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- Gender equity in athletics



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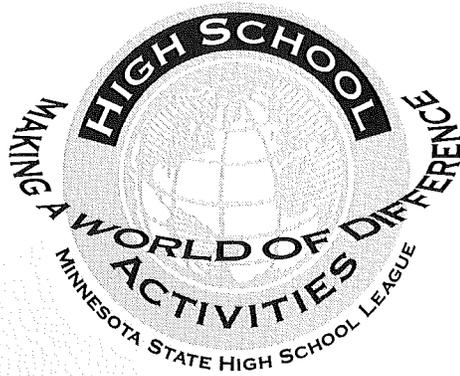
GENDER EQUITY IN ATHLETICS

A Manual to Assist Minnesota High Schools to
Conduct a Self-Review of Their Athletic Programs

KFM
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.G46
1993



Published by the
Minnesota State High School League
with the technical assistance of the Minnesota
Department of Education



Code of Commitment to Be Multicultural, Gender-Fair and Disability Aware

I will support the commitment of the Minnesota State High School League and its member schools to enhance race relations, gender fairness and sensitivity to disability by:

...modeling language and behavior that is non-biased and inclusive of individuals regardless of ethnicity, race, religion, sex and disability;

...educating and sensitizing myself to gender fairness and equity issues;

...intervening to let others know that I will not tolerate ethnic, disability, or sexist jokes, racial or religious slurs, or any action which demeans any individual or group;

...educating and sensitizing myself to the cultural heritage and traditions of others; and,

...initiating actions which would prevent prejudice and discrimination against individuals or groups in League-sponsored activities.

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by the
Minnesota State High School League
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Gender Equity in Athletics

*A manual to assist Minnesota high schools to
conduct a self-review of their athletic programs*



Published by the:

Minnesota State High School League
prepared with the technical assistance
of the
Minnesota Department of Education

Production of this manual was undertaken to assist Minnesota schools with their compliance reviews, recognizing that the final decisions regarding compliance rests with the enforcing agencies and the courts.

This manual represents the best understanding of the Minnesota State High School League of what is expected of schools at this time.



ACKNOWLEDGEMENTS



In April 1992, the Minnesota State High School League and the Minnesota State Department of Education initiated a joint project with the formation of an ad hoc Sports Equity Committee. The Committee was charged with the responsibility to develop a uniform student athletic interest survey and to compile information which could assist schools with their responsibilities to comply with state and federal laws.

Both organizations appreciate the efforts and assistance provided by the Sports Equity Committee:

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Special thanks to the Sub-Committee of Schulstad, McIntyre, Dildine, Euerle, Delano, Endersbe, LaCroix, and Swenson who contributed valuable time, and insights to the development of the student interest survey and this manual, and to our allied state activities associations and professional colleagues who shared information and their expertise.

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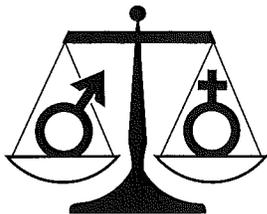
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Our state of Minnesota and its high schools can take justifiable pride in the growth of girls athletics since the 1970s. As your district developed its program, state and federal laws reflected public support for the elimination of sex discrimination in athletics and the opportunities for girls expanded and multiplied.

But we cannot rest on past accomplishments. In the 1990's, school districts must closely monitor their athletic programs to ensure that sports offerings are equitably meeting the interests and abilities of their students.

The commitment of the Minnesota State High School League and the Minnesota Department of Education to ensuring that young women have equal access to our athletic programs led to the creation of the Sports Equity Committee and to this manual and its model for a self-review of each member school's athletic program.

The purpose of the manual is to compile information in one document that will provide guidelines for Minnesota schools in their independent assessment of the status of gender equity.

We believe that it is important that school administrators, school board members, and school personnel exercise their responsibilities to establish athletic activities which equitably serve the needs of the young men and women in the schools of Minnesota. There are tough decisions ahead. Districts are facing challenges today in providing athletic programs for their students. Budget limitations can result in reductions in staff, programs and extracurricular activities. However, we are convinced that if Title IX, M.S. 126.21, State Board Rules and the remedies they prescribe are properly implemented and administered, gender equity can be reached while costly and unnecessary conflict and litigation in the area of sex discrimination in athletics can be virtually eliminated.

As you read through this manual, you'll see that we've gathered information from state and federal agencies, drawing from the experience and expertise of many individuals. Most important, the manual describes our own Minnesota blueprint for reaching equity through a self-review of the athletic program. In most, if not all Minnesota schools, girls have historically been the underrepresented gender. The informa-

tion gathered will enable your district to assess the status of gender equity, i.e., to determine if girls and boys are provided with equivalent opportunities throughout the athletic program.

You'll become familiar with the acronym, GEAR. It stands for "Gender Equity in Athletics Review."

The manual is divided into five (5) sections:

Section One: includes an introduction and brief history.

Section Two: provides strategies which can affirmatively increase girls' interest and awareness of sports and create a positive environment for their participation.

Section Three: includes the laws and interpretations which define gender equity and sex discrimination.

Section Four: provides a description of conducting a self-review with Title IX information and charts. Briefly, it includes two steps:

Step One: establish your Gender Equity in Athletic Review (GEAR) Committee composed of individuals from *inside* your district who will review the overall athletic program. This internal review is recommended for all member schools of the League.

Step Two: is a recommended activity for you to consider. Establish a GEAR-2 Committee of individuals from *outside* your district who would review your sports offerings and assess how you are meeting the interests and abilities of the students in your district. The Committee would provide advice and recommendations from a neutral and supportive viewpoint.

Section Five: includes reference information, models of policies and other resources.

While the League does not have authority to provide specific interpretations or to rule on compliance in a district, it does have a compelling interest in assisting its member schools to meet the spirit and intent of gender equity.

It must be clearly understood that this manual is not a legal document. The interpretations are provided as we understand the regulations. We have gathered information from authorities responsible for compliance with state and federal laws. However, the final decisions ultimately rest with the monitoring agencies and courts who are responsible for enforcing these standards.

In these pages, you will find that there is no single answer to the question: is our district's program in compliance? It requires an analysis of each piece and of the total athletic program of your district.

This self-review will be followed by continual monitoring of the effect of each decision on gender equity.

After those disclaimers, let's talk about the blueprint in this manual. The information which follows will guide you through an important process of conducting a self-review. It will compile the data needed to support your decisions and determine steps needed, if any, to provide gender equity throughout the program.

A self-review is an important step to prevent problems from developing and to provide a composite picture of your efforts to comply with state and federal laws .

Let's be clear about our goals. Gender equity is more than "being in compliance" with a law. It is a spirit, a personal ethic, a community and state commitment to doing what is fair and right for all of its children. It means creating an atmosphere and environment where the opportunities and resources of your district are fairly distributed to girls and boys and where no student, coach or administrator experiences discrimination on the basis of their gender.

Parents sometimes find themselves faced with one piece of pie left in the pan, and two children who want their fair share. One solution is to give one child the knife to cut the piece in half, and the other child gets first choice. The analogy provides us with the spirit and ultimate goal of gender equity: an athletic program that divides resources, facilities and opportunities in half and either half would be acceptable to the girls or to the boys.

Why this emphasis now?

... it's the law! Schools have been required to be in compliance with Title IX since July 1978.

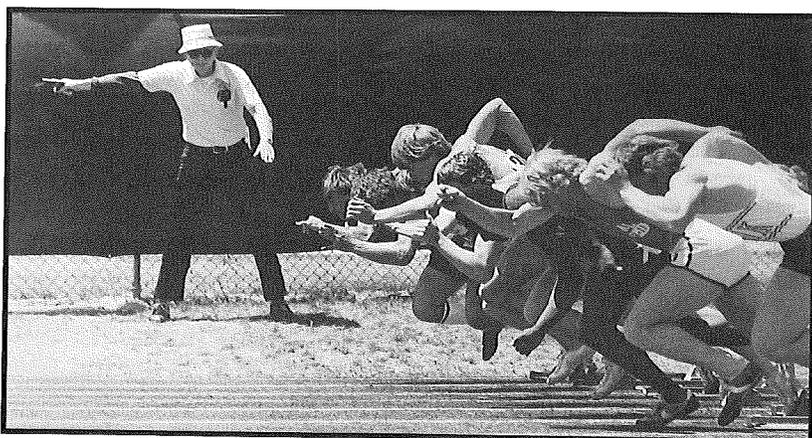
... it's costly to procrastinate. In February 1992, the Supreme Court unanimously held in Franklin vs. Gwinnett County Public Schools that monetary damages can be awarded to those who file sex discrimination complaints under Title IX.

... it's important to our country's future to eliminate barriers and ensure that females have the opportunity to reach their full potential as citizens in our democratic society.

At this point, someone is asking, "do we have to do this?"

It's your decision. One thing is clear: conducting a self-review stands as visible evidence that your district wants to take every step available to ensure equity for all of its students, girls and boys. As one superintendent phrased it, "this is an opportunity for us to do our best."

We're confident that your response is, "let's get started!"



An Historical Perspective

Throughout history, female athletes have faced resistance and adversity in response to their desire to participate in sports.

At the turn of the century, female athletes had fought for the right to play and had won, only to lose again in the 1920's when Mrs. Hoover and the National Amateur Athletic Federation (NAAF) turned off the spotlight and created the "dark hole" which was to endure for nearly fifty years.

After women had gained the right to attend college in the 1850s, the new women's schools provided courses in health and physical education amid dire predictions that the stress and demands of education would produce sickly, barren bodies. Bicycling had become the social rage and the bloomers worn are credited with making the change into looser clothes for women and ultimately, the freedom to enjoy sports.

By 1884, the U.S. Commissioner of Education gave a favorable report on women's health in the schools because of their strong physical education programs. By the 1890's, most schools had built gymnasiums and offered sports programs for their female students. Competitive sports were a natural outgrowth of these classes and women were attracted to them. Nationally, basketball was introduced in 1891, volleyball in 1893 and field hockey in 1897. Soon, competitive sports replaced sports for exercise and social activity.

By 1900, instruction in sports was an integral part of many college physical education departments, and it was the team sports that the women flocked to, especially basketball. However, with more organized team competition came media coverage and more spectators, which raised the concerns of various organizations.

In 1917, the Athletic Conference of American College Women issued a statement opposing intercollegiate competition for women. Mrs.

Herbert Hoover, First Lady, formed a committee in 1923 to study the dubious practice of scheduling men and women's double-header basketball games. Their inspection of games showed women in "gym" uniforms playing in front of male spectators. She and her committee recommended that such practices stop in the name of decency. The National Amateur Athletic Federation added its support and the number of colleges sponsoring women's varsity competition throughout the country dropped from 22% in 1923 to 12% in 1930. Women's sports generally became uncompetitive events, usually called "playdays" and "sportsdays."

As one writer, Barbara Jane Walter wrote, "the golden era of women's intercollegiate athletics ground to a shameful halt." Ms. Walter's article, "Mrs. Hoover's holy war on athletics," *womensports*¹ magazine, describes how it happened:

The Army, the Navy, the Boy Scouts and the churches gassed up Mrs. Hoover's bandwagon in 1923 by forming the National Amateur Athletic Federation (NAAF). The NAAF made official the general dissatisfaction with athletics at the time. There were two beefs: (1) the military alerted people to how unfit the men consigned to fight in the 1917 war had turned out to be; and (2) this got them thinking it had something to do with athletes being exploited for the sake of the few at the expense of the many.

Mrs. Hoover headed up the Women's Division of the NAAF, and the Committee on Women's Athletics (a policy-making group formed in 1917 by the physical educators' national organization) hopped right on board. Both the men's and women's groups vowed to nip "exploitation" in the bud, but as it turned out the men sort of gave up the ghost and went back to the Army, Navy and Boy Scouts while the women kept



right on in their vigilance to eradicate sweat.

The NAAF was successful: by 1930 the number of colleges sponsoring varsity competition dropped by 22% to 12%. Gradually it became all right to exploit males again but the women never did quite get out from under.

While NAAF's motto became "a game for every girl and a girl in every game," their enthusiasm for participation did not spill over to the exceptional athlete capable to learning highly competitive skills and they officially opposed female participation in the 1928 Olympics."

The high schools shared the after-shocks of the demise of women's intercollegiate sports, losing their interscholastic teams in the wake of negative criticism of females in competition. One high school sport affected was girls swimming and diving. Girls high school swimming in Minnesota enjoyed a state girls swimming meet from 1928 - 1942 sponsored by the Minnesota State High School League. The meet was held on the Iron Range with the schools who had built swimming pools during the growth of iron mining. The meet ended after 1942 with no recorded action in League annals to indicate who made the decision or why.

Girls high school basketball teams were playing in local conferences across Minnesota through the 1920's and 30's. Often the girls played the first game followed by the boys game. In some areas, the train was the common mode of transporting teams.

A girls basketball team in Grand Meadow compiled a record of 94 straight wins between 1929 and 1939. During the 1992 celebration of National Girls and Women in Sport Day at the State Capitol, a member of the Grand Meadow team, who had worked in the superintendent's office as a senior student, recalled the superintendent showing her a letter from "some government office" that said the school was to stop sponsoring its girls basketball team. The woman recalls that the superintendent threw the letter in the wastebasket, but, she noted, the team was disbanded one year later in 1939.

The scenario was repeated across the state. As a result, high school girls shared the same fate as the collegiate women, i.e., an occasional play day or sports day, or use of the gymnasium for intramurals or their Girls Athletic Association

(GAA) when the boys teams were away from school.

The theme was the same across the country, i.e., the inability of girls and women to compete in athletics. National organizations supported this position. In 1933, the President of the American Physical Education Association said, "External stimuli such as cheering audiences, bands, lights, etc., cause a great response in girls and are apt to upset the endocrine balance. Under emotional stress, a girl may easily overdo. There is the widespread agreement that girls should not be exposed to extremes of fatigue or strain, either emotional or physical...In addition, custom and good taste should always influence in questions of public display, costumes, publicity."

The Division of Girls and Women's Sports (DGWS) of the American Association for Health, Physical Education and Recreation (AAHPER) developed rulebooks for female sports and set a philosophy that encouraged, 'a girl for every sport and a sport for every girl.' Intramurals, playdays and sports days with limited competition became the standard. As a result, the good intentions of men and women and their professional concerns for protecting females from abuse denied competitive opportunities to two generations of girls and women.

And then came the 1960 Summer Olympics and Wilma Rudolph.

In 1960, the Summer Olympics featured an outstanding track and field athlete. Wilma Rudolph, shown on television with her gold medals, became the catalyst for the obvious questions to be raised: where are the United States' other female athletes? If it is good for Wilma Rudolph, why isn't it good for our daughters?

And the new era began in the 1960's which would lay the groundwork for a competitive athletic program for girls and women.

Nationally, the National Association for Girls and Women in Sport (NAGWS) began conducting institutes across the country to determine the future of female in sports. The philosophy and myths regarding competitive sports were challenged and leaders in each state began to raise questions.

In Minnesota, it began in 1960 with a group of women who had a vision for change. As teachers and administrators in local high schools and colleges, they began organizing events, begin-

ning with gymnastics. They planned and conducted training workshops which mobilized interest across the state, investing their time and energies and risking their careers to break the stereotypes and myths which surrounded females in sports. Young women and their teachers/advisors flocked to these events, clearly demonstrating their desire for information and the opportunity to participate. Soon, the activities expanded to other individual and team sports sponsored by the Minnesota Division for Girls and Womens Sports (MDGWS), a branch of the Minnesota Association for Girls and Womens Sports (MAHPER).

During this period, the Health and Physical Education Section of the Minnesota State Department of Education led by Dr. Carl Knutson was instrumental in conducting high school leadership workshops across the state for schools to learn about the benefits of expanded opportunities for girls as well as support through revised rules and standards.

In 1965, a study committee was established by the Minnesota Association for Health, Physical Education and Recreation (MAHPER) to develop a position statement regarding girls interscholastic sports. In May 1966, the committee met with the Minnesota State High School League through Beverly H. Hill, Executive Director. In June 1967, the committee provided the MSHSL Board of Control with a report which stressed the need for regulations, the League as the appropriate body to administer the program; the establishment of a Women's Advisory Committee to the League which would make recommendations to the Board, and that the girls program should be developed to meet their needs. An inservice program was conducted with MSHSL District Officers in December 1967. In March 1968, the MSHSL Representative Assembly approved a resolution that the League should be responsible for administering a girls interscholastic program and that bylaws be developed.

In March 1968, the Minnesota State High School League established an ad hoc committee to develop a set of proposed rules for interscholastic girls athletics. In December 1968, the Board submitted the proposed Bylaws for Girls Athletics to the MSHSL Representative Assembly. In March 1969, the Assembly passed the amendments and girls athletics became an official program of the Minnesota State High School League. The League created a position on its executive staff and filled it in July 1970 with an individual charged with the responsibility to assist schools to develop their girls inter-

scholastic athletic program.

Minnesota high schools began to create teams, employ coaches and develop competitive schedules for girls teams in a variety of activities. The League established statewide seasons and district and region tournaments were conducted in various sections of the state.

The first state tournament was initiated in 1972: track and field. (*Note: a Minnesota metropolitan newspaper printed the meet results in the Women's Section of its Sunday paper.*) It was followed by gymnastics, tennis and volleyball in 1974-75; basketball, cross country running, swimming and diving, and cross country and slalom skiing in 1975-76; golf and softball in 1976-77; and soccer in 1980-81. The number of varsity girls teams increased from 424 in 1971-72 to 2,823 in 1981-82.

Prior to 1970, there were less than 300,000 female participants in high school athletics nationwide. It should be noted that schools across the country between 1970-1974 added programs for an additional one million female participants without any stimulation from the government. This four-year growth period has never been equaled.

State and Federal Rules and Legislation:

The Minnesota State Department of Education moved in 1972 to support the newly emerging girls athletic program by issuing a policy statement on sex equity. It covered extracurricular sports as well as instructional materials and regular classes and course work. The State Board of Education adopted a regulation which stated that schools could lose state aid for failure to equitably provide course, activities and athletics to students of both sexes. This regulation is now Minnesota Statute 124.15.

Congress in 1972 passed a law called Title IX of the Education Amendments. They were 37 words which would change the face of athletics in America:

"...no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving financial or federal assistance."

Simply put, the law says that girls and boys are equally important, shall be treated fairly and shall have a chance to participate in educational activities based on interest and ability.

Competitive athletics would become a key component of Title IX interpretations.

In 1976, the Minnesota Legislature passed a law, M.S. 126.21, which provides for equal opportunity for members of both sexes to participate in athletic programs. Shortly after, the State Board of Education promulgated rules to implement this section of law which prevents discrimination in elementary and secondary school athletic programs operated by educational institutions.

By 1978, when Title IX regulations were to be enforced by all schools, there were 1.8 million girls participating in high school athletics, comparable to the rates of the 1990's.

In 1984, school and collegiate athletic programs were affected by a court decision, the *Grove City College v. Bell*, when it limited Title IX's coverage to include only those specific programs or activities which actually received federal funds. Fortunately for Minnesota athletes, M.S. 126.21 and M.R. 3535 continued to ensure equal opportunity under their provisions.

In 1988, Title IX's broad coverage was once again guaranteed by the Civil Rights Restoration Act, passed by Congress on March 22, 1988, over President Reagan's veto. The Civil Rights Restoration Act directly reversed the Supreme Court's decision in *Grove City College v. Bell*. With the *Grove City* notion of "program specificity" clearly rejected by the Congress, Title IX prohibits sex discrimination in nearly all aspects of education in this country.

A significant court decision affecting all schools occurred on February 26, 1992, when the United State Supreme Court in *Franklin v. Gwinnett County Public Schools* held that monetary damages could be awarded to Title IX plaintiffs who suffer sexual harassment and other forms of sex discrimination by their schools in violation of their civil rights.

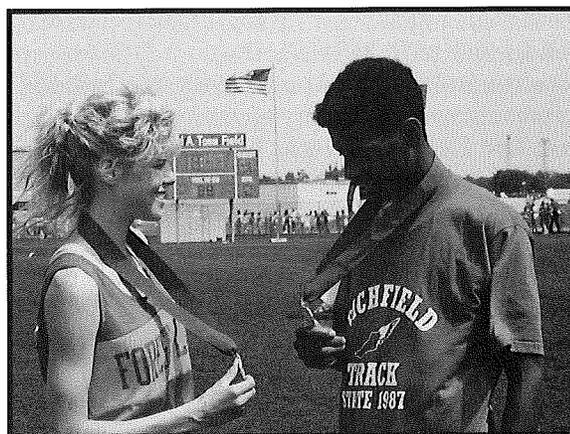
This decision clearly encourages all MSHSL member schools to take preventative actions which will address all forms of sex discrimination and in this specific area, to bring their athletic programs into compliance with state and federal laws, thereby avoiding costly litigation and potentially large sums of monetary damages awarded to a student plaintiff.

So what are the issues of the 90's? Clearly, the focus is on change: changing paradigms and revisiting old boundaries and eliminating myths and stereotypes. It means listening to your

students. What do students want to play? Is your school offering what students are interested in, or what adults want to watch because they played those sports?

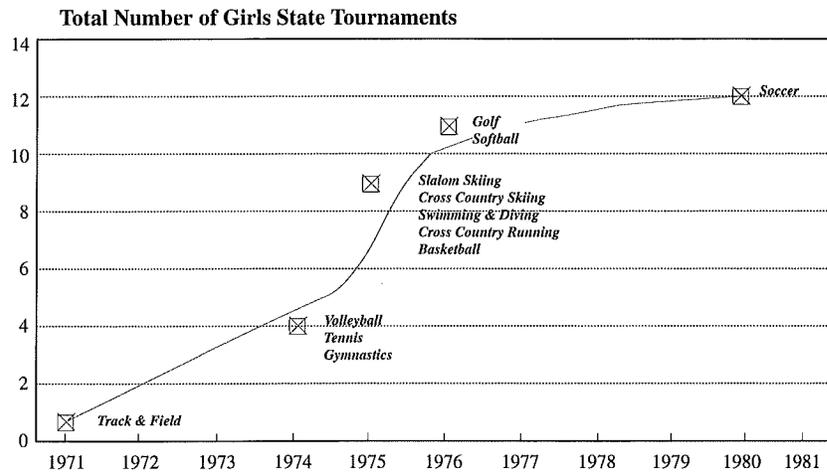
Your decisions are history-in-the-making! Let's work on it together!!

¹Walter, Barbara Jane, "Mrs. Hoover's holy war on athletics," *womensports magazine*," September 1974.



GIRLS STATE TOURNAMENTS

Sponsored by MSHSL

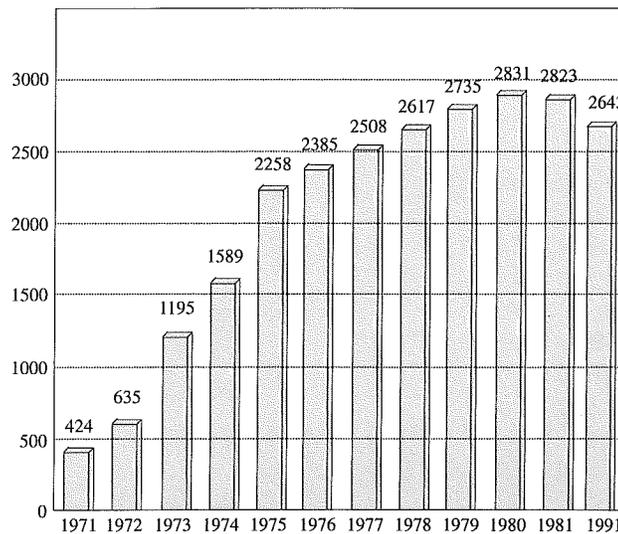


First 10 Years of State Girls Tournament

—x— # State Tournaments

Year=Beginning of academic year

THE FIRST TEN YEARS IN MINNESOTA



GIRLS ATHLETIC PARTICIPATION

█ # of Varsity Teams

Year=Beginning of academic year

NOTE: The number of teams in 1991-92 was 2,643 which reflects a decrease in the number of school districts and an increase in the number of cooperative

1992 SPORTS PARTICIPATION SURVEY

Conducted By

THE NATIONAL FEDERATION OF STATE HIGH SCHOOL ASSOCIATIONS

Based on Competition at the Interscholastic Level in 1991-92 School Year

| | BOYS | | GIRLS | |
|------------------------|-------------------|------------------------|-------------------|------------------------|
| | Number of Schools | Number of Participants | Number of Schools | Number of Participants |
| ARCHERY | 4 | 188 | 13 | 277 |
| BADMINTON | *141 | *2398 | *272 | *7037 |
| BASEBALL | 13,722 | 433,684 | **52 | **541 |
| BASKETBALL | 16,469 | 518,127 | 15,934 | 391,612 |
| BOWLING | 649 | 7,886 | 620 | 6,588 |
| CANOEING | 8 | 147 | 11 | 197 |
| CREW | 28 | 879 | 28 | 935 |
| CROSS COUNTRY | 10,470 | 154,119 | 9,592 | 110,409 |
| DECATHLON | 138 | 594 | 17 | 54 |
| EQUESTRIAN | 14 | 78 | 21 | 141 |
| FENCING | 44 | 817 | 38 | 432 |
| FIELD HOCKEY | 1 | 40 | 1,434 | 49,160 |
| FOOTBALL--11-man | 12,768 | 890,041 | **29 | **117 |
| 9-man | 305 | 5,591 | | *1 |
| 8-man | 596 | 12,905 | | **2 |
| 6-man | 157 | 4,308 | | |
| GOLF | 10,025 | 132,847 | **4,277 | **42,368 |
| GYMNASTICS | 279 | 3,475 | 1,604 | 22,849 |
| HEPTATHLON | 2 | 3 | 51 | 186 |
| ICE HOCKEY | 925 | 22,817 | **34 | **122 |
| JUDO | 21 | 156 | 5 | 12 |
| LACROSSE | 413 | 20,883 | 258 | 10,544 |
| PENTATHLON | | | 52 | 83 |
| RIFLERY | 135 | 1,831 | 79 | 613 |
| SKIING (Cross Country) | 375 | 4,413 | 349 | 3,540 |
| (Alpine) | 358 | 5,497 | 330 | 3,305 |
| SOCCER | 7,025 | 236,082 | 4,665 | 135,302 |
| SOFTBALL (Fast Pitch) | 61 | 1,070 | 9,015 | 221,510 |
| (Slow Pitch) | 12 | 194 | 2,093 | 42,894 |
| SWIMMING & DIVING | 4,294 | 79,998 | 4,385 | 93,490 |
| TENNIS | *8,845 | *145,374 | *8,795 | *139,433 |
| TRACK & FIELD (Indoor) | 1,765 | 41,448 | 1,600 | 31,868 |
| (Outdoor) | 14,034 | 417,451 | 13,782 | 327,183 |
| VOLLEYBALL | *1,106 | *23,586 | *12,095 | *293,948 |
| WATER POLO | 391 | 10,273 | 122 | 1,260 |
| WEIGHT LIFTING | 369 | 14,719 | **114 | **2,256 |
| WRESTLING | 8,392 | 229,908 | **50 | **219 |
| OTHER | 329 | 7,841 | 26 | 313 |

* Includes some co-educational teams

** Includes girls playing on boys' teams and boys playing on girls' teams

NATIONAL FEDERATION OF STATE HIGH SCHOOL ASSOCIATIONS SUMMARY 1991-92 SPORTS PARTICIPATION SURVEY

TEN MOST POPULAR BOYS SPORTS

| Schools | | | Participants | | |
|---------|-------------------------|--------|--------------|-------------------------|---------|
| 1. | Basketball | 16,469 | 1. | Football | 912,845 |
| 2. | Track & Field (Outdoor) | 14,034 | 2. | Basketball | 518,127 |
| 3. | Football | 13,826 | 3. | Baseball | 433,684 |
| 4. | Baseball | 13,722 | 4. | Track & Field (Outdoor) | 417,451 |
| 5. | Cross Country | 10,470 | 5. | Soccer | 236,082 |
| 6. | Golf | 10,025 | 6. | Wrestling | 229,908 |
| 7. | Tennis | 8,845 | 7. | Cross Country | 154,119 |
| 8. | Wrestling | 8,392 | 8. | Tennis | 145,374 |
| 9. | Soccer | 7,025 | 9. | Golf | 132,847 |
| 10. | Swimming & Diving | 4,294 | 10. | Swimming & Diving | 79,998 |

TEN MOST POPULAR GIRLS SPORTS

| Schools | | | Participants | | |
|---------|-------------------------|--------|--------------|-------------------------|---------|
| 1. | Basketball | 15,934 | 1. | Basketball | 391,612 |
| 2. | Track & Field (Outdoor) | 13,782 | 2. | Track & Field (Outdoor) | 327,183 |
| 3. | Volleyball | 12,095 | 3. | Volleyball | 293,948 |
| 4. | Cross Country | 9,592 | 4. | Softball (Fast Pitch) | 221,510 |
| 5. | Softball (Fast Pitch) | 9,015 | 5. | Tennis | 139,433 |
| 6. | Tennis | 8,795 | 6. | Soccer | 135,302 |
| 7. | Soccer | 4,665 | 7. | Cross Country | 110,409 |
| 8. | Swimming & Diving | 4,385 | 8. | Swimming & Diving | 93,490 |
| 9. | Golf | 4,277 | 9. | Field Hockey | 49,160 |
| 10. | Softball (Slow Pitch) | 2,093 | 10. | Golf | 42,368 |

SPORTS PARTICIPATION SURVEY TOTALS

| Year | Boy Participants | Year | Girl Participants |
|---------|------------------|---------|-------------------|
| 1971 | 3,666,917 | 1971 | 294,015 |
| 1972-73 | 3,770,621 | 1972-73 | 817,073 |
| 1973-74 | 4,070,125 | 1973-74 | 1,300,169 |
| 1975-76 | 4,109,021 | 1975-76 | 1,645,039 |
| 1977-78 | 4,367,442 | 1977-78 | 2,083,040 |
| 1978-79 | 3,709,512 | 1978-79 | 1,854,400 |
| 1979-80 | 3,517,829 | 1979-80 | 1,750,264 |
| 1980-81 | 3,503,124 | 1980-81 | 1,853,789 |
| 1981-82 | 3,409,081 | 1981-82 | 1,810,671 |
| 1982-83 | 3,355,558 | 1982-83 | 1,779,972 |
| 1983-84 | 3,303,599 | 1983-84 | 1,747,346 |
| 1984-85 | 3,354,284 | 1984-85 | 1,757,884 |
| 1985-86 | 3,344,275 | 1985-86 | 1,807,121 |
| 1986-87 | 3,364,082 | 1986-87 | 1,836,356 |
| 1987-88 | 3,425,777 | 1987-88 | 1,849,684 |
| 1988-89 | 3,416,844 | 1988-89 | 1,839,352 |
| 1989-90 | 3,398,192 | 1989-90 | 1,858,659 |
| 1990-91 | 3,406,355 | 1990-91 | 1,892,316 |
| 1991-92 | 3,429,853 | 1991-92 | 1,940,801 |

SECTION TWO



Increasing Interest and Participation of Girls in Athletics

As long as we deny girls the education and encouragement they need, America

will be competing with only half of its team on the field. Shortchanging Girls, Shortchanging America, AAUW

There is a myth which filters through some athletic programs, that girls do not express the same degree of interest in sports as do boys, therefore, they do not want to participate in high school athletics in the same numbers as boys. Recent studies are now showing that socialization and education are responsible for both creating and changing the level of interest and participation by young girls.

When girls exhibit a lesser degree of interest, schools can conduct positive activities which will motivate and encourage girls to participate. Title IX encourages affirmative action to overcome the effects of limited participation and opportunity.

If a girl does not participate in sports by the time she is 10, there is only a 10% chance she will participate when she is 25.

As little as two hours a week of exercise may lower a teenage girl's lifelong risk of breast cancer.

Women who are active in sports and recreational activities as girls feel greater confidence, self-esteem and pride in their physical and social selves than those who were sedentary as children.

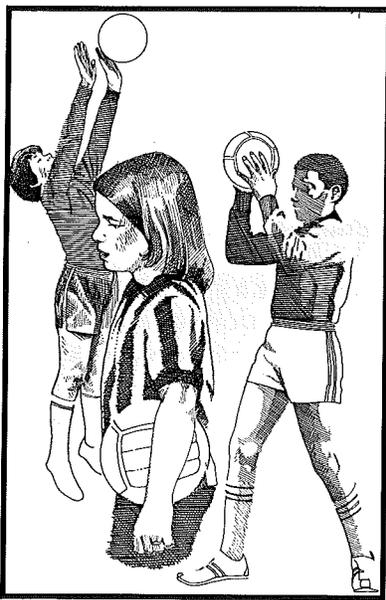
Girls who participate in sport are three times more likely to graduate from high school.

Women's Sports Foundation

Here are ideas for your district to consider:

School Administration:

1. **Celebrate** a special day which honors sport participants in your school. Provide an equitable focus on the girls athletic program. Involve the community, media and student body to raise awareness and support for the total athletic program.
2. **Consider** participating in the National Girls and Women in Sport Day, held annually in every state and nationally during the first week in February as a affirmative action to project a focus on females and sports. Obtain ideas from the National Association for Girls and Women in Sport, 1900 Association Drive, Reston, VA 22091, or 703 476-3450, or the Minnesota State High School League. Minnesota celebrates in the rotunda of the State Capitol at 12 Noon of the designated day.
3. **Encourage** the attendance of elementary, middle school and junior high students at girls high school games. Options include free admission with school I.D. Prior to the game, female athletes can go into the schools to provide mini-clinics on the sport to develop their interest as a future participant.
4. **Explore** the coed team approach to introduce sports, such as coed volleyball, mixed doubles tennis, etc.
5. **Invite** an area, state or nationally known female athlete to speak to the students about their experiences and the benefits of being a female athlete.
6. **Take** girls to a neighboring town that already has a girls team sport so that they have the opportunity to see the team in action.
7. **Arrange** for high school female athletes to visit elementary and middle school classes to talk about their choice to be an athlete, the challenge of competition and the benefits which they receive.



8. **Provide** elementary classes with information on what is expected of athletes in your district and to make girls and boys feel welcome and invited to participate in the athletic program.
9. **Take** the girls to events that feature female athletes, i.e., high school contests, section and state tournaments, women's tournaments in individual and team sports, etc.
10. **Encourage** girls to enter related areas of sports, such as becoming officials, coaches, statisticians, trainers, media, athletic administrators, etc. Plan career nights for girls and their parents to provide information.
11. **Study** the policies in your district regarding the cutting of athletes to reduce numbers. If your district has such a policy, what teams are provided to those who are cut, i.e., do boys have other teams available? If so, do girls have other teams available?
12. **Establish** a Speakers Bureau for women to speak at school programs, etc.
13. **Ensure** that the competitive schedule is balanced for school nights and responsibilities for homework. Starting times for girls and boys contests are rotated so that one gender is not consistently the early game and the other scheduled for the prime time game; review the days that girls and boys games are scheduled to ensure that one gender is not scheduled consistently for school nights and

the other gender for weekends.

14. **Provide** a balance of female coaches, officials and administrators as role models for girls and boys. Ensure that girls and boys encounter women in leadership positions in athletics, as coaches, officials and athletic administrators.
15. **Ensure** that the sexual harassment and sexual violence policies are in place and all staff and students are aware of their spirit and intent.
16. **Ensure** that your district has a peer leadership program and that girls have

“When my 5th grade physical education teacher said that boys would play basketball and girls would skip rope, I became a basketball activist.” Janet Karvonen, New York Mills, Basketball Scoring Record Holder, Inductee in National Federation High School Sports Hall of Fame

an equivalent opportunity to be leaders in that program. The Minnesota State High School League's chemical health program, TARGET Minnesota, encourages schools to identify, train, support and recognize its chemically free student leaders, thereby empowering them to serve as role models for their athletic and fine arts activities. Girls should be encouraged to develop their leadership skills and confidence through these TARGET and other peer leadership activities.

Awareness, Attitudes and Publicity:

1. **Set** standards for acceptable language:
 - a. **Use** comparable language when referring to the girls athletic program as for the boys' program. Do not refer to “the team” and “the girls' team” when addressing the same sport.
 - b. **Be** aware of appropriate language. Words, such as “sweetie” and “honey,” are not

acceptable. Avoid “ladies,” and “gals,” unless pairing with “gentlemen” and “guys” and in appropriate settings.

2. **Expect** school administrators and staff to balance their support and attendance at girls and boys events.
3. **Implement** a plan which provides an equal focus on sports during special festivities. The student council in one school decided to provide equal recognition by rotating sports as the centerpiece of homecoming. All teams have a home contest during Homecoming Week with one sport being the focal point of the week’s festivities. The next year, another sport receives special time and attention.
4. **Seek** out speaking engagements with local community organizations to talk about the benefits of extracurricular activities and feature your girls athletic program and its athletes.
5. **Ensure** that girls’ sports and female athletes are provided equal coverage in all of the school’s publications, such as the yearbook, student newspaper, and daily announcements, and ask the news media in your community to do the same.
6. **Inservice** the faculty and coaching staff on the expectations of the school for equal support when attending girls and boys contests and sharing their enthusiasm during the season for both programs.
7. **Encourage** teachers to include examples of female athletes in their assignments and homework to provide role models for both genders.
8. **Work** with a local or school newspaper to feature female athletes and to provide both male and female recognition, such as athlete of the week.
9. **Encourage** girls to watch television and movies and read books and articles which feature female athletes.
10. **Provide** opportunities through physical education classes for students to learn how to officiate and coach. Provide

information on how to “give back” to their sport as officials and volunteer coaches.

11. **Establish** a mentor program to retain coaches who are role model for students, providing encouragement, solutions to problems and other information gained from experience in coaching.

Coaches:

1. **Serve** as a role model to provide

“As the coach of the first state girls track and field team champions in 1972, I raced to get the next day’s newspaper to read about this historic event. But it wasn’t to be found in the sports pages. Later in the day, a friend called to say that the results were there: in the Women’s Society News! Apparently the newspaper decided that was where there might be interest in reading about girls sports. Needless to say, in 1973, it was in the sports section where it belonged.” Connie Sugden, coach, White Bear Lake

athletes with a positive image of coaching, encouraging them to consider coaching as a future career. Provide information about education and teaching, coaching certification, etc.

2. **Ensure** that girls are aware of school’s sexual harassment policies and the established process for responding to issues.
3. **Respond** to issues raised by girls relating to participation in athletics, harassment, and other concerns.
4. **Seek** out female applicants for coaching positions to add to the school’s roster of female coaches. Serve as a mentor to young coaches to support them as they learn about coaching and its challenges.

Sports Photos Show Male and Female Athletes Differently

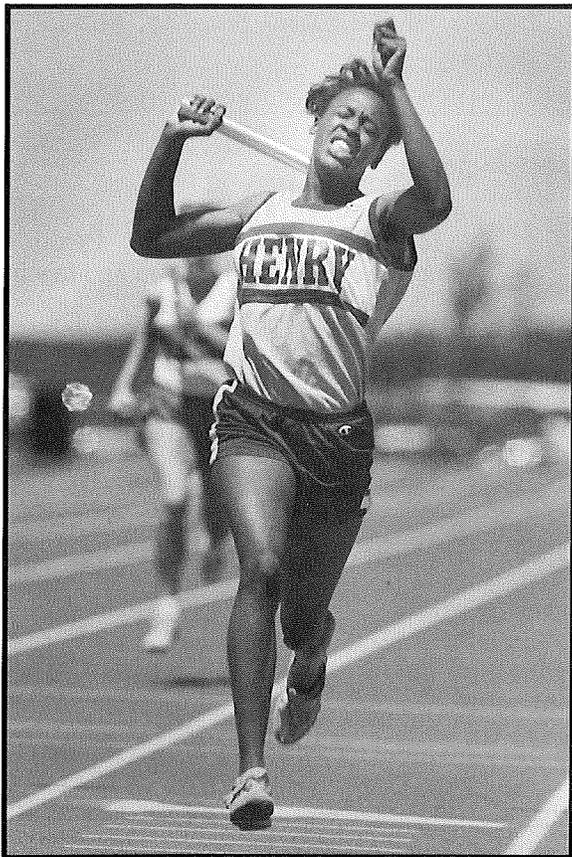
A study of athletes from the 1984 and 1988 Olympic games shows that photographs are more likely to show male athletes in dominant/masculine positions and female athletes in submissive/feminine positions. Female athletes are more likely to be shown displaying emotions, e.g., tears and crying. Camera angles typically focus up to male athletes and focus down on female athletes with male athletes in active roles, and females in passive roles.

The study suggests that such photos imply that female athletes are different than male athletes and reinforce patriarchal assumptions about gender roles and sport as male activity.

M.C.Duncan. *Sociology of Sport Journal*, 6(1)

Community Support:

1. **Find** a community club or organization and ask them to adopt a girls team by attending their games and cheering them on.
2. **Encourage** area park/recreation, community education and community league teams to include or to develop teams for girls at young ages.



“As we sat on the bench during the game, boys behind us would call us names, throw things at us and comment on our body parts.”

“The teacher would read the scores of the boys game and then pretend to make a big deal of it when our scores came up. We knew we were being made fun of.”

“At a pepfest, the boys wore cheerleader uniforms with balloons and mocked our cheering routines. No one said it wasn’t o.k.”

“One of my teachers said that girls should learn to play touch football so later they can watch football with their husbands and not ask dumb questions.”

“I don’t like it when the coach puts an arm around me after I do well. What can I say?”

“I’ve never had a woman for a coach.”

