



PIEDMONT UNIFIED SCHOOL DISTRICT RESOURCE
TITLE IX AND CALIFORNIA EDUCATION CODE ATHLETICS - QUESTIONS AND ANSWERS
(updated as of 3-21-24 – all 2024 parent questions are highlighted in yellow)

The material contained herein does not constitute legal advice, is not to be acted on as such and may be subject to change without notice. The questions represent the most commonly asked questions by parents, coaches and administrators. Yellow highlighted questions represent questions asked by PUSD parents and administrators in 2024. Note that any question comparing the treatment of girls and boys in the same sport or any sport related question that did not have a context of comparing ALL girls to ALL boys, were not included. The ALL girls to ALL boys and a completed year of data is essential – counts and comparisons should not be made while the academic year is ongoing.

Answers are derived from a number of sources and have been reviewed by Dr. Donna Lopiano, Sports Management Resources. This resource is prepared for general information purposes only, to permit the reader to learn more about Title IX in athletics and to assist in managing a school's athletics program in a manner consistent with Title IX, and district policies, procedures, and needs. Statements of opinion do not necessarily reflect the views and opinions of the PUSD. For legal issues that arise, the reader should always consult legal counsel.

Table of Contents

1.0 GENERAL

- 1.1 What is Title IX?
- 1.2 Which schools must comply with Title IX?
- 1.3 How is Title IX applied to athletics?
- 1.4 Does Title IX require that equal dollars be spent on boys' and girls' sports?
- 1.5 Who is responsible for enforcing Title IX? What happens if a Title IX complaint is filed?
- 1.6 What is the penalty for non-compliance with Title IX?
- 1.7 Are institutions prohibited from retaliating against persons who file Title IX complaints or lawsuits?
- 1.8 Does Title IX apply to local community programs conducted on school property?
- 1.9 If a middle school competes against another middle school, is that considered interscholastic competition? Does Title IX apply?
- 1.10 Is it acceptable for coaches to make choices related to practice times, use of strength training facilities, that might result in benefit and treatment inequities for males or female athletes?
- 1.11 At what point is all Title IX self-audit data locked in and is a historical record that can no longer be modified?

2.0 PARTICIPATION

- 2.1 Does Title IX require identical athletic programs (the same sports) for males and females?
- 2.2 Is football (or any sport) excluded from Title IX?
- 2.3 Does Title IX mandate decreases in opportunities for male athletes in order to provide increased opportunities for females to participate?
- 2.4 Are females less interested in sports than males?
- 2.5 Does Title IX require an equal number of teams for male and female athletes?
- 2.6 Can cheerleading be considered a varsity sport?
- 2.7 Do boys have a right to try out for a girls' team?
- 2.8 Our school seldom cuts students who try out for teams. How can we maintain compliance with the proportionality provision of Title IX (male and female athletic participation opportunities equal to percent of males and females in student body) when we can't predict try out numbers?

- 2.9 Why is roster management by capping the maximum size of each team so important?
- 2.10 Do boys' and girls' roster management team size caps in the same sport need to be equal?
- 2.11 Can you give an example of how to use team roster caps to help get a school with a large female participation gap into compliance with the proportionality provision of Title IX?
- 2.12 Larger squads have traditionally been used to give less experienced players time to develop. Will roster limits result in discrimination against those students who can't afford to attend sports summer camps, many of whom are minority students?
- 2.13 What if we have a surfing, competitive dance teams, badminton or table tennis club under our ASB activity program? Can we elevate any of these current ASB activities and classify them as varsity, junior varsity or freshman sports?
- 2.14 Are roster caps and Title IX proportionality solutions rigid plans that have to be carefully followed or is there some flexibility? Is there an allowable difference in gender numbers?
- 2.15 What are some strategies to increase interest in girls?
- 2.16 What if girls prefer to participate in spirit/sideline cheerleading or dance rather than team sports?
- 2.17 What if our female participation gap is smaller than 10-12 participants, what are our options for closing the gap and achieving athletic program male/female participation equal to the percentage of males and females in the student body?
- 2.18 What is a minimum response rate for a valid student interest survey? How can my school insure the best response rate?
- 2.19 The practice of roster management is definitely needed when programs are established or successful and there is stability. However, when an athletic program is going through change or transition and attempting to increase participation numbers for boys and girls, programs usually have open door policies to help build interest and get athletes to come out. For those programs that have a high level of interest in one sport and are building participation, caps could hurt such programs while other teams are still not meeting or coming close to their roster caps? How could a balance and compliance be achieved in this scenario?
- 2.20 Varsity cross country only counts scores from the first seven runners and doesn't allow additional runners to enter a race as non-scoring participants. Should varsity cross country teams have roster caps of 7?
- 2.21 What is the basis for the California Education Code requirement to post athletic participation numbers on the school website?
- 2.22 What information needs to be posted to meet the requirements of California Education Code section 221.9?
- 2.23 What is the definition of "competitive athletics" according to California Education Code 221.9?
- 2.24 We do a yearly list for CIF on our participation numbers. Is this sufficient or do we need to do something else?
- 2.25 We have some students that participate in games sponsored by City, Parks and Recreation. I am not aware of them having a governing organization as required by California Education Code 221.9. Are these activities exempt?
- 2.26 If a district or school determines that the athletics teams provided do not meet the requirements of Education Code section 221.9, what should be posted, if anything?
- 2.27 Does Title IX permit a school to remove boys' teams or decrease the roster size of boys' teams as a mechanism to comply with Title IX? Isn't this a direct violation of Title IX?
- 2.28 What is the exact point in season for each team that the Title IX Coordinator and AD use to make official roster counts for Title IX?

3.0 EQUIPMENT, UNIFORMS AND SUPPLIES

- 3.1 California law requires that no fee, deposit, or other charge be assessed to students, parents, or guardians that are not specifically authorized by law. Schools are obligated to provide all materials, supplies and equipment required by the school for participation in any curricular or extracurricular activity, including athletics. How does this statement apply to athletics?

- 3.2 Our school has a policy that school funds may not be used to provide practice apparel for players. However, there are some sports like football that require uniforms that can receive pads required for safety and these items of practice apparel are more expensive than shorts and t-shirts! Is there a solution to this dilemma?
- 3.3 We have many players in our program who can't afford specialized shoes or even practice apparel, is there any way we can provide players these items?
- 3.4 If we need to add a sport to reach gender equity, should we purchase equipment first?
- 3.5 How does a school determine whether sports are provided with the same quality uniforms when there are so many different brands to choose from?
- 3.6 Is it permissible to mandate the purchase of "spirit packs" so players are able to acquire the same practice apparel?

4.0 SCHEDULING OF GAMES AND PRACTICE TIMES

- 4.1 Our high school girls play at 4:00 p.m. on Fridays, and the boys play at 7:00 p.m. on Fridays. Is this a violation of Title IX?
- 4.2 Boys' basketball practices from 3:00-5:00 pm. Our girls' basketball coach is a walk-on coach who works until 5:00 pm and cannot be available for earlier practice. Is this a justification for not treating girls' and boys' basketball equally with regard to practice times?
- 4.3 Do boys' and girls' teams need to be provided with the same number of hours of practice time? What if a coach is only available days per week, is this a violation? Is it equitable to provide junior varsity teams with fewer practice hours than varsity teams.
- 4.4 Is it equitable to provide some teams with out-of-season practice times while others are limited to in-season practice only?

5.0 TRAVEL, MEALS, BEVERAGES AND SNACKS

- 5.1 Football is provided with charter buses to travel to all of their away contests while all other teams use school buses or rental vans. Is this a Title IX violation?
- 5.2 Transportation for winter break tournaments is often provided by parents only. Is this okay?
- 5.3 While California law does not permit a school district to charge an athletics participation fee, is it permissible for a district to charge an athletics "transportation" or "field trip" fee?
- 5.4 Can a girls' team opt out of a competition date or time? Can they opt out of provided transportation?
- 5.5 Parents wish to provide a pre-game meal or food to teams on campus or for a bus trip. Explain why such "gifts-in-kind" must equally benefit male and female athletes.

6.0 TUTORING AND ACADEMIC SUPPORT

- 6.1 The boys' basketball and soccer teams have mandatory study hall every Monday through Thursday from 3:00-4:00 pm prior to their 4:00-6:00 practices. No other boys' teams or girls' team have mandatory study hall. Is this a Title IX violation?
- 6.2 Can a school enforce a mandatory study hall for students that stay at school waiting for a late practice?

7.0 OPPORTUNITY TO RECEIVE COACHING

- 7.1 The boys' varsity football team has five volunteer and four paid coaches, resulting in a coach to athlete instructional ratio of one coach for every six athletes. All other teams have coach-to-athlete instructional ratios of 1:10. Is this a Title IX violation?
- 7.2 Does the number or ratio of male coaches and female coaches matter?
- 7.3 Can a male coach a girls' team? Can a female coach a boys' team?
- 7.4 Are stipends for coaches a school issue or a district issue?

- 7.5 Our boys' basketball coach wants to take his staff to Dallas for a national basketball coaches' conference. The cost is \$2,500 which would come from the boys' basketball fundraising account. We don't have any other coaches going on any trips or clinics like this. Would this be considered a gender inequity under Title IX?

7.6 What happens of walk-on coaches work less hours than other coaches?

- 7.7 Because of a coach only being available four days per week, parents paid for access to the gym for a fifth day of parent supervised "open gym." Is such a practice equitable?

8.0 LOCKER ROOMS, PRACTICE AND COMPETITION FACILITIES

- 8.1 The boys' football team locker room is twice the size as team rooms provided to all other teams. However, the lockers are the same size as lockers in all other team rooms and there are enough lockers to provide teams using any team room with one locker per player. All team rooms have the same amenities – painted in school colors, white boards, bulletin boards, benches and showers/access to toilets. Is this a Title IX violation?
- 8.2 The boys' baseball team has an on-campus baseball field that is used for practice and competition. The girls' softball team does not have an on-campus facility. Is this a Title IX violation?
- 8.3 Volunteers are used to maintain the baseball field and the baseball coach and parents get donations of clay and other materials from local businesses, resulting in the provision of a superior baseball facility. Girls' softball has no volunteers and its facility is adequate but not superior. How does a school resolve this discrepancy created by volunteer time?

9.0 MEDICAL, ATHLETIC TRAINING AND WEIGHT TRAINING/CONDITIONING

- 9.1 The girls' volleyball and track coaches are complaining that the school weight training and conditioning facility only has heavier weights to serve football and that lower poundage bar bell plates and hand bar bells are not available for girls. They also say that most of the equipment in the weight room meets the needs of boys' wrestling and football but not girls' sports. Is this a Title IX violation?
- 9.2 What are some ideas for establishing equity in availability of trainers?
- 9.3 Are conditioning activities in weight/cardio rooms considered part of physical education classes or athletic team practices?
- 9.4 What are best practices for measuring strength and conditioning equity? Some teams have access to the scheduled strength and conditioning activities year round while other teams only have access during their regular playing season. Some teams pay for off-campus access to strength and conditioning facilities or coaching.

10.0 PUBLICITY, PROMOTIONS, AWARDS

- 10.1 The boys' teams receive letter jackets from the booster club at the end of the year while the girls' teams receive certificates from the school. Is this a Title IX violation?
- 10.2 Is it a violation of Title IX when cheerleaders, pep squads and/or bands are provided for boys' athletic events but not for girls' athletics events?
- 10.3 Should all sponsor banners be approved by the athletic department?
- 10.4 Explain more about posters in training or locker rooms.
- 10.5 Why does a parent-produced "media guide" for boys' basketball "count" in a Title IX assessment versus, for example, the school issuing programs for some teams and not others, which would appear to fall within Title IX jurisdiction?

11.0 RECRUITING

- 11.1 Coaches are responsible for recruiting prospective students on-campus during lunch periods, posting flyers on campus and speaking to incoming 9th graders about trying out for sports teams. Seventy percent of the coaches of girls' teams are walk-on coaches while 70% of the boys' teams are on-campus certificated teachers or classified staff members. Because of their work schedules,

walk-on coaches are unable to perform most of these on-campus recruiting responsibilities. Is this a Title IX violation?

