

EXPANDING THE POSSIBILITIES

finishing last

girls of color and school sports opportunities

ABOUT THE AUTHORS

The National Women's Law Center (NWLC) is a nonprofit organization working to expand opportunities for women and their families, with a major emphasis on education and employment opportunities, women's health and reproductive rights, and family economic security.

The Poverty & Race Research Action Council (PRRAC) is a civil rights policy organization convened by major civil rights, civil liberties, and anti-poverty groups in 1989-90. PRRAC's primary mission is to help connect advocates with social scientists working on race and poverty issues, and to promote a research-based advocacy strategy on structural inequality issues.

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Table of Contents

Introduction and Executive Summary	1
Girls of color are not receiving equal opportunities to play school sports	3
School-sponsored sports opportunities are particularly important for girls of color, yet schools are failing to provide them with equal chances to reap the many benefits of participation.....	6
The disparate sports opportunities provided to girls at heavily minority versus heavily white schools raise questions under the civil rights laws prohibiting gender and race discrimination	8
Policymakers and communities must increase their efforts to ensure that girls of color receive equal opportunities to secure the advantages associated with playing sports	9
Conclusion	11

Introduction and Executive Summary

OUR NATION’S SCHOOLS REMAIN HIGHLY SEGREGATED ALONG RACIAL AND ECONOMIC LINES, and schools with high concentrations of minority and low-income students generally have fewer resources for academic and extracurricular activities.¹ Opportunities to play sports, which provide valuable benefits, are diminished for all students at these schools, but are particularly limited for girls. In fact, when it comes to girls of color and chances to play school sports,² the reality is bleak: they receive far fewer opportunities—defined as spots on teams—than white girls, white boys, and boys of color.³ It is an inequality that has gone largely undocumented due to limited research. This report uses an innovative research strategy—identifying high schools where the student body is either 90 percent or more white or 10 percent or less white—to show the lack of sports opportunities on the basis of race and gender.

While heavily minority schools⁴ typically have fewer resources⁵ and provide fewer spots on teams compared to heavily white schools, they also allocate those fewer spots unequally such that girls of color get less than their fair share. So even though girls overall still receive fewer opportunities to play sports than boys, girls in heavily minority schools are especially shortchanged. In fact, nationwide, 40 percent of heavily minority schools have large “female opportunity gaps,” compared to only 16 percent of heavily white schools (see box on page 2 for explanation of Title IX requirements and what constitutes a large female opportunity gap).

These national inequities persist at the state level. Thirteen states have a substantial number (20 or more) of both heavily minority and heavily white high schools, which allows for a comparison of the relative opportunities

METHODOLOGICAL NOTE:

Data on sports opportunities in high schools are National Women’s Law Center calculations based on the U.S. Department of Education’s Civil Rights Data Collection (CRDC) for school year 2011-2012. The CRDC data cover all of the nation’s public school students.⁶

DEFINITIONS:

Girls/Boys of Color: Students who do not fall into the racial category of White. The CRDC data use seven racial categories: American Indian/Alaskan Native, Asian, Hispanic/Latino of any race, Black/African American, White, Native Hawaiian and other Pacific Islander, and two or more races. The CRDC data treat Hispanic as a racial category.

High Schools: Schools are included in NWLC’s calculations if they have a 10th grade, are co-ed, and provide interscholastic athletic opportunities.

Heavily White/Minority Schools: For this analysis, schools are defined as “heavily white” if 90 percent or more of enrolled students are white and “heavily minority” if 10 percent or less of enrolled students are white.⁷

offered to girls and boys in these schools. These thirteen states are Alabama, Illinois, Louisiana, Massachusetts, Michigan, Mississippi, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Tennessee, and Texas. In all of them, a greater share of heavily minority high schools have large female opportunity gaps as compared to heavily white schools.

TITLE IX REQUIREMENTS:

Showing that the percentage of spots on teams allocated to girls is roughly equal to the percentage of students who are girls is one way that a school can demonstrate compliance with Title IX. The term “female opportunity gap” used in this report refers to the percentage point gap between the percentage of spots on teams allocated to girls and the percentage of students who are girls. For example, if at School A, girls are 45 percent of all students but only get 35 percent of all the spots on teams, then School A has a female opportunity gap of 10 percentage points. While there is no set gap that constitutes a violation of Title IX, gaps of 10 percentage points or more indicate that schools are likely not complying with the law. See Office for Civil Rights, U.S. Dep’t of Educ., CLARIFICATION OF INTERCOLLEGIATE ATHLETICS POLICY GUIDANCE: THE THREE-PART TEST 4-5 (Jan. 16, 1996).

Focusing on the participation opportunities that schools choose to provide to girls is critical because the history of Title IX has shown that “If you build it, they will come.” While schools sometimes claim that girls are not interested in sports to justify their providing more opportunities to boys, courts have consistently rejected such stereotypes as contrary to the purpose of Title IX.⁸

The systematic failure to treat girls, and especially girls of color, in an equitable manner deprives them of the many positive health, academic, and employment outcomes associated with playing sports. It is vitally important—and legally required by federal civil rights laws prohibiting sex (Title IX) and race (Title VI) discrimination⁹—that states and school districts provide students with equal opportunities to play sports in school. This report provides recommendations to help decision makers at the federal, state, and local levels fulfill their obligations to do so.

KEY FINDINGS:

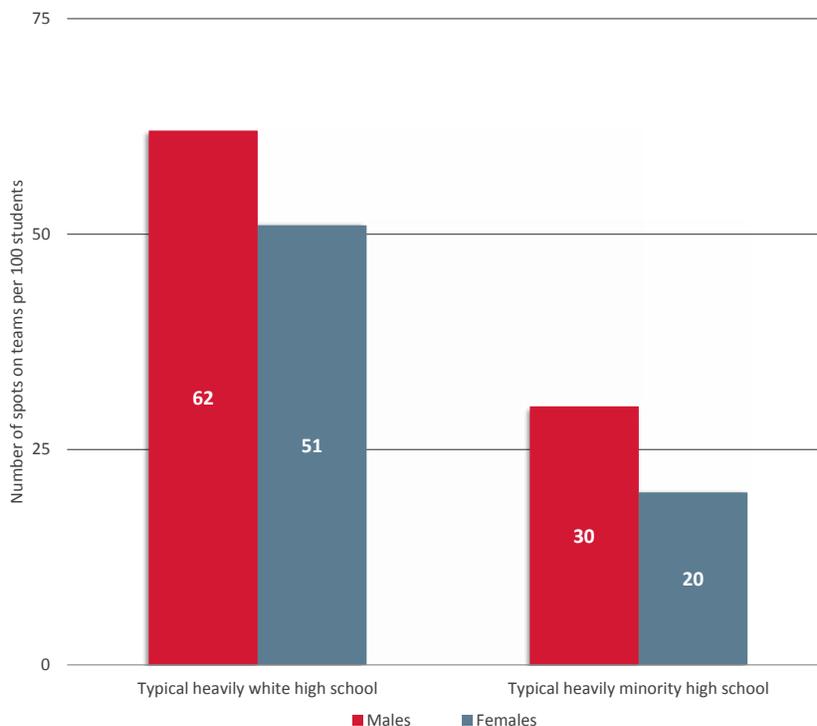
- 42 percent of our nation’s public high schools are 90 percent or more white, or over 90 percent minority.
- 40 percent of heavily minority high schools have large female opportunity gaps compared to 16 percent of heavily white schools.
- In 8 of the 13 states identified in this report, the share of heavily minority schools with large female opportunity gaps is more than double the share of heavily white schools with large gaps.

