

# **COMPONENTS OF TITLE IX**

Title IX has two basic provisions: OPPORTUNITIES to become participants and BENEFITS or treatment of participants.

## **PARTICIPATION OPPORTUNITIES**

The Opportunities provision concerns the opportunity for a student to become a participant in the interscholastic athletics program. The Three-Part Test was developed to assess a school's performance in affording potential athletes chances to participate. The Three-Part Test provides schools with three methods for compliance. Schools achieve compliance in this area by meeting the standard for one of the three tests, known collectively as the Three-Part Test. School personnel may choose which one method the school will meet.

- TEST ONE – PROPORTIONALITY: This first test is based on a comparison of the percent of school enrollment for a gender to the percent of participation in sports by that gender.
- TEST TWO – PROGRAM EXPANSION: The second test is designed to judge the school's efforts to expand or increase the number of participants for the underrepresented sex – nearly always girls. Usually, schools that achieve compliance with test two have added new sports and teams (for example, freshman, junior varsity, and varsity teams) for girls, which has resulted in a significant increase in the number of female participants.
- TEST THREE – FULL ACCOMMODATION: The third test assesses whether the school's athletic program already offers every team for the underrepresented sex, usually girls for which there is sufficient interest and ability to field a team, and sufficient competition for that team in the area where the school normally competes. In Kentucky high schools, an Interscholastic Athletics Student Survey is administered at least every other school year, to gather and analyze responses to determine if increasing athletic offerings should be considered.

A school is required to meet the standard for one of the three tests in order to comply with this Title IX component. Each test is described in more detail below.

## **TEST ONE – PROPORTIONALITY**

Test One - Proportionality is met when the percentage of the school enrollment for one gender is "substantially proportionate" to that gender's percentage of participation opportunities. For example, girls may comprise 49% of a school's enrollment and 47% of the interscholastic participants. There is a two percentage points difference between girls' rate of participation and rate of enrollment, and this may be close enough to meet Test One. An individual athlete, or participant, may be counted more than once. For example, a female athlete who participated in varsity volleyball, junior varsity basketball and varsity basketball would be counted as three participants. This is known as a triple count. In the case of an individual participating in two sports or one sport at two levels, it would be a double count. In Kentucky high schools, students who are in grade eight or below who take part in a freshman, junior varsity, or varsity sport are also counted as participants.

In assessing compliance for Test One – Proportionality, the difference between a gender's percent of school enrollment and the percent of participation in sports by that gen-

der is calculated, as shown in the example above. A compliance target (but not a formal standard), is for a gender's rate of participation to be within three (3) percentage points of their rate of enrollment. Therefore, in our example, it appears that the standard for Test One is being met and compliance is achieved.

### **TEST TWO – PROGRAM EXPANSION**

Test Two – Program Expansion enables a school to comply by demonstrating a history and continuing practice of expanding opportunities for the gender that is underrepresented in the interscholastic program (which is nearly always girls). Underrepresented means that Test One – Proportionality is not met, as students of one gender are participating in interscholastic athletics at a rate that is less than their rate of enrollment. Test Two provides a method to comply even though one gender is underrepresented. The expansion of the number of opportunities may be achieved by adding new sports to the program and/or adding new teams at different levels of sports (for example, freshman, junior varsity and varsity teams). Test Two – Program Expansion can also be achieved or enhanced by adding opportunities to existing teams – however, this scenario may be more likely at the intercollegiate rather than the interscholastic level.

A school meeting Test Two is likely to have increased opportunities for the underrepresented sex by 25% in the last five years. This is not a formal compliance standard or requirement; rather, this is a more likely scenario for a school to be judged compliant with Test Two. To calculate the increases, the number of participants added for the underrepresented gender during the past five years is divided by the total number of participants for that gender. For example, a particular school has a total in all sports, in all levels, of 206 female participants. Of the 206, there are 33 girls who are participating on teams that were added to the athletic program during the past five years. Thirty-three divided by 206 equals .16, or 16%. The target is 25% or greater. In this example, it is unlikely that the school is meeting Test Two.