12.0 ADMINISTRATIVE AND SUPPORT SERVICES, FUNDRAISING

- 12.1 Does Title IX apply to booster clubs and similar forms of fundraising support for athletic teams?**
- 12.2 All sports at my school keep the concessions revenues they generate for use in their fundraising accounts. How do I respond to a parent group that is selling elaborate concessions at only one sport, when other sports don't get that parent support and as a result have smaller fundraising accounts from which to draw?**
- 12.3 So many of our parents want to designate funds for a particular sport. How do I educate booster clubs and parents about Title IX so that they understand that benefits must be equal for male and female athletes?**
- 12.4 What should I do if a sport decides they are not going to fundraise at all because they know that they will still get the benefit of the fundraising by other sports?**
- 12.5 My district cannot afford to pay for transportation to all competition events. How do I deal with that in terms of fundraising and making sure the athletes receive equal treatment?**
- 12.6 If fundraising money does not come from federal sources, why is the use of these funds a Title IX issue?**
- 12.7 What if booster money is kept outside the school or district, solely in a booster organization account?**
- 12.8 Is a business in the community donates dirt for the football or baseball field or makes other donations of materials, supplies or equipment, does that gift need to be matched for girls' sports?**
- 12.9 What is the best way to deal with corporate sponsorships?**
- 12.10 What are some ideas for establishing equity in the area of concessions?**
- 12.11 When is a donation a truly voluntary donation?**
- 12.12 What are the five ways to ask for a donation that are illegal in California?**

TITLE IX AND CALIFORNIA EDUCATION CODE ATHLETICS - QUESTIONS AND ANSWERS

1.0 GENERAL

1.1 What is Title IX?

Title IX: No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.

- Title IX of the Education Amendments of 1972 is a federal law that prohibits sex discrimination in any educational program or activity at any educational institution that is a recipient of federal funds.
- Athletics, drama, band and other extracurricular student activities are considered to be educational programs under this law.
- Title IX also prohibits all forms of sex discrimination in federally funded educational institutions, including sexual harassment, discrimination in admissions and counseling, discrimination against married or pregnant students, etc.

1.2 Which schools must comply with Title IX?

- Title IX applies to educational institutions that receive any federal funds — whether public or private. (There are very few private colleges but many private elementary and secondary schools that do not receive federal money.)
- Almost all private colleges are covered because they receive federal funding through federal financial aid programs used by their students. Many private elementary and secondary schools receive federal funding through various programs as well.

1.3 How is Title IX applied to athletics?

There are three basic parts of Title IX as it applies to athletics:

- Participation: requires that girls be provided an equitable opportunity to participate in sports as boys (not necessarily the identical sports but an equal opportunity to play).
- Scholarships: requires that female athletes receive athletic scholarship dollars proportional to their participation (e.g., if there are 100 male athletes/100 female athletes and a \$200,000 scholarship budget, then the budget must be split \$100,000 to men/\$100,000 to women).
- Other Treatment and Benefits: requires equal treatment in the provision of (1) equipment and supplies, (2) scheduling of games and practice times, (3) travel and daily allowance, (4) access to tutoring, (5) coaching, (6) locker rooms, (7) practice and competitive facilities, (8) medical and training facilities and services, (9) publicity and promotions, (10) recruitment of student athletes, and (11) support services.

1.4 Does Title IX require that equal dollars be spent on boys' and girls' sports?

- No. The only provision that requires that the same dollars be spent (proportional to participation) is "scholarships". Otherwise, female athletes must receive equal "treatment" and "benefits".
- The standard is one of "quality" rather than dollars spent. For example, if a school spends \$700 outfitting a male football player, it does not have to spend \$700 outfitting a female lacrosse player. However, male and female athletes must be provided with the same quality uniforms, and they must be replaced under the same circumstances.

- Unequal budgets can also affect the number of athletes on a team. Insufficient funds may not permit a coach to supply the necessary equipment, uniforms and travel costs to a large number of players. Such disparities may violate Title IX.

1.5 Who is responsible for enforcing Title IX? What happens if a Title IX complaint is filed?

- Schools and colleges are responsible for complying with federal law. The law requires each school to have a Title IX compliance coordinator. The first step for parents or students should be to make this person aware of a suspected inequity and given an opportunity to remedy the deficiency if it is verified as existing. There is no requirement to exhaust this complaint avenue first but it makes sense because filing a Title IX complaint will most likely take at least one year to process and lawsuits are in the 2-4 year ranges and very expensive.
- The OCR is specifically charged with enforcing the law. Anyone can file an OCR complaint and the identity of the complaining party will be kept confidential. OCR must start an investigation within 180 days, but the assessment process and report are likely to take at least a year to complete.
- Once a complaint has been investigated, OCR and the institution can enter into a rapid resolution agreement but OCR may not require the institution to immediately remedy every deficiency. Resolution agreements vary in speed and complexity.
- Courts — affected parties have the individual right to sue (courts may award damages).

1.6 What is the penalty for non-compliance with Title IX?

- The ultimate penalty for non-compliance is withdrawal of federal funds from the offending institution. Institutions may also be required by a court or the OCR to make changes in their programs and to pay damages to the students for their lost opportunities.
- Although no institution has lost any federal funds as a result of non-compliance with Title IX (Office for Civil Rights states that it does not have sufficient staff/budget to fully enforce Title IX), institutions have had to pay substantial damages and attorneys' fees in cases brought to court.

1.7 Are institutions prohibited from retaliating against persons who file Title IX complaints or lawsuits?

Yes, retribution is prohibited.

1.8 Does Title IX apply to local community programs conducted on school property?

No, except that if the local community program is a recipient of federal funds in its own right, Title IX may apply to that entity. Title IX applies if the sport program is financed by the school, either through fundraising by athletic teams or the school budget, through gate receipts generated by sports, advertising or sponsorships, or if it is considered a school athletic program. If the school receives a State of California Grant to conduct a sport program, it is the school's sport program. School athletic programs may be conducted at the elementary, middle school or high school level. Community programs may be conducted on school property with the school renting out its facility or even allowing the organization to utilize its facilities at no charge, but as long as the program is funded and administered by an external community organization, these are not school sport programs. It should be noted however, that schools should have a policy that any outside organizations utilizing its facilities cannot discriminate on the basis of race, sex, or other factors. Consult legal counsel for your specific situation.

1.9 If a middle school competes against another middle school, is that considered interscholastic competition? Does Title IX apply?

Technically, whenever a team from one school competes against a team from another school, this may be referred as interscholastic competition. However, one school playing another school is not the only condition that defines an interscholastic athletic program. An interscholastic athletic program is typically arranged and at least partially funded by the school, includes coaches appointed by the school, the conduct of formal team practice and team selection, and the application of eligibility rules and a code of conduct. For instance, there are some “club” sports that play contests against teams from other schools but they do not receive any institutional financial support and are organized and directed by students as ASB interest groups. For Title IX purposes, education institutions cannot discriminate on the basis of sex in the provision of any education program or activity, including interscholastic athletic programs and club sports.

1.10 Is it acceptable for coaches to make choices related to practice times, use of strength training facilities, etc. that might result in benefit and treatment inequities for their male or female athletes?

Generally, no. Coaches cannot decide to accept lesser or discriminatory treatment for their players. Making sure 200-300 athletes are treated equitable requires adherence to policy and structure. The athletic director must be the Title IX referee who determines and enforces equitable treatment. Remember, equity is always determined based on an assessment of the treatment of all female athletes compared to the treatment of all male athletes. It is the athletic director’s responsibility to oversee the treatment of ALL sports so this equity balance can be realized. For example, the athletic director assigns an earlier preferred practice time for the boys’ basketball team for the first half of the season while the girls’ basketball team gets the later time. At mid-season, the teams are switched in order to ensure equitable treatment. This policy is used for all sports that must share the same practice facilities. If the two basketball coaches were allowed to unilaterally determine not to switch midseason, they undermine the gender equity plan. This is just common sense. Similarly, all sports require strength training and conditioning and it is not reasonable to allow a coach to unilaterally determine that his or her team will not engage in such training or not take advantage of these facilities. This is not to say that a coach is prohibited from exercising good professional judgement and deciding to give a fatigued team an extra day off to recover. The bottom line is that coaches must follow their assigned practice and facility schedules and always consult with the athletic director before making changes.

1.12 At what point is all Title IX self-audit data locked in and is a historical record that can no longer be modified?

A Title IX assessment cannot be completed until the end of the academic year and all teams have stopped competing. At that point data is fixed. That is not to say that errors cannot be corrected when they are recognized during the analysis of data.

2.0 PARTICIPATION

2.1 Does Title IX require identical athletic programs (the same sports) for males and females?

- No. Males and females can participate in different sports. Rather, Title IX requires that the athletic programs meet the interests and abilities of each gender.
- Under Title IX, one team is not compared to the same team in each sport. The Office for Civil Rights examines the participation and treatment of ALL male athletes compared to the participation and treatment of ALL female athletes and whether equal percentages of male and female athletes receive the same participation, benefits, and treatment.

- Title IX does not require that each team get exactly the same services and supplies. Rather, it requires that the boys' program and the girls' program receive the same level of service, facilities and supplies. Variations within the boys' program and within the girls' program are allowed. For example, 50% of all boys and 50% of all girls may be provided with Superior practice facilities; 25% of all boys and 25% of all girls may be provided with Adequate practice facilities; and 25% of all boys and 25% of all girls may be provided with Inadequate practice facilities.

2.2 Is football (or any sport) excluded from Title IX?

- No. All sports at an institution are included under Title IX.
- During the 1970s, there were four efforts to amend Title IX to exclude football, and each effort failed.
- Males are entitled to participate in the sports in which they have an interest, and females are entitled to participate in the sports in which they have an interest.
- The point is that if male athletes prefer to use 100 participation opportunities playing football, that's fine. If female athletes prefer to use their 100 participation opportunities playing soccer, softball and field hockey, that's fine too.
- Football programs already receive protection under Title IX as mandated by the Javits Amendment, which allows increased expenditures based on "the nature of a sport" (i.e., football uniforms and protective equipment cost more than uniforms in other sports).
- Some have argued for the exclusion of football from Title IX because it not only costs more to fund a football program, but it earns more money, which funds other sports. This statement is a myth. Currently, among NCAA football programs in all competitive divisions, 81% spend more than they bring in and contribute nothing to other sport budgets. Even among Division I Football Bowl Subdivision athletic programs, only 28 programs make more money than they spend.
- Affording special consideration to football would permit an economic justification for discrimination. This would allow an institution to say, "We're sorry we can't afford to give your daughter the same opportunity to play sports as your son because football needs more money."

2.3 Does Title IX mandate decreases in opportunities for male athletes in order to provide increased opportunities for females to participate?

- No. Title IX's purpose is to create the same opportunity and quality of treatment for female athletes as is afforded male athletes. The law does not require reductions in opportunities for male athletes.
- Cutting boys' sports is not the intent of Title IX. The intent of Title IX is to bring treatment of the disadvantaged gender up to the level of the advantaged group.
- However, if finances don't permit elevating the treatment of the underrepresented sex, the law does not prohibit reductions in boys' opportunities or treatment.

2.4 Are females less interested in sports than males?

- No. There is no evidence suggesting girls are inherently less interested in sports than boys. At an early age (six to nine years old), they are equally as interested. However, historically participation opportunities decline sharply as girls get older.
- The participation rate of boys reflects the opportunities that are offered to them — not lack of interest on the part of girls.

2.5 Does Title IX require an equal number of teams for male and female athletes?

- No. Title IX deals with participation opportunities or number of individual participation slots for males and females to play — not numbers of teams.