Student Comments

Extracurricular Activities and Sports

Grades, test scores, and course-taking patterns are all important aspects of students' educational experiences. But information on disparate patterns of participation in extracurricular activities among girls and boys is also revealing in terms of the status of girls in public education.

Since the 1972 passage of Title IX, which mandates equal educational opportunities in academic and athletic programs for girls and boys, girls' participation in athletics has increased dramatically. In 1972 approximately 4 percent of the female school population participated in secondary-school athletics; by 1987 the figure had risen to 26 percent.

However, boys' participation is still almost twice that of girls (1990-91 National Federal Handbook). These findings are corroborated by data from the National Educational Longitudinal Survey (NELS) of eighth-graders, which reveal that in all racial groups, boys are much more likely than girls to participate in school sports. In addition, the percentage of women coaches has decreased, not increased, since the passage of Title IX. As in other areas of educational leadership, students lack female role models in athletics.

A recent statewide study in Michigan revealed that students perceive clear sex-biased standards and expectations favoring males in physical education classes. Moreover, students listed almost all sports as male domains; figure skating, gymnastics, jumping rope, and cheerleading were the only athletic activities identified as female. When asked, "How would your life be different if you were a boy?" many girls wrote about how they would play and enjoy sports more if they were male. Obviously, gender socialization has a profound effect on how girls perceive themselves in relation to sports. Classroom teaching practices and systematic limitations in school districts play a critical role. Seventy percent of the school districts polled in this study did not provide girls with athletic opportunities comparable to those provided to boys.

But girls enjoy and benefit from participation in sports as much as boys do. For example, research indicates that even though the participation of Hispanic girls in high school athletics is low, they more than any other minority subgroup "were most likely to reap benefits from participation in high school athletics... (and) more apt than non-athletes to improve their academic standing while in high school, to graduate, and to attend college following high school."

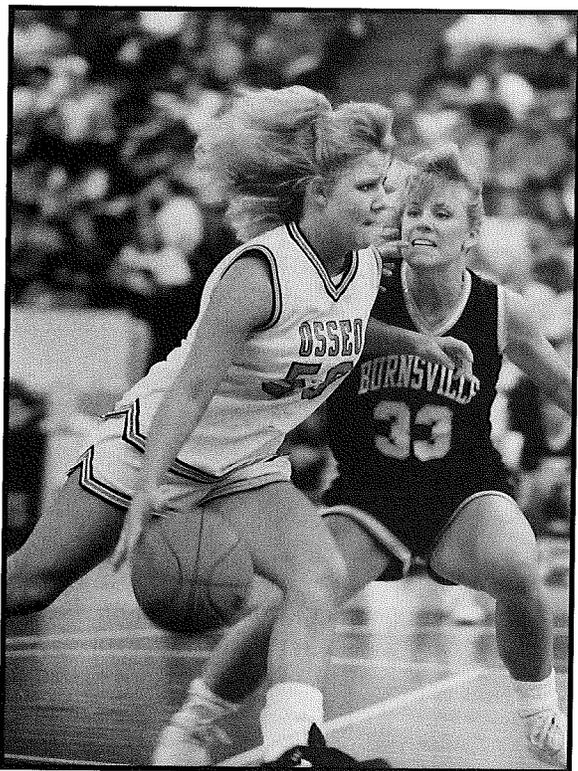
Extracurricular activities and sports provide important opportunities for leadership, teamwork, and the development of citizenship. They also provide both a chance to explore a variety of new areas and an opportunity to delve into an area of particular interest if a student is so inclined. Extracurricular activities also offer opportunities for personal contacts with adult role models who can, in turn, provide guidance and support. For all of these reasons, it is important to actively encourage girls' participation.

"How Schools Shortchange Girls." The American Association of University Women, 1992, pp. 45-46, 1111 Sixteenth Street NW, Washington, DC 20036-4873

3. **Contact** local service clubs and solicit their support in recognizing girls activities as well as boys activities.
4. **Ask** community booster clubs to help finance a girls team if they already finance a boys team.

Media Support:

1. **Encourage** the media to conduct their live radio broadcasts of "Coaches Corners" to include girls coaches and activities.
2. **Work** with local cable television stations to encourage coverage of girls athletic events.
3. **Work** with local media to develop public service announcements which promote girls, and boys, in sports.



4. **Affirmatively** develop information for the media on female athletes and their teams.
5. **Encourage** local radio stations to do live broadcasts of girls contests.
6. **Conduct** a "Media Day" when local media can meet the athletes and coaches for that season and conduct interviews.
7. **Work** with media regarding the

language of sports, i.e., pairing words: girls and boys; men and women. Use the last name of female and male athletes, i.e., don't use last name of male athletes and first name of female athletes.

8. **Encourage** photographs of female athletes that show skills, courage and teamwork. Express your dissatisfaction with photos with emphasize tears and hugs to the exclusion of competitive action shots.

Providing A Positive Environment For Female Athletes

Sexual harassment impacts the female athlete. It can cause her to choose not to participate at all or drop from a team. Or it can cause stress and anxiety as she participates, removing the benefits and enjoyment of competition.

Harassment can come from any quarter: from spectators, members of the student body, or coaches. It can range from inappropriate looks, gestures or verbal comments to touching, unwanted hugs and acts of violence. It can include homophobic harassment which is directed to females, regardless of their sexual identities, as a technique to discourage them from participating in athletics.

It becomes the responsibility of the school to enforce its sexual harassment and sexual violence policies and develop pro-active strategies which will create a positive environment for the female athlete.

Such activities include:

1. Develop and update district policies and procedures.
2. Communicate district policies and procedures all staff, students and community:
 - * post policy and contact person on bulletin boards at school.
 - * send information to parents.
 - * include policy in student handbooks.
 - * discuss with classes at the beginning of the year.
 - * conduct workshops and classes with appropriate personnel.
 - * share the district commitment with the media.

Study Shows Impact of Sports on Pre-Adolescent Girls

The girls in this study were physically active in a variety of sports. (age 9-12)



- * **All of the girls in this study reported enjoying the activities in which they participated. The primary reason girls engaged in physical activity was to have fun, followed by positive health benefits.**
- * **Those girls who felt most confident about themselves and their abilities were more likely to participate in physical activities at higher levels than girls who felt less confident.**
- * **The girls in this study derived positive self-esteem from sports through challenge, achievement in sports, risk-taking experiences and skill development.**
- * **The girls in this study were motivated to be physically active by: 1) themselves, 2) their mothers, 3) their fathers and their friends.**
- * **Despite having fun, liking physical activity, and feeling good about themselves, the girls in this study cited some serious obstacles to maintaining physical activity. These obstacles included unfair treatment by the boys they were playing with, the assumption that they were not good players, inappropriate level of challenge, lack of opportunity and time conflicts with other activities.**
- * **It is important that those adults who work with girls in this age group focus on removing these obstacles, as they and the frustrations cited by the girls will become the reasons that girls drop from sports participation. It is also important for younger girls to develop the skills necessary to participate in sports with confidence in themselves and their abilities. Some strategies for parents, teachers, coaches and recreation specialists might include:**
 - * **Encourage same-sex teams, where girls can play and try new activities in a safe, uncritical environment.**
 - * **Keep organized sports fun, ensuring appropriate levels of challenge for each child, taking into account each girl's skill level.**
 - * **Competitiveness should be kept to a minimum, as competition is not a primary reason for girls to participate in sports. Girls are more likely to continue participating when the focus is on self-esteem, skill building and teamwork.**
 - * **Provide opportunities for girls in all kinds of sports, including traditional male sports, such as football and hockey. Opportunities should be provided for girls of all skill levels. Equipment must be provided by the sponsoring agency to ensure that girls' participation will not be limited by finances.**
 - * **Emphasize women role models who are active in sports, such as coaches and collegiate, Olympic and professional athletes. Encourage girls to become active and vocal in increasing opportunities for girls and women.**

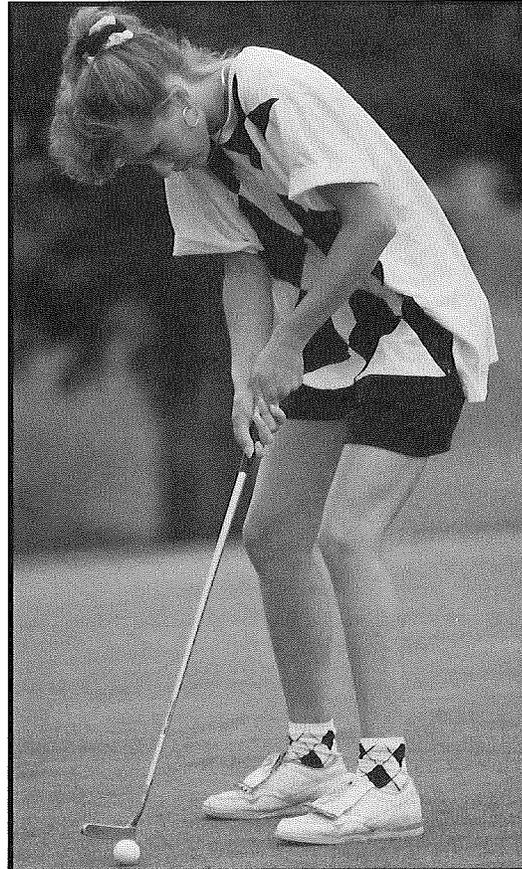
"Girls' Perspectives: Physical Activity and Self-Esteem" Jaffee and Manzer, Melpomene Journal, Vol. 11, No. 3, Autumn 1992.

3. Conduct Staff Development Training Workshop.

- * conduct training of professional and other staff.
- * provide information in employee contracts so that sexual harassers receive training and/or treatment as needed.
- * ensure that coaches of male and female athletes understand the district's sexual harassment policy and their responsibilities to respect boundaries of the students.

4. School Environment.

- * monitor pep fests and events to ensure that females are free of harassment in skits, pep talks, etc. It requires attention to costumes and statements made by students and adults to motivate teams and spectators.
- * monitor athletic events to ensure that female athletes are treated with respect by students, spectators, coaches and visitors from other schools.
- * Refer to: Appendix D for a model of a sexual harassment policy for a school district; and, Appendix E for the Sexual Harassment and Violence Rules of the Minnesota State High School League.





The following discussion can guide your equity committee as it gathers information and analyzes data from the student interest survey. The interpretations reflect League rules and policies, state law, state board rules and policy interpretations provided by the Office for Civil Rights. Clearly, these answers are not binding on the enforcement agencies and may be interpreted differently based on the facts of a given situation.

The League Office will assist member schools with information and updates as available, however, the League is not authorized to issue interpretations on compliance or specific fact situations. These questions on compliance should be directed to the Equal Educational Opportunities Section of the MDE and its gender equity specialists.

A Starting Point Before Moving On

Q1 *Is this manual a legal document and one which has all of the answers needed by our school?*

A. This manual should not be viewed as a legal document, but it does represent our best understanding of what is expected of schools, based on policy interpretations provided for Title IX, Minnesota Statutes and State Board Rule. As more complaints are filed and decisions are handed down by the courts, more specific interpretations will accumulate and provide more specific answers.

Title IX, the Law and its Policy Interpretations

Q2 *What is Title IX?*

A. The federal law passed in 1972 which states that: no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Q3 *Does Title IX cover more than athletics?*

A. Yes, Title IX bars discrimination on the basis of financial aid, access to course offerings, employment, health care, counselling, as well as on the basis of pregnancy and parental status.

Q4 *After passage of Title IX in 1972, were schools provided with time to evaluate their programs and to make changes to conform to the requirements of the regulation?*

A. Yes. Schools were provided with an adjustment period in which they were to conduct a self-evaluation and design a plan for achieving full compliance with the regulation, to be implemented no later than July 21, 1978.

Q5 *Is there to be an individual designated in my school to be responsible for Title IX?*

A. Yes. Every district must designate an employee to coordinate compliance efforts and to investigate possible complaints of sexual discrimination. The name of this person, their school address and phone number are to be given to students, parents and employees. See the MSHSL Directory for names submitted by member schools or the annual Assurance of Compliance form submitted to the MDE

Minnesota Statute 126.21 and State Board Rules Regarding Gender Equity in Athletics

Q6 *What is gender equity?*

A. Gender equity is an atmosphere and a reality where fair distribution of overall athletic opportunity and resources, proportionate to enrollment, are available to girls and boys and where no student athlete, coach or athletic administrator is discriminated against in any way in the athletic program on the basis of gender.

Q7 *Is our school responsible for other laws and rules in addition to Title IX?*

A. Yes. Minnesota Statute 126.21 and M.R. 3535.3000-3700, also contain requirements for your athletic programs, and in some cases are more specific than Title IX, such as in providing eligibility for girls to be members of boys teams.

Q8 *Who enforces gender equity?*

A. The Minnesota Department of Education (MDE) and the U.S. Office for Civil Rights (OCR), as well as the courts, enforce state law and Title IX by interpreting the regulations and securing compliance with their terms.

The Minnesota State Department of Human Rights and the courts can and do act independently of the MDE and OCR and are not bound by their interpretations. Judicial decisions may vary significantly from positions taken by the MDE or OCR.

The Joint Project of the Minnesota State High School League and the Minnesota Department of Education.

Q9 *Why are schools encouraged to undertake voluntary self-reviews at this time?*

A. The League and the MDE are committed to gender equity in sports. Twenty years after passage of Title IX, equity is a goal yet to be reached in all schools in Minnesota. In April 1992, an ad hoc committee formed by the League and the MDE was charged to develop the information needed by schools to evaluate their athletic programs. With this information and assistance, schools can then initiate any action needed to ensure equity and, hopefully, avoid costly and unnecessary conflict and litigation.

The Components of Compliance:

Q10 *What is compliance?*

A. There is no single response which any agency can provide which defines compliance based on one question or one piece of the athletic program. Determining if your district's overall

athletic program is within compliance of the laws requires a review of the total program, which includes the following components:

- * accommodating student interests and abilities;
- * equipment and supplies;
- * scheduling of games and practice time;
- * travel and per diem allowance;
- * coaches;
- * locker rooms, practice and competitive facilities;
- * medical and training facilities and services;
- * publicity;
- * support services;
- * athletic fees and awards, special assistance, recruitment and positive environment.

Q11 *What is the standard for compliance under the Title IX regulation?*

A. The following information regarding compliance is taken from the 1979 Title IX Policy Interpretation, Federal Register, December 11, 1979, VII, 2. The Policy:

"The Department will assess compliance...by comparing the availability, quality and kinds of benefits, opportunities, and treatment afforded members of both sexes. Institutions will be in compliance if the compared program components are *equivalent*, that is, equal or equal in effect. Under this standard, identical benefits, opportunities, or treatment are not required, provided the overall effects of any differences is negligible."

The overall objective of the Title IX Regulation is not that males and females receive identical treatment but to ensure that both are provided equal opportunities to compete in athletics in a meaningful way.

Q12 *When is our athletic program "out of compliance?"*

A. A district is "out of compliance" when it is not meeting all of the requirements of Title IX and Minnesota State laws and

rules. A district will be found to be out of compliance as a result of a complaint or other enforcement action if the district is not meeting those requirements, and corrective orders and/or penalties may result.

It is important that districts take action without waiting for a complaint or a sex discrimination charge. Ensuring gender equity is not just the law, it is the right thing to do. Meeting the spirit and intent of gender equity is equally as important as being in compliance with the law.

Q13 What should we do at this time to ensure that our program meets these expectations?

- A. Conduct a self-review by including members of your staff and community to build "ownership" in the process and the results of the study.

Accommodating Student Interests and Abilities:

Q14 If our school sponsors an equal number of sports for girls and boys, are we in compliance with accommodating student interests and abilities?

- A. This is a good start, but it is not the only factor involved. You must evaluate participation rates, results of the student interest survey, and the kinds of sports offered. You should examine the seasonal balance of your offerings.

A school offering an equal number of sports may still be found to be out of compliance in light of a specific complaint. For more discussion of this important factor, see Equity Component #1, Accommodation of Interests and Abilities, Section Four of this manual.

Q15 How do we know if we are accommodating the interests and abilities of girls and boys in our athletic program in compliance with the requirements of the laws?

- A. The number of girls and boys participating in sports should be substantially proportionate to their respective enrollments in the school. For example, if 52% of the students enrolled in your

school are boys and 48% are girls, then 52% of the participants in the sports program should be boys and 48% of the participants should be girls. If less than 48% of the participants are girls, then girls would be considered *underrepresented* in the sports program. If the percentages were reversed, boys could be underrepresented in the sports program. (Refer to Title IX Equity Component #1, Analysis, p.46 for examples of computing participation rates.)

Q16 Can our sports program reach a goal of gender equity if one gender is underrepresented?

- A. Where one gender is underrepresented in the sports program, the school must show a history or continuing practice of program expansion for that gender or be able to show that it has fulfilled the interests and abilities of its students, as evidenced in part by the student interest survey.

Example: a school offers 9 sports for boys and 11 sports for girls. But because there are 110 boys on the football teams, the overall participation rate was 60% boys and 40% girls. School enrollment was 52% boys and 48% girls. Girls are underrepresented in the sports program relative to their enrollment in the school.

The school must assess if it is: (a) offering the sports in which students had indicated an interest; (b) not limiting the number of participants on those teams; and (c) continuing to initiate and conduct pro-active strategies to generate interest in sports and provide a positive environment. If so, the school could be meeting the goal of gender equity even though that gender is underrepresented in the sports program.

Q17 In determining the participation rate for girls and boys, do I use duplicated or unduplicated numbers of participants?

- A. Use both rates. **First**, use the *unduplicated* numbers of participants, which means counting each student *once* who participates in one or more sports

offered by your school. This will show how many girls and boys are participating in at least one sport offered by your school.

Example: a student participates in cross country running, skiing and golf. The student is counted once.

Second, use the *duplicated* or total number of participations, which means to count the total number of participants by gender for all sports offered, double or triple counting students who participate in more than one sport. This will show the number of sports participations offered by your school.

Example: your school offers girls volleyball, 80 participants; girls basketball, 60 participants; and girls softball, 20 participants, and girls track and field, 40 participants: total: 200 participants. A girl who participates in all of these sports is counted as 3 participations.

Use both figures to evaluate the participation opportunities. (Refer to Title IX Equity Component #1, Analysis, p.53 for examples of computing participation rates.)

Q18 *How often are schools required by State Board rules to conduct a survey of student athletic interests?*

A. State Board rules require biennial determination of student interest in sports offerings and that schools report the method used to the State Department of Education.

Q19 *If we conducted our own survey last year, must we do it again this year with the MSHSL survey?*

A. The League recommends that your district conduct the MSHSL survey using the information sent on October 1, 1992 to all member schools. However, if your survey requested the same information, that data may be submitted in April 1993 provided a copy of the survey used is sent to the League Office and the method used is reported to the MDE. .

Q20 *Are private schools responsible for conducting a review of their athletic programs?*

A. Title IX, Minnesota Statute 126.21 and State Board rules also apply to private schools and require that the Department collect private school athletic data and assure compliance. Therefore, private schools are responsible on the same basis as public schools. See M.R. 3535.3000-3700 in Section Two of this manual.

Q21 *Will the results of the Student Athletic Interest in Sport Survey be reported by each school to the League?*

A. Yes, select data will be forwarded by each school to the League on the April 1993 Registration Form. The statewide data will be available to member schools and compiled to assist the League to plan for new activities. The MDE will have access to the data and it may use the data to review the survey results of an individual school district during a compliance review.

Q22 *Does Title IX require schools to offer the same sports for girls and boys under certain conditions?*

A. Under certain conditions, Title IX may require a school to offer the same sport for girls as it offers to boys.

For example, the Title IX Policy Interpretation, part VII (C)(4), states that where a school offers a team in a *contact sport* for members of one sex, it must offer a team for members of the other sex when: 1) opportunities for members of the excluded sex have historically been limited, and 2) there is sufficient interest and ability to sustain a viable team and a reasonable expectation of interscholastic competition.

For *non-contact sports*, where a team is offered to students of one sex, team must be offered to members of the excluded sex where: 1) opportunities for members of the excluded sex have historically been limited; 2) there is sufficient interest and ability to sustain a viable team and reasonable expectation of interscholastic competition for that team; and 3) members of the excluded sex do not possess sufficient skill to be selected for a single integrated team or

compete actively on such a team if selected.

Q23 Based on the above interpretation, would we have to add girls soccer if they asked for it and we sponsor boys soccer?

A. The purpose of gender equity is to respond to the interest of girls and boys and to provide them with equivalent sports opportunities.

Title IX interpretations indicate that your school should respond to expressed interest by girls to participate in equivalent sports as those offered to boys. If your school has a boys soccer team, a girls team should be established if the girls express sufficient interest and ability for an interscholastic team and competition can be scheduled.

The Title IX Policy Interpretation clarifies that the eligibility of girls for boys teams is not an acceptable alternative to providing a separate team where girls do not possess sufficient skill to be selected for a single integrated team or to compete actively on such a team if selected.

Sport and Support Activities

Q24 What is a sport?

- A. A sport is a competitive physical activity that:
- a. is offered within a school, the purpose of which is to provide opportunities for students to compete with other students on like teams in other schools within an organized conference under the auspices of the Minnesota State High School League or with other like teams in other schools operating under separate jurisdictions (State Rule 3535.3000, Subd.3);
 - b. has a primary purpose of competition rather than support;
 - c. is guided by a set of established rules;
 - d. includes an interscholastic schedule of contests between groups or individuals;
 - e. has funds controlled by the

- f. school district; and,
- f. has the direction of a licensed head coach as defined by Minnesota Statute 125.091.

Q25 Can membership be limited by gender on a sports team?

A. Membership may be limited to the underrepresented gender under the provisions of M.S. 126.21 and M.R. 3535.3200.

Q26 What is a support activity?

A. A support activity includes cheerleaders, pompon groups, drill teams and the like whose primary purpose is to provide support for sports teams.

Some support activities include competition with other like support activities.

Q27 Can membership be limited by gender on a support activity?

A. No. Membership on a support activity must be open to girls and boys as defined by Title IX.

Q28 What process should our school use to determine when a competitive athletic activity meets the definition of sport?

A. Sports sponsored by the League meet the criteria of a sport as defined in Q24 above. For other activities, the determination would be included in the internal self-review of your Gear Committee. It is recommended that it be included in the external evaluation by the Gear-2 Committee and that both review committees should support the decision.

Q29 How will our school determine when an activity meets the definition of sport?

A. In the absence of a definition provided by the OCR or the courts, the definition of sport was developed by the Sports Equity Committee, a joint project of the MDE and the League, to assist schools in making this decision.

Your school should evaluate each competitive physical activity against the definition. Determine if the activity's *primary purpose* is competition among other like teams. Then assess each of

the other components against the structure of the activity.

It remains the responsibility of your school district to assess its athletic offerings under these parameters and to be able to demonstrate your rationale for defining an activity as a competitive sport. During a compliance review or responding to a complaint, your school would be required to demonstrate the basis for its decision. The MDE, OCR, or the courts may or may not agree with your decision.

Q30 Does a danceline activity meet the definition of sport?

A. A memorandum was sent by the Office for Civil Rights to all school superintendents in September 1975 which defined the basic provisions of Title IX and instructed schools in their responsibilities during the first year of responsibility to bring programs into compliance. It stated, "Drill teams, cheerleaders and the like, which are covered more generally as extracurricular activities under section 86.31, and instructional offerings such as physical education and health classes, which are covered under section 86.34, are not a part of the institution's "athletic program" within the meaning of the regulation."

Danceline activities as conducted by Minnesota schools would have to alter their current structure as a support activity to have a primary purpose of competition rather than support and to meet the other criteria which define a sport.

Q31 If our school's danceline activity provides support for our athletic teams, participates in a danceline competition and the state danceline competition, is it a sport?

A. Under those conditions, the activity would not meet the definition of sport. Its primary purpose is described as support for athletic teams. It should be defined as a support activity, not a sport.

Q32 What if our danceline has more competitions than performances?

A. It might be a sport if it meets all of the criteria listed for the definition of sport.

Q33 Can performances at halftimes of athletic events or before other audiences be considered practices?

A. They are considered performances, not practices.

Q34 What is the status of cheerleading?

A. See Question 30. Title IX Policy Interpretation indicates that cheerleading is a support activity.

At the present time, cheerleading activities as sponsored by member schools of the League would have to alter their current structure as support activities to have a primary purpose of competition, i.e., not to be leaders of cheers and spirit performers.

Q35 If our cheerleader squad for fall and winter sports teams compete in local cheerleader contests and an invitational championship at a local college, is it a sports team?

A. Under those conditions, the activity does not meet the definition of sport. Its primary purpose is described as support for athletic teams.

Q36 Are participants in fine arts activities, such as speech, music and debate, considered in the analysis of the athletic program?

A. No. Your district is limited to counting students who are participants on sports teams. Title IX and MS 126.21 speak to equity within the activities sponsored by the athletic program separately from other extracurricular activities. Participation in these other activities may not be limited by gender.

Decisions to Add or Reduce Sports Offerings:

Q37 If our school has to reduce the number of sports offerings, how do we decide which activities will be affected?

A. Assess the impact of the decision on the participation rates for girls and boys. The result must not disproportionately impact one gender. For example, if girls are currently underrepresented and your school were

to cut a girls team, it would increase the disparity of participation by further reducing participation opportunities for females. Or, if girls are currently under-represented and your school were to cut one team for girls and one for boys, it could disproportionately impact the girls program. Both of these actions could be violations of Title IX and M.S. 126.21.

If the participation rates for girls and boys are proportionate to their enrollment in your student body, and the same number of teams are offered to girls and boys, determine if dropping one girls and one boys sport would disproportionately limit the participation opportunities for one gender.

Q38 Our district has not approved a plan to add activities even though the interest survey identifies areas of interest and we are clearly not in compliance with state and federal laws. What can I do?

- A. Conduct your self-review with your GEAR Committee who will assess the total program and provide a report. For additional support, consider conducting an external review with a GEAR-2 Committee of individuals from outside your district as a source of advice and recommendations. Present these reports to the school board which is responsible for gender equity in your district and request prompt action to assure compliance.

Technical Assistance:

Q39 How do we request technical assistance in interpreting Title IX?

- A. The Office for Civil Rights encourages schools to contact their regional offices to request technical assistance. The extent of technical assistance provided may vary considerably from telephone contacts to on-site visits depending upon the request and the nature of the program. The regional office for Minnesota is:

Office for Civil Rights, Region V
U.S. Department of Education
401 South State Street, Room 700C, 05-4010
Chicago, IL 60605-1202

312/886-3456, FTS 8-886-3456
TDD 312/ 353-2541

The Equal Education Opportunity (EEO) Section of the Minnesota Department of Education can assist your school. Each year several schools are selected for compliance reviews. Telephone requests for technical assistance can be directed to:
Minnesota State Department of Education
550 Cedar Street
Equal Education Opportunities Section
St. Paul, MN 55101
612/297-2792 or 612/296-7430

For further references and resources, see Section Five (5) of this manual.

Eligibility for Opposite Gender Team

Q40 How does M.S. 126.21 define membership on teams for the other gender?

- A. Subdivision 3, (1), provides that: "Notwithstanding any other state law to the contrary, in athletic programs operated by educational institutions or public services and designed for participants 12 years or older or in the seventh grade or above, it is not an unfair discriminatory practice to restrict membership on an athletic team to participants of one sex whose overall athletic opportunities have previously been limited.

Subdivision 3, (4), provides that: "If two teams are provided in the same sport, one of these teams may be restricted to members of a sex whose overall athletic opportunities have previously been limited, and members of either sex shall be permitted to try out for the other team."

Q41 How do State Board Rules interpret this portion of the statute?

- A. State Board Rules, M.R. 3535.3200, to implement this section of the law provide that:

Subpart 3. Provision of separate teams. Any public or private elementary or secondary school may provide in the same sport two teams which are separated according to sex when overall

athletic opportunities for one sex have previously been limited, but the team for the other sex may only be substantially separated by sex.

When an equal opportunity to participate is not provided to members of a sex whose overall athletic opportunities to participate have previously been limited, the school, where there is a demonstrated interest shall provide separate teams in sports which it determines will provide members of the excluded sex with an equal opportunity and which will attempt to accommodate their demonstrated interest.

Subpart 4. Try out for opposite team.

When overall athletic opportunities for one sex have previously been limited, members of that sex shall be permitted to try out and, if successful, to participate on any team in any sport. This part does not prohibit any elementary or secondary school from making participation on a team in a sport dependent upon a demonstrated level of skill and ability. When an educational institution has established a team exclusively for members of the sex whose overall athletic opportunities have previously been limited, members of the other sex may not try out for or participate on that team."

Q42 Why does M.S. 126.21 and State Board Rule protect the girls athletic teams?

- A. The law is focused on providing opportunity for those who have been deprived of equal opportunity in sports and underrepresented in the total athletic program. Historically, it has been females who have been deprived of sports opportunities. Therefore, the state has taken action to protect the opportunity for girls to fully participate on teams established by their schools.

Booster Clubs

Q43 Should our review committee examine the booster clubs which assist and support our athletic program?

- A. Schools must ensure that equivalent benefits and services are provided to members of both sexes. Therefore, where booster clubs provide benefits or

services that assist only teams of one sex, the school shall ensure that teams of the other sex receive equivalent benefits and services. If booster clubs provide benefits and services to athletes of one sex that are greater than what the school is providing to athletes of the other sex, then the school shall take action to ensure that benefits and services are equivalent for both sexes.

Q44 If our district's hockey booster club donates \$10,000 to our boys hockey program, do we need to find \$10,000 to put into our girls program?

- A. The district must first look to the athletic opportunities it is offering to boys and girls and to whether it is meeting the demonstrated interest in girls athletic programs, especially during the winter season. The district may not use lack of funding to justify failure to offer an ice sport for girls, or to meet other demonstrated interests in girls sports so long as the opportunities for girls are limited in comparison to the boys. The district must also assure that such factors as equipment, uniforms, coaches, facilities, and practice times are provided to girls and boys on an equal basis regardless of booster club funding and the resulting benefits and services are equivalent for both sexes.

Scheduling of Facilities

Q45 What is required for provision of equality in the scheduling of facilities for practice or for competitive events?

- A. The scheduling of the use of athletic facilities for practice and for competitive athletic events must be done in a manner which does not discriminate on the basis of gender. Times for use of facilities for practice and for competition need to be scheduled so as to provide equal access, convenience, and visibility for female and male athletes. To provide one gender's athletes or teams the use of a gym or other practice facility only before school, while consistently providing the other gender's athletes or teams access to the same facility after school would not be sufficient to constitute equality. To consistently schedule athletic competition for one gender on Friday or

Saturday nights while scheduling the other gender's competitions on Monday through Thursday nights would not constitute equality.

Funding and Equipment

Q46 Does Title IX require equal expenditures for girls and boys sports?

A. It is the *impact* of expenditures by a school which must be assessed in evaluating equality of opportunity and compliance with Title IX. Although equal aggregate expenditures are not required, the pattern of expenditures should not result in disparate effects on athletic opportunities for either males or females. Financial resources must be allocated as necessary to provide equipment, supplies, facilities, and opportunities for participation and competition which equally accommodate the athletic interests and abilities of both males and females. Equality of opportunity for both genders must be provided without regard to possible differences in costs or in spectator interest. However, M.R. 3535. 3400 (I) is more specific for Minnesota Schools: I. the expenditure, excluding salary of the coach, per participant on each team is substantially equal. When an item or items of expense are not separated, the expense shall be prorated to the teams according to the number of participants.

Q47 If equipment for boys' interscholastic teams is donated by individuals and community groups. Does the school district have to purchase equipment for girls' teams?

A. Title IX requires that boys and girls teams must have equal access to comparable equipment. If a district accepts gifts of equipment for boys teams, then the district must ensure that comparable equipment is provided for girls teams. It may solicit donations of additional equipment, but if these are not available, the district must purchase or obtain comparable equipment for girls teams.

Athletic Scholarships

Q48 What is the standard for awarding scholarships?

A. School districts frequently administer small scholarships to assist students in continuing their education after high school. The fundamental intent is to ensure that females and males of comparable qualifications are provided comparable funds for education and that funds are awarded in a fashion which does not discriminate on the basis of gender.

Students must be selected for assistance on the basis of objective criteria, without any consideration of gender or the availability of sex-restricted funds. Funds must then be awarded to the selected students in the order of their qualifications according to the objective criteria used. If a school had only two scholarships which were restricted to male recipients, and the top two recipients were females, the school must procure additional funds for the females and award to all four students or award no scholarships.

For athletic scholarships, the overall allocation of athletic scholarships may be based on gender (which is prohibited in non-athletic scholarships). Districts should assess whether male and female athletes at comparable levels of competition are afforded approximately the same opportunities to obtain athletic scholarships.

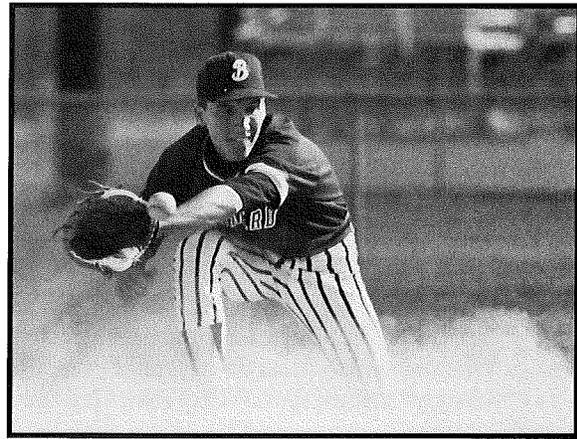
New State Legislation Regarding Equity

Q49 What legislation was passed in the 1992 session regarding ice arena levy and opportunities for female ice sports?

A. The following provision was originally part of the House tax bill, but was added as an amendment to the omnibus education bill during conference committee. (Article 7):

(a) "Each year, an independent school district operating and maintaining an ice arena, may levy for the net operational costs of the ice arena. The levy may not exceed the net actual costs of operation of the arena for the previous year. Net actual costs are defined as operating costs less any operating revenues. (b) Any school

district operating and maintaining an ice arena must demonstrate to the satisfaction of the office of monitoring in the department of education that the district will offer equal sports opportunities for male and female students to use its ice arena, particularly in areas of access to prime practice time, team support, and providing junior varsity and younger level teams for girls' ice sports and ice sports offerings."



Q50 Does Minnesota law provide for equal access to recreational and athletic facilities supported by charitable gambling revenue?

- A. Yes. M.S. 314.12 provides that such facilities may not discriminate on the basis of gender as evidenced by "(i) provision of equipment and supplies, (ii) scheduling of activities, including games and practice times, (iii) supply and assignment of coaches or other adult supervisors, (iv) provision and availability of support facilities, and (v) whether the opportunity to participate reflects each gender's demonstrated interest in the activity."

Filing Complaints or Grievances

Q51 How would a student, coach or other sports personnel who believe their rights under Title IX have been violated file a complaint?

- A. Persons who believe their Title IX rights have been violated may file a complaint with the Minnesota Department of Education, MN Dept. of Human Rights or the U.S. Office for Civil Rights, Region V, Chicago, IL. Complaints must be in writing, clearly state they are a complaint, and be filed no later than 180 days after the alleged discrimination (or the termination of an ongoing practice of discrimination). The Minnesota Department of Human Rights complaint may be filed as late as 365 days from the time of the alleged discrimination. In addition, victims of sex discrimination can file a Title IX claim directly in court.

Title IX, The Law

Editor's Note: Section 106.41 of the Education Amendments of 1972 refers to athletics. The complete text of the law and regulation, and the 1979 Policy Interpretations for athletics may be found in Section Five, Appendix B and C.

** See Minnesota Statute 126.21 for regulations governing Minnesota schools regarding girls eligibility for boys sports.*

*** the effective date for interscholastic programs to be in compliance with Title IX was set for July 1978.*

Title IX of the Education Amendments of 1972:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

United States Congress, June 12, 1972

Section 106.41. Athletics:

- (a) General. No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.
- (b) Separate teams. Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.

However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purpose of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose of major activity of which involves bodily contact. *

- (c) Equal opportunity. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director (Office for Civil Rights) will consider, among other factors:

- (1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
- (2) The provision of equipment and supplies;
- (3) Scheduling of games and practice time;
- (4) Travel and per diem allowance;
- (5) Opportunity to receive coaching and academic tutoring;
- (6) Assignment and compensation of coaches and tutors;
- (7) Provision of locker rooms, practice and competitive facilities;
- (8) Provision of medical and training facilities and services
- (9) Provision of housing and dining facilities and services;
- (10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant

Secretary (HEW) may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

- (d) Adjustment period. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation. **

Minnesota Statute 126.21

Note: This is a Minnesota statute relating to education; providing equal opportunity for members of both sexes to participate in certain athletics. It contains specific language and requirements for Minnesota schools and must be referenced by your review committees.

Subdivision 1. The legislature recognizes certain past inequities in access to athletic programs and in the various degrees of athletic opportunity previously afforded members of each sex. The purpose of this section is to provide an equal opportunity for members of both sexes to participate in athletic programs.

Subdivision 2. Each educational institution or public service shall provide equal opportunity for members of both sexes to participate in its athletic program. In determining whether equal opportunity to participate in athletic programs is available for the purposes of this section, at least the following factors shall be considered to the extent that they are applicable to a given situation: whether the opportunity for males and females to participate in the athletic program reflects the demonstrated interest in athletics of the males and females in the student body of the educational institution or the population served by the public service; whether the variety and selection of sports and levels of competition effectively accommodate the demonstrated interests of members of both sexes; the provi-

sion of equipment and supplies; scheduling of games and practice times; assignment of coaches; provision of locker rooms; practice and competitive facilities; and the provision of necessary funds for teams of one sex.

Subdivision 3.

- (1) Notwithstanding any other state law to the contrary, in athletic programs operated by educational institutions or public services and designed for participants 12 years old or older or in the seventh grade or above, it is not an unfair discriminatory practice to restrict membership on an athletic team to participants of one sex whose overall athletic opportunities have previously been limited.
- (2) When an educational institution or a public service provides athletic teams for children eleven years old or younger or in the sixth grade or below, those teams shall be operated without restrictions on the basis of sex, except that when overall athletic opportunities for one sex have previously been limited and there is a demonstrated interest by members of that sex to participate on a team restricted to members of that sex, the educational institution or public service may provide a team restricted to members of that sex.
- (3) When two teams in the same sport are in fact separated or substantially separated according to sex, the two teams shall be provided with substantially equal budgets per participant, exclusive of gate receipts and other revenues generated by that sport, and in all other respects shall be treated in a substantially equal manner. However, nothing in this section shall be construed to require the two teams to conduct combined practice sessions or any other combined activities related to athletics.

- (4) If two teams are provided in the same sport, one of these teams may be restricted to members of a sex whose overall athletic opportunities have previously been limited, and members of either sex shall be permitted to try out for the other team.
- (5) Notwithstanding the provisions of clauses (1), (2) and (4), any wrestling team may be restricted to members of one sex whether or not the overall athletic opportunities of that sex have previously been limited, provided that programs or events are provided for each sex to the extent the educational institution or public service determines that these programs or events are necessary to accommodate the demonstrated interest of each sex to participate in wrestling.

(Paragraph (5) added 6/1/81)

Subdivision 4. When an equal opportunity to participate in the elementary or secondary school level athletic program of an educational institution or public service is not provided to members of a sex whose overall athletic opportunities have previously been limited, that educational institution or public service shall, where there is demonstrated interest, provide separate teams for members of the excluded sex in sports which it determines will provide members of that excluded sex with an equal opportunity to participate in its athletic program and which will attempt to accommodate their demonstrated interests.

Subdivision 5. The State Board of Education, after consultation with the Commissioner of Human Rights, shall promulgate rules in accordance with chapter 14 to implement this section to prevent discrimination in elementary and secondary school athletic programs operated by educational institutions. The rules promulgated by the state board pursuant to this section shall not require athletic competition or tournaments for teams whose membership may be restricted to members of a sex whose overall athletic opportunities have previously been limited to be scheduled in conjunction with the scheduling of athletic competition or tournaments for teams whose membership is not so restricted by this section. Any organization, association or league entered into by elementary or secondary schools or public services for the purpose of promoting

sports or adopting rules and regulations for the conduct of athletic contests between members shall provide rules and regulations and conduct its activities so as to permit its members to comply fully with this section. The rules of that organization, association or league may provide separate seasons for athletic competition or tournaments in a sport for teams whose membership may be restricted to members of a sex whose overall athletic opportunities have previously been limited from athletic competition or tournaments established for teams in that same sport whose membership is not so restricted by this section, and its rules may prohibit a participating student from competing on more than one school team in a given sport during a single school year.

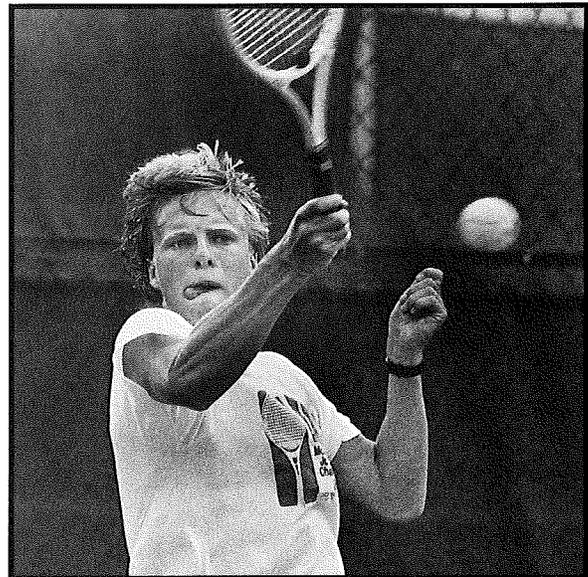


Photo Courtesy of Star Tribune



Minnesota State Board of Education Rules 3535.3000

The following rules were established by the Minnesota State Board of Education to implement M.S. 126.21. These rules provide the specific interpretations for your self-review.

