



**2014 NCA
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WORKSHOP

TITLE IX COMPLIANCE: HIGH SCHOOL SPORTS

***PRESENTER: LEE E. GREEN, J.D.
PROFESSOR – BAKER U. [KANSAS]***

N nebraska
coaches
association





TITLE IX



“TOO STRONG FOR A WOMAN”

***PUBLIC LAW 92-318
OF THE EDUCATION ACT OF 1972***

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”



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TITLE IX COMPLIANCE

40 Years Of Title IX In Action

H.S. Sports 1972: 3M Boys – 294,000 Girls

H.S. Sports 2012: 4.4M Boys – 3.2M Girls

*Office For Civil Rights (OCR) Report
Title IX Complaints – 2009 Through 2012*

Data Regarding Number Of Complaints:

Total Complaints Filed: 4,138

College/High School Athletics: 1,264

Retaliation Against Filers: 612

TITLE IX COMPLIANCE FRAMEWORK

COMPONENT I: SPORTS OFFERINGS

A. Participation Offerings - The Three Prong Test

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

B. Levels Of Competition - The Two Prong Test

- Equivalently Advanced Competitive Opportunities or
- History & Continuing Practice Of Improvement

COMPONENT II: ATHLETIC SCHOLARSHIPS

COMPONENT III: OTHER ATHLETICS BENEFITS

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

THE THREE PRONG TEST

◆ **SUBSTANTIAL PROPORTIONALITY**

- Ratio of female athletic participation must be “substantially proportional” to the ratio of female enrollment at the school
- Law defines no strict statistical test (but note 5% standard)

◆ **HISTORY & CONTINUING PRACTICE OF ATHLETIC PROGRAM EXPANSION**

- Demonstrate a pattern of ongoing program expansion
- OCR focuses on *very recent* history (last three to five years)

◆ **FULL & EFFECTIVE ACCOMMODATION OF ATHLETICS INTERESTS & ABILITIES**

- Surveys to show that all sports interests of female students have been “*fully*” and “*effectively*” satisfied

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COMPONENT II: ATHLETIC SCHOLARSHIPS

COMPONENT III: OTHER ATHLETICS BENEFITS

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

EQUIVALENCE IN OTHER ATHLETIC BENEFITS & OPPORTUNITIES

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

- P** protective athletic equipment & athletic supplies
- L** locker rooms and practice/competition facilities
- A** allocation of travel/transportation/per diem benefits
- Y** years of experience, quality & salaries of coaches
- I** institutional housing/dining facilities & services
- N** nature of publicity, marketing & media services
- G** game/practice times & scheduling
- F** facilities for & access to training & medical services
- A** academic tutoring services for student-athletes
- I** institutional support services for athletic programs
- R** recruiting resources provided to athletic programs

EQUIVALENCE IN OTHER ATHLETIC BENEFITS & OPPORTUNITIES

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

P: Protective Athletic Equipment & Supplies

COMPLIANCE FACTORS

- ◆ **Quality Of Athletic Equipment**
- ◆ **Suitability Of Athletic Equipment**
- ◆ **Amount Of Athletic Equipment**
- ◆ **Maintenance Of Athletic Equipment**
- ◆ **Availability Of Athletic Equipment**

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

*L: Locker Rooms & Practice/Competition
Facilities & Playing Fields*

COMPLIANCE FACTORS

- ◆ **Quality & Availability Of Facilities**
- ◆ **Exclusivity Of Use Of Facilities**
- ◆ **Event Preparation In Facilities**
- ◆ **Maintenance & Repair Of Facilities**
- ◆ **Locker Room Quality**
- ◆ **Locker Room Availability**

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

A: Allocation Of Travel/Transportation/Per Diems

COMPLIANCE FACTORS

- ◆ **Modes Of Transportation**
- ◆ **Housing During Overnight Travel**
- ◆ **Length Of Stay Before/After Events**
- ◆ **Per Diem & Meal Allowances**
- ◆ **Dining Arrangements**

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

*Y: Years Of Experience, Quality
Compensation & Assignment Of Coaches*

COMPLIANCE FACTORS

- ◆ **Availability Of Coaches**
- ◆ **Assignment Of Coaches**
- ◆ **Compensation Of Coaches**

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

I: Institutional Housing & Dining Facilities

COMPLIANCE FACTORS

- ◆ **Housing Quality & Arrangements**
- ◆ **Dining Quality & Arrangements**
- ◆ **Special Services Related To
Housing & Dining Arrangements**

