

**FROM THE OFFICE FOR CIVIL RIGHTS...**

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*The following information is a reprint of an article that was written by the OCR in Denver and first appeared in MHSAs mailings in 1995.*

The interests and abilities component of the Title IX Regulation includes a three-prong test. OCR has developed a chart to help districts determine their proportionality between enrollment and athletic participation, and thereby, determine whether they are achieving compliance with the regulation.

1. **Are the number of interscholastic male and female athletic opportunities substantially proportionate to the number of female and male students enrolled?**

**When counting the number of athletes, count the total number of opportunities or filled slots. For example, one male athlete who participates in football in the fall and track in the spring would count as two opportunities.**

**Do not include cheerleaders, drill team, pep band, or other participants whose activity is not an interscholastic athletic activity.**

1994-1995	BOYS	GIRLS	TOTAL
Number Enrolled			
Percentage Enrolled			100%
Number of Athletes			
Percentage of Athletes			100%
Variance			

**SAMPLE**

1994-1995	BOYS	GIRLS	TOTAL
# Enrolled	1600	1525	3125
% Enrolled	51%	49%	100%
# Athletes	235	165	400
% Athletes	59%	41%	100%
Variance	8%	-8%	

IF the number of female/male students enrolled in the District is NOT substantially proportionate to the number of male/female interscholastic athletes, THEN go to step two:

2. **District's history of adding sports**

When is the last time your District added a sport or level of a sport for the underrepresented gender? Within the last three years? Have sports or levels of sports been added on a regular basis, demonstrating that the District is improving the ratio between enrollment and athletic participation?

IF the District does not have a history of adding sports and the ratio between enrollment and athletic participation is not substantially proportionate, THEN go to step three:

3. **Are athletic interests met by the current programs?**

Has the District recently conducted an athletic interest survey of all high school students, to determine whether interests are being met by the current athletic program?

Has the District gathered other reports or information providing justifiable, non-discriminatory explanations for the current athletic program, which may not be meeting the substantially proportionate ratio requirement? (such as lack of available competition in the area or not enough athletes to field a team, budgetary restrictions is NOT a justifiable explanation)

One frequently asked question about athletic interests and abilities is, why don't cheerleaders or drill team members count as athletic participants? At this time, cheerleading and drill team are considered to be primarily support activities for athletic events. According to a 1975 memorandum from the U.S. Department of Health, Education and Welfare, "...drill teams, cheerleaders are covered as extracurricular activities...and are not a part of the institution's athletic program within the meaning of the regulation." Additionally, in 1993 the Assistant Secretary of the U.S. Department of Education stated,

Across the country, drill teams are still intended to provide support for other athletic events. If the events were not scheduled, the drill teams would not regularly perform. The performance by the drill teams are routinely viewed during breaks in the regular athletics programs, similar to the entertainment provided by mascots, cheerleader, and bands.

Another frequently asked question is, if a school achieves proportionality shouldn't a boy be allowed to play on the girls' volleyball team, since girls' are allowed to play on the boys' wrestling team? According to The Policy Interpretation and court cases, girls may participate on boys' non-contact sport teams, but boys are not allowed to participate on girls' non-contact sport teams, to promote equal interscholastic athletic opportunities for girls, to overcome the effects of past discrimination, because the physiological differences between boys and girls might allow boys to displace girls resulting in diminishment of athletic opportunities for girls, and boys historically have had ample opportunity for participation and currently have available to them sufficient opportunities for interscholastic athletic participation.

Some ideas for achieving compliance with the accommodation of interests and abilities include: add a sport for the underrepresented gender; add another level to a presently offered sport (JV or Soph team); and reduce the number of players presently being "cut," whenever retention of these players can give them a meaningful (if not starting) team experience.

OCR is available to provide technical assistance and answer questions you may have. Please feel free to write or call our office if we can be of assistance.