

Title IX and Gender Inequality in Texas School Athletic Programs

**The Texas Civil Rights Project's
2007 Human Rights Report**



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This information is not a substitute for speaking with a lawyer. Before filing a lawsuit, always consult an attorney. This information is not a substitute for a lawyer's advice. The Texas Civil Rights Project is committed to ending gender discrimination and is willing to discuss your case with you. Please call during our intake hours, 1-4 pm each Thursday. (512) 474-5073. The Texas Lawyer Referral Service can also help you find a lawyer. 1-800-252-9690.

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Title IX and Gender Inequality in Texas School Athletic Programs

[N]o 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 education program or activity receiving Federal financial assistance.

--Title IX (20 U.S.C. § 1681; 34 C.F.R. § 106)

I. INTRODUCTION

The Scope and Impact of Title IX

Title IX of the 1972 Education Amendments Act prohibits sex discrimination in education. Among other things, Title IX requires schools that receive federal funds to provide students of both genders equal opportunity in all school sponsored activities, including athletic programs.

In 1979, the Office of Civil Rights (OCR) issued Title IX guidelines in its “Final Policy Interpretation of Title IX.”¹ This policy set forth specific guiding factors for determining *actual* rather than *presumed* compliance with Title IX.

From 1992 to 1999, OCR had received nearly 100 complaints across the country against more than 50 institutions of higher education.² Title IX has been the impetus for sweeping reforms across the United States and Texas, since nearly every public school, from elementary to the university level, receives federal funding.

The State of Women’s School Athletic Programs After Title IX

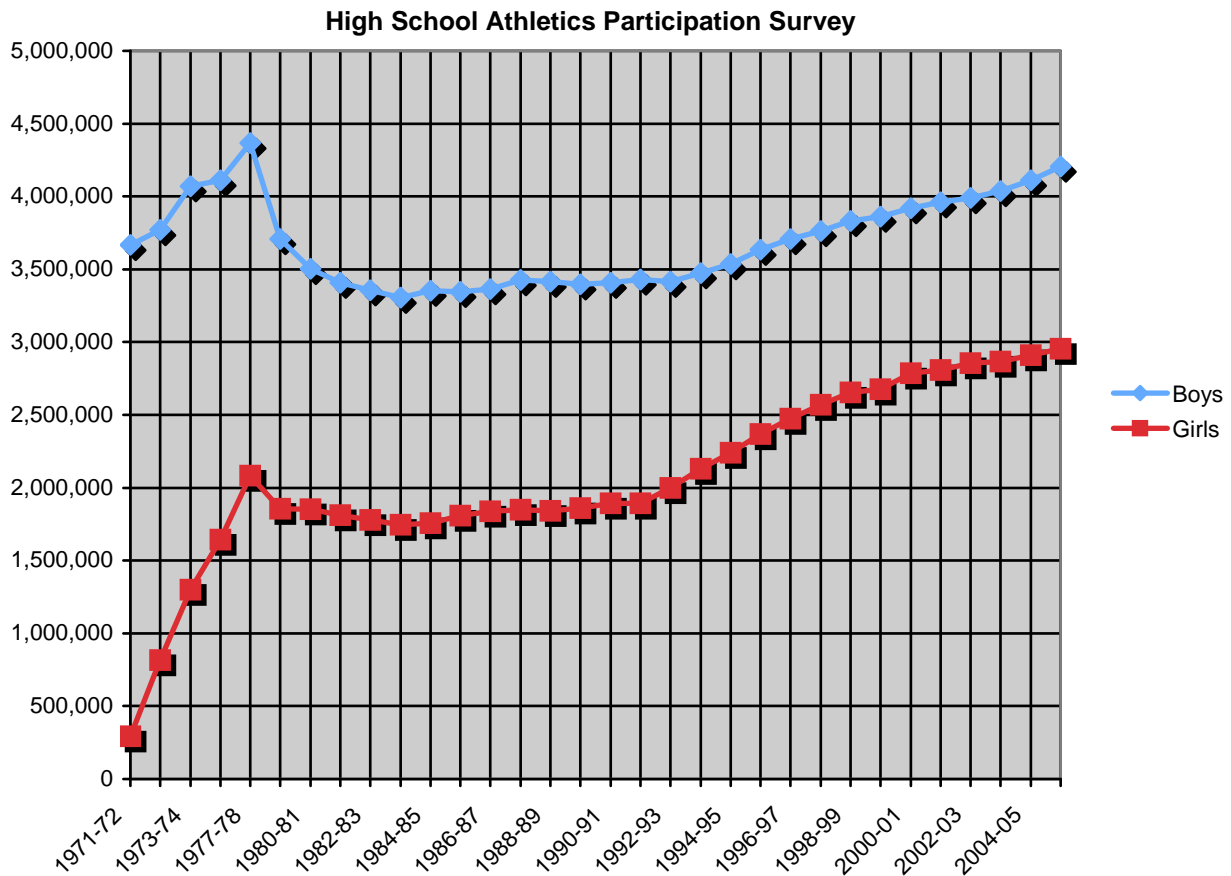
In 1972, women made up only 15.6% of all college athletes.³ Between 1981 and 1999, the total of collegiate women’s teams increased 66%.⁴ Title IX has had a monumental effect on women’s sports in schools. However, disparities still exist between athletic programs for males and females in virtually every realm of sports education -- from participation rates, to scholarship funding, to salaries for coaches.

¹ A Policy Interpretation: Title IX and Intercollegiate Athletics, 44 Fed. Reg. 239 (Dec. 11, 1971) (45 CFR Part 26).

² *Id.*

³ Title IX and Girl’s Athletics, *available at* <http://www.womenscouncil.org/pdfs/titleix.pdf> (March 2003).

⁴ “Open to All” Title IX at Thirty: The Secretary of Education’s Commission on Opportunity in Athletics (Feb. 2003) (unpublished manuscript, on file at the U.S. Department of Education)



Figures from the 2005-06 High School Athletics Participation Survey Conducted by the National Federation of State High School Associations, (2006). For more information: http://www.nfhs.org/core/contentmanager/uploads/2005_06NFHSparticipationsurvey.pdf

Inequality in athletic programs translates into differences in the amount of money schools have invested in their respective male and female athletic programs. For example, coaching salaries for male and female teams differ dramatically. Head coaches for men’s teams received an average annual salary of \$132,100, compared to only \$43,000 for heads of women’s teams in the 2002-2003 school year.⁵ Moreover, although women comprise 54% of Division I college students, they receive only 43% of the sports participation opportunities, 38% of operating dollars, and 33% of money spent on recruitment.⁶ “Improvements are being made, but being made much too slowly,” according to Cedric Dempsey, Executive Director of the National Collegiate Athletic Association, “We must continue to add programs for women and dedicate more resources to women’s programs on our campuses at a faster rate.”⁷

⁵ *Id.*

⁶ National College Athletic Association (NCAA), 2002-03 Gender Equity Report (2004).

⁷ Title IX Facts Everyone Should Know! available at <http://www.womenssportsfoundation.org/cgibin/iowa/issues/geena/article.html?record=862> (June 10, 2002).

II. WHY IS ATHLETIC PARTICIPATION SO IMPORTANT TO THE EDUCATION OF YOUNG WOMEN?



The Benefits of Sports Participation: Quality of Life

Athletic programs add an essential dimension to a young person's education that the traditional school setting does not offer. Through sports programs, young women learn about leadership, positive body image, and self-esteem. Participation in athletic programs has lasting, positive effects on students.

Physical Health

Regular physical activity can reduce serious health risks in young women. For example, women who exercise at least four hours each week reduce the risk of contracting pre-menopausal breast cancer by more than 50%.⁸ Exercise also reduces the risk of obesity and hyperlipidemia, coronary heart disease, stroke, osteoporosis, and some cancers.⁹ Helping young women form healthy habits early in life combats serious health risks well into adulthood and establishes good health patterns.

⁸ Title IX and Girl's Athletics, *supra* note 3.

⁹ Mary Miller, *Psychology of Sports in Children: What Girls Learn from Athletics*, available at http://sd.essortment.com/psychologyofsp_rdhl.htm (2002) (last visited June 27, 2006).

Mental Health

Participation in sports improves self-esteem, body image, and confidence by providing children with a sense of competency. Furthermore, participation in sports, especially during adolescence, has been linked to a reduction in symptoms of depression.¹⁰ Female athletes are less likely to abuse drugs or use tobacco, compared with other female high school students.¹¹ Physical activity is a cost-effective means of addressing mental health problems.

Academic Achievement

Young women who participate in sports learn about challenge, achievement, risk-taking, goal-setting, skill development, and other positive behaviors.¹² Young women who participate in sports are also more likely to do well in school, attend and graduate from college, and become community leaders as adults.¹³ In fact, studies show that high school female athletes score higher on standardized tests than young women who do not participate in high school sports.¹⁴ On average, student athletes' grade point averages are 10% higher than those of non-athletes.¹⁵ Participation in athletic programs clearly provides positive educational benefits for young women.



