan High School Athletic Association* (2001), said that scheduling females in the non-traditional seasons and boys in the traditional seasons sent a message that the female athletes were “second-class” and that their athletic role is of less value than that of the boys. The court held that the Michigan High School Athletics Association had violated the female athletes’ rights under the Equal Protection Clause of the U.S. Constitution, under Title IX, and under the Michigan’s Elliott-Larsen Civil Rights Act.

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### **Travel and Per Diem Allowances**

When school athletes travel for their sport, they incur many travel-related expenses. The school must provide equivalent services and transportation to teams when they travel to away games, matches or competitions. They do not need to be exactly equal, but any substantial difference should be attributable to a reason like team size. When determining whether your school is treating female and male athletes equally, look at the following:

- Is transportation to away games provided equally for male and female teams (i.e., are females forced to forfeit competitive events because they are unable to secure transportation where males are provided transportation to every game)?

- Are female and male athletic teams provided a similar mode of transportation (i.e. both female and male teams use a school bus or a luxury charter bus)?
- Whenever teams stay overnight, are they provided similar accommodations (i.e., are female athletes required to sleep four to a room while male athletes are required to sleep only two to a room)?

### **Academic Tutoring**

Due to the demands of participating in athletics, schools often provide tutoring assistance to athletes. When determining whether your school is treating female and male athletes equally, look at the following:

- If your school provides tutors, are the tutors provided for an equal amount of time to female and male athletes?
- Do the tutors provided to female and male athletes have similar qualifications and experience levels?
- Do female and male athletes have access to similar materials and facilities for tutoring (i.e., a similar number of computers or other educational aids)?

### **Assignment and Compensation of Coaches**

In order to achieve their full potential, athletes need quality instruction from their coaches. Title IX requires that female and male athletes receive a similar quality of coaching. Full- and part-time coaches of equal caliber should be provided to female and male athletes in a similar manner. When determining whether your school is treating female and male athletes equally, look at the following:

- Do female and male teams have a similar number of coaches and assistant coaches with similar training, experience, and other professional qualifications?
- Do the coaches of female and male teams receive similar salaries for similar work?
- Do coaches of female and male teams have equivalent “other duties” (teaching versus full-time coaching)?

### **Provision of Locker Rooms, Practice and Competitive Facilities**

Female and male teams should be provided locker rooms, practice and competitive facilities of equal quality, quantity, and suitability. If female and male athletes use the same facilities, they should be allowed equal and fair access. When determining whether your school is treating female and male athletes equally, look at the following:

- Are the facilities used by the female and male athletes of similar quality (i.e., if a male swim team has access to a regulation-size

swimming pool on campus, do female athletes have equal and fair access to the same facility or access to their own facility of equal quality)?

- Are the number and quality of locker rooms equal? Do female and male locker rooms have similar amenities (i.e., size, number of lockers, and amenities like an athletic whirlpool)?
- Are spectator seating and scoreboards provided equally to female and male teams?

### **Provision of Medical and Training Facilities and Services**

Similarly to locker rooms, medical and training facilities and services must be provided on an equal basis to female and male athletes. When determining whether your school is treating female and male athletes equally, look at the following:

- Do female and male teams have equal access to training facilities of equal caliber?
- If medical personnel and assistance are provided to male athletic teams, are they provided in the same quantity and type to female teams?
- Do female and male athletes have the same health, accident and insurance coverage?

### **Provision of Housing and Dining Facilities and Services**

Female and male athletes should be provided with equal housing and dining facilities and services. When determining whether your school is treating female and male athletes equally, look at the following:

- If the school provides housing for male athletes during the school year and when school is not in session, does it also provide housing for female athletes?
- If so, is the housing of similar quality (number of roommates, location, bathrooms, etc.)?
- Are male athletes' meals or meal plans different from those of the female athletes?