2.6 Can sideline cheerleading be considered a varsity sport?

Generally, no. However, if they have a coach, practice as frequently as a regular varsity team, compete against other cheerleading teams on a regular basis and more frequently than they appear to cheer for other teams, and receive approval from the Office for Civil Rights, “stunt” or “acro-tumbling”, two sports that developed out of cheerleading, meets the definition of a varsity team. See the answer to 2.13 for the list of criteria, all of which must be present for the Office of Civil Rights to agree that an activity may be counted as an interscholastic sport. The bottom line is that spirit or sideline cheerleading cannot count as an interscholastic sport but stunt or acro-tumbling can.

2.7 Do boys have a right to try out for a girls’ team?

Generally no, although a court in one state with an equal rights amendment has issued that ruling. Generally, it is accurate to say that a boy does not have the right to try out for a girls' team if boys are overrepresented in that school's athletic program (percentage of boys participating exceeds the percentage of males in the general student body). In this case, a boy playing on a girls' team would take away a participation opportunity for underrepresented sex. Thus, in the interest of the "class" (all girls), boys would not be allowed to take spots on a girls' team even though the reverse would be permitted. Consult legal counsel for your specific situation.

2.8 Our school seldom cuts students who try out for teams. How can we maintain compliance with the proportionality provision of Title IX (male and female athletic participation opportunities equal to percent of males and females in student body) when we can't predict try out numbers?

Interscholastic athletic programs are designed to meet the needs of higher skilled athletes and one way this happens is to have small enough teams to ensure optimum player-coach instructional ratios. Thus, having try outs and cutting players so that team size allows for optimum instruction is normal. The athletic director should establish a roster management system that indicates the maximum size of each team that corresponds to ideal team size AND allows the program to meet the proportionality requirement.

2.9 Why is roster management by capping the maximum size of each team so important?

There are three reasons why it is good management practice to set a maximum limit on the number of participants on a team based on the normal size of a team related to the rules and the nature of the sport: (1) to establish the best possible coach/athlete instructional ratio to support a high ability level athletics experience, (2) to control costs of each sport program and (3) to be able to easily maintain Title IX compliance regarding the proportional representation of male and female athletes. It is an unacceptable management practice and unethical to set unrealistic higher team size limits for girls' sports than boys' sports when the purpose of such roster manipulation is purely to meet a participation proportionality goal and correct the underrepresentation of girls. Such team size inflation is usually to avoid adding teams for girls. All boys' and girls' team sizes should be based on the number of athletes needed to have a starting team, sufficient substitutes, and enough players for daily practice.

- a. Athletics is not a club sport, intramurals, or a developmental program for all-comers. Tryouts should be required and all parents and students should be informed that the highest ability athletes and athletes with the greatest potential will be selected for a limited number of participation slots. In other words, not every student can expect to be selected for a team.

- b. Maximum roster sizes or caps should be established for every sport to insure optimum coach/athlete instruction. It should be based on the number of participants required to compete and conduct practices. For instance, that number might be 12-15 in basketball because you need at least 5 versus 5 to practice plus subs. Track and field meets have 15 events with three entries per event so squad sizes of 35-45 appear reasonable. There is no one “correct” roster cap.
- c. If there is only one varsity team in a sport as opposed to three teams (one varsity, one JV and one freshman team), the one varsity team may have a larger cap than three teams with lower caps.
- d. Examining the actual team size over a range of years may be helpful as might accommodating higher interest in some sports rather than others.
- e. If females are underrepresented, be careful not to artificially inflate girls’ maximum team sizes in some sports in order to avoid adding another girls’ sport.

See Question 2.11 for a sample range of reasonable roster limits in a variety of sports that may be considered:

It is very important to explain roster management policies to parents and prospective athletes prior to team selection. The following points should be explained:

- a. Intramurals and ASB activity clubs are for all comers. These activity programs are for recreation purposes and where students can learn to play new sports. No participation limits are imposed for these programs.
- b. Historically, most high school and college programs have always practiced “roster management” without use of that particular label. Practically every athlete remembers trying out for the varsity or junior varsity team and anxiously waiting for the coach to post the names of students who “made the team”. Team selection is based on athletic ability and these programs are intended for the most highly skilled, much like an honors program or selection for the school debate team.
- c. Limiting the number of athletes on a team optimizes the coach-athlete instructional ratio, ensuring that coaches are able to spend extended time teaching each athlete.
- d. Athletic programs are expensive with regard to providing transportation to compete against other schools, pay for coaches and provide sufficient uniforms, equipment and supplies. Limiting teams to optimum instructional size also allows schools to control the cost of each team so schools can sponsor many different sports to meet the varied interests of large numbers of boys and girls.

2.10 Do boys’ and girls’ roster management team size caps in the same sport need to be equal?

Remember that reasonable roster sizes are not fixed numbers but fall within an acceptable range with regard to the size of a team. Team participation numbers vary every year for many reasons. Title IX is very flexible with regard to participation solutions as long as they are justifiable given the fact situation at the individual school developing the solution. Girls’ and boys’ roster caps can be slightly different within a justifiable range of acceptable team sizes as long as (a) the proportion of male and female athletes overall is equal to the percentages of males and females in the student body, (b) the proportion of male and female athletes given opportunities to compete at different levels of competition are equal (i.e., if 45% of all male athletes are given opportunities to compete on the varsity level, 45% of female athletes should receive the same competition level opportunity), (c) the size of the underrepresented gender’s teams is not artificially inflated to unrealistic numbers in order to avoid adding a new team for that gender, (d) the reason for lower caps for teams serving the previously overrepresented gender is to maintain their same broad selection of sports that meets their interests as the school is committed to doing for the underrepresented gender (i.e., instead of dropping a boys’ sport to meet the male/female proportionality obligation, roster

numbers are lowered a little bit on all boys' teams) and (e) the overrepresented team's cap is realistic in that it is not unreasonably lower and still allows a sufficient number of participants to compete and practice.

2.11 Can you give an example of how to use team roster caps to help get a school with a large female participation gap into compliance with the proportionality provision of Title IX?

Following is the thought process that should go into developing such a solution:

1. After determining the female participation gap, first establish optimum team sizes for every sport in your program using the following guidelines:

<i>Team</i>	<i>Cap Range</i>	<i>Team</i>	<i>Cap Range</i>	<i>Team</i>	<i>Cap Range</i>
Badminton	12-21	Gymnastics	12-22	Track and Field	35-45
Baseball	15-25	Lacrosse	22-38	Volleyball-Indoor	12-15
Basketball	12-15	Soccer	18-24	Volleyball-Beach	6-12
Cross Country	8-12	Softball	12-20	Water Polo	16-20
Field Hockey	22-24	Stunt	24-36	Wrestling	17-24
Football	43-53	Swimming/Diving	12-20		
Golf	8-12	Tennis	10-14		

Roster cap ranges for boys' and girls' teams in the same sport should be the same. Feel free to change these ranges if you have good reasons other than "boys are very interested in this sport and we've never had tryouts or cut a team." The ranges should represent sensible team sizes allowing for optimal coach/player instructional ratios.

2. If your school has not done a student sport interest survey, this should be a top priority to determine what sports girls' want to play.
3. Carefully examine all teams for the overrepresented gender (boys) to determine whether these team sizes can be reduced given the established roster caps. Make necessary reductions and re-compute the female participation gap (the number of female opportunities that should be added) trying to get that number as low as possible.
4. Remember that girls' sideline cheerleading does not count as a sport. Consider whether you may have a significant number of sideline cheerleaders who would be interested in STUNT or ACRO-TUMBLING (the sport versions of competitive cheerleading) – adding a new STUNT team could result in an additional 36 participation slots for girls. But read question 2.13 carefully re: the conditions that need to be met before you can include STUNT in your sport count.
5. When adding new girls' teams – consider first those teams in which your league already has regular and post-season competition or the CIF has post-season play. You should get together with the other league athletic directors and discuss the sports you don't currently sponsor that would be the easiest for all schools to add simultaneously so you can easily put together a regular season schedule. Also consider those sports that you have the facilities and financial resources to easily offer. For instance, badminton simply requires a gym floor and new lines, stanchions and nets and a minimum equipment investment. If schools already have a pool, even if one end is shallow, water polo is a viable option because there are rules for shallow pools.
6. Consider the financial resources available to the athletic program – funds for transportation, coaches, equipment, uniforms, supplies, etc. to determine the number of new girls' teams in addition to the existing boys' and girls' teams that can be added.
7. If the number of new girls' teams that can be financially supported is less than the number of new girls' teams required to close the female participation gap to "0", consider the following options for further reduction of opportunities for the overrepresented sex (boys):

- a. Avoid dropping any sport, instead drop a freshman or junior varsity team before eliminating every team in a sport - in order to retain a program that continues to meet the interests of the overrepresented sex.
- b. Reduce boys' team roster caps by 2-5 players per team compared to girls' team caps in the same sport in order to reduce the female participation gap while retaining all competition levels for boys. There is no Title IX requirement to have the same number of participants on girls' and boys' teams in the same sport. Just be sure to keep the boys' team number large enough to support the number of players required for competition and practice with no excesses. Lowering participation numbers of the overrepresented sex is permitted as long as proportionality is achieved overall and equal proportions of male and female athletes are provided with varsity, JV, and freshmen opportunities.

Now, further reduce the boys' numbers by these reductions and recalculate your female participation gap.

8. As you work to reach your total male/female athlete proportionality solution, be sure to have equal proportions of boys and girls at each competition level. For instance, if 20% of all male athletes are provided with freshmen competition level teams, 20% of all female athletes should receive the same competition level opportunities.

2.12 Larger squads have traditionally been used to give less experienced players time to develop. Will roster limits result in discrimination against those students who can't afford to attend sports summer camps, many of whom are minority students?

Football and track will still have the largest squad sizes when roster limits are established but they will not be excessive. There will be many opportunities for students to play football and many other sports. Typically, one third or an even greater percentage of the total student body of a high school are offered interscholastic athletic participation opportunities. Educational institutions should explore ways to permit lower socio-economic level students – both boys and girls-- to participate in summer camp or other developmental programs that funnel students into interscholastic athletic programs.

2.13 What if we have a surfing, competitive dance teams, badminton or table tennis clubs under our ASB activity program? Can we elevate any of these current ASB activities and classify them as varsity, junior varsity or freshman sports?

This is the same question as cheerleading. If any of these activities meet ALL of the following conditions, they may be considered a sport;

- a. whether selection for the team is based upon factors related primarily to athletic ability; ,
- b. whether the activity is sponsored for the primary purpose of preparing for and engaging in athletic competition against other similar teams;
- c. whether the team prepares for and engages in practice and competition in the same way as other teams in the athletic program, e.g., receives coaching, conducts try outs; engages in regular practice sessions, and has regularly scheduled athletic competitions;
- d. whether national, state and conference championships exist for the activity;
- e. whether the activity is administered by the athletic department and whether the operating budget, support services, coaches, etc. are provided in a manner consistent with other sports;
- f. whether the activity is recognized as part of the interscholastic or intercollegiate athletic program by the athletic conference to which the institution belongs and by organized state and national interscholastic or intercollegiate athletic associations;
- g. whether organizations knowledgeable about the activity agree that it should be recognized as an

- athletic sport;
- h. whether there is a specified season for the activity which has a recognized commencement and ends in a championship;
- i. whether there are specified regulations for the activity governing the activity such as coaching, recruitment, eligibility and the length and number of practice sessions and competitive opportunities;
- j. whether a national, state or conference rule book or manual has been adopted for the activity;
- k. whether there is national, conference, or state regulation of competition officials along with standardized criteria upon which the competition may be judged; AND
- l. whether participants in the activity/sport are eligible to receive athletics awards (e.g., varsity awards).

There are many Olympic sports in particular that may meet all of these criteria. If surfing is organized like these Olympic sports with a national sport governing body, regional and state competitions, certified officials, etc. and there is a full competition schedule comparable in number and quality to existing varsity teams and there are existing post season opportunities that high school students can qualify to participate in, these sports may qualify as interscholastic sports.