¹⁰ *Athletics and Physical Activity: Women's Health Issues Educational Fact Sheet*, Women's Sports Foundation: Geena Takes Aim, available at <http://www.womenssportsfoundation.org/cgi-bin/iowa/issues/-rights/article.html?record=748> (Feb. 7, 2000).

¹¹ Kyanna Sutton, *Raising Our Athletic Daughters*, available at <http://www.familyeducation.com/article/0,1120,67-4999,00.html> (last visited June 27, 2006) (interview with Jean Zimmerman and Gil Reavill).

¹² Miller, *supra* note 9.

¹³ Sutton, *supra* note 11.

¹⁴ *Empowering Women in Sports*, Feminist Majority Foundation, available at <http://www.feminist.org/research/sports/sports6.html> (last visited June 27, 2006).

¹⁵ Miller, *supra* note 9.

III. WHAT FORMAL ACTIONS CAN I TAKE IF I THINK MY SCHOOL IS IN VIOLATION OF TITLE IX?

Two Options: File an OCR Complaint and/or File a Lawsuit

Individuals who wish to file a Title IX claim against a school may pursue two avenues of redress. An individual may (1) pursue a private action in court and/or (2) file a complaint with the U.S. Department of Education’s Office of Civil Rights (OCR), the administrative body responsible for enforcing Title IX.

Several key differences distinguish these two options. Unlike a lawsuit, an administrative complaint with the OCR is free, and a complaint can be brought by anyone — a student, parent, coach, or even a concerned citizen with no stake in the claim.

Administrative Complaints with OCR are FREE and QUICKER than lawsuits.

However, filing a complaint with the OCR may be more time consuming than pursuing a private suit, but can be a more pragmatic approach. Moreover, while an OCR Title IX complaint can address inequalities in male and female sports programs, the OCR cannot force schools to spend more money on athletics as a whole.

On the other hand, a lawsuit requires a complainant to have “standing.” This means that concerned citizens do not have a right to file a lawsuit on a student’s behalf, only the parents of the student himself or herself (if over 18). A private lawsuit allows the plaintiff filing the suit to maintain more control over the suit, whereas a complaint filed with the OCR is turned over to that agency’s administrative hands. A lawsuit may also provide immediate relief through a temporary injunctive order. This may quickly stop athletic departments from taking actions that would limit women’s athletic teams.¹⁶

Before You Start: Laying the Groundwork

It is important to lay a strong groundwork for your OCR complaint and/or lawsuit. You can greatly strengthen your case by taking the following steps, recommended by the Women’s Sports Foundation (*see Appendix C*).¹⁷

1. Assess Your School.

Find out how well your school is doing, compared to the standards set by Title IX.

Visit www.GeenaTakesAim.com to see a Title IX School Report Card (*see Appendix D*)

¹⁶ For further discussion of these steps, *see* Kathryn M. Reith, *Playing Fair: A Women’s Sports Foundation Guide to Title IX in High School & College Sports* 34, 35 (4th ed. 2004), available at www.womenssportsfoundation.org/cgi-bin/iowa/issues/geena/record.html?Record=818(Sept. 3, 2003).

¹⁷ “*Step-by-Step: A Practical Guide to Assessing and Getting Gender Equity*” *Geena Takes Aim, Your Rights & Title IX*, available at <http://www.womenssportsfoundation.org/cgibin/iowa/issues/geena/-record.html?record=818> (Sept. 3, 2003).

2. *Gather Facts*

It will be important to pinpoint specific instances of violations or to have statistics on hand comparing men's and women's athletics programs. For example, is there a difference in the women's and men's gym facilities? Is there a difference in the rewards and recognition that male and female athletes receive?

If your institution is a post-secondary school, you can find out about your school's athletics programs by visiting the Equity in Athletics Disclosure website: <http://ope.edu.gov/athletics/Search.asp>. This website provides participation statistics and a summary of operational costs for both male and female athletic teams.

3. *Organize Support*

If you think your school athletic programs are unfair to women, chances are, other parents, friends, students, and teachers feel the same way. The more voices you have making the same complaints, the stronger your claim will be.

4. *Organize Your Information*

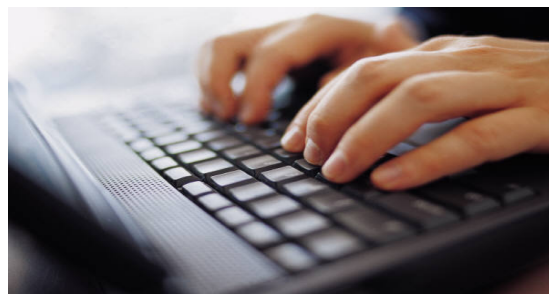
Make sure you have all the following information on hand before you meet with administrators, attorneys, or athletics directors:

- (a) Graded school report based on your assessment from Step 1.
- (b) List of examples of noncompliance. Be specific about the ways in which your school is not following Title IX standards.
- (c) Any sort of informational resources you might think would be helpful (e.g., "Playing Fair, A guide to Title IX in High School & College Sports" is an excellent resource to read through.¹⁸

5. *Keep Records of Everything!*

Make sure you keep copies and records of complaints, research, interviews, meetings, and letters filed with OCR and the school. Always document your phone calls and make sure to note any promises that administrators make along the way. This will be important to your lawsuit or OCR complaint.

¹⁸ PDF version available at: www.womenssportsfoundation.org/binary-data/WSF_ARTICLE/pdf_file/-195.pdf.



Option 1: Making an OCR Complaint

Anyone may file a formal complaint with the OCR by submitting a written letter or a Discrimination Complaint Form (*see* Appendix A). A complaint should include the following:

1. Name and address of person filing the claim (you may request that your identity be kept confidential);
2. Description of the persons/class of people injured by the alleged discriminatory acts;
3. Name and location of the school responsible for the alleged actions or inaction; and,
4. A description of the alleged discriminatory acts describing what occurred, when it occurred, and the basis for the alleged sex discrimination¹⁹

A formal complaint filed with OCR must explain the nature and conditions of the violation. It may allege an ongoing violation (e.g. difference in quality of the women's locker rooms compared to men's) or a specific incident of discrimination (e.g. not permitting a woman to try out for the hockey team). A complaint about a specific incident must be filed within 180 days of the incident. Extra care should be taken to identify all problems and all areas that OCR should investigate because OCR will only look to enforce reform in areas specifically mentioned in a filed complaint.²⁰

Once the complaint has been filed, OCR has 90 days to complete an investigation and an additional 90 days to obtain a voluntary compliance agreement from the school found to have violated Title IX. OCR may then negotiate a plan to implement necessary corrections, or the school may develop its own strategy. OCR will monitor progress made by the school.²¹

In theory, if this process fails, OCR will initiate proceedings to withdraw federal funding. However, OCR generally will not withdraw federal funding from a school on the basis of non-compliance with Title IX.²² Therefore, OCR's administrative enforcement has experienced limited success.

¹⁹ *Navigating the Legal System: Before Going to Court*, available at www.aauw.org (last visited June 26, 2006).

²⁰ *Id.*

²¹ A Policy Interpretation, *supra* note 1.

²² Melody Harris, *Hitting 'Em Where It Hurts: Using Title IX Litigation to Bring Gender Equity to Athletics*, 72 DENV. U. L. REV. 57, 95 (1994).

How Do I Know if My School's Athletic Programs Are in Compliance with Title IX?



The Three-Part Test

OCR issued a significant Clarification on January 16, 1996, explaining the Three-Part Test used to analyze the level of compliance of athletic programs with Title IX. This Three-Part Test was further clarified in February 2003 in *Open to All: Title IX at Thirty, Report of the Commission on Opportunities in Athletics*.

Compliance with Title IX may be shown by passing one of the following three prongs:

1. The male to female ratio of athletes is “substantially proportionate” to the male to female ratio of student enrollment;
2. The school has a “continuing practice of program expansion” for members of the underrepresented sex; or,
3. The school is “fully and effectively” accommodating the interests and abilities of the underrepresented sex.²³

If a school passes one of these three prongs, it has met its commitment under Title IX. However, court decisions have shown a strong focus on the first prong, and it has become the informal litmus test for Title IX compliance. In contrast, a claim of compliance under the other two prongs will generally be treated with greater scrutiny.²⁴

Title IX requires that male and female athletes receive equal benefits from their school. OCR assesses a school’s entire athletic program to determine whether male and female athletes are receiving the same level of services, facilities, and supplies. However, *equal* benefits do not imply *identical* benefits. For example, it is not a Title IX violation for schools to spend more money on men’s football team than on, for instance, a women’s soccer team, if the football equipment is more expensive. On the other hand, it would be a violation for male athletes to be provided with pre-game meals while female athletes are not.

