

## **Missing Report Cards: Available data show stark gender inequality in sports programs, and many California public schools shirk reporting requirement**

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Legal Aid at Work

Fair Play for Girls in Sports Project

### Executive Summary

Title IX, a federal law, which is marking its 45th anniversary this month, requires gender equity in all educational programming, including sports, in schools that receive federal funding. Specifically, female and male students must experience gender equity in the athletic treatment and benefits they are afforded by their educational institutions and in the opportunities provided in the form of individual and team sports. As recipients of federal funds, California public and charter schools are covered by Title IX.

Given the difficulty in measuring the progress made by public and charter K-12 schools in complying with Title IX, in 2014, the California state legislature passed SB 1349. It mandated that all schools, following the 2015-2016 school year, and thereafter on an annual basis, post on the school's website (or district site) metrics on students' participation in competitive sports by gender. In particular schools must report: the numbers of female and male students playing interscholastic sports; the levels at which they each are playing (*e.g.*, JV, Varsity); and the athletic opportunities available. The website reporting must also include the number of female and male students enrolled, so as to provide a comparison to the numbers of those female and male students participating in sports programs. The intent behind SB 1349 was to produce data that could shed light on longstanding gender inequity in school athletic programs and to spur schools, girls, parents, and community members to address the problem.

Based on a new study, conducted by Fair Play for Girls in Sports (a project of Legal Aid at Work), we conclude that public schools of all sizes and types serving the full range of California communities are not complying with SB 1349, by failing to post required data. And the data that has been posted and analyzed strongly suggests that girls continue to face dramatic inequities in athletic opportunities.

The imbalance matters in the number of girls enrolled in school in contrast to the number participating in sports because girls are being denied equal access to sports, and the facilities, coaching, training, and benefits related to sports participation—in disregard of Title IX and



fundamental fairness. There are both short- and long-term benefits girls gain from participation. Girls who play sports experience better health, more academic success, and greater future prospects in employment. In sum, failure to share key data that would uncover Title IX problems and trigger solutions, results in denying girls a better future.

Fair Play analyzed 107 randomly selected high schools and found that less than half — just 48 percent — had posted any data at all about the participation rates by gender in their athletic programs as of June 2017. Among those that did post data, for the 2015-2016 school year, the 2016-2017 school year, or both, we found an average gap of 6 percentage points between the numbers of girls' enrolled in the schools and the numbers of girls participating in sports programs. This finding may be conservative because it may be reasonable to assume even bigger participation gaps at schools that do not comply at all with SB 1349.

Among schools that posted data, girls are afforded far fewer athletic opportunities than they should be given their enrollment numbers. This is the case even though girls account for approximately one half of all enrolled students. And studies demonstrate that girls are equally interested in playing sports.

We also found that the lack of compliance with SB 1349 does not correlate with the racial, ethnic or socioeconomic composition of the school's student body; inequities in sports for girls in California and failure by schools to post data that could shed light on the issue appear to cross racial, ethnic, and socioeconomic lines.

Our report opens with a brief history of Title IX. And we describe the tools that SB 1349 creates to help identify and remedy gender-based inequities in schools and school districts. We then review the requirements of SB 1349 and other similar reporting mandates and their limitations in exposing gender inequities. Finally, we describe our methodology, our findings with regard to compliance, and a summary of the manner in which the data is being reported. We further discuss what constitutes a sport under Title IX. We conclude with recommendations for ensuring that all schools and school districts comply with SB 1349 and suggestions for ways that they can improve their reporting on gender equity in sports. Finally, we offer a range of tools students and their advocates can use in the fight for gender equity in sports programs across California.



California public and charter schools must step up to meet the obligations of SB 1349 by posting the specified data so that students, parents, guardians, school leadership, and the community can apply what they learn and ensure girls finally enjoy the promise of equity afforded under Title IX.

