

# Gender Equity

## DPI/WIAA Gender Equity Information

### Overview

The following is an excerpt from the "Pupil Non-Discrimination Guidelines For Athletics" co-published by the WIAA and DPI and available from WIAA member schools and the DPI.

Discrimination in interscholastic athletics in Wisconsin has been an item of increasing concern since the 1970-71 school year, when swimming, gymnastics, and track for girls were given state tournament status by the Wisconsin Interscholastic Athletic Association (WIAA). Additional girls' sports were added to the WIAA list each year until the number totaled ten in 1982-83. As of 2004, the state interscholastic program includes 11 sports for girls and 13 sports for boys.

The growth of girls' sports in Wisconsin coincided with the passage of Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in federally funded educational programs. Title IX gave needed impetus for the development of girls' interscholastic sports and expanded opportunities in all educational programs and activities.

Although discrimination exists in many forms, most discrimination problems in interscholastic athletics have been based historically on sex. In the 1997 edition of the guidelines, we begin to address other discriminatory factors, but will continue to draw on the bulk of case law and interpretations by the Office for Civil Rights, which focus on sex or gender.

In the years since 1972, nearly all Wisconsin school districts have experienced some problems in providing equity between the boys' established programs and the girls' growing programs. Problems frequently encountered included developing equitable budgets, sharing facilities, providing comparable facilities, transporting athletes, and scheduling games. Other problems arose in providing publicity, assigning bands and cheerleaders to games, and maintaining consistent athletic codes. Most of the problems at the school-district level have been settled by enlightened leadership and compromise, but it is not unusual for controversies to result in complaints, frequently through the federal Office for Civil Rights or litigation through the courts.

At the state level, it has been necessary for WIAA to change long-standing rules. For example, WIAA rules prohibited all competition between boys and girls. In 1978, the U.S. District Court ruled that qualified girls must be allowed to participate on boys' teams if no girls' team is offered in a sport. This decision, which applies to both contact and noncontact sports, is consistent with other court decisions throughout the country. As a result of this ruling, the WIAA changed its rule.

A number of sex-related athletic problems have yet to be resolved. Equal offerings of some WIAA sports to girls and boys during fall, winter, and spring seasons, reaching agreement at local and conference levels regarding the scheduling of activities on given days of the week, and providing equitable media coverage for boys' and girls' activities are problems that remain to be fully solved.

Although in 1984, the U.S. Supreme Court (in *Grove City College v. Bell*, 465 U.S. 555, 1984) cast serious doubts about the applicability of Title IX to programs such as athletics that receive no direct federal funds, the Civil Rights Restoration Act of 1988 has clarified this point and established that Title IX applies to all programs and activities.

In 1992, the United States Supreme Court decided that monetary damages may be awarded for sexual harassment under Title IX (*Franklin v. Gwinnett County Public Schools*, 503 U.S. 60, 1992). This decision has caused school districts to approach questions of gender equity with a greater sense of urgency, and to focus on the issue of sexual harassment in interscholastic

athletics. To address this emerging and important issue, we have included the appendix section on preventing harassment, hazing, and assault.

In 1985, the Wisconsin Legislature repealed and recreated section 118.13, Wis. Stats., which prohibits discrimination in public schools on the basis of sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional, or learning disability. Section 118.13(2), Wis. Stats., requires school boards to develop policies and procedures, including a complaint procedure, to implement the statute (see Pupil Nondiscrimination Guidelines, DPI Bulletin No. 94050). Section 118.13, Wis. Stats., also requires that the state superintendent decide appeals of the school districts' final decisions on complaints. The statute also authorizes the state superintendent to review school district compliance with the statute and provide school districts with technical assistance.

The issue of whether some mascots, logos, and nicknames used by school athletic teams are discriminatory and offensive began to be widely debated in the press and other public forums in 1991. Some districts and the department received complaints about discriminatory logos and mascots. In 1992, the state superintendent requested an opinion from the Attorney General on the subject of whether American Indian logos, mascots, and nicknames come within the purview of the pupil nondiscrimination statute and its rule. The opinion is straightforward and clear, stating that the use of such logos, mascots, and nicknames is clearly within the purview of the law. Further, the Attorney General found that the administrative rules in PI 9, Wis. Admin. Code, which define the statutory language "discrimination," "pupil harassment," and "stereotyping" are a valid interpretation of the statute. Evaluations of whether a particular use by a school district of an American Indian logo, mascot, or nickname is discriminatory must be made on an individual, case-by-case basis. Discrimination which meets the definitions of either stereotyping or pupil harassment must be shown to be detrimental to constitute a violation of the law. Finally, it is not a necessary element of a finding of discrimination to prove that the district intended to discriminate by adopting such logos or mascots. School districts using mascots, logos, and nicknames which have single gender or ethnic group connotations could be in violation of s. 118.13 and PI 9. In 1994, the state superintendent urged school districts to review their logos and mascots in light of the Attorney General's opinion to determine whether a change was in order.