PROHIBITION OF DISCRIMINATORY PRACTICES IN ATHLETIC PROGRAMS

3535.3000 DEFINITIONS

Subpart 1. **Scope.** All the words listed shall have the meaning herein ascribed to them.

Subpart 2. **Athletic program.** "Athletic program" means all interscholastic and intramural sports offered to students by public and private elementary and secondary educational institutions.

Subpart 3. **Interscholastic athletic program.** "Interscholastic athletic program" means all athletic activities offered within a school the purpose of which is to provide opportunities for students to compete with other students on like

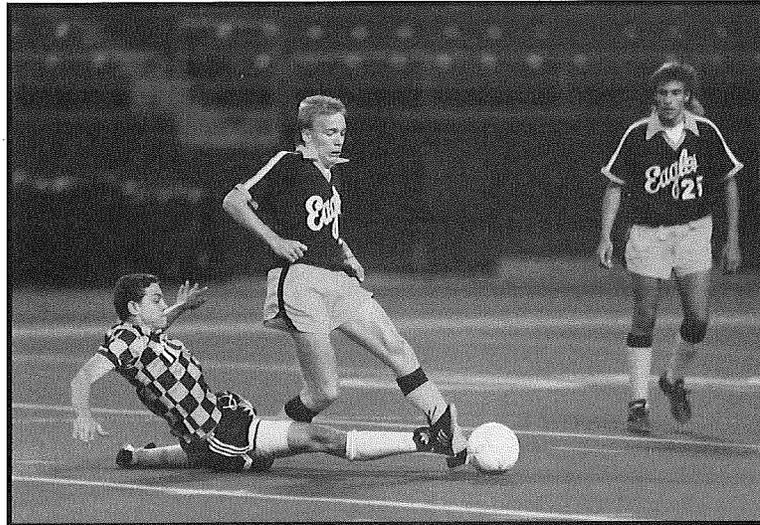


Photo Courtesy of Star Tribune

teams in other schools within an organized conference under the auspices of the Minnesota State High School League or with other like teams in other schools operating under separate jurisdictions.

Subpart 4. **Intramural athletic program.** "Intramural athletic program" means all noninterscholastic athletic activities offered within a school, which are not a part of the regular physical education curriculum, designed to provide students athletic opportunities, experiences, and the development of competencies in a variety of sports.

Subpart 5. **Participate.** "Participate" means for interscholastic sports, a student has been selected by the coach to be a member of a particular athletic team, inclusive of varsity, junior varsity, and sophomore teams, after the tryout period has ended.

Subpart 6. **Participation rate for a particular sex in the interscholastic athletic program.** "Participation rate for a particular sex in the interscholastic athletic program" means the ratio of the number of participants of that sex in the athletic program to the number of students of that sex in the student body.

Subpart 7. **Participation rate for a particular sex in the intramural athletic program.** "Participation rate for a particular sex in the intramural athletic program" means the ratio of the number of participants of that sex in the athletic program to the number of students of that sex in the student body.

Statutory Authority: M.S. 124.15 subd 2a

3535.3100 SCOPE AND PURPOSE

Parts 3535.3000 to 3535.3700 are promulgated pursuant to Minnesota Statutes, section 126.21, subdivision 5, as amended by Laws of Minnesota 1980, chapter 355, section. Parts 3535.3000 to 3535.3700 apply

to both public and private elementary and secondary schools that operate athletic programs.

Statutory Authority: M.S. 124.15 subd 2a.

3535.3200 SEPARATION BY TEAMS

Subpart 1. **Programs for students in the seventh grade and above.** Athletic programs for students in the seventh grade or above may include one or more teams limited to participants of one sex whose overall athletic opportunities have previously been limited.

3535.32 EQUALITY OF EDUCATION OPPORTUNITY

Subpart 2. **Programs for students in the sixth grade and below.** Athletic programs for students in the sixth grade or below shall be

operated without restrictions on the basis of sex, except that when overall athletic opportunities for one sex have previously been limited and there is demonstrated interest by members of that sex to participate on a team restricted to members of that sex, the educational institution may provide a team restricted to members of that sex. The educational institution shall make a biennial determination of student's demonstrated interest. The method used shall be reported to the State Department of Education in conjunction with report required by part 3535.3600.

Subpart 3.

Provision of separate teams. Any public or private elementary or secondary school may provide in the same sport two teams which are separated according to sex when overall athletic opportunities for one sex have previously been limited, but the team for the other sex may only be substantially separated by sex.

When an equal opportunity to participate is not provided to members of a sex whose overall athletic opportunities to participate have previously been limited, the school, where there is a demonstrated interest, shall provide separate teams in sports which it determines will provide members of the excluded sex with an equal opportunity and which will attempt to accommodate their demonstrated interest.

Subpart 4. Try out for opposite team. When overall athletic opportunities for one sex have previously been limited, members of that sex shall be permitted to try out and, if successful, to participate on any team in any sport. This part does not prohibit any elementary or secondary school from making participation on a team in a sport dependent upon a demonstrated level of skill and ability. When an educational institution has established a team exclusively for members of the sex whose overall athletic opportunities have previously been limited, members of the other sex may not try out for or

participate on that team.

Statutory Authority: M.S. 124.15 subd 2a

3535.3300 BIENNIAL DETERMINATION OF STUDENT INTEREST.

Public and private elementary and secondary schools shall make a biennial determination of student demonstrated interest. Schools shall report the method used to make the determination to the State Department of Education as part of part 3535.3600. The first biennial determination shall be made prior to the end of the 1981-82 school year. Student demonstrated interest shall be considered in the selection of

those athletic activities to be provided in the athletic program for the purpose of providing separate teams or sports for members of previously excluded sex.

Public and private elementary and secondary schools shall provide equal opportunity for members of each sex to participate in both their intramural and

interscholastic athletic program by responding to the following considerations.

The number of opportunities for females to participate on teams is to be comparable to the number of opportunities for males to participate on teams in each school year in the interscholastic athletic program and comparable, as well as in the intramural athletic program. The equipment, supplies, and uniforms for each sport are to be comparable for both sexes. The locker rooms, practice and competitive facilities are to be comparable for both sexes. The medical services are to be comparable for both sexes. The participation rates for members of both sexes are to be comparable while recognizing the voluntary nature of student involvement in interscholastic and intramural athletics.

Statutory Authority: M.S. 124.15 subd 2a

3535.3400 CREATING EQUAL OPPORTUNITY FOR TWO TEAMS



When two teams in the same sport are provided pursuant to part 3535.3200, subpart 1, the two teams shall be treated in a substantially equal manner. Public and private elementary and secondary schools shall accomplish this to the extent they they are applicable in a given situation by providing that:

- A. equipment, supplies, and uniforms for each team are comparable;
- B. the games and competitive events for each team are scheduled so that the number of opportunities to perform before an audience are comparable;
- C. the practice sessions and competitive events scheduled for each team are at equally desirable time periods;
- D. the travel and per diem allowances per participant are comparable;
- E. the amount of coaching provided for members of each team is comparable;
- F. the locker rooms, practice, and competitive facilities for each team are comparable;
- G. the medical services for each team are comparable;
- H. the publicity produced by the school for each team is comparable and
- I. the expenditure, excluding salary of the coach, per participant on each team is substantially equal. Per participant expenditure excludes gate receipts and other revenues generated by that sport. When an item or items of expense are not separated, the expense shall be prorated to the teams according to the number of participants.

Statutory Authority: M.S. 124.15 subd 2a

3535.3500 PENALTY FOR NONCOMPLIANCE

The penalty for noncompliance with parts 3535.3100 to 3535.3700 by public elementary and secondary schools shall be the reduction of state aids pursuant to procedures of Minnesota Statutes, section 124.15, subdivision 3. In addition, nothing in parts 3535.30000 to 3535.3700 shall be interpreted as limiting the authority of the human rights department over public and nonpublic schools and noncompliance may constitute a violating of Minnesota Statutes, chapter 363, Human Rights Act.

Statutory Authority: M.S. 124.15 subd 2a

3535.3600 COMPLIANCE REPORTS AND SUBMISSION OF DATA

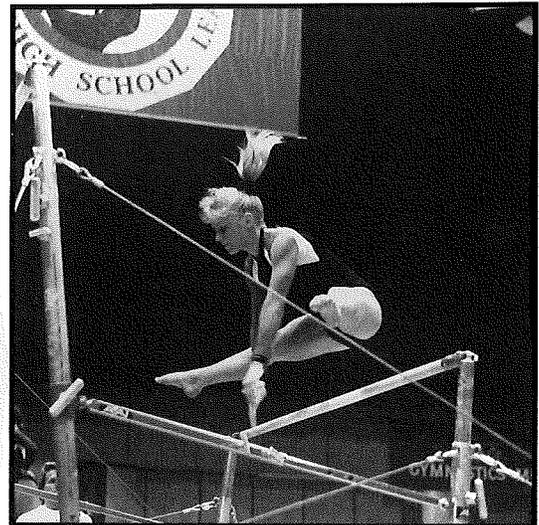
Annually, on or before October 15, each school/school district shall submit to the commissioner of education an elementary and secondary athletic program report containing information about both intramural and interscholastic athletics provided. The report shall contain by building: number of sports offered for each sex, the season each sport is offered for each sex, the number of weeks each sport is offered, the number of teams in each sport, the number of coaches assigned each sport, the number students by sex participating in each sport, the dollar expenditure per sport, the total unduplicated count of student participation in the intramural program by sex, and the total unduplicated count of student participation interscholastic programs by sex.

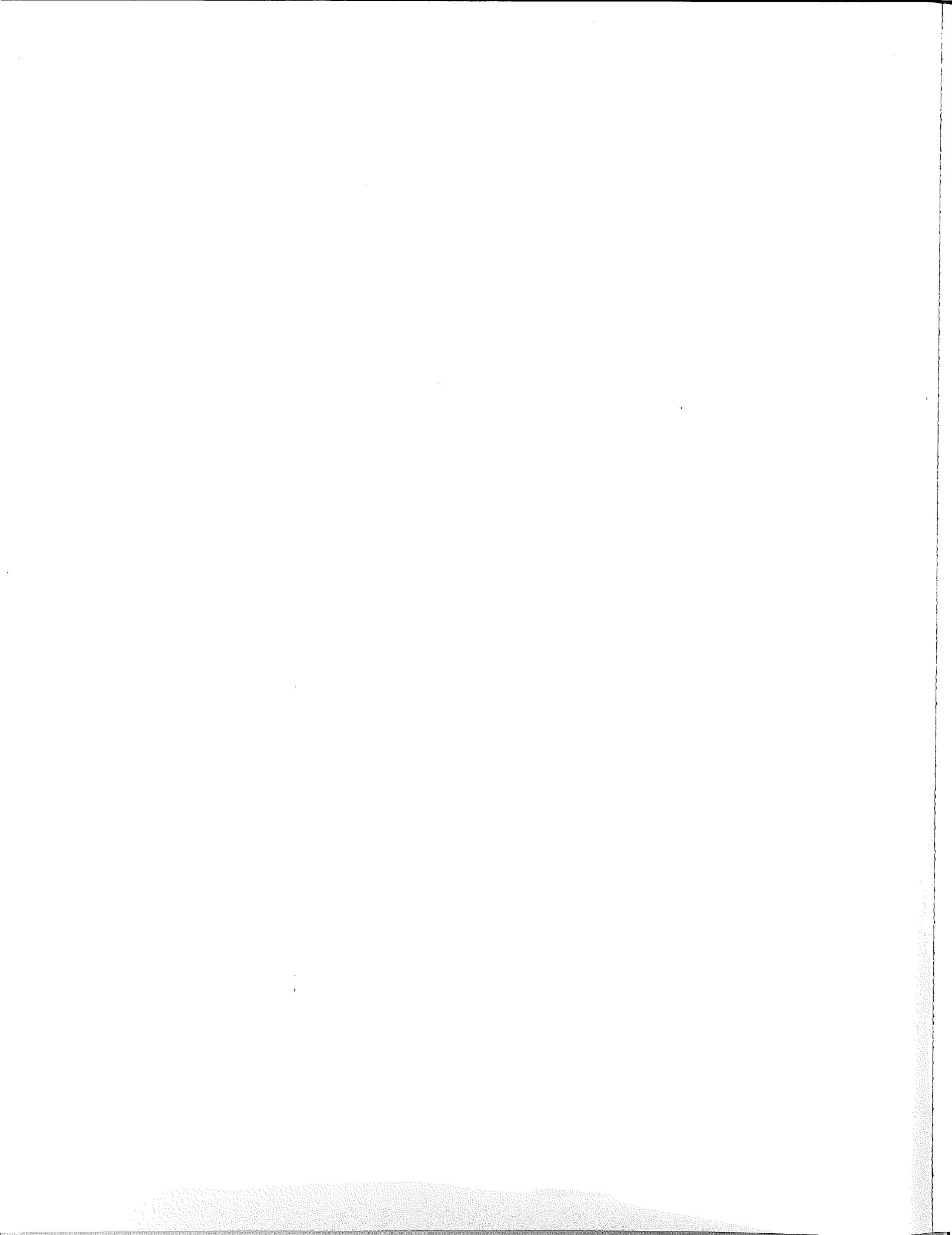
Statutory Authority: M.S. 124.15 subd 2a

3535.3700 DUTIES OF THE COMMISSIONER OF EDUCATION

Upon receipt of an educational institution's athletic program report, the commissioner of education shall evaluate the date contained in the report and forward reports requiring additional attention to the commissioner of human rights pursuant to Minnesota Statutes, section 124.15, subdivision 2a.

Statutory Authority: M.S. 124.15 subd 2a





The Language of Equity in Sports

Ability:

The capacity to develop the skills to participate in a sport.

Competition:

Means a contest between rivals or competitors and whose purpose is to determine a winner.

Competitive Season:

Means the period of weeks established for a sport by the Minnesota State High School League or other sponsoring organization for competition between high school teams and their state tournament.

Complaint:

An allegation that a mandatory law or rule is not being implemented.

Corrective Action:

Means action which is taken by the school district to eliminate or modify any policy, procedure, or practice found to be in violation of Title IX and/or to provide redress to any grievant injured by the identified violation.

Discrimination:

Means the violation of an individual's state or federal equal rights guarantees, U.S. Constitution, Amendment 14; 20 U.S.C. 1681 et seq.; Minnesota State Constitution, whether intended or unintended.

Equal Access:

Means availability of opportunity without discrimination on the basis of sex, going beyond simple access to an activity to include full and unrestricted participation in the activity.

Equivalent:

Equal or equal in effect.

Equivalent Sports:

The following sports are currently sponsored by the Minnesota State High School League. Title IX defines those *in italics* as equivalent sports.

Girls Sports:

Basketball
Cross Country Running
Cross Country Skiing

Golf
Gymnastics

Slalom Skiing
Soccer
Softball
Swimming and Diving
Synchronized Swimming
Tennis
Track and Field
Volleyball

(Note: girls may participate on boys teams. See M.S. 126.21)

Boys Sports:

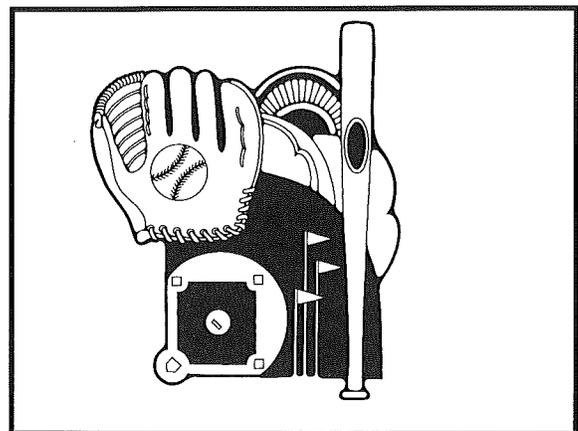
Baseball
Basketball
Cross Country Running
Cross Country Skiing
Football
Golf

Ice Hockey
Slalom Skiing
Soccer

Swimming and Diving

Tennis
Track and Field

Wrestling



Gender Equity:

An atmosphere and a reality where fair distribution of overall athletic opportunity and resources, proportionate to enrollment, are available to girls and boys and where no student athlete, coach or athletic administrator is discriminated against in any way in the athletic program on the basis of gender.

Grievance:

Means a complaint alleging any policy, procedure or practice which would be prohibited by Title IX.

Grievant:

Means a student or employee of a district who submits a grievance relevant to Title IX or an individual or group submitting a grievance on behalf of a student(s) or employee(s).

Interscholastic Athletic Program: (M.R. 3535.3000. Subpart 3)

Means all athletic activities offered within a school the purpose of which is to provide opportunities for students to compete with other students on like teams in other schools within an organized conference under the auspices of the Minnesota State High School League or with other like teams in other schools operating under separate jurisdictions.

Participate: (M.R. 3535.3000. Subpart 5)

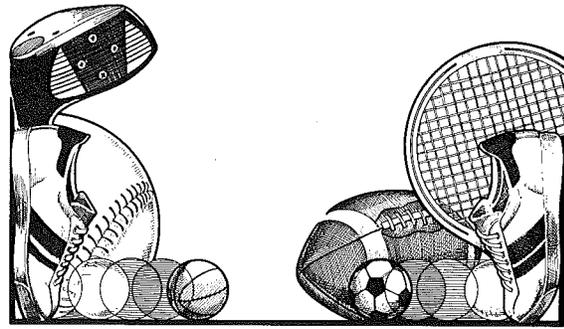
Means for interscholastic sports, a student has been selected by the coach to be a member of a particular athletic teams, inclusive of varsity, junior varsity, and sophomore teams, after the tryout period has ended.

Participation Rate:

Means the percentage of participants of each gender in the athletic program. The results should be compared to the percentage of students of each gender enrolled in the school.

Used to determine if participation opportunities are provided in numbers substantially proportionate to the respective enrollment of girls and boys in the school. (*Refer to Title IX Equity Component #1, Analysis, p.46 for examples of computing participation rates.*)

Should be computed in two forms: unduplicated participation and duplicated participation.



unduplicated participation: each student who participates in a sport is counted once.

Example: a student participates in cross country running, skiing and golf. The student is counted once.

Provides a measure of how many girls and boys are participating in the athletic program.

duplicated or total participation: count the total number of participants by gender for all sports offered, double or triple counting students who participate in more than one sport.

Example: a student participates in cross country running, skiing and golf. The student is counted once in each activity, i.e., 3 participations.

Provides a measure of the total number of sports opportunities being offered by the athletic program.

Practice:

Means to exercise; train or drill for the purpose of improving skills.

Prime Time:

Means that time period which is most desirable locally for a given activity.

Proactive Strategy:

Schools are encouraged to take affirmative steps to overcome the effects of conditions which resulted in limited participation by females.

School:

Refers to a member high school of the Minnesota State High School League.

Season:

The period of weeks established for a sport by the Minnesota State High School League for competition between high school teams and their state tournament.

Sexual Harassment:

Is a form of sex discrimination which consists of unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature.

Sport:

Is a competitive physical activity that:

- a. is offered within a school, the purpose of which is to provide opportunities for students to compete with other students on like teams in other schools within an organized conference under the auspices of the Minnesota State High School League or with other like teams in other schools operating under separate jurisdictions; (State Rule 3535.3000, Subd. 3)
- b. has a *primary* purpose of competition rather than support;
- c. is guided by a set of established rules;
- d. includes an interscholastic schedule of contests between groups or individuals;
- e. has funds controlled by the school district; and,
- f. has the direction of a licensed head coach as defined by Minnesota Statute 125.091.

Sports Currently Sponsored by the Minnesota State High School League and Their High School Season as of 1993-94:

Fall Season:

- Football, *b*
- Soccer, *g-b*
- Cross Country Running, *g-b*
- Swimming, *g*
- Tennis, *g*
- Volleyball, *g*

Winter Season:

- Basketball, *g-b*
- Wrestling, *b*
- Hockey, *b*
- Slalom Skiing, *g-b*
- Cross Country Skiing, *g-b*
- Gymnastics, *g*
- Swimming, *b*

Spring Season:

- Track and Field, *g-b*
- Golf, *g-b*
- Softball, *g*
- Baseball, *b*
- Tennis, *b*
- Synchronized Swimming, *g*

Code: g - girls; b - boys (Note: girls may participate on boys teams).

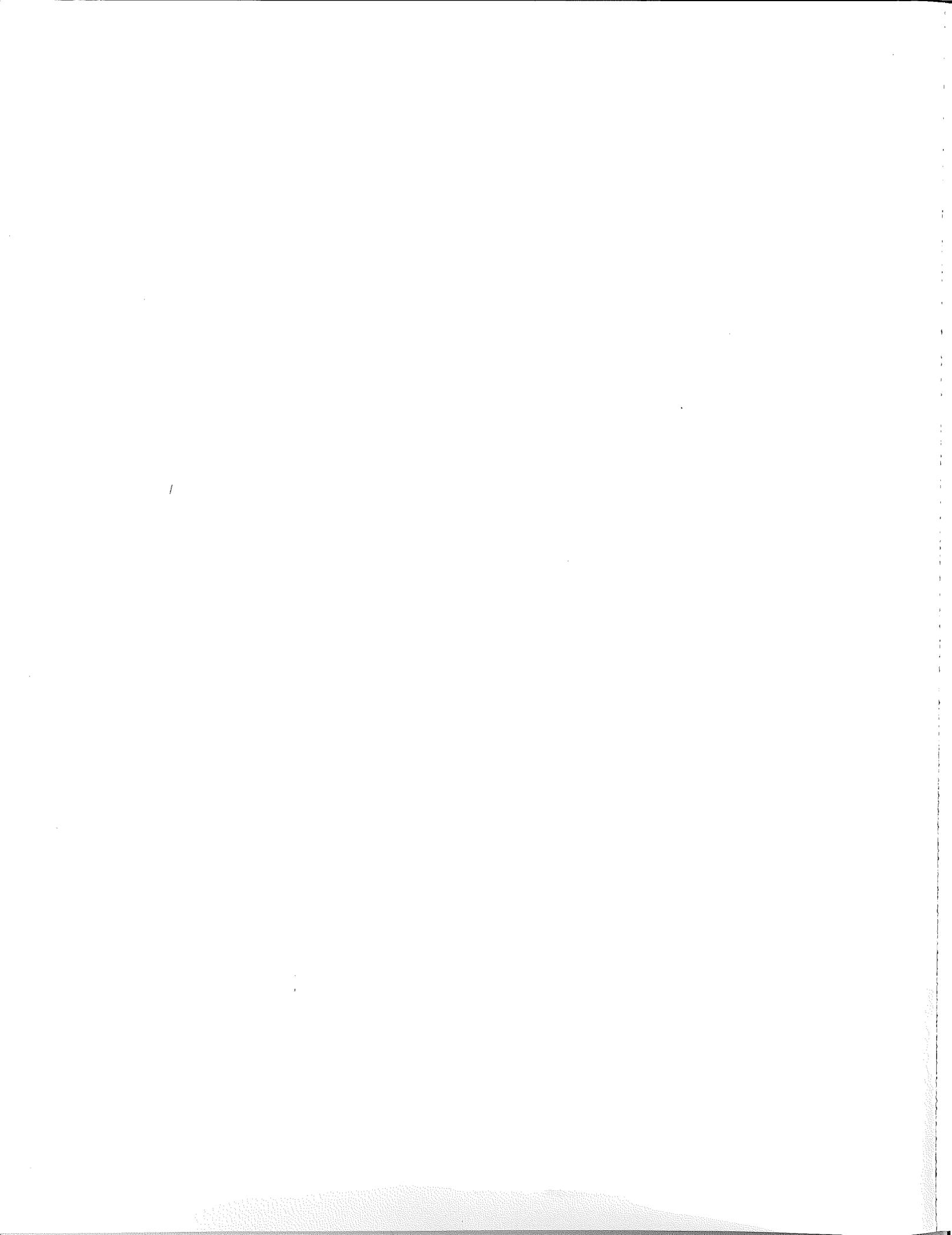
Note: M.S. 126.21 provides that membership on girls teams are restricted to girls; girls are eligible to participate on any boys teams, with wrestling a permitted exception. See Section 1 for M.S. 126.21 and State Board Rules.

Support Activity:

An activity that has a primary purpose of support for athletic teams rather than competition. Title IX requires that membership must be open to both genders.

Title IX Coordinator:

Means the employee(s) designated to coordinate the efforts of a district to comply with and carry out its responsibilities under Title IX and the Title IX implementing regulation.



SECTION FOUR



Conducting a Self-Review: A Grassroots Approach

"Even if you're on the right track, you'll get run over if you just sit there." Will Rogers

The following plan for your self-review includes a suggested process to follow, data to be gathered, and report forms to summarize your analysis and plans.

Initiating the Process

Initial Steps.

- * Discuss with your school board and community the commitment of the Minnesota State High School League and the Minnesota Department of Education to ensure gender equity in athletics. Provide them with a brief history of the development of high school sports and the standards required by state and federal regulations.
- * Review the commitment and responsibilities of your district to provide gender equity in athletics.
- * Meet with the staff members who will be responsible for each area to be examined.
- * Develop a timetable for your district's self-review.
- * Conduct the mandatory biennial determination of student interest. Tabulate and analyze its results. Prepare information for the MSHSL Registration Form Due April 1, 1993 and subsequent years as requested.

Conducting Your Self-Review.

Conduct An Internal Review: Gender Equity in Athletics Review (GEAR) Committee.

- * Notify the committee members of the timetable, meetings, etc.

Membership on the committee should include gender and minority representation which reflects your school/community.

- * Disseminate the requests for information to all staff with responsibility in that area.
- * Collect, tabulate and evaluate the information.
- * Evaluate each of the Equity Components listed in Section Four and determine if your program has met the standards of that component. Complete the summary charts.
- * Determine modifications and remedial steps needed where inequity has been identified. Specify the action to be taken, staff accountability for its accomplishment, and the date(s) required for completion.
- * Complete the Final Report of the GEAR Committee.

Conduct An External Review: GEAR-2 Committee

- * To provide an external review, establish a GEAR-2 Committee of individuals from outside your school to review the Equity Program Component #1: *Accommodating Student Athletic Interests and Abilities*. This review will focus on your sports offerings and results from the student interest survey. The Committee may review other components as needed for information which impacts the sports offered by your school.
- * Determine the committee membership. The committee members could be school administrators, athletic directors, school board members, equity officers from other districts, members of the public, i.e., individuals who have an

interest in ensuring the spirit and intent of gender equity in sports.

- * The membership of the Committee should be balanced in gender and include minority representation.
- * Determine the committee chair. Establish a date for the meeting of the committee. Notify members of the site, time, provisions for mileage, meals and lodging.
- * Conduct the meeting. Describe the purpose and process, establish timelines and responsibilities of the committee members. Invite appropriate school personnel to review the reports developed by the district's GEAR Committee.
- * Review your district's sports offerings and the information from your student interest survey.
- * Provide the GEAR-2 Committee with the charts compiled by your self-review committee and with forms which they could complete reflecting their review and recommendations.
- * Review the report of the GEAR-2 Committee and determine what actions should be taken on their recommendations.
- * Add the report of the GEAR-2 Committee to your self-review report. Maintain the records and remedial steps taken and keep on file. It will provide a reference for compliance reviews by the MDE or OCR, or compliance assurances required with every application for Federal funding, and for any complaints which might be filed.

Implementing Changes and Remedial Steps

Results of the Review.

- * Provide the results of the self-review to the administration and school board. It is the responsibility of the school administration and school board to determine appropriate steps based on areas which need to be remediated.
- * Report data results from student interest survey to the League Office as requested.
- * Share results of study interest survey with area schools to assist in mutual planning for new activities.

Monitoring the Modifications and Remedial Steps

- * Conduct a periodic review of assignments for modifications and remedial steps with individuals responsible for implementation.
- * Establish a timeline for the next self-review to ensure an ongoing monitoring and review of the athletic program. It is recommended that a review be conducted every three years.



Information To Be Gathered for the Self-Review Committees

The following information would be gathered from the athletic department and from district policies.

A. GENERAL INFORMATION:

- * A list of all high school interscholastic teams and the levels at which the teams compete, i.e., varsity, junior varsity, sophomore, etc.
- * The current percentage of girls and boys enrolled in the high school.
- * The participation rates of girls and boys in the athletic program for duplicated and unduplicated participation:

1. Participation rate means the percentage of participation of each gender in the athletic program. *(For an example of computing participation rates, refer to Title IX Equity Component #1, Analysis.)*
2. Unduplicated participation: count each student *once* who participates in one or more sports offered by your school.

Example: a student participates in cross country running, skiing and golf. The student is counted once.

This provides a measure of how many girls and boys are participating in the athletic program.

3. Duplicated or total participation: count the total number of participants by gender for all sports offered, double or triple counting students who participate in more than one sport.

Example: your school offers girls volleyball, 80 participants; girls basketball, 60 participants; and girls softball, 20 participants and girls track and field, 40 participants: total 200 participants. A girl who participates in all of the sports is counted as 3 participations.

This provides a measure of the total number of sports opportunities offered for each gender by the athletic program.

- * Budgets for the past and current year, and, if available, for the next year.
- * MINCRIS Athletic Report Form for the past three years.

B. INFORMATION FOR TITLE IX PROGRAM COMPONENTS

#1. Accommodation of Student Athletic Interests and Abilities



- * Policies, procedures and criteria for determining whether sports will be added, and if so, what sports, to the boys and girls interscholastic athletic programs.
- * Reports discussing the growth of the athletic program.
- * Tabulation of the student athletic interest survey.

#2. Provision of Equipment and Supplies

- * Policies, procedures, and criteria for providing, maintaining and replacing equipment and supplies, including any replacement schedules.

#3. Scheduling of Games and Practice Time

- * Policies, procedures and criteria for

establishing competitive and practice schedules.

* The competitive and practice schedules for each interscholastic athletic team, varsity, jv, etc., for the current year.

* A list of teams by gender that competed in jamborees or scrimmage games, the schedule of competition.

#4. Travel and Per Diem Allowance.

* Policies, procedures and criteria for providing travel arrangements and per diem allowances.

* A list of the modes of transportation used by each team for each competition.

* For each team, the size of the squad and the names and positions of additional personnel who travel with the team to away games.

* The per diem allowance for male and female athletes.

* Description of policies for lodging and meals for athletes during tournaments and other special events during the season.

#5. Opportunity to Receive Coaching and Assignment and Compensation of Coaches.

* Policies, procedures, and criteria for determining the number of coaches assigned to teams.

* A list of the names of all varsity, junior varsity, and freshman coaches by team, with the following information regarding their assignment:

- a) head
- b) assistant
- c) volunteer
- d) years of experience as coach
- e) length of assignment and terms of contract;
- f) educational background, e.g., coaching certification
- h) salary or stipend for coaching

#6. Provision of Locker Rooms, Practice, and Competitive Facilities

* Policies, procedures and criteria for

determining the use and availability of locker rooms and practice and competitive facilities.

* A listing of all locker rooms and practice and competitive facilities used by each team, indicating the general age of the facility, whether it is on or off campus, and whether the facility is used exclusively by certain teams or programs; a schedule showing when any facilities are used for practice and how long the locker rooms are assigned for use by each team (for example, competitive season only, all year, etc.)

#7. Provision of Medical and Training Facilities and Services

* Policies, procedures, and criteria for providing medical and training facilities and services to male and female athletes.

* A list of each weight training, and conditioning facility available to athletes, indicating the teams by gender using the facility, and the schedule of use.

* For each team, a list of the names of any trainers and any medical personnel assigned to the team; the certification of each trainer; if a student trainer, the number of years that person has been a student trainer; which trainers accompany the team to away games.

#8. Publicity

* Printed materials distributed by the athletic department to the general public, such as, schedule cards, game programs, promotional materials, posters, etc.

* Policies, procedures, and criteria for providing publicity services to boys and girls interscholastic athletic programs, including the name(s) and title(s) of person(s) in charge.

#9. Support Services

* Policies, procedures, and criteria for providing administrative, secretarial, clerical support services to the boys and girls interscholastic athletics programs.

* Any available organizational charts

showing the lines of authority for all persons involved in interscholastic athletics, indicating the administrative and clerical support personnel assigned to each organizational unit; for each organizational unit in the athletic department, a list of the names of all personnel assigned to that unit and their titles.

#10. Athletic Fees and Awards

- * Policies, procedures and criteria for bestowing and granting awards.
- * Policies for assessing activity fees and providing hardship waivers.

#11. Assistance for Athletes with Special Needs

- * Information describing how the district responds to athletes with special needs, such as aides and interpreters for the hearing impaired.
- * Lists of athletes who have received tutoring at school expense.

#12. Recruitment

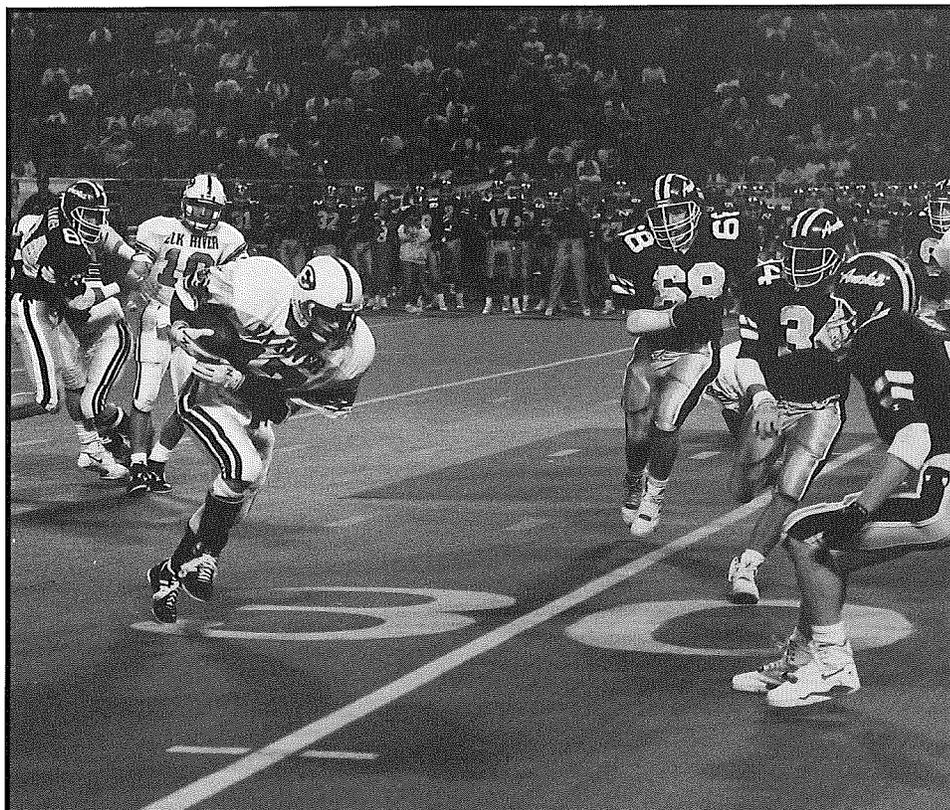
- * Information on how the school provides male and female athletes with the opportunity to meet with post-secondary recruiters.

#13. Sexual Harassment Policies

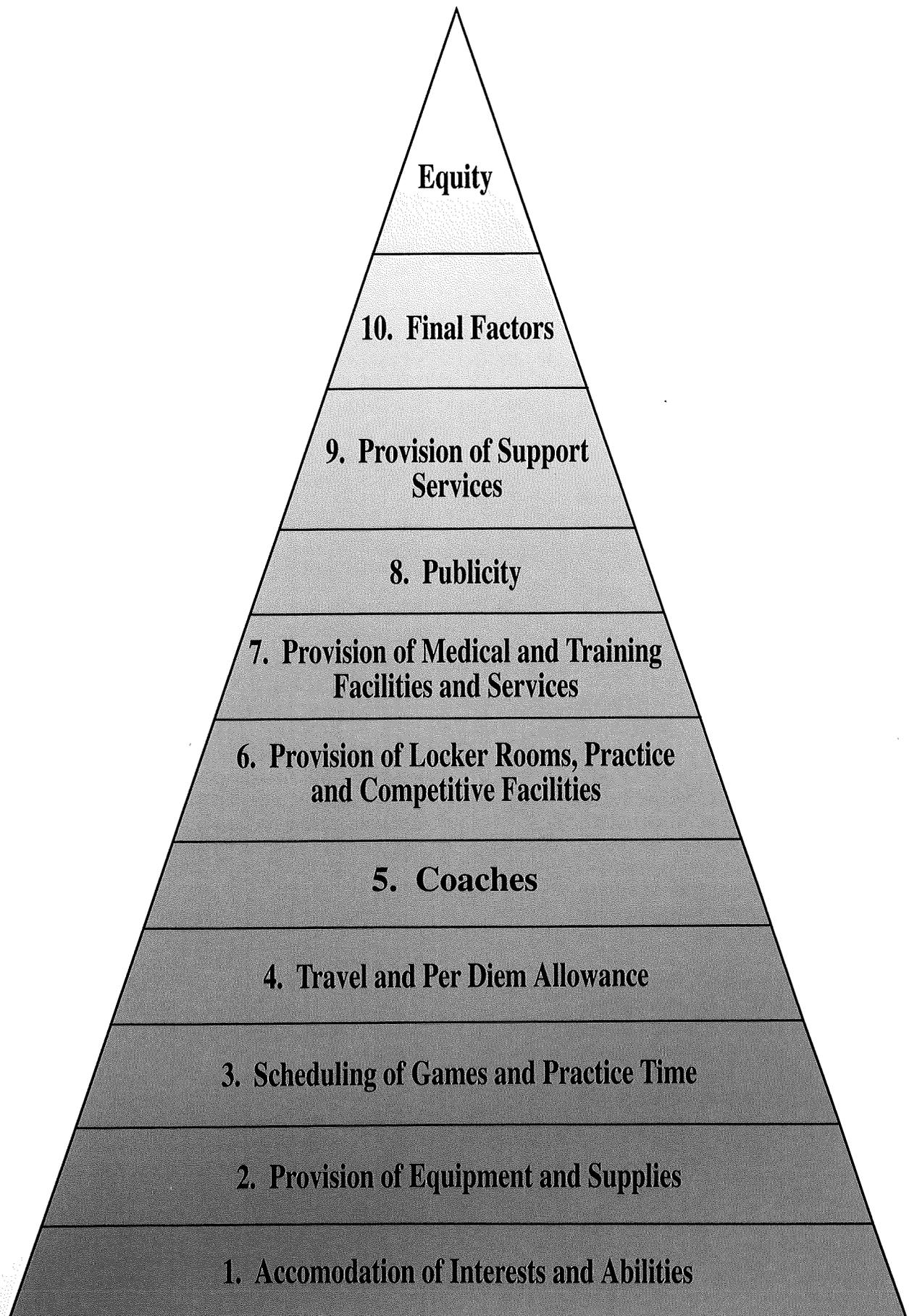
- * Copy of the district's sexual harassment policies.

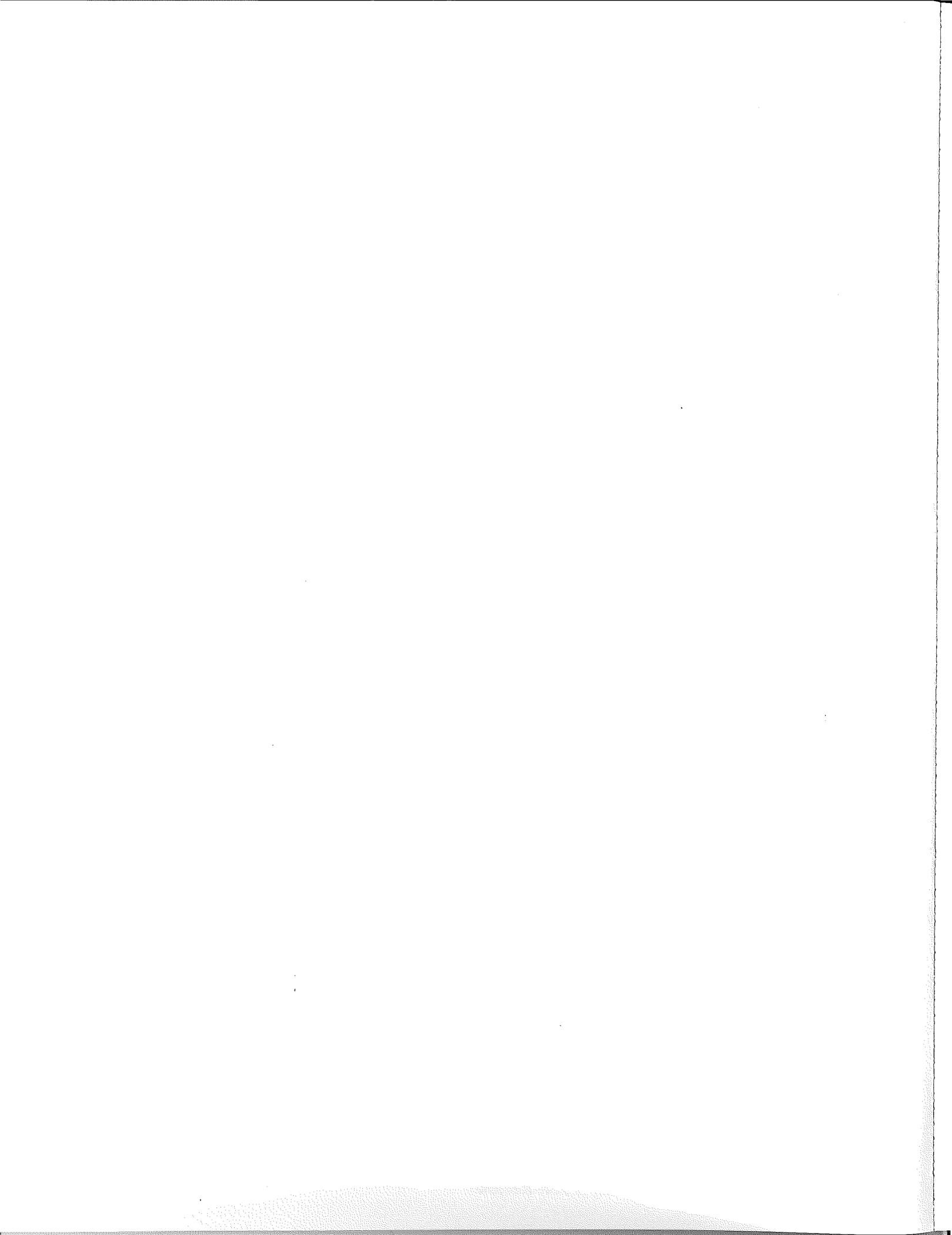
#14. Other:

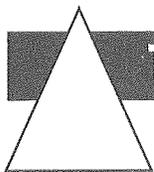
- * Any other available information that might help the committees to understand the school's interscholastic athletics program.