### Title IX's History and the Inequity that SB 1349 Seeks to Remedy

The federal law known as Title IX,<sup>i</sup> which took effect 45 years ago, requires gender equity in all programs and facilities — including sports — at all schools that receive even a dollar of federal funding. The law seeks to ensure that girls are equally accommodated by the school's athletic offerings.<sup>ii</sup> The law applies to elementary, middle, and high schools and institutions of higher education, but K-12 schools often are not held accountable for violating Title IX's mandates. And



few attorneys or other advocates are monitoring gender equity due to lacking resources and community-wide inattention to inequity issues, especially at the K-12 school level.

Unfortunately, many K-12 schools simply don't abide by Title IX, and many girls and their families are unaware of their rights and how to exercise them. Members of the public need clear information about gender inequity in sports so they can start leveling playing fields throughout

California. California's Legislature passed SB 1349<sup>iii</sup> in 2014 with the goals of shining a light on sports participation and encouraging greater compliance with Title IX.

Sponsored by State Sen. Hannah-Beth Jackson (D-Santa Barbara), SB 1349 requires each school to post data on its website (or on its district's website) about the gender breakdown of its students who participate in competitive sports, starting in 2015-2016. This provides a ready gauge — a "report card" on sports opportunities — that students, parents, guardians, school staff, coaches, and administrators can use to assess whether a school is providing girls with equal opportunities in athletics.

Schools have long been required to post or publish information about test scores and other academic targets but were not previously required to disclose athletic participation data on their school or district site. Ensuring that girls have equal opportunities to play sports allows them to reap short-term and lifelong benefits. In comparison with non-athletes, those benefits experienced by female athletes include improved health and academic performance and — later in life — 7 percent higher wages.<sup>iv</sup> Girls who don't get the chance to play sports also miss

out on the related health, academic, and workforce advantages of participation, and they are not experiencing Title IX's promise of gender equity in schools.

New analysis<sup>v</sup> from Fair Play for Girls in Sports reveals that schools are reporting SB 1349 data at a low rate, and even schools that are complying do not have equitable sports programs. Across California, 463,137 boys participate in competitive (private and public) high school sports but only 338,980 girls do, a difference of 124,157, despite girls' strong interest in sports



participation.<sup>vi</sup> That means girls make up just 42 percent of high school athletes, while high school enrollment statewide is about 49 percent female, a gap of nearly 7 percentage points. Our analysis of schools in compliance with SB 1349, conducted by a random sample of public high schools, reveals a similar average 6 percent gap<sup>vii</sup> between the enrollment of girls and girls' athletic representation; this figure includes only those schools in our sample that have posted clear data. That is, on average, 90 more female athletes should be added to each of these

randomly selected schools' athletic programs to ensure that the percentage of girls participating in after-school sports matches the share of girls in the student body (the selected schools have an average enrollment of 1,765).

Federally funded California schools must step up to meet the demands of the law by posting athletics data so that students, parents, guardians, school staff, coaches, and the community can better understand and can act to remedy gender inequities.

#### Lack of accurate, current data led to passage of SB 1349

On the federal level, the web-based Equity in Athletics Data Analysis<sup>viii</sup> provides information about the number of female and male athletes at colleges and universities that receive federal funds, in comparison to enrollment, but such comprehensive data is not available for primary and secondary schools.<sup>ix</sup> The federal Department of Education hosts a civil rights data collection website<sup>x</sup> with limited information about the number of female and male athletes and enrollment at the high school level, but this information is difficult to locate, not available on school or district websites where parents can find it, and it is often outdated. Efforts to create a federal disclosure requirement for primary and secondary schools have failed.<sup>xi</sup> At the state level, California's Department of Education does not require schools to report or post athletics data. And information on participation in sports is not in the department's DataQuest system.<sup>xii</sup>

## SB 1349's Requirements

SB 1349 requires each California public school that offers competitive athletics at the elementary or secondary level, including charters, to post:

- their enrollment, by gender;
- the number of male and female students participating in competitive athletics<sup>xiii</sup>; and
- the number of teams and competition levels afforded to girls and boys.

Schools must post the information annually on their website or their district's website.