Title IX requires equal benefits for girls and boys athletics, BUT equal does not mean identical!

²³ “Open to All,” *supra* note 4.

²⁴ *Id.*

OCR evaluates eleven (11) areas to determine if benefits received by male and female athletes are equal²⁵:

1. Equal quality and quantity of equipment and supplies;
2. Fairness in scheduling games and practices;
3. Equal financial support for travel and expenses;
4. Access to tutoring;
5. Fairness in assigning and paying quality coaches;
6. Equal facilities (locker rooms, fields, and arenas, for example)
7. Medical and training facilities and services;
8. Housing and dining facilities and services;
9. Publicity;
10. Recruitment of student athletes; and
11. Support services.

The OCR Clarification of March 17, 2005

On March 17, 2005, OCR issued a Clarification. This letter allows schools to claim compliance under Prong 3, if results to a “model survey” simply show that the underrepresented sex does not have an interest in athletic participation. Once a survey is administered, the burden of demonstrating compliance would shift from the school to the person or entity seeking Title IX compliance.²⁶

The Clarification Letter was criticized and rejected by organizations such as the NCAA and Women’s Sports Foundation. Rather than accept the 2005 Clarification, the NCAA committed itself to abiding by the standards of the 1996 Clarification to evaluate the women’s athletics programs under Prong 3, and listed the following reasons for rejecting the 2005 Clarification.²⁷ According to the NCAA, the 2005 Clarification:

- (a) permits schools to use surveys alone, rather than the factors set forth in the 1996 Clarification, as a means to assess female students’ interest in sports;
- (b) conflicts with a key purpose of Title IX—to encourage women’s interest in sports and eliminate stereotypes that discourage them from participating;
- (c) allows schools to restrict surveys to enrolled and admitted students, thereby permitting them to evade their legal obligation to measure interest broadly;

²⁵ Reith, *supra* note 16, at 19.

²⁶ Department of Education Creates Huge Title IX Compliance Loophole: The Foundation Position, “Executive Summary”, available at <http://www.womenssportsfoundation.org/cgi-bin/iowa/issues/rights/-article.html?record=1009> (June 16, 2005).

²⁷ NCAA Leadership Groups Urge Department of Education to Rescind Additional Clarification for Title IX and Maintain 1996 Clarification, available at http://www2.ncaa.org/media_and_events/press_room/2005/april/20050428_titleix_resolution.html (April 28, 2005).

- (d) authorizes a flawed survey methodology;
- (e) shifts the burden to female students to show that they are entitled to equal opportunity; and
- (f) makes no provision for the Department of Education to monitor schools' implementation of the survey or its results.

Among other concerns regarding methodology, the clarification allows schools to interpret a lack of response to a survey as evidence of a lack of interest, notwithstanding the low response rates generally.²⁸

Moreover although OCR maintains that the 2005 Clarification does not represent a change in policy, its March 17, 2006 report to Congress suggests otherwise.

Evaluating fifty-four (54) cases over a fourteen year period, the report indicates that, prior to the 2005 Clarification, OCR never once allowed a survey alone to prove Title IX compliance.²⁹

The extent to which this controversial 2005 Clarification will affect school athletic programs is yet to be determined.

What Happens Once the OCR Receives My Complaint Letter?: A Brief Overview of Complaint, Investigation, and Resolution Process

*Full Investigation*³⁰

Once OCR receives a complaint letter against a school district, it has 15 days to inform the school district that a complaint has been filed. It will then assign an investigator to the district. OCR will request information from the district and may also make an on-site visit to review the athletic facilities. The investigator may interview the complainant, school district personnel, coaches, and other student athletes. OCR will then decide whether there is enough evidence to support the complaint. It is very rare for OCR's investigative process to turn up Title IX violations that were not contained in the original complaint. It is critical, therefore, that the original complaint be as thorough and clear as possible.

A school may send a school attorney to be present during OCR interviews. The presence of a school attorney may make students and school employees hesitant to voice their concerns. If an OCR investigator is going to visit your school, you may want to tell coaches and athletes ahead of time that a school attorney may sit in, so they will be prepared for this.³¹

²⁸ National Women's Law Center (NWLC) Fact Sheet: Title IX "Clarification": What's at Stake (April 24, 2006), available at <https://www.nwlc.org/details.cfm?id2733§ion=athletics>.

²⁹ NWLC, Fact Sheet: Title IX Clarification Education Report to Congress (April 24, 2006), available at <https://www.nwlc.org/details.cfm?id2733§ion=athletics>.

³⁰ Reith, *supra* note 16, at 34.

³¹ *Id.*



If OCR concludes that the school is in violation of Title IX, it will work with the school district to come to a “Resolution Agreement.” This Agreement will outline steps that the school district must take in order to resolve the problems, as well as dates by which the district will submit “Progress Reports” to OCR. These steps might be as specific as installing drinking fountains and bathrooms at a softball field, or as vague as “ensuring girls’ teams receive funds to support their programs that are equal, or equal in effect as compared to the boys’ athletic teams.”

The person who filed the complaint is not involved in the process of developing an acceptable Resolution Agreement. It is entirely up to OCR to decide what a school district must do in order to solve its Title IX problems.

Resolution Without Complete Investigation

Often, a school district will voluntarily agree to make changes even before OCR completes an investigation of the complaint. A school can avoid an investigation by sending the OCR a voluntary “Commitment to Resolve” letter.³² This letter outlines steps that the school district will take to resolve the complaint. These Commitments have varied widely in terms of their scope. Some of them have promised to fix problems that were not even mentioned in the complaints. On the other hand, others have made only vague, minimal guarantees.

If OCR accepts this “Commitment,” it ostensibly will remain involved in the case long enough to make sure the school district does what it has promised to do.³³ As with a Resolution Agreement, the complainant has no say in deciding whether a district’s Commitment to Resolve is adequate or not. In addition, if a school violates the terms of a Commitment to Resolve, there is nothing a complainant can do about it, other than filing a new complaint with OCR.³⁴

To illustrate, the November 1998 complaint dealing with Bowie ISD in Texas provides an example of a narrow, minimal Commitment to Resolve.³⁵ The Bowie complaint alleged that a junior varsity football field overlapped with the women’s softball field, so that the softball

³² *New OCR Complaint Procedures, An “Ounce of Prevention...,”* News 7 No.10, available at <http://www.spedlaw.com/html/opnews/V7n10ju94.htm> (June 1994).

³³ *Id.*

³⁴ See Daniel Joyce, Letter to Spring Independent School District (Sept. 14, 2000).

³⁵ See Bowie ISD Commitment to Resolve Case #06981372, from Joe Vasser, Superintendent for Bowie ISD, to Jack Washington, United States Department of Education, OCR S. Div. (Nov. 11, 1998).

outfield was rough and was intersected by a fence.³⁶ In its Commitment to Resolve, the district promised to “consider” and “explore the possibility of moving either the football field or the softball field, or keeping both fields where they were while “assuring OCR that the field will be maintained . . . in a manner that is equal, or equal in effect, when compared to the boys’ baseball field.”³⁷ In other words, “consideration” did not amount to a promise to address the problem raised in the complaint. However, a Commitment to Resolve may include admissions which may be useful in subsequent lawsuits.³⁸

In every case in which a school district has submitted a voluntary Commitment to Resolve, OCR has accepted the Commitment as an adequate resolution of the complaint. The OCR did not ask the district to make their plans more specific or more far-reaching. Thus, it fell on the shoulders of school officials to decide whether to closely examine athletics programs to ensure compliance with Title IX or to make minimal promises to OCR in order to clear up the complaint.

When an OCR complaint does not resolve the issue, the next course of action may be to file a lawsuit.

³⁶ See Title IX Findings for Bowie ISD Compliance Letter from Tim Blanchard, Team Leader, Team Leader, United States Department of Education, OCR S. Div., to Joe Vassar, Superintendent, Bowie ISD 1 (Nov. 20, 1998).

³⁷ See Bowie ISD Commitment to Resolve, *supra* note 35, at 2.

³⁸ *New OCR Complaint Procedures*, *supra* note 32.

Option 2. Filing a Lawsuit

A claimant has the option of bringing a suit either in place of, or in addition, to filing an OCR complaint. A right to a private cause of action pursuant to Title IX was established in *Cannon v. University of Chicago*,³⁹ in which the U.S. Supreme Court held:

- Enactment of Title IX was for the benefit of a specific class;
- It was Congress' intent to grant a private right of action;
- It would not run counter to the purpose of Title IX; and
- It would not infringe on states' rights to have such a federal remedy.⁴⁰

Is My Claim Covered?

The scope of Title IX is broader than most people think. In addition to traditional equal accommodation and equal treatment sports cases, Title IX claims have been based on claims such as retaliation against a Title IX sports complainant, discrimination against employees and students at educational institutions, and sexual harassment.⁴¹ Title IX covers a broad range of gender-based discrimination in educational institutions.