### **TEST THREE – FULL ACCOMMODATION**

Test Three concerns whether the school is fully and effectively accommodating the interests and abilities of the underrepresented sex. In effect, does the school offer every team for girls for which there is sufficient interest and ability for a team and sufficient competition for that team in the area where the school normally competes (this assumes that girls are the underrepresented gender). In Kentucky high schools, an Interscholastic Athletics Survey (form) is administered to students at least every other year. This Survey gathers information relative to possible athletic interests that are not currently being met through the sports program. After completing an analysis of the students' responses, school personnel may determine whether a meeting with prospective students and parents is appropriate concerning any expressed interest and whether consideration should be given to expanding athletic offerings. Documentation of any meeting with students and parents should be kept in the school's Title IX file. If school personnel determine that there may be sufficient interest and ability to field a team, then an analysis should be conducted to determine if there is sufficient competition. For example, if there are not sufficient competitors within a reasonable travel distance, it would not be feasible to field a team. To determine if a school meets Test Three, this manual presents a series of questions to be answered by school personnel. The questions focus on the need for adding new teams or additional levels of a team (which is determined mostly by an analysis of the survey results). A response of "no" to the questions would suggest that the school may be meeting Test Three with its current program.

## **BENEFITS FOR TREATMENT OF PARTICIPANTS**

The Benefits provision of Title IX encompasses all resources that are required and made available to field an athletic team. There are twelve program components concerning the treatment of student-athletes, nine of which apply to most Kentucky high schools. In discussing these nine components, it is important to clarify that Title IX requires equivalence between the overall girls' program and the overall boys' program. Title IX does not require equivalence by sport. In effect, Title IX does not require that the boy's tennis team receive the same benefits as the girls' tennis team, or vice versa. An evaluation of a school's compliance considers the balance of benefits. The relevant comparison is between the overall benefits provided to all girls' teams and the benefits provided to all boys' teams. It is not just the details; it is what the details add up to. It is an overall athletic program pattern that is evaluated. For example, if for one year, the baseball team travels to Florida for a tournament and the softball team and no other girls' teams participate in an out of state trip, it may not be a concern. However, if the baseball team takes part in an out of state tournament every year, but neither the softball team nor any other girls' teams ever experience similar benefits, it may be a compliance concern – it would be appropriate to raise questions regarding the differences between the benefits provided for the two programs.

Benefits consider the resources available to and the treatment of students who have become participants in the interscholastic athletics program. For Kentucky high schools, there are nine major areas of Benefits:

- Equipment and Supplies
- Scheduling of Games and Practice Times
- Travel and Per Diem
- Coaching
- Locker rooms, Practice and Competitive Facilities
- Medical and Training Facilities, and Services
- Publicity
- Tutoring
- Support Services

### **Equipment and Supplies**

Equipment and supplies include, but are not limited to, uniforms and apparel, sport specific equipment and supplies, and instructional devices. Generally, there are three factors reviewed in ascertaining if the equipment/supplies are comparable for both genders: (1) quality; (2) amount; and (3) maintenance and replacement.

During KHSAA Audit Team visits, uniforms including shoes, travel bags, warm-ups, etc., are examined to ascertain if male and female participants are comparably attired. It is a KHSAA requirement that every school develop a written policy or guidelines for the review and/or purchase and replacement of uniforms. Most schools opt for a rotation based on a certain number of years. For example, in year one of the cycle, girls' and boys' basketball uniforms are purchased, year two – boys' and girls' soccer, year three – baseball and softball, year four – track, cross country and volleyball. In the fifth year, the cycle starts over and is repeated as basketball uniforms are replaced. It is important to insure that "sets of uniforms," or the number of different uniforms per team, is comparable for boys and girls. Also, be mindful that differences based on the nature of

sports are acceptable. For example, the purchase and replacement of football gear costs considerably more than outfitting a swim team member. The Title IX concern focuses on the quality and quantity of the sport-specific uniform, not the actual amount of money expended.

*Suggestions Regarding Equipment & Supplies:*

- Establish well-defined procedures for conducting inventories of equipment, supplies and uniforms. Keep accurate and up-to-date records of all inventories.
- Follow a written policy for the purchase and replacement of uniforms.
- Insure that the quality and quantity of uniforms are comparable for female and male participants.
- Record any equipment/supplies purchased by booster groups in the school inventory.
- Provide equipment/supplies on an equal basis for like sports. For example, if the baseball team has a pitching machine and batting cage, then make certain the softball team has comparable access to this equipment or purchase similar equipment for them. This same treatment for like sports may not be required by Title IX, but this approach will enhance compliance significantly.