Girls of color are not receiving equal opportunities to play school sports.

GIRLS OF COLOR ARE DOUBLY DISADVANTAGED WHEN IT COMES TO OPPORTUNITIES TO PLAY SPORTS IN HIGH SCHOOL. First, over 40 percent of our nation’s public high schools are either heavily white or heavily minority,¹⁰ and there are far fewer opportunities to play sports at heavily minority schools than at heavily white high schools.¹¹ At the typical heavily minority high school, for every 100 students there are just 25 spots on sports teams. By contrast, at the typical heavily white high school, for every 100 students there are 58 spots.¹²

Second, while gender disparities are pervasive across schools,¹³ they are worse at heavily minority schools. At the typical heavily white high school, girls have only 82 percent of the opportunities to play sports that boys have: for every 100 female students there are 51 spots on teams, and for every 100 male students there are 62 spots on teams.¹⁴ But at the typical heavily minority high school, girls have only 67 percent of the opportunities to play sports that boys have: for every 100 female students there are just 20 spots on sports teams, and for every 100 male students there are 30 spots.¹⁵

FIGURE 1: GENDER DISPARITIES IN ATHLETIC OPPORTUNITIES AT HEAVILY WHITE & HEAVILY MINORITY HIGH SCHOOLS



Source: NWLC calculations based on CRDC 2011-2012 data. Heavily white high schools have white enrollment of 90 percent or more. Heavily minority high schools have white enrollment of 10 percent or less. CRDC data treat Hispanic as a racial category.

These data show that girls of color are doubly disadvantaged because heavily minority schools have fewer overall athletic opportunities and fail to distribute those limited opportunities equitably between boys and girls. As a result, girls at heavily minority high schools have:

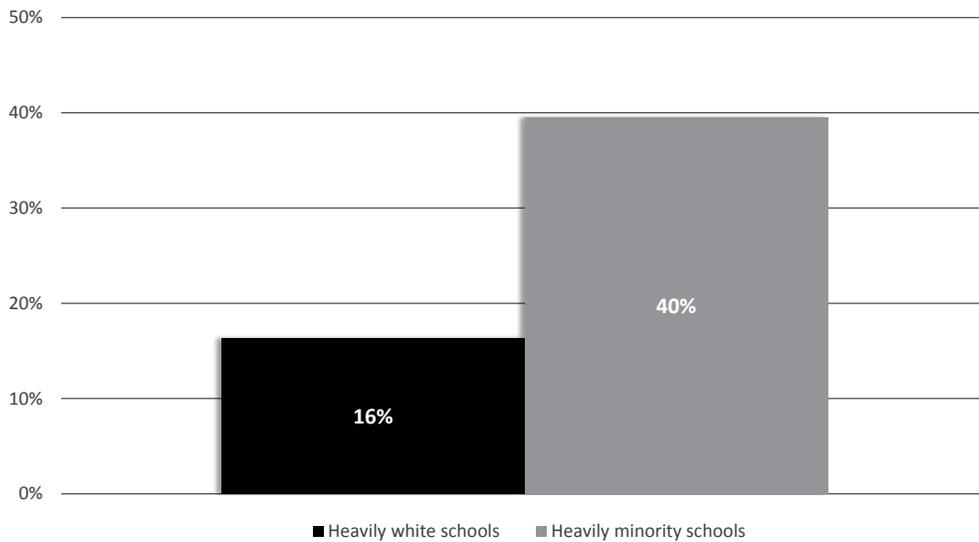
- Only 39 percent of the opportunities to play sports as girls at heavily white schools do.
- Only 67 percent of the opportunities to play sports as boys at heavily minority schools do.
- Only 32 percent of the opportunities to play sports as boys at heavily white schools do.¹⁶

Looking at the data another way, heavily minority schools are more than twice as likely to have large female opportunity gaps—defined as a gap of 10 percentage points or more between the percentage of students who are female and the percentage of athletic spots for girls¹⁷—which is a strong indicator of lack of compliance with Title IX. Forty percent of heavily minority high schools have large female opportunity gaps compared to 16 percent of heavily white schools.

LARGE FEMALE OPPORTUNITY GAPS=MANY LOST CHANCES TO PLAY SPORTS

At the typical school with a large female opportunity gap (gap of ten percentage points or more), girls lose 91 chances to play sports. At such a school, the typical number of boys' spots on teams is 185—twice the number of girls' spots (92). The typical enrollment for boys is 407—almost the same as girls' enrollment (402). For girls to have proportionally equal opportunities, the typical school with a large female opportunity gap would have to add 91 spots on teams for girls, bringing the total number of spots to 183. If the school did so, boys and girls would both have 46 spots on teams per 100 students (as compared to the current situation, in which boys have 46 spots on teams per 100 male students and girls have 23 spots per 100 female students).