Effective Accommodation and Equal Treatment Claims

Pederson v. Louisiana State University is an excellent model U.S. Fifth Circuit Court of Appeals case.⁴² *Pederson* held that Louisiana State University (LSU) violated Title IX by failing to “accommodate effectively the interests and abilities of certain female students and that its discrimination against these students was intentional.”⁴³ *Pederson* informs us that Title IX athletics cases are often divided into two different types of cases—effective accommodation claims and equal treatment claims.⁴⁴ This distinction is derived directly from Title IX.

Effective accommodation claims involve an OCR review of whether the selection of sports and competitions effectively accommodate the abilities and interests of both sexes. Effective accommodation claims derive from 34 C.F.R. §106.41(c)(1). On the other hand, equal treatment claims derive from 34 C.F.R. §§106.37(c) and 106.41(c)(2)-(10). These federal regulations require equal provision of athletic scholarships and equal provision of other athletic benefits and opportunities.

³⁹ *Cannon v. Univ. of Chicago*, 441 U.S. 677 (1979).

⁴⁰ *See Cannon*, 441 U.S. at 703-04, 708-09.

⁴¹ Reith, *supra* note 16, at 5.

⁴² 213 F3d 858 (5th Circuit 2000). The 5th Circuit covers Texas.

⁴³ *Pederson v. Louisiana State University*, 213 F.3d 858, 864 (5th Cir. 2000).

⁴⁴ *Id.* at 865.

Standing and Injury in Fact

In order to be a plaintiff in a suit, a claimant must have standing—“the right to make a legal claim or seek judicial enforcement of a duty or right.”⁴⁵ For a claim in which the injury results from an imposed barrier such as a school’s failure to field a varsity soccer team, establishing standing is simple. The plaintiff in such a case would only have to show that she was “‘able and ready’ to compete for a position on the unfielded team, not that she would have made the team had it been fielded.”⁴⁶

However, the “able and ready” standard does not translate into automatic standing in equal treatment claims. The injury or discrimination, in equal treatment cases, cannot be one suffered by “other, unidentified members of the class to which [the plaintiff] belong[s] and which she purports to represent,” but an injury or discrimination she herself has experienced.⁴⁷ Therefore, a person who is not a current varsity athlete cannot automatically challenge the discriminatory treatment of *current* varsity athletes in already existing programs.⁴⁸

Remember: Anyone may file an OCR complaint, BUT only a person with STANDING can sue in court.

Remedies

Typical remedies available under Title IX are injunctive relief, monetary compensation, and attorney’s fees. The court may also require unique compliance standards such as the creation of a Compliance Plan.

1. Injunctive Relief

Litigation can be time consuming, and the plaintiff may graduate from a school before the case is resolved. However, this does not bar injunctive relief.

An injunction is “a court order commanding or preventing an action.”⁴⁹ For example, a court may grant an injunction requiring a school to add a softball team to its varsity sports program. If injunctive relief is “not moot as to the putative class,” then the relief may still be granted.⁵⁰ This means that as long as the class of students that the young woman represents would still be affected by an injunction, then the court may still order a school to comply with Title IX, even if she no longer attends the school. The school must show “there is no reasonable expectation that the wrong will be repeated” to prevent the court from issuing an injunction to remedy the discrimination.⁵¹

Remedies can be injunctive relief, monetary damages, attorney fees, compliance plans, and/or creation or reinstatement of women’s athletics teams

⁴⁵ BLACK’S LAW DICTIONARY (8th ed. 2004) (accessed on WestLaw).

⁴⁶ *Pederson*, 213 F.3d at 871.

⁴⁷ *Warth v. Seldin*, 422 U.S. 490, 502 (1975).

⁴⁸ *Pederson*, 213 F.3d at 872.

⁴⁹ BLACK’S LAW DICTIONARY (8th ed. 2004) (accessed on WestLaw).

⁵⁰ *Pederson*, 213 F.3d at 875.

⁵¹ *ACLU v. Finch*, 638 F.2d 1336, 1346 (5th Cir.1981).

2. Monetary Damages

The right to recover money damages where intentional sex discrimination is proven was established in *Franklin v. Gwinnett County Public Schools*.⁵² Monetary damages are generally recovered by someone directly affected by the discrimination—i.e. victims of discrimination.⁵³ Archaic notions such as a school’s assumption that women would be less interested or less able to participate in sports can rise to the level of intent. In *Pederson*, the court interpreted paternalism and stereotypical assumptions as *intentional* unequal treatment of women for the purposes of a Title IX suit.⁵⁴

3. Attorney’s Fees

A prevailing plaintiff is usually entitled to attorney’s fees incurred during the suit.⁵⁵ Attorney’s fees are the charge to a client for services performed for the client, such as an hourly fee, a flat fee, or a contingent fee. Compensation for attorney’s fees allows many potential plaintiffs, such as high school or college students with limited resources, to file suit. Often, the high cost of legal fees may pressure educational institutions to avoid litigation.⁵⁶

4. Compliance Plan

In some cases (primarily in class actions), a court may order a school to produce a compliance plan. A compliance plan is an outline of steps a school must take to redress Title IX violations.⁵⁷ The court then monitors that school as it undergoes the process of becoming Title IX compliant. This broad-based remedy provides educational institutions with some discretion in the process of becoming Title IX compliant.

5. Creation or Reinstatement of Women’s Athletic Team

Many federal district courts have granted specific, requested relief such as the creation or reinstatement of a women’s athletic team.⁵⁸ However, some schools have challenged this remedy on the grounds that it is inappropriately intrusive, since Title IX does not require institutions to fund any particular number or types of athletic opportunities. Courts have generally been receptive to this defense.⁵⁹ Specific injunctive relief is usually granted to a plaintiff who has brought a claim in her individual capacity.⁶⁰

⁵² *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60, 76 (1992); see also *Pederson*, 213 F.3d at 880.

⁵³ Reith, *supra* note 16, at 35.

⁵⁴ *Pederson*, 213 F.3d at 880.

⁵⁵ 42 U.S.C. § 1988(b) (Supp. V. 1993).

⁵⁶ See Harris, *supra* note 22, at 95.

⁵⁷ *Id.* at 95.

⁵⁸ *Id.* at 97.

⁵⁹ *Id.* at FN 275.

⁶⁰ See *Roberts v. Colorado State Board of Agriculture*, 998 F.2d 824, 833-34 (10th Cir. Colo. 1993).

IV. WHAT KIND OF TITLE IX ATHLETIC OCR COMPLAINTS HAVE BEEN FILED IN TEXAS?: A REVIEW OF COMPLAINTS AND SOLUTIONS, FROM JANUARY 1996 TO MAY 2001

Report Methodology

We reviewed 36 Title IX OCR responses to athletics complaints filed against Texas public schools between January 1, 1996 and May 10, 2001. These OCR responses included the basis for the complaint, the OCR's method of investigation, and the agreements reached between OCR and the school in question. These records were obtained through a Freedom of Information Act Open Records Request to OCR.

We supplemented the records obtained through an Open Records Request with information from the *Atlanta Journal-Constitution's* online journal. As part of a special report on Title IX in Georgia schools, the AJC compiled a chart of all OCR complaints nationwide from 1992 to 1999.⁶¹

Softball

Most of the OCR complaints that we reviewed from Texas (64%) centered on inequalities between women's softball teams and men's baseball teams. Generally, complainants stated that female softball players had inferior fields, locker rooms, and equipment, and fewer opportunities to use weight rooms and receive training services compared to male baseball players and other male athletes.

In several districts, such as Mesquite and Harlingen, female softball players traveled miles away from their school to practice on poorly maintained municipality-owned fields while male baseball players practiced on well-maintained school fields.⁶² In many cases, softball fields lacked equipment such as batting cages, lighting, scoreboards, ticket boxes, and concession stands that were present on the baseball fields.⁶³ Some girls' softball teams were not provided with basic supplies such as shoes, pitching machines, and even an adequate number of balls.⁶⁴

In some instances, fields were poorly maintained. In the Bowie School District, for example, the girls' softball field overlapped with a junior varsity football field. The softball outfield was rough on account of the use by the football team. In addition, a portable fence cut across part of the outfield.⁶⁵

⁶¹ Mike Fish and David Milliron, *Special Report: The Gender Gap*, Atlanta Journal-Constitution, at <http://www.stacks.ajc.com/> (Dec. 17-18, 1999).

⁶² Title IX Findings for Mesquite Independent School District Compliance Letter from Tim Blanchard, Team Leader, U.S. Department of Education, OCR S. Div., to John Horn, Superintendent, Mesquite ISD 3 (Oct. 31, 1997); Title IX Findings for Harlingen CISD Compliance Letter from Sandra W. Stephens, Team Leader, U.S. Department of Education, OCR S. Div., to Jesus H. Chavez, Superintendent, Harlingen CISD 1 (Oct. 1, 1997).