Title IX Equity Components and Summary Charts

*"Coming together is a beginning;
keeping together is progress;
working together is success."*

Henry Ford

Introduction for Minnesota schools: *When you begin your self-review, this section will be important for your GEAR Committee as it contains information and interpretations which will guide your assessment. It should be combined with information about the requirements and interpretations of M.S. 126.21 and State Board Rules in Section Two.*

This information, unless otherwise noted, is taken from a document which would be used by the Office for Civil Rights to conduct an investigation of your athletic program. The document is called, "Title IX Investigator's Manual," and was prepared by the Office for Civil Rights, (OCR), U.S. Department of Education.

These excerpts are those which apply to the interscholastic program. Sections which apply only to the intercollegiate program have not been included.

There are thirteen (13) program components listed in the Title IX regulation. Other factors may be added during an OCR and MDE compliance review.

These components are not considered to be a finite list. Regulations permit the Assistant Secretary for Civil Rights to consider other factors in the determination of equal opportunity. Other factors may be added or considered during an investigation.

The thirteen (13) program components are:

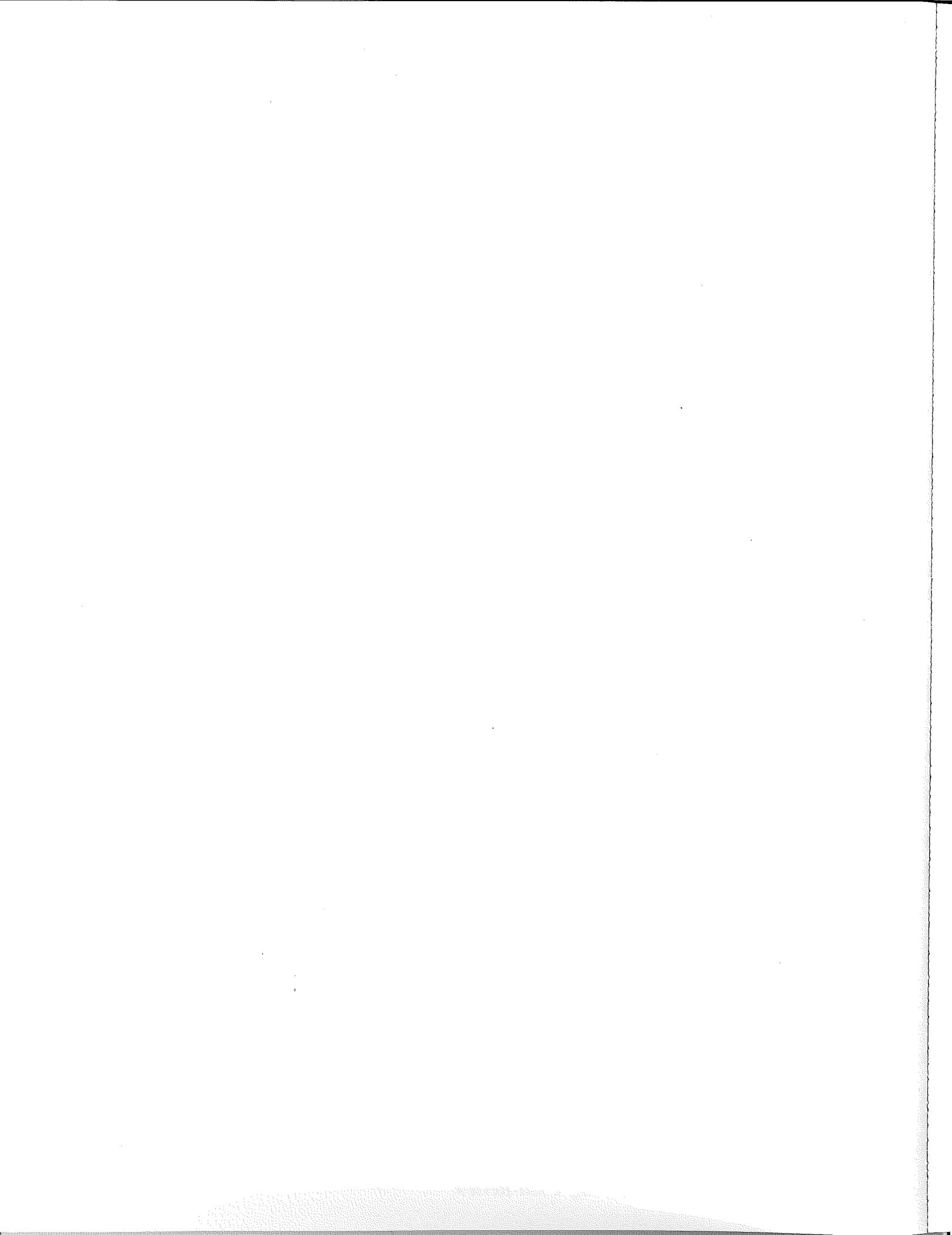
1. Accommodation of Interests and Abilities
2. Provision of Equipment and Supplies
3. Scheduling of Games and Practice Time
4. Travel and Per Diem Allowance
5. Coaches
6. Provision of Locker Rooms, Practice and Competitive Facilities
7. Provision of Medical and Training Facilities and Services
8. Publicity
9. Provision of Support Services
- *10. Athletic Financial Assistance
- *11. Tutors
- *12. Provision of Housing and Dining

- Facilities and Services
- *13. Recruitment of Student Athletes

*All thirteen program areas included in the manual for review. While the final four program components have limited application to the inter scholastic program, they should be included in your self-review. In the charts that follow, these components have been combined into charts 10A to 10D.

Each Title IX program component is divided into four subsections:

- A. **Policy Interpretation Factors:** a list of the factors to be investigated as specified by the Title IX Policy Interpretations. Your school's review of each program component should include these factors. The review committees would arrive at a final conclusion for each factor and then, for the program component as a whole.
- B. **Data Request and Interview Questions:** an "information to collect" section that lists data to be collected for the review.
- C. **Analysis:** an "analysis" section that provides the factors to be compared between the girls and boys programs. The review committee must then determine whether the differences for each factor or all of the factors combined have a disparate impact on one sex. If so, and these differences cannot be explained by nondiscriminatory justifications, a disparity exists for that program component.
- D. **Cautions:** a "cautions" section that reminds the review committee of common nondiscriminatory justifications that may explain differences between girls and boys programs for that particular program component.



What It Means:

The Title IX regulation requires schools that offer athletics programs to accommodate effectively the interests and abilities of students to the extent necessary to provide equal opportunity in the selection of sports and levels of competition available to members of both sexes.

Minnesota Statute 126.21, Subdiv. 2 and State Board Rule 3535.3300 provide the specific requirements for Minnesota schools.

A. FACTORS TO ASSESS:

The basic determination for this program component relies on a *two-part* analysis:

1 *equal opportunities to compete.*

Title IX Policy Interpretation outlines three (3) factors which may be considered consecutively to the opportunity for individuals of both sexes to compete in athletics programs:

- a. Whether interscholastic level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments.
- b. Where the members of one sex have been and are underrepresented among interscholastic athletes, whether the school can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of that sex.
- c. Where the members of one sex are underrepresented among interscholastic athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

2 *levels of competition for interscholastic athletics, varsity, junior varsity, and freshman teams.*

In effectively accommodating the interests and abilities of male and female athletes, schools must provide opportunities for individuals of each sex to participate in interscholastic competition, and for athletes of each sex to have competitive team schedules which equally reflect their abilities.

Two factors must be considered:

- a. Whether the competitive schedules for male and female teams, on a program-wide basis, afford proportionately similar numbers of male and female athletes equivalently advanced competitive opportunities.
- b. Whether the school can demonstrate a history and continuing practice of upgrading the competitive opportunities available to the historically disadvantaged sex as warranted by developing abilities among the athletes of that sex.

B. INFORMATION TO COLLECT

Data Request

Request the following information:

1. Copies of written policies, procedures, and criteria for determining how and whether sports will be added to the boys' and girls' athletic programs; include copies of any reports discussing the growth of the athletics program, and copies of any surveys or assessments conducted of students' athletic interests and abilities, the date(s) and results of the surveys or assessments.
2. Information necessary to determine the duplicated and unduplicated participation. A list of all boys and girls teams (varsity, junior varsity, freshman, etc.) including the competitive level at which each team competes and the date (month and year) each team began competition; also, a copy of the eligibility or squad lists for the current year and the previous year for boys and girls for each team.
3. The athletic association in which the boys and girls programs are members.
4. A current list of club and intramural sports and the number of participants, by sex, participating in each club and intramural sport.
5. The total number of secondary students by gender currently enrolled in the school.
6. The competitive schedules for each team (request this only if scheduling information is not obtained under the data request for another program component).

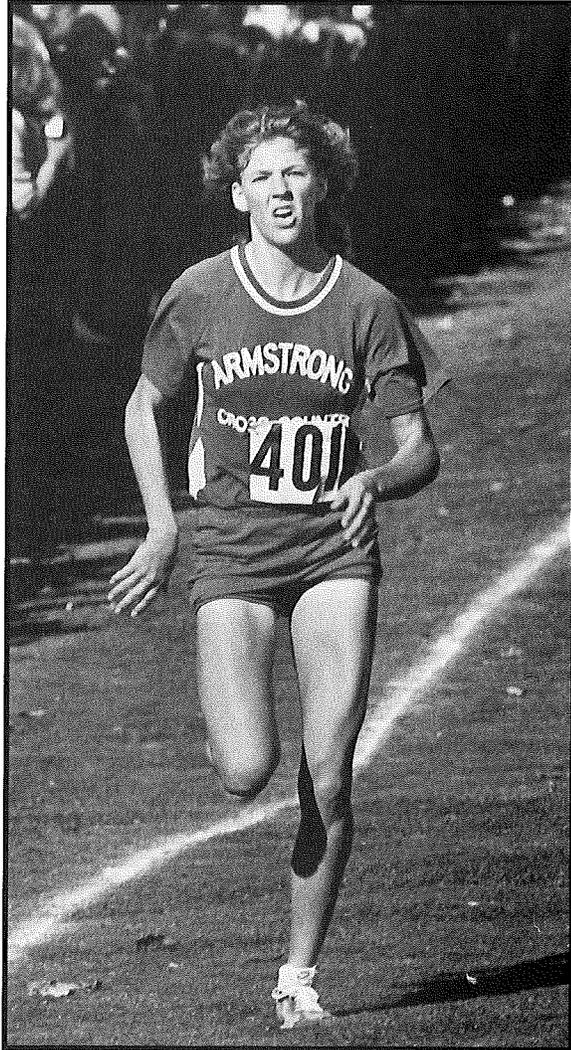


Photo Courtesy of Star Tribune

Interview Questions

Administrators:

1. Verify the dates the current boys and girls teams entered interscholastic competition, and determine the origin of these teams (e.g., were the boys' sports previously club/intramural activities? Did the teams begin through the interest of a staff member who desired to teach the sport?).
2. Obtain clarification, if necessary, on the practices and policies regarding determining whether sports will be added. Are any to be added? If so, which ones? What are the reasons for the new additions? Have there been any unsuccessful attempts to add sports? Why were the attempts unsuccessful?
3. Have any girls or boys sports been eliminated? If so, which sports, and when? (If recent, obtain the number of participants affected.)

4. Does the current program fully and effectively accommodate the interests and abilities of participants?
5. Determine if interests and abilities have ever been surveyed. If so, when? What were the survey results? Obtain a copy of all related documents that were not provided through the pre-on-site data request.

Coaches:

6. Using the appropriate eligibility or squad list, have the coach verify the actual number of participants.
7. Are you aware of any other sport in which there might be interest but which is not currently being offered? If so, what sport? Have there been any unsuccessful attempts to add sports? Why were the attempts unsuccessful?
8. Do you believe that the interests and abilities of both sexes are being fully and effectively accommodated? Why?

Athletes:

9. Are you aware of any other sport in which there might be interest but which is not currently being offered? If so, what sport? Have there been any unsuccessful attempts to add sports? Why were the attempts unsuccessful?

C. ANALYSIS

Factor One: Equal Opportunities to Compete

Step One:

Note: The following examples in Step One have been developed specifically to assist Minnesota schools to calculate percentages of participation for unduplicated and duplicated participation.

The first step is to compare the ratios of girl and boy participants in the athletic program with the number of secondary students enrolled in your school. If the results are substantially proportionate, the school is effectively accommodating the interests and abilities of both sexes. If the calculation of participation to secondary enrollment is not substantially proportionate, go to the second step.

1. Calculate the *percentage* of girls and boys enrolled in your school.

Example: 1000 total number of students enrolled: 500 are girls; 500 are boys.

$$\frac{500 \text{ boys}}{1000 \text{ students enrolled}} = 50\% \text{ of the enrollment are boys}$$

$$\frac{500 \text{ girls}}{1000 \text{ students enrolled}} = 50\% \text{ of the enrollment are girls}$$

2. Calculate the *unduplicated participation rate*:

- a. Count each student *once* who participates in one or more sports. It provides a measure of how many girls and boys are participating in at least one sport offered by your school

Example: a student participates in cross country running, skiing and golf. The student is counted once.

Example:

unduplicated number of girls participating = 100
unduplicated number of boys participating = 200
unduplicated number of girls and boys participating = 300

- b. Divide the number of unduplicated participants of each gender by the total number of participants in the athletic program. The unduplicated participation rates are:

Unduplicated participation rate for girls = $\frac{100}{300} = 33\%$
Unduplicated participation rate for boys = $\frac{200}{300} = 66\%$

Calculating the Unduplicated Participation Rate

| | | | | |
|--|---|-----|---|---|
| unduplicated number of girl participants (100) | = | 100 | = | 33% unduplicated participation rate for girls |
| unduplicated number of girl and boy participants in the athletic program (300) | = | 300 | | |
| unduplicated number of boy participants (200) | = | 200 | = | 66% unduplicated participation rate for boys |
| unduplicated number of girl and boy participants in the athletic program (300) | = | 300 | | |

3. Calculate the *duplicated or total participation rate*:
- a. Count the total number of participants by gender for all sports offered, double or triple counting students who participate in more than one sport. This rate provides a measure of the total number of sports participations being offered for each gender by the athletic program.

Example of duplicated participation rate: your school offers girls volleyball (80 participants), girls basketball, (60 participants); girls softball (20); and girls track and field (40). Total: 200 participants

Example of calculating the duplicated participation rate:

Total number of participations by girls = 200
Total number of participations by boys = 300
Total number of girls and boy participations in athletic program = 500

- b. Divide the number of participations of each gender by the total number of participations in the athletic program. The duplicated participation rates are:

Duplicated participation rate for girls = $\frac{200}{500} = 40\%$
Duplicated participation rate for boys = $\frac{300}{500} = 60\%$

Calculating Duplicated or Total Participation Rate:

| | | | | |
|---|---|-------------------|---|--|
| Total number of participations by girls (200) | = | $\frac{200}{500}$ | = | 40% duplicated participation rate for girls |
| Total number of participations in athletic program (500) | | | | |
| Total number of participations by boys (300) | = | $\frac{300}{500}$ | = | 60% duplicated participation rate for boys |
| Total number of participations in athletic program (500) | | | | |

4. Compare the duplicated and unduplicated participation rates for boys and girls to the percentage of boys and girls enrolled in the school.

In the above example:

| | | |
|--|-----------|----------|
| Enrollment percentage | 50% girls | 50% boys |
| Unduplicated participation rate | 33% girls | 66% boys |
| Duplicated or total participation rate | 40% girls | 60% boys |

In analyzing this example, when comparing both the unduplicated and duplicated participation rate to the enrollment, the girls are substantially underrepresented in the athletic program.

There is no set ratio that constitutes “substantially proportionate” or that, when not met, results in a disparity or a violation. All factors for this program component, and any justifications for differences evaluated in steps two and three below, must be considered before a finding is made.

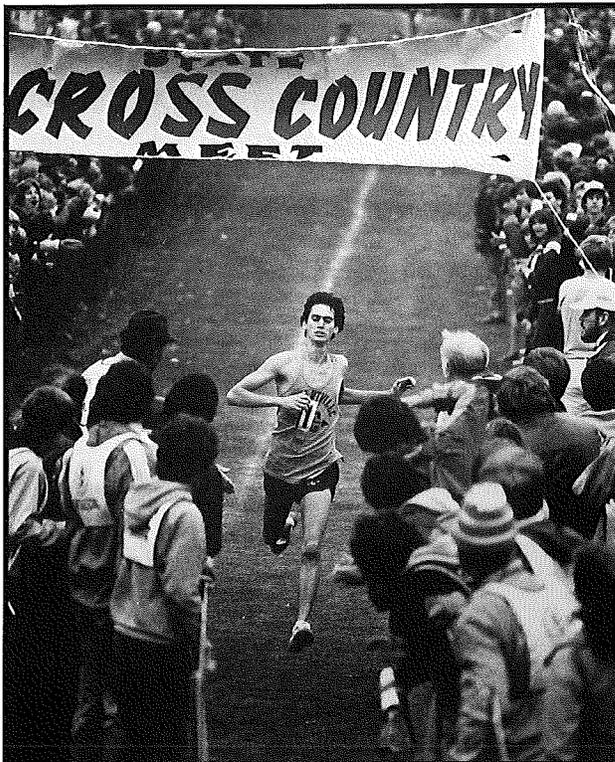


Photo Courtesy of Star Tribune

5. If the calculation of participation to enrollment in the athletic program is not substantially proportionate, then go to Step Two.

Step Two:

DETERMINE when each boys and girls team began interscholastic competition and the origin of the sport. If any boys or girls sports have been eliminated, discuss the reasons they were eliminated and determine the number of participants that were on each team. DETERMINE the percentage of loss to each program. If sports have recently been added, INDICATE the number of participants affected and the percentage of gain to each program. DETERMINE

whether there have been unsuccessful attempts to add teams, and why the attempts were unsuccessful. VERIFY plans for adding sports and whether the written policies, procedures, and criteria for determining whether sports will be added are discriminatory in language or effect. With these facts, DETERMINE whether the school has shown a history and continuing practice of program expansion which has been demonstrably responsive to the developing interests and abilities of the underrepresented sex. If so, it is not necessary to consider step three. If not, go to step three.

Step Three:

Once step three is reached, the determination for this program component is complex and often difficult and may involve additional investigation. The participation ratios are often not proportionate to the enrollment ratios for members of each sex, and a history of program expansion for the underrepresented sex may not be apparent, thus leading to the question of whether the current program equally effectively accommodates student interests and abilities, step three of the analysis for competitive opportunities.

If the school has not conducted a survey or used another method for determining interests and abilities and cannot demonstrate that the current program equally effectively accommodates interests and abilities, the review committee must determine to what degree the current program accommodates interests and abilities. The committee should REVIEW whether the school failed to accommodate "expressed interest," for example, athletes of the underrepresented sex participating in a club/intramural sport express interest in interscholastic competition or sufficient numbers of individuals to form a team request that a sport be offered. If so, the recipient may be in violation (review carefully the Cautions section below before determining a violation).

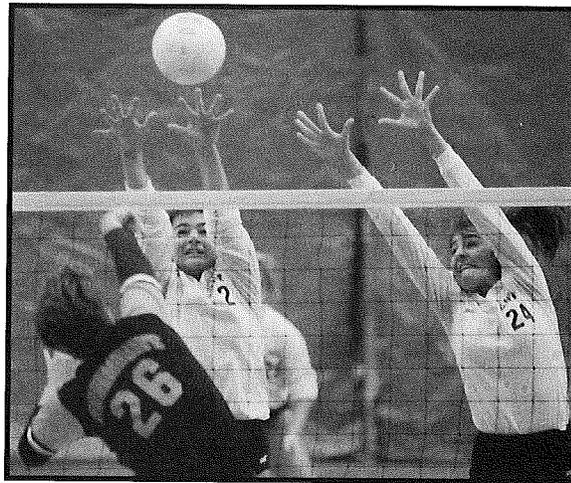


Photo Courtesy of Star Tribune

In addition, the investigator may consider reviewing other programs indicative of interests and abilities, for example, club and intramural sports; sports programs at junior high/middle schools; community sports programs; and physical education classes. If this review demonstrates that there are sufficient interests and abilities in certain sports that are not offered by the school to students of the underrepresented sex, then the school may be in violation. Review carefully the Cautions section below before determining a violation). Finally, the committee should also REVIEW how the school met the developing interests and abilities in the program of the "overrepresented" sex.

Once this additional review has been completed:

DETERMINE whether the current program equally effectively accommodates the current interests and abilities of male and female athletes.

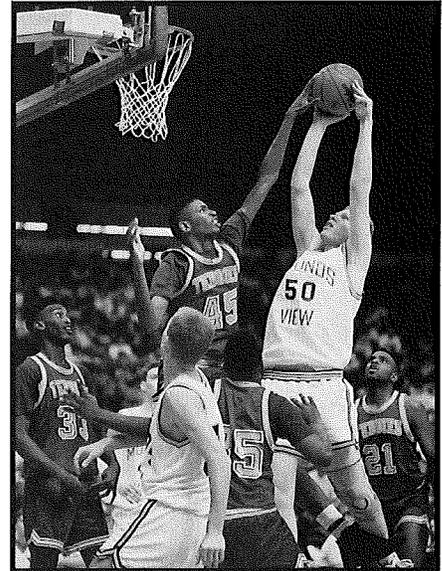
NOTE whether a survey or other method of assessing interests and abilities has been conducted. If so, provide the date and the results.

If an assessment of interests and abilities has not been conducted, DETERMINE the origin of girls and boys sports and whatever method of determining interests and abilities was used. DETERMINE if the method used is effective. DETERMINE if the interests and abilities of both sexes are accommodated equally effectively.

Factor Two: Levels of Competition

DETERMINE the quality of competitive opportunities provided to each sex. CONSIDER two factors.

1. COMPARE the number of competitive events for each team at the school's declared competitive level. USE the attached chart for this comparison. DETERMINE the overall percentage of boys and girls events below the declared division level or classification. If this analysis results in relative equivalence, then the second factor, as discussed below, need not be considered. If there is a significant difference in the number of competitive events for boys and girls at the school's declared competitive level, ASK the appropriate school representative for an explanation. If there is any concern that the explanation is not satisfactory, consider the second factor.
2. DETERMINE whether the school can demonstrate a history and continuing practice of upgrading the competitive opportunities available to the historically disadvantaged sex. This will generally be females. Most state, regional, and/or national athletic organizations require that its members compete at the same division or classification level and member institutions will, therefore, comply with this factor. For those institutions with girls' or boys' that are not classified at the same level of competition and have been determined, through an assessment of the first factor, to provide a lower quality of competitive opportunities to athletes of one sex, DETERMINE if there is a history and continuing practice of upgrading competitive opportunities for the disadvantaged sex. This determination is based on the interviews with coaches, participants and, where appropriate, administrator(s) concerning their assessment of the quality of their schedules, the opportunities provided for post-season competition, whether there were opportunities to compete against teams with state, regional, or national ranking, whether the quality of their schedules has improved and will continue to improve, and other relevant factors.



DETERMINE whether any differences in the opportunity to compete or the levels of competition provided to boys and girls result in a disparity and whether those differences constitute a significant disparity. If the disparity is significant enough to constitute a violation, a separate finding may be made, where appropriate, for the accommodation of student interests and abilities. If the disparity is not significant enough to constitute a violation, then the disparity is evidence to be considered with the determinations for other program components that may be investigated.

D. CAUTIONS

The Policy Interpretation permits nondiscriminatory differences in boys and girls athletics programs. Ask the appropriate school representative for an explanation of any disparities found.

The Title IX regulation at 34 C.F.R. SS 106.41(b) differentiates between contact and non-contact sports. The Policy Interpretation clarifies that where an institution offers a team in a contact sport for members of one sex, it must offer a team for members of the other sex when:

1. opportunities for members of the excluded sex have historically been limited, and
2. there is sufficient interest and ability to sustain a viable team and a reasonable expectation of interscholastic competition. (Note: see definition of ability under Section Three)

For non-contact sports, where a team is offered to students of one sex, a team must be offered to members of the excluded sex where:

1. opportunities for members of the excluded sex have historically been limited;
2. there is sufficient interest and ability to sustain a viable team and reasonable expectation of interscholastic competition for that team; and,
3. members of the excluded sex do not possess sufficient skill to be selected for a single integrated team or compete actively on such a team if selected.

Schools are not required to upgrade teams to interscholastic status or otherwise develop interscholastic sports absent a reasonable expectation that or interscholastic competition in that sport will be available within the school's normal competitive regions. Schools may be required by the Title IX regulation to actively encourage the development of such competition, however,

when overall athletic opportunities within that region have been historically limited for the members of one sex.

OCR investigative experience indicates that where budget restrictions have led a recipient to eliminate sports previously offered, there is frequently a compliance problem with this program component. The tendency is for schools to eliminate a sport previously offered to females who are already underrepresented in the schools' athletics programs. The result has been that females are now more disadvantaged by the elimination of a girls' team despite sufficient interest and ability to sustain a viable team. In this situation, the school may well be in violation of this program component. In effect, the participation rates of male and females are not proportionate to their enrollment rates such that girls are underrepresented in the athletics program, and the school is not meeting expressed interests and abilities of female students. Therefore, the school is not equally effectively accommodating the athletics interests and abilities of male and female students.

ACCOMMODATION OF INTEREST AND ABILITIES

CHART 1

Gender Equity in Athletics Review Manual SUMMARY REPORT

| Question | YES | NO | GEAR Committee Analysis and Recommendations | Date for Completion | Individual Responsible to Implement the Recommendation |
|--|-----|----|---|---------------------|--|
| 1. Did the school survey the athletic interests and abilities of its students within the last two years? | | | | | |
| 2. Was there any increase in the number of female participants during the past three (3) years? | | | | | |
| 3. Did the survey indicate that there was demonstrated interest and sufficient competition available to establish new activities? | | | | | |
| 4. If "yes", to the above, were new activities added? If so, which activity? If not, what is the timeline for adding new activities? | | | | | |

ACCOMMODATION OF INTEREST AND ABILITIES

CHART 1

Gender Equity in Athletics Review Manual SUMMARY REPORT

| Question | YES | NO | GEAR Committee Analysis and Recommendations | Date for Completion | Individual Responsible to Implement the Recommendation |
|---|-----|----|---|---------------------|--|
| 5. Based on the survey results, do the kinds of interscholastic sports presently offered meet students' interests and abilities? | | | | | |
| 6. Does the school provide equivalent levels of teams per sport, such as varsity, JV and B teams? | | | | | |
| 7. Is the unduplicated and duplicated participation rate of girls and boys in the high school athletic program substantially proportionate to their respective enrollment in the high school? | | | | | |

ACCOMMODATION OF INTEREST AND ABILITIES

CHART 1

Gender Equity in Athletics Review Manual SUMMARY REPORT

| Question | YES | NO | GEAR Committee Analysis and Recommendations | Date for Completion | Individual Responsible to Implement the Recommendation |
|---|-----|----|---|---------------------|--|
| <p>8. Using the duplicated number of participants, are the number of opportunities available for both girls and boys substantially equal?</p> | | | | | |
| <p>9. Using the unduplicated number of participants, are the number of opportunities available for both girls and boys substantially equal?</p> | | | | | |
| <p>10. If the participation rates were not substantially proportionate, did the school show a history and continuing practice of expanding participation opportunities for the under-represented sex?</p> | | | | | |

ACCOMMODATION OF INTEREST AND ABILITIES

CHART 1

Gender Equity in Athletics Review Manual SUMMARY REPORT

| Question | YES | NO | GEAR Committee Analysis and Recommendations | Date for Completion | Individual Responsible to Implement the Recommendation |
|--------------------------|-----|----|---|---------------------|--|
| 11. Committee questions: | | | | | |

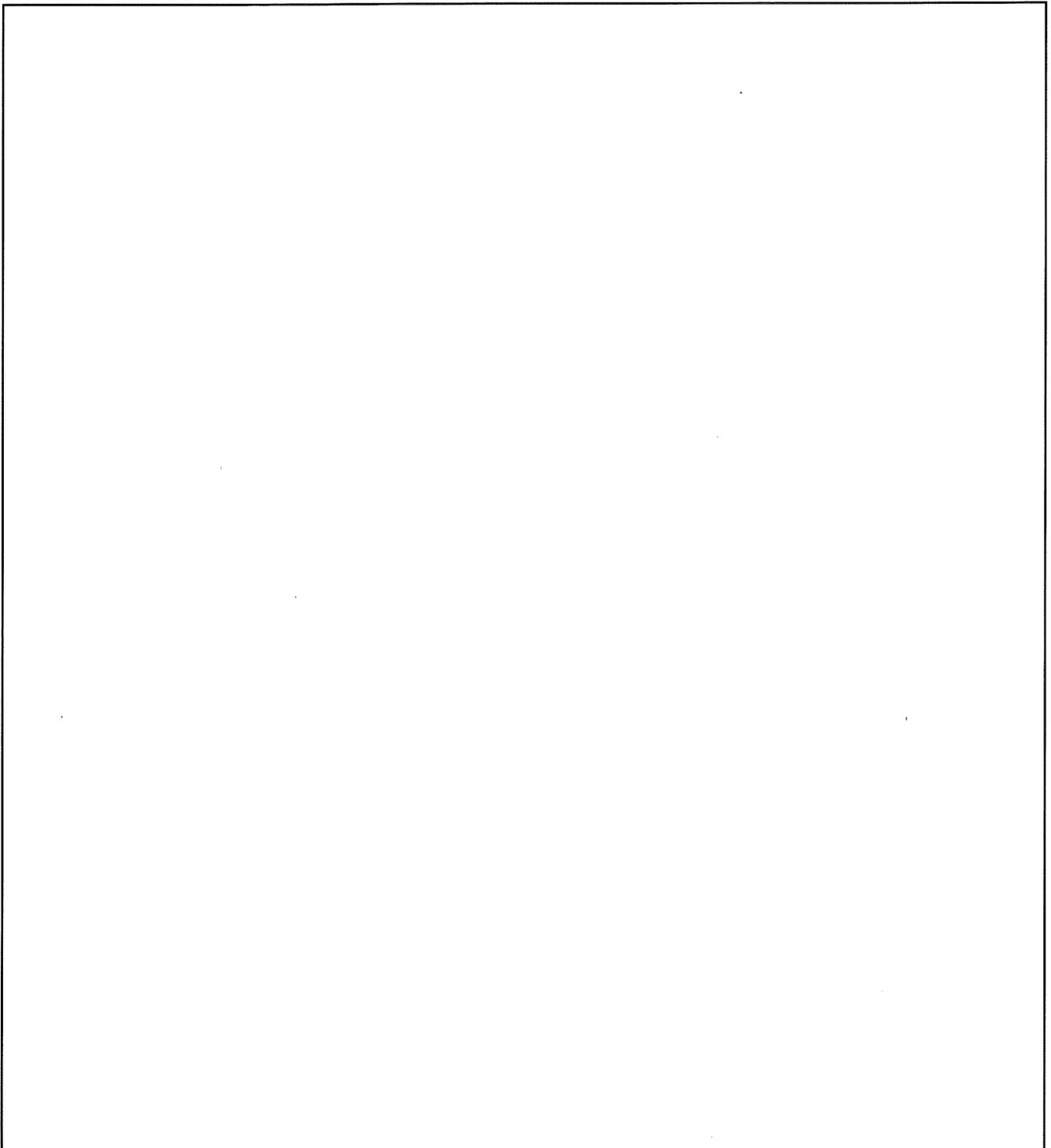
ACCOMMODATION OF INTEREST AND ABILITIES

CHART 1

Gender Equity in Athletics Review Manual SUMMARY REPORT

GEAR COMMITTEE EVALUATION OF COMPONENT

Directions: Use narrative and anecdotal notes to indicate the status of this component regarding equity; indicate any differences or areas which need remedial action or modification.



The Title IX Policy Interpretation states: "Equipment and supplies include but are not limited to forms, other apparel, sport-specific equipment and supplies, instructional devices, and conditioning and weight training equipment."

State Board Rule 3535.3300 for Minnesota schools requires that: "The equipment, supplies and uniforms for each sport are to be comparable for both sexes."

A. FACTORS TO ASSESS:

The Policy Interpretation lists five(5) factors to be assessed in determining compliance:

- (1) quality, (2) amount, (3) suitability, (4) maintenance and replacement, and (5) availability of equipment and supplies.*

The information for this program component should be categorized and reviewed as follows:

Types Of Equipment and Supplies

1. UNIFORMS AND OTHER APPAREL:

includes practice and game uniforms, shoes, rain gear, warm-up suits (do not obtain, review, or analyze information on undergarments)

2. SPORT-SPECIFIC EQUIPMENT:

bats, hockey sticks, tennis rackets, equipment set up and taken down for practices, etc.; stationary equipment such as basketball hoops, tennis nets and soccer goals should not be considered as they are part of the facility and reviewed under provision of locker rooms, practice and competitive facilities.

3. GENERAL EQUIPMENT:

ankle and wrist weights, water bottles, sweatbands, knee braces, etc.; major conditioning equipment - e.g., nautilus, whirlpool, universal - should be addressed under medical and training facilities and services.

Assessment Factors for Equipment and Supplies

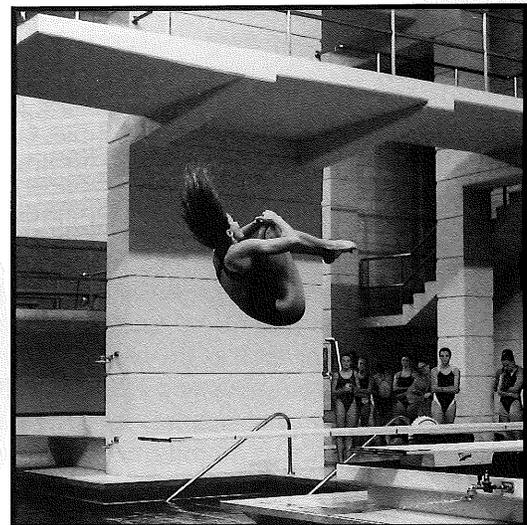
1. QUALITY - condition, durability, top-of-the-line or cut-rate; and

SUITABILITY - regulation, officially sanctioned, does or does not meet rules or specifications for balls, rackets, uniforms, nets, gymnastics equipment, etc.

2. AMOUNT - number, i.e., too many, adequate, or too few bats, balls, shoes, uniforms, wrist weights, etc.; includes consideration of shared equipment, such as teams sharing warm-up suits, and any equipment provided by athletes; and

MAINTENANCE AND REPLACEMENT - maintenance personnel and services such as laundry service for uniforms, equipment storage, upkeep and repair, etc.; replacement - schedules for replacement of uniforms, shoes, bats, balls, etc., e.g., replaced semi-annually, annually, every two, three, four years, etc.

3. AVAILABILITY - amount of time equipment and supplies are accessible to athletes, e.g., always, not on Sundays, restricted to hours equipment rooms are open, etc.





B. INFORMATION TO COLLECT

Data Request

REQUEST budget information regarding the previous year's expenditures and the current year's budget for equipment and supplies in the pre-on-site data request.

On-site

INTERVIEW coaches and athletes from each team as to whether the equipment and supplies provided are adequate. If inadequate, determine specifics.

INTERVIEW athletic directors as necessary, particularly regarding budget information and expenditures.

INTERVIEW equipment managers as necessary, particularly regarding maintenance of equipment.

INSPECT the equipment and supplies provided to each team. This inspection should be conducted with an individual knowledgeable about the equipment such as the coach, athletic director, or equipment manager. DETERMINE where the equipment and supplies for each team are stored. NOTE the proximity of the storage area to the practice and competitive areas and the locker rooms. NOTE any inconsistencies between personal observation of the equipment

and supplies and the opinions of coaches and participants, and ASK the appropriate individuals, before concluding the on-site investigation, about any conflicts.

Interview Questions

Coaches and Athletes:

1. What equipment and supplies are provided to the athletes (e.g., competitive and practice uniforms, warmups, shoes, socks, sport-specific and general equipment)?
2. Do the athletes furnish any equipment and/or supplies, or pay an equipment fee? If so, what?
3. What is the source of funding for the team's equipment and supplies? Do you have to sponsor or participate in fund raisers?
4. What is the quality of the equipment and supplies provided to the team (e.g., substandard, adequate, excellent)?
5. Is all of the equipment provided to the team "regulation?" (If not, what is provided?)
6. Is the equipment provided to the team appropriate for the sport? (If not, explain.)

7. Are there any problems with equipment and supplies? If so, be specific.
8. Verify the number of equipment or student managers and determine their specific responsibilities (e.g., handles equipment and supplies for practices and/or games, launders uniforms, orders new equipment, etc.).
9. What arrangements are made for laundering uniforms? (Include both practice and competitive uniforms; note problems.)

Coaches Only:

10. Is there a replacement schedule for uniforms or any other equipment and supplies? (If not, how is it determined when something must be replaced, e.g., shoes, uniforms, balls, etc.?)
11. When something must be replaced, what is the exact procedure for replacement?
12. Verify the location of the equipment storage and ask whether any storage problem exists. (This question is not necessary if it is obvious that no problem exists.)
13. Verify expenditures or budget and determine whether the amounts are adequate. (If not, why? How much more was needed? Was that amount requested? Why was any amount reduced?)

C. ANALYSIS

DETERMINE the extent that equipment and supplies are provided for each team. Note any budget concerns evident through interviews with coaches or athletic directors or information provided in response to the data request may be noted. SUMMARIZE the significant information provided.

COMPARE the extent to which boys teams are provided with equipment and supplies with the extent to which girls teams are provided with equipment and supplies. SUMMARIZE any disparities.

DETERMINE whether any differences result in a disparity and whether any disparity constitutes a significant disparity.

D. CAUTIONS

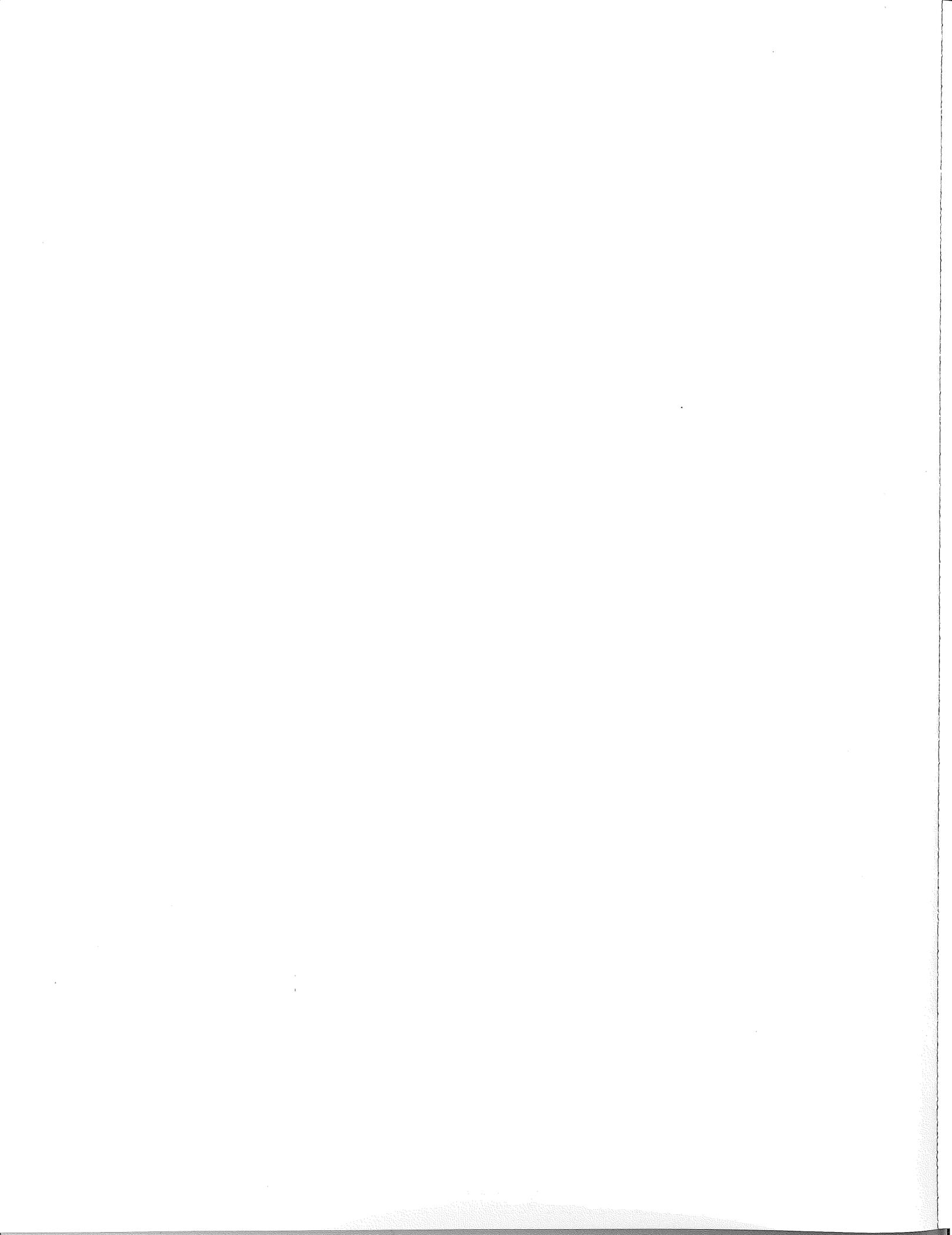
The Policy Interpretation permits nondiscriminatory differences based on the unique aspects of particular sports, while the Title IX regulation does not require equal expenditures for each team or program. See M.R. 3535.3400 for requirement for Minnesota schools.