**Scheduling Games and Practice Times**

There are five considerations for this component: (1) the number of competitive events offered per sport; (2) the number and length of practices; (3) the time of day competitive events are scheduled; (4) the time of day practices are scheduled; and (5) the number of scrimmages or pre-season competitive opportunities scheduled. Title IX also applies to post-season opportunities, but Kentucky high schools need not review this factor as post-season play is structured by the high school athletic association, which allows all schools the opportunity to advance.

In Kentucky, an important aspect of this benefit component is the policy regarding girls' basketball teams competing on a "prime date." The KHSAA policy is as follows: Each year, girls' basketball teams must schedule at least 40 percent of their regular season home basketball contests on prime dates, i.e., Friday night, Saturday, or Sunday. The girls' percentage must be accomplished irrespective of the boys' home game "prime date" percentages. To calculate the prime date percent, divide the number of home games scheduled on Friday night, Saturday, and Sunday by the total number of home games scheduled. If boy/girl double headers are scheduled on prime dates, rotate early/late start times so both genders have an equal opportunity to compete at "prime time," i.e., the more favorable, later start time.

Another consideration relative to scheduling practice and game times is the use of shared facilities. For example, if there is only one soccer field and girls and boys don't practice together, consider a rotation plan with the girls practicing early and the boys practicing late for one week, and the reverse assignment for the following week. As another example, if there is a practice field and a game field that are both used for practices, assign the fields on an alternating basis so that both genders use both the practice and game field. This format should also be considered for basketball teams. It is best to schedule and assign venues in a manner so that both genders have equitable access to the more favorable times and facilities.

*Suggestions Regarding Games and Practice Times:*

- Post all facility usage schedules, including the gymnasium and fields, for both

practices and events. Include this information in handbooks and on the school's web site. Give student athletes copies of schedules for both practices and events.

- Schedule a like number of events for boys' and girls' teams for like sports.
- Schedule at least 40% of the girls' home basketball games on prime dates.
- Rotate the start times for boys' and girls' basketball double headers.
- Secure contracts with competitors so that there is a balance of home and away games each season.
- Schedule shared facilities on an equitable, rotating basis.
- Include a comparable number of tournaments, clinics, camps and schedules for "like" sports.
- Endeavor to keep travel times and distances similar for boys' and girls' teams.

### **Travel and Per Diem**

This benefit component involves the mode of transportation, distances traveled, and meals and lodging that are provided for teams. Specifically, factors to consider include: (1) the mode of transportation - van versus bus, luxury charter versus school bus; (2) out of state or region travel for tournaments, clinics and camps; (3) meals arranged by school personnel from restaurants or by booster groups; and (4) accommodations for overnight stays.

#### *Suggestions Regarding Travel and Per Diem:*

- Develop a written policy for the equitable purchase and provision of meals. The per diem policy may be structured to address the dollar amount and when teams stop for food based on the distance from the school. Consider the role of booster groups in either funding for meals or providing food for athletes.
- Adopt a written policy that delineates the type of lodging that will house teams for away activities and the number of athletes to be assigned to each hotel room. It may be appropriate to identify a range for the dollar amount to be spent for specific locations that teams may visit for out of town events.
- Ensure that the quality of transportation, such as buses and vans, is comparable for girls' and boys' teams. Again, the actual distance to be traveled may serve as a guide in determining the method of transportation.
- Provide similar travel opportunities for like teams for out-of-region and out-of-state experiences, such as tournaments, clinics and camps. Also, consider providing a similar number of special travel opportunities for boys' and girls' teams overall, including girls' and boys' teams in dissimilar sports.

### **Coaching**

Coaches are responsible for the instruction and supervision of student athletes as well as performing a multitude of other duties that are necessary to field a team. It is critical that both girls' and boy's teams are led by competent and caring individuals. The success of many programs can often depend on the quality of the coaching. The following factors are considered relative to this component, as adapted for Kentucky: (1) compensation, including the dollar amount and the number of extended days; (2) levels of experience and qualifications; (3) the location of the primary work assignment, and whether it is on campus or off campus; (4) the availability of female coaches; (5) the number of coaches per team; and (6) the number of volunteer coaches.