#### **WHAT UNEQUAL FACILITIES LOOKED LIKE**

In a school district in Florida, the male baseball teams had three batting cages. Neither of the female softball teams had any batting cages. The male baseball teams could practice and play at night because their fields were lighted. The softball teams could not because their fields were not equipped with lights. Female athletes and their families challenged this unequal treatment. In 2001, a federal court found that the differences in facilities violated Title IX and ordered the school district to remedy the inequalities. *Landow ex rel. Landow v. School. Board. (2001).*

## Publicity

Schools should provide female and male athletes with equal access to sports information personnel and services in order to publicize teams and games. When determining whether your school is treating female and male athletes equally, look at the following:

- Is the coverage of the male and female athletes in the school's paper, at pep rallies, on bulletin boards, on the website, and other media outlets equal?
- Do a similar number of cheerleaders and members of the drill teams and pep bands attend female and male sporting events?
- Are athletic awards and recognition given equally for female and male athletes?

Research shows that although 40% of Division I college athletes are female, they receive only 6 to 8% of the media coverage.

## WASHINGTON STATE LAW: GREATER PROTECTION

Around the same time that Title IX passed, Washington amended its constitution to add the Equal Rights Amendment (ERA).<sup>30</sup> The ERA provides that “[e]quality of rights and responsibility under the law shall not be denied or abridged on account of sex.” In 1975, the Washington Legislature passed the Sexual Equality in Common Schools Act (Sexual Equality Act).<sup>31</sup> The Sexual Equality Act explicitly states that inequality in educational opportunities afforded to female athletes at all levels of public school is considered a violation of the ERA.<sup>32</sup>

The Sexual Equality Act requires the following areas to be equitable:

- equipment and supplies
- laundry services
- medical care, services and insurance
- transportation and per diem allowances
- opportunities to receive coaching and instruction
- assignment of game officials
- publicity and awards
- opportunities for competition and scheduling of games and practice times including use of courts, gyms, and pools

Schools must provide comparable facilities for showers, toilets, and training. These facilities may be provided either as separate facilities, or shall be scheduled and used separately by each sex.<sup>33</sup> The statute allows private citizens to bring lawsuits seeking money damages or an order from the court requiring the school to correct the discrimination.<sup>34</sup>

While there are many similarities between the Washington law and Title IX, the Washington ERA and the Sexual Equality Act create stronger protections than those provided by Title IX. Some of the differences between Washington Law and Title IX include:

- Title IX permits school to field separate teams for male and female athletes. In Washington, separate teams based on sex are allowed under the state ERA, but only if the maintenance of separate teams is the best method of providing both sexes with an equal opportunity to participate.<sup>35</sup>
- Title IX allows schools to field a male-only team and not allow females to try out if it is a contact sport. For example, under Title IX female athletes may be forbidden from trying out for football, and the school does not have to field a separate female football team. Washington law has no such contact exemption. A school may not prohibit a female student from trying out for a male-only team for a sport where the school does not field a separate female team.

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### *They CAN Play!*

In 1973, sisters Carol and Delores Darrin, both students at Wishkah Valley High School in Grays Harbor County, wanted to play tackle football for their school's team. The Darrins tried out, and they made the team. They practiced with the team until the Washington Interscholastic Activities Association (WIAA) told the coach that WIAA regulations prohibited females from participating on male teams. Carol and Delores thought it was unfair and violated their rights under Title IX and the Washington State ERA.

In *Darrin v. Gould*, (1975), the Washington State Supreme Court agreed that prohibiting girls from trying out for a football team violated the ERA. The court said that girls, just like boys, must be given an opportunity to try out and to be considered based on their individual qualifications. Girls cannot be excluded from football competition solely because of their sex.

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## WASHINGTON SCHOOLS: MAKING THE GRADE

In 2007, the Women's Sports Foundation graded colleges and universities on how well they have complied with Title IX. Here's how Washington schools fared.<sup>36</sup>

Org/Div.	Name	Grade
NWAAC	Bellevue Community College	B
NWAAC	Big Bend Community College	B-
NCAA Div. II	Central Washington University	A-
NWAAC	Centralia College	A-
NWAAC	Clark College	A
NWAAC	Columbia Basin College	C
NCAA Div. I-AA	Eastern Washington University	A
NWAAC	Edmonds Community College	A
NWAAC	Everett Community College	C
NAIA	Evergreen State College	A
NCAA Div. I-AAA	Gonzaga University	A
NWAAC	Grays Harbor College	B
NWAAC	Green River Community College	B+
NWAAC	Highline Community College	D+
NWAAC	Lower Columbia College	A
NAIA	Northwest College of the Assemblies of God	D+
NWAAC	Olympic College	B+
NCAA Div. III	Pacific Lutheran University	B+
NWAAC	Peninsula College	D
NWAAC	Pierce College at Puyallup	B
NCAA Div. II	Saint Martins College	B