⁶³ *E.g.*, Findings for Harlingen CISD, *supra* note 62, at 1.

⁶⁴ *E.g. Id.*

⁶⁵ Title IX Findings for Bowie ISD, *supra* note 36, at 1.

One reason for the large number of complaints about softball facilities may be softball's obvious similarity to baseball. It is easy for students and parents to identify differences between softball and baseball facilities and equipment. For instance, if the baseball team has a batting cage and the softball team does not, a disparity clearly exists. On the other hand, it is harder to compare the equipment provided to a volleyball team with that given to a football team.

Second, disparities may exist because softball programs are relatively new compared to baseball programs. The University Interscholastic League (UIL) did not sponsor softball as an official sport until 1993, while it has sponsored baseball for more than fifty years.⁶⁶ Consequently, schools with new softball programs may have refrained from devoting money to build equal facilities for the new teams. An OCR complaint can be an effective way to make a school district address this disparity.

New Sports Teams

A quarter of the Texas Title IX complaints reviewed identified the failure to provide enough sports for girls without reference to cutting men's athletics. Public debate over adding new women's teams focuses on how to balance the ratio of men's and women's sports—should a gender balance be struck by adding a new women's team or eliminating a men's team? Most often, complaints about a school's failure to provide women with enough athletic opportunities requested the addition of softball or volleyball teams. In new team cases, school districts usually agree to survey their students to determine whether there would be enough participants to field a new team and promised to add teams if surveys showed sufficient interest. In some cases, complainants asked schools with softball programs to add additional teams (for instance, a freshman softball team). OCR analyzed the level of men's and women's participation in sports, and determined that because the participation levels were already proportionate, the schools would not be required to add new teams.

Scheduling

A little over half of OCR complaints reviewed alleged that practice and game schedules were unfair to girls. For instance, in McKinney ISD, OCR found that men's teams played eleven (11) more games overall than women's teams, and that 55% of the men's teams had consecutive athletic periods and practice times, compared to only twelve percent (12%) of the women's teams.⁶⁷ In Smithville ISD, volleyball teams were required to end their games when a football game started and to watch the end of football games before they were transported back to

⁶⁶ Sandra W. Stephens, Letter to Pflugerville ISD, April 24, 1998; UIL website Baseball Tournament Records Through 2000-01 School Year, <http://www.uil.utexas.edu/ath/records/base.html> (last visited Aug. 18, 2005).

⁶⁷ Title IX Findings for McKinney Independent School District Compliance Letter from Vicki L. Johnson, Team Leader, U.S. Department of Education, OCR S. Div., to David Anthony, Superintendent, McKinney ISD 5 (Sept. 30, 1990).

school.⁶⁸ In most scheduling cases, school districts agreed to examine the gender inequality created by game and practice schedules.

Booster Club Spending

Nationwide, athletic booster club spending is a controversial Title IX issue. Booster clubs, usually comprised of the athletes' parents, sometimes contribute thousands of dollars to athletic programs without direct school supervision. A school violates Title IX if booster club spending results in unequal athletic programs between genders.⁶⁹

In Texas, approximately 11% of OCR complaints reviewed complained of unequal spending by booster clubs. In many of these cases, schools did not know how much booster clubs were spending or how they were spending it. Schools agreed to "conduct an assessment" of booster club spending to ensure that girls' sports received a proportionate amount of money.

Parents and student athletes often do not know or understand the impact booster club spending has on their athletic programs. Thus, complaints about booster club spending are relatively rare. Since OCR investigations are limited to issues that the complainants raise themselves, it does not provide a way to uncover less visible or less obvious Title IX violations.

Other Issues Raised in the 36 Complaints Reviewed

School districts most often resolved the following complaints by promising to ensure equality in these areas. In some cases, schools promised to make specific improvements, such as providing girls with larger lockers.

1. Inequalities in equipment and supplies (61% of complainants)
2. Quality and availability of equipment and facilities (75%)
3. Exclusivity of female athletes' use of facilities and equipment (66%)
4. Quality of locker rooms (69%)
5. Maintenance (53%)
6. Budget allocation (56%)

Unsuccessful Complaints

OCR found a few complaints to be unsubstantiated. These complaints usually involve issues affecting men and women equally. For example, an unsubstantiated complaint alleged that Mesquite High School and North Mesquite High School were the only 5A schools in the state with one gymnasium. Although these schools each had one gym, the gyms were shared by men's and women's sports teams, affecting both genders equally.⁷⁰

⁶⁸ Title IX Findings for Smithville Independent School District Compliance Letter from Sandra W. Stephens, Team Leader, U.S. Department of Education, OCR S. Div., to Steven L. Tom, Superintendent, Smithville ISD 5 (Mar. 21, 1999).

⁶⁹ *Boosters May Be Funding Disparity: Special Report: The Gender Gap*, Atlanta Journal-Constitution, 1A, at www.stacks.ajc.com (Dec. 13, 1999) (available in archives).

⁷⁰ Title IX Findings for Mesquite ISD, *supra* note 62, at 3.

Similarly, in Bridge City ISD, Title IX did not cover a complainant alleging overcrowded women’s locker rooms because OCR found the men’s locker rooms were equally overcrowded.⁷¹

Repeat Offenders

Generally, OCR will address specific complaints raised in an OCR complaint. Therefore, a school district may end up fixing only the Title IX inequalities raised in a specific complaint, ignoring other inequalities. This can lead to multiple complaints against a single school district within a period of a few years. Of the Texas school districts reviewed, 13 had more than one complaint filed against them between 1992 and 2000, as follows:⁷²

- | | |
|------------------------------|-----------------------------------|
| 1. Bowie | 7. Grand Prairie |
| 2. Carrollton-Farmers Branch | 8. Houston |
| 3. Coppell | 9. Ingleside |
| 4. Corpus Christi | 10. Kingsville |
| 5. Denton | 11. Pflugerville |
| 6. Garland | 12. Schertz-Cibolo Universal City |
| 7. Grand Prairie | 13. Spring |

Is your school a repeat offender?

For example, in Carrollton-Farmers Branch ISD, two complaints were filed within twelve months (in March 1996 and January 1997).⁷³ Both alleged inequalities in equipment, supplies, locker rooms, and game and practice facilities. The complaints dealt with different high schools in one school district. While the district agreed to make school specific changes, it did not go as far as making systemic changes in the whole district.

Two Obstacles

A review of Title IX OCR complaints reveals two obstacles to successful claims. First, most complaints involve disparities in athletic programs that are easy for parents and athletes to notice. There are many fewer complaints dealing with issues that are difficult for parents and students to observe or discover, such as funding, pay for coaches, or booster clubs. Therefore, less visible forms of discrimination are not likely to be eliminated through the OCR complaint process. It is important for people who are concerned with gender equity in sports to consider alternative means of increasing compliance with Title IX, such as raising the level of general awareness about gender inequality, mobilizing community members to advocate for change, and perhaps even filing a suit.

⁷¹ Title IX Findings for Bridge City Independent School District Compliance Letter from Bessie M. Faucette, Equal Opportunity Specialist, U.S. Department of Education, OCR S. Div., to Sam Lucia, Superintendent, Bridge City ISD 3 (Apr. 18, 2001).

⁷² Title IX Finding Compliance Letters for Texas Schools Districts, U.S. Department of Education, OCR S. Div. (1996 – 2001); David Milliron, *supra* note 61.

⁷³ Title IX Findings for Carrollton-Farmer’s Branch Independent School District Compliance Letter from John F. Stephens, Team Leader, U.S. Department of Education, OCR S. Div., to Doug Shouse, Associate Superintendent, Carrollton-Farmer’s Branch ISD 1 (Aug. 6, 1997); Title IX Findings for Carrollton-Farmer’s Branch ISD Compliance Letter from John F. Stephens, Team Leader, U.S. Department of Education, OCR S.Div., to Monte Sriver, Superintendent, Carrollton-Farmer’s Branch ISD 1 (Aug. 15, 1996).

Second, OCR often — in fact, usually — does not fully investigate a complaint before reaching a resolution agreement with the school district. In this way, OCR seems to act more as a conciliator than as an enforcer. While this tactic may foster more positive relationships with school officials, it also means that school districts can get away with promising to make the minimal changes required.

V. CONCLUSION

Title IX means that women no longer have to sit on the sidelines. We hope this guide has been helpful to you. If you think you might have a Title IX claim in your local Texas school district, please call us at the Texas Civil Rights Project during our intake hours, Thursday, 1:00 – 4:00 P.M., at (512) 474-5073.

APPENDIX A. PARTS OF AN OCR COMPLAINT FORM

To File a Complaint, please use online available at:
<http://www.ed.gov/about/offices/list/ocr/complaintintro.html>

Office for Civil Rights Discrimination Complaint Form

Before completing this form,
please read the information describing its use:
<http://www.ed.gov/about/offices/list/ocr/complaintintro.html>

* First Name:

* Last Name:

* Address:

* City:

* State:

* Zip Code:

Best Time to Call You:

* Primary Phone Number: (xxx-xxx-xxxx)

Alternative Phone Number: (xxx-xxx-xxxx)

* Your Email Address:

Contact's Name:

Daytime Phone Number: (xxx-xxx-xxxx)

Relationship to you:

Yourself?