*Suggestions Regarding Coaching:*

- Maintain an equitable pay scale for coaches of boys' teams and coaches of girls' teams, and retain a copy of the pay scale in the school's permanent Title IX file.
- Develop strategies that encourage women to seek coaching positions.
- Provide an equal number of coaches for like teams if the number of participants is similar for both the boys' team and girls' team.
- Hire coaches with similar levels of competence and experience for boys' teams and girls' teams.
- Provide opportunities for attendance at clinics, in-service, workshops, etc., for coaches of both girls' and boys' teams.
- Maintain a balance of on-campus / off-campus coaches for teams of both genders.

**Locker Rooms, Practice and Competitive Facilities**

This Benefit refers to facilities for practices and contests and any locker rooms used by interscholastic athletes. This tends to be an area in which significant differences exist between the allocation of facilities for boys' teams and facilities for girls' teams.

For locker rooms, the quality, maintenance, availability and location relative to the respective practice and competitive facilities, training room, equipment room, and weight rooms are assessed. "Exclusivity" is also a factor. In other words, does the football team, boys' basketball team, and baseball team each have their own locker room while the girls' volleyball, basketball, and softball teams all share the same locker room?

For practice and competitive facilities, the quality, maintenance, availability and location for indoor and outdoor facilities are the primary considerations. More specific items relative to these facilities include: the quality of playing surfaces, bleachers, restrooms for fans, lighting, sound systems, concession stands, storage areas, sprinklers, drainage, and whether the facility is located on or off campus.

*Suggestions Regarding Locker Rooms, Practice and Competitive Facilities:*

- Review the status of all facilities on a regular basis and implement upgrades to provide like-quality facilities for teams of both genders. If this is difficult due to the physical layout or financial concerns, then rotate the use of the better facilities by both genders.
- Print a list assigning all teams to a locker room. All teams should have a designated locker room even though they may choose not to use it.
- Provide similar amenities – for example TVs, VCRs, laundry machines, carpets, chalkboards, computers, stools/benches and lockers of similar construction for locker rooms used by girls' and boys' teams.
- Follow a timetable to improve facilities and include target years to address the identified needs.
- Adhere to a written policy for the display of banners, pictures, awards, trophies, and advertising located in the gymnasium, trophy cases and throughout other school facilities.

**Medical and Training Facilities and Services**

This benefit component involves the provisions for physical examinations, the assignment of medical doctors, certified trainers and student trainers to practices and competitive events, and the quality and availability of training rooms and weight rooms.

*Suggestions for Medical and Training Facilities and Services:*

- Ensure that exams by a medical doctor, if provided through the school, are at no cost for participants of both genders.
- Assign a full time certified trainer to both practices and competitive events on a equitable basis for girls' and boys' teams.
- Develop a program for student trainers for both genders.
- Maintain a well supplied training room on campus that is accessible for all participants.
- Make a well-stocked first aid kit accessible for every team.
- Develop and post a schedule for the weight and training rooms that is equitable for both genders.
- If there is one weight room, decorate it in a manner that is motivating and welcoming for both genders.
- Provide appropriate sized weights and universal machines for female athletes.

**Publicity**

Publicity is communication, in its broadest sense, through both media and support groups that promotes a message that all teams, both girls' and boys' teams, are highly valued within the school and the community.

*Suggestions for Publicity:*

- Assign cheerleading squads, dance team, and bands on an equitable basis to both boys' and girls' athletic events. If your school has two cheerleading squads, equitably rotate the two squads between boys' teams and girls' teams. If your school has one cheerleading squad, assign them to an equal number of games for boys' teams and girls' teams.
- Publish seasonal media guides that honor all athletic teams for boys and girls for that season.
- Contact local media, including newspapers, radio and TV stations, and explain the need for equitable coverage.
- Opt for group pictures when possible. For example, photograph the boys' and girls' soccer teams together.
- Schedule pep assemblies and rallies that support teams of both genders.
- Require a written policy that specifies how awards for athletics are earned and include in your school's Title IX file.
- Provide comparable banquets to honor athletes. Consider having one seasonal banquet for all sports during the season — or a banquet for like sports such as boys' and girls' soccer.
- Design your school's website to reflect event schedules and successes on an equitable basis.
- Ensure that the school and community are aware of efforts and accomplishments to achieve the intent and spirit of Title IX through reports to various groups such as the school council, PTSA, and local media.