<b>Org/Div.</b>	<b>Name</b>	<b>Grade</b>
NWAAC	Seattle Community College-North Campus	B-
NCAA Div. II	Seattle Pacific University	A+
NCAA Div. II	Seattle University	B+
NWAAC	Shoreline Community College	C+
NWAAC	Skagit Valley College	C
NWAAC	South Puget Sound Community College	C
NWAAC	Spokane Falls Community College	B-
NWAAC	Tacoma Community College	D
NCAA Div. III	University of Puget Sound	B-
NCAA Div. I	University of Washington: Seattle Campus	A-
NCCAA	Walla Walla College	B+
NWAAC	Walla Walla Community College	B+
NCAA Div. I-A	Washington State University	A
NWAAC	Wenatchee Valley College	F
NCAA Div. II	Western Washington University	A-
NWAAC	Whatcom Community College	A
NCAA Div. III	Whitman College	B+
NCAA Div. III	Whitworth College	D
NWAAC	Yakima Valley Community College	F

## WHAT HAPPENS IF GENDER INEQUITY EXISTS AT MY SCHOOL

If you have done your research and gone through the checklist and you have come to the conclusion that your school is engaging in sex discrimination in athletics, what next?

There are several ways to tackle the problem. You might pursue several options at the same time. Whatever approach you choose to take, you will need to gather evidence of discrimination. You can use the questions outlined in the participation and program sections of this guide you in your preliminary research.

### **Actions within the School**

A recent study showed that fewer than 50% of educators understand what Title IX covers and only a small percentage of students and parents are aware of their rights under Title IX.<sup>37</sup> This means that a school engaging in discriminatory practices may not realize it is violating state and federal law. Therefore, the first approach should be to work within your school.

Most high schools and universities have an athletic or activity director. Arrange a meeting with your athletic or activity director to discuss your concerns. Be prepared to educate him or her about Title IX and Washington's gender equity laws. You should also be armed with your evidence that shows the inequity in the school athletics program. There is power in numbers, so think about bringing a group of other students and parents. If you have a group interested in establishing a team, also consider creating a petition of interested students.

If the athletic director is unresponsive, do not give up. You can also use this approach to lobby others for support, including coaches, teachers or parent groups. They can support you in lobbying for changes at your school board. The school board can direct the athletics director to make changes.

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### *Learn More about School Board Advocacy*

You can learn more about school board advocacy in the ACLU of Washington's publication, *Parents' Guide to School Board Advocacy in Washington*, available at our website: [www.aclu-wa.org](http://www.aclu-wa.org).

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## Contact Your School's Gender Equity Officer

You can also contact your school districts "Title IX/RCW 28A.640 Officer." Title IX and Washington law require school districts to designate a Title IX/RCW 28A.640 Officer. Schools must include information regarding the name of the officer and how to contact him or her in school district publications. The statement should look like the following<sup>38</sup>:

*The ABC School District complies with all federal and state rules and regulations and does not discriminate on the basis of race, color, national origin, gender, or disability in education programs, services and activities. Inquiries regarding compliance and/or grievance procedures may be directed to the school district's Title IX/RCW 28A.640 officer and/or Section 504/ADA coordinator.*

*Title IX/Chapter 28A.640 RCW Officer  
Address  
Telephone Number*

## File a Complaint with the Office for Civil Rights

You can also file a Title IX complaint directly with the U.S. Department of Education Office for Civil Rights ("OCR"). Anyone (students, coaches, parents, or concerned community members) can file a complaint with OCR. The OCR's website provides information for how to file a complaint and access to filing a complaint online. To file a complaint you will have to provide your contact information, a general description of the people being injured (you can say female athletes generally, you are not required to name an individual female athlete), the name and location of your school, and a specific description of what the school is doing to discriminate against female athletes. You must file a complaint within 180 days of the alleged discrimination. You can also file a gender discrimination complaint at the state level with the Washington Office of Superintendent of Public Instruction (OSPI).

