

# Guide to 14.8

## Equity in Athletics: Accommodating Student Interests and Abilities (Three-Part Test)

**Note:** If your LEA operates, sponsors, or provides interscholastic, club, or intramural athletics, submit evidence for this item.

### Legal Background

#### *Student Athletic Interest Survey*

Title IX and state law require LEAs to ensure girls and boys have equitable opportunities, benefits, and treatment in athletic programs. Each LEA must administer the OSPI student athletic interest survey at least once every three years at each building that offers interscholastic athletics. This survey helps schools determine whether the school's athletic program fully and effectively meets students' interests and abilities.

The LEA disaggregates and summarizes its survey results by sex and by building and considers these results when planning and developing which recreational and athletic activities to offer and when determining whether equal opportunities are available to members of both sexes.

#### *Three-part Test*

Title IX and state law require LEAs to ensure girls and boys have equitable opportunities, benefits, and treatment in athletic programs. Each building that offers an interscholastic athletic program must equally accommodate the interests and abilities of male and female students as demonstrated in one of the following ways ("Three-Part Test"):

Part 1: The ratio of male/female student enrollment is substantially proportionate to the ratio of male/female athletic participation,

Part 2: The school has a history and continuing pattern of program expansion for the underrepresented sex, or

Part 3: The school's current program fully and effectively accommodates the interests and abilities of the underrepresented sex as demonstrated by the athletic interest survey and other requests for specific sports.

**Legal Authority:** Title IX, [34 C.F.R. Sec.106.41](#); RCW [28A.640.020](#); WAC [392-190-025](#), [392-190-030](#), [392-190-040](#), and [392-190-045](#).

#### Key Resources:

[OSPI Student Athletic Interest Survey](#)

[Summary Worksheet](#)

[Athletic Opportunities Tool](#)

[Sex Equity in Athletics Training Handout](#)



## Student Athletic Interest Survey (14.8.A & B)

### Evidence to Provide

- A. A complete copy of the [student athletic interest survey](#) instrument administered within the last three years, and date it was last administered.

*For 14.8.B, provide evidence for a middle/junior high school and high school (where applicable).*

- B. Student athletic interest survey results for each selected building, with a summary of student responses *disaggregated by sex* (use the OSPI's [Sample Summary Worksheet](#) or equivalent), including at a minimum:
1. The number of students surveyed.
  2. The number of students enrolled (i.e., eligible to take the survey).
  3. The top five sports requested, including the number of students who expressed interest in each sport.
  4. The top reasons for non-participation.

### Tips for Program Review

- Survey results need to be provided for one middle/junior high schools and one high schools (where applicable). For 14.8.C, please be sure to provide evidence *for the same schools* as provided for 14.8.B because OSPI monitors will review the evidence together.
- LEA's are required to use the [OSPI Student Athletic Interest Survey](#) (translated surveys are available on OSPI's [Sex Equity in Athletics](#) webpage). While an LEA may add questions to the survey or modify the formatting for online use, LEAs must request OSPI approval before modifying the content of the survey.
- OSPI provides a [sample summary worksheet](#) to assist LEAs in compiling and analyzing the survey data. While use of OSPI's sample summary worksheet is not required, it is helpful for documenting the LEA's survey results for girls and boys separately at each building.
- Be sure to consider the results of the survey when evaluating each school's athletic programs under Part Three the Three-Part Test (see item 14.8.C below for more information).

## Three-Part Test for Athletic Opportunities (14.8.C)

### Evidence to Provide

*For 14.8.C, provide evidence for a middle/junior high school and high school (where applicable). Please submit evidence for the same schools previously selected in 14.8.B.*

- C. A completed Three-Part Test analysis for each selected building, using OSPI's [Athletic Opportunities Tool](#).