A particular line of equipment may reflect the preference of the coach who may believe certain equipment is better even though it is not considered top-of-the-line.

The amount of sport specific equipment will often determine which teams reasonably need equipment managers. Sports such as football, baseball and field hockey are more likely to need equipment managers than sports such as basketball and cross country.

Expect that team size and the differences inherent in the nature of particular sports will often affect budgetary needs and equipment and supply needs.

The analysis of the budget information is important mainly when disparities are evident in the provision of equipment and supplies. If there are no disparities in the overall provision of equipment and supplies, then an in-depth analysis of budgetary information is unnecessary and budget information need not be included in the letter of findings.



EQUIPMENT AND SUPPLIES

CHART 2

Gender Equity in Athletics Review Manual SUMMARY REPORT

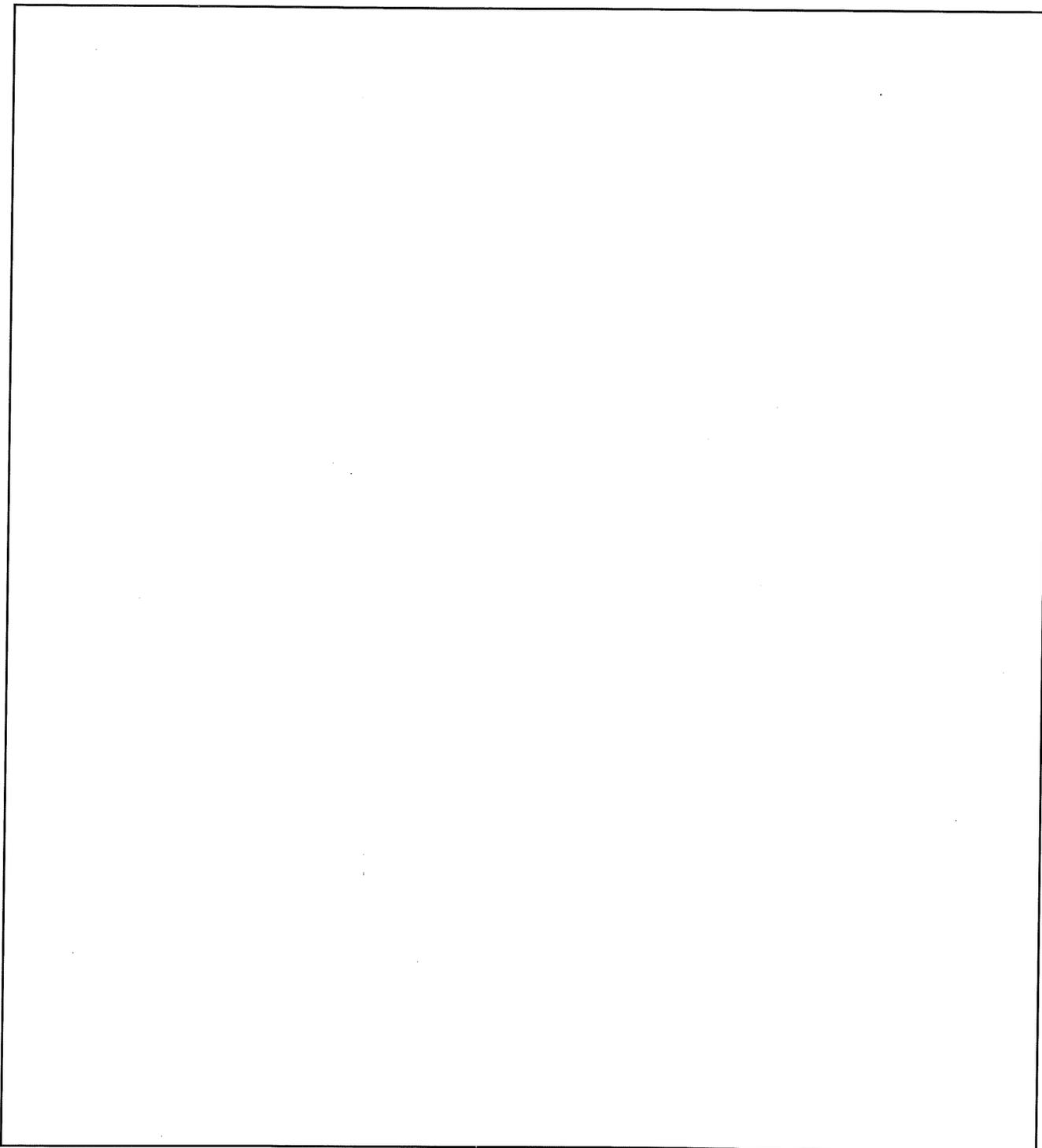
| Question | YES | NO | GEAR Committee Analysis and Recommendations | Date for Completion | Individual Responsible to Implement the Recommendation |
|---|-----|----|---|---------------------|--|
| <p>1. Are girls and boys teams provided with equipment and supplies on an equivalent basis?</p> <p>2. Is the quality of equipment and supplies provided equivalent for girls and boys teams?</p> <p>3. Is the maintenance and replacement of equipment and supplies provided on an equivalent basis to girls and boys teams?</p> <p>4. Committee questions:</p> | | | | | |

CHART 2

**Gender Equity in Athletics Review Manual
SUMMARY REPORT**

GEAR COMMITTEE EVALUATION OF COMPONENT

Directions: Use narrative and anecdotal notes to indicate the status of this component regarding equity; indicate any differences or areas which need remedial action or modification.



A. FACTORS TO ASSESS

The Title IX Policy Interpretation lists the following five factors to be assessed in determining compliance:

1. *number of competitive events per sport;*
2. *number and length of practice opportunities;*
3. *time of day competitive events are scheduled;*
4. *time of day practice opportunities are scheduled; and*
5. *opportunities to engage in available pre-season and post-season competition.*

The season of the sport and the length of season may also be a factor to be assessed depending upon the specific fact situation.

B. INFORMATION TO COLLECT

Data Request

Most of the information necessary to the determination of compliance or non-compliance for scheduling of games and practice time may be obtained through the pre-on-site data request. Additional information may be obtained through interviews of coaches, athletes, and athletic directors. Scheduling is a program component where comparing boys and girls teams in the same sport is particularly useful since the number of competitive events varies by sport. For example, the football team may average 10 regular season games while the basketball team averages 16 regular season games.

REQUEST the following information through the data request.

1. Copies of written policies, procedures, and criteria affecting scheduling of games, practices, pre-season and post-season competition
2. The competitive and practice schedules for each team including the date practice begins (ask for previous year schedules if current year schedules are not available)
3. A list of teams that competed in pre-

season and post-season competition and any teams for which these opportunities were available but the teams did not compete

The information that should be available in response to the data request questions is: number of games in regular season, number of pre-season and post-season events, which teams did not compete in pre-season and post-season competition when opportunities were available, days of the week games are played, times of day games are played, number of practice sessions per week, days practices are held, and time of day and length of practices. DETERMINE whether there are any differences in the number of games per sport, number and length of practice opportunities, time of day of competitive events, time of day of practices, and the teams competing in pre-season and post-season competition. In particular, COMPARE this information for boys and girls teams competing in the same or similar sports.

On-site

INTERVIEW coaches and athletes from each team regarding whether the scheduling of games and practice time is appropriate. INTERVIEW administrators and facilities managers regarding scheduling decisions.

Interview Questions

Administrators/Facilities Managers:

1. What is your role in the scheduling of games and practice time?
2. Do certain teams have priority in scheduling? If so, which ones? Are you responsible for resolving scheduling conflicts, and/or reorganizing schedules during inclement weather?

Coaches and Athletes:

3. How many regular-season games do you play? Is the number of regular season events adequate for the team's level? If one team has more regular season games than the same sport team for students of the other sex, determine why.

4. Verify the first day of practice, the time of day and the days of week of practices.
5. Are practice and game schedules convenient? Do they conflict with classes, meal times, other scheduled activities, etc.?
6. What days of the week and what times of day are considered "prime time" for games? How often does your team compete during prime time? Do game schedules permit reasonable opportunities to compete before an audience?
7. How would you rate your competitive schedule?
8. Is your practice time sufficient?
9. How did the team qualify for post-season competition?
10. Is there any problem with the season during which the sport is scheduled (e.g., fall vs. spring) or the length of season (discuss in terms of number of weeks)?

Coaches Only:

11. Who does the scheduling? (If a considerable difference exists between the number of home and away games, ask why.)
12. On what basis is the competition time(s) determined and are these times convenient?
13. Is there a unique aspect about the schedule for the team? If yes, clarify.

C. ANALYSIS

COMPARE, for boys and girls teams of the same or similar sport, the number of games, the days and times of games, and the number of practices and the days and times of practices. NOTE any differences. COMPARE the remaining boys and girls teams for the same information and determine whether any differences for the scheduling of these remaining teams may offset any differences in the scheduling for teams of similar sports.

DETERMINE whether any differences result in a disparity and whether any disparity, constitutes a significant disparity.

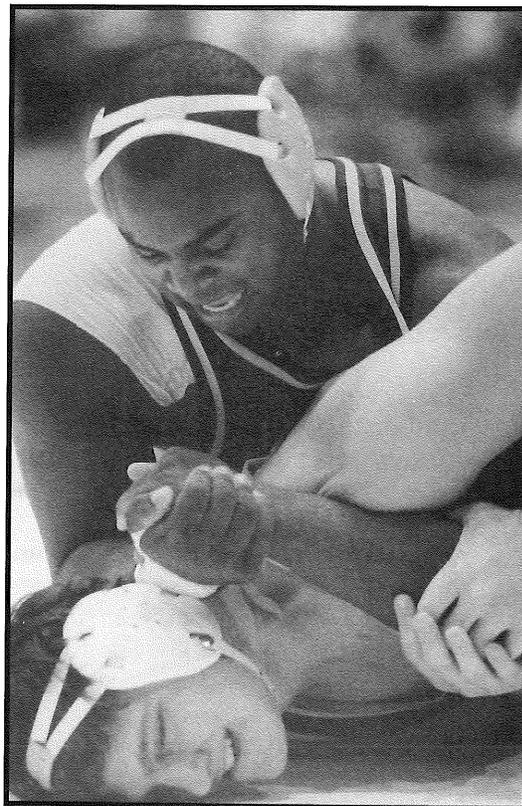
D. CAUTIONS

The Policy Interpretation permits nondiscriminatory differences based on the unique aspects of particular sports. Ask the appropriate school representative for an explanation of any disparities found.

An example of a nondiscriminatory justification for scheduling disparities is where the scheduling of competitive events is limited by lack of competition for that sport in the normal competitive area. Fewer competitive contests may in turn affect practice schedules and pre-season and post-season competitive opportunities.

Competitive and practice schedules are often affected by the availability of facilities. When schedules for teams of one sex are adversely affected by the availability of facilities, a disparity may occur in both program components, scheduling and provision of locker rooms, practice and competitive facilities.

A school is not required to schedule the same number of games or practices for boys and girls teams of the same or similar sport. However, any differences favoring, for example, boys teams, should be offset by differences favoring girls teams in other sports.



SCHEDULING OF GAMES AND PRACTICE TIMES

CHART 3

Gender Equity in Athletics Review Manual SUMMARY REPORT

| Question | YES | NO | GEAR Committee Analysis and Recommendations | Date for Completion | Individual Responsible to Implement the Recommendation |
|--|-----|----|---|---------------------|--|
| <p>1. Are girls and boys teams provided with the number of competitive events appropriate for their sport, and their level of competition?</p> <p>2. Is equivalent opportunity provided regarding the number and length of practices for girls and boys teams?</p> <p>3. Is equivalent opportunity provided regarding the time of day games and practices are scheduled for girls and boys teams?</p> <p>4. Committee questions:</p> | | | | | |

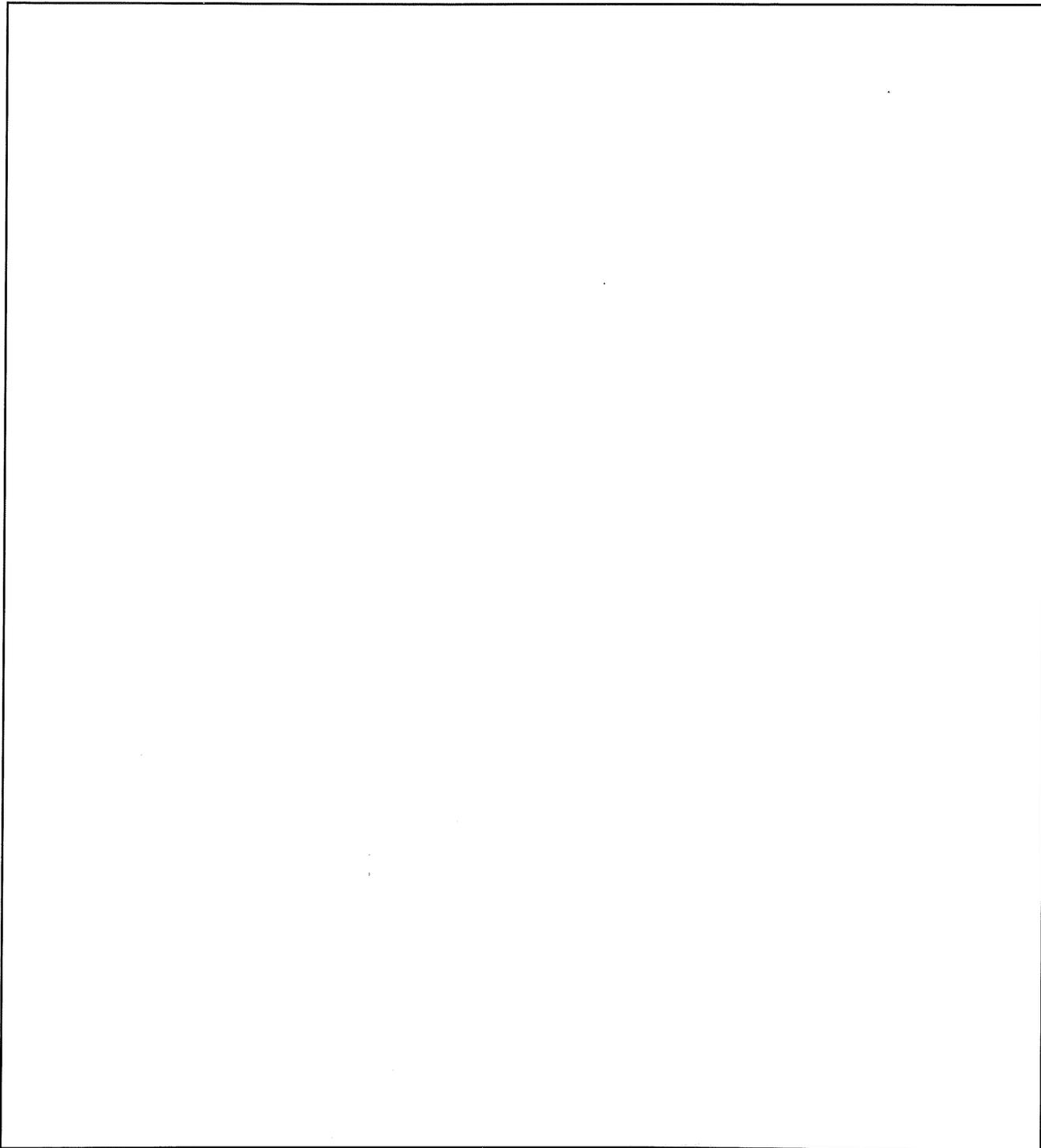
SCHEDULING OF GAMES AND PRACTICE TIMES

CHART 3

Gender Equity in Athletics Review Manual SUMMARY REPORT

GEAR COMMITTEE EVALUATION OF COMPONENT

Directions: Use narrative and anecdotal notes to indicate the status of this component regarding equity; indicate any differences or areas which need remedial action or modification.



4

Equity Program Component: TRAVEL AND PER DIEM ALLOWANCE

A. FACTORS TO ASSESS

The Policy Interpretation lists five factors to be assessed in determining compliance:

1. *modes of transportation;*
2. *housing furnished during travel;*
3. *length of stay before and after competitive events;*
4. *per diem allowances; and*
5. *dining arrangements.*

B. INFORMATION TO COLLECT

OBTAIN a map of the school's competitive area which will assist in making comparisons of the modes of transportation used for boys and girl's teams traveling the same distances. Be prepared to ask coaches the distance to a competitive site when necessary. Interscholastic teams will probably travel only within the school district or conference limits except for special events or tournaments.

Data Request

REQUEST the following information through the data request.

1. Copies of written policies, procedures, and criteria for providing travel arrangements and per diem allowances
2. The travel expenditures and budgets for each team
3. A list of the modes of transportation (privately-owned vehicles; school owned vehicles - be specific as to car, van, bus, or plane; commercial vehicles - bus; train; or plane) used by each team for each away game
4. The per diem allowances for each team
5. The size of the travel squad for each team and the number of personnel and their identities (trainer(s), coaches, sports information staff, etc.), who travel with the team to away games

COMPARE the information provided and NOTE any differences between the boys and girls programs.

On-site

INTERVIEW coaches and athletes from each team regarding whether the travel and per diem allowances are adequate.

Interview Questions

Coaches and Athletes:

1. What was the mode of transportation used for each away event? Ask for the distance to any event, as necessary.
2. If not apparent, ask the reason for the specific mode of transportation provided.
3. What housing is furnished during travel? Ask specific name of lodging facility.
4. How many athletes are assigned to each room?
5. What are the meal arrangements? Does the team eat as a group and the coach pays the bill? Are the athletes given money to eat wherever they wish?
6. What is the per diem allowance, or how much money per meal?
7. Is the team provided with a pre-game meal?
8. How much time in advance of the competitive event does the team arrive in the area of the competitive event? Is this always true or does the arrival time vary? On what do any variations depend?
9. Does the team leave immediately after a competitive event, or are there some occasions where the team might stay overnight? On what does this depend?

Coaches Only:

10. Does the coach prepare the travel budget? If not, who does? Is the budget adequate? If not, why?
11. Does the coach handle the travel

arrangements for the team (reservations, securing the mode of transportation, etc.)? If not, who does?

C. ANALYSIS

COMPARE the modes of transportation used by boys and girls teams. In particular, REFER to the scheduling information and USE a map to determine which teams traveled similar distances. COMPARE the modes of transportation used where boys and girls teams traveled similar distances. DETERMINE whether the number of athletes, others traveling with the team, and/or the amount of equipment to be transported may explain any differences in the mode of transportation used by boys and girls teams traveling the same distances.

COMPARE the housing furnished during travel for boys teams to the housing provided to girls teams. NOTE whether teams of one sex stay at better quality motels than teams of the other sex, or stay at motels while teams of the other sex stay in less desirable facilities.

COMPARE whether teams of one sex have more athletes assigned to a room than teams of the other sex.

COMPARE whether teams of one sex arrive at away games earlier and/or leave later than teams of the other sex, thus allowing more time for rest, meals, or practices. DETERMINE whether there is a pattern favoring teams of one sex.

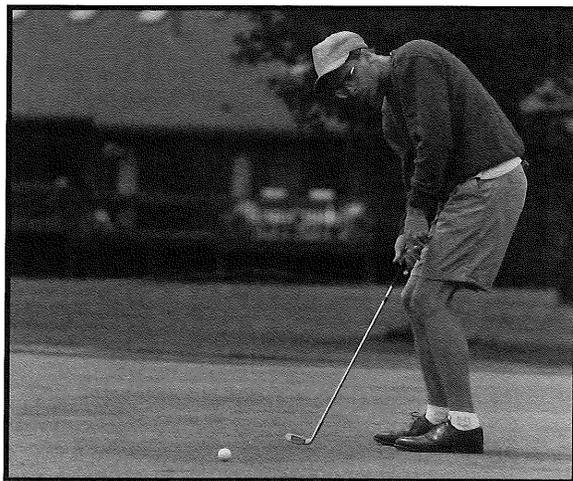
COMPARE the per diem allowances for boys and girls teams. (Per diem allowances usually refer to meal expenses only. If otherwise, clarify as necessary.) NOTE any differences in the amounts provided. USE the amounts actually given or spent on athletes since this may be different from the "standard" per diem rate that the school may set. If "per diem amounts are not used, USE total amounts per meal and divide by the number of participants traveling with the team to obtain a figure for comparison purposes. (Be certain that any calculations consider the number of meals necessary for a particular trip.) Also, NOTE any differences in the method of payment. DETERMINE whether any differences

in payment methods have a negative impact on teams of one sex.

COMPARE the dining arrangements during travel for boys and girls teams. NOTE any differences in quality such as whether teams of one sex eat at restaurants while teams of the other sex eat at the school cafeteria.

COMPARE the total and average travel and per diem budgets for boys and girls teams. COMPARE the average travel and per diem budget per athlete. Be certain to USE the number of athletes on the travel squad, which is often less than the total number of athletes on the team. NOTE any differences. NOTE separately whether any coaches indicated that the number of athletes traveling with the team was limited because of inadequate travel and per diem budget.

DETERMINE whether any differences result in a disparity and whether any disparity constitutes a significant disparity.



D. CAUTIONS

The Policy Interpretation permits nondiscriminatory differences based on the unique aspects of particular sports. Ask the appropriate school representative for an explanation of any disparities found.

The mode of transportation may vary between teams traveling the same distances because the size of the team, the number of people traveling to the competition (for example, coaches, trainers, sports information personnel, etc., in addition to the athletes), and/or the amount of equipment that must be transported may vary.

TRAVEL AND PER DIEM ALLOWANCE

CHART 4

Gender Equity in Athletics Review Manual SUMMARY REPORT

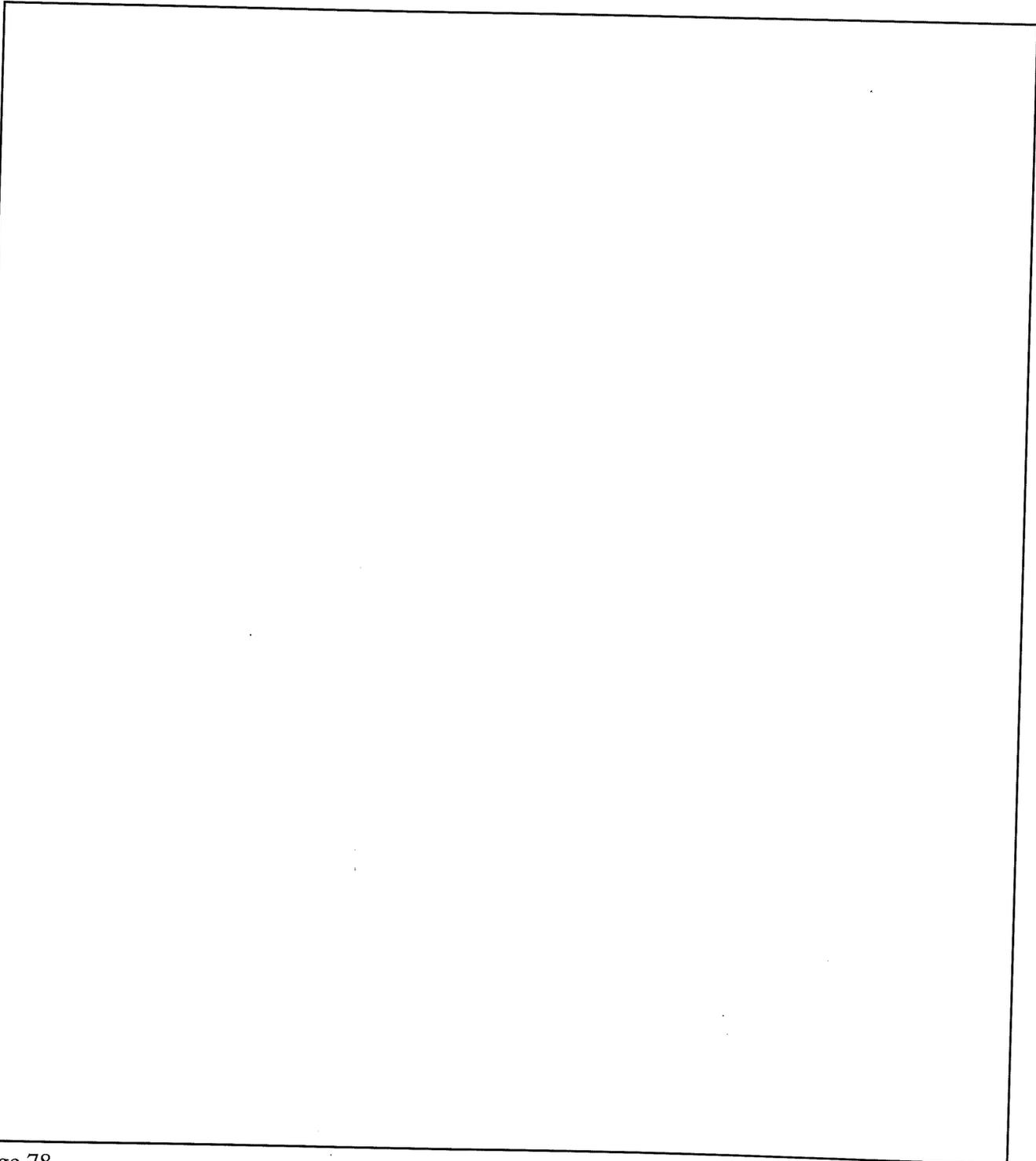
| Question | YES | NO | GEAR Committee Analysis and Recommendations | Date for Completion | Individual Responsible to Implement the Recommendation |
|---|-----|----|---|---------------------|--|
| <p>1. Are the modes of transportation provided on an equivalent basis to girls and boys teams?</p> <p>2. Are girls and boys teams provided the same lodging when in travel status?</p> <p>3. Are girls and boys teams treated the same regarding the time of arrival and length of stay after competitive events?</p> <p>4. Are girls and boys provided with equivalent meals and dining arrangements during travel?</p> <p>5. Committee questions:</p> | | | | | |

CHART 4

**Gender Equity in Athletics Review Manual
SUMMARY REPORT**

GEAR COMMITTEE EVALUATION OF COMPONENT

Directions: Use narrative and anecdotal notes to indicate the status of this component regarding equity; indicate any differences or areas which need remedial action or modification.



A. FACTORS TO ASSESS:

The Policy Interpretation lists *three* factors to be assessed in determining compliance for the *opportunity to receive coaching*:

1. *relative availability of full-time coaches;*
2. *relative availability of part-time and assistant coaches;*
3. *relative availability of volunteer assistants.*

The Policy Interpretation lists *two* factors to be assessed in determining compliance for the *assignment of coaches*:

1. *training, experience, and other professional qualifications;*
2. *professional standing.*

The Policy Interpretation lists *seven* factors to be assessed in determining compliance for the *compensation of coaches*:

1. *rate of compensation (per sport, per season);*
2. *duration of contracts;*
3. *conditions relating to contract renewal;*
4. *experience;*
5. *nature of coaching duties performed;*
6. *working conditions; and*
7. *other terms and conditions of employment.*

The information for this program component should be categorized and reviewed as follows:

1. Availability - relative availability of full-time and part-time coaches and volunteer coaches.
2. Assignment - training, experience, and other professional qualifications of coaches.
3. Compensation - the allocation of funds for coaching to the boys and girls program.

B. INFORMATION TO COLLECT

Interscholastic athletics coaches are rarely (if ever) full time coaches, and generally perform coaching duties in addition to their teaching or administrative duties for the school district.

They are usually paid a stipend for coaching which is in addition to their, for example, teaching salary. The stipend may be a flat rate set by the school district for that specific coaching position with no relation to the specific coach's background and experience. The data request and interview questions below are designed to determine how the particular school assigns and compensates coaches for the athletics program, in addition to clarifying the availability of coaches.

Data Request

REQUEST the following information:

1. A list of the coaching staff for each team and each individual's status as head, assistant, or volunteer coach; salary or stipend for coaching duties; each coach's other job duties and the extent to which each coach is relieved of other job duties during the season of sport, semester, etc. (e.g., reduced teaching load, etc.); length of contract or assignment for coaching, background and experience related to each individual's selection as coach; and, a copy of the job contract for each coach.
2. A description of the policies, procedures, and criteria for selecting coaches and for determining coaches' salaries.
3. Information on the policies concerning the number of coaches for each team.
4. The number of athletes on each team (if not obtained under another program component).

On-site

INTERVIEW coaches and athletes from each team regarding coaching. INTERVIEW the administrator(s) responsible for the budget for coaches' salaries and the assignment of coaches.

Interview Questions

Administrator(s):

1. Verify (or obtain) the salary or stipend for each coach. Determine whether the amount is based on the coaching position or whether the coaching qualifications of the specific individual affect

the rate of pay. Is any coach(es) paid a salary that is significantly higher than the salaries of other coaches? If so, why?

2. How was it determined which coaches were needed? Who determined whether they would be hired for full or part time? Describe the hiring procedures.

Coaches:

3. Verify or determine the background and experience of the head coach, especially coaching, teaching, and participation at each level, for example, high school, college, amateur, and/or professional. Ask the head coach to provide the same information for any assistant coaches.
4. Verify or determine the academic degree of the head coach and any assistant coaches. For each coach, determine whether academic degree was considered regarding appointment and/or salary.
5. Determine the duties and responsibilities of each coach. Explain all duties and responsibilities of any assistant coaches.
6. Verify or determine the terms of the contract or assignment, including reduction of teaching load or other duties during season of sport or semester. Verify the hiring procedures.
7. Verify the number of assistant or volunteer coaches and their duties.
8. How many athletes are on the team?

Athletes:

9. Verify the number of head, part-time, and volunteer coaches.
10. Determine whether all coaches are always available for practice and competition and other times (e.g., counselling, specialized training, etc.).

C. ANALYSIS

The investigation and analysis of this program component is difficult. OCR's primary focus must be availability of coaches. Following that, the qualifications (in effect, assignment) of coaches will need to show a pattern of less

qualified coaches being assigned to the program for students of one sex before lack of equivalence can be demonstrated because, depending on the particular individuals, it is possible for a coach with five years experience to be as effective, or even more effective, than someone with 15 years coaching experience. The third factor, compensation of coaches, is particularly difficult for establishing noncompliance under SS 106.41. If availability and assignment of coaches to both programs are equivalent, it is difficult for OCR to assert that the lower compensation for coaches in, for example, the girl's program, negatively affects female athletes. The intent of SS 106.41 is for equal athletic opportunity to be provided to participants, not coaches. Where both male and female coaches in the girls program are receiving lower compensation than coaches in the boys program, asserting noncompliance with Subpart E of the Title IX regulation regarding employment is also difficult. Thus, this particular program component requires very careful analysis and careful reasoning in justifying violations.

Under certain circumstances, some coaching positions can and should be excluded from the three part analysis described below. These coaching positions are for coaches of combined and coed teams. "Combined teams" refers to sports where the boy's and girl's teams have the same coach(es) and practice and compete at the same or similar times. This situation is most likely for the sports of swimming, track, and cross country. Coaches of combined teams should be excluded from the analysis unless the investigation reveals that more coaching time is spent with athletes of one sex. In this case, a breakdown of the percentage of time spent with each team and the corresponding percentage of salary must be obtained and calculated, and included in the analysis below.

Availability:

DETERMINE the number of coaches available to each team in the boys and girls programs. DETERMINE the ratio of the total number of coaches to the total number of participants in each program and COMPARE the ratios. NOTE any differences. DETERMINE the number of assistant coaches available to each team in the boys and girls programs. COMPARE the number of girls teams that have assistant coaches with the number of boys teams that have assistant coaches. NOTE any differences in the number of assistant coaches for each team in the boys and girls programs and the number of teams in each program that have assistant coaches.

Assignment:

COMPARE the training, experience, and other professional qualifications of coaches assigned to the boy's programs with coaches assigned to the girl's program. NOTE any differences.

Since individuals' backgrounds and experiences may vary considerably, differences are expected. The determination is based on whether the assignment of coaches is equivalent or equal in effect. The school may not routinely assign coaches of less experience or qualifications to, for example, the girl's program.

Compensation:

COMPARE the salaries of head coaches in the boys program with the salaries of head coaches in the girls program. COMPARE the salaries of assistant coaches in the boys program with the salaries of assistant coaches in the girls program. DETERMINE any differences. DETERMINE whether any differences are the result of nondiscriminatory factors such as the following, which are noted in the Policy Interpretation: the range and nature of duties, the experience of individual coaches, the number of participants for particular sports, the number of assistant coaches supervised, the level of competition, etc.

COMPARE the percentage of coaching funds available to the boys program with the percentage of coaching funds available to the girls program. The proportion of these percentages should be roughly equivalent to the proportion of male to female participants in the athletic program. NOTE any significant differences in these proportions.

Significant disparities that have nondiscriminatory justifications for them are less likely in interscholastic athletics programs where coaches usually receive a stipend for coaching duties. In particular, OCR experience indicates that some schools may base coaching stipends on the sport that is coached. Where this is the case, schools may be unable to justify differences between, for example, the stipends for the coach of the boys' basketball team as compared to the coach for the girls' basketball team.

As noted above, even where significant differences may be apparent under compensation of coaches, it is difficult for OCR to assert that there is a negative impact on athletes of one sex if availability and assignment of coaches are equivalent.

C. ANALYSIS

DETERMINE whether any differences result in a disparity and whether any disparity constitutes a significant disparity.

D. CAUTIONS

The Policy Interpretation permits nondiscriminatory differences, several of which are listed above in the "Analysis" section under "compensation." Ask the appropriate school representative for an explanation of any disparities found.



The nature of the sport of football, including the number of participants needed to field the team, the rate of injury, and the rate of severe injury, often justifies the assignment of several assistant coaches.

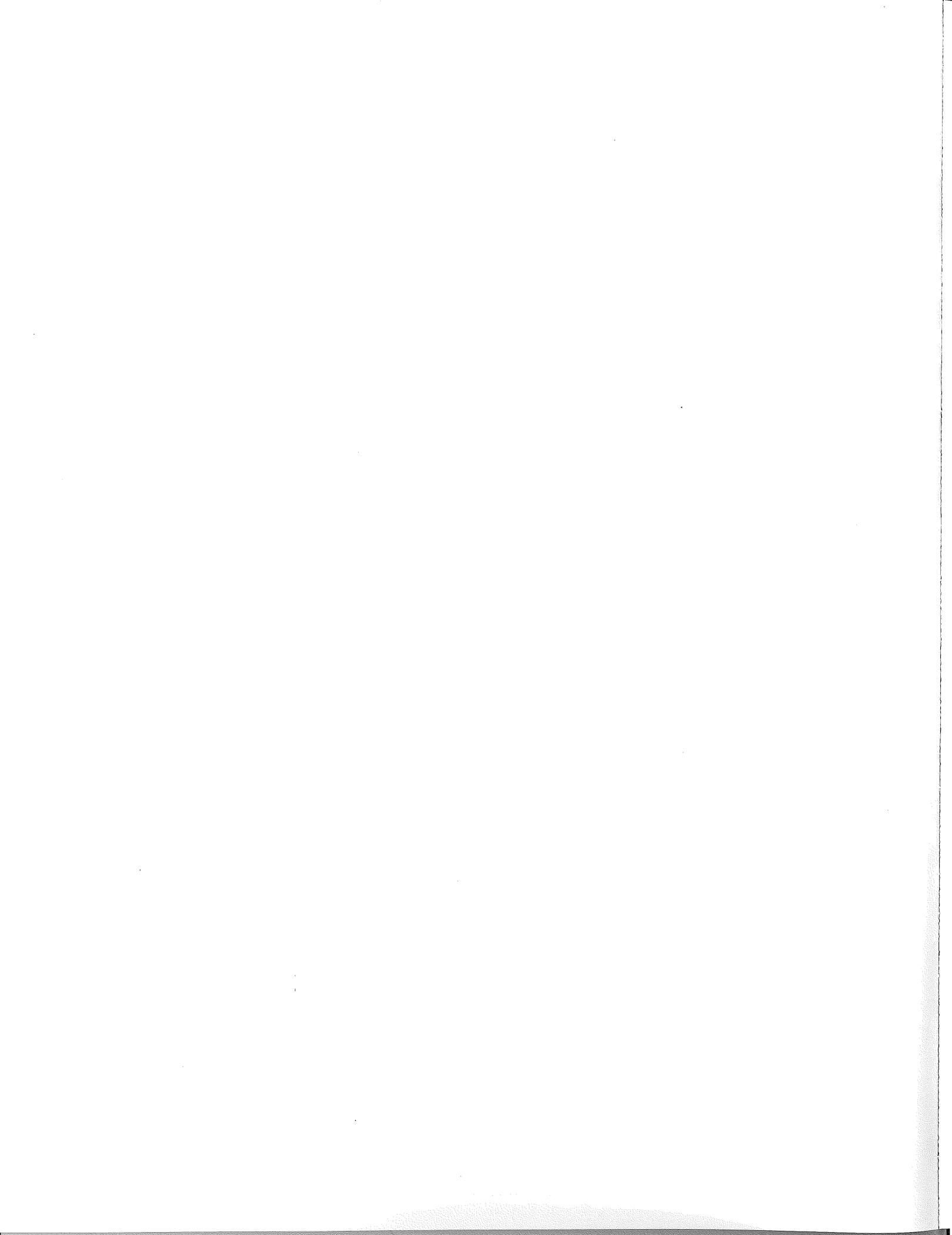


CHART 5

**Gender Equity in Athletics Review Manual
SUMMARY REPORT**

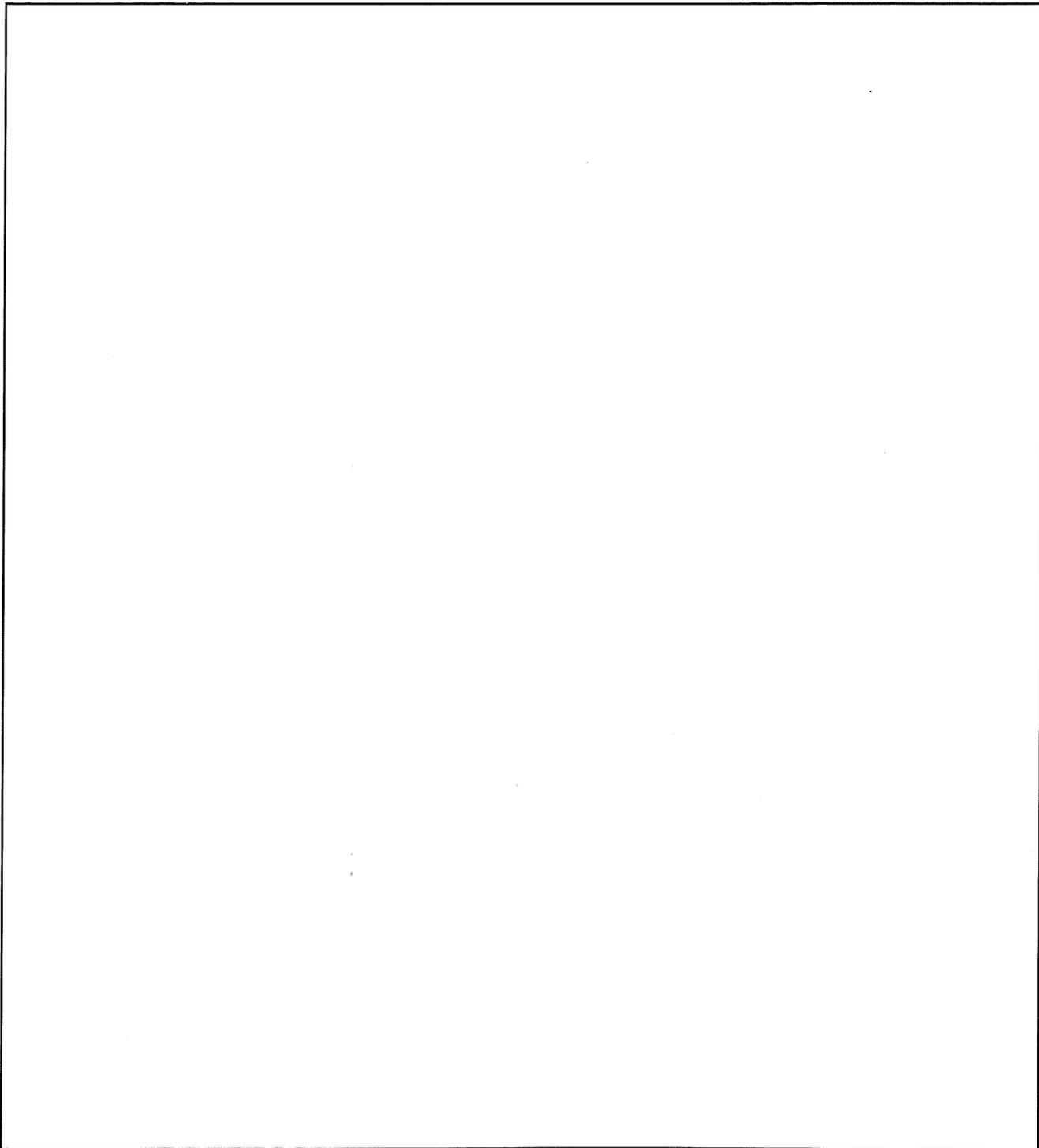
| Question | YES | NO | GEAR Committee Analysis and Recommendations | Date for Completion | Individual Responsible to Implement the Recommendation |
|---|-----|----|---|---------------------|--|
| <p>1. Is equivalent opportunity provided regarding the availability of full time, part time and volunteer coaches for girls and boys teams?</p> | | | | | |
| <p>2. Is equivalent opportunity provided in the assignment of coaches to girls and boys teams based on the training, experience, and other professional qualifications of coaches?</p> | | | | | |
| <p>3. Is equity provided regarding the compensation of coaches and other terms and conditions of employment including: experience; working conditions, etc.?</p> | | | | | |
| <p>4. Committee questions:</p> | | | | | |

CHART 5

**Gender Equity in Athletics Review Manual
SUMMARY REPORT**

GEAR COMMITTEE EVALUATION OF COMPONENT

Directions: Use narrative and anecdotal notes to indicate the status of this component regarding equity; indicate any differences or areas which need remedial action or modification.