Note that the Office for Civil Rights should be asked to validate that all criteria have been met – as is currently required for cheerleading. However, the OCR office will not make such an assessment prospectively, i.e. on a “what if” basis. The program has to be in place and operating. Thus, it becomes particularly important for a school to get together with other schools in their league or enough schools within a reasonable geographic area so all schools can start the sport program and meet one of the highest hurdles – a full regular season, usually 10 or more events – of regular season competition.

2.14 Are roster caps and Title IX proportionality solutions rigid plans that have to be carefully followed or is there some flexibility? Is there an allowable difference in gender numbers?

There is flexibility in both roster caps and proportionality solutions. You start out the year with a plan to be as close to meeting a “0” male or female participation gap as possible. Remember, the margin of acceptable error to the proportionality standard is the size of a team that could be added for the underrepresented sex without the proportion flipping to have the opposite sex become over represented. If the school does not have golf, tennis or cross country, the smaller teams – this “buffer” number could be 8. If the school has these sports, the size of a team that could be added might be around 12-15. During the course of the year, some teams will most likely come in lower than their roster caps and the athletic director could approve some teams adding a few more players – as long as at the end of the year, total athlete proportionality within the buffer zone is achieved and equal proportions of male and female athletes are accommodated at each competition level. Key is the athletic director keeping close watch on actual roster numbers as the school year progresses. For instance, if the cap for football in the fall was 50 and the roster on the first day of competition was actually 47, there would be 3 opportunities that the athletic director has in his or her “back pocket” to allow another sport to go up to 3 opportunities over their cap, etc.

2.15 What are some strategies to increase the interest of girls?

The results of interest surveys usually show that girls and boys are equally interested in playing sports or, that boys and girls indicate more interest in playing sports than there are currently sports to meet that interest. Yet, interest surveys also reveal that many girls indicate that they lack confidence to try out for athletic teams. Thus, taking action to alleviate these fears and encourage

girls to try out are key. All of the following recruiting, instructional and promotional strategies should be considered, especially just prior to starting a new girls' sport:

- a. A coach should be hired as soon as possible and asked to visit home rooms and the cafeteria during lunch period to promote the new sport.
- b. Several after school introductory "clinics" should be offered in each new sport. Each introductory clinic should be promoted several weeks in advance via school public address system announcements and flyers advertising "Is this the sport that's right for you? Come learn how to play it and see if you like it!"
- c. A college female athlete, current boys' coach in that sport or the coach hired to coach that sport should be asked to offer the clinic and should be asked to address the "confidence to try out" issue.
- d. All physical education and home room teachers should be asked to promote the new sport clinics.
- e. Current sport participants should be asked to "recruit" prospective athletes for their respective new junior varsity or frosh teams.
- f. The athletic director should visit home rooms, targeting 9th and 10th grade home rooms first, to promote the new sports and encourage girls to attend the introductory clinics.
- g. The new coach should be asked to visit local community sports programs offering that sport to inquire about participants who will be attending the school who might wish to try out.
- h. The school should administer an annual interest survey that asks girls to provide their email address and phone number to learn when sport clinics and try-outs will be conducted. The new coach should personally contact these students to encourage them to come out for the team.
- i. The new sport should be imbedded in the PE 9 and 10 curriculum or offered as a PE elective.
- j. The All-Freshman Assembly and Freshmen Orientation conducted at the start of school should be used to promote the new girls' sport opportunities.
- k. A local college or open amateur team should be invited to campus to play a demonstration game and conduct a short clinic for those interested in learning how to play.

2.16 What if girls prefer to participate in spirit/sideline cheerleading or dance rather than team sports?

Girls and boys are interested in many different activities some of which are athletic teams and some of which might be ASB club activities. Most educators agree that involving the greatest number of boys and girls in after school activities is desirable. Most interest surveys reveal that while girls may be interested in cheerleading and dance, they are also interested in many team and individual sports that are not currently offered by the school. Key to fulfilling this interest is usually getting all the schools in a league to adopt the new girls' sport at the same time in order to allow each school to schedule a sufficient number of regular season competitions and to have the mechanism to offer post-season championships. Schools seeking to add more girls' participation opportunities should first examine CIF and league sports not currently offered by the school and then sports indicated on student interest surveys. Title IX requires that the school equally meet the sports interests of boys and girls, even though such interest may be in different sports. It should also be noted that for girls' interest in spirit or sideline cheerleading, a team sport called STUNT involves similar skills.

2.17 What if our female participation gap is smaller than 10-12 participants, what are our options for closing the gap and achieving athletic program male/female participation equal to the percentage of males and females in the student body?

It is difficult to answer this question without seeing the Varsity, JV and Frosh configuration of the athletic program. But here are some options:

- a. If you don't have golf or tennis, you should be adding these sports as they are sponsored by most leagues and there is a CIF state championship. If schools in your league are not sponsoring either of these sports, seek competition at non-league schools within your normal geographical area – or make a proposal to your league that every member add one or both of these sports so that everyone is helped regarding Title IX compliance.
- b. If you are already sponsoring varsity golf and/or tennis, considering adding JV or frosh teams in this sport. However, remember that there must be equal proportions of boys and girls at every competition level. If 50% of all boys are given the chance to participate in varsity sports, 50% of the girls must receive the same opportunity. If 20% of all male athletes receive JV participation opportunities, 20% of girls must receive the same. In adding new JV or Frosh girls' sports, you must keep this balance.
- c. If you are already sponsoring girls' golf and tennis and there is no girls' sport that can't be added without turning the female participation gap into a male participation gap, a girls' team does not have to be added.

2.18 What is a minimum response rate for a valid student interest survey? How can my school insure the best response rate?

Fifty percent and a roughly even distribution of responses at each grade level. To ensure the best response rate, the survey should be administered by a teacher (distribute surveys to students, give instructions, and collect completed surveys) on the same day in home room or during a specified class period in order to capture all students in attendance that day.

2.19 The practice of roster management is definitely needed when programs are established or successful and there is stability. However, when an athletic program is going through change or transition and attempting to increase participation numbers for boys and girls, programs usually have open door policies to help build interest and get athletes to come out. For those programs that have a high level of interest in one sport and are building participation, caps could hurt such programs while other teams are still not meeting or coming close to their roster caps? How could a balance and compliance be achieved in this scenario?

There are many implications covered by this question.

- a. First, roster size caps should be within a reasonable team size for that sport, recognizing that athletic programs should have optimum coach-athlete instructional ratios and offer participants a reasonable chance of actual participation in contests. Also, a participation cap should never be set so high that actual participation falls short. So, the cap reflects both reasonable squad size and student interest in participating.
- b. Also, there is no obligation of the school to meet every student's sport interest or for the school to meet the interest of all students to want to participate in a particular sport. For instance, let's say 300 boys come out for football? The school is not going to drop all other boys' sports so every boy who wants to play football can do so. The school will probably decide to offer multiple reasonably sized teams in this sport (varsity, junior varsity and freshmen) but the interest of 300 boys is not going to be fully accommodated. Ultimately the school limits its offerings based on the availability of financial resources to support a limited number of teams. Schools will never be able to meet the full interests of all girls and boys simply because there isn't enough money to support an unlimited number of teams.
- c. Schools are also obligated to meet the requirements of federal law – Title IX – to provide equal opportunities for boys and girls to participate. Thus, a school must ultimately decide the maximum number of teams it can financially support, then distribute those opportunities to

boys and girls based on their respective general student body enrollment percentages; then decide how many levels of competition it will offer in each sport, making sure that boys and girls get an equal opportunity to compete at each of these levels. Within these team limits, boys get to have the sports they want and girls get to have the sports they want.

2.20 Varsity cross country limits participation to seven runners and doesn't allow additional runners to enter as non-scoring participants. Should varsity cross country teams have roster caps of 7?

Roster caps for varsity cross country and freshmen cross country should be between 8 and 12 participants to allow for injuries or illness and because the same runners do not usually participate on the seven person teams in all events. The composition of the 7-person team may vary based on times or practice performance during the week. At the varsity competition level, often, no other independent non-scoring runners are permitted. However, there may be an unlimited number of junior varsity participants because in addition to the seven-person varsity scoring team, any number of non-scoring additional participants may be entered in a race.

2.21 What is the basis for the California Education Code requirement to post athletic participation numbers on the school website?

Education Code section 221.9 requires that each public elementary and secondary school, including charter schools, that offers competitive athletics must make available participation information regarding the athletics program, starting with the 2015-16 school year and every year thereafter. Specifically, the code requires:

- If the school has a website, the information is to be posted there.
- If the school does not have a website, the information is to be posted on the district website.

2.22 What information needs to be posted to meet the requirements of California Education Code section 221.9?

California Education Code section 221.9 requires the posting of the following information:

1. The total enrollment of the school, classified by gender.
2. The number of pupils enrolled at the school who participate in competitive athletics, classified by gender.
3. The number of participants on boys' and girls' teams, classified by sport and by competition level.

2.23 What is the definition of "competitive athletics" according to California Education Code 221.9?

"Competitive athletics" means sports where the activity has coaches, a governing organization, and practices, and competes during a defined season, and has competition as its primary goal.

2.24 We do a yearly list for CIF on our participation numbers. Is this sufficient or do we need to do something else?

NO. Education Code 221.9 is a separate reporting requirement from reporting CIF participation numbers. It is actually simpler than the CIF requirement. A school is required to do both. You can use the participation numbers from your CIF data to complete the section 221.9 posting. You may also consider non-CIF sports such as sand volleyball, STUNT, surf club, etc. for this report. The section 221.9 participation report is required to be posted to the school website on or before June 30

2.25 We have some students that participate in games sponsored by City, Parks and Recreation. I am not aware of them having a governing organization as required by California Education Code 221.9. Would you say then that those activities are exempt?

If the answer to ALL of the following questions are “yes”, then the park and recreation department is a governing organization for purposes of year-end posting.

- Does the park and recreation department set or adopt rules and bylaws for a league?
- Does the park and recreation department set the schedule for the season and games?
- Are the teams identified by school?

2.26 If a district or school determines that the athletic teams provided do not meet the requirements of Education Code section 221.9, what should be posted, if anything?

Recommended language for posting in these circumstances is: “[Name of School or District] did not offer competitive athletics as that term is defined by Education Code Section 221.9 (e) in the 20__-20__ school year.”

2.27 Does Title IX permit a school to remove boys’ teams or decrease the roster size of boys’ teams as a mechanism to comply with Title IX? Isn’t this a direct violation of Title IX?

Yes, but only if boys are members of the overrepresented sex. Roster management should be the first step (see 2.9 through 2.11 above). That being said, dropping a boys’ sport or a team should be a last resort. Every effort should be made to increase participation of the underrepresented sex. If finances preclude adding a large number of teams, a common mechanism might be to restructure the athletic program into multiple, differentially funded financial tiers. For example, the number of coaches, competitions, and practice hours might be reduced for frosh and JV teams, treating all male and female participants at those levels of competition equally. teams in each competition level. Varsity teams would be prioritized with regard to funding with each funding level containing equal proportions of male and female athletes.

2.28 What is the exact point in season for each team that the Title IX Coordinator and AD use to make official roster counts for Title IX?

1. The starting point and general rule for counting participants starts with the 1979 Policy Interpretation (44 F.R. at 71415) and the 1996 Clarification (p. 3). The 1979 Policy Interpretation explains that counted participants are those athletes:
 - (a) Who are receiving the institutionally-sponsored support normally provided to athletes competing at the institution involved (e.g., coaching, equipment, medical and training room services) on a regular basis during a sport’s season; **and**
 - (b) Who are participating in organized practice sessions and other team meetings and activities on a regular basis during a sport’s season; **and**
 - (c) Who are listed on the eligibility or squad lists maintained for each sport; **or**
 - (d) Who, because of injury, cannot meet a, b, or c above but continue to receive financial aid on the basis of athletic ability (for colleges only).

Note: Participation in an actual competition is not required to count as a participant.