FIGURE 2: PERCENTAGE OF HIGH SCHOOLS WITH LARGE FEMALE OPPORTUNITY GAPS IN SPORTS, BY RACIAL COMPOSITION OF SCHOOL



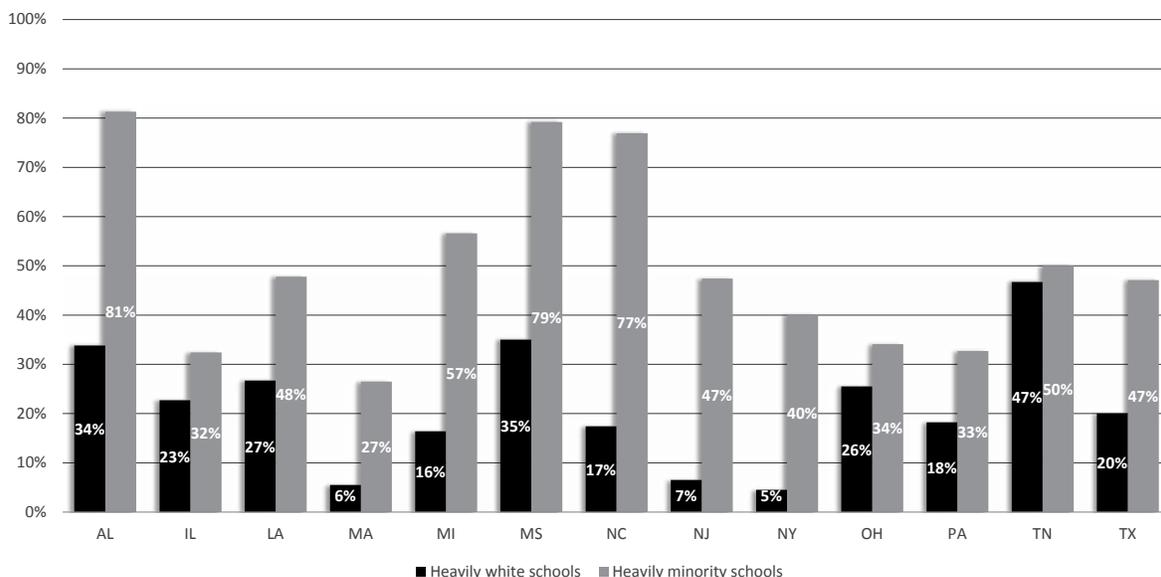
Source: NWLC calculations using CRDC 2011-2012 data. Heavily white high schools have white enrollment of 90 percent or more. Heavily minority high schools have white enrollment of 10 percent or less. “Large female opportunity gaps” are defined as Title IX gaps of 10 percentage points or greater. CRDC data treat Hispanic as a racial category.

(At the typical school with a large female opportunity gap of 10 percentage points or more, girls lose 91 opportunities to play sports. See box on page 4.) This means that girls in heavily minority schools receive far less than their fair share of the already limited opportunities to play sports.

This troubling national picture is reflected in the thirteen states where there are a substantial number of both heavily minority and heavily white schools.¹⁸ In each of these states, the share of heavily minority schools with large female opportunity gaps is higher—more than double in 8 of 13 states—than the share of heavily white schools with large female opportunity gaps.¹⁹ Some mid-Atlantic

states show the largest disparities between opportunities for girls of color and white girls. In New York, for example, 40.1 percent of heavily minority high schools have large female opportunity gaps, which is almost nine times larger than the share of heavily white high schools with such gaps (4.5 percent). In New Jersey, 47.4 percent of heavily minority high schools have large female opportunity gaps—more than seven times larger than the share of heavily white high schools with such gaps (6.5 percent). The situation is particularly bad for girls of color in Alabama, Mississippi, and North Carolina, where about 80 percent of heavily minority schools have large female opportunity gaps.

FIGURE 3: PERCENTAGE OF HIGH SCHOOLS WITH LARGE FEMALE OPPORTUNITY GAPS IN SPORTS, BY RACIAL COMPOSITION OF SCHOOL



Source: NWLC calculations using CRDC 2011-2012 data. Heavily white high schools have white enrollment of 90 percent or more. Heavily minority high schools have white enrollment of 10 percent or less. States have at least 20 schools in both categories. “Large female opportunity gaps” are defined as Title IX gaps of 10 percentage points or greater. CRDC data treat Hispanic as a racial category.

School-sponsored sports opportunities are particularly important for girls of color, yet schools are failing to provide them with equal chances to reap the many benefits of participation.

GIRLS OF COLOR ARE LESS LIKELY THAN WHITE GIRLS TO PARTICIPATE IN SPORTS OUTSIDE OF SCHOOL,²⁰ making school-sponsored opportunities that much more important.²¹ By not providing them with equal opportunities to play sports, schools are denying girls the health, academic, and economic benefits that accompany participation.²²

There are long-term health benefits of sports participation. Playing sports decreases a young woman's chance of developing heart disease, osteoporosis, breast cancer, and other health related problems.²³ Female student athletes also exhibit more responsible social behavior than their non-athletic peers. For example, studies have found that high school athletes are 25 percent less likely to smoke²⁴ and less likely to use cocaine (3.1 percent versus 7.2 percent) or psychedelic drugs (9.8 percent versus 18.1 percent).²⁵ And female student athletes have much lower rates of both high-risk sexual behavior and pregnancy compared to their peers who are not athletes.²⁶ A 1998 report found that high school female athletes were more likely to use a condom than non-athletes (53 percent versus 41 percent), and were less than half as likely to get pregnant as female non-athletes (5 percent versus 11 percent).²⁷ In addition, girls who play sports report better body image and an overall higher quality of life, compared to girls who don't play sports.²⁸ According to a 2008 report, only 35 percent of female non-athletes reported having high body esteem, compared to 43 percent of girls moderately involved in sports and 54 percent of girls highly involved in sports.²⁹

By not providing girls of color with equal opportunities to play sports, schools are denying them the health, academic, and economic benefits that accompany participation.

With respect to obesity, research shows that women who were athletes while young had a seven percent lower risk of obesity 20 to 25 years later compared to those who were not. The study notes that "no other public health program can claim similar success."³⁰ This is significant because even though obesity rates have stabilized over the past decade, they remain extremely high for most children of color.³¹ In 2013, 16.7 percent of African American and 11.4 percent of Hispanic high school girls were obese compared to 9.7 percent of white girls and 2.1 percent of Asian American girls.³² High school boys' obesity rates were generally higher than those of their female counterparts, except among African American youth: 16.7 percent of African American girls were obese compared to 14.8 percent of African American boys.³³ These high obesity rates have dire health consequences, including increased risk for cardiovascular disease and diabetes, as well as a negative impact on self-esteem, relationships with peers, performance in school, and even earnings.³⁴

While increasing physical activity is one of the keys to combating obesity,³⁵ girls of color not only have unequal opportunities in terms of school-based sports, but also face obstacles to being physically active in their communities outside of school. So it is not surprising that girls of color are less physically active than their white peers. Over one-quarter of African American girls, one-fifth of Hispanic girls, and nearly one-fifth of Asian American girls report not being physically active for at least 60 minutes in the past week, while less than one-sixth of white girls do.³⁶

Many neighborhoods where girls of color are disproportionately concentrated have higher rates of traffic, crime, and other factors that limit opportunities for girls to take part in physical activities outdoors.³⁷ Fewer parks, trails, bike paths, and recreational facilities also contribute to decreased physical activity.³⁸ Other structural issues, such as inadequate housing and environmental factors,³⁹ can also lead to increased instances of asthma and obesity that negatively affect the ability of girls of color to take advantage of any physical activity opportunities.