Someone else?

If someone other than yourself please include:

Injured Person's Name:

Daytime Phone Number: (xxx-xxx-xxxx)

Evening Phone Number: (xxx-xxx-xxxx)

Relationship to You
(eg. son or daughter)

Injured Person's Address:

City:

State:

Zip Code:

If the person discriminated against is age 18 or older, we will need that person's signature before we can proceed with this complaint. If the person is a minor, and you do not have legal authority to file a complaint on the student's behalf, the signature of the child's parent or legal guardian is required.

(OCR's laws cover educational institutions such as school districts, colleges and universities, public libraries and state vocational rehabilitation agencies)

* Institution Name:

Address:

City:

* State:

Zip Code:

School or department involved:



Yes



No

Agency Name:

Date Filed:

(mm/dd/yyyy)

If yes, what is the current status of the complaint?

OCR enforces regulations that prohibit discrimination on the basis of race, color, national origin; sex; disability; and/or age.

On what basis were you discriminated against?

(You may select more than one.)

race or color

national origin

disability

sex

age

retaliation because you filed a complaint or asserted your rights

Boy Scouts Equal Access Act

In the space provided below please describe each discriminatory action separately. For each action, you need to provide the following information:

- date(s) the discriminatory action occurred;
- name(s) of individual(s) who discriminated;
- what happened;
- witnesses, (if any);
- why you believe the discrimination was because of [race, gender, disability, or whatever basis you indicated above] or why you believe the action was retaliatory.

Do you have written information that you think will help us understand your complaint?

Yes No

You will be contacted with instructions for submitting this information (please do not send original documents).

The laws that we enforce require that complaints be filed with our office within 180 days of the alleged discriminatory event. If any of the alleged discriminatory actions took place more than 180 days before the postmark or receipt date of this complaint, you may request a waiver of the 180-day limit.

When did the last act of discrimination occur?

Enter the date: (mm/dd/yyyy)

Are you requesting a waiver of the 180-day filing time limit for discrimination that occurred more than 180 days before the filing of this complaint?

Yes No

Reason for not filing complaint before 180 days.

9. Please read the [Information About OCR's Complaint Resolution Procedures](#), [Office for Civil Rights Notice About Investigatory Uses of Personal Information](#), and [Consent Form](#). All these documents are downloadable. Before we can complete initial processing of your complaint, we will need your signed consent authorizing us to proceed. Please sign and date A or B on the consent form and mail it to the OCR Enforcement Office responsible for your complaint.

Click 'submit' to send your complaint to OCR. Your complaint will be routed to the OCR office with authority to handle complaints in the state where the institution or entity you are complaining about is located. A staff person will contact you once we receive your electronic complaint form.

APPENDIX B. LIST OF USEFUL RESOURCES

<p>Texas Civil Rights Project</p>	<p>Mailing Address: 1405 Montopolis Drive Austin, TX 78741-3438</p> <p>Telephone: 512-474-5073 Fax: 512-474-0726 http://www.texascivilrightsproject.org/</p>
<p>Women’s Sports Foundation Advocacy Department</p>	<p>Mailing Address: Women's Sports Foundation Eisenhower Park East Meadow, NY 11554</p> <p>Telephone: 1-800-227-3988 (U.S. only) 1-516-542-4700 (Business) 1-516-542-4716 (Fax) E-mail: wosport@aol.com</p>
<p>Women’s Sports Foundation, Geena Takes Aim (Title IX Library)</p>	<p>http://www.womenssportsfoundation.org/cgi-bin/iowa/issues/rights/index.html</p>
<p>How to File a Discrimination Complaint with the Office for Civil Rights (OCR)</p>	<p>http://www.ed.gov/about/offices/list/ocr/docs/howto-index.html?src=rt</p>
<p>OCR of the U.S. Dept. of Education; S.Div. (Includes TX)</p>	<p>United States Department of Education Office for Civil Rights Southern Division, Dallas Office 1999 Bryan Street, Suite 2600 Dallas, TX 75201-6810</p> <p>Phone (214) 880-2459 Fax (214) 880-3082</p>

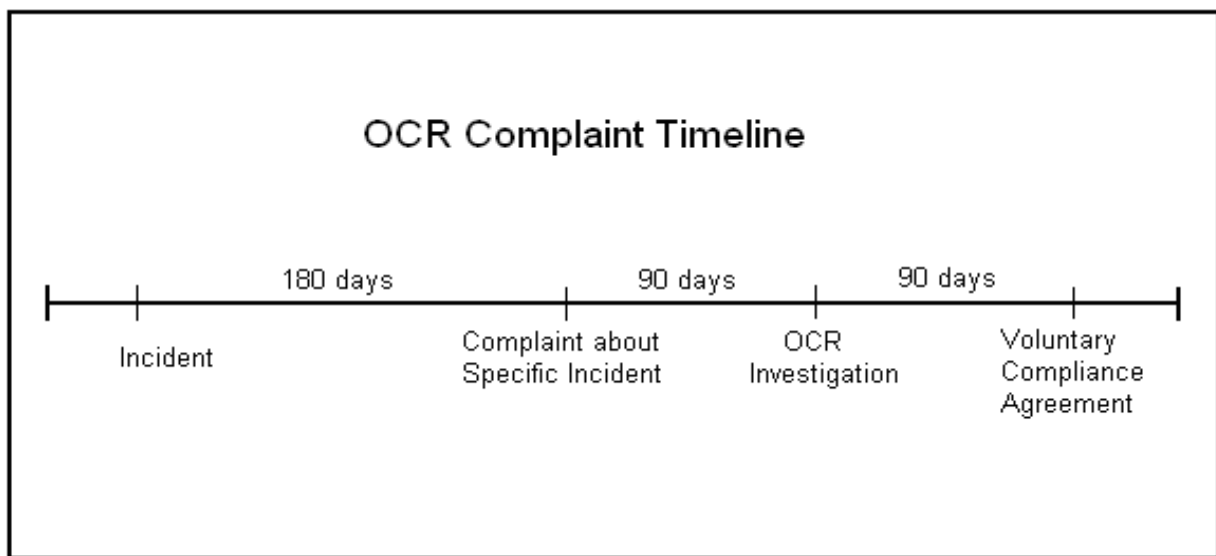
APPENDIX C. OCR COMPLAINT CHECKLIST AND TIMELINE

When getting an OCR complaint started, make sure to take the following steps:

Laying the Groundwork for an OCR Complaint: A Check List

- Assess Your School
- Gather Facts
- Get Support
- Organize Your Information
- Keep Records of Everything

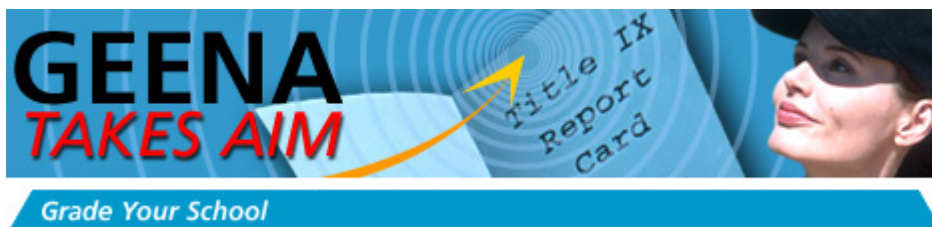
When making an OCR complaint, be aware of the following time limitations:



APPENDIX D. GEENA TAKES AIM: SCHOOL REPORT CARD EVALUATION FORM AND SAMPLE RESULTS

To grade your school, visit: <http://www.geenatakesaim.org>

The Geena Takes Aim School Report Card is available via the Women's Sports Foundation



School Report Card

Are girls underrepresented in your school's or college's athletics program? By that, we mean: Is the percent of female athletes less than the percent of females in the general student body? If so, then this School Report Card can help you calculate a set of grades and give you a better understanding of how well your educational institution complies with Title IX.

You can use this report card to grade middle school, high school or college athletics programs, however you should make separate report cards for each level--do not combine them.

You can also grade varsity or junior varsity sport programs as long as you make a separate report card for each program. Do not combine varsity and junior varsity numbers. (N/A = Not applicable, or the item is equally unavailable for both male and female students.)

This report card is an adaptation of "Check It Out: Is the Playing Field Level for Girls at Your Elementary or Secondary School?" by L. Bunker, N. Chaudrey, P. Kellers, D. Larkin and V. Williams. You can purchase a copy of this publication from the National Women's Law Center (202) 588-5180.