A. FACTORS TO ASSESS

The Policy Interpretation lists *six* factors to be assessed in determining compliance:

1. *quality and availability of the facilities provided for practice and competitive events;*
2. *exclusivity of use of facilities provided for practice and competitive events;*
3. *availability of locker rooms;*
4. *quality of locker rooms;*
5. *maintenance of practice and competitive facilities; and*
6. *preparation of facilities for practice and competitive events.*

B. INFORMATION TO COLLECT

Data Request

REQUEST the following information:

1. Copies of written policies, procedures, and criteria regarding the use and availability of locker rooms, practice and competitive facilities
2. A listing of all locker rooms, practice and competitive facilities used by each team, the name of the facility, the age of the facility, its location, other uses of the facility, which teams have exclusive use of the facilities, and the period of time for which lockers are assigned; if available, a map showing the available facilities and their locations

COMPARE the information provided and NOTE any differences between the boys and girls programs.

On-site

INSPECT the facilities used by each team. Various methods for conducting this inspection are acceptable, but it may be more convenient for both investigator and school staff if all facilities are reviewed at once by the investigator with someone knowledgeable about the facilities. Careful note taking is a necessity during this inspection. In particular, during the inspection of facilities, NOTE the general condition and sufficiency of the locker rooms and related

facilities; the proximity of the locker rooms to practice and competitive facilities; the types of services offered at the various facilities (e.g., laundry room, etc.); and the condition and sufficiency of practice and competitive facilities. NOTE any differences between the facilities provided to the girl's program as compared to the boy's program.

INTERVIEW coaches and athletes from each team regarding the provision of locker rooms, practice and competitive facilities. At larger schools, athletic directors, assistant athletic directors, and/or other administrators may be responsible for scheduling facilities and/or may supervise staff responsible for maintenance and preparation of facilities. INTERVIEW administrators and other personnel as necessary. In addition, a general description of these individuals' duties would be warranted.

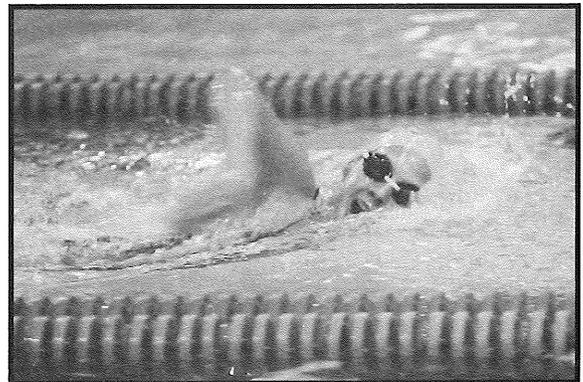


Photo Courtesy of Minneapolis - St. Paul Star Tribune

Interview Questions

Coaches and Athletes:

1. Verify the locations of the practice and competitive facility and the locker rooms for each team. If the practice facility is different from the competitive facility, ask why, and ask whether this is a problem.
2. Do any other teams or school activities (e.g., interscholastic, club, or intramural teams, pep band, etc.) use the facility? Are any of these activities scheduled at the same time as practice or competition? Which activity or team has priority use of the facility?
3. Who maintains the facilities? Are the

facilities maintained adequately?

4. Who prepares the facilities for competitive events? Are they prepared adequately?
5. Do the facilities require preparation for practices and, if so, who prepares the facilities, and are they prepared adequately?
6. Are lockers individually assigned to the athletes? For what length of time (e.g., all year, the sport season, etc.)?
7. Do athletes have exclusive use of the locker rooms or are other teams or groups using the locker room at the same time?
8. What is the quality of the practice and competitive facilities (e.g., excellent, adequate, poor)? Are they "regulation"?
9. What is the quality of the locker room facilities (e.g., excellent, adequate, poor)?
10. What special features are available at the facilities (e.g., laundry service or trainers available in locker room area; accommodations for visiting teams; concession facilities, spectator capacity, public address system, electronic score boards, special lighting for television coverage at competitive or practice facilities, etc.)?

C. ANALYSIS

DETERMINE whether any policies, procedures, or criteria used for allocating locker rooms, practice and competitive facilities differ on the basis of sex.

COMPARE the quality and availability of practice and competitive facilities for boys and girls. DETERMINE any differences between the boys and girls programs.

COMPARE the quality and availability of locker room facilities for boys and girls, and DETERMINE any differences between the boys and girls programs.

COMPARE the number of boys teams that have exclusive use of practice and/or competitive facilities with the number of girls teams that have exclusive use of practice and/or competitive facilities.

COMPARE the number of girls teams that have exclusive use of locker room facilities with the number of boys teams that have exclusive use of locker room facilities.

COMPARE the maintenance and preparation of practice and competitive facilities for the boy's program with the maintenance and preparation of practice and competitive facilities for the girls program. NOTE any differences.

DETERMINE whether any differences result in a disparity and whether any disparity.

D. CAUTIONS

The Policy Interpretation permits nondiscriminatory differences based on the unique aspects of particular sports. Ask the appropriate school representative for an explanation of any disparities found.

The availability and adequacy of facilities is often contingent upon the number of athletes who need to use a facility at any one time.

Exclusive use of a facility refers to exclusive use at the time of the practice session or competition. Thus, exclusivity of use will be affected only if other teams, physical education classes, intramural teams, or other groups use the facility at the same time as the team practice or competition. However, if many groups use a particular facility, it may affect the quality of the facility, or the necessary maintenance and preparation of the facility.

The provision of locker rooms, practice and competitive facilities may be the direct result of the scheduling of games and practices for each team.

LOCKER ROOMS, PRACTICE AND COMPETITIVE FACILITIES

CHART 6

Gender Equity in Athletics Review Manual SUMMARY REPORT

| Question | YES | NO | GEAR Committee Analysis and Recommendations | Date for Completion | Individual Responsible to Implement the Recommendation |
|---|-----|----|---|---------------------|--|
| <p>1. Does the quality and availability of the facilities provide for practice and competitive events for girls and boys teams?</p> | | | | | |
| <p>2. Is equivalent opportunity provided regarding the availability and quality of locker rooms for girls and boys teams?</p> | | | | | |
| <p>3. Is the use of facilities for practice and competitive events provided on an equivalent basis for girls and boys teams?</p> | | | | | |

LOCKER ROOMS, PRACTICE AND COMPETITIVE FACILITIES

CHART 6

Gender Equity in Athletics Review Manual SUMMARY REPORT

| Question | YES | NO | GEAR Committee Analysis and Recommendations | Date for Completion | Individual Responsible to Implement the Recommendation |
|---|-----|----|---|---------------------|--|
| <p>4. Is there equity in the maintenance and preparation of facilities for practice and competitive events for girls and boys teams?</p> <p>5. Committee questions:</p> | | | | | |

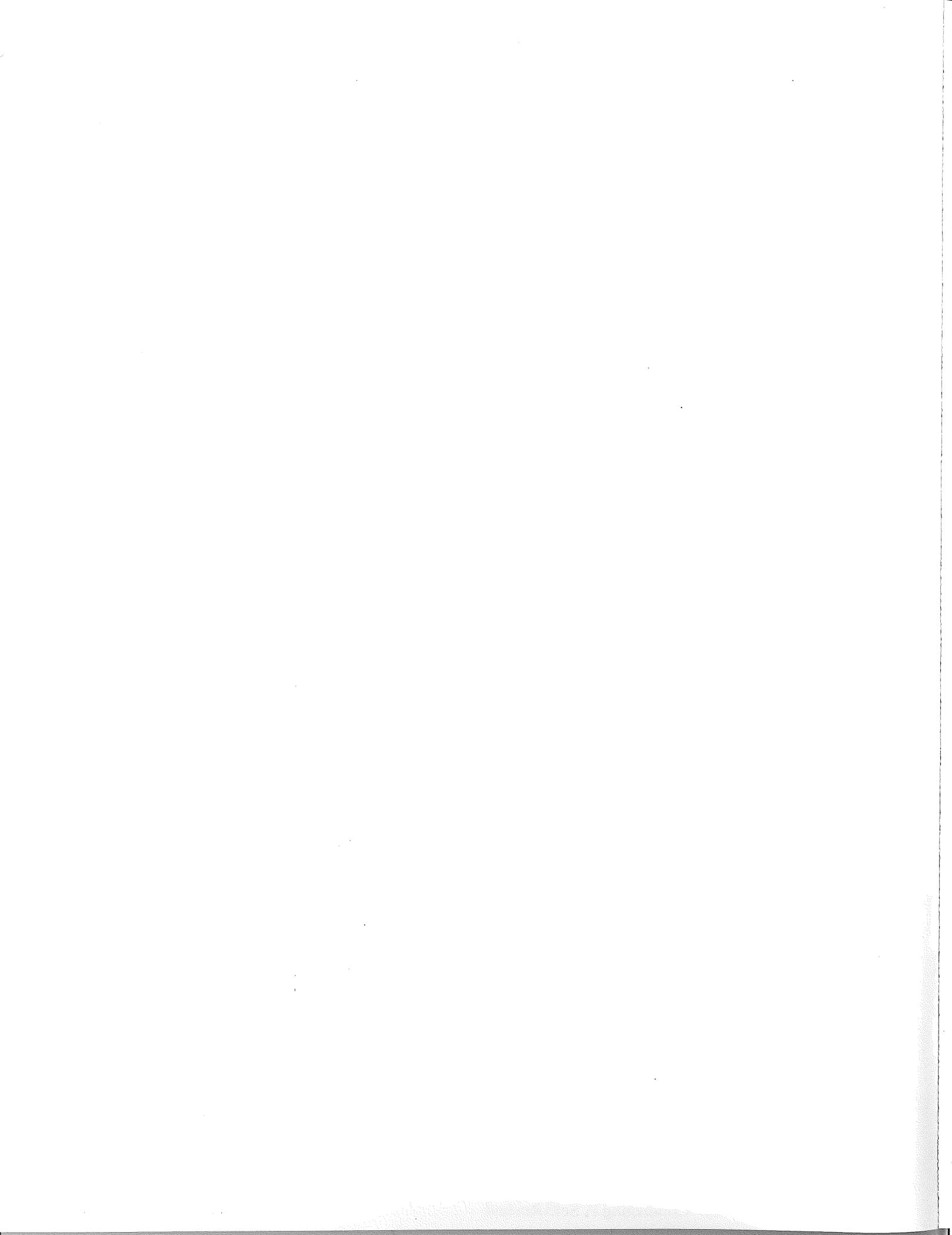
CHART 6

**Gender Equity in Athletics Review Manual
SUMMARY REPORT**

GEAR COMMITTEE EVALUATION OF COMPONENT

Directions: Use narrative and anecdotal notes to indicate the status of this component regarding equity; indicate any differences or areas which need remedial action or modification.





A. FACTORS TO ASSESS

The Policy Interpretation lists *five* factors to be assessed in determining compliance in the provision of medical and training facilities and services:

1. *availability of medical personnel and assistance;*
2. *health, accident and injury insurance coverage;*
3. *availability and quality of weight and training facilities;*
4. *availability and quality of conditioning facilities; and*
5. *availability and qualifications of athletic trainers.*

B. INFORMATION TO COLLECT

Data Request

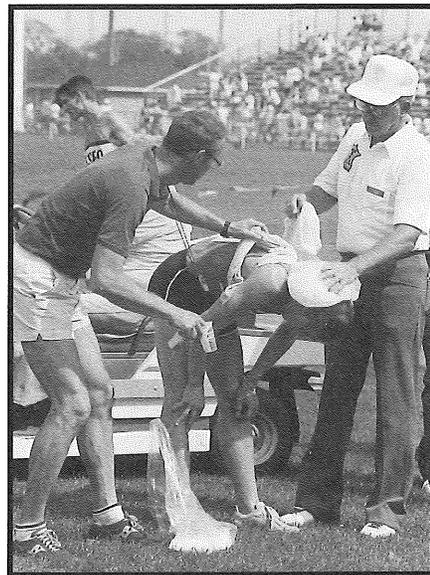
REQUEST the following information.

- 1 List of each weight, training, and conditioning facility available to athletes; the location of each facility; the teams that use each facility; if available, a list of the name and type of equipment in each facility
2. List of the names of the trainers and medical personnel assigned to each team; the certification of each trainer; the identification of student trainers; which trainers accompany teams to away games
3. Copies of any insurance policies covering athletes; the cost of the policy to the athlete, if any (general insurance policies available to all students at the school need not be provided)

REVIEW the insurance policy and DETERMINE the extent of coverage and whether coverage is equivalent for boy and girls. NOTE that under 34 C.F.R. SS 106.39, any recipient that provides full coverage health service shall provide gynecological care. (Generally, schools that provide insurance coverage specifically for athletes cover injuries or health problems related to the athletes' participation in the athletics program. Under such a policy, gynecological

care shall be covered where such health problems are the result of participation in the athletics program.) DETERMINE any differences in the insurance coverage provided. Be prepared to interview the appropriate school representative, usually the athletic director, regarding any differences in insurance coverage.

Also, NOTE that differences in insurance coverage on the basis of sex may result in a violation of 34 C.F.R. SS 106.39. However, under the program component of the provision of medical and training facilities and services, an insurance policy favoring athletes of one sex is only one factor of several to be considered and will not necessarily result in a violation under SS 106.41.



On-site

INSPECT the facilities used by each team. NOTE the number of machines in each facility. ASK the name of any machine, device, or equipment as necessary. ASK for a general description of services or treatment provided. ASK to inspect any medical or training equipment which may be stored away and not readily visible (e.g., ultrasound, heat or ice treatment equipment, etc.). NOTE the general condition, size, sufficiency, and services available at each facility. NOTE the proximity of these facilities to locker rooms, practice and competitive facilities. NOTE any differences between the facilities and services provided to the girls program as compared to the boys program.

INTERVIEW coaches and athletes from each



Photo Courtesy of Gerry Zeck, Mpls.

team and all full time trainers. INTERVIEW the athletic directors and other school representatives, such as the strength coach, facilities managers, etc., as necessary or appropriate. Take the facilities charts to the interviews.

Interview Questions

Trainers:

1. Verify or determine the professional background of each trainer (education, degree, professional experience in terms of years and where the experience was obtained) and certification.
2. How much experience do you have in treating male and female athletes? Which sports?
3. How many people do you supervise? What are the names and titles of employees? How many student trainers?
4. Are the student trainers seeking academic degrees in training related fields? How are student trainers allocated to each team?
5. To whom do you report?
6. Do you work with or coordinate the work of physicians who work with the team? If so, explain.
7. Are physical exams given to each team each year? How is this arranged? Who conducts the exams for which teams?
8. Which teams have medical doctors that travel with the team to away games? Which teams have medical doctors present for home games and practices?
9. What is the schedule for medical doctors for the teams they treat?
10. Do any medical doctors have office space at the school? Who and where?
11. What equipment is contained in each training room?
12. Which teams have access to the training facilities?
13. Do athletes use the training rooms on a scheduled or drop-in basis? If scheduled, what is the schedule?
14. Who is responsible for the weight

- and conditioning rooms?
15. Verify the equipment located in these rooms.
 16. Are the weight and conditioning rooms used on a scheduled or drop-in basis? If scheduled, what is the schedule?
 17. What is your opinion of the quality of the training facilities? What is your opinion of the quality of the weight and conditioning facilities?
 18. What clerical and secretarial assistance do you have? What are their names and responsibilities? Do these individuals work for anyone else?
 19. Verify the location of the trainer's office.
 20. When trainers are assigned to accompany a team to away events, do their expenses come out of the team's budget or a training budget? Are there differences for different teams and, if so, which teams?
 21. Do you have any other responsibilities such as arranging meals for certain teams for away games? Describe any such responsibilities and the teams which receive this assistance. (If meals are arranged, where does the team eat, what kinds of food, which meals, what are the costs per meal per athlete, and is one bill paid or charged to the hotel?)

Coaches and Athletes:

22. Does the team use any of the weight and conditioning facilities at the school? If not, why? If so, which ones? Where are they located? What is the schedule? What is the procedure for use? Who supervises the workouts? What is the extent of supervision?
23. What is your opinion of the general quality of the facility? How well is it maintained?
24. Do the athletes get physical exams? When? Where? Conducted by whom? How is this arranged?
25. Is there a medical doctor available for home events? If so, who? For away games? If so, who?

26. How many professional trainers are assigned to the team? How many student trainers are assigned to the team?
27. How many trainers travel to away games? Attend practice? Attend home games?
28. Do trainers have any responsibilities with the team other than training responsibilities? If so, what other responsibilities? Be specific.
29. What training facility is used by the team? Is the facility available on a scheduled or drop-in basis? If scheduled, what is the schedule?
30. What is your opinion of the general quality of the facility? How well is it maintained?
31. Where is the training facility located?
32. Has any athlete ever had an injury requiring an examination or treatment by doctor? If so, how were the doctor's services obtained?

C. ANALYSIS

DETERMINE whether any policies, including insurance coverage, differ on the basis of sex.

DETERMINE the quality and availability of medical personnel (i.e., doctors, physiotherapists, nurses, paramedics) to the boys and girls teams. COMPARE whether the quality and availability of medical personnel for the girls teams differ from the quality and availability of medical personnel for the boys teams.

DETERMINE the quality and availability of weight and conditioning facilities for boys and girls teams, including which teams have exclusive use of certain facilities, which teams have priority use of these facilities, which teams must share facilities, and which teams have use of any special facilities. COMPARE whether the quality and availability of these facilities differ between the boys and girls programs.

DETERMINE the quality and availability of training facilities for boys and girls teams, including which teams have exclusive use of these facilities, which teams have priority use of these facilities, which teams must share these

facilities, and which teams have use of any special facilities. COMPARE whether the quality and availability of these facilities differ between the boys and girls program.

DETERMINE the quality and availability of trainers to the boys and girls teams, including which teams are assigned professional as opposed to student trainers, and which trainers are full or part time. COMPARE whether the quality and availability of trainers differ between the boys and girls programs.

DETERMINE whether any differences result in a disparity and whether any disparity constitutes a significant disparity.

D. CAUTIONS

The Policy Interpretation permits nondiscriminatory differences based on the unique aspects of particular sports. Ask the appropriate school representative for an explanation of any disparities found.

The program component of the provision of medical and training facilities and services is one where comparing boys and girls teams of the same or similar sport can be beneficial. For example, the need for professional as opposed to student trainers, or access to similar quality and

equally available weight, conditioning, and training facilities is not likely to vary significantly, between the boys and girls basketball teams. However, some variations may be justified by different numbers of athletes on the teams, or inquiries or conditions of specific athletes who require more intense conditioning or training services.

The unique aspects of sports, including the number of participants necessary to field a team, the rate of injury, and the rate of severe injury, may justify the assignment of more qualified and more frequently available medical and training personnel, and the scheduling of more frequently available conditioning and training facilities to a particular team.

The injury rates in particular sports may justify more comprehensive insurance coverage for a particular team.

The availability and adequacy of facilities is often contingent upon the number of athletes who need to use the facility at any one time.

A team may choose not to use weight and conditioning facilities at all. The relevant determination is based on whether facilities are available should a team or individual athletes desire to use them.

MEDICAL AND TRAINING FACILITIES AND SERVICES

CHART 7

Gender Equity in Athletics Review Manual SUMMARY REPORT

| Question | YES | NO | GEAR Committee Analysis and Recommendations | Date for Completion | Individual Responsible to Implement the Recommendation |
|--|-----|----|---|---------------------|--|
| <p>1. Is equivalent opportunity provided regarding the availability of medical personnel and assistance for girls and boys teams?</p> <p>2. Is equivalent opportunity provided regarding the availability and quality of weight and training facilities for girls and boys teams?</p> <p>3. Is equivalent opportunity provided regarding the availability and quality of conditioning facilities for girls and boys teams?</p> | | | | | |

MEDICAL AND TRAINING FACILITIES AND SERVICES

CHART 7

Gender Equity in Athletics Review Manual SUMMARY REPORT

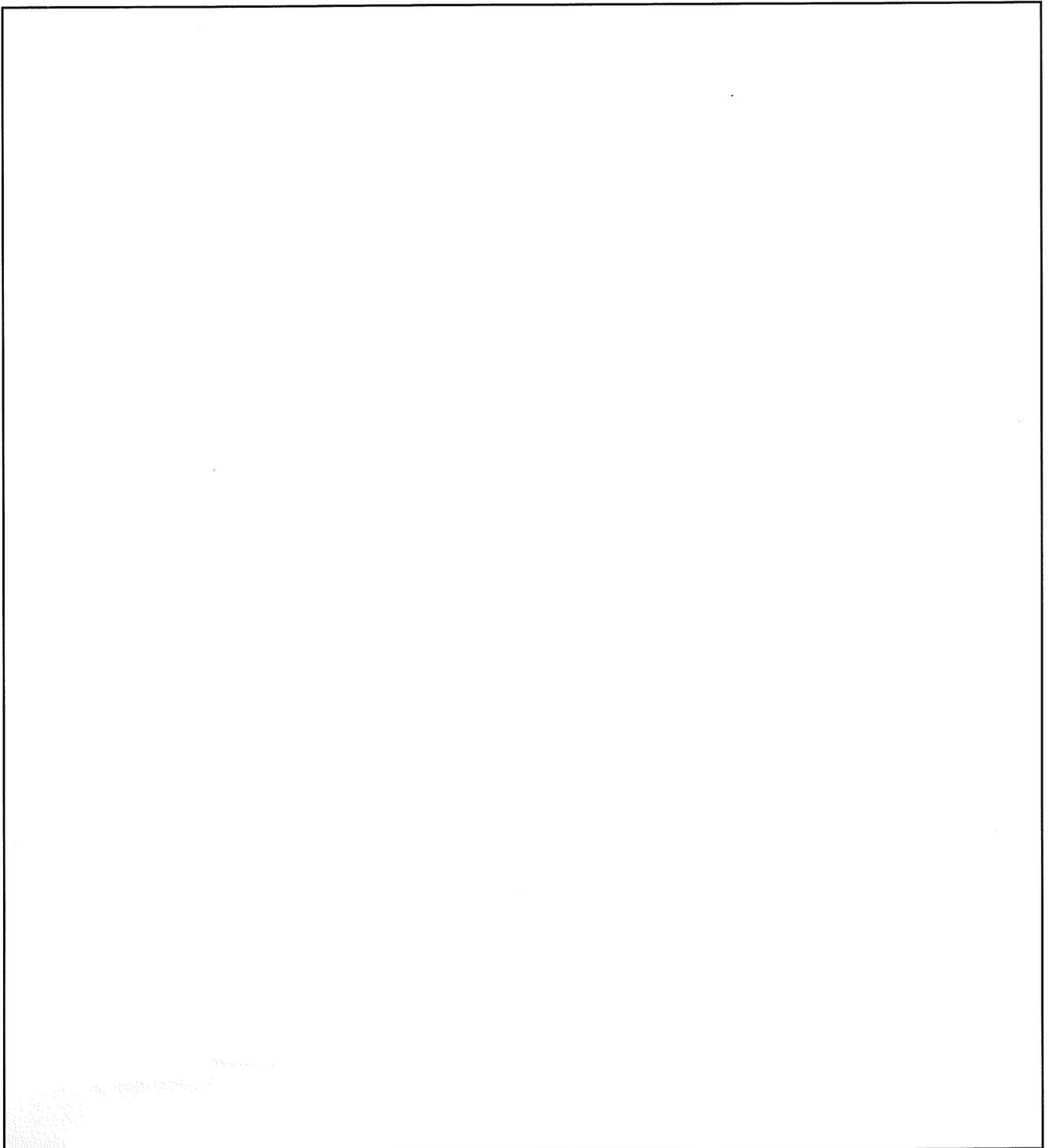
| Question | YES | NO | GEAR Committee Analysis and Recommendations | Date for Completion | Individual Responsible to Implement the Recommendation |
|---|-----|----|---|---------------------|--|
| <p>4. Is equivalent opportunity provided regarding the availability and qualifications of athletic trainers for girls and boys teams?</p> <p>5. Is equivalent opportunity provided regarding any health, accident, and injury insurance coverage for girls and boys teams?</p> <p>6. Committee questions:</p> | | | | | |

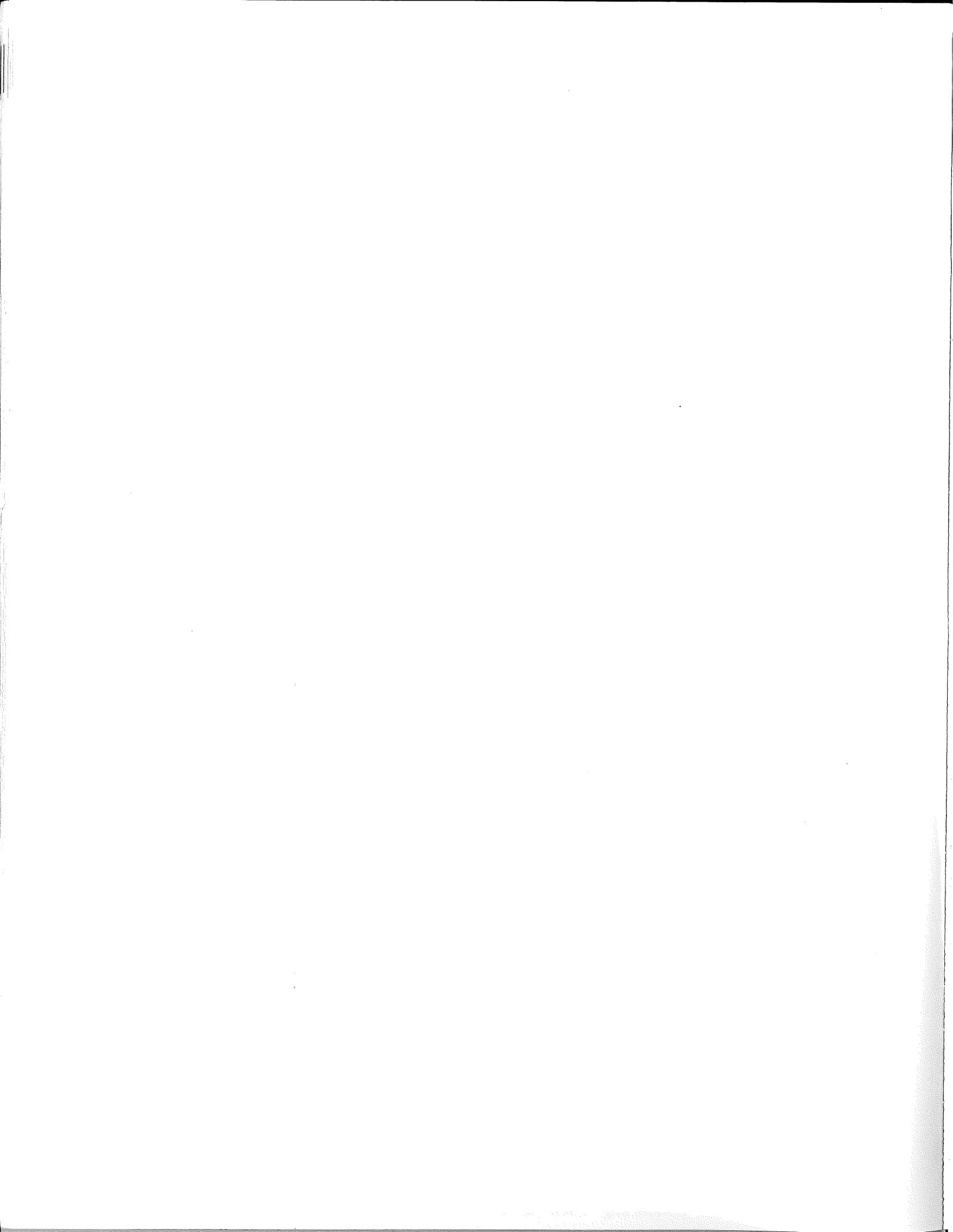
CHART 7

**Gender Equity in Athletics Review Manual
SUMMARY REPORT**

GEAR COMMITTEE EVALUATION OF COMPONENT

Directions: Use narrative and anecdotal notes to indicate the status of this component regarding equity; indicate any differences or areas which need remedial action or modification.





A. FACTORS TO ASSESS

The Policy Interpretation lists *three* factors to be assessed in determining compliance:

1. *availability and quality of sports information personnel;*
2. *access to other publicity resources for boy's and girl's programs; and*
3. *quantity and quality of publications and other promotional devices featuring boy's and girl's programs.*

B. INFORMATION TO COLLECT

Data Request

REQUEST the following information.

1. Copies of written policies, procedures, and criteria regarding providing publicity services to the boys and girls athletics programs, including samples of all publicity documents made available to the boys and girls programs (e.g., press guides, recruitment brochures, schedule cards, game programs, etc.)
2. A description of all publicity and promotional services made available to the boys and girls athletics programs
3. A list of the names of sports information personnel and the teams to which each person is assigned

RECORD this information using the publicity team and program comparison chart's. COMPARE samples of publicity documents with the description of publicity and promotional services provided to ensure that either a sample or list has been provided of every publicity service available. COMPARE the information provided for boys and girls programs and NOTE differences. IDENTIFY the sports information personnel who should be interviewed. Smaller schools or interscholastic athletics programs may assign publicity duties to the athletic director, an assistant athletic director, or to coaches as part of their overall duties.

On-site

INTERVIEW athletic directors and other administrators as appropriate.

Interview Questions

Sports Information Personnel:

1. Describe your background and experience (e.g., how long, where, with whom, doing what). What are the terms of your present employment?
2. Describe your duties.
3. What is the amount of time you spend on each sport or each facet of your job?
4. To whom do you report?
5. Whom do you supervise? What is the background and assignment for those you supervise?
6. How do you coordinate your responsibilities with the head coach of the teams with whom you work?
7. Who coordinates any radio and TV coverage? Explain.
8. What is done to promote girls sports? What is done to promote boys sports?
9. What criteria are used to determine the level of support your office provides to the various teams?
10. Verify the sports information services that the interviewee provides to the teams he or she covers (e.g., writes the press guides, provides weekly press releases, etc.)

Coaches:

11. Verify or determine the name of the sports information person assigned to the team.
12. Does the sports information person assigned to the team travel to away games? Is this person present at all home games? Who pays the expenses of the sports information person? What are this person's responsibilities overall and during away games? Does this person keep statistics or provide other assistance?
13. What sports information services do you

provide? Do you promote the team in any way?

Coaches and Athletes:

14. What are the publicity and promotional services provided to the team (e.g., pocket schedules, posters, press guides, programs for home events, etc.)?
15. How many spectators are there at home events?
16. How would you rate the publicity provided to your team (including the quantity, quality, and availability of sports information personnel and the quantity and quality of publications and promotional devices)? Are there any problems? Be specific. What do you think would remedy any problems?

C. ANALYSIS

COMPARE the policies, procedures, and criteria for providing publicity services to the boys program and the girls program. DETERMINE any differences.

COMPARE the quality of sports information personnel (i.e., background, experience, etc.) assigned to boys teams with the quality of sports information personnel assigned to girls teams.

COMPARE the number of sports information personnel assigned to the boys teams with the number of sports information personnel assigned to the girls teams.

COMPARE the availability and amount of time sports information personnel spend on boys teams with the availability and amount of time sports information personnel spend on girls teams.

COMPARE the availability of other sports information services to the boys teams with the availability of other sports information services to the girls teams.

COMPARE the quality of sports information publications and promotional services and devices provided to the boys teams with the quality of publications and promotional services and devices provided to the girls teams.

COMPARE the quantity of publications and promotional services and devices provided to the boys teams with the quantity of publications and promotional services and devices provided to the girls teams.

DETERMINE whether any differences result in a disparity and whether any disparity constitutes a significant disparity.

D. CAUTIONS

The Policy Interpretation permits nondiscriminatory differences based on the unique aspects of particular sports. Ask the appropriate school representative for an explanation of any disparities found.

Newspapers, TV, and other media are not required to be equally responsive to a school's efforts to provide equivalent publicity services to its boys and girls athletics programs. The determination must be based on the school's efforts to provide equivalent publicity services.

The unique circumstances of a particular team, competitive event, or particular athlete (e.g., state champion, Olympic hopeful athlete, etc.) may create unique demands or imbalances in particular program components, including publicity. Such imbalances are permissible to the extent that opportunities for teams of the other sex are not limited.



CHART 8

**Gender Equity in Athletics Review Manual
SUMMARY REPORT**

| Question | YES | NO | GEAR Committee Analysis and Recommendations | Date for Completion | Individual Responsible to Implement the Recommendation |
|---|-----|----|---|---------------------|--|
| <p>1. Is equivalent opportunity provided for girls and boys provided regarding information provided to the media and coverage of events?</p> <p>2. Is equivalent opportunity provided for girls and boys teams regarding the quantity and quality of publications and other promotional devices?</p> <p>3. Are cheerleading squads, bands, danceline and other support activities provided on an equivalent basis for girls and boys teams?</p> | | | | | |

CHART 8

**Gender Equity in Athletics Review Manual
SUMMARY REPORT**

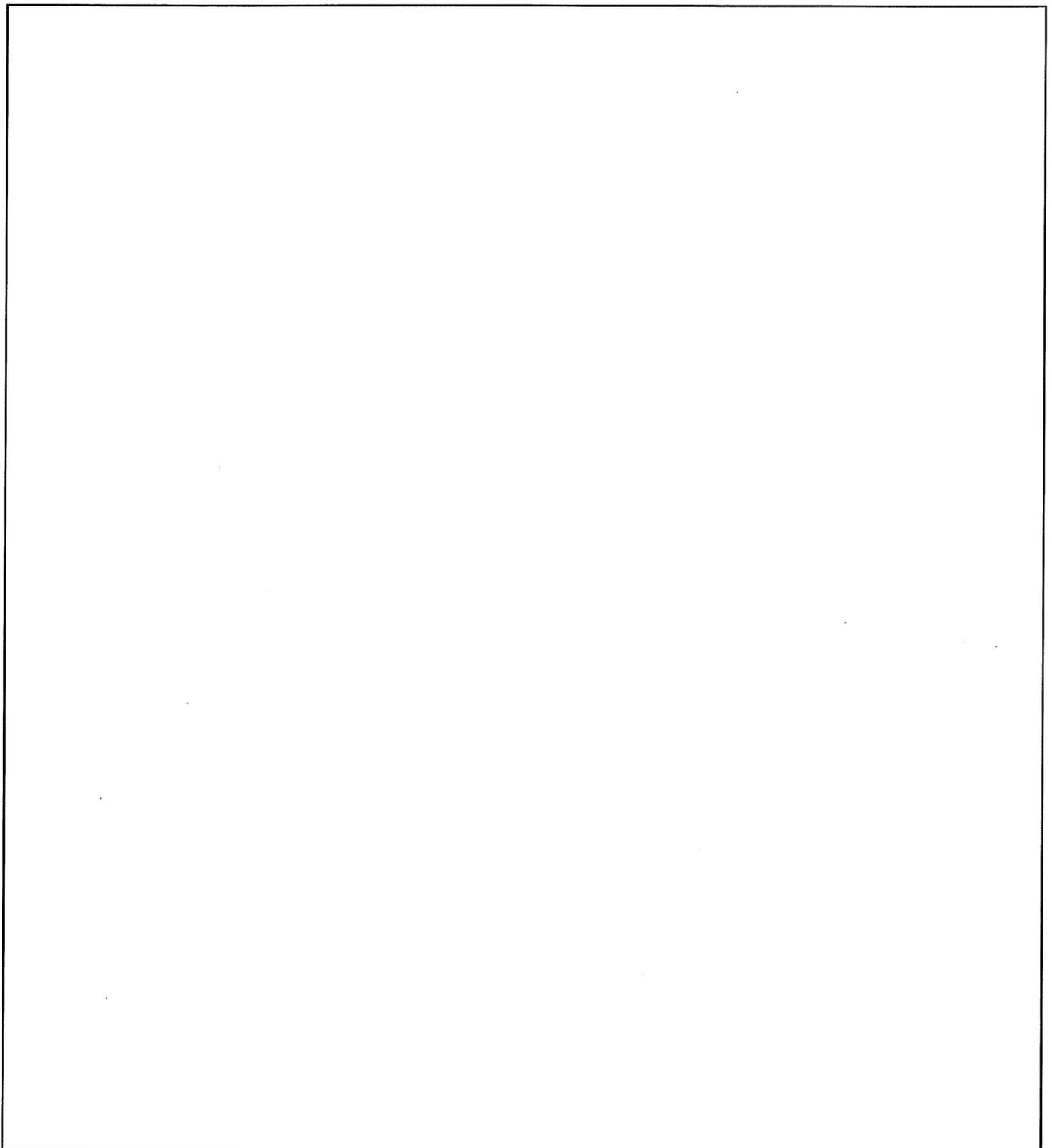
| Question | YES | NO | GEAR Committee Analysis and Recommendations | Date for Completion | Individual Responsible to Implement the Recommendation |
|--|------------|-----------|--|----------------------------|---|
| <p>4. Is membership in cheerleading squads and other support activities open to both genders?</p> <p>5. Committee questions:</p> | | | | | |

CHART 8

**Gender Equity in Athletics Review Manual
SUMMARY REPORT**

GEAR COMMITTEE EVALUATION OF COMPONENT

Directions: Use narrative and anecdotal notes to indicate the status of this component regarding equity; indicate any differences or areas which need remedial action or modification.





A. FACTORS TO ASSESS

The Policy Interpretation states that “the administrative and clerical support provided to an athletic program can affect the overall provision of opportunity to male and female athletes, particularly to the extent that the provided services enable coaches to perform better their coaching functions.”

The Policy Interpretation lists *two* factors to be assessed in determining compliance:

1. *the amount of administrative assistance provided to boys and girls programs.*
2. *the amount of secretarial and clerical assistance provided to boys and girls programs.*

B. INFORMATION TO COLLECT

Data Request

REQUEST the following information.

1. Copies of written policies, procedures, and criteria for providing administrative, secretarial, and clerical support services to the boy’s and girl’s programs
2. An organizational chart showing lines of authority for all persons in the athletics program indicating the administrative, secretarial, and clerical support personnel and the unit to which they are assigned; otherwise, a list of all employees, by job titles, listed under their immediate supervisor

On-site

INSPECT the facilities available for use by support services staff. INSPECT each administrator’s and coach’s office. This inspection should include offices provided for sports information personnel, even though the school may not consider certain sports information personnel to be “administrators.” During the inspection of offices, NOTE the size of the office; its location; the location of telephones; secretarial assistance in the area; the type and proximity of office machines (ask where they are if not obvious); with whom the office is shared, if anyone; etc. NOTE any differences between the office space, equipment, and supplies provided to the girls program as compared to the boys

program.

INTERVIEW all administrators and coaches from each team regarding the provision of administrative, secretarial, and clerical support services.

Interview Questions

All Administrators:



1. What are your duties and responsibilities, and how much time do you spend on each? Be as specific as possible.
2. What secretarial and clerical assistance is available to you? Do these people do secretarial or clerical work for others? If so, who? About how much time do they work for you?”
3. Where is your office located?
4. To whom do you report?
5. Whom do you supervise?

Coaches:

6. Who does the clerical and administrative work for the team? What are their names? What are their specific responsibilities? Where are their offices or desks located? Do these individuals work for anyone **else**? About **how** much time do they work for your team?
7. Do you perform any clerical functions?

If so, what and why, and how much time do you spend on clerical functions?

8. Where is your office? Verify with whom the office is shared, if anyone. Do you have a telephone specifically for your use and do you have access to a WATTS line?
9. To whom do you report?
10. What office machines are available?

C. ANALYSIS

COMPARE the policies, procedures, and criteria for providing support services to the boys program and the girls program. DETERMINE any differences.

COMPARE the number of administrators assigned to, and the amount of time they spend working for, the girls program with the number of administrators assigned to, and the amount of time they spend working for, the boys program.