## Methodology

In our study,<sup>xiv</sup> Fair Play randomly selected 107 federally funded high schools<sup>xv</sup> in California to examine SB 1349 compliance.<sup>xvi</sup> We searched for SB 1349 data on the websites covering each



school or its district. Fair Play analyzed the quality of the data, with a focus on whether the total enrollment and athletic participation figures are posted by gender. From the federal Department of Education's Office for Civil Rights Civil Rights Data Collection website, we gathered information on each school's student body's racial/ethnic make-up, and the share of its students who qualify for free and reduced-price lunch.

A note on our math: As indicated, we compared the share of boys and girls in a school with the share participating in sports to come up with the percentage known as the "participation gap." The gold standard under Title IX is that if enrollment is 49 percent girls, then 49 percent of participants in athletic programs should be girls. Across the schools clearly reporting data under SB 1349, we found enrollment is about 49 percent female, but girls made up just 43 percent of sports program participants and boys made up 57 percent. Thus, in a hypothetical sample school of 1000 students, with 490 girls and 510 boys enrolled, there would be just 215 female athletes (43 percent) and 285 male athletes (57 percent). This hypothetical school would need to add 59 girls to existing teams and/or add new teams and levels to bring girls' athletic participation up to 49 percent of the program and make it equitable.

Extrapolating from the average 6-percentage-point gap to the total enrollment at the schools in our sample that have reported SB 1349 data, we found that on average 90 more girls should be participating in sports at each school (note: the average overall enrollment was 1,765

students).<sup>xvii</sup> There are over 11,000 K-12 public schools in California, including charter schools (which often accept federal funds rendering them covered by Title IX), and approximately three million female and three million male students enrolled.<sup>xviii</sup> Considering simply California's 1,339 traditional high schools, there are approximately 120,510 girls who should be participating in sports that are currently sitting on the sidelines, if 90 more athletes are added to each high school.<sup>xix</sup> Girls wish to play in greater numbers but are cut, or their schools don't offer novice-level to encourage learning, and girls aren't surveyed about which sports they would like to play.<sup>xx</sup> And the number is probably greater: It's reasonable to anticipate even bigger participation gaps at schools that do not post data in compliance with SB 1349.

### Findings about SB 1349 compliance

Our review of SB 1349 compliance by a random sample of 107 high schools in California shows:

- Just 48 percent (51 of 107) are reporting SB 1349 athletics data on their school and/or district websites, meaning less than half of schools subject to the law are following it.
- Schools posting data have average non-white enrollment of 70.1 percent, nearly the same as schools in our sample that are not posting data (70.5 percent), suggesting that non-compliance is not tied to a school's racial/ethnic makeup.
- Schools posting data have students who qualify for free and reduced-price lunch at a rate of 53.6 percent, nearly the same rate as schools not posting data (54.5 percent), revealing that non-compliance also does not correlate with this gauge of the socioeconomic status of a school's student body.



Thus, lack of compliance with SB 1349 does not appear to correlate with the racial or socioeconomic composition of the community a school serves. Accordingly, these data reporting compliance issues appear to transcend the racial and socioeconomic makeup of California schools.

### Findings on how schools report SB 1349 data

There is a great deal of room for improvement because so few schools post SB 1349 data. Following are our findings about the data that has been posted so far under SB 1349.

*Posted material varies widely* — Among schools in our sample that complied at least in part with SB 1349 in 2016 and 2017, posted data varies in at least six ways. This makes it difficult for

a parent, guardian, student, community member, coach, or even school staff member to compare or use the information. Our research revealed these variations:

1. Several reporting schools failed to tally participation in athletics by gender and provided only sub-totals for each team or sport, rendering it hard to evaluate participation rates overall.
2. Schools posted very different levels of information. One school, for example, simply posted the number of girls and boys who participate in sports and the total number of male and female students, without noting sports or levels offered. Others schools posted a great deal more than required, including information on coaching.
3. Some districts combined data for all their schools into one document, even where the schools maintain their own websites and should place the data there. This made it harder to find and use the information on a localized level.
4. Finding the information typically requires a search of non-obvious terms like “SB 1349” or “Title IX” on the school site. Most schools place the data somewhere within the athletics area of the school website, under headings such as “Title IX” or “SB 1349,” but some label it with generic terms like “athletic data.”
5. Some schools explained the data and why it was posted, and others did not. Providing more context for the posting will help the community understand why the school or district is providing athletic participation data.
6. Only a handful of the randomly selected schools we studied explain how to follow up. At least one high school included the name and contact information for their Title IX Coordinator, along with their athletics data, in case a student wishes to discuss inequities with a staff member or administrator. Some schools include an athletic interest survey link, possibly in an attempt to learn which sports the underrepresented sex would like to play. Schools should provide follow-up contact information.

Note: Newly-passed California law SB 1375, will soon require (as of July 1, 2017) federally-funded California schools to post information regarding Title IX coordinators and related information.

*Better compliance need not be costly or time-consuming* — Non-reporting schools already compile much of the same athletics participation data for the California Interscholastic Federation (CIF), a nonprofit empowered by the state to govern private and public high school athletics, and by other entities such as the federal Department of



Education's Office for Civil Rights. In fact, CIF has surveys its member schools about sports participation for several years.<sup>xxi</sup> But CIF's Participation Census hasn't required schools to tally their male and female athletes to give the big picture of how many spots girls and boys fill throughout a school's athletic program. Therefore, it should be relatively simple for schools to post the already collected data online in compliance with SB 1349. Fair Play, within its toolkit of SB 1349 materials (detailed below) offers a calculator for individuals to determine the number of girls a school should add to its athletic program to reach proportionality.

#### Cheerleading confusion – what constitutes a sport

Of the schools we studied that post athletics data in compliance with SB 1349, several attempted to include cheerleading. Currently, cheerleading is not recognized as a sport in California, based on Title IX guidance as interpreted by the courts and the federal Department of Education's Office for Civil Rights. For cheerleading to count as compliant with Title IX, participants must receive the same types of benefits, treatment, and opportunities as comparable interscholastic athletes. Those include robust competition schedules, adequate coaching, and other support, regardless of whether CIF or the state Legislature labels the activity a "sport." These standards will help ensure that girls reap the benefits of true athletic participation and don't simply cheer on other teams.

#### Conclusion and recommendations for improving compliance with SB 1349

Schools across California must immediately comply with SB 1349 and remedy the reporting deficiencies that Fair Play revealed. Girls need and deserve the lifelong benefits of participating in competitive sports, and federal and state laws require schools to provide girls and boys with equal access and opportunities to participate in competitive sports.



We recommend the following four improvements in reporting of SB 1349 data:

- Schools and districts can readily use the gender data they already compile regarding enrollment, athletes, teams, and levels, and they should do so;
- Schools should make their SB 1349 data easy to find online (preferably on their own websites rather than a district website);

- Schools should include an explanation with their SB 1349 data of where it comes from, what it indicates, why it's important, and how an individual can follow-up on inequity;
- The data's key elements — enrollment, numbers of athletes, numbers and levels of teams — must be clear and highlighted.

## **Appendix 1**

To help empower students and community members to take action, we offer the following resources:

- a fact sheet on SB 1349;
- a brochure on Title IX to easily understand and explain to others the law's requirements;
- a sample demand letter to request change in any local school;
- an online calculator to determine how many more female athletes should be added in any given school;
- a link to our short training video on Title IX;
- a fact sheet regarding cheerleading and whether/how it can be considered a "sport"; and
- a webinar as to how Title IX operates in the K-12 schools athletics context.

**Appendix 2**

Below is a sample posting (note: all sports, levels, and figures are simply hypothetical).