2. The 1996 Clarification: OCR “considers a sport’s season to commence on the date of a team’s first competitive event and to conclude on the date of the team’s final competitive event. As a general rule, all athletes who are listed on a team’s squad or eligibility list and are on the team as of the team’s first competitive event are counted as participants by OCR.”
3. Courts have held that institutions cannot cheat and the first day of the season is a measure of convenience and form rather than substance. In other words, an institution cannot intentionally

design a situation where male athletes are told not to attend practice until after the first date of competition for the purpose of not counting them when from that point on they practice and play for the rest of the season. Such a practice would artificially reduce the male participant count. Similarly, an institution that purposely keeps every female who tries out for a team through the first day of competition and then drops one or more female athletes from the squad after that day in order to artificially inflate the female participant count would not be permissible.

4. Again, the first day of season is a measure of convenience and form rather than substance. Athletes who participate in any competition during the academic year, or who otherwise participate sufficiently to be charged with a year of eligibility are counted as participants whether or not they were on the roster on the day of the first competition.
5. Counting an athlete who does not participate throughout the full playing season is a commonly encountered situation. Reasonable interpretations of “counters” such as participating in at least 50 percent of all practice and team meetings are acceptable as long as all male and female athletes are counted in the same way.

3.0 EQUIPMENT, UNIFORMS AND SUPPLIES

- 3.1 California law requires that no fee, deposit, or other charge be assessed to students, parents, or guardians that are not specifically authorized by law. Schools are obligated to provide all materials, supplies and equipment required by the school for participation in any curricular or extracurricular activity, including athletics. How does this statement apply to athletics?**

Generally, any item (i.e. equipment, uniform, supplies, etc.) required by the school or the rules of the sport to participate in that sport must be provided by the school free of charge to the student unless such charge is authorized by law. The school must provide competition uniforms, all items of safety equipment required for practice and competition, and all sport implements (i.e. balls, bats, gloves, pads, etc.) required to play. If the student does not have the required equipment, the school must provide it. The school is not obligated to provide items not required by the school or the rules of the sport (i.e. practice apparel). However, if a school or coach requires that all participants wear the same practice apparel, the school must provide such apparel just as it does for competition uniforms free of charge. Often a team’s provision of practice apparel to athletes is funded by teams who are very successful at fundraising which has Title IX implications. If such apparel is provided to a team of boys representing 10% of all male athletes, 10% of all female athletes must be equally treated even if their fundraising does not support such purchase.

- 3.2 What if our school adopts a policy that school funds may not be used to provide practice apparel for players. However, there are some sports like football that require uniforms that can receive pads required for safety and these items of practice apparel are more expensive than shorts and t-shirts! Is there a solution to this dilemma?**

YES. A good solution would be to keep the general policy and then adopt a gender-neutral exception policy such as: Exception: “Safety equipment (helmets, knee pads, etc.) is not considered apparel. If specialized apparel is required for the use of safety equipment (fencing jackets, football pants, etc.), coaches are permitted to issue old competition uniforms as practice apparel or to purchase low-cost practice apparel that fulfills this function for any boys’ or girls’ sport.”

3.3 Our school has a policy that school funds may not be used to provide practice apparel for players. However, we have many players in our program who can't afford specialized shoes or even practice apparel, is there any way we can provide players these items?

YES. Two commonly used solutions are exception gender neutral policies such as:

Exception: In the case of all students who qualify for the school lunch program, practice apparel may be provided.

Exception: The athletic department maintains a donated/used equipment and uniform inventory for those students who may be unable to afford practice apparel or sports equipment normally purchased by players themselves. Such inventory shall be offered to all girls' and boys' teams at the beginning of each sport season (fall, winter, spring) with all students expected to return items at the close of the season. The athletic department budget may be used to supplement this uniform and equipment inventory based on availability of funds and athletic director oversight to ensure equal treatment of male and female participants.

3.4 If we need to add a sport to reach gender equity, should we purchase equipment first?

Yes. Ordering equipment as soon as possible will permit the athletic department to offer introductory clinics, permit the coach to conduct demonstration lessons or games, permit the athletic department to insert the sport in summer sports offerings and enable the school to add the sport to the 9th or 10th grade PE curriculum or as a PE elective offering. Participation in such activities will increase the confidence of girls in participation and trying out for a team. Even if most players who eventually make the team voluntarily provide their own personal sports equipment such as baseball or softball gloves and tennis rackets, the school is obligated to provide these items for students who cannot afford such purchases. So this equipment investment will not be wasted.

3.5 How does a school determine whether sports are provided with the same quality uniforms when there are so many different brands to choose from?

The easiest way to manage the obligation to provide girls' and boys' sports with the same quality uniforms, equipment and supplies is to engage in the following procedure:

- a. Ask each head coach to list those brands or makes that represent the highest quality, most expensive equipment or uniforms in their sport. These brands may allow maximum customization to the purchaser's specifications. Call these brands "Superior".
- b. Ask each head coach to list those brands that represent good but not superior quality, mid-range priced equipment or uniforms in their sport. Call these brands "Adequate".
- c. Ask each head coach to list those brands that represent the lowest quality, lowest priced equipment or uniforms in their sport. Call these brands "Inadequate".

The school's gender equity obligation is to insure that an equal percentage of all male and female sports participants is provided with the same quality equipment in each category.

3.6 Is it permissible to mandate the purchase of "spirit packs" so players are able to acquire the same practice apparel?

Coaches have traditionally established practice apparel requirements by informing students that they are required to purchase "spirit packs" which contain items of practice apparel designated by the coach and sometimes have described such purchases as voluntary while exerting verbal pressure when students appear at practice without such gear. Mandating a "spirit pack" purchase in effect becomes a participation fee which is not permitted. If a "spirit pack" is assembled for voluntary student purchase, the school must make clear that such purchase is voluntary. (see Question 12.11 for more detailed information on voluntary donations). Similarly, schools must be careful not to

imply that students or their parents are “required” to make a donation or solicit funds in order to pay for their competition uniforms or other costs of participation. Consult legal counsel for your specific situation.

4.0 SCHEDULING OF GAMES AND PRACTICE TIMES

4.1 Our high school girls play at 4:00 p.m. on Fridays, and the boys play at 7:00 p.m. on Fridays. Is this a violation of Title IX?

YES. Later times for games are more valued because parents, friends and spectators can attend. In order to comply with Title IX, many schools will alternate early and late Friday starting times for boys’ and girls’ teams or keep the later starting time for both but schedule boys at home and girls away or vice versa on the same dates.

4.2 Boys’ basketball practices from 3:00-5:00 pm. Our girls’ basketball coach is a walk-on coach who works until 5:00 pm and cannot be available for earlier practice. Is this a justification for not treating girls’ and boys’ basketball equally with regard to practice times?

NO. But it should be noted that Title IX compliance does not compare a single boys’ sport to a single girls’ sport. When examining the equal provision of prime versus non-prime practice times, compare the percentage of all boys (participants, not teams) to the percentage of all girls within each competition levels (varsity, JV, frosh) who enjoy prime practice times and make sure they are equal. Thus, when all sports are included, boys’ basketball and girls’ volleyball may enjoy a prime practice time immediately after school while girls’ basketball and an equal number of participants in another boys’ sport does not.

4.3 Do boys’ and girls’ teams need to be provided with the same number of hours of practice time? What if a coach is only available 4 days per week, is this a violation? Is it equitable to provide junior varsity teams with fewer practice hours than varsity teams.

Generally, yes. However, some schools may not have sufficient facilities to meet the needs of all teams with the same number of practice hours. In this case, a solution would be to ensure that all varsity athletes received the same number of practice hours and all junior varsity athletes receive the same but a lower number of practice hours. Remember that Title IX requires an equal proportion of male and female athletes be provided with the same levels of competition. It is possible to create an accommodation for a coach that is only available four days per week as long as male and female athletes are equally disadvantaged. For example, the practice policy could be that all teams will be provided with practice hours that do not exceed two hours per day and five days per week, allowing an equal number of male and female athletes who would be scheduled for Saturday practice hours with one week day off. Or, because the standard is always the treatment of all male versus all female athletes, the solution might involve two teams in different playing seasons.

4.4 Is it equitable to provide some teams with out-of-season practice times while others are limited to in-season practice only?

Every team does not have to be treated “identically.” Whenever teams are treated differently, the equity standard is the overall, an equal proportion of male and female athletes must be in each different treatment category. Thus, if 30 percent of all male athletes are provided with year round practice facility assignments, 30 percent of all female athletes must receive the same treatment.

5.0 TRAVEL, MEALS, BEVERAGES AND SNACKS

5.1 Football is provided with charter buses to travel to all of their away contests while all other teams use school buses or rental vans. Is this a Title IX violation?

YES. If there are 55 players on the football team and, for example this number represents 25% of all male athletes, and they are provided with a charter bus, then equal treatment of female athletes would be to ensure that 25% of all female athletes are provided with such treatment. HOWEVER, a better system would be to adopt a gender-neutral transportation policy. The Title IX obligation is to ensure that girls and boys are treated equally with regard to modes of transportation. The assessment is made examining transportation used by all teams over the course of the entire season. If teams with large fundraising accounts can afford to charter buses and teams with smaller budgets are dependent on parents driving personal automobiles, and more male than female athletes benefit from the former practice, this is a gender inequity. The school district should consider adopting a gender-neutral policy regarding the transportation of athletic teams such as the following:

Sample Policy: The athletic director shall be responsible for ensuring that all male and female athletes are equally treated with regard to modes of transportation provided for travel to athletics events. The use of school buses shall be required for all league and non-league team travel and shall be funded by the school district. The following alternative arrangements may be approved by the athletic director:

- (1) Use of air-conditioned chartered buses for trips over [INSERT # OF MILES] round trip at times of the year when temperatures are excessive.
- (2) Use of chartered buses if school buses are unavailable.
- (3) Use of rental cars or vans with paid third-party drivers with commercial licenses if school or charter buses are unavailable or the size of a team make such travel more cost efficient.
- (4) Personal automobiles of parents or coaches may not be used except in the case of emergencies when none of the above-mentioned modes of transportation are available or vehicle breakdowns preclude obtaining alternative vehicles. In the event of such use, all parents or other drivers, vehicles, parent permission forms and insurance coverages must meet PUSD guidelines.

5.2 Transportation for winter break tournaments is often provided by parents only. Is this okay?

There are two issues that should be considered: (1) travel safety and (2) gender equity in the provision of modes of transportation. With regard to travel safety, use of parent vehicles is not prohibited, but there are preferred methods of student transportation. Transportation is subject to individual district policy. Following is the list of OUSD recommendations for student transportation in order of preference:

- a. Students are to use district transportation when provided.
- b. School pupil activity bus (charter buses or vans)
- c. Public Transportation
- d. Personal vehicle of student's parent
- e. Personal vehicle of other volunteer
- f. Personal vehicle of staff
- g. Student driver (extremely rare)

Personal vehicles are subject to California Vehicle Code section 17150, which indicates that the owner of a vehicle is liable and responsible for death or injury to person or property resulting from a negligent or wrongful act in the operation of a motor vehicle. Thus, it is not in the best interest of a volunteer or staff member to drive their personal vehicles. Ideally, the district should provide school or chartered bus transportation or a rental vehicle driven by a third party with a commercial license.

Also, California law prohibits K-12 students from transportation in 15-passenger vans, unless the driver has a commercial license.

5.3 While California law does not permit a school district to charge an athletics participation fee, is it permissible for a district to charge an athletics “transportation” or “field trip” fee?

“Transportation fee” is not the correct term. Schools may charge athletics participants a “field trip fee” as long as it represents the actual per participant cost of each trip AND as long as no student is denied participation for inability to pay. Title IX requires that male and female athletes be treated equally with regard to such fees. Thus, the district should adopt policies that ensure gender neutral practices with regard to such fees such as the fee applying to (a) all athletic teams for all away events, (b) all non-league events, (c) all events over a prescribed distance OR (d) all events requiring an overnight stay, etc.. The district is also obligated to make sure that male and female athletes have equal access to each of these categories of event travel.