Providing school-based opportunities for girls of color to play sports is therefore critical. In addition to the health benefits, playing sports leads to better academic and employment outcomes. Although often overlooked, girls—particularly girls of color—drop out at high rates. In 2010, 22 percent of girls failed to graduate on time with a diploma, and the numbers were worse for girls of color: 49 percent of American Indian female students, 34 percent

of black female students, and 29 percent of Hispanic female students failed to graduate on time.⁴⁰ Playing sports increases the likelihood that they will graduate from high school, have higher grades, and score higher on standardized tests.⁴¹ And girls of color who play on sports teams experience higher levels of self-esteem⁴² and are more likely to be involved in other extracurricular activities than minority girls who do not play sports.⁴³ Not to mention that the availability of an athletic scholarship can dramatically increase a young woman's ability to attend college and—if she gets multiple scholarship offers—her ability to choose from a wider range of schools.

Beyond helping students stay engaged in school, playing sports also has a positive effect on employment outcomes. A study using state-level data concluded that an increase in female sports participation leads to an increase in women's labor force participation down the road and greater female participation in previously male-dominated occupations, particularly high-skill, high-wage ones.⁴⁴ That same study showed that being a high school athlete was associated with 11 to 14 percent higher wages for women, even when controlling for demographic factors (e.g., age, race), family background (e.g., parental education attainment, family poverty status) and school characteristics (e.g., dropout and attendance rates).⁴⁵ In addition, more than four out of five executive businesswomen played sports growing up, and the vast majority reported that the lessons they learned on the playing field contributed to their success in business.⁴⁶

Girls of color not only have unequal opportunities in terms of school-based sports, but also face obstacles to being physically active in their communities outside of school.

The disparate sports opportunities provided to girls at heavily minority versus heavily white schools raise questions under the civil rights laws prohibiting gender and race discrimination.

MORE THAN 40 YEARS AFTER THE PASSAGE OF TITLE IX OF THE EDUCATION AMENDMENTS OF 1972, schools across the country continue to provide girls with fewer opportunities to play sports when compared to boys. The typical high school provides girls with 75 percent of the opportunities provided to boys.⁴⁷ And more than 50 years after the passage of Title VI of the Civil Rights Act of 1964, over 40 percent of our nation's public high schools are still either heavily white or heavily minority due to a variety of factors.⁴⁸ Heavily minority schools tend to have fewer resources overall and provide fewer opportunities to play sports to their students, particularly girls. These disparities between heavily minority and heavily white schools touch on both of these civil rights laws.

Although Title IX has been credited with dramatically increasing female athletic opportunities, it has also been criticized for not benefitting girls of color as much as white girls.⁴⁹ The available data, coupled with that presented in this report, support the need to increase opportunities for girls of color in particular. For example, according to a 2008 nationwide survey of 2,185 students in grades 3-12,⁵⁰ girls of color are less likely to be athletes than white girls.⁵¹ Specifically, 36 percent of African American girls, 36 percent of Hispanic girls, and 47 percent of Asian American girls were non-athletes, compared to 24 percent of Caucasian girls.

The differences in girls' sports opportunities between heavily minority and heavily white high schools are borne out in the underrepresentation of women of color in college athletics. Women of color make up 25 percent of female college students, but only 15 percent of female college athletes.⁵² By contrast, white women are 69 percent of the female student body and 77 percent of female college athletes; and men of color make up 22 percent of

male college students and 22 percent of male college athletes.⁵³ In addition, black women in particular are concentrated in two sports: Nine out of ten participate in basketball or track and field.⁵⁴ This translates into fewer opportunities for athletic scholarships, especially since many colleges have added opportunities for women to play sports like volleyball, crew, and soccer.⁵⁵

While Title IX and Title VI provide protection from overlapping race and sex discrimination, the law has had trouble handling such claims of "intersectionality."⁵⁶ Courts have tended to break these types of claims into separate race and sex components,⁵⁷ a practice that fails to account for and minimizes the unique harms and challenges that girls of color face.⁵⁸

States and school districts, however, through their decisions about how to distribute resources to local schools, are in a prime position to address the unique factors that lead to girls of color receiving the fewest sports opportunities. The Department of Education's Office for Civil Rights, which enforces both Title IX and Title VI, recently issued guidance reminding states and school districts of their legal obligation under Title VI "to provide students with equal access to [educational] resources without regard to race, color, or national origin," and specifically addressed the issue of cross-district resource disparities. The guidance strongly encourages states and school districts to "take proactive steps to ensure that the educational resources they provide are distributed in a manner that does not discriminate against students on the basis of race, color, or national origin."⁵⁹ Because educational resources include extracurricular programs such as sports, the guidance supports increasing the quantity and quality of sports programs for students in heavily minority schools. States and school districts must further focus on girls in these intensely segregated and often under-resourced communities, analyzing their participation rates and adding opportunities as needed to comply with Title IX.

Policymakers and communities must increase their efforts to ensure that girls of color receive equal opportunities to secure the advantages associated with playing sports.

THERE ARE A NUMBER OF STEPS THAT FEDERAL, STATE, AND LOCAL POLICYMAKERS AND COMMUNITIES SHOULD TAKE to increase opportunities for girls of color to play sports and gain the benefits that accompany participation. The following list of recommendations—including expanding racially and economically integrated educational opportunities, stepping up enforcement of Title IX and Title VI, increasing data transparency, and addressing resource inequities facing communities of color—would help advance the ball.