*SB 1349 – Title IX Data: Pursuant to SB 1349, Education Code Section 221.9, beginning in the 2015-16 school year and every year thereafter, public primary and secondary schools (including charters) in California are required to publicly report information regarding the school’s competitive athletics to include total enrollment, classified by gender; the number of students enrolled at the school who participate in competitive athletics, classified by gender; and the number of boys’ and girls’ teams, classified by sport and by competition level.*

<b>Student Gender</b>	<b>Total School Enrollment</b>		<b>Number of Athletes</b>	
<b>Female</b>	500		200	
<b>Male</b>	500		200	
<b>Sport, Level, Co-Ed(?)</b>	<b>Girls’ Teams</b>	<b>Number of female athletes</b>	<b>Boys’ Teams</b>	<b>Number of male athletes</b>
Baseball, Varsity	0	0	1	15
Baseball, JV	0	0	1	12
Basketball, Varsity	1	10	1	10
Basketball, JV	1	10	1	9
Cross Country, Varsity, Co-Ed	1	20	1	15
Football, Varsity, Co-Ed	0	2	0	25
Football, JV	0	0	0	25
Soccer, Varsity	1	20	1	15
Soccer, JV	1	19	0	14
Softball, Varsity	1	15	0	0
Softball, JV	1	15	0	0
Tennis, Varsity	1	16	1	13
Track, Varsity, Co-Ed	1	25	1	20
Volleyball, Varsity	1	15	1	12
Volleyball, JV	1	18	0	0
Wrestling, Varsity, Co-Ed	1	5	0	15
Lacrosse, Varsity	1	10	0	0
<b>TOTALS</b>	<b>13</b>	<b>200</b>	<b>9</b>	<b>200</b>

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<sup>i</sup> 20 U.S.C. § 1681, et. seq.

<sup>ii</sup> Under Title IX, a school may meet the law's requirements in one of three ways: (1) by showing substantial proportionality, or a close mirroring in the percentage of female students enrolled and female students participating in athletics; (2) by showing a history and continuing practice of program expansion for girls; or (3) showing girls' interests in sports have been fully accommodated such that no more wish to play than currently do, such as through athletic interest surveys.

<sup>iii</sup> Cal. Educ. Code § 221.9.

<sup>iv</sup> "Based on the findings from 23 studies examining the effect of moderate and vigorous physical activity during adolescence on cancer risk, those who had the highest physical activity during adolescence and young adulthood were 20% less likely to get breast cancer later in life." WOMEN'S SPORTS FOUND., *Her Life Depends on It III*, (Jan 21, 2016), available at [http://www.womenssportsfoundation.org/wp-content/uploads/2016/08/hldoi-iii\\_full-report.pdf](http://www.womenssportsfoundation.org/wp-content/uploads/2016/08/hldoi-iii_full-report.pdf); see also NAT'L WOMEN'S LAW CTR., *Finishing Last: Girls of Color and School Sports Opportunities*, (May 2015), available at [https://nwlc.org/wp-content/uploads/2015/08/final\\_nwlc\\_girlsfinishing\\_last\\_report.pdf](https://nwlc.org/wp-content/uploads/2015/08/final_nwlc_girlsfinishing_last_report.pdf) ("Although often overlooked, girls—particularly girls of color—drop out at high rates. . . . Playing sports increases the likelihood that they will graduate from high school, have higher grades, and score higher on standardized tests."); Betsey Stevenson, *Beyond the Classroom: Using Title IX to Measure the Return to High School Sports* (Nat'l Bureau of Econ. Res., Working Paper No. 15728), (Feb. 2010), available at <http://www.nber.org/papers/w15728.pdf> (noting girls who play sports in high school make 7% higher wages later in life compared to their non-athletes peers).

<sup>v</sup> All data supporting the conclusions of this report can be made available upon request.

<sup>vi</sup> NATIONAL FEDERATION OF HIGH SCHOOLS, *2015-2016 Summary of Athletics Participation Totals By State* at 56, available at

[http://www.nfhs.org/ParticipationStatistics/PDF/201516\\_Sports\\_Participation\\_Survey.pdf](http://www.nfhs.org/ParticipationStatistics/PDF/201516_Sports_Participation_Survey.pdf).

<sup>vii</sup> Federal courts have found educational institutions in violation of Title IX for participation gaps of 6.7% (*Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 856–57 (9th Cir. 2014)) and 3.62% (*Biediger v. Quinnipiac Univ.*, 691 F.3d 85, 91, 105–07 (2d Cir. 2012)).