**Support Services**

This Benefit includes the following factors: (1) administrative and clerical assistance available to teams; (2) office space for coaches; and (3) office equipment and supplies available for coaches that assist them in their duties.

*Suggestions for Support Services:*

- Provide administrative and clerical support that is equitable for both girls' and boys' coaches.
- Provide office space for all coaches and keep a written copy of the assignments with the school's Title IX documents. Assign the same or similar number of girls' and boys' coaches to offices by season if space must be shared.
- Provide office supplies and equipment and access to equipment (copiers, fax machines, etc.) on an equitable basis for girls' and boys' coaches.

### **Tutoring**

This benefit deals with the provision of instructional assistance to ensure that all athletes are achieving satisfactory academic progress. Most often, students attend the Extended School Service Program offered at their respective school.

Suggestions for Tutoring:

Encourage an attitude among athletes that academics come first. Provide an appropriate environment for both male and female athletes for receiving additional instructional services.

### **Housing and Dining Facilities and Services**

#### **Recruitment of Student-Athletes**

#### **Athletic Scholarships**

It should be noted that these three components – Housing and Dining Facilities and Services, Recruitment of Student Athletes, and Athletic Scholarships do not apply to public high schools as a general rule.

#### **BUDGETS, BOOSTER CLUBS, AND FUNDRAISING**

Available funding may determine the extent to which opportunities and benefits are provided. However, lack of funds cannot justify more limited opportunities and/or benefits for one gender.

The funding of a school's interscholastic sports program is a matter that receives extensive scrutiny. Title IX does not require that budgets or expenditures be the same for girls' and boys' teams in the same sport or overall programs. Title IX does require that equivalent opportunities and benefits be provided. While budgets suggest intent, expenditures show practices. It is critically important that spending for athletics is closely monitored to avoid establishing a pattern of inequity. The most prudent approach for a school's financial practices is to implement well-defined procedures for fund raising and expenditures that are followed without exception. It is the responsibility of the school's administration to oversee financial matters and ensure that spending is kept in balance for both genders.

Booster organizations are recognized for their contributions in both time and money, and their efforts are often extremely important in maintaining a viable interscholastic sports program. A booster organization is defined as "any individual or agency which provides resources to a school's athletes and/or athletic teams." School personnel must be cognizant of spending by a booster or booster organizations. Benefits provided by boosters are viewed under Title IX as provided by the school, and the school's administration is responsible for ensuring equity. Thus, it is imperative that clear policies and procedures are in place to protect against any one group spending excessive amounts for a particular team. A signed, up-to-date agreement with every booster group is rec-

ommended, and a copy of this document should be kept in the school's Title IX file.

Suggestions for Budgets, Booster Clubs, and Fundraising:

- Ensure appropriate administrative oversight of booster activities. Maintain written agreements with all booster organizations that define the role of the group and its relationship to the school and the school's administration. Ensure that written procedures provide for athletic director/principal/school board approval for booster club fund raising and expenditures that benefit all teams.
- Include representative(s) from booster organization(s) on the Gender Equity Review Committee.
- Meet with booster clubs and other community groups periodically. Provide information for all interested parties that clearly delineate your school's commitment to equitable funding of boys' athletics and girls' athletics.
- Consider establishing one booster club that supports all teams or one booster club for like sports such as boys' basketball and girl's basketball.
- Structure joint fund raising activities that benefit both a girls' team and a boys' team. For example, the boys' basketball and the girls' basketball teams engage in an activity and equitably share the funds collected.
- Evaluate expenditures for athletics over a two year period.
- Calculate and monitor the amount of money spent per male athlete as compared to the amount spent per female athlete. Identify the cause for any significant differences, and whether those differences may be justified by the nature of sports (for example, providing pants and a jersey, protective padding and a helmet requires a greater expenditure for a football athlete than a uniform for a volleyball athlete). Differences that cannot be explained by sport-specific needs should be carefully reviewed.