FEDERAL POLICYMAKERS

- The Department of Education should investigate the states identified in this report (along with the schools in those states) under Title VI and Title IX to require them to provide equal athletic opportunities on the basis of race and gender.⁶⁰
- The Department of Education should modify its Civil Rights Data Collection (CRDC) so that athletic participation data is collected not just by gender, but also by gender broken down by race/ethnicity, consistent with other key parts of the CRDC.
- Congress should pass the High School Data Transparency Act, which would require schools to make publicly available information on the number of female and male students and athletes, broken down by race/ethnicity, as well as the expenditures by sports teams.
- The Department of Education should increase incentives for states to develop interdistrict school integration programs that will expand opportunities for all children to attend integrated schools (for example, by expanding the Magnet Schools Assistance Program and including diversity priorities in the Department's competitive grants).⁶¹

STATE POLICYMAKERS

- States should take steps to provide equitable educational resources, including athletic opportunities, to all school districts in their state and ensure that differences in resources among districts do not result in discrimination on the basis of race, consistent with their obligations under Title VI.⁶²
- States should fund magnet schools and other interdistrict programs to expand racially and economically integrated educational opportunities for more children.
- States should monitor their school districts to ensure that they are providing equal athletic opportunities to boys and girls, consistent with their obligations under Title IX.
- States should assess barriers to girls' sports participation, particularly in racially isolated schools, by analyzing girls' participation rates and working with schools to add new teams or spot on teams as needed.
- States should require schools to collect and make publicly available data on the sports opportunities and resources provided to boys and girls, broken down by race/ethnicity.⁶³
- States should assess the availability of parks, recreation centers, and other athletics resources for their various communities and take steps to increase access where opportunities to be physically active are lacking—for example, through support for shared use initiatives that allow community access to school facilities.

LOCAL GOVERNMENTS AND COMMUNITIES

- Local governments should use funds from the federal Community Development Block Grant program to improve recreational facilities, parks, and play equipment,⁶⁴ particularly in low-income, racially isolated neighborhoods.

- Local governments in low-income and minority communities should review and change zoning laws to address infrastructure improvements and create areas that facilitate physical activity.⁶⁵
- Local governments should institute policies to incentivize the development of parks, recreation facilities, or side-walks and trails, such as allowing denser development in exchange for land set aside for public parks.⁶⁶
- Communities with heavily minority high schools should partner with community-based and legal services organizations to secure more funding for physical activity resources and sports opportunities in school (for example, if a recreational facility is built in a heavily white area while a heavily minority community has significantly fewer recreational facilities, a Title VI challenge could be brought).⁶⁷
- Communities should challenge the lack of access to public parks due to discriminatory siting of parklands or recreational facilities under the public trust doctrine—a common law doctrine requiring public entities owning and operating public parks to ensure equal access.⁶⁸
- Communities should press local governments for improved designs and management of the built environment—including implementation of safety and violence prevention measures—to help increase physical activity in neighborhoods and parks.⁶⁹
- Communities and local governments should enlist private sector support to strengthen youth sports leagues and similar activities for girls, to create a stronger youth pipeline for high school sports participation.⁷⁰
- Communities should pool resources for the purpose of sharing the cost of sports equipment among all participants⁷¹ and providing community-financed transportation to and from sports facilities.⁷²
- To counteract barriers to participation such as obesity, communities should structure recreational-level practices and competitions in a manner that leads adolescents to progressively develop their skills and improve their fitness level.⁷³

SCHOOL DISTRICTS

- School districts should evaluate the athletic opportunities they provide to students and ensure that they are not discriminating on the basis of race or gender or both.
- School districts should survey their female students, especially girls of color who are still not receiving their fair share of opportunities, to find out what sports they are interested in playing.
- School districts should pay special attention to the impact of discipline on girls' participation in physical activity and sports. The Department of Education has found a significant disparity in disciplinary action taken against minority girls (particularly African American girls) versus white girls, which can include barring participation in school-sponsored sports events.⁷⁴
- To take advantage of the importance of role models in sports participation,⁷⁵ schools should explore ways to expand parental involvement in girls' sports activities⁷⁶ and increase the visibility of older female athletes from the community who can provide training and guidance.⁷⁷
- Schools should partner with community-based nonprofit organizations to introduce girls to various sports and teach core skills outside of school that they can apply to school sports.⁷⁸
- Schools, through concerted community outreach, should create a high profile for physical activity and ensure recognition of physical activity, sports participation, and achievement.⁷⁹
- Schools should ensure that students receive 150 minutes of physical activity per week during physical education class, since research indicates that the opportunity to participate in physically active sports increases a child's desire to play sports, which in turn affects future sports participation and overall rates of physical activity.⁸⁰
- All schools receiving federal funding for school meals should fulfill their obligation to create and utilize school wellness policies and wellness policy councils, which should establish aspirational goals for and track girls' sports participation.⁸¹
- Schools should enter into joint use agreements with community organizations to provide additional space for physical activity, especially in communities where recreational facilities and parks are less common.⁸²

Conclusion

GIRLS OF COLOR ARE FINISHING LAST WHEN IT COMES TO OPPORTUNITIES TO PLAY SPORTS IN SCHOOL and missing out on the lifelong benefits that accompany athletic participation. While the playing field is far from level for girls in general, it is particularly uneven for girls in heavily minority schools. Tackling the problem will require policymakers at all levels—federal, state, and local—and communities to work together to increase opportunities for girls of color to play sports and be physically active. Doing so is not only required by law, but is also a critical investment in their future.

