

TITLE IX AND THE NEW MEXICO ATHLETICS EQUITY ACT

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What is Title IX?

- Title IX is the portion of the Education Amendments of 1972 that provides:
 - No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.



Gender Equity

- “Gender equity is an atmosphere and a reality where fair distribution of overall athletic opportunity and resources are proportionate to women and men and where no student-athlete, coach or athletic administrator is discriminated against in any way in the athletic program on the basis of gender.”

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Statutory and Regulatory Framework

- 20 U.S.C. § 1681 prohibits gender discrimination in education programs that receive federal funds, either directly or indirectly
- Enforcement power is vested in U. S. Department of Education’s Office of Civil Rights (“OCR”)

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How is Title IX applied to athletics programs?

- Title IX applies:
 - to the overall athletic *program* of a school.
 - physical education courses and all other school sponsored athletic programs.

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Title IX: EQUIVALENCE

- The basic test of compliance is – *equivalence*.
- The benefits, opportunities and treatment of each gender must be equal in effect.
- There must be no disparity between boys' and girls' programs.

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Federal Requirements for Accommodation of Interests and Abilities

- OCR issues a three test examination in 1996
- Participation/Opportunities Tests
 - 1. participation (opportunities) is substantially proportionate to enrollment: or
 - 2. demonstrates history and continuing practice of program expansion responsive to developing interests and abilities of under-represented sex; or
 - 3. fully and effectively accommodate interests and abilities of under-represented sex

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Federal Requirements for Accommodation of Interests and Abilities

- Participation/Opportunities Tests
- First test
 - Participation of female student athletes in the school's athletics program is *substantially proportional* to the percentage of females enrolled in the school
 - No clear rule setting a definitive percentage

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Federal Requirements for Accommodation of Interests and Abilities

- Participation/Opportunities Tests

- Second Test
 - demonstrate history and continuing practice of expanding its sports offerings for females
 - Adding sports
 - Responding to requests for adding sports
 - Monitoring interests and abilities of student athletes

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Federal Requirements for Accommodation of Interests and Abilities

- Participation/Opportunities Tests

- Third Test
 - Fully and effectively accommodating the athletic interests and abilities of females in the student body.
 - Surveys
 - Reviews
 - Assessments

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Federal Requirements for Accommodation of Interests and Abilities

Major OCR compliance emphasis is on the participation opportunities tests. Failure to comply with at least **one** of the three part tests will likely result in a finding of a violation by OCR.

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ATHLETIC PROGRAM AREAS EXAMINED TO DETERMINE COMPLIANCE

- **Travel and per diem allowance**
- Tutors
- Coaches including “volunteer” coaches
 - **Pay** and assignment
 - Office/facilities

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ATHLETIC PROGRAM AREAS EXAMINED TO DETERMINE COMPLIANCE

- Facilities: Locker rooms, **weight room**, practice area, etc.
- Practice Times
- **Athletic Equipment and Supplies**
- **Publicity** and Support services

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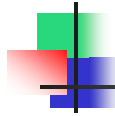


COMPLIANCE ISSUES

Athletics

- Compliance is an examination of the overall benefits provided to girls' athletics compared to boys' athletics.
 - Compliance = overall benefits
 - **NOT** just boys' soccer = girls' soccer

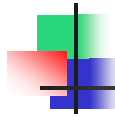
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COMPLIANCE ISSUES

- Athletics
- Example: New Uniforms
- 2 of 8 boys' teams
- 50% of boys' participation
- **Equivalence**
- New uniforms for 50% of girls' participation
- 4 of 9 girls' teams or 5 of 9 girls' teams

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COMPLIANCE ISSUES

Athletics

- Teams may be provided different benefits as long as balance of benefits in women's programs is equal to balance in men's programs

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COMPLIANCE ISSUES

Athletics

- Proportionality of benefits--
- **NOT** \$ girls = \$ boys
- able to demonstrate amount, quality and suitability of equipment is equivalent

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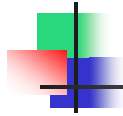


COMPLIANCE ISSUES

Booster clubs, donations and fundraiser impact

- Private fundraising is permissible.
- Differences in donations may not be used to justify imbalance in benefits or services provided
- Disproportionate benefits from team booster clubs may require reallocation of budgeted funds from teams receiving donations to teams which are not.
- Outside donations, such as contributions from businesses, community members, or parents are treated as private funds.

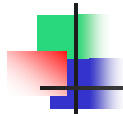
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COMPLIANCE ISSUES

- Donations policy—direct donations to school's athletics program not to specific team or program.
- Title IX requires that boys' and girls' teams must have equal access to comparable benefits and services no matter the source of money.

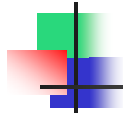
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COMPLIANCE ISSUES

“Where booster clubs provide benefits or services that assist only teams of one sex, the institution shall ensure that teams of the other sex receive equivalent benefits and services.” (Title IX Athletic Investigators Manual, Office of Civil Rights)

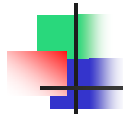
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School Athletics Equity Act

- The School Athletics Equity Act (“SAEA”) applies to each public school that has an athletics program for grades seven through twelve.
- Each public school shall operate its program in a manner that does not discriminate against students or staff on the basis of gender.