5.4 Can a girls’ team opt out of a competition date or time? Can they opt out of provided transportation?

All girls’ and boys’ teams should be equally treated by school policy. With regard to scheduled competitions, these are obligations with other schools that should be confirmed by athletic director or principal signed agreements. These agreements should be treated as contracts because they involve each party incurring travel expenses or scheduling officials, arranging for concessions and other obligations. No event should be cancelled unless due to unforeseen weather or other circumstances and should always be cancelled by the athletic director or school principal. Similarly, transportation policies should be equally applied. If buses are provided for boys’ teams, they should be equally provided for girls’ teams. No individual coach can refuse such equal treatment and thereby create a gender inequity. Some coaches want to cancel expensive buses because they are paid for from their own fundraising accounts. If such cancellation results in unequal treatment, they should not be allowed to do so.

5.5 Parents wish to provide a pre-game meal or food to teams on campus or for a bus trip. Explain why such “gifts-in-kind” must equally benefit male and female athletes.

A “gift-in-kind” donation is a contribution of goods or services to a nonprofit organization. Instead of the school having to buy meals or buy meals for athletes, parents or boosters may do so. The “goods or services” are benefits that must be equally provided to male and female athletes in the same way as gifts of cash must be expended in a way that equally benefits male and female athletes.

6.0 TUTORING AND ACADEMIC SUPPORT

6.1 The boys’ basketball and soccer teams have mandatory study hall every Monday through Thursday from 3:00-4:00 pm prior to their 4:00-6:00 practices. No other boys’ teams or girls’ team have mandatory study hall. Is this a Title IX violation?

YES. Arranging for a study hall is considered a treatment benefit, so Title IX requires equal treatment of male and female athletes. This is also true of equal treatment of male and female athletes with regard to team rules; different team rules may result in discriminatory treatment. Requiring some athletes to attend study hall while others do not is permissible if it is the result of gender-neutral rules applicable to all athletes. For instance, a rule that requires any athlete with a GPA below 2.2 to

attend study hall would not violate Title IX even if it resulted in many more male than female athletes provided with study hall. If possible, all athletes should be required to adhere to the same policies and in the event of violations, should be treated equally with regard to penalties.

6.2 Can a school enforce a mandatory study hall for students that stay at school waiting for a late practice?

Yes, as long as such mandatory study hall attendance is required of all athletes staying late for practice in which case this is a gender-neutral policy OR a proportional number of male and female athletes are provided with such a study hall benefit.

7.0 OPPORTUNITY TO RECEIVE COACHING

7.1 The boys' varsity football team has five volunteer and four paid coaches, resulting in a coach to athlete instructional ratio of one coach for every six athletes. All other teams have coach-to-athlete instructional ratios of 1:10. Is this a Title IX violation?

Not enough information is provided to determine whether this practice violates Title IX. Title IX does not look at the treatment of one team; it examines the treatment of all male athletes and compares this treatment to that of all female athletes. If paid and volunteer coaches work the same hours, for purposes of computing instructional ratios, they count the same (for instance, each coach counting as one FTE-full-time equivalency). To determine instructional ratio, take the total number of varsity male participants and divide by the total number of boys' team coach FTEs at the varsity level. Then do the same for varsity girls. Compare to determine treatment equality. Then do the same for JV and Frosh levels of competition.

7.2 Does the number or ratio of male coaches and female coaches matter? Do they have to be equal?

Yes, the numbers of male and female coaches do matter but they do not have to be equal. If there are significant imbalances between the numbers of males and females who are employed overall as head or assistant coaches, the possibility of being vulnerable to charges of sex discrimination in employment under Title VII, the Equal Pay Act, or Title IX may increase. For example, if 0% of the head coaches of boys' teams are female and only 10-20% of the head coaches of girls' teams are female, questions may be raised related to sex discrimination in employment. However, if these imbalances are caused by differences in experience and qualifications rather than the gender of the coach, such imbalances may not be the result of sex discrimination in the hiring process. Or, for example, if 70% of the coaches of girls' teams are walk-on coaches while 70% of the coaches of boys' teams are full-time on-campus certificated teachers, the school may be vulnerable to allegations that it is providing females with coaches of lesser quality or who do not have the time to recruit or provide counseling or extra instruction to their athletes during the school day – benefits received by boys. As a general good practice, schools should make every effort to ensure that the applicant pool for every open position contains a sufficient number of qualified male and female applicants.

7.3 Can a male coach a girls' team? Can a female coach a boys' team?

Most definitely. The gender of the teacher or coach in an educational activity – curricular or extracurricular - is irrelevant. The most qualified teacher should be hired for boys' or girls' athletic teams. It is also important for boys and girls to see members of both sexes coaching boys and girls

so they have equal respect for the skills and abilities of both men and women and both girls and boys have role models they may wish to emulate with regard to their future career choices.

7.4 Are stipends for coaches a school issue or a district issue?

Both. Stipends for coaches and employees involved in other extracurricular activities are usually included as part of the school district's collective bargaining agreement with teachers and employee unions. These stipends are established based on gender-neutral criteria such as responsibility factors. However, district, schools or team fundraising accounts may be responsible for actually providing the funds for such stipends. If schools allow coaches to receive bonuses as long as they use their fundraising accounts, this practice presents the risk of creating gender inequities related to the number and compensation of coaches. Schools should adopt policies requiring athletic director and principal approval prior to the use of fundraising accounts to compensate coaches other than with stipends indicated in the CBA agreement. Further, if lesser amounts are paid to coaches than the CBA amounts, such compensation should be reflective of lesser work hours and responsibilities.

7.5 Our boys' basketball coach wants to take his staff to Dallas for a national basketball coaches' conference. The cost is \$2,500 which would come from the boys' basketball fundraising account. We don't have any other coaches going on any trips or clinics like this. Would this be considered a gender inequity under Title IX?

Yes, if a school uses fundraising revenues, funds from any school account or accepts booster club funds to provide professional development opportunities that improve the coaches of male athletes, female athletes must be provided with similarly well-trained coaches. However, this inequity could be eliminated and such an expenditure approved if the school also provided the coaches of a girls' team with the opportunity to attend a similar professional conference. The amount spent on the conference is not an issue - it could be a conference that costs less because it is closer or costs more because it is farther. The point is that it must be a comparable professional development opportunity. Also, if the boys' basketball staff served 45 boys participating on varsity, junior varsity and freshmen teams and these 45 athletes represented 10% of all male athletes, the coaching conference benefit would have to be provided to coaches of female teams that served an equal proportion of all female athletes (10%).

7.6 What happens if walk-on coaches work less hours than other coaches?

Title IX requires that male and female athletes be provided with the same quality coaches (training and experience) and equal instructional ratios (e.g., one coach for every ten athletes). Most coach stipends are specified in the school district's collective bargaining agreement, differ in amount based on non-gender-based responsibility factors and are based on a coach fulfilling all basic coaching duties – practice, competition, recruiting, etc. Each coach, as a district employee, should have a position description that details all coach responsibilities. As long as the coach fulfills all such responsibilities, that coach would be considered one full-time coach equivalent (FTE) when computing instructional ratios. If a coach does not fulfill all responsibilities, a proportion of the full-time coaching assignment should be calculated based on the actual time spent coaching should be estimated and the coaching stipend reduced accordingly. Remember that single sport to single sport comparisons are never made when assessing Title IX compliance. The calculation of instructional ratio is taking the total number of all male athletes and dividing that number by the total FTEs of all coaches of boys' teams to get the average number of athletes per coach. Then do the same calculation for girls.

7.7 Because of a coach only being available four days per week, parents paid for access to the gym for a fifth day of parent supervised “open gym.” Is such a practice equitable?

A parent-supervised practice or open gym normally would not be counted as a practice. It’s “open gym.” Thus, it is likely that this is a violation of Title IX’s requirement that male and female athletes be provided with equal access to the same quality coaches. A better solution is for the school to pay a coach and hourly wage to “cover” for the coach who cannot make the fifth practice, much in the same way that the school would be obligated to provide a substitute teacher. Certainly the school rather than parent would be required to provide the same quality facilities.

8.0 LOCKER ROOMS, PRACTICE AND COMPETITIVE FACILITIES

8.1 The boys’ football team locker room is twice the size as team rooms provided to all other teams. However, the lockers are the same size as lockers in all other team rooms and there are enough lockers to provide teams using any team room with one locker per player. All team rooms have the same amenities – painted in school colors, white boards, bulletin boards, benches and showers/access to toilets. Is this a Title IX violation?

Not enough information is presented. Title IX would examine the square feet of locker room space per player. For instance, if the boys’ and girls’ track teams had team sizes comparable to football and were provided with smaller locker rooms and all other boys’ and girls’ teams were smaller teams provided with smaller locker rooms, it is reasonable to assume a gender inequity exists because no girls’ team of comparable size to football has a large locker room. Title IX is always fact specific to each institution and must always examine the treatment of all male athletes compared to all female athletes.

8.2 The boys’ baseball team has an on-campus baseball field that is used for practice and competition. The girls’ softball team does not have an on-campus facility. Is this a Title IX violation?

Not enough information is presented. Title IX does not compare one team to another; a comparison of the treatment of all male athletes versus all female athletes at each competition level is required. If for instance, boys’ cross country and golf were the only two teams using off-campus facilities and girls’ softball, golf and cross country were the only three girls’ teams using off-campus facilities, it is reasonable to assume that there would be a lower percentage of all male athletes using off-campus facilities compared to the percentage of all female athletes using off-campus facilities. If this were the case, this would be a Title IX violation that had to be corrected.

8.3 Volunteers are used to maintain the baseball field and the baseball coach and parents get donations of clay and other materials from local businesses, resulting in the provision of a superior baseball facility. Girls’ softball has no volunteers and its facility is adequate but not superior. How does a school resolve this discrepancy created by volunteer time?

Whether through donations of money, materials, equipment or volunteer time to the athletic program, the use of such donations cannot result in unequal treatment of males and females. (See also the answers to questions 12.3 and 12.7). In this example, if the school allows the development of a superior facility for a certain percentage of all male athletes, it must provide superior facilities for an equal proportion of female athletes. Those female athletes do not have to be softball players; they can be participants in any sport.

9.0 MEDICAL, ATHLETIC TRAINING AND WEIGHT TRAINING/CONDITIONING

- 9.1 The girls' volleyball and track coaches are complaining that the weight training and conditioning facility only has heavier weights to serve football and that lower poundage bar bells, plates and hand bar bells are not available for girls. They also say that most of the equipment in the weight room meets the needs of boys' wrestling and football but not girls' sports. Is this a Title IX violation?**

YES. If the equipment in the conditioning facility results in meeting the needs of most boys and few girls, this is most likely a Title IX violation. The equipment should meet the needs of the same percentages of boys and girls. If football and boys' wrestling represent 35% of all male athletes and these are the only sports that say their weight room equipment needs are fully met, the school is obligated to fully meet the weight room needs of 35% of all female athletes.

- 9.2 What are some ideas for establishing equity in availability of trainers?**

Following are several guidelines that should be considered for adoption in order to ensure gender equity in the provision of athletic trainers and athletic training services. Remember that not every athlete must be provided exactly the same equipment, time with athletic trainers and strength and conditioning coaches, etc. Rather, all male and female athletes who are injured or who are participating in sports at high risk for injury must be treated equally.