### Tips for Program Review

- The [Athletic Opportunities Tool](#) is an Excel file with the Three-Part Test for assessing whether a school is providing nondiscriminatory participation opportunities for boys and

girls. While use of the Athletic Opportunities Worksheet is required for Program Review, OSPI recommends the LEA use this worksheet for reviewing each school's athletic opportunities as part of its annual athletics evaluation.

- Be sure to **complete all three parts** of the worksheet. It is most common for schools to meet compliance with Part Three of the Three-Part Test. Also, if an LEA cannot demonstrate compliance with any part of the Three-Part Test, OSPI's action required for the LEA will likely focus on the Part Three analysis.
- In line with federal guidance, **activities like cheer and dance** are generally not considered athletic opportunities for Title IX purposes and should not be included in the athletic participation numbers considered in Part One of the Three-Part Test. Contact the OSPI Equity and Civil Rights Office for more information or see OCR's [Dear Colleague Letter: Athletic Activities Counted for Title IX Compliance](#).
- In determining whether a school's current program fully and effectively accommodates the interests and abilities of an underrepresented sex in **Part Three of the Three-Part Test**, be sure the analysis includes consideration of the following questions regarding the feasibility of expanding opportunities:
  - Is there an unmet interest in a particular sport (see the results of the Student Athletic Interest Survey and other requests)?
  - Is there sufficient ability to sustain a team in the sport?
  - Is there a reasonable expectation of competition for the team?
- In line with federal guidance, OSPI will not consider concerns over **cost** of expanding athletic opportunities for an underrepresented sex as an acceptable response to the feasibility of addressing unmet interests.

## Frequently Asked Questions

### How often must schools administer the student athletic interest survey?

State law requires that schools administer the athletic interest survey at least **once every three years**. Some schools survey students more frequently to help fine-tune their athletic programs on a regular basis.

### What is an acceptable response rate for the survey?

No specific response rate is required. However, OSPI will assess each school's survey on a case-by-case basis. OSPI generally affords more weight to a survey with a higher response rate but will also consider the school's efforts to encourage participation, the target population surveyed, and treatment of nonresponses.

Schools should take steps to allow—and encourage—all students to participate in the athletic interest survey. Schools should take steps to widely publicize the survey, give students adequate time to respond, and send reminder notices as needed. To ensure high response rates, schools can administer the survey as part of a mandatory student activity, such as during course registration or advisory period.

## Why are cheer and dance typically not considering athletic opportunities under Title IX?

Countable athletic participation opportunities must take place in the context of a “sport.” While OCR does not have a specific definition for “sport,” it sets out a [case-by-case evaluation that considers several factors](#) for determining whether a sport or activity is counted as an athletic opportunity, including a sport or activity’s **program structure and administration, team selection and preparation, and competition structure and opportunities.**

To date, OCR has not considered activities like competitive or sideline cheer to be athletic opportunities for Title IX purposes because it does not consistently meet the expectations of the factor analysis outlined above. As a result, OSPI strongly discourages schools from including competitive or sideline cheer participants when counting a school’s athletic participation opportunities for purposes of Part One, or to first consult with their legal counsel or OCR.

Other activities and sports that have generally not been counted as athletic opportunities for Title IX purposes include dance, Unified Sports, and eSports.

## What is substantially proportionate?

OCR considers athletic opportunities to be substantially proportionate when the number of opportunities that would be required to achieve proportionality would not be sufficient to sustain a viable team. A “viable team” would be a team which there are enough interested and able students and enough available competition to sustain an interscholastic athletic team.

## Learn More About Sex Equity in Athletics

- OSPI’s [Sex Equity in Athletics](#) webpage
- OSPI Equity and Civil Rights Webinar: [Three-Part Test](#) | [Sex Equity in Athletics Training Handout](#)
- OSPI [Survey Instructions](#), including instructions for administering the survey and analyzing the results, information about the Three-Part Test, and frequently asked questions
- OCR [Dear Colleague Letter: Part Three of the Three-Part Test \(2010\)](#)
- OCR [Dear Colleague Letter: Athletic Activities Counted for Title IX Compliance](#)