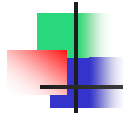
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School Athletics Equity Act

- PED shall collect annual data from public schools on their athletics programs.
- Each public school shall collect and submit the prior-year data required in SAEA in a format required by PED.

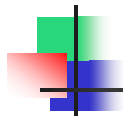
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School Athletics Equity Act

- The data submitted shall include:
 - by August 31, 2011, the following information pertaining to enrollment:
 - (1) the total enrollment in each public school as an average of enrollment at the eightieth and one hundred twentieth days of the school year;
 - (2) student enrollment by gender;
 - (3) total number of students participating in athletics;
 - (4) athletics participation by gender; and;
 - (5) the number of boys' teams and girls' teams by sport and by competition level;

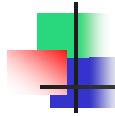
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School Athletics Equity Act

- The data submitted shall include:
 - by August 31, 2011, the following information pertaining to athletic directors, coaches and other school personnel:
 - (1) the name and gender of each public school's athletic director;
 - (2) the name of each team's coaches and other team personnel, with their gender, job title and employment status, such as full-time, part-time, contract or seasonal, specified;
 - (3) the coach-to-athlete and staff-to-athlete ratio for each team; and;
 - (4) the stipend or other compensation for coaching paid to coaches of boys' teams and to coaches of girls' teams for each public school;

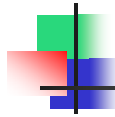
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School Athletics Equity Act

- The data submitted shall include:
 - by August 31, 2012, an accounting of the funding sources that are used to support the school's athletics programs and to which teams those funds are allocated; funding sources include state funding, federal funding, fundraising or booster clubs, game and concession receipts, gate receipts, cash or in-kind donations, grants and any other source;

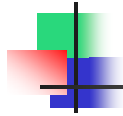
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School Athletics Equity Act

- The data submitted shall include:
 - by August 31, 2012, the following information regarding expenses, including:
 - (1) any capital outlay expenditures for each public school's athletics programs;
 - (2) the expenditures for each public school's athletics programs; and;
 - (3) the expenditures for individual teams, including travel expenses such as transportation, meal allowances and overnight accommodations; equipment; uniforms; facilities; facilities improvements; publicity expenses; awards; banquets; insurance; and any other expenses incurred by each team; and

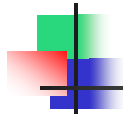
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School Athletics Equity Act

- The data submitted shall include:
 - by August 31, 2012, a statement of benefits and services to each team, including:
 - (1) replacement schedules for equipment, uniforms and supplies;
 - (2) practice and game schedules;
 - (3) access to locker rooms, weight rooms and practice, competitive and training facilities; and;
 - (4) assistance in obtaining scholarships.

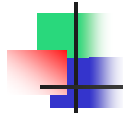
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School Athletics Equity Act

- Each public school shall make its data available to the public, including all materials relied upon to compile the data.
- Each public school shall inform all students at the public school of their right to review the data.
- PED shall publish the following information:
 - (1) each public school's data; and;
 - (2) a list of public schools that did not submit fully completed data.

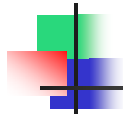
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School Athletics Equity Act

- Each public school shall maintain its data and all materials relied upon to complete the data for at least three years.
 - Statute of Limitations for Title IX cases.
- Each public school shall publish its data in a newspaper of general circulation in the state or make the data available on a publicly accessible web site.

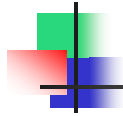
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School Athletics Equity Act

- Each public school shall submit an assurance of compliance with Title IX to its local school board or governing body and provide a copy to PED no later than August 31 of each year.
- The assurance shall be signed by the superintendent or the head administrator of the charter school.
- PED shall publish, in a newspaper of general circulation in the state or on a publicly accessible web site, a list of public schools that fail to submit the assurance of compliance with Title IX.

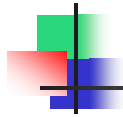
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School Athletics Equity Act

- REPORT TO GOVERNOR AND LEGISLATURE.
 - Beginning December 1, 2011, PED shall submit annually a report on the School Athletics Equity Act to the Governor and the Legislature, including a summary of the data received from the public schools.
 - The report shall include recommendations on how to increase gender equity in athletics in public schools.
 - PED shall post the report on its web site.

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Suggestions

- Conduct a Title IX Audit
 - Work with the NMAA
 - Review your numbers as to enrollment and participation in athletics
 - Surveys of interest
 - Finances in athletics
 - Benefits to each team
 - Review of booster clubs

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Suggestions

- Begin making necessary changes now
 - Be open with parents, coaches and public
 - Work with booster clubs or have plan to address booster clubs
 - Donations policy
 - Control of name and logo
 - Control of athletes.

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Questions



- Thank you

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