I. PARTICIPATION

1. Participation Opportunities. Females should have the same opportunities as males to play sports.

a. Number of students in my school: **FEMALE**

Number of students in my school: **MALE**

b. Number of athletes: **FEMALE**

Number of athletes: **MALE**

c. Over the last four years, how many new sports for females have been added to the sports program? (**NOTE: If no new sports have been added, write in the word "none."**)

d. Number of sports: **FEMALE** (Note: Count cross country, indoor track and outdoor track as separate sports.)

Number of sports: **MALE** (Note: Count cross country, indoor track and outdoor track as separate sports.)

e. Has your school conducted a survey (asking all students in the school) to find out what sports they are interested in playing?

Yes

No

II. BENEFITS

2. Equipment and Supplies. Athletes should have the same quality equipment and supplies. Female athletes shouldn't be given "old stuff" while the male athletes get "new and better stuff."

a. The quality and quantity of equipment for male and female teams is the same.

Yes

No

b. The number of practice uniforms and their quality is the same.

Yes or N/A

No

c. The number of competitive uniforms and their quality is the same.

Yes

No

3. Scheduling Competitions and Practices. Male and female teams should be able to practice the same number of hours and have the same chance to play at times and days when their parents can attend games.

a. Practice time is equal (hours of practice; days per week; time of day).

Yes

No

b. The number of competitions played by male and female teams are the same.

Yes

No

c. The time at which competitions are held (e.g. 3 p.m. vs. evening; weekday vs weekend) allows the parents of males and females who play sports to see them play.

Yes

No

d. The male and female teams get to play in the same quality (strength of competition) tournaments and league, conference and state championships.

Yes

No

4. Meals. When teams travel, the same amount of meal money and quality of meals should be provided to male and female teams (e.g., female teams shouldn't eat at fast food spots while male teams eat in restaurants).

a. Pre-game or post-game meals, snacks (or training tables for college athletes) are provided equally.

Yes or N/A

No

b. Male and female teams eat in the same type of restaurants.

Yes

No

5. Travel. Travel arrangements should be the same for male and female teams. (Example:

Parents or coaches should not have to drive female teams while male teams get buses with professional drivers).

- a.** Transportation (vans, buses) is equally available and driven by qualified persons. If air travel is required, both male and female teams should be able to fly. Yes
No
- b.** If an athletic trip is an "overnight," housing (motels, hotels) for male and female teams is of the same quality and the number of athletes in each room is the same. Yes or N/A
No

6. Academic Help. Study halls and one-on-one tutoring for male and female athletes should be provided on the same basis.

- a.** If tutors are provided for athletes, tutors are provided on the same basis for male and female athletes. Yes or N/A
No
- b.** Study halls are equally available for male and female teams. Yes or N/A
No

7. Coaches. Schools must provide the same number and the same quality coaches for male and female teams. Ask your coach for answers to items **a** through **f**.

- a.** The same quality coaches are provided for male and female teams. Yes
No
- b.** Coaches receive equal salaries for equal work. Yes
No
- c.** Coaches have equal "other duties" (e.g. teaching vs. full-time coaching). Yes
No
- d.** If you count all the coaches of male teams and all the coaches of female teams, there are almost equal numbers of male and female coach role models available. Yes
No
- e.** Assistant coaches are equally available for male and female teams. Yes or N/A
No
- f.** Instructional equipment (video tapes, films, etc) is equally available to male and female teams. Yes or N/A
No

8. Locker Rooms, Practice and Competitive Facilities. All athletes should have access to safe and effective facilities.

- a.** The size, location (on-campus vs. off-campus) and quality of gyms, playing fields, outdoor and indoor courts and pools are comparable for male and female teams. Yes
No
- b.** The condition (clean floors, good lighting, grass cut, access to bathrooms, access to drinking water, etc.) of practice and competitive facilities for male and female teams are equally as good. Yes

c. The quality and size of locker rooms for male and female teams are comparable.

No
Yes

d. Spectator seating and scoreboards are equally provided in the facilities used by male and female teams.

No
Yes

9. Medical and Training Services. Male and female teams are provided equal training rooms, trainers and access to medical services. Ask your coach for the answer to item d.

a. Weight training and conditioning facilities are equally available (at convenient times) and are of equal quality.

Yes or N/A
No

b. Medical personnel are equally available to conduct physical examinations, and physical exams are provided equally for to male and female teams.

Yes or N/A
No

c. Athletic trainers are equally available to provide rehabilitation and prevention services (taping, etc.), and are present at competitive events and practices for like sports (i.e., boys' basketball and girls' basketball).

Yes or N/A
No

d. Health, accident and injury insurance are equally available.

Yes
No

10. Publicity. Schools should provide comparable publicity and sports information personnel for male and female athletes. If the school newspaper sends a reporter to cover the male tennis team, it should provide the same quality coverage for the female tennis team. If the yearbook covers sports, there should a comparable number of male and female athlete photos and stories. If the pep band and cheerleaders appear at male athletic events, they should be at female competitions too.

a. Coverage in school papers and school media is equivalent.

Yes
No

b. Cheerleaders and pep rallies are equally provided for male and female sports.

Yes or N/A
No

c. Pep bands are equally provided for male and female sporting events.

Yes or N/A
No

d. Trophy cases are equivalent and provided for both male and female sports.

Yes or N/A
No

e. Comparable language is used to describe teams and individuals (not "the basketball team" and the "girls team").

Yes
No

f. Athletic awards and recognition and/or awards banquets and ceremonies are comparable.

Yes or N/A
No

g. Posters, banners, public address announcements, etc. are equally

Yes
Yes

provided for male and female sport teams.

No

11. Administrative and Support Services. The amount and type of support provided to coaches has a direct impact on the time and attention coaches give to athletes. Do some coaches have to "do it all," including paperwork, hiring officials, lining fields, setting up the gym, etc., while others have school staff members handle these elements? Ask your coach how he or she would answer items **a** through **f**.

a. Equipment and laundry managers are equally available to male and female sport teams.

Yes or N/A

No

b. Quality officials are equally provided (referees, umpires and linespersons).

Yes

No

c. Secretarial and office support is available at equal levels.

Yes or N/A

No

d. Administrators and school personnel both support and attend games at comparable levels for female and male sports.

Yes

No

e. Office resources are comparable (telephone, computer, FAX, copying, etc.).

Yes

No

f. Managers and support personnel are equally assigned to male and female teams.

Yes

No

12. Recruiting. Male and female athletes should be recruited using similar methods and resources.

a. The policies regarding recruitment and the methods used are equal for male and female athletes.

Yes or N/A

No

b. The numbers of prospective student-athletes who visit the campus and the quality of their visits (meals, transportation, entertainment, etc.) are equal for male and female teams."

Yes or N/A

No

III. FUNDING

13. Funding. The only equal expenditure requirements of Title IX are in the area of scholarships. Dollars expended must be proportional to the number of male and female student-athletes. However, vastly unequal budgetary allocations usually result in unequal treatment and therefore suggest inequality concerns.

a. Booster clubs exist equally for male and female sport teams or, if there is one umbrella booster club, it equally supports male and female teams.

Yes or N/A

No

b. Overall budgets (including money from booster clubs) provide for equal treatment of male and female teams.

Yes

No

c. Athletic awards (letters, plaques, jackets, sweaters, travel bags, rings, etc.) are provided equally to male and female athletes.

Yes
No

d. High schools award college scholarships to graduating athletes and colleges award scholarships to athletes participating in their athletic programs. Ask your athletic director for information to answer the following question.

Total scholarship dollars provided to all **male** athletes

Total scholarship dollars provided to all **female** athletes

IV. ADDITIONAL INFORMATION

ALL IDENTIFYING INFORMATION ENTERED BELOW WILL BE KEPT CONFIDENTIAL

The Women's Sports Foundation will **not** publish your name, your school's name, nor any other personally identifiable information. However, we do request that you provide this data for our internal use.

If the Foundation publishes data based on your responses to this questionnaire, we will **not** use your school's name or your town's name. Instead, we will use a generic description such as "a large, public high school in Illinois."

Name of school:

City:

State:

There may be an occasion where the Foundation would like to speak with you about the report card you filled out. Please give us your **name** and a way to reach you:

(e-mail address; and/or phone number+area code; and/or mailing address/city/state/ZIP)

The Women's Sports Foundation has my permission to publish the results of this report card. I understand that my name, the name of my school and any other personally identifiable information will be kept confidential.