<sup>viii</sup> Equity in Athletics Data Analysis, U.S. Dept. of Education, available at <https://ope.ed.gov/athletics/>.

<sup>ix</sup> For more information on the federal Equity in Athletics Disclosure Act, see National Women's Law Center, *Legislative Developments: The Equity in Athletics Disclosure Act, Breaking Down Barriers*, available at [https://nwlc.org/wp-content/uploads/2015/08/BDB07\\_Ch7and8.pdf](https://nwlc.org/wp-content/uploads/2015/08/BDB07_Ch7and8.pdf).

<sup>x</sup> U.S. DEPT. OF EDUCATION, *Civil Rights Data Collection*, available at

<https://ocrdata.ed.gov/DistrictSchoolSearch> (currently, data is from 2013 and is self-reported by schools).

<sup>xi</sup> See e.g., The High School Sports Information Collection Act of 2007, available at <https://www.congress.gov/bill/110th-congress/senate-bill/518> (proposing the requiring of data collection from secondary schools regarding athletic programs, including participant gender and race, team schedules, budget, and other information).

<sup>xii</sup> CA Dept. of Education, *DataQuest*, available at <http://www.cde.ca.gov/ds/sd/cb/dataquest.asp> (facts about California schools and districts).

<sup>xiii</sup> "Competitive athletics' means sports where the activity has coaches, a governing organization, and practices, and competes during a defined season, and has competition as its primary goal." Cal. Educ. Code § 221.9.

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<sup>xiv</sup> This work, report, and related materials were made possible with support from the Flom Incubator Grant Program of the Skadden Foundation and the assistance of several attorneys and law students.

<sup>xv</sup> Several dozen California public/charter middle schools were examined as well, given SB 1349 also applies to such schools, yet very few reported any data. This analysis was confined primarily to high schools, particularly given the great amount of resources and time focused on high school sports. Middle school sports are a critical feeder into high school athletics and thus, middle schools must increase compliance so as to provide data on gender inequity, allowing action and improvement.

<sup>xvi</sup> Note, the majority of data posted references the 2015-2016 school year enrollment and athletics data. However, a handful of schools have begun posting their 2016-2017 data as this school year concludes, in accordance with the requirement that such data be shared every year.

<sup>xvii</sup> Under Title IX, a school may meet the law's requirements in one of three ways: (1) by showing substantial proportionality, or a close mirroring in the percentage of female students enrolled and female students participating in athletics; (2) by showing a history and continuing practice of program expansion for girls; or (3) showing girls' interests in sports have been fully accommodated such that no more wish to play than currently do, such as through athletic interest surveys. Note, a few schools had a negative participation gap, meaning girls' share of sports opportunities was larger than their share in enrollment, but this was rare.

<sup>xviii</sup> See CalEdFacts, *Fingertip Facts on Education in California*, (Sept. 29, 2016), <http://www.cde.ca.gov/ds/sd/cb/ceffingertipfacts.asp>.

<sup>xix</sup> *Id.*

<sup>xx</sup> “[S]chools cannot use a myth that ‘boys are more interested in sports than girls,’ to justify providing more participation opportunities for boys than girls. There is no research that shows that boys are more interested in sports than girls. We do know that girls are just as interested in sports as boys when they are young. A combination of lack of opportunity, lack of peer group support when they do play sports and lack of encouragement causes them to drop out of sports at a rate that is two times greater than boys.” WOMEN’S SPORTS FOUNDATION, *Mythbusting: What Every Female Athlete Should Know!*, (Aug. 11, 2011) available at <https://www.womenssportsfoundation.org/athletes/for-athletes/know-your-rights/athletes/mythbusting-every-female-athlete-know/>

<sup>xxi</sup> CALIFORNIA INTERSCHOLASTIC FEDERATION, *Participation Census*, (June 1, 2017), available at <http://www.cifstate.org/coaches-admin/census/index>.