Endnotes

- 1 See generally GARY ORFIELD ET AL., THE CIVIL RIGHTS PROJECT, E PLURIBUS...SEPARATION: DEEPENING DOUBLE SEGREGATION FOR MORE STUDENTS (2012), available at <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/mlk-national/e-pluribus...separation-deepening-double-segregation-for-more-students>.
- 2 “Sports” refers to interscholastic sports. Office for Civil Rights, 2011-12 *Civil Rights Data Collection Questions and Answers*, U.S. DEP’T OF EDUC., <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2011-12-factsheet.html> (last visited Apr. 9, 2015).
- 3 Figures are relative to enrollment.
- 4 The UCLA Civil Rights Project refers to the increasing number of schools that have 90 percent or more minority enrollment as “intensely segregated schools.” GARY ORFIELD ET AL., THE CIVIL RIGHTS PROJECT, BROWN AT 60: GREAT PROGRESS, A LONG RETREAT AND AN UNCERTAIN FUTURE 5 (2014), available at <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/brown-at-60-great-progress-a-long-retreat-and-an-uncertain-future/Brown-at-60-051814.pdf>. Based on Orfield’s report, in the current report, the term “intensely segregated” is used interchangeably with the terms “heavily minority,” and “racially isolated.” For purposes of comparison this analysis applies the same 90 percent or more standard to schools which are 90 percent or more white or 10 percent or less white.
- 5 See, e.g., ARY SPATIG-AMERIKANER, CTR. FOR AM. PROGRESS, UNEQUAL EDUCATION: FEDERAL LOOPHOLE ENABLES LOWER SPENDING ON STUDENTS OF COLOR (2012), available at <https://cdn.americanprogress.org/wp-content/uploads/2012/08/UnequalEducation-1.pdf>.
- 6 Data are from the CRDC flat file. All data in the CRDC are self-reported by school administrators. Single-sex schools are excluded from NWLC’s calculations. For additional details, see Office for Civil Rights, *Civil Rights Data Collection (CRDC): 2011-12 CRDC*, U.S. DEP’T OF EDUC., <http://www2.ed.gov/about/offices/list/ocr/data.html?src=rt/> (last updated Mar. 21, 2015). According to the CRDC FAQ, “The 2011-12 CRDC will collect data from a universe of all public schools and school districts, including juvenile justice facilities, charter schools, alternative schools, and schools serving students with disabilities.”
- 7 Of the 6,703 schools, 4,633 are heavily white and 2,070 are heavily minority. Overall, they account for 42 percent of the 16,056 co-ed high schools that provide athletic opportunities. Twenty-nine percent of schools in the total sample are heavily white and 13 percent are heavily minority. *Id.* See also Office for Civil Rights, *CRDC FAQ*, U.S. DEP’T OF EDUC., <http://ocrdata.ed.gov/FAQ> (last visited Apr. 9, 2015).
- 8 See *Cohen v. Brown Univ.*, 101 F.3d 155, 178-79 (1st Cir. 1996) (“To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based up on the premise that women are less interested in sports than are men, is . . . to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women’s interests and abilities.”); see also *Pederson v. La. State Univ.*, 213 F. 3d 858, 878-82 (5th Cir. 2000) (noting that attitudes tying female interest in sports to stereotypes about femininity are archaic and discriminatory).
- 9 See Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 (2012) (prohibiting sex discrimination in federally funded education programs and activities); Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2012) (prohibiting discrimination on the basis of race, color, and national origin in federally funded programs and activities).
- 10 In the CRDC data set, the most comprehensive data set of sports opportunities in U.S. public schools, data on sports participation are not available by race. Because of this shortcoming, racial composition of the student population is used to identify heavily white or heavily minority high schools.
- 11 The typical (median) high school has 614 students and 277 spots on sports teams. These figures translate into 45 athletic slots per 100 students. But focusing on the typical high school obscures important disparities. The typical mostly white high school has substantially fewer students (398) but not dramatically fewer spots on teams (229). These figures translate into 58 athletic slots per 100 students. At the typical mostly minority high school the situation is reversed: enrollment is higher (637 students) while participation is lower (160 spots on teams). These figures translate into just 25 athletic slots per 100 students. This means that the typical mostly minority high school has less than half (43 percent) of the athletic participation opportunities per 100 students that mostly white high schools have. In all cases, median enrollment and participation slots are calculated separately. Nat’l Women’s Law Ctr. calculations based on Office for Civil Rights, *Civil Rights Data Collection (CRDC): 2011-12 CRDC*, *supra* note 6.
- 12 See *supra* note 11 for details on enrollment and athletic participation at these schools.
- 13 The typical (median) high school has 302 female students and 116 female spots on teams for girls. These figures translate into 38 spots on teams per 100 female students. By comparison the typical high school has 313 male students and 161 spots on teams for boys. These figures translate into 51 spots on teams per 100 male students. This means at the typical high school, girls are only receiving three-quarters of the participation opportunities that boys are, per hundred students. Nat’l Women’s Law Ctr. calculations based on Office for Civil Rights, *Civil Rights Data Collection (CRDC): 2011-12 CRDC*, *supra* note 6. At the heavily white school the situation is more equitable (see *infra* note 14), while at the typical heavily minority high school it is worse (see *infra* note 15).
- 14 The typical (median) mostly white high school has 192 female students and 98 spots on teams for girls. These figures translate into 51 spots on teams per 100 female students. By comparison the typical mostly white high school has 202 male students and 125 spots on teams for boys. These figures translate into 62 spots on teams per 100 male students. This means at the typical mostly white high school, girls are only receiving 82 percent of the participation opportunities that boys are, per 100 students. Nat’l Women’s Law Ctr. calculations based on Office for Civil Rights, *Civil Rights Data Collection (CRDC): 2011-12 CRDC*, *supra* note 6.
- 15 The typical (median) heavily minority high school has 318 female students and 65 spots on teams for girls. These figures translate into just 20 spots on teams per 100 female students. By comparison the typical heavily minority high school has 322 male students and 97 spots on teams for boys. These figures translate into 30 spots on teams per 100 male students. This