Yes
No

My school is:

Public
Private

My school is a: (choose one)

Middle School
High School
College/University

The athletic program I want to grade is:

Varsity
Junior Varsity

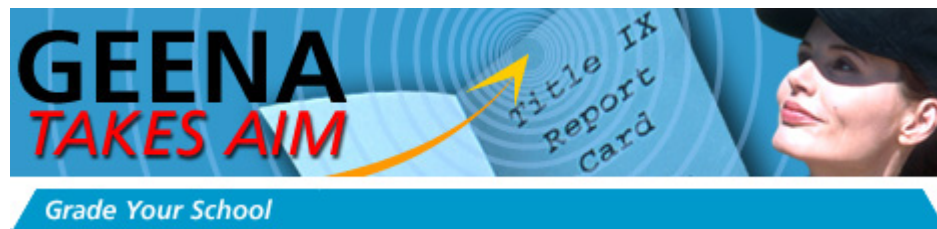
I am a: (check as many as apply)

- Student
- Parent
- Athletic Administrator
- Coach
- School Board Member
- Teacher
- Other
- Anonymous

Submit

Great job! Make sure you have completed all answers to the best of your knowledge. For your records, you may want to print out a copy of the filled out form before submitting it.

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School Report Card Results

PRINT OUT A COPY OF YOUR RESULTS NOW

Did your school make the grade? If you are dissatisfied with the results, have further questions or would like additional assistance, please contact the Advocacy Department at (800)227-3988 x159 or [email us](#)

Thank you for your efforts in filling out our School Report Card. Here are the grades:

Grades by Athletic Program Area

Each section counts 1/3 toward the overall grade.

I. Participation Opportunities for Female Athletes = A+

Points = 100

II. Benefits Afforded Female Athletes = F

Points = 49

III. Funding, Financial Assistance = A+

Points = 99

Overall Grade = B

Grade point average = 83

What the final grade means

A Excellent - Nominate your school for a Women's Sports Foundation Award

B Good - some areas need improvement

C Fair - many areas need improvement

D Poor - serious deficiencies need to be addressed

F Unacceptable - serious violations of the law probable

NOTE: Only the courts can really determine if your school or college is in compliance with Title IX. However, if your institution's grade is less than an "A" overall, there may still be a number of athletic program areas in which your institution may not be in compliance with the law.

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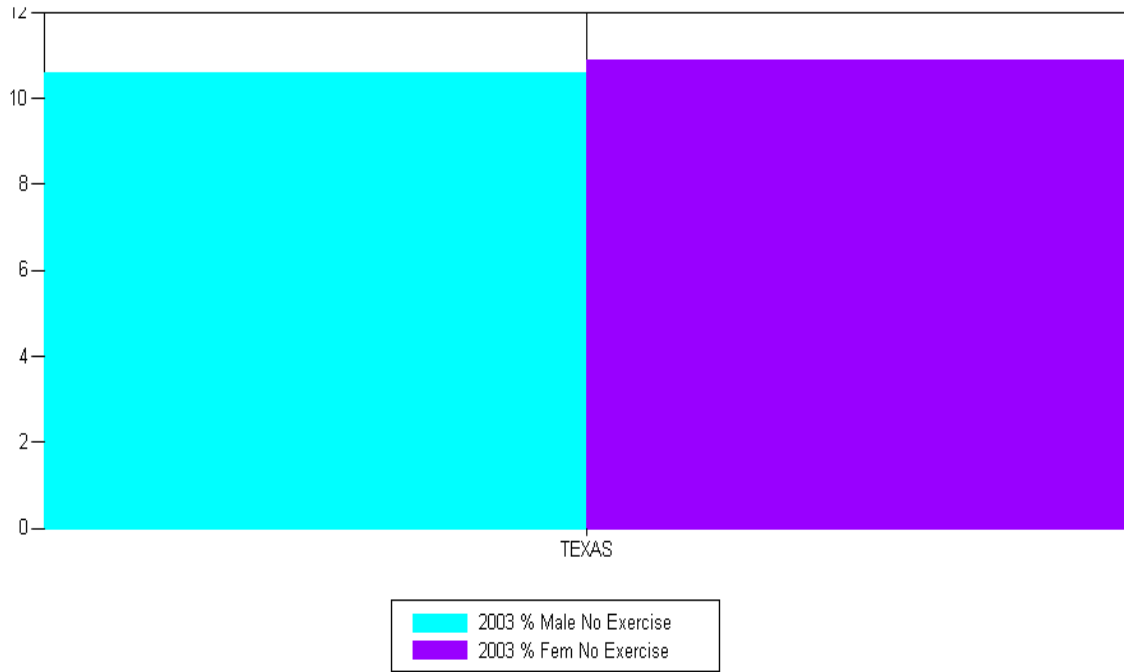
APPENDIX E. STATISTICS ON EXERCISE AND ATHLETICS PARTICIPATION

The following graphs were compiled via the U.S. Department of Health and Human Services, the Office on Women's Health Quick Health Data Online:

Male v. Female Vigorous Exercise (Youths)



Male v. Female No Exercise (Youths)





About the Texas Civil Rights Project

The Texas Civil Rights Project (TCRP) promotes racial, social, and economic justice through education and litigation. TCRP strives to foster equality, secure justice, ensure diversity, and strengthen communities. Since its beginning, TCRP has achieved substantial system gains in ensuring justice for all Texans. TCRP uses education and litigation to make structural change in areas such as voting rights, police and border patrol misconduct, sex discrimination, employment bias, privacy, disability rights, grand jury discrimination, traditional civil liberties (i.e. free speech), and Title IX in secondary education.

TCRP was founded in 1990 as part of Oficina Legal del Pueblo Unido, a non-profit community-based foundation located in South Texas. Oficina Legal del Pueblo Unido, Inc., started in 1978 as a community, grassroots foundation to provide legal assistance and education, without cost, to low-income people, particularly minority persons and individuals victimized by discrimination.

TCRP began with an unpaid staff of two in the Austin Peace Building (an attorney and an office manager). Within a few months, TCRP was able to hire an attorney for its South Texas office. TCRP now has a staff of eight in Austin, and five in the Rio Grande Valley – and owns its offices in both places. TCRP also has recently opened an office in El Paso with a staff of three.

For 17 years, the Texas Civil Rights Project has been a tireless advocate for racial, social and economic equality in Texas, through its education and litigation programs.

Some of the achievements we are most proud of:

- * Handled more than 2000 cases
- * Published 8 Human Rights reports on issues such as hate crimes and the death penalty
- * Compiled five “self-help” manuals
- * Published 300 opinion editorials in Texas newspapers
- * Given 250 speeches and talks on civil rights
- * Conducted community and lawyer trainings for more than 22,000 persons.

The South Texas Project has worked steadfastly to extend equal rights to farm laborers and colonia residents in the Rio Grande Valley, and improve their living and working conditions.

History of Oficina Legal del Pueblo Unido, Inc. and The Texas Civil Rights Project, available at <http://www.texascivilrightsproject.org/about/history.htm>

We have sued over every kind of misconduct in every part of Texas — city police, sheriff deputies, Department of Public Safety officers, and Border Patrol agents. Because of our work, jails in Hidalgo, El Paso, Henderson, Tom Green, Williamson, Travis, Bexar, Dallas, and Brown Counties do much more now in preventing inmate suicide, providing interpreters for deaf prisoners, protecting vulnerable inmates from sexual assault, administering HIV medications, and making them accessible for inmates with disabilities.

TCRP set the national model in ballot accessibility for blind voters and has led at least 17 regional compliance campaigns in Texas under the Americans with Disabilities Act (“ADA”). Thanks to the efforts of our staff, churches and courthouses in Texas are much more accessible to elderly and disabled people – and government more accountable.

We have pioneered a unique “circuit-rider” outreach program in west and south rural Texas for abused and undocumented spouses under the Violence against Women Act (VAWA).

And we have prodded the Texas Supreme Court to improve *pro bono* services for poor and low-income families in the state, 90% of whom have unmet legal needs each year.

Our Title IX educational and litigation programs on sexual harassment and equal sports opportunities have helped make rural middle schools and high schools more hospitable for young women. Our work has also opened up the prospect of athletic scholarships to college for them.

Our “Equality under the Law” campaign has addressed “benign” discrimination against African Americans and Hispanic Americans in banks, restaurants, motels, and other places of public accommodation.

Our efforts to help South Asian, Muslim, and Arab citizens, permanent residents, and students who fell victim to post September 11 discrimination have included filing a suit against a major airline, and enlisting Texas attorneys to represent, on a *pro bono* basis, individuals who were questioned by the FBI.

We worked with the Mexican American Legal Defense and Education Fund (MALDEF) to help create single-member school board districts in Del Valle ISD and assisted in redistricting the Texas Legislature and Texas Congressional so as to protect the voting and representational rights of minority citizens.

We are assisting the NAACP in asking the U.S. Department of Justice to withhold federal funds from the Austin Police Department until it changes its use of force practices in minority communities.

We joined with the American Jewish Congress in one of the first court cases in the country to challenge the constitutionality of government funding of a religiously orientated job-training program that used the Bible as a text and proselytized among its trainees.

We are a leading voice in raising questions about the fairness of Texas' death penalty scheme, and the possibilities of executing innocent people. So, too, are we an intrepid advocate of traditional civil liberties, such as free speech and assembly, due process, and equal protection under the United States and Texas Constitutions.