Also, COMPARE the types of administrative services available to the boys program with the types of administrative services available to the girls program (types of administrative services might include, for example, athletic directors and assistants, business managers, accountants, facilities managers, fund raisers, team managers, etc.).

COMPARE the number of secretarial and clerical staff assigned to, and the amount of time they spend working for, the girls athletics program with the number of secretarial and clerical staff assigned to, and the amount of time they spend working for, the boys program.

COMPARE the number of girls teams who have to share administrative, secretarial, and clerical assistance with the number of boys teams who have to share administrative, secretarial, and clerical assistance.

COMPARE the number of coaches for the girls program who do clerical work with the number of coaches for the boys program who do clerical work.

COMPARE the size of the offices provided for coaches in the girls program, and the number of coaches for the girls program who share offices, with the size of the offices provided for coaches in the boys program and the number of coaches for the boys program who share offices.

COMPARE the office equipment available to

the girls program with the office equipment available to the boys program, including photocopying machines, telephones available at individuals' desks, access to WATTS lines, etc.

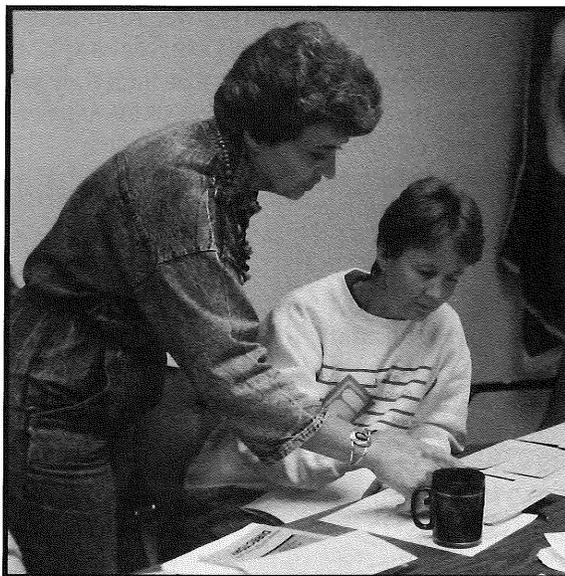
DETERMINE whether any differences result in a disparity and whether any disparity constitutes a significant disparity.

D. CAUTIONS

The Policy Interpretation permits nondiscriminatory differences based on the unique aspects of particular sports. Ask the appropriate school representative for an explanation of any disparities found.

The need for administrative, secretarial, and clerical support services may vary from team to team. The relevant determination is whether this need is met to the same extent for the boys and girls programs.

Where shared offices are larger than single person offices, the amount of office space may be the same per staff person. The relevant determination is the convenience or inconvenience of sharing an office, which may affect, for example, coaches' abilities to counsel athletes.



SUPPORT SERVICES

CHART 9

Gender Equity in Athletics Review Manual SUMMARY REPORT

| Question | YES | NO | GEAR Committee Analysis and Recommendations | Date for Completion | Individual Responsible to Implement the Recommendation |
|--|-----|----|---|---------------------|--|
| <p>1. Is equivalent opportunity provided regarding the amount of administrative assistance that is provided to the girls and boys programs?</p> <p>2. Are coaches of girls and boys teams provided with equivalent office space?</p> <p>3. Is equivalent opportunity provided regarding the amount of secretarial and clerical assistance provided to the girls and boys programs?</p> | | | | | |

SUPPORT SERVICES

CHART 9

Gender Equity in Athletics Review Manual SUMMARY REPORT

| Question | YES | NO | GEAR Committee Analysis and Recommendations | Date for Completion | Individual Responsible to Implement the Recommendation |
|---|-----|----|---|---------------------|--|
| <p>4. Are coaches of girls and boys teams permitted and encouraged to go to training workshops, inservice or to participate in professional organizations?</p> <p>5. Committee questions:</p> | | | | | |

CHART 9

**Gender Equity in Athletics Review Manual
SUMMARY REPORT**

GEAR COMMITTEE EVALUATION OF COMPONENT

Directions: Use narrative and anecdotal notes to indicate the status of this component regarding equity; indicate any differences or areas which need remedial action or modification.

[Empty box for evaluation notes]



Program Component – Final Factors

A-D ATHLETIC FEES AND AWARDS, TUTORS/SPECIAL NEEDS, RECRUITMENT of STUDENT ATHLETES, SEXUAL HARASSMENT

The following section has been developed for Minnesota schools:

A. Athletic Fees and Awards:

Since it is unlikely that a high school will provide athletic financial assistance, an OCR interscholastic athletic investigation is not likely to include this program component.

In Minnesota, when financial scholarships are awarded, the Minnesota Department of Education (MDE), Office of Monitoring and Compliance/Equal Educational Opportunities (OMC/EEO) section examines districts for gender equity in scholarships and awards. Complaints will also be investigated in this area.

Schools should examine the distribution of service club scholarship, donations, memorials, bequests and wills for gender equity and determine whether financial assistance must be solicited for the underrepresented gender until equality is achieved. Activity fees charged by the district to student participants need to be equitable by gender. Students who are unable to pay such a fee cannot be excluded from participating in athletics.

1. Data Request

- a. Copies of written policies, procedures and criteria for awarding scholarships and awards to male and female athletes.
- b. Policies for establishing activity fees and hardship waivers.

2. Analysis

- a. Compare the policies, procedures and criteria for awarding scholar-

ships and awards to male and female athletes. DETERMINE any differences.

- b. Compare the policies, procedures and criteria for activity fees and hardship waivers. DETERMINE any differences.

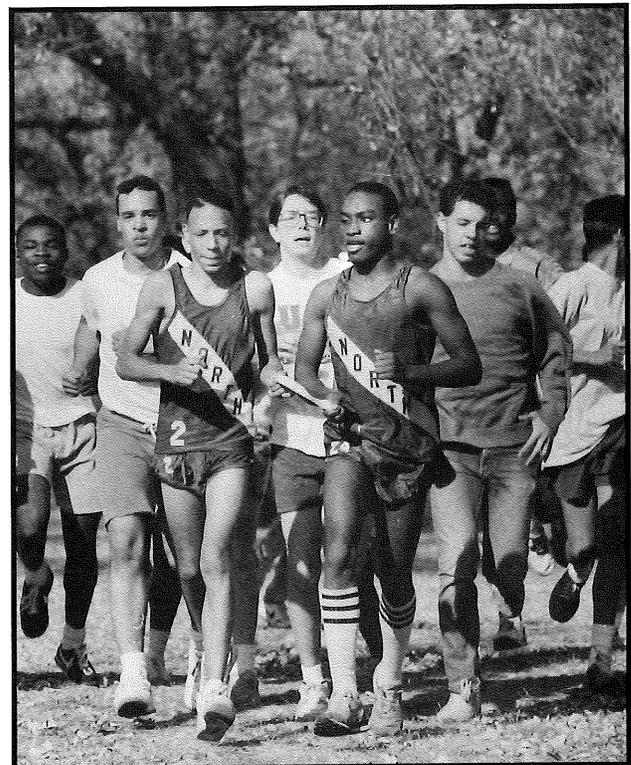


Photo Courtesy of Star Tribune

B. Tutors/Special Needs

In Minnesota, it is highly unlikely that tutors would be provided specifically to athletes.

Schools may provide aides, interpreters for the hearing impaired, or other assistance for athletes with special needs as required under section 504 of the Rehabilitation Act of 1973.

1. Data Request

- a. Information regarding athletes with special needs for tutoring or other special needs.
- b. How special assistance is provided to male and female athletes.

2. Analysis

Compare the amount of special assistance provided and determine if athletes of one sex receive more assistance than athletes of the other sex.

C. Recruitment of Student Athletes.

Recruitment of high school athletes is not permitted under rules of the Minnesota State High School League. The school is responsible for ensuring that these practices are not occurring.

Access to student athletes by post-secondary recruiters should be equitable for each gender.

1. Data Request:

Determine how the school proves female athletes with an equitable opportunity to meet with post-secondary recruiters.

2. Analysis:

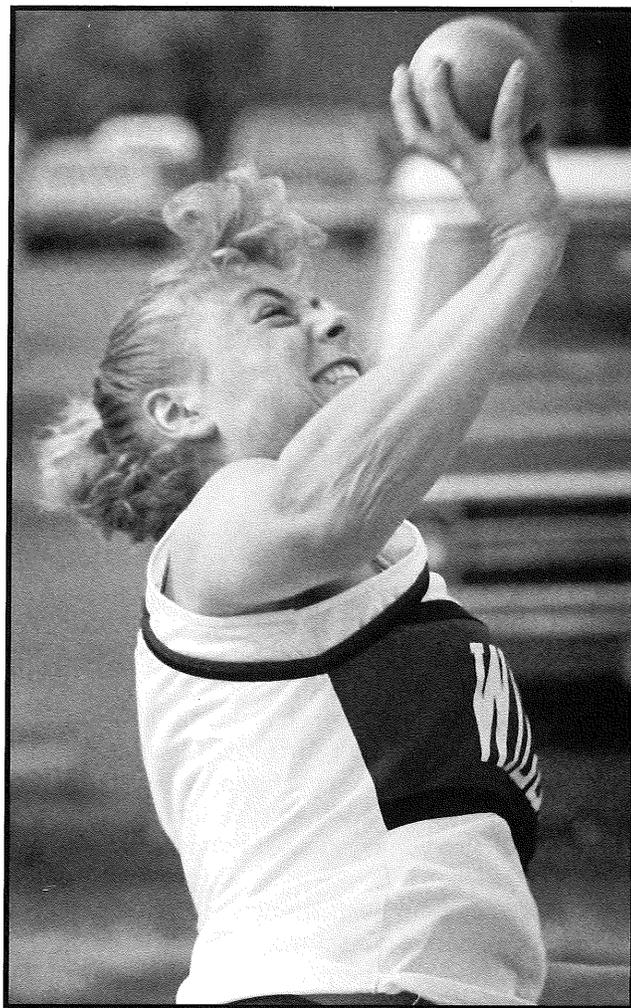
Compare the policies and procedures for providing male and female athletes with the opportunity to meet with post-secondary recruiters.

D. Sexual Harassment Policy.

Each school is required to have a sexual harassment policy in place for its employees and students and on file with the MDE and the League Office.

1. Data Request:

- a. Secure a copy of the district's sexual harassment policy.



- b. Request information on how the district distributes the policy for employees.

- c. Secure a copy of the MSHSL sexual harassment policy for athletes.

- d. Request information on how the district distributes the policy to athletes, parent/guardians and explain the rules.

2. Analysis

Determine if there is a process which ensures that female athletes are not being subjected to harassment which would limit their participation or enjoyment of competition.

FINAL FACTOR: ATHLETIC FEES AND AWARDS

CHART 10 -A

Gender Equity in Athletics Review Manual SUMMARY REPORT

| Question | YES | NO | GEAR Committee Analysis and Recommendations | Date for Completion | Individual Responsible to Implement the Recommendation |
|---|-----|----|---|---------------------|--|
| <p>1. Is equivalent opportunity provided for the awarding of scholarships and awards?</p> <p>2. Does the district charge activity fees to students in order to participate in a sport? If so, are they equitable for both genders?</p> <p>3. Is equivalent opportunity provided for students to receive a hardship waiver?</p> <p>4. Committee questions:</p> | | | | | |

CHART 10 -A

**Gender Equity in Athletics Review Manual
SUMMARY REPORT**

GEAR COMMITTEE EVALUATION OF COMPONENT

Directions: Use narrative and anecdotal notes to indicate the status of this component regarding equity; indicate any differences or areas which need remedial action or modification.

[Empty box for evaluation notes]

FINAL FACTOR: SPECIAL ASSISTANCE

CHART 10 - B

Gender Equity in Athletics Review Manual SUMMARY REPORT

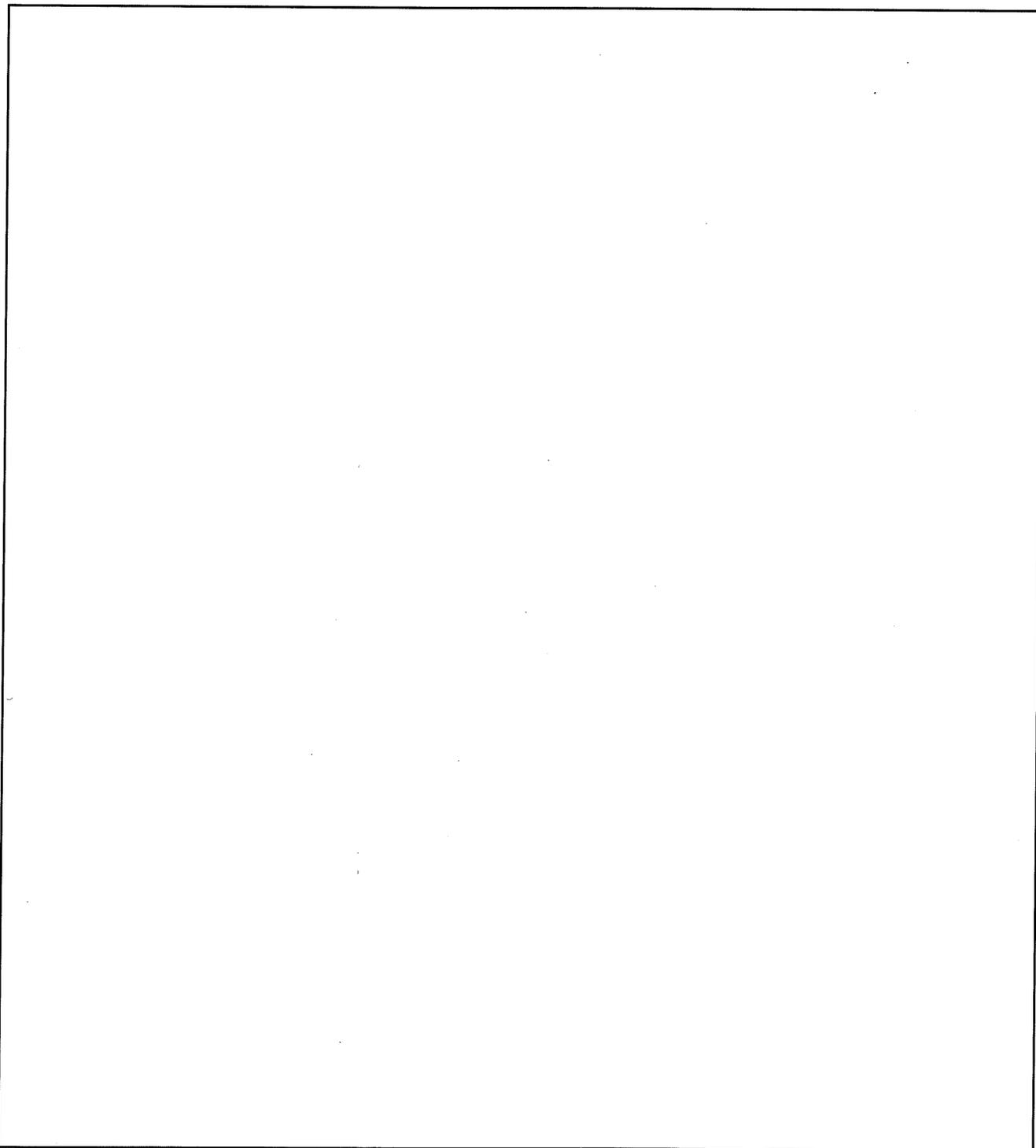
| Question | YES | NO | GEAR Committee Analysis and Recommendations | Date for Completion | Individual Responsible to Implement the Recommendation |
|---|-----|----|---|---------------------|--|
| 1. Do you have athletes with special needs in your interscholastic program? | | | | | |
| 2. Do you inform them of their rights to special assistance should it be necessary? | | | | | |
| 3. Is special assistance provided on an equitable basis for both genders? | | | | | |
| 4. Committee questions: | | | | | |

CHART 10 - B

**Gender Equity in Athletics Review Manual
SUMMARY REPORT**

GEAR COMMITTEE EVALUATION OF COMPONENT

Directions: Use narrative and anecdotal notes to indicate the status of this component regarding equity; indicate any differences or areas which need remedial action or modification.



FINAL FACTOR: POST-SECONDARY RECRUITMENT OF STUDENT ATHLETES

CHART 10 - C

Gender Equity in Athletics Review Manual SUMMARY REPORT

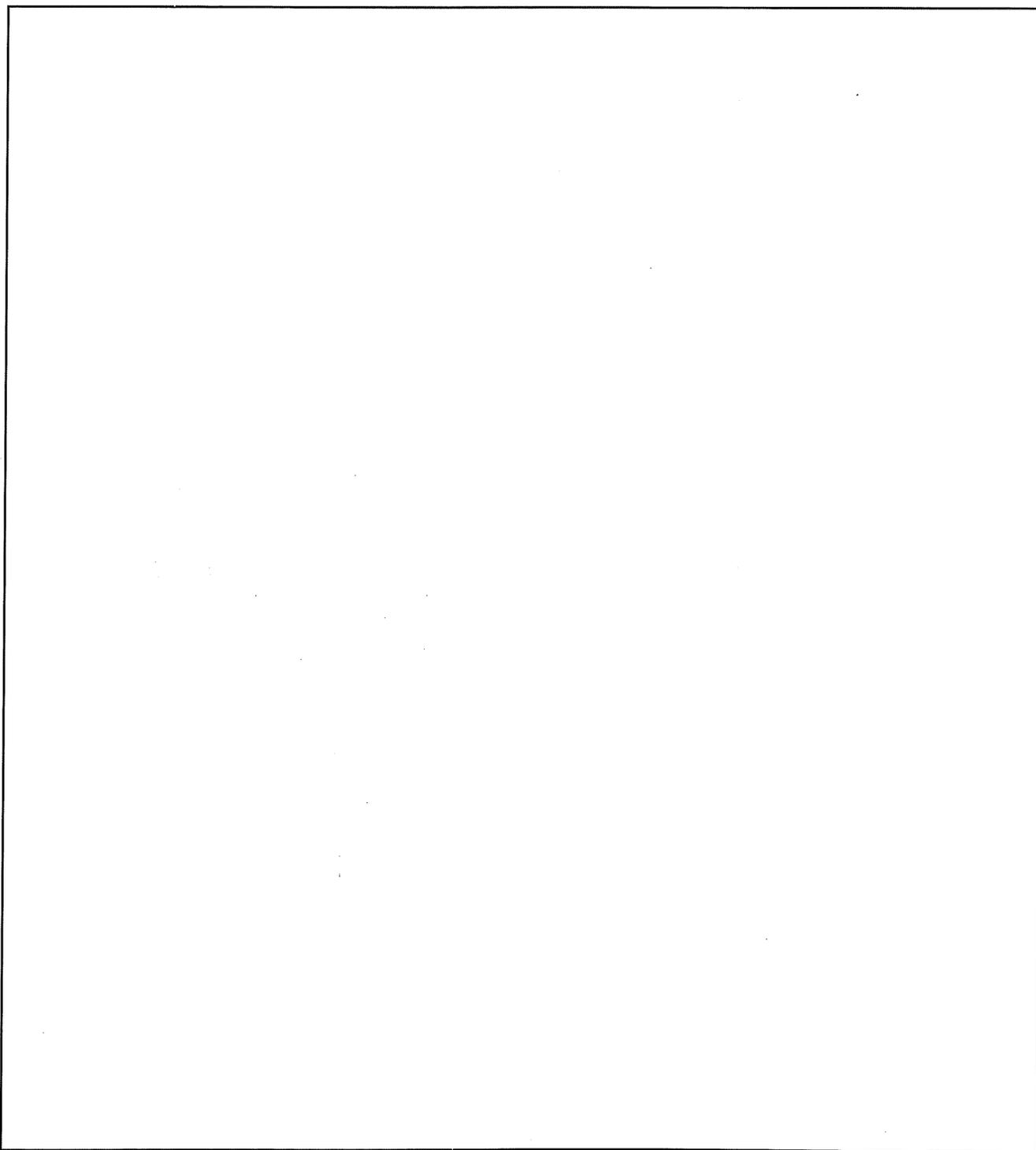
| Question | YES | NO | GEAR Committee Analysis and Recommendations | Date for Completion | Individual Responsible to Implement the Recommendation |
|---|-----|----|---|---------------------|--|
| 1. Is access to student athletes by post-secondary recruiters done on an equitable basis? | | | | | |
| 2. Is access to information regarding college eligibility provided on an equitable basis? | | | | | |
| 3. Committee questions: | | | | | |

FINAL FACTOR: POST-SECONDARY RECRUITMENT OF STUDENT ATHLETES

CHART 10 -C Gender Equity in Athletics Review Manual SUMMARY REPORT

GEAR COMMITTEE EVALUATION OF COMPONENT

Directions: Use narrative and anecdotal notes to indicate the status of this component regarding equity; indicate any differences or areas which need remedial action or modification.



FINAL FACTOR: INCREASING THE INTEREST AND AWARENESS OF GIRLS AND ENSURING A POSITIVE ENVIRONMENT

CHART 10 - C

Gender Equity in Athletics Review Manual SUMMARY REPORT

| Question | YES | NO | GEAR Committee Analysis and Recommendations | Date for Completion | Individual Responsible to Implement the Recommendation |
|--|-----|----|---|---------------------|--|
| <p>1. Has the district initiated activities which will increase the awareness and interest of girls in athletics?</p> <p>2. Has the district informed its employees of its sexual harassment policy?</p> <p>3. Has the district conducted in-service workshops to sensitize and educate its district personnel about multi-cultural, gender fair, disability aware issues (inclusive education)?</p> <p>4. Has the district disseminated the MSHSL Sexual Harassment Policy to all students who participate in League sponsored athletic and fine arts activities?</p> | | | | | |

FINAL FACTOR: INCREASING THE INTEREST AND AWARENESS OF GIRLS AND ENSURING A POSITIVE ENVIRONMENT

CHART 10 - D

Gender Equity in Athletics Review Manual SUMMARY REPORT

| Question | YES | NO | GEAR Committee Analysis and Recommendations | Date for Completion | Individual Responsible to Implement the Recommendation |
|--|-----|----|---|---------------------|--|
| <p>5. Does the district have grievance procedures in place for sexual harassment and title IX complaints?</p> <p>6. Does the district currently have any unresolved grievances?</p> <p>7. Has the district initiated activities which would remove barriers and any negative factors which would restrict girls participation in and enjoyment of athletics?</p> <p>8. What is the name of the title IX coordinator?</p> | | | | | |

FINAL FACTOR: INCREASING THE INTEREST AND AWARENESS OF GIRLS AND ENSURING A POSITIVE ENVIRONMENT

CHART 10 - D

Gender Equity in Athletics Review Manual SUMMARY REPORT

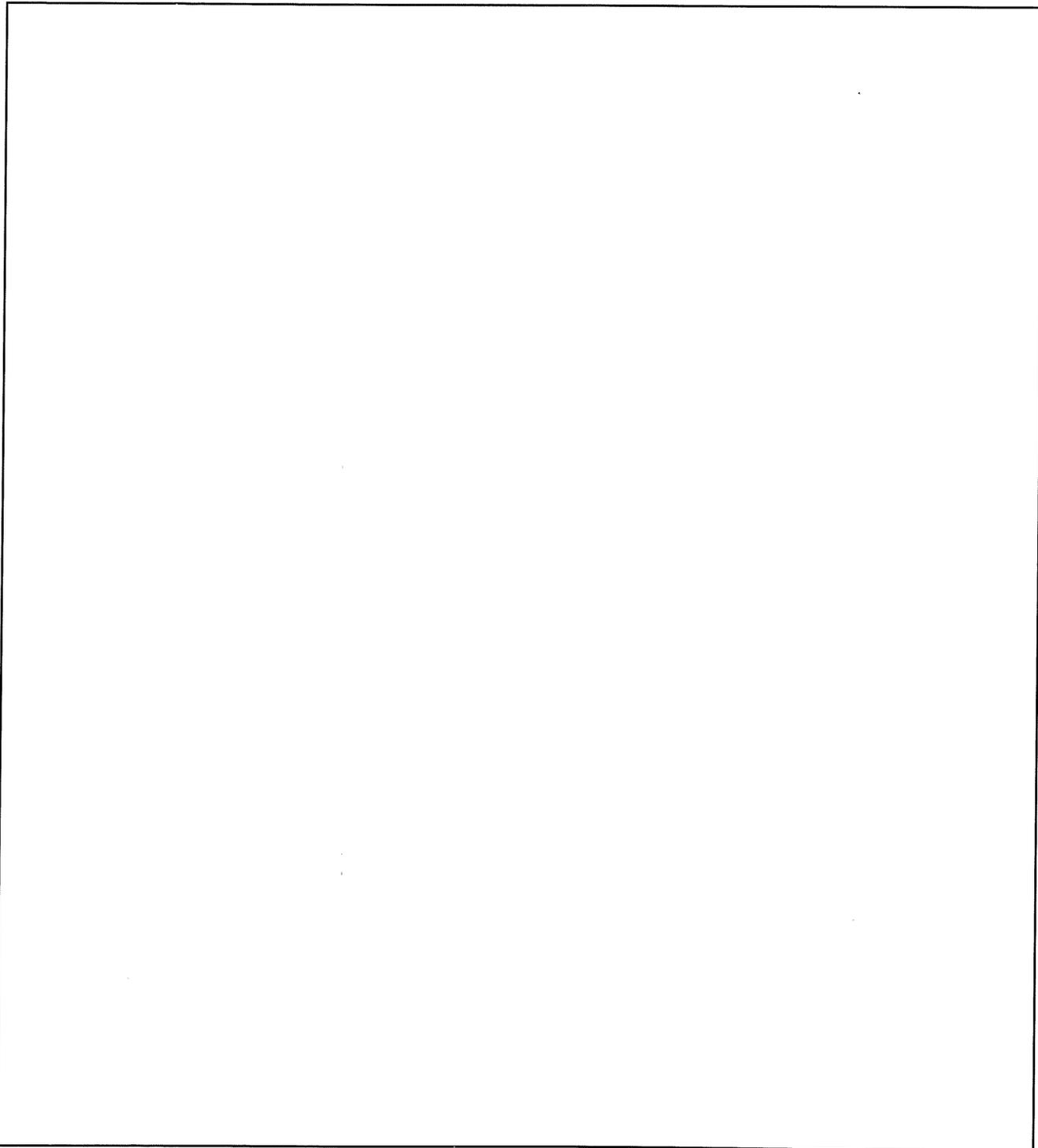
| Question | YES | NO | GEAR Committee Analysis and Recommendations | Date for Completion | Individual Responsible to Implement the Recommendation |
|--|-----|----|---|---------------------|--|
| <p>9. Has the name of the Title IX coordinator, their school address and work phone # been given to students, parents and employees?</p> <p>10. Committee Questions:</p> | | | | | |

FINAL FACTOR: INCREASING THE INTEREST AND AWARENESS OF GIRLS AND ENSURING A POSITIVE ENVIRONMENT

**CHART 10 - D
Gender Equity in Athletics Review Manual
SUMMARY REPORT**

GEAR COMMITTEE EVALUATION OF COMPONENT

Directions: Use narrative and anecdotal notes to indicate the status of this component regarding equity; indicate any differences or areas which need remedial action or modification.



Final Report of the Gender Equity in Athletics Review Committee

The following report is provided by the GEAR Committee established by the school district to conduct a self-review and determine the status of gender equity in the high school athletic program. Check those that apply.

1. Status of Gender Equity in the Athletic Program.

The self-review reports indicate:

Policies and activities are in place which meet the spirit and intent of gender equity.

The overall athletic program contains some instances where sports offerings or other factors are not equivalent and require modification and remedial action.

2. Summary of the Self-Review.

The Committee has:

developed recommendations and timelines which would modify and remedy the inequities identified and has recorded the information on the attached charts.

indicated their evaluation of each gender equity component on the form below.

| | District Meets Gender Equity Standards | Modifications and Remedial Action Identified |
|---|--|---|
| Check those that apply: | | |
| #1 Accommodation of Interests and Abilities | <input type="checkbox"/> | <input type="checkbox"/> |
| #2 Provision of Equipment and Supplies | <input type="checkbox"/> | <input type="checkbox"/> |
| #3 Scheduling of Games and Practice Time | <input type="checkbox"/> | <input type="checkbox"/> |
| #4 Travel and Per Diem Allowance | <input type="checkbox"/> | <input type="checkbox"/> |
| #5 Opportunity to Receive Coaching and Assignment and Compensation of Coaches | <input type="checkbox"/> | <input type="checkbox"/> |
| #6 Provision of Locker Rooms, Practice and Competitive Facilities | <input type="checkbox"/> | <input type="checkbox"/> |
| #7 Provision of Medical and Training Facilities and Services | <input type="checkbox"/> | <input type="checkbox"/> |
| #8 Publicity | <input type="checkbox"/> | <input type="checkbox"/> |
| #9 Support Services | <input type="checkbox"/> | <input type="checkbox"/> |

Check those that apply:

#10 Final Factors:

- | | | |
|--|-------|-------|
| athletic fees and awards | _____ | _____ |
| special assistance | _____ | _____ |
| post-secondary recruitment of student athletes | _____ | _____ |
| increasing interest and participation | _____ | _____ |
| ensuring a positive environment | _____ | _____ |

Reports and Policies Filed:

- | | | |
|--|-------|-------|
| * Results of most recent biennial student athletic interest survey | _____ | _____ |
| * Sexual Harassment and Sexual Violence Policy | _____ | _____ |
| * Student/Parent Grievance Procedure | _____ | _____ |

Date Placed on File in District Office: _____

School: _____

SECTION FIVE**Resources and References – Organizations**

**Minnesota State
Department of
Education**
550 Cedar Street
St. Paul, MN 55101

Gene Mammenga, Commissioner of
Education, 612/296-2358
Jim Sauter, Deputy Commission of
Education, 612/297-3115

Lorie Schulstad, Civil Rights
Compliance Officer, EEO, 612/296-
7430
Sue Sattel, Gender Equity Specialist,
EEO, 612/296-6946

The Equal Educational Opportunities (EEO) section of the MDE performs the following functions: monitoring compliance with state and federal laws prohibiting discrimination and providing technical assistance in the areas of race and sex discrimination.

State and federal law prohibit discrimination on the basis of age, race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability. EEO monitors in order to help eliminate these discriminatory practices in public schools. The monitoring in EEO includes the monitoring of sex discrimination in athletic programs. Technical assistance is provided to districts in the areas of sexual harassment and sex discrimination.

Minnesota State High School League

2100 Freeway Boulevard
Brooklyn Center, MN 55430
612/560-2262
Fax: 612/569-0499

Executive Staff:

David V. Stead, Executive Director
Dorothy E. McIntyre, Associate Executive
Director
Skip Peltier, Associate Executive Director
Lisa Lissimore, Associate Executive Director
John Bartz, Associate Executive Director

Schools are authorized by M.S. 129.21 to join the association. Governing boards may delegate the control, supervision and regulation of interscholastic athletics and other extracurricular activities to the League, a non-profit incorporated voluntary association. Its activities include

the interscholastic athletics, music, dramatic and other contests conducted between Minnesota high schools.

National Federation of State High School Associations

11724 NW Plaza Circle, Box 20626
Kansas City, Missouri 64195-0626
816/464-5400
FAX: 816/464-5571

The membership of the Federation consists of the fifty (50) state activity associations and the District of Columbia. It was organized to assist state associations in the conduct of their activities and to enhance their programs through the sharing of information, publications, policies and standards.

Office for Civil Rights, U.S. Department of Education, Washington, D.C.

Under the laws enforced by the Office for Civil Rights (OCR), programs and activities funded by the Department of Education (ED) must be operated in a manner that ensures individuals are provided an equal opportunity to participate, regardless of their race, color, national origin, sex, handicap, or age.

OCR has authority to enforce these laws in all programs and activities that receive funds from ED. OCR investigates complaints filed by individuals, initiates compliance reviews of recipient institutions and offers technical assistance to help recipients achieve voluntary compliance.

OCR maintains a headquarters office in Washington, D.C., and ten regional offices throughout the United States. Minnesota is in Region V:

Office for Civil Rights, Region V
U.S. Department of Education
401 South State Street, Room 700C, 05-
4010
Chicago, IL 60605-1202
312/886-3456, FTS 8-886-3456
TDD 312/ 353-2541

Sources of Information**Guides, Pamphlets, Reports, Journals and Books:**

“A Century of Women’s Basketball: From

Frailty to Final Four," Joan S. Hult & Marianna Trekell, National Association for Girls and Women in Sport, American Alliance for Health, Physical Education, Recreation and Dance, 1991. 1900 Association Drive. Reston, Virginia 22091.

"How to Organize a Community Awards and Grants Program," Women's Sports Foundation, Community Awards and Grants Program Administrator, 342 Madison Ave. Suite 728, NY, NY 10173

Melpomene Journal, published by the Melpomene Institute, founded in 1982 to help girls and women of all ages link physical activity and health through research, publication and education, 1010 University Avenue, St. Paul, MN 55104. 612/642-1951.

"Playing Fair: A Guide to Title IX in High School and College Sports." Women's Sports Foundation, 342 Madison Avenue. Suite 728. New York, NY 10173. 212/972-9170; 1-800-227-3988

"Shortchanging Girls, Shortchanging America: A Call to Action. Initiatives for Educational Equity." American Association of University Women, 111 Sixteenth Street N.W. Washington, DC 20036-4873. Sales Office, P.O. Box 251, Annapolis Junction, MD 20701-0251. 1-800-225-9998.

The Women in Sport and Physical Activity Journal, Women of Diversity Publications, 421 Sandy Lane, Fort Worth, TX 76120-1717. 817/451-6615

"Title IX Toolbox," National Association for Girls and Women in Sports, AAHPERD, Reston, VA. Over 100 pages of information, history, recognized as the most comprehensive and practical book produced about Title IX. The five sections include The Law, Title IX History, Evaluating for Compliance, Causing Change, and Support Services and Reference Materials. 1-800-321-0789. Stock Number: 0-88314-536-7.

Video:

"Sports Careers for Women," Minnesota State High School League, 2100 Freeway Boulevard, Brooklyn Center, MN 55430. Profiles careers of Janet Karvonen, basketball record holder and public speaker; Chris Voelz, Director of Women's Athletics, University of Minnesota;

Lisa Lissimore, Associate Director, Minnesota State High School League, and other women who have combined their interest in sports with their careers. Rental available. 612/569-0491

"Shortchanging girls, Shortchanging America," A dramatic look at the inequities girls face in America's schools. Featuring education experts and public policy leaders, AAUW poll results, as well as the compelling voices and faces of American girls. VHS Format/15 minutes/1991.

Reports from the State Department of Education:

"Interscholastic Athletic Opportunities in Minnesota Public School Districts Examined by Gender." MDE-EEO, Sue Sattel, July 1991. 612/297-2792.

"A Report to the Minnesota Legislature Concerning Interscholastic Athletic Equity in Minnesota High School," March 23, 1992. This report was funded by the Minnesota Legislature through an appropriation to the Office of the Attorney General. The report was prepared by Robert A. Dildine.

Prevention of Sexual Harassment in Schools

Attorney General's Task Force on the Prevention of Sexual Violence Against Women - Final Report.

Includes sections on control of sex offenders, education/prevention of sexual violence and services for victims of sexual violence; a resource section lists available materials and sexual assault services statewide, 79 pages, 1989, available as long as supply lasts from Equal Education Opportunities, 5th floor, Minnesota Department of Education, Capitol Square Building, St. Paul, MN 55101. 612/296-7628.

Sexual Harassment to Teenagers: It's Not Fun/It's Illegal

A curriculum for identification and prevention of sexual harassment for use with junior high, senior high and adult students, 88 pages, developed by Equal Education Opportunities Section. See above.

Tune In to Your Rights: A Guide for Teenagers About Turning Off Sexual Harassment

Twenty pages, Programs for Educational Opportunity, Attn: Publications Secretary, University of Michigan, 1046 School of Education Building, Ann Arbor, MI 48109-1259. 313/763-9910.

Sticks, Stones and Stereotypes

The effect of name-calling on students, strategies for interrupting it and reasons why students participate in name-calling are explored in this student-centered documentary. \$325. ETR Associates, Box 1830, Santa Cruz, CA 95061-9979. 800/321-4407.

Sexual Health and Responsibility Program (SHARP)

SHARP was developed by the Minnesota Department of Human Services as a means of reducing the incidence of sexual violence among young people by teaching students alternatives to sexually abusive and exploitive behaviors. The curriculum consists of a manual and a video tape.

Crossing the Line: Sexual Harassment Among Students

Kitchener Reese
210 Colonial Warehouse
212 Third Avenue North
Minneapolis, MN 55401-1437
612/338-5350

Produced with Sepler and Associates, Inc. and Walter H. Bera

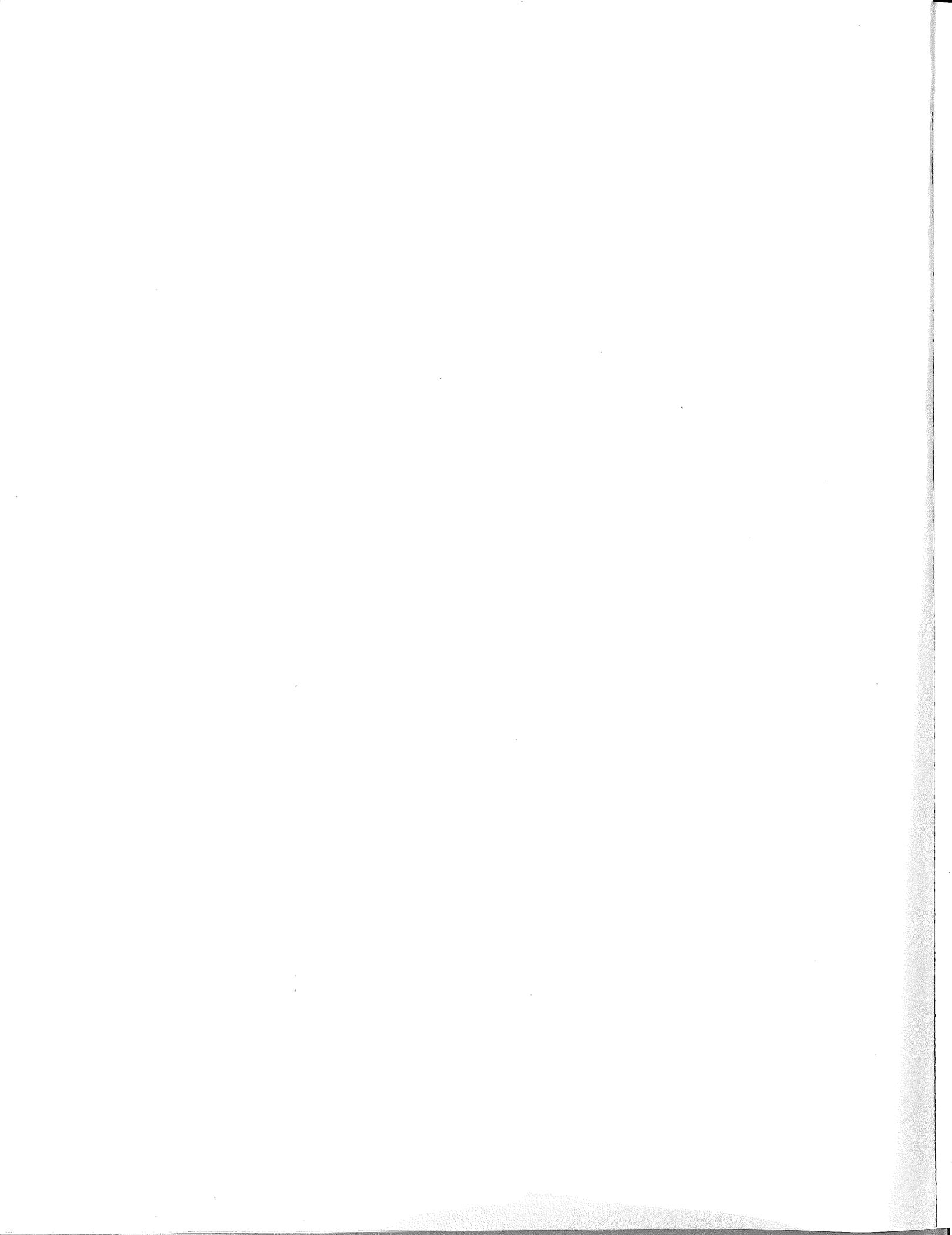
3 hours video-based curriculum for junior and senior high students \$350.00 (curriculum and tape) plus postage and handling. Posters and masters extra. There is a \$10.00 preview fee.

Values and Choices

A course for 7th and 8th graders and parents on Human Sexuality

Search Institute
122 W Franklin Ave., Suite 525
Minneapolis, MN 55404
1-800-888-7828

The following is a model for a school district to adopt which provides a process for responding





1992-93
Student Interest Survey of
Interscholastic Athletic Activities

Name: _____ Male: _____ Female: _____

School: _____ Current Grade: _____ Date: _____

STUDENTS: This survey is being conducted by Minnesota schools. We are seeking information about your participation in athletics and your interest in athletics not currently sponsored by the school district. The district is evaluating its athletic program because of its commitment to providing equal opportunity for girls and boys under the regulation of Title IX and Minnesota Statute 126.21.