- a. Both male and female athletic trainers should be assigned to work with boys' and girls' teams. Do not assign female trainers to girls' teams and male trainers to boys' teams.
- b. Be sure the athletic training room is not located in the boys' locker room. If it is, a similar facility with the same space and equipment should be provided in the girls' locker room. Ideally, an athletic training facility that is easily accessible to both male and female athletes should be provided.
- c. Dress codes should be established for all athletes using the training room – shorts and tops required so there is never an issue related to boys' and girls' being treated in the same facility.
- d. Gender blind policies should guide the assignment of athletic trainers to cover team practices and athletic events. The most experienced and highly qualified trainers should be assigned to the sports representing the highest risk for injury. The National Athletic Trainers Association has a sport classification system that specifies sports at higher and lower risk. Consult the NATA.com web site for access to this information. For example, the following assignment system illustrates a gender-neutral method based on sport risk that might be used by a high school with limited access to athletic trainers to assign trainers to cover practice and competition:
Lower Risk – no trainer assigned to practice or games - Baseball, Crew, Cross Country, Fencing, Golf, Track and Field, Softball, Swimming, Tennis, Water Polo
Moderate Risk – trainer on call in training room during practice and assigned to attend games, taping services provided for games only - Diving, Field Hockey, Lacrosse, Soccer, Volleyball
Increased Risk – trainer assigned to practices and games – taping services provided for practices and games – doctor present at games if required by rules. Basketball, Football, Gymnastics, ice hockey, Skiing, Wrestling
- e. If taping services are provided for boys' teams, such services should be equally available to girls' teams in the same injury risk category.

- f. Neither boys nor girls sports should be given priority regarding training room treatment. Treatment should be based on the seriousness of the athlete's injury.
- g. Weight rooms and similar conditioning facilities should be equally available to male and female athletes and the equipment contained in these areas should meet the needs of both boys' and girls' sports.

9.3 Are conditioning activities in weight/cardio rooms considered part of physical education classes or athletic team practices? How do we ensure equal access?

They may be either but not both. Remember that all physical education classes during the school day that are used to fulfill the 9th and 10th grade PE curriculum requirement or an 11th or 12th grade physical education elective must fulfill minimum standards re: instructional minutes and be co-ed. The only single sex physical education class allowed is for contact sports and even if such a class is offered for boys, a single sex contact sport class must be offered for girls and enrollment in such classes must be voluntary. All other team activities in the weight room outside of physical education classes would be considered team practices. Access to the weight room and all conditioning facilities should be equal for boys' and girls' teams. The athletic director, school principal or other person responsible for facility scheduling should be held responsible for ensuring gender equity in access.

9.4. What are best practices for measuring strength and conditioning equity? Some teams have access to the scheduled strength and conditioning activities year round while other teams only have access during their regular playing season. Some teams pay for off-campus access to strength and conditioning facilities or coaching.

All of these different situations are permitted and may exist simultaneously, as long as an equal proportion of male and female athletes are provided with year round access, in-season only access, and off-campus access respectively. All male and all female athletes are not required to be provided with "identical" treatment. If they are treated differently, equal proportions of male and female athletes should be in each different treatment category.

10.0 PUBLICITY, PROMOTIONS AND AWARDS

10.1 The boys' teams receive letter jackets from the booster club at the end of the year while the girls' teams receive certificates from the school. Is this a Title IX violation?

Yes. If permission is given by the athletic director for an action or expenditure that benefits the boys' programs, a similar benefit must be provided to the girls' programs.

10.2 Is it a violation of Title IX when cheerleaders, pep squads and/or bands are provided for boys' athletic events but not for girls' athletics events?

Yes. Cheerleaders, pep squads and bands are considered publicity services. If they are provided for the boys' program, they must be provided for the girls' program.

10.3 Should all sponsor banners be approved by the athletic department?

It is good management practice for the athletic director and school principal to approve any school signage to be sure it meets district policy. While this query does not appear to be a Title IX issue, generally, the school is obligated to equally publicize and promote boys' and girls' sports

10.4 Explain more about posters in training or locker rooms.

Posters in physical activity areas used by male and female athletes like the weight and conditioning room and the athletic training area should equally display male and female athletes. For instance, if there is a record board for weights or sit-ups, it should include both male and female athletes or records for boys and girls should be equally kept and displayed. If there are posters showing proper lifting techniques, the posters should depict both males and females. Similarly, if there are team rooms (sport specific locker rooms or locker rooms rotated by season and assigned to team use), the painting of and amenities in these locker rooms should be equal. For instance, if boys' locker rooms are painted in school colors, have white boards, benches and posters celebrating that sport, the girls' locker rooms should have the same features.

10.5 Why does a parent-produced "media guide" for boys' basketball "count" in a Title IX assessment versus, for example, the school issuing programs for some teams and not others, which would appear to fall within Title IX jurisdiction?

Whenever an outside third party provides a benefit to athletes and the school accepts the gift or knows and assists in the production of the gift (provides information, photos), or uses the gift such as disseminating the media guide to the press or the public, etc., the media guide is a gift-in-kind – just like a gift of money. The Title IX rule is that all revenues or gifts to the athletic department are gifts to the school. The school must use all of its resources to equally benefit male and female athletes. Otherwise, parents or booster clubs could be used by the school to evade its Title IX obligations. If the school knows about the good intention of parents to provide benefits to enhance the athletic program, it can better plan to ensure equal treatment of boys and girls. This is why it is important to educate all parents to discuss the provision of such gifts and services with the athletic program – so these gifts don't undermine the school's plans to provide equal treatment and benefits. Remember that the school may accept a gift that parents want to give to one sport, but only if it is prepared to provide an equal proportion of girls that benefit.

11.0 RECRUITING

11.1 Coaches are responsible for recruiting prospective students on-campus during lunch periods, posting flyers on campus and speaking to incoming 9th graders about trying out for sports teams. Seventy percent of the coaches of girls' teams are walk-on coaches while 70% of the boys' teams are on-campus certificated teachers or classified staff members. Because of their work schedules, walk-on coaches are unable to perform most of these on-campus recruiting responsibilities. Is this a Title IX violation?

YES, this is most likely a Title IX violation in two or three areas. First, girls and boys must receive equal benefits with regard to recruiting. Second, girls and boys must have access to the same quality coaches. If many of these certificated teachers have greater teaching and coaching experience than their walk-on counterparts, this may not be the case. Third, on-campus full-time employees are in a position to be more accessible to their athletes for counseling or provision of additional coaching time and, if they are certificated physical education teachers, to work with their athletes during any 6th period athletics physical education class. Thus, discrepancies in the numbers of walk-on coaches provided to girls and boys may result in benefit inequities in these areas. The school must make the

same effort to provide girls with on-campus certificated teachers and classified staff as coaches as are provided to boys. Changing the composition of a coaching staff usually occurs through attrition over time. While the school is making efforts to accomplish this change, here are some ideas to mitigate the effects of walk-on coaches not being able to perform on-campus recruiting and athlete counseling functions:

- a. Start an apprentice coach program among on-campus certificated teachers or classified staff who might wish to try coaching. The athletic department can pay for a low-priced online coaching course for apprentice coaches (\$25-\$50). The apprentice coach can perform the on-campus recruiting, counseling and promotional functions for the walk-on coach.
- b. To mitigate lack of extra opportunities for instruction that might occur during the school day, teams that have walk-on coaches could receive a special budgetary allocation that would permit a special workshop with a visiting coach or conditioning coach.
- c. By policy, walk-on coaches might be required to be accessible by phone during the school day in the same way a teachers might post office hours to be accessible.

12.0 ADMINISTRATIVE AND SUPPORT SERVICES AND FUNDRAISING

12.1 Does Title IX apply to booster clubs and similar forms of support for athletic teams?

Yes. If the school permits an individual or group to donate funds for the benefit of a specific gender or sport, it must also make sure that benefits and services are equivalent for both sexes.

12.2 All sports at my school keep the concessions revenues they generate for use in their fundraising accounts. How do I respond to a parent group that is selling elaborate concessions at only one sport, while other sports don't get that parent support and as a result have smaller fundraising accounts from which to draw?

There are three different issues that should be clarified in order to respond to this query.

First, the relative fundraising success of various teams is not a Title IX issue. Where revenues are derived is irrelevant to the issue of a school's obligation to ensure monies are not expended in such a way as to create a disparity in the benefits provided to or treatment of boys and girls. For example, let's assume that football raises significant concessions income because 3,000 fans come to every game and parents are running a superior fundraising operation that yields significant profits. Before football can spend that money on benefits for male football players, the school is obligated to ensure that equal benefits are provided to an equal proportion of female athletes from other revenue sources. If revenues are not available in girls' fundraising accounts, the athletic department account, or from the school district's athletic budget contribution, those expenditures for football cannot be approved. Thus, complying with Title IX, the federal law that prohibits discrimination on the basis of sex "trumps" any sport earned revenue advantage. This does not mean that football parents or any team shouldn't try to raise as much money as possible. It does mean that schools have to strategically manage their revenues. For instance, gate receipts, parking and sponsorship income from all sports could be mandated to go into an athletic department account that is used to ensure that equal benefits are provided to girls if larger boys' fundraising resources are used to provide benefits to boys. The school district may also wish to consider a policy where 10-20% of all concessions income earned by team or parent volunteers running concessions at athletic events must go to the athletics department account to ensure equal treatment of all teams and gender equity.

Second, athletic directors should do everything they can to prevent divisiveness based on team differences in fundraising success. Different sports have different fundraising success because of many factors, most of which are not related to coach/athlete effort. For instance:

- Sports with larger teams have an advantage because more players and parents ask their friends to give or give themselves;
- Sports that historically have been well promoted have become more popular in the community and have developed more donors and sponsors over time;
- Sports whose seasons are in the fall or winter before the community is “tapped out” because of over solicitation have an advantage;
- Sports with full-time certificated teacher or classified employee coaches have more time and are better positioned to supervise and conduct fundraising efforts than their “walk-on” coach counterparts;
- Some sports like football and indoor gym sports more easily accommodate more fans at games, resulting in greater concessions revenues;
- Some sports have more parents from higher socio-economic levels that others, who can give or ask their friends to give more successfully; and
- Spring sports who have many multisport athletes, players and parents who have fundraised or given to the fall sport in which the athlete initially participated, are disadvantaged.

The same is true of the varying ability of sports to generate gate receipts. Thus, athletic directors should not allow coaches to suggest that some teams are not “pulling their fundraising weight” because they are lazy. Such an unhealthy climate is non-productive.

Third, Title IX requires that concessions services be equally provided to spectators of boys’ and girls’ teams. If the parents of football players, who represent, for example, 25% of all male athletes, operate superior concessions (hot dogs and hamburgers, cappuccinos, popcorn and soft drinks, then spectators of 25% of all female athletes must be provided with superior concessions services. If the school cannot arrange for such gender equity, it may be required to restrict the quality of concession services at boys’ football games to that level of service that can be provided to 25% of all female athletes. This does not mean that all teams have to have the same concession services. It does mean that if 40% of all male athletes don’t have any concession services at their events, then 40% of female athletes should be similarly treated.

12.3 So many of our parents want to designate funds for a particular sport. How do I educate booster clubs and parents about Title IX so that they understand that benefits must be equal for male and female athletes?

“Education” is critical but so is having three separate revenue resources. First, with regard to education, following are suggested education efforts that should be initiated:

- a. Use the school’s Annual Notice to Parents to explain both Title IX and the funding system for interscholastic sports.
- b. “How Athletics is Funded” should be a featured content area on the athletics web site.
- c. “How Athletics is Funded” should also be a print publication that is distributed to all booster club members and individual donors. The athletic director should attend a meeting of every booster club to address this area.
- d. Every booster club has one or two leaders, the athletic director should make every effort to explain Title IX and the funding system in personal meetings with these individuals. These individuals should be requested to play a leadership role in acquiring common fund donations.

The second piece of the puzzle is having three different revenue sources for athletics. There will always be donors that restrict their contributions to specific sports or athletes who are voluntarily paying for their own participation via a parent donation or their individual fundraising efforts. Few athletic departments have the power to tell the powerful or wealthy donors or businesspersons that they cannot restrict their gifts to a specific sport. Thus, key is to maximize communication with businesses and donors of wealth in particular to explain the need for “common fund” (“where they

are needed most”) donations and other revenues. The goal should be to have sufficient “common fund” balances to provide for the equitable treatment of teams that are less successful at sport specific fundraising. District funding is one of the “common fund” resources. The district may cover all coach stipends, all transportation costs, etc. The second “common fund” resource is an athletic department account. All sport gate receipts, advertising or sponsorship revenues, should go to the athletic department account. The athletic department could also operate events that generate common revenues such as an end of year all-sports awards banquet. The third resource is each team’s sport specific ASB fundraising account into which booster club donations may be deposited. Key to managing gender equity is mandated athletic director approval for all expenditures made from fundraising accounts other than those pre-approved expenditures providing every athlete the same guaranteed benefits. See model policy 5.3 for such a system.