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

*N: Nature Of Sports
Publicity/Marketing/Media Services*

COMPLIANCE FACTORS

- ◆ **Sports Information Personnel**
- ◆ **Sports Program Related Publications**
- ◆ **Other Publicity Resources For Your Interscholastic Athletics Program**

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

G: Game & Practice Times/Scheduling

COMPLIANCE FACTORS

- ◆ **Number Of Competitive Events**
- ◆ **Time Of Day Events Are Scheduled**
- ◆ **Number/Length Of Practice Opportunities**
- ◆ **Time Of Day Practices Are Scheduled**
- ◆ **Chance For Pre/Post Season Competition**

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

F: Facilities For & Access To Athletic Training & Medical Services

COMPLIANCE FACTORS

- ◆ **Availability Of Medical Personnel**
- ◆ **Availability Of Athletic Trainers**
- ◆ **Availability Of Weight/Training Facilities**
- ◆ **Availability Of Conditioning Facilities**
- ◆ **Health/Accident/Injury Insurance**

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

A: Academic Tutoring Services For Student-Athletes

COMPLIANCE FACTORS

- ◆ **Opportunity To Receive Tutoring**
- ◆ **Assignment Of Tutors**
- ◆ **Compensation Of Tutors**

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

I: Institutional Support Services For Athletics Programs

COMPLIANCE FACTORS

- ◆ **Administrative Assistance For Men's & Women's Programs**
- ◆ **Secretarial & Clerical Assistance For Men's & Women's Programs**

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

R: Recruiting Resources For Athletics Programs

COMPLIANCE FACTORS

- ◆ **Equal Opportunity To Recruit**
- ◆ **Equivalent Resources To Recruit**
- ◆ **Effect Of Athletics Program Benefits
On Ability To Effectively Recruit**

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TITLE IX FAQs

- **Booster \$/Fundraisers/Donors/Sponsors?**
- **Non-Traditional Sports Seasons?**
- **Most Common Title IX Complainant?**
- **Doubleheader Scheduling?**
- **Women As Coaches Of Women's Teams?**
- **Boys Playing On Girls' Teams?**
- **Cheerleading/Poms/Drill Team?**
- **High School Accountability Act?**
- **Liability For Retaliation? [Jackson v Birmingham]**
- **Personal Financial Liability? [Fitzgerald v Barnstable]**



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TITLE IX COMPLIANCE

*Ollier v. Sweetwater Union H.S. Dt.
Feb 2012 (& May 2009) - California*

Ruling By The Court:

2012: Found Title IX violations in 8 of 11 categories of “other athletics benefits and opportunities.” 2009: Found three-prong test participation violations.

Standard Of Practice:

Blueprint for Title IX compliance by high schools. Full-text: www.las-elc.org.



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TITLE IX COMPLIANCE

***Parker v. Franklin County Schools
Consent Decree - Oct 2012 - Indiana***

Terms Of The Consent Decree:

Mandates equal prime-night-of-the-week scheduling of girls' and boys' basketball.

Brings to conclusion Jan 2012 Court of Appeals ruling that disproportionate scheduling of boys' games on Fri's/Sat's (95%) vs. girls' (< 50%) violates Title IX.



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TITLE IX COMPLIANCE

*Dempsey v. District Of Columbia
Public Schools (OCR Complaint)
Settlement – September 2013 – D.C.*

Results Of OCR Investigation:

60% of DCPS high schools had gaps between female enrollment and sports participation $\geq 10\%$ and inequities exist in 8 of 11 categories of “other athletics benefits and opportunities.” Resolution agreement: timeline to remedy issues.



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TITLE IX COMPLIANCE

Ongoing Disputes: Girls On Boys Teams
Strong Rock Christian School (GA)
Winimac School (IN)
Liberty Union-Thurston (Ohio)

Issue In Cases:

Criteria under Title IX and Equal Protection for refusing to allow girls to participate on boys' teams. Only safety factors may be considered; gender cannot be criteria for exclusion..



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TITLE IX COMPLIANCE

Biedeger v. Quinnipiac University
March 2013 - Connecticut

Ruling By The Court:

U.S. District Court monitoring previous rulings in case held once again that competitive cheer does not meet criteria for a sport established by OCR.

Standard Of Practice:

To be considered a sport for Title IX, must comply with 2008 OCR policy guidance. Full-text: www2.ed.gov.



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Thanks For Attending The Presentation!!

Lee E. Green, J.D. - Baker University
618 Eighth Street P.O. Box 65
Baldwin City, Kansas 66006
Office: 785.594.8336
Email: Lee.Green@BakerU.Edu

N nebraska
coaches
association