- means at the typical heavily minority high school, girls are only receiving two-thirds of the athletic participation spots that boys are, per 100 students. Nat'l Women's Law Ctr. calculations based on Office for Civil Rights, *Civil Rights Data Collection (CRDC): 2011-12 CRDC*, *supra* note 6.
- 16 See *supra* notes 14 and 15 for details on enrollment and athletic participation at these schools. Figures compare spots on sports teams per 100 students. Boys at the typical heavily minority high school receive just under half (48 percent) of the athletic participation opportunities that boys at the typical heavily white high school do (30 spots on teams per 100 students, compared to 62 spots on teams per 100 students).
- 17 See text box, *supra* page 4.
- 18 A state must have a sufficient number of each type of high school—at least 20 schools in either category—to make this comparison. Nat'l Women's Law Ctr. parameters for analyzing data found in Office for Civil Rights, *Civil Rights Data Collection (CRDC): 2011-12 CRDC*, *supra* note 6.
- 19 These states are Alabama, Massachusetts, Michigan, Mississippi, North Carolina, New Jersey, New York, and Texas. Nat'l Women's Law Ctr. calculations based on Office for Civil Rights, *Civil Rights Data Collection (CRDC): 2011-12 CRDC*, *supra* note 1.
- 20 See WILSON SPORTING GOODS CO. & WOMEN'S SPORTS FOUND., *THE WILSON REPORT: MOMS, DADS, DAUGHTERS AND SPORTS 5* (1988), available at <http://www.womenssportsfoundation.org/home/research/articles-and-reports/mental-and-physical-health/moms-dads-daughters-and-sports>.
- 21 See WOMEN'S SPORTS FOUND., *HER LIFE DEPENDS ON IT II: SPORT, PHYSICAL ACTIVITY, AND THE HEALTH AND WELL BEING OF AMERICAN GIRLS AND WOMEN* 56-60 (2009), available at http://www.womenssportsfoundation.org/home/research/articles-and-reports/mental-and-physical-health/~/-/media/PDFs/WSF%20Research%20Reports/Her_Life_II_Full.ashx (finding that “girls and their families [] need program resources, safe venues, and opportunities to participate in school and community sports programs”).
- 22 See generally ALEX POINSETT, CARNEGIE CORP. OF N.Y., *THE ROLE OF SPORTS IN YOUTH DEVELOPMENT* (1996), available at <http://files.eric.ed.gov/fulltext/ED407376.pdf>.
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- 24 Brian Castrucci et al., *Tobacco Use & Cessation Behavior Among Adolescents Participating in Organized Sports*, 28 *AM. J. HEALTH BEHAVIOR* 63, 63 (2004).
- 25 Adam Naylor et al., *Drug Use Patterns among High School Athletes & Nonathletes*, 36 *ADOLESCENCE* 627, 634 (2001).
- 26 See WOMEN'S SPORTS FOUND., *HER LIFE DEPENDS ON IT II*, *supra* note 21, at 37-39 (“According to [a 2002] study, 10% of young adult women with a history of extensive sports involvement in high school [had] a child outside of marriage, while the number is 25% for those who had little or no involvement in high school sports.”); T. Dodge & J. Jaccard, *Participation in Athletics and Female Sexual Risk Behavior: The Evaluation of Four Causal Structures*, 17 *J. ADOLESCENT RES.* 42 (2002); THE PRESIDENT'S COUNCIL ON PHYSICAL FITNESS AND SPORTS, *PHYSICAL ACTIVITY & SPORTS IN THE LIVES OF GIRLS* 26-27 (1997), available at http://www.donaldcollins.org/administrators_school_officials/phys%20activity%20in%20lives%20of%20girls.pdf.
- 27 THE WOMEN'S SPORTS FOUND., *SPORT AND TEEN PREGNANCY* 4-5 (1998), available at <http://www.womenssportsfoundation.org/home/research/articles-and-reports/mental-and-physical-health/sport-and-teen-pregnancy>.
- 28 See WOMEN'S SPORTS FOUND., *GO OUT AND PLAY: YOUTH SPORTS IN AMERICA* 75-81 (2008), available at <http://www.womenssportsfoundation.org/home/research/articles-and-reports/mental-and-physical-health/go-out-and-play> (discussing the favorable contributions of sport and athletic contributions to body esteem for both boys and girls); *id.* at 96-109 (stating that girls and boys who play sports experience an increased quality of life, measured by their responses to statements that tap whether they feel positive about themselves and have positive relationships with friends and family members).
- 29 *Id.* at 79.
- 30 Tara Parker-Pope, *As Girls Become Women, Sports Pay Dividends*, *N.Y. TIMES*, Feb. 16, 2010, at D5, available at <http://www.nytimes.com/2010/02/16/health/16well.html?emc=eta1>; Robert Kaestner & Xin Xu, *Title IX, Girls' Sports Participation, and Adult Female Physical Activity and Weight*, 34 *EVAL. REV.* 52 (2010).
- 31 TRUST FOR AM.'S HEALTH & ROBERT WOOD JOHNSON FOUND., *THE STATE OF OBESITY: BETTER POLICIES FOR A HEALTHIER AMERICA* 3, 7 (2014), available at <http://www.rwjf.org/content/dam/farm/reports/reports/2014/rwjf414829> (includes obesity rates for children by gender for whites, Latinos, and African Americans); see also Cynthia L. Ogden et al., *Prevalence of Childhood and Adult Obesity in the United States, 2011-2012*, 311 *J. AM. MED. ASS'N Tbl.* 3 (2014), available at <http://jama.jamanetwork.com/article.aspx?articleid=1832542> (includes additional data on non-Hispanic Asian American boys and girls, whose obesity rates are generally lower than those of other racial and ethnic groups).
- 32 *Youth Online: National Youth Risk Behavior Surveillance System*, CTRS. FOR DISEASE CONTROL & PREVENTION, <http://nccd.cdc.gov/youthonline/App/Default.aspx> (last visited Apr. 12, 2015). The share of all high school students who are obese is 13.7 percent in 2013, up from 10.6 percent in 1999. Note that this increase is not linear. The Centers for Disease Control and Prevention categorize a child as obese when his/her Body Mass Index (BMI) is at or above the 95th percentile for children of same age and sex (based on sex- and age-specific reference data from the 2000 CDC growth charts). *Overweight and Obesity*, CTRS. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/obesity/childhood/basics.html> (last visited Apr. 12, 2014).
- 33 See text and citations *supra* note 32. Nineteen percent of Hispanic boys were obese, compared to 16.5 percent of white boys and 9.9 percent of Asian American boys. The share of all high school students who are obese was 13.7 percent in 2013, up from 10.6 percent in 1999. Note that this increase is not linear.
- 34 E.g., TRUST FOR AM.'S HEALTH & ROBERT WOOD JOHNSON FOUND., *supra* note 31, at 27-31; see generally S. Caprio et al., *Influence of Race, Ethnicity, and Culture on Childhood Obesity: Implications for Prevention and Treatment* 31 *DIABETES CARE* 2211 (2008), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2571048/> (regarding cardiovascular disease and diabetes); MH Zeller et al., *Negative Peer Perceptions of Obese Children in the Classroom Environment*, 16 *OBESITY* 755 (2008) (regarding peer relationships); H. Taras & W. Potts-Datema, *Obesity and Student Performance at School*, 75 *J. OF SCH. HEALTH* 291 (2005) (regarding school performance); Joanna Venator & Richard Reeves, *Weight and Social Mobility: Taking the Long View on Childhood Obesity*, *BROOKINGS* (Jan. 8, 2015, 3:03 PM), <http://www.brookings.edu/blogs/social-mobility-memos/posts/2015/01/08-childhood-obesity-social-mobility-reeves> (regarding earnings).