The Department of Public Instruction and the WIAA have prepared a publication called "The Pupil Non-Discrimination Guidelines For Athletics" available through public schools to provide guidelines for athletic decision makers at the local and conference levels. The guidelines are based upon the spirit and regulations of Title IX, appropriate case law, WIAA rules, section 118.13, Wis. Stats., and PI 9, Wis. Admin. Code, in addition to valuable assistance from professional organizations and the U.S. Office for Civil Rights. Although most attention will focus on sex equity, other areas of possible discrimination that are prohibited under section 118.13, Wis. Stats., will also be discussed. It is intended that these guidelines will help ensure the following:

- No student's athletic participation is to be determined by any of the discriminatory factors listed in section 118.13, Wis. Stats, although the Americans with Disabilities Act has been interpreted to mean that it is not necessary to alter the standard of an activity to give an unfair advantage to opponents in athletic contests.
- Since separate interscholastic athletic programs are conducted for boys and girls, both programs are to be provided with comparable facilities, equipment, coaching, game and practice schedules, training rules, awards, and publicity.

- The levels of competition provided for boys and girls are to be commensurate with student interests and abilities.
- Activities peripheral to the athletic program, such as pompon squads, cheerleaders, and pep bands, are to be assigned to specific games on the basis of a school plan that does not include sex of either athletes or support activity participants as a factor.
- Administrators, coaches, parents, and athletes will understand both the legal and philosophical implications of discrimination in athletics.

**Philosophy** The intent of most civil rights legislation is to ensure equitable treatment for minority groups and individuals who have been subject to discrimination. In Wisconsin, the Legislature enacted section 118.13, Wis. Stats., in an attempt to prevent discrimination in public schools on the basis of sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional, or learning disability.

This statute can significantly enhance interscholastic athletic participation, an important component of education for thousands of boys and girls in Wisconsin. However, ensuring equity in athletics, particularly sex equity, is frequently hindered by stereotypic beliefs about what constitutes safe, appropriate, and acceptable athletic participation for boys and girls. The previously held supposition that only males should be involved in vigorous, competitive sports, often involving physical contact, has lessened, but not to the extent that girls' athletics have achieved a desired level of equity or equality of opportunity.

The spirit and intent of the statute, as it applies to interscholastic athletics, is to provide all boys and girls with the opportunity to participate in equitable athletic programs and activities at comparable levels of support. Nothing in section 118.13, Wis. Stats., or in Title IX, for that matter, requires comparable programs for males and females in athletics.

Both DPI and the WIAA are committed to the concept of separate athletic programs for boys and girls. On the surface, this seems to contradict civil rights decisions in which courts have consistently held that "separate but equal" is in fact unequal. In athletics, however, size, strength, and weight are often the qualifying factors for successful participation, and these factors continue to favor the average boy over the average girl. Consequently, if all sports activities were open equally to both boys and girls, the number of female athletes would be severely curtailed.

The best interests of both boys and girls in athletics seem to be served at this time by separate, comprehensive, comparable programs that are carefully organized and monitored to accommodate the interests and activities of both sexes. Comparable programs, according to DPI/WIAA philosophy, are those offering boys and girls the same or similar activities, with opportunities and resources of equal quality in the areas of coaching, provision of facilities and equipment, assignment of practice and game times, awards, publicity, and transportation. Cheerleaders, pompon squads, and pep bands have individual identities and add to the excitement and attractiveness of high school sports. Appearances at respective boys' and girls' contests must satisfy the same equity comparability standards as those just mentioned. The availability of concessions stands, booster activities, and so forth, cannot be ignored either.

In the matter of boys competing on girls' teams and girls competing on boys' teams, Title IX requirements and subsequent case law generally allow students to cross over only if there is no team for one sex and athletic opportunities for that sex have been limited in the past. In Wisconsin and many other states, this approach allows girls on boys' teams under certain conditions, but it does not allow boys on girls' teams. DPI/WIAA philosophy tolerates the apparent unfairness to boys in this situation only because the alternative would be more

discriminatory. Both agencies monitor related state and federal case law on an ongoing basis. Future court findings will influence interpretations and determinations on this issue.

Athletic programs most successfully reflect the philosophy of equity when the people affected develop plans and policies. Typically, this includes school administrators, athletic directors, coaches, athletes, parents, and representatives of groups that perform at athletic contests. It is especially important to ensure adequate representation of both females and males in planning equitable athletic programs in Wisconsin.

Although most athletic equity problems should be prevented or solved at the district level, it should be emphasized that equity is guaranteed at several levels. Among the sources to be considered are the Fourteenth Amendment to the U.S. Constitution (equal protection), Title IX of the Education Amendments of 1972, the Wisconsin Constitution, section 118.13, Wis. Stats., PI 9, Wis. Admin. Code and the bylaws and rules of eligibility of the WIAA.

DPI and the WIAA are confident in the ability of educational decision makers to guarantee equitable athletic opportunities for all boys and girls in Wisconsin. This is consistent with the Wisconsin tradition of educational excellence and ensures no students are denied participation in activities for discriminatory reasons. WIAA member schools have successfully identified ways to provide greater levels of access to interscholastic athletic programs, and, more important, to afford all public school students with the opportunity to benefit from participation in athletics. A positive approach must continue if Wisconsin's sports offerings are to withstand the scrutiny of critical observers, and, more importantly, to afford all public school students the opportunity to benefit from participation in athletics.