Despite the requirement that the OCR enforce Title IX, enforcement is often slow. This means that while you may submit your complaint to the OCR, this should not be the only action you take to try to resolve the problem.

## File a Lawsuit

Another option is to file a lawsuit. Title IX and the Washington Sexual Equality Act allow individuals to sue for sex discrimination and receive both injunctive relief (a requirement that the school do something to fix the problem) and damages (monetary amounts to compensate for the denial of the right to be free from sex discrimination).

When a school engages in sex discrimination, student athletes can file a lawsuit without exhausting administrative remedies. This means that you do not have to file a complaint with OCR or OSPI before you can go to court. If you do file a complaint with OCR or OSPI or both, you do not have to wait for a response from them before filing a lawsuit.

Given the lack of enforcement at the state and federal level, a lawsuit can often be a useful tool to end sex discrimination in schools. A lawsuit can have an immediate impact. Courts have the power to issue preliminary injunctions, which means they can require a school to stop a potentially discriminatory action prior to the completion of the lawsuit.

Think carefully before you file a lawsuit. Going to court can be time-consuming and expensive. But if you have tried to work within your school, and your school continues to discriminate on the basis of sex, you should contact a private lawyer or the ACLU.

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### *Coaches and Teachers Can Stand up for Gender Equity*

Are you a coach or teacher who thinks your school is violating Title IX? Are you afraid you will lose your job if you speak up on behalf of the female athletes?

In 2000, Coach Jackson, the coach of a female basketball team, discovered his team was not receiving equal funding or equal access to athletic equipment and facilities. He complained, unsuccessfully, to his supervisors. He then received negative work evaluations and was removed as the coach. He sued the school district for retaliation and the U.S. Supreme Court, in *Jackson v. Birmingham Board of Education* (2005), held that he had the right to sue the school for retaliation under Title IX.

Bottom line, if a school retaliates against you because you complain of sex discrimination they are violating Title IX and you may sue the school under Title IX.

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## CONCLUSION

*Parents, students, and coaches should insist on equality for female athletics. It is nothing less than the law, and nothing less than what female athletes deserve.*

We hope this guide will be a useful tool in researching and addressing sex discrimination in your school. Remember that the law says that female and male athletes must be treated equitably, but sometimes schools have to be reminded of their obligations. By speaking up, you can be a powerful advocate for female student athletes.

## RESOURCES

### *American Civil Liberties Union of Washington*

901 Fifth Avenue, Suite #630

Seattle, WA 98164

(206) 624-2184

<http://www.aclu-wa.org>

### *Women's Sports Foundation*

Eisenhower Park

East Meadow, NY 11554

1-800-227-3988 (U.S. only)

[info@womenssportsfoundation.org](mailto:info@womenssportsfoundation.org)

<http://www.womenssportsfoundation.org>

### *Washington Interscholastic Activities Association*

435 Main Avenue, S.

Renton, WA 98055

(425) 687-8585

<http://www.WIAA.com>

## **Government Officials**

### *Office of Superintendent of Public Instruction*

PO Box 47200

Olympia, WA 98504-7200

(360) 725-6051/TTY (360) 664-3631

<http://www.k12.wa.us/equity>

### *Office for Civil Rights*

U.S. Department of Education

915 Second Avenue, Room 3310

Seattle, WA 98174-1099

(206) 220-7900

[ocr\\_seattle@ed.gov](mailto:ocr_seattle@ed.gov)