12.4 What should I do if a sport decides they are not going to fundraise at all because they know that they will still get the benefit of the fundraising by other sports?

It is important to recognize that there was never a policy requiring that athletes fundraise. All student fundraising is voluntary. A coach does not go into the season thinking “what if none of my athletes gives me 100% effort.” The right question is how do we create an athletic department culture in which all athletes and coaches are committed to giving their best effort at fundraising – recognizing that it is a voluntary activity on the part of students? Several suggestions are:

- a. “Leading team fundraising initiatives” should be a responsibility of every coach – part of their job description.
- b. The athletic director should not assume that coaches know how to fundraise or feel confident in doing so. Coaches must be trained in relationship building and novice coaches should meet with the athletic director to determine that team’s specific fundraising goals and programs for the year, with the athletic director providing clear action plans explaining “how to”. Do not assume that any coach knows how to friend-raise or fund-raise.
- c. Every coach should be provided with a standard script so he/she can explain to their athletes how important fundraising is to athletic department success.

12.5 My District can’t afford to pay for transportation to all competition events. How do I deal with that in terms of fundraising and making sure the athletes receive equal treatment?

It is recommended that the district first examine how it structures the provision of revenue sources for athletics and the exact cost of Title IX compliance before advancing piecemeal solutions to the support of athletics. It is the responsibility of the athletic director, in consultation with the Title IX Coordinator to determine the structure and cost of an athletic program that is in compliance with Title IX - including the provision of equal facilities and modes of transportation. This will require doing a full athletic program Title IX assessment, installing a roster management system, and, assuming a female participation gap, calculating the cost of additional new female teams and the cost of any remedy to correct gender equity deficiencies. Initially, this should be done with no reduction of opportunities for boys. Part of this analysis will be to identify all existing revenue sources – including to what extent the athletic director believes athletic department generated revenues (fundraising, gate receipts, etc.) can be increased, and to calculate the budget shortfall that would need to be filled with new revenues. The athletic director may wish to meet with booster club leaders to explain the gender equity issue and ask if they are willing to be a part of the team that helps the school district confront this legal requirement – pointing out that the district does not want to be put in the position of cutting sports for boys or girls but may have to if sufficient revenues cannot be generated. The athletic director should prepare a policy proposal that would advance the establishment of an athletic department revenue account that could be used to address gender equity. See Question 12.3 for the description of why a balanced approach utilizing three revenue resources is required to adequately fund athletics programs.

Once the Title IX compliance cost and realistic assessment of annual revenues is determined, if there is a revenue shortfall, a meeting with the principal and superintendent is in order to discuss how many and what kind of options should be presented to the Governing Board of the District for consideration. One option will be your estimated cost of the Title IX compliant athletic program with no reduction in opportunities for boys. The superintendent may ask you to produce another option that adds no new girls' sports opportunities but cuts boys' sports until proportionality is achieved. The superintendent may also ask for another Title IX compliant option that is not more expensive than the current total athletic program budget or total projected revenues – one that would require you to maintain proportionality in male/female participation and cut a few boys' teams and add a minimal number of new girls' teams. It is this process that will permit the Governing Board to assess the community reaction to the various possibilities and decide whether it will dedicate additional resources to athletics. This is not an athletic director decision but it is the responsibility of the athletic director to present a clear picture of alternative for higher administrative officials to consider.

12.6 If fundraising money does not come from federal sources, why is the use of these funds a Title IX issue?

The definition of "recipient of federal funds" and the requirement that laws prohibiting discrimination apply to all programs and educational activities of the institution receiving federal funds, not just those programs that are directly supported by federal funds, is contained in a law adopted by Congress in 1988 called the Civil Rights Restoration Act. It clearly does not make sense to require that the English department not discriminate on the basis of sex, race/ethnicity or disabilities while allowing the math department to do so. Neither does it make sense to allow a recipient of federal funds to "launder" funds via fundraising by an athletic booster club or other entity outside the school in order to evade anti-discrimination laws. Once funds or gifts-in-kind from any source are used to support the school's educational programs or activities, the school is required to adhere to federal non-discrimination laws, ensuring that the use of those funds does not violate the law. Further, California state law is identical to Title IX with regard to the prohibition of sex discrimination in athletics. Institutions that wish to discriminate on the basis of sex, race/ethnicity or disability may do so if they refuse to accept any federal or California state education funding.

12.7 What if booster money is kept outside the school or district, solely in a booster organization account?

Booster funds may reside in accounts outside the control of the school. However, once such funds are transferred to the institution or are used to purchase anything for the athletic program or to provide for benefits to or treatment of athletes, the school is obligated to ensure that males and females are treated equally. Thus, it is permissible to accept funds, gifts of equipment, uniforms or supplies or provision of awards banquets or other benefits restricted for the use of a specific team. However, if a school accepts such support for members of one sex, it must provide equal treatment of a proportional number of athletic participants of the opposite sex from other funding sources. If it cannot, the school would be expected to reject such fundraising gifts or support.

12.8 If a business in the community donates dirt for the football or baseball field or makes other donations of materials, supplies or equipment, does that gift need to be matched for girls' sports?

If any gift of materials, supplies, equipment etc. results in an improvement in the condition of a field, or a benefit or treatment to boys that is not provided for girls, that benefit must be provided to a proportional number of girls. For example, if there are 50 boys on the football team representing

20% of all male athletes and lights are donated for the football field and no other girls' or boys' team uses that field, a lighted facility would need to be provided to 20% of the female participants. Equality under Title IX is treating a proportional number of male and female athletes equally.

12.9 What is the best way to deal with corporate sponsorships or advertising?

There are several important considerations that should be carefully thought out regarding the solicitation and acceptance of corporate sponsorships, advertising or gifts from businesses.

- a. Determination of Revenues to be Deposited in Team Fundraising Accounts vs. the General Athletic Account to Benefit all Sports.** One of the most important policies to be adopted by the governing board of the school district is sources of funding for interscholastic athletics. See the answer to Question 12.3 regarding the establishment of three distinct funding "resources" for athletics. Ideally, gate receipts, sponsorships and advertising income should, by policy, be revenues that must be deposited in the general athletics department account to benefit all sports in the program rather than the team that generated the gate receipts or sponsorships.
- b. Why the Athletic Director Should Control and Solicit Advertising and Sponsorships.** All sports vary in their ability to generate gate receipts and the size of the spectator audience often determines a business's interest in advertising or sponsorships because the number of people who are exposed to the event or advertisement determines price. When the athletic director has control of advertising and sponsorship opportunities for all teams, he/she can aggregate opportunities in all sports to present the best package prices. It is only fair that gate receipts, advertising and sponsorship revenues benefit all sports.

12.10 What are some ideas for establishing equity in the area of concessions?

See Q&A 12.2 above for a complete discussion of various concessions issues. Note that Title IX requires that concessions services be equally available at boys' and girls' athletic events. This does not mean that concessions services need to be provided at EVERY athletic event. Rather, Title IX requires that an equal percentage of male and female athletes be provided with such benefits. For example, if a school only operates concessions during home varsity and JV football games and the 95 players on these two teams represent 30% of all male athletes, then 30% of all female athletes must have concessions services at their home events. Larger teams have access to a larger number of parents to volunteer to work at such concession events and some teams will make more money operating concessions at their events because their sport garners larger crowds. Thus, some fair system of operating concessions needs to be established that fairly considers these factors. Following are some policy ideas that, taken together, will maximize the fundraising ability of those teams with greater resources or ability to attract crowds while enabling an athletic director to ensure gender equity in the provision of concession services and develop a fund that can be used to benefit all sports in the athletic program:

- a. Policy Recommendation:** Every team shall have the opportunity to operate concessions at their own home events and retain 90% (or other percent) of the profits in their respective ASB accounts. Ten percent of all team concession profits must be deposited in the athletic department account to advance the success of all teams and ensure athletic program gender equity.
- b. Policy Recommendation:** If any team does not wish to operate concessions at their home events, the opportunity to do so will first be offered to other interested athletic teams. Among those teams interested in operating concessions at the home events of other teams, the team(s) with the lowest fundraising revenues generated in the previous year shall be selected. The percentage split of profits as described in (a) above shall apply.
- c. Policy Recommendation:** ASB clubs shall be given the opportunity to operate concessions at

athletic events at which interscholastic teams do not operate concessions. The percentage split of profits as described in (a) above shall apply.

- d. **Policy Recommendation:** The athletic director is responsible for ensuring that spectators of girls' and boys' sports are equally provided with concession services. Specifically, equal proportions of male and female athletes shall receive concession services for spectators at their events. It should be noted that this policy does not require that concession services be provided at all athletic events, only that equal proportions of male and female athletes be served or unserved by concessions at their events. If any sport is underserved given this Title IX standard (provision of such spectator benefits to equal proportions of male and female athlete participants), the athletic director shall be responsible for arranging for concessions, either operated by that team, another teams, an ASB club or volunteer or paid students.

12.11 When is a donation a truly voluntary donation?

In California the law is very clear that students shall not be required to pay any fee, deposit or other charge not specifically authorized by law. Therefore, schools cannot charge a fee for materials, supplies or equipment required by the school or rules of the activity required for participation in any curricular or extra-curricular activity, including athletics. Does this mean that schools cannot ask for donations? No! However, schools cannot imply that the donation is mandatory or that a student will not be allowed to play or will be punished in any way if he or she does not meet a fundraising goal. Any statement or explanation related to a donation that could lead a reasonable person to believe the donation may not be truly voluntary is to be avoided.

12.12 What are the five ways to ask for a donation that are illegal in California?

1. **Never designate a specific minimum amount of donation per student.** While it is fine to sell a discount card for \$10 as a fundraising activity, or a ticket to an awards banquet for \$15, or to have a team's fundraising goals based on the \$350 per player cost of the program, it is not permissible to tell students or parents that the school expects each player's family to raise \$350.00 or to donate this amount. It is okay to ask families "to help us raise \$350.00 per player with all donations of any amount appreciated" to support the cost of the football program. However, the school cannot say "Each family is expected to raise or donate \$350 to cover the cost of football participation for your son." This distinction is how a donation is described is critical.
2. **Never establish a "due date" by which a donation must be submitted.** It is permissible to say that the team is trying to raise a specific amount by a certain date but avoid any language like "we expect each family's donation to be submitted by Oct. 10". Use language like, "We are trying to achieve our fundraising goal of \$350 per player by October 10. Any and all efforts by families to help with fundraising or contribute to this goal are appreciated."
3. **Never establish a lesser donation amount if funds are received prior to a certain date.** For instance, do not say "if your family submits your donation by October 1, instead of \$350, only \$300 is due." Such a statement obviously implies that the donation is mandated.
4. **Never use any statements or actions that exert explicit or implicit pressure on students or parents to make a donation.** There is a significant difference between saying, "Each player (or each family) is required to participate in the football fundraising program." And "the help of all families and players to meet our team fundraising goal is truly appreciated – if everyone pitches

in and tries to raise or donate as much as they can, we can reach our \$17,500 fundraising goal which represents the \$350 per player cost of our program.”

5. **If a family does not make a donation, that family must not be subject to inquiry as to why.** It is to communicate with each family at the beginning of a fundraising campaign to ask that they help in any way to raise funds and/or make a donation to the program and to say that any and all family donations are appreciated. It is even okay to say that the team goal is based on \$350 per player. It is fine to communicate and thank a family for making a donation in any amount or to say thank you for raising any amount and to ask them to continue helping the team fundraise to achieve their goal. However, it is not permitted to communicate with a family to say that they are expected to make a donation in a specific amount or to raise funds in this amount or even to state that they have not yet made a donation or have not contributed a large enough amount.