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- 38 BRISTOL-MYERS SQUIBB, ACTIVE LIVING BY DESIGN: LOW INCOME POPULATIONS AND PHYSICAL ACTIVITY 2-3 (2012), available at http://www.bms.com/documents/together_on_diabetes/2012-Summit-Atlanta/Physical-Activity-for-Low-Income-Populations-The-Health-Trust.pdf; PA Estabrooks et al., *Resources for Physical Activity Participation: Does Availability and Accessibility Differ by Neighborhood Socioeconomic Status?*, 25 *ANN. BEHAV. MED.* 100 (2003) (High-, medium-, and low-income communities report similar levels of pay-to-play physical activity resources).
- 39 BRISTOL-MYERS SQUIBB, *supra* note 38, at 2.
- 40 Nat’l Women’s Law Ctr. calculations based on Educ. Counts Research Ctr., *Data Indicators*, EDITORIAL PROJECTS IN EDUC., <http://www.edcounts.org/createtable/step1.php> (last visited Mar. 12, 2015) (retrieved from Custom Table Builder). Graduation rates are reported by Editorial Projects in Education under the Cumulative Promotion Index (CPI); see generally NAT’L WOMEN’S LAW CTR., WHEN GIRLS DON’T GRADUATE, WE ALL FAIL: A CALL TO IMPROVE HIGH SCHOOL GRADUATION RATES FOR GIRLS (2007), available at <http://www.nwlc.org/resource/when-girls-dont-graduate-we-all-fail-call-improve-high-school-graduation-rates-girls>; NAT’L WOMEN’S LAW CTR., UNLOCKING OPPORTUNITY FOR AFRICAN AMERICAN GIRLS: A CALL TO EDUCATIONAL EQUITY 27 (2014), available at <http://www.nwlc.org/resource/unlocking-opportunity-african-american-girls-call-action-educational-equity>.
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- 48 See *supra* note 7; see generally GARY ORFIELD ET AL., THE CIVIL RIGHTS PROJECT, E PLURIBUS...SEPARATION, *supra* note 1.
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- 57 The most analogous cases available are in the employment context. See, e.g., *DeGraffenreid v. General Motors Assembly Div.*, 413 F. Supp. 142, 143 (E.D. Mo. 1976), *aff’d in part, rev’d in part on other grounds*, 558 F.2d 480 (8th Cir. 1977) (holding that plaintiffs who alleged employer’s hiring policies discriminated against them as black women could either assert race-based claim or sex-based claim, but not both); *Lee v. Walters, CIV. A. No. 85-5383, 1988 WL 105887, *7 n.7 (E.D. Pa. 1988)* (dismissing plaintiff’s claim of sex and race discrimination for failure to show “direct evidence of anti-female or anti-asian [sic] animus”).

- 58 *But see* Jeffries v. Harris Cnty. Cmty. Action Ass'n, 615 F.2d 1025, 1032 (5th Cir. 1980) ("We agree that discrimination against black females can exist even in the absence of discrimination against black men or white women").
- 59 Letter from Catherine E. Lhamon, Assistant Sec'y, U.S. Dep't of Educ. Office for Civil Rights, to Colleagues 1, n. † (Oct. 1, 2014), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-resourcecomp-201410.pdf>.
- 60 *Id.* at 5.
- 61 See NAT'L COALITION ON SCH. DIVERSITY, REAFFIRMING THE ROLE OF SCHOOL INTEGRATION IN K-12 EDUCATION POLICY (2010), available at <http://school-diversity.org/pdf/DiversityIssueBriefStmt.pdf>; *Advocacy Letters*, NAT'L COALITION ON SCH. DIVERSITY, www.school-diversity.org (last visited Apr. 15, 2015).
- 62 See *generally* EQUITY & EXCELLENCE COMM'N, U.S. DEP'T OF EDUC., FOR EACH AND EVERY CHILD—A STRATEGY FOR EDUCATION EQUITY AND EXCELLENCE (2013), available at <https://www2.ed.gov/about/bdscomm/list/eec/equity-excellence-commission-report.pdf>. For information on how state funding mechanisms can penalize students in low-income school districts, see, e.g., CHANGELAB SOLUTIONS, NOT MAKING THE GRADE: HOW FINANCIAL PENALTIES FOR SCHOOL ABSENCES HURT DISTRICTS SERVING LOW-INCOME CHRONICALLY ILL KIDS 9 (2014), available at http://changelabsolutions.org/sites/default/files/School-Financing_StatePolicymakers_FINAL_09302014.pdf.
- 63 A few states already have adopted and implemented state laws and policies requiring high schools to submit annual reports with information regarding their athletic participation rates and expenditures by gender. See 702 KY ADMIN. REGS. 7:065 §§ 2(13)-(14) (2009); Georgia Equity in Sports Act, GA. CODE ANN. § 20-2-315 (2010); School Athletics Equity Act, N.M. STAT. ANN. § 6.13.4.8 (2009); Equity in Interscholastic Athletics Disclosure Act, 24 PA. CONS. STAT. ANN. § 16-1604-C (West 2012).
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- 65 EMILY THRUN ET AL., BRIDGING THE GAP, USING LOCAL LAND USE LAWS TO FACILITATE PHYSICAL ACTIVITY (2012), available at http://www.bridgingthega-presearch.org/_asset/5q86hg/btg_land_use_pa_FINAL_03-09-12.pdf. For a comprehensive examination of the issues related to maximizing the health benefits of potential zoning changes, see RACHEL JOHNSON THORNTON ET AL., CTR. FOR CHILD & CMTY. HEALTH RESEARCH, JOHNS HOPKINS UNIV., ZONING FOR A HEALTHY BALTIMORE: A HEALTH IMPACT ASSESSMENT OF THE TRANSFORM BALTIMORE COMPREHENSIVE ZONING CODE REWRITE (2010), available at http://www.hiasociety.org/documents/BaltimoreHIA_FullReport.pdf. For an examination of the potential impacts of zoning changes on adolescent obesity, see Jamie F. Chriqui et al., *Physical Activity-Oriented Zoning and Walkable Community Associations with Adolescent Obesity* (APHA Annual Mtg. & Expo., Conference Paper No. 312230, 2014), recording of presentation available at <https://apha.confex.com/apha/142am/webprogram/Paper312230.html>.
- 66 EMILY THRUN ET AL., *supra* note 65.
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- 68 See, e.g., ROBERT GARCÍA ET AL., CTR. FOR LAW IN THE PUBLIC INTEREST, DREAMS OF FIELDS: SOCCER, COMMUNITY, AND EQUAL JUSTICE 26 (2002), available at <http://www.cityprojectca.org/pdf/dreamsoffields.pdf>. For a careful consideration of whether public parks are protected under the public trust doctrine, see Serena M. Williams, *Sustaining Urban Green Spaces: Can Public Parks Be Protected Under the Public Trust Doctrine?*, 10 S.C. ENVIRONMENTAL L. J. 23 (2002), available at: http://works.bepress.com/serena_williams/2.
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- 70 For example, the Bay Area Women's Sports Initiative recruits female athletes for the purpose of "engaging, equipping and encouraging children on playgrounds to be active, self-confident change makers" through engagement in community service activities. See BAY AREA WOMEN'S SPORTS INITIATIVE, <https://bawsi.org> (last visited Apr. 12, 2015).
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78 WOMEN'S SPORTS FOUND. UK & SPORTSCOTLAND, *supra* note 71, at 30.

79 See WOMEN'S SPORTS FOUND. UK & SPORTSCOTLAND, *supra* note 71, at 17.

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81 See Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 111-296, § 204, 124 Stat. 3183, 3216 (2010).

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