<http://www.ed.gov/about/offices/list/OCR/index.html>

## ENDNOTES

- <sup>1</sup> St. Lawrence County Branch of the American Association of University Women, *History of Women in Sports Timeline*, <http://www.northnet.org/stlawrenceaaauw/timeline.htm> (last visited June 20, 2007) (“Timeline”).
- <sup>2</sup> *Id.*
- <sup>3</sup> *Id.*
- <sup>4</sup> *Id.*
- <sup>5</sup> *Id.*
- <sup>6</sup> The National Federation of State High School Associations, *2005-06 High School Athletics Participation Survey*, [http://www.nfhs.org/core/contentmanager/uploads/2005\\_06NFHSParticipationsurvey.pdf](http://www.nfhs.org/core/contentmanager/uploads/2005_06NFHSParticipationsurvey.pdf).
- <sup>7</sup> Timeline.
- <sup>8</sup> Feminist Majority Foundation, *Gender Equity in Athletics and Sports*, <http://www.feminist.org/sports/titleIXfactsheet.asp> (last visited June 20, 2007).
- <sup>9</sup> *UW Sports Pioneers*, The Seattle Post Intelligencer, April 6, 2006, at C5.
- <sup>10</sup> *Darrin v. Gould*, 540 P.2d 882, 865 (1975).
- <sup>11</sup> Title IX of the Education Amendments of 1972 92 P.L. 318; 86 Stat. 235.
- <sup>12</sup> EqualRightsAmendments.org, *The History Behind the Equal Rights Amendment*, <http://www.equalrightsamendment.org/era.htm> (last visited June 20, 2007).
- <sup>13</sup> Women’s Sports Foundation, “Playing Fair.” 2004.
- <sup>14</sup> *Id.*
- <sup>15</sup> Amanda Paule, *We Need to Do More: How Title IX Impacts Women of Color*, Women’s Sports Foundation, <http://www.womenssportsfoundation.org/> (Search “color”; then follow “Need to Do More” hyperlink under “Articles.” [bin/iowa/issues/disc/article.html?record=1156](http://www.womenssportsfoundation.org/bin/iowa/issues/disc/article.html?record=1156)).
- <sup>16</sup> *Id.*
- <sup>17</sup> The National Federation of State High School Associations, *2005-06 High School Athletics Participation Survey*, [http://www.nfhs.org/core/contentmanager/uploads/2005\\_06NFHSParticipationsurvey.pdf](http://www.nfhs.org/core/contentmanager/uploads/2005_06NFHSParticipationsurvey.pdf).
- <sup>18</sup> Feminist Majority Foundation, *Gender Equity in Athletics and Sports*, <http://www.feminist.org/sports/titleIXfactsheet.asp> (last visited June 20, 2007).

- <sup>19</sup> *Cannon v. Univ. of Chicago*, 441 U.S. 677, 690-693, (1979).
- <sup>20</sup> *Franklin v. Gwinnett County Pub. Sch.*, 503 U.S. 60 (1992).
- <sup>21</sup> *Jackson v. Birmingham Bd. of Educ.*, 125 S. Ct. 1497 (2005)
- <sup>22</sup> 34 C.F.R. 106.41 (1979).
- <sup>23</sup> U.S. Department of Education, "Title IX: 25 Years of Progress" <http://www.ed.gov/pubs/TitleIX/part5.html> (June 1997)
- <sup>24</sup> *Id.*
- <sup>25</sup> *Id.*
- <sup>26</sup> *Id.*
- <sup>27</sup> *Cohen v. Brown Univ.*, 809 F. Supp. 978 (D. R.I. 1992) (Citing Department of Education, Title IX Athletics Investigator's Manual (1990))
- <sup>28</sup> 34 C.F.R. 106.37 (1979)
- <sup>29</sup> RCW 28B.15.460 (1999).
- <sup>30</sup> WASH. CONST. ART. XXXI, § 1, effective 1973.
- <sup>31</sup> RCW§ 28A.640.010 (1975)
- <sup>32</sup> *Id.*
- <sup>33</sup> RCW § 28A.640.020 (1975)
- <sup>34</sup> RCW § 28A.640.040 (1975)
- <sup>35</sup> 1976 Op. Atty Gen. Wash. No. 8 (1976).
- <sup>36</sup> John Cheslock, Ph.D., WHO'S PLAYING COLLEGE SPORTS? TRENDS IN PARTICIPATION SUPPLEMENT (Women's Sports Foundation, 2007), <http://www.womenssportsfoundation.org/binary-data/reportcard/reportcard.pdf>
- <sup>37</sup> Feminist Majority Foundation, *Title IX Gender Coordinators*, <http://www.feminist.org/education/NetworkCoordinators.asp> (last visited June 20, 2007).
- <sup>38</sup> Naomi K. Obie, "Sample Statements for School District Compliance with Federal and State Civil Rights Regulations," Office of Superintendent of Public Instruction; <http://www.k12.wa.us/CareerTechEd/OCR/pubdocs/OCR-7-SampleStatements.pdf> (last visited June 21, 2007)



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