

Title IX Athletics

Q & A

Q *We have made some improvements to the softball field to try and make it equitable with the baseball field, but the reality is the baseball parents and boosters are more prepared to pay for things at the baseball field than the softball parents. It seems like we may never catch up, but some of the softball parents are saying that Title IX requires the fields to be identical (except for dimensions, of course). Does Title IX really require the softball and baseball fields to be the same? (Community College and High School Athletic Directors).*

A In a word – no. Title IX does not require the baseball and softball fields to be the same. BUT . . . it is an outstanding compliance plan, and we strongly urge schools to indeed make the baseball and softball fields the same quality.

Facilities are a common compliance problem under Title IX, and most of the time it is the quality of the softball field that is the main concern. So, if there is indeed a difference in quality, it would be wise to address this now, rather than wait for a complaint to be filed.

For starters, the source of funding that created a better quality baseball than softball field is irrelevant under Title IX – booster club monies, other donations, or fundraised dollars do not relieve the institution of its obligation to make facilities equivalent (see the September 1975 Guidance in the “Resources” tab of the Good Sports, Inc., website at www.TitleIXSpecialists.com). Whether a facility used by an intercollegiate or interscholastic team is on-campus, off-campus, institution-owned, rented from the community, or paid for by institution funds or donations or fundraisers, the facility is whatever is made available to the team, and the institution is responsible for ensuring that facilities are equivalent for women’s and men’s, and boys’ and girls’ teams in the overall program. To permit disparate quality facilities for female and male students because of fundraisers, donations, or rental arrangements would allow an institution to circumvent the intent of Title IX and the obligation to ensure equity for its students.

As for the details of the facilities themselves, they are worth reviewing at length because problems with softball fields have generated lawsuits by parents at both the high school and collegiate levels. Furthermore, the Office for Civil Rights has shown its willingness to conduct “modified reviews” at secondary schools, in which they visit a campus to review just the baseball and softball fields.

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There is no requirement under Title IX that men's and women's teams in the same sports or like sports have facilities of the same quality. The analysis for the Title IX program component of the "provision of locker rooms, practice and competitive facilities" is an overall approach that compares all of the facilities for women's teams to all of the facilities for men's teams. Schools can emphasize different teams for men and women. If the softball field is lesser quality than the baseball field, a school can still comply if, for example, the women's soccer field is better quality than the men's soccer field. However, the reality for many programs is that the women's and men's teams in the same sports often use the same facilities. Men's and women's teams in such sports as basketball, cross country, golf, soccer, swimming, tennis, and track may all use the same facilities. If volleyball is offered only to women, that team often uses the same facilities as the basketball teams. If an institution offers football, the soccer teams may use the same fields as the football team, or the football facilities may be comparable quality to the soccer facilities and/or facilities for most other teams. In other words, in many programs, nearly all men's and women's teams use the same facilities, which is equitable. Often, the only unshared facilities remaining for comparison are the baseball and softball fields.

The many features to be reviewed at baseball and softball fields include: field surface quality, dugouts, scoreboards, fencing, batting cages, bullpen areas, lights, equipment storage, press boxes, spectator seating, concessions, restrooms, locker rooms, and umpire locker rooms. Also reviewed are off-campus versus on-campus facilities, and permanent versus portable features. There is no requirement that identical features be at the softball and baseball facilities, but the same overall analysis applies. If one facility has several features, while the other has very few, a compliance problem is likely. Minutiae do not create compliance concerns, such as the number of hooks for jackets in the dugouts, whether there are billboards advertising the local car dealership at one facility but not the other, or whether the foul poles are 30 feet high at one field and 25 feet high at the other field. With the numerous features that may be provided at baseball and softball fields, a difference for one feature may be negligible or result in a very minor compliance concern. Differences for several features all affecting the same facility simply add up to a lesser quality facility, a definite compliance problem. The following may help in making the simple comparison between baseball and softball fields.

Field Surface Quality. Unless a meteor hit one of the fields, there is no acceptable reason under Title IX for differences in quality when making the simple comparison between baseball and softball field surfaces. Make them comparable.

If the baseball coaches and/or parents spend time sprucing up the baseball field, while the softball coaches and parents do not groom the softball field, it may be because the baseball field is protected by perimeter fencing that keeps others from damaging their efforts. Softball tends to be a more popular recreational sport than baseball. If others are allowed to use the softball field, the softball coaches / parents / athletes have much less incentive to fix the field surface. Instead, the maintenance by school staff will require much greater vigilance to maintain comparable surface quality between the baseball and softball fields. If other school groups or outside groups are given priority at any time for using the softball field (while the baseball team has exclusive use of its field), then the institution likely has two Title IX compliance problems – quality of the softball field due to overuse, and the scheduling for the softball team's games and practices.

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Also, requiring the coaches to be responsible for field maintenance does not relieve the institution of its responsibility to provide equitable facilities. Ultimately, the institution and institution administrators are responsible for failure to comply with Title IX.

Dugouts. A bench separated from the field by a chain link fence with no walls and no roof (as seems to be provided more often at softball fields) is *not* comparable to a bench with walls on three sides and a roof (as seems to be provided more often at baseball fields). It does not matter whether the floor of the dugout is at ground level or below ground level. If the dugout floor is at ground level, the usual result is that spectator seating behind the dugout is more limited or must be raised so spectators may see the field. The square footage of the dugouts need not be identical to comply with Title IX, particularly if the number of athletes on the teams varies significantly. In general, however, this approach can differ between college and high school programs. For example, at the college level, if over the years the baseball team averages 35 participants while the softball team averages 18, it is acceptable for the dugouts at the baseball field to be larger than those at the softball field. The size of the dugouts should be “equivalently adequate.” Thus, if the dugouts at the baseball and softball fields are both built to accommodate 20 athletes, it might be adequate for softball but not for baseball. However, administrators should not build in limitations; if the softball dugouts are constructed so that they just barely accommodate 18 athletes, the dugout is less adequate if a new head coach prefers to have 25 athletes on the softball team. At the high school level, it may be school policy or standard operating procedure to set a limit on the number of participants per team, such as 15, for both baseball and softball and most other sports. Under those circumstances, there is no justification for having softball dugouts smaller than those at the baseball field.

Dugouts should also be constructed of similar quality materials. Tarps over chain link are not equivalent to cinderblock. Providing a single bench that seats 8 is not equivalent to double-tier seating that accommodates 35. Providing only hooks and nothing else in the dugout is not equivalent to providing hooks, helmet racks, and bat racks. If there is a lavatory adjoining the baseball team’s dugout, then there should be one adjoining the softball team’s dugout.

Scoreboards. Scoreboards should be comparable. This does not mean that they need to be identical size or that it violates federal civil rights law if the scoreboard at one facility flashes hits or errors, while the other does not. However, if there is a “jumbotron” at the baseball field complete with instant replay, while spectators need to be armed with their binoculars to find the scoreboard at the softball field, then it is time to identify the local business willing to donate the new scoreboard at the softball field, complete with the company’s name on it if necessary, or find the dollars somewhere in the institution’s funds.

Fencing. This can include outfield fencing and fencing surrounding the facility that limits access to persons who may damage the facility. The fencing provided should be comparable, which includes safety features such as protective tops on chain link outfield fencing.

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Bullpens, Batting Cages. Ideally, pitchers would like to warm-up without distraction, whether they are starting the game or coming in for relief. Whatever space or privacy is provided for bullpen areas should be equivalent at softball and baseball fields. Batting cages should be equivalent, whether at the field or tucked in to the corner of a building located conveniently near other facilities used by the team. If the baseball team routinely has 35 athletes, while the softball team averages 18 athletes, it can be okay for an extra batting cage to be available for baseball. If the baseball and softball fields are near each other and both teams share the batting cages between the fields, that can work well. What does not work well is providing batting cages at the baseball field only and expecting the softball athletes to ask permission of the baseball coaches and/or athletes to use the cages. Use of the cages should not be less convenient for one team than the other.

One consideration is that quality can offset convenience, and convenience can offset quality. For example, a batting cage is conveniently located next to the baseball field, but enclosed only by netting, so it is unusable during inclement weather. The batting cage available to the softball team is in a gym that is not near the softball field, but the softball team has exclusive use of the batting cage and access at all hours of the day and days of the week. The convenience of the batting cage for baseball is offset by the quality of the batting cage for softball. Under Title IX, offsetting benefits means that students of one sex are provided an advantage in some aspect of the program, while students of the other sex are provided an advantage in a different aspect of the program. If the benefits are of equivalent weight or importance, then they may “offset” each other or provide a balance of benefits. The result is compliance with Title IX.

Lights. If the baseball field has lights, then so should the softball field and vice versa. There are other ways to comply with Title IX if one facility has lights but the other does not. However, the team using the facility without lights is at a disadvantage, which should be offset elsewhere in the program. Since providing offsetting benefits usually requires a continuous and conscious effort to achieve and maintain compliance, providing lights at both facilities may be easier in the long run, particularly if the difference of lights is the basis for someone’s filing a lawsuit or complaint that prompts a review of the entire athletics program.

Press Boxes. The usual compliance problem for press boxes is that they are provided at one facility but not the other. Obviously, if the baseball or softball game is taking place in a light drizzle, keeping score and announcing the game over the electronic public address system are more challenging when there is no press box. If the baseball field has a press box and the softball field does not, then rent a trailer if necessary until the local high school shop class, the architecture or engineering class at the university, or some other group can make constructing a press box their class project or team bonding experience. Press boxes should be equivalently adequate and of equivalent quality at the respective fields, which includes consideration of facility features allowing for webcasts.

Equipment Storage. If equipment storage is provided at one field, then it should be provided at the other field. Equipment storage should be “equivalently adequate” and equivalently convenient. If one field has storage but the other does not, this can be mitigated by providing student managers to haul equipment back and forth from the field to storage facilities elsewhere until such time as storage is provided at both fields.

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Spectator Seating. If an institution has offered baseball for decades and as many as 1,000 spectators come to the baseball games, while softball is still developing a fan base and 150 to 200 spectators attend the softball games, then providing seating capacity for 1,500 spectators at the baseball field and 500 at the softball field is fine. Seating capacity at facilities should be “equivalently adequate” under Title IX, based on expected attendance. It is a good plan for institutions to construct facilities at locations that permit expansion to meet increasing attendance in the future. As with other features, there are different levels of quality for spectator seating, ranging from bleachers of warped wood and splinters, or creaking rusting metal, to seats with seatbacks and armrests. The quality of spectator seating should be comparable. If there is seatback seating at one field, then there should be seatback seating at both fields.

Concessions, Restrooms. The convenience and quality of concessions and restrooms are incentives for spectator attendance at any contest. When making the simple comparison between baseball and softball facilities, concessions and restrooms should be the same in regard to convenience and quality.

Locker Rooms. If the locker room for the baseball team is at the baseball field, while the softball team’s locker room is 150 yards (or farther) from the softball field, this minor difference may be offset by the location and/or quality of locker rooms for other teams. This means that even if the analysis for practice and competitive facilities comes down to comparing the baseball and softball fields, the locker rooms provided to teams may be very different quality and in a variety of locations, convenient or inconvenient. For example, even though the men’s and women’s soccer teams use the same practice and competitive fields, the women’s soccer locker room may be conveniently located to the soccer field, while the men’s soccer locker room is not. This could balance out the convenience for the baseball team having its locker room at the field while the softball team does not.

Umpire Locker Rooms. The institution that provides a locker room for baseball athletes and a locker room for the umpires at the baseball field but does not provide a locker room for the softball athletes at the softball field should rethink priorities. Hopefully, the students attending the institution and competing as representatives of the institution would be given more deference than the visiting game officials. If the umpires’ locker room is in a building adjacent to the field, there is less to explain. If locker room facilities are provided for umpires, they should be equivalently convenient in relation to both facilities.

On-Campus Versus Off-Campus. It does not violate Title IX to provide a facility off-campus, while others are on-campus. Many postsecondary and secondary institutions use community golf courses, swimming pools, and local parks for cross country meets. Whether a compliance problem exists depends on quality, availability, and convenience, and the proportions of athletes from each program using off-campus facilities. For example, if most female athletes are using off-campus facilities, while most male athletes have facilities on-campus, that would raise a red flag, and possibly create a compliance problem. But, factors such as quality, priority use, and degree of inconvenience can affect compliance – is the field across the street or across town and 30 minutes drive in traffic? Usually, it is inconvenient for a facility to be off-campus. If a facility is community-owned, then the teams

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may not be able to use a facility at their convenience, but must schedule practices and games around community events. This can influence an institution's compliance for the Title IX program component of the scheduling of games and practice times. However, community facilities may have features, such as lights, that on-campus facilities do not, and this can offset the inconvenience of the off-campus location.

Portable Versus Permanent Facilities. Some "permanent" restrooms and concession facilities are on the verge of crumbling. Some portable facilities – for example, large trailers – are spotless and serve as concession stands complete with stoves, ovens, sinks, etc., and restroom facilities with all plumbing in full operation. In other words, portable facilities may be comparable to and even better than permanent facilities. The question to answer is not whether the baseball field or the softball field has more permanent or portable features; the question to answer is whether the facility features are the same quality.

Again, between baseball and softball fields, a difference for one feature may create a very minor compliance concern. Differences for several features all affecting the same facility simply add up to one team being provided a lesser quality facility than the other team; in effect, a compliance problem.

Like most Title IX issues, compliance for facilities is based on a review of the overall women's program compared to the overall men's program. If there are differences between the softball and baseball fields that create a compliance problem, then it is likely to be a "disparity" under Title IX rather than a violation that suggests a program-wide compliance problem capable of jeopardizing federal funding to the institution. Nevertheless, unlike some other benefits for student-athletes, facilities—especially outdoor facilities—are readily visible, so any disparity tends to be readily visible.

In many cases, facilities problems may be remedied without new construction or renovation. For example, facility use may be alternated annually between men's and women's teams to achieve compliance. This may be more challenging for the sports of baseball and softball, but using the same facility is an option for the institution that can provide a makeshift pitcher's mound (which may be more plausible at the secondary education level).

Facilities are a significant benefit in an athletics program; they affect daily team operations. The Title IX program component of locker rooms, practice and competitive facilities is also an area where compliance problems are common. Facilities, more often than other issues, are the basis for formal complaints and even lawsuits. Thus, institution officials would do well to remedy facilities problems sooner rather than later. (34 C.F.R. § 106.41(c)(7); PI VII.B.3.f. page 71417)