SECTION A: Place an X in the appropriate columns:

| OUR SCHOOL OFFERS | SPORTS SPONSORED BY THE MINNESOTA STATE HIGH SCHOOL LEAGUE | (1) | (2) | (3) |
|----------------------|--|--|--|--|
| | | SPORTS OFFERED BY YOUR SCHOOL I have or will try out in 1992-93 | SPORTS OFFERED BY YOUR SCHOOL I will try out in 1993-94 | SPORTS NOT OFFERED BY YOUR SCHOOL I would try out for a team, if offered: |
| FALL SEASON | | | | |
| | Cross Country (Running) - <i>b & g</i> | | | |
| | Football - <i>b</i> | | | |
| | Soccer - <i>b & g</i> | | | |
| | Swimming & Diving - <i>g</i> | | | |
| | Tennis - <i>g</i> | | | |
| | Volleyball - <i>g</i> | | | |
| WINTER SEASON | | | | |
| | Basketball - <i>b & g</i> | | | |
| | Gymnastics - <i>g</i> | | | |
| | Ice Hockey - <i>b</i> | | | |
| | Skiing-Cross Country - <i>b & g</i> | | | |
| | Skiing-Slalom - <i>b & g</i> | | | |
| | Swimming & Diving - <i>b</i> | | | |
| | Wrestling - <i>b</i> | | | |
| SPRING SEASON | | | | |
| | Baseball - <i>b</i> | | | |
| | Golf - <i>b & g</i> | | | |
| | Softball (Fast Pitch) - <i>g</i> | | | |
| | Synchronized Swimming - <i>g</i> | | | |
| | Tennis - <i>b</i> | | | |
| | Track and Field - <i>b & g</i> | | | |

g = girls sport, b = boys sport (Note: girls may participate on boys teams)

A Model for a Title IX Student, Parent/Guardian Grievance Procedure

The following is a model for a school district to adopt which provides a process for responding to a complaint filed by a student and parent/guardian alleging sex discrimination under the Title IX regulation. Districts are required to have their own grievance procedure in policy. If it is in district policy, the district grievance procedure should be followed.

STUDENT, PARENT GRIEVANCE PROCEDURE

Section 1. Definition and Interpretation

- A. This grievance procedure may be used by students, parents and the general public. Employees of the school are encouraged to use the established employee's grievance procedure.
- B. Any claim by a student, parent, general public, or employee that there has been a violation or misinterpretation of Title IX shall be a grievance.
- C. The term "grievant" means any student, parent, from the general public, or employee filing a grievance.
- D. The term "days" means any calendar day, except Saturday, Sunday or legal holidays.
- E. The filing or service of any notice shall be timely if it bears a postmark of the U.S. mail within the time period.
- F. The time limits provided in this grievance procedure shall be strictly observed, but may be extended by written mutual agreement. (Failure to file any grievance within the time periods shall be deemed a waiver thereof.)
- G. In computing any period of time prescribed or allowed by procedures herein, the date of the act, event, or default for which the designated period of time begins to run shall not be included. The last day of the period as computed shall be counted, unless it is a Saturday, Sunday, or legal holiday, in which event, the period runs until the end of the next day, which is not a Saturday, Sunday, or legal holiday.

Section 2. Informal Procedure

- A. The grievance shall be put in writing on a form available from the principal's office in each building or from the Title IX coordinator. The written grievance shall be submitted to the Title IX coordinator and retained by the coordinator.
- B. The grievant, either personally or accompanied by persons of his/her choice, shall discuss the alleged grievance with the appropriate school principal or immediate supervisor and the Title IX coordinator. All persons who are involved in the situation in any way shall be notified and may be invited to attend informal conferences held to settle differences. Such persons may be accompanied by others of their choice. An effort shall be made to settle all differences informally.

Section 3. Formal Procedure

A. Level One - Building Principal or Immediate Supervisor

- 1. If, after informal discussion with the school principal or immediate supervisor, the grievance still exists, the grievant may, within 30 days after s/he knew or should have known about the event on which the grievance is based, invoke the formal grievance procedure.

2. The grievance shall be filed through the Title IX coordinator on a form available from the principal's office in each building or from the Title IX coordinator. A copy of the grievance shall be delivered to the principal or immediate supervisor, who shall forward a copy of the grievance to the Superintendent of Schools and to all other persons named in the grievance. If the grievance involves more than one school building it may be filed with the Superintendent of Schools or designee.
3. Within five (5) school days of the receipt of the formal grievance, the principal and/or immediate supervisor shall meet with the grievant and persons of her/his choosing in an effort to resolve the grievance. The principal and/or immediate supervisor shall indicate, in writing, within five (5) school days of such meetings, the disposition of the grievance, and shall furnish a copy to the grievant, all persons named in the grievance, and to the Title IX coordinator.

B. Level Two - Superintendent of Schools

If the grievant is not satisfied with the disposition of the grievance, or if no disposition has been made after five (5) school days of such meeting, the grievance may be transmitted through the Title IX coordinator to the Superintendent of Schools. Within ten (10) days after s/he received, or should have received the grievance, the Superintendent, or designee, shall meet with the grievant and persons of her/his choice on the grievance and shall indicate hers/his disposition of the grievance in writing within five (5) days of such meetings, and shall furnish a copy thereof to the grievant, all persons named in the grievance, and the Title IX coordinator.

C. Level Three - Board of Education

If the grievant is not satisfied with the disposition of the grievance, or if no disposition has been made after five (5) days of such meeting, the grievance may be transmitted to the Board of Education by filing the form with the Clerk of the Board. The Board, or a committee of its members, no later than its next regular meeting or ten (10) days, whichever shall be later, shall meet with the grievant and persons of her/his choice. Disposition of the grievance in writing by the Board shall be no later than seven (7) days thereafter. A copy of such disposition shall be furnished to the grievant, all persons named in the grievance, the Superintendent of Schools, the building principal and/or immediate supervisor, and the Title IX coordinator.

D. Level Four - Minnesota Department of Education/Office for Civil Rights.

The grievant may at any time during or following this procedure file a complaint with the Office of Civil Rights or with the Minnesota Department of Education, Office of Monitoring/Equal Educational Opportunities section.

Section 4. Right to Participate

- A. No reprisal of any kind will be taken by the Board, an administrator, or any employee of the District against any person bringing a grievance under this procedure.
- B. Exhaustion of these procedures is NOT a prerequisite to filing of complaints with the Office of Civil Rights.

Complaints or grievances related to sports equity should be resolved at the "lowest" possible level. First, at the local school district the person who has a concern should speak with district administrators or the local Title IX Coordinator. The Title IX Coordinator's role is to investigate local complaints of sexual discrimination. Districts are required to distribute or post this individual's name, office address and telephone number. IF someone in the district is unable to access this person's name, the Minnesota Department of Education, Equal Educational Opportunities Section (EEO) should have this name on file for each district. If the district is able to resolve the concern within the local district this is to everyone's benefit. However, if the district is unable to

resolve the concern, a person can contact the EEO section of the Minnesota Department of Education (MDE). Three options are available to a section of the Minnesota Department of Education (MDE). Three options are available to a person when contacting, EEO, those options are:

1. To get more information to back up their efforts in working with the district.
2. To try to get an informal resolution with the district by asking the EEO compliance specialist to contact an administrator within the district (usually the superintendent) to increase the administrator's awareness of the laws and rules and for the EEO compliance specialist to get a better understanding of the district's stand on the issue in dispute.
3. To register a formal complaint.

If the third option is the choice for the complainant (person who files the complaint) then that person should mail a letter which contains the following information:

- a. areas in which the complaint alleges that discrimination has occurred,
- b. basis for the complaint,
- c. who is filing the complaint, and
- d. against which district the complaint is being filed.

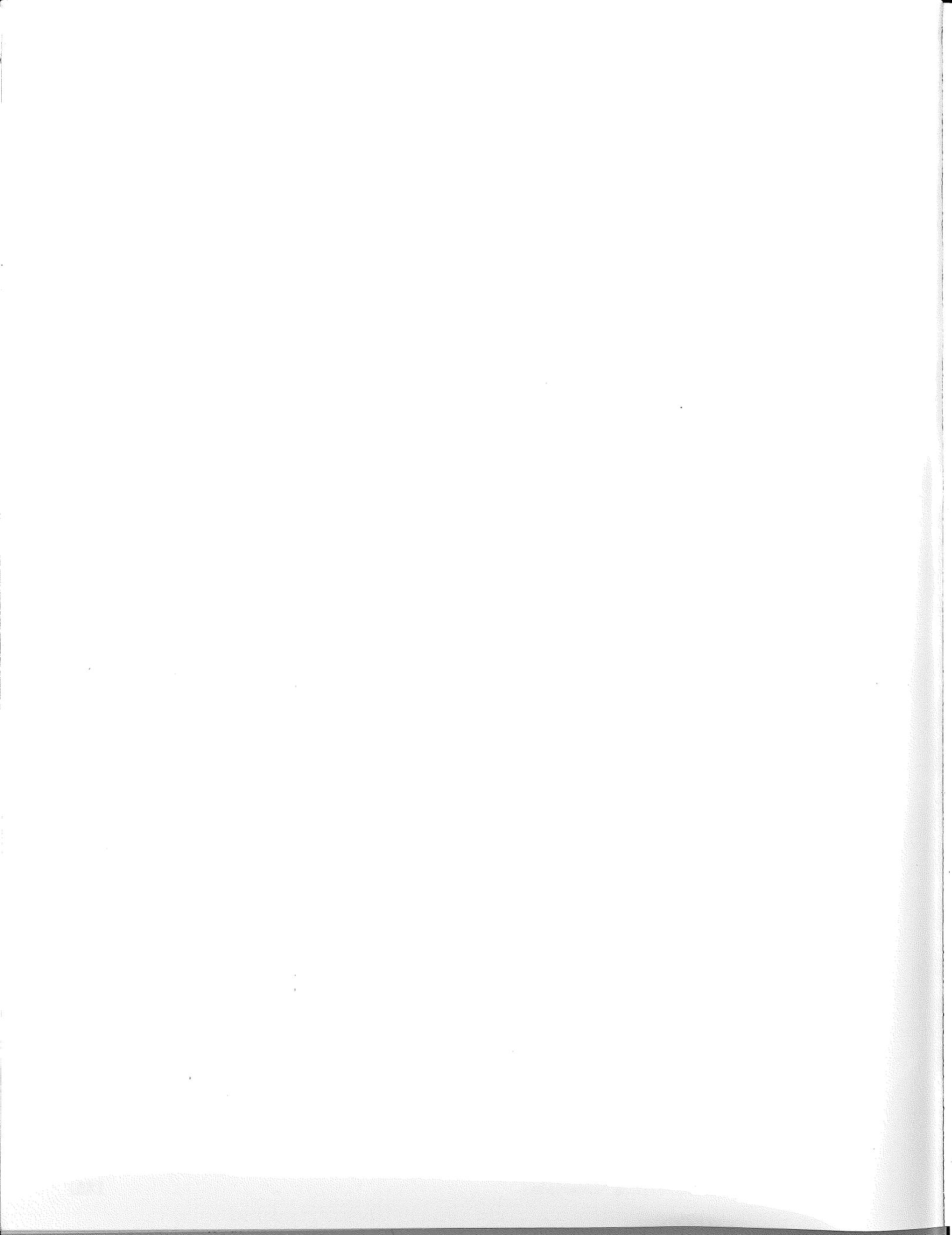
The letter should be addressed to:

Commissioner of Education
Minnesota Department of Education
Capitol Square Building
550 Cedar Street
St. Paul, MN 55101

In addition, a complaint may also be filed with the Regional Office for Civil Rights (OCR) in Chicago or with the Minnesota Department of Human Rights. The addresses and phone numbers for these organizations are listed in the Appendix B.

Prior to a detailed explanation of the complaint procedure, it's important for districts to be aware of the following:

Investigations of athletic programs are frequently difficult and lengthy, primarily because of the considerable amounts of information that must be collected, analyzed and evaluated to determine compliance. The decision regarding compliance involves determining which benefits and services are provided to men and which are provided to women, whether there are any differences between benefits and services for men and women, whether these differences have a negative impact on athletes of one sex, and thus, may result in noncompliance.



Model of a District Sexual Harassment and Sexual Violence Policy

M.S. 127.46 require each school board to adopt a written sexual harassment and sexual violence policy. The following model was prepared by the Minnesota School Boards Association, November 1989.

I. General Statement of Policy

Sexual harassment is a form of sex discrimination which violates Section 703 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., and Minnesota Statute 363.01-.14, the Minnesota Human Rights Act. Sexual violence is a physical act of aggression that includes a sexual act or sexual purpose.

It is the policy of Independent School District No. ____ to maintain a learning and working environment that is free from sexual harassment and sexual violence.

It shall be a violation of this policy for any student or employee of School District No. ____ to harass a student or an employee through conduct or communication of a sexual nature as defined by this policy.

It shall be a violation of this policy for any student or employee of School District No. ____ to be sexually violent to a student or employee.

The School District will act to investigate all complaints, either formal or informal, verbal or written, of sexual harassment or sexual violence and to discipline any student or employee who sexually harasses or is sexually violent to a student or employee of the School District.

II. Sexual Harassment/Sexual Violence Defined

A. Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:

1. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining or retaining employment, or of obtaining an education; or
2. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or education; or
3. That conduct or communication has the purpose or effect of substantially or unreasonably interfering with an individual's employment or education, or creating an intimidating, hostile or offensive employment or education environment.

Any sexual harassment as defined when perpetrated on any student or employee by any student or employee will be treated as sexual harassment under this policy.

B. Sexual harassment may include but is not limited to:

1. verbal harassment or abuse;
2. subtle pressure for sexual activity;
3. inappropriate patting or pinching;
4. intentional brushing against a student's or an employee's body;
5. demanding sexual favors accompanied by implied or overt threats concerning an individual's employment or educational status;
6. demanding sexual favors accompanied by implied or overt promises of preferen-

7. any sexually motivate-ed unwelcome touching; or
8. sexual violence which is a physical act of aggression that includes a sexual act or sexual purpose.

III. Reporting Procedures

Any person who believes she or he has been the victim of sexual harassment or sexual violence by a student or an employee of the School District, or any third person with knowledge or belief of conduct which may constitute sexual harassment or sexual violence should report the alleged acts immediately to an appropriate School District official as designated by this policy. The School District encourages the reporting party or complainant to use the report form available from the principal of each building or available from the School District office.

- A. In Each School Building. The building principal is the person responsible for receiving oral or written reports of sexual harassment or sexual violence at the building level. Upon receipt of a report, the principal must notify the District Human Rights Officer immediately without screening or investigating the report. A written report will be forwarded simultaneously to the Human Rights Officer. If the report was given verbally, the principal shall reduce it to written form within 24 hours and forward it to the Human Rights Officer. Failure to forward any sexual harassment or sexual violence report or complaint as provided herein will result in disciplinary action. If the complaint involves the building principal, the complaint shall be filed directly with the District Human Rights Officer.
- B. District-Wide. The School Board hereby designates _____ as the School District Human Rights Officer to receive reports or complaints of sexual harassment and sexual violence from any individual, employee or victim of sexual harassment or sexual violence and also from the building principals as outlined above. If the complaint involves the Human Rights Officer, the complaint shall be filed directly with the Superintendent.

The School District conspicuously post the name of the Human Rights Officer, including a mailing address and telephone number,

- C. Submission of a complaint or report of sexual harassment or sexual violence will not affect the individual's future employment, grades or work assignments.
- D. Use of formal reporting forms is not mandatory.

The School District will respect the confidentiality of the complainant and the individual(s) against whom the complaint is filed as much as possible, consistent with the School District's legal obligations and the necessity to investigate allegations of sexual harassment and sexual violence and take disciplinary action when the conduct has occurred.

IV. Investigation and Recommendation

By authority of the School District, the Human Rights Officer, upon receipt of a report or complaint alleging sexual harassment, or sexual violence shall immediately authorize an investigation.² This investigation may be conducted by School District officials or by a third party designated by the School District. The investigating party shall provide a written report of the status of the investigation within 10 working days to the superintendent of Schools and the Human Rights Officer.³

In determining whether alleged conduct constitutes sexual harassment or sexual violence, the School District should consider the surrounding circumstances, the nature of the sexual advances, relationships between the parties involved and the context in which the alleged incidents occurred. Whether a particular action or incident constitutes sexual harassment or sexual violence requires a determination based on all the facts and surrounding circumstances.

The investigation may consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have the knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and documents deemed pertinent by the investigator.

In addition the School District may take immediate steps, at its discretion, to protect the complainant, students and employees pending completion of an investigation of alleged sexual harassment or sexual violence.

The School District Human Rights Officer shall make a report to the Superintendent upon completion of the investigation.

V. School District Action

- A. Upon receipt of a recommendation that the complaint is valid, the School District will take such action as appropriate based on the results of the investigation.
- B. The result of the investigation of each complaint filed under these procedures will be reported in writing to the complainant by the School District. The report will document any disciplinary action taken as a result of the complaint.

VI. Reprisal

The School District will discipline any individual who retaliates against any person who reports alleged sexual harassment or sexual violence or who retaliates against any person who testifies, assists or participates in an investigation, proceeding or hearing relating to a sexual harassment or sexual violence complaint. Retaliation includes, but is not limited to, any form of intimidation, reprisal or harassment.

VII. Right to Alternative Complaint Procedures

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include filing charges with the Minnesota Department of Human Rights, initiating civil action or seeking redress under state criminal statutes and/or federal law.

VIII. Sexual Harassment or Sexual Violence as Sexual Abuse

Under certain circumstances, harassment or sexual violence may constitute sexual abuse under Minnesota Statute 609.341, subd. 10 through 609.345; Minnesota Statute 609.321 through - .324; or Minnesota Statute 617.246. In such situations, School Districts shall comply with Minnesota Statute 626.556, Reporting of Maltreatment of Minors.

Nothing in this policy will prohibit the School District from taking immediate action to protect victims of alleged sexual abuse.

IX. Discipline

Any School District action taken pursuant to this policy will be consistent with requirements of applicable collective bargaining agreements, Minnesota Statutes and School District policies. The School District will take such disciplinary action it deems necessary and appropriate, including warning, suspension or immediate discharge to end sexual harassment and sexual violence and prevent its recurrence.

1. In some School Districts the Superintendent may be the Human Rights Officer. If so, an alternative individual should be designated by the School board.
2. Also see Article IX.
3. If the Superintendent is the subject of the complaint, the report shall be submitted to the Human Rights Officer or the alternate individual as designated by the School Board.

MDE Supplement to MSBA Model Policy Recommendations

March 1990

ISD _____ is committed to the elimination and prevention of sexual harassment and sexual violence in order to maintain a safe and positive working and learning environment.

To reach this goal, the district will provide (1) staff development for identification and prevention, (2) classroom curriculum and instruction, (3) student services, and (4) student, staff and community participation. All these strategies will be designed to help prevent sexual harassment and sexual violence.

I. Plan for In-service in the Identification and Prevention of Sexual Harassment and Sexual Violence

After the adoption of ISD _____'s policy prohibiting sexual harassment and sexual violence, all of the district employees, contracted program staff, and volunteers will receive an initial training which will include the following:

- a. Definition of sexual harassment and sexual violence
- b. Explanation of the district policy and grievance procedures
- c. Legal prohibitions and consequences of sexual harassment and sexual violence
- d. Pertinent examples of sexual harassment
- e. Overview of sexual harassment identification and prevention curriculum for students

New employees and others who come into contact with learners will receive initial training soon after they begin their responsibilities with the district.

Each subsequent year, ISD# _____'s employees, contracted program staff and volunteers will be provided with additional training opportunities which will restate the district's commitment to providing a harassment free working and learning environment and provide the staff with opportunities to broaden their knowledge of the issues related to sexual harassment and sexual violence.

II. Plan for Classroom Curriculum and Instruction in the Identification and Prevention of Sexual Harassment and Sexual Violence

Upon the adoption of ISD# _____'s policy prohibiting sexual harassment and sexual violence all students, in one of their classes, will receive age-appropriate information which will include the following:

- a. A copy of the district's policy
- b. An explanation of the policy and its purpose
- c. A definition of sexual harassment and sexual violence
- d. Instruction in what to do if one is a victim of sexual harassment or sexual violence
- e. A clear delineation of the sanctions against anyone found to have been a perpetrator of sexual harassment or sexual violence
- f. Information on the consequences to individuals who are found to have made a frivolous accusation
- g. A safe and supportive forum for discussion by the students of the issue of sexual harassment and of their related concerns

In addition, an age-appropriate curriculum will be adopted for use in the classroom which will ensure that succeeding generations of students will learn how to deal with sexual harassment and sexual violence if it is happening to them and, also, how to treat each other with courtesy and respect so that the underlying causes of sexual harassment are removed.

III. Plan for Student Services in the Identification and Prevention of Sexual Harassment and Sexual Violence

Upon the adoption of ISD# _____'s policy prohibiting sexual harassment and sexual violence, a plan will be made to provide staff and students with student service professionals (such as counselors, school nurses, social workers and psychologist) who will:

- a. Provide support services to help individuals determine whether or not an experience may have been sexual harassment or sexual violence
- b. Provide counselling and other support services to help harassed or violated individuals to cope with lowered self-esteem
- c. Provide consultation and support to enable individuals to file a complaint regarding an accusation, when appropriate
- d. Provide support services for victimizers
- e. Provide referral services to other agencies or organizations when needed to meet needs of individuals

The student services can be provided within the education system or in cooperation with other community agencies, whatever is most effective and affordable for a school district.

IV. Plan for Student, Staff and Community Participation on the Identification and Prevention of Sexual Harassment and Sexual Violence.

Parents will be informed of ISD# _____'s policy prohibiting sexual harassment and sexual violence by the inclusion of information about the policy and the procedure for filing a grievance in printed materials sent home with students who are under 18 years of age.

Members of the community will be informed by the publication of ISD# _____'s policy in the local newspaper.

In addition there will be a continuing effort to provide opportunities for further community participation on the issues related to sexual harassment and sexual violence through its inclusion in Parent Teacher Student Association (PTSA) programs or other public forums.

Considerations:

- 1 Every effort should be made to include the entire district staff in this initial training: administrators, early childhood through adult teachers, aides, office staff custodial staff, food service workers, bus drivers, etc. Provisions should be made to provide train for the staff in educational cooperatives by the group of school districts served.
- 2 Some examples of subjects for in-service training include "the images of females and males in the media and in advertising," "societal expectations of males and females and the resulting impact on behavior," "spouse battering and family violence in the U.S.," "what is the role of language in sexism?," "historical influences which perpetuate sexism and heterosexism in the legal system and in American life," and "how to make the curriculum inclusive of both females and males.
- 3 Considerable variation in methodology is needed for early childhood studies and early elementary grades.
- 4 Many schools incorporate the sexual harassment and sexual violence curriculum into their health classes.
- 5 Public information programs could be co-sponsored by the district and a community organization such as the Chamber of Commerce or the League of Women Voters.

Problems in Student Interactions

The ways students treat each other during school hours is an aspect of the informal learning process, with significant negative implications for girls. There is mounting evidence that boys do not treat girls well. Reports of student sexual harassment - the unwelcome verbal or physical conduct of a sexual nature imposed by one individual on another - among junior high school and high school peers are increasing. In the majority of cases, a boy is harassing a girl.

Incidents of sexual harassment reveal as much about power and authority as they do about sexuality; the person being harassed usually is less powerful than the person doing the harassing. Sexual harassment is prohibited under Title IX, yet sex-biased peer interactions appear to be permitted in schools, if not always approved. Rather than viewing sexual harassment as serious misconduct, school authorities too often treat it as a joke.

When boys line up to "rate" girls as they enter a room, when boys treat girls so badly that they are reluctant to enroll in courses where they may be the only female, when boys feel it is good fun to embarrass girls to the point of tears, it is no joke. Yet these types of behaviors are often viewed by school personnel as harmless instances of "boys being boys."

The clear message to both girls and boys is that girls are not worthy of respect and that appropriate behavior for boys includes exerting power over girls - or over another, weaker boy. Being accused of being in any way like a woman is one of the worst insults a boy can receive. As one researcher recently observed:

"It is just before dismissal time and a group of very active fourth-graders are having trouble standing calmly in line as they wait to go to their bus. Suddenly one of the boys grabs another's hat, runs to the end of the line, and involves a number of his buddies in a game of keep-away. The boy whose hat was taken leaps from his place in line, trying to intercept it from the others, who, as they toss it back and forth out of his reach, taunt him by yelling, 'You woman!' When the teacher on bus duty notices, she tells the boys that they all have warnings for not waiting in line properly. The boys resume an orderly stance but continue to mutter names - 'Woman!' 'Am not.' 'Yes, you are.' - under their breath." Margaret Stubbs, October 1990

Harassment related to sexual orientation or sexual preference has received even less attention as an equity issue than heterosexual sexual harassment. Yet, examples of name calling that imply homophobia, such as "sissy," "queer," "gay," "lesbo," are common among students at all levels of schooling. The fourth-grade boys who teased a peer by calling him a "woman" were not only giving voice to the sex-role-stereotype that women are weaker than and therefore inferior to men; they were also challenging their peer's "masculinity" by ascribing feminine characteristics to him in a derogatory manner. Such attacks often prevent girls, and sometimes boys, from participating in activities and courses that are traditionally viewed as appropriate for the opposite sex.

When schools ignore sexist, racist, homophobic, and violent interactions between students, they are giving tacit approval to such behaviors. Environments where students do not feel accepted are not environments where effective learning can take place.

"How Schools Shortchange Girls," The American Association of University Women, 1992, pp. pp. 73-74. 1111 16th Street N.W. Washington, DC 20036-4873

Sexual Harassment Rules and Consequences for Students in League-Sponsored Athletic and Fine Arts Activities

Note: The following rules apply to all students who participate in League-sponsored athletic and fine arts activities. The rules and consequences are explained to students and parent/guardians by each member school prior to their participation in League-sponsored activities.

I. General Statement of Policy

The Minnesota State High School League believes that all individuals should be treated with respect and dignity. Students should be able to participate in League-sponsored activities in an environment that is free from sexual harassment and sexual violence. It shall be a violation of this policy for a student participant in League activities to harass a person through conduct or communication that is determined to be sexual harassment or sexual violence as defined by this policy.

II. Responsibilities of the Minnesota State High School League and its member schools as required by state and federal law.

- A. Title IX, of the Federal Education Amendments of 1972 prohibits sex-based discrimination against students by education institutions.
- B. Title VII, 1980 is interpreted by the Equal Employment Opportunity Commission to include sexual harassment as a form of sex discrimination in employment, and provides a definition of sexual harassment.
- C. Minnesota State Human Rights Act, Minnesota Statutes Chapter 363, defines sexual harassment as a form of sex discrimination in education and employment.
- D. Minnesota Statutes Section 127.46 (Sexual Harassment and Violence Policy) requires each school board to adopt a written sexual harassment and sexual violence policy that is clear and understandable. The policy shall apply to pupils and employees, including reporting procedures, and set forth disciplinary actions that will be taken for violation of the policy.
- E. Minnesota Statutes Section 129.121, Subd. 6, (Sexual Harassment and Violence Policy and Rules) requires the Minnesota State High School League to adopt a policy, rules, penalties, and recommendations addressing sexual harassment and sexual violence toward and by participants in League activities.
- F. Minnesota Statutes Section 609.341 et seq. establishes statutory penalties with respect to sex crimes.

III. Sexual Harassment and Sexual Violence Defined

- A. Sexual harassment is a form of sex discrimination which violates Section 703 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., and Minnesota Statutes Sections 363.01-.14, the Minnesota Human Rights Act.
 1. Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature. Sexual harassment is illegal but may or may not be criminal activity.
 2. Sexual harassment may include but is not limited to:
 - a. verbal, written/graphic harassment or abuse;
 - b. subtle pressure for sexual activity;
 - c. inappropriate patting or pinching;
 - d. intentional brushing against the individual's body;
 - e. demanding sexual favors accompanied by implied or overt threats concerning an individual's employment or educational status;
 - f. demanding sexual favors accompanied by implied or overt promises of preferential treatment with regard to an individual's employment or educational status;
 - g. any unwelcome touching of a sexual nature.

- B. Sexual violence is a physical act of aggression that includes a sexual act or sexual purpose which involves the touching of another's intimate parts, either above or underneath the other person's clothes, or forcing another to touch one's intimate parts, either above or underneath one's clothes. Intimate parts, as defined in Minnesota Statutes 1990, Section 609.341, includes the primary genital area, groin, inner thigh, buttocks, or breast of a human being. Sexual violence is a criminal activity.

Sexual violence may include, but is not limited to:

1. touching, patting, grabbing, or pinching another person's intimate parts, either same sex or opposite sex.
2. coercing or forcing sexual touching on another;
3. coercing or forcing sexual intercourse on another;
4. threatening to force sexual touching or intercourse on another.

IV. School Actions and Responsibilities

- A. Responsibilities under M.S. 127.46.

Any person who believes that she or he has been the victim of sexual harassment or sexual violence, or any third person with knowledge or belief of conduct which may constitute sexual harassment or sexual violence by a student participant in League-sponsored activities should report the alleged acts immediately to a responsible school district official or directly to the Human Rights Officer designated by that district's policy.

- B. Investigation Process.

The School District Human Rights Officer, upon receipt of a report or complaint alleging sexual harassment or sexual violence shall immediately authorize an investigation. The investigating party shall provide a written report to the Superintendent of Schools and the District Human Rights Officer or other designated official within the time frame required by the school district policies.

- C. School District Action and Consequences.

Any School District action taken pursuant to this policy will be consistent with requirements of applicable collective bargaining agreements, Minnesota Statutes and School District policies.

1. Upon determination that the complaint is valid, the School District will take such disciplinary action as it deems necessary and appropriate to end sexual harassment and sexual violence and prevent its recurrence.
2. The results of the investigation will be reported in writing to the complainant and the student(s) named in the complaint by the School District. The report will document the disciplinary action taken as a result of the complaint, eligibility affected by the disciplinary action and the date when the student will return to good standing and be eligible to participate in League-sponsored activities.
3. The student(s), their parent/guardian will be informed of their due process for the loss of eligibility.
4. Complaints, investigations and resolutions will be handled as discreetly as possible, with information being shared with those having a need to know and in accordance with the legal obligations of the member school.

V. Bylaw

During the school year, a student shall not violate the sexual harassment and sexual violence bylaws of the Minnesota State High School League.

Interpretation: The bylaw applies to the entire school year and any portion of an activity season which occurs prior to the start of the school year or after the close of the school year.

VI. Category of Activities

A. Category I Activities: those League-sponsored activities in which a member school has a schedule of interscholastic contests, exclusive of League-sponsored tournaments:

1. Athletic Activities: as listed in 501.00
2. Fine Arts Activities:
 - a) Debate;
 - b) Speech Activities including One-Act Play - when a school schedules a season of interscholastic contests.

B. Category II. Activities: those League-sponsored activities in which a member school does not have a schedule of interscholastic contests, exclusive of League-sponsored tournaments:

1. Fine Arts Activities:
 - a) Speech activities including One Act Play when a school schedules no interscholastic contests and participates only in the League-sponsored tournament series.
 - b) Music activities.

VII. Penalties and Recommendations for Category I Activities

A. Sexual Harassment Violations

1. First Violation:

Penalty: After determination of the violation, a student shall lose eligibility for the next two (2) consecutive interscholastic contests or two (2) weeks of a season in which the student is a participant, whichever is greater.

Recommendations:

- a) It is recommended that the school develop a local education program through which the student would receive information about sexual harassment and sexual violence.
- b) It is recommended that, when appropriate, the school refer a student to a community agency or a professional individual outside the school for counselling.

2. Second Violation:

Penalty: After determination of the second violation, the student shall lose eligibility for the next six (6) consecutive interscholastic contests in which the student is a participant.

Recommendation:

It is recommended that before being re-admitted to activities following suspension for the second violation, the student shall show evidence in writing that the student has received counselling from a community agency or professional individual such as a school counselor, medical doctor, psychiatrist, or psychologist.

3. Third Violation:

Penalty: After determination of the third or subsequent violations, the student shall lose eligibility for the next twelve (12) consecutive interscholastic contests in which the student is a participant.

4. Accumulative Policies.

Penalties for sexual harassment violations shall be accumulative beginning with and continuing throughout the student's participation on a Varsity, Junior Varsity, "B" squad or Sophomore team or activity.

B. Sexual Violence Violations.

After determination of the violation of the sexual violence rules, the student shall lose eligibility for the next twelve calendar months.

VIII. Penalties for Category II Activities

A. Sexual Harassment Violations.

Each member school shall develop penalties which it will apply to the participants in these activities. A current copy of the member school's policy shall be kept on file in the member school.

B. Sexual Violence Violations.

After determination of the violation of the sexual violence rules, the student shall lose eligibility for the next twelve calendar months.

IX. Responsibilities for Distribution of Policies

The Minnesota State High School League and each member school will provide a written brochure which explains the sexual harassment and sexual violence policy, rules and penalties for student participants in League-sponsored athletic and fine arts activities.

Each student and parent/guardian shall annually sign the brochure provided by the League and it shall be kept on file in the member school.

A Code of Commitment to Be Multicultural, Gender-Fair, and Disability Aware (Inclusive)

The following code represents the commitment of the Minnesota State High School League to reduce prejudice and discrimination in the extracurricular activities program. The code was adopted in August 1992.

Philosophy

The Minnesota State High School League is concerned about the negative impact of prejudice and discrimination on the participants in the interscholastic activity programs sponsored by its member schools.

The League and its member schools are committed to creating an environment in the activity program which promotes respect for and appreciation of racial, gender, and ethnic differences and is disability aware.

League activities should be models of how individuals can live in a world free of prejudice and discrimination. Because one incident adversely impacts the individuals and activities involved, it is of legitimate concern to the organization.

League Representatives Defined

The Minnesota State High School League believes that clear expectations of appropriate behavior must be communicated to those individuals who are responsible for students in the activity program sponsored by member schools.

By definition, this code applies to all League representatives, including: the Board of Directors and Staff, the Representative Assembly, Region Committees, ad hoc and advisory committees, registered officials, rules clinicians, tournaments and their personnel, and representatives of MSHSL member schools to League-sponsored activities.

The Code of Commitment

The Board of Directors has established the following Code of Commitment and will communicate its spirit and intent throughout all League-sponsored activities:

I will support the commitment of the Minnesota State High School League and its member schools to enhance race relations, be gender fair and disability aware by:

...modeling language and behavior that is non-biased and inclusive of individuals regardless of ethnicity, race, religion, sex, or disability;

...educating and sensitizing myself to gender fairness and equity issues;

...intervening to let others know that I will not tolerate ethnic, disability, or sexist jokes, racial or religious slurs, or any action which demeans any individual or group;

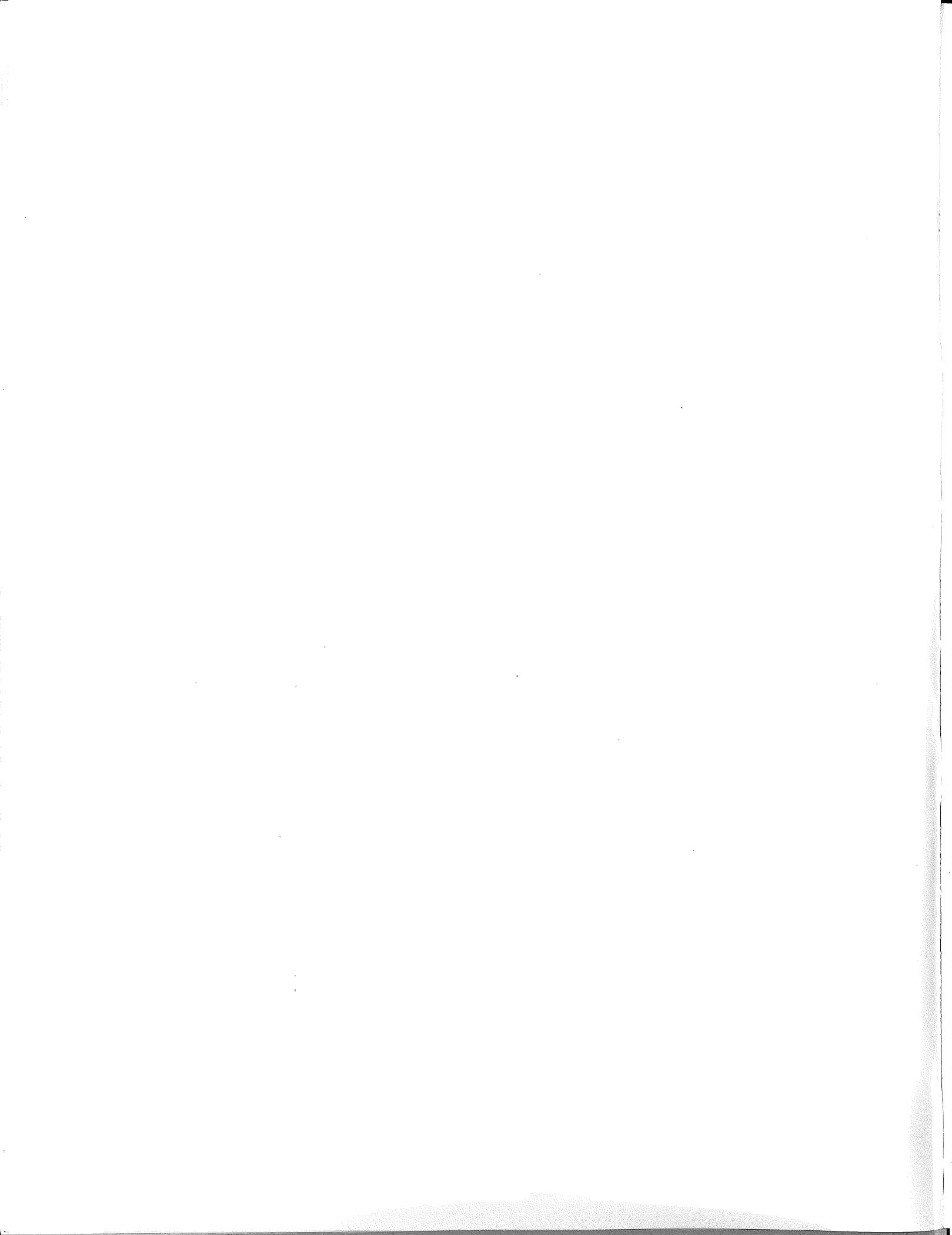
...educating and sensitizing myself to the cultural heritage and traditions of others; and,

...initiating actions which would prevent prejudice and discrimination against individuals or groups in League-sponsored activities.

Commentary

Leaders of interscholastic activities are role models for young people and have a responsibility to model a lifestyle free of prejudice and discrimination.

Preventing prejudice and discrimination can begin with one person. The Minnesota State High School League believes that it begins with us, each and every one.



for the institution in which they reside. The Department of Labor has recently issued a proposed regulation under the Fair Labor Standards Act (FLSA) that covers the question of compensation for institutionalized persons. 42 FR 15224 (March 18, 1977). This Department will seek information and comment from the Department of Labor concerning that agency's experience administering the FLSA regulation.

36. *Health, welfare, and other social service providers.* Section 104.52(a) has been expanded in several respects. The addition of new paragraph (a)(2) is intended to make clear the basic requirement of equal opportunity to receive benefits or services in the health, welfare, and social service areas. The paragraph parallels §§ 104.4(b)(ii) and 104.43(b). New paragraph (a)(3) requires the provision of effective benefits or services, as defined in § 104.4(b)(2) (i.e., benefits or services which "afford handicapped persons equal opportunity to obtain the same result (or) to gain the same benefit * * *").

Section 104.52(a) also includes provisions concerning the limitation of benefits or services to handicapped persons and the subjection of handicapped persons to different eligibility standards. One common misconception about the regulation is that it would require specialized hospitals and other health care providers to treat all handicapped persons. The regulation makes no such requirement. Thus, a burn treatment center need not provide other types of medical treatment to handicapped persons unless it provides such medical services to nonhandicapped persons. It could not, however, refuse to treat the burns of a deaf person because of his or her deafness.

Commenters had raised the question of whether the prohibition against different standards of eligibility might preclude recipients from providing special services to handicapped persons or classes of handicapped persons. The regulation will not be so interpreted, and the specific section in question has been eliminated. Section 104.4(c) makes clear that special programs for handicapped persons are permitted.

A new paragraph (a)(5) concerning the provision of different or separate services or benefits has been added. This provision prohibits such treatment unless necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

Section 104.52(b) has been amended to cover written material concerning waivers of rights or consent to treatment as well as general notices concerning health benefits or services. The section requires the recipient to ensure that qualified handicapped persons are not denied effective notice because of their handicap. For example, recipients could use several different types of notice in order to reach persons with impaired vision or hearing, such as brailled messages, radio spots, and tactile devices on cards or envelopes to inform blind persons of the need to call the recipient for further information.

Section 104.52(c) is a new section requiring recipient hospitals to establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care. Although it

would be appropriate for a hospital to fulfill its responsibilities under this section by having a full-time interpreter for the deaf on staff, there may be other means of accomplishing the desired result of assuring that some means of communication is immediately available for deaf persons needing emergency treatment.

Section 104.52(c), also a new provision, requires recipients with fifteen or more employees to provide appropriate auxiliary aids for persons with impaired sensory, manual, or speaking skills. Further, the Assistant Secretary may require a small provider to furnish auxiliary aids where the provision of aids would not adversely affect the ability of the recipient to provide its health benefits or service.

37. *Treatment of Drug Addicts and Alcoholics.* Section 104.53 is a new section that prohibits discrimination in the treatment and admission of drug and alcohol addicts to hospitals and outpatient facilities. Section 104.53 prohibits discrimination against drug abusers by operators of outpatient facilities, despite the fact that section 407 pertains only to hospitals, because of the broader application of section 504. This provision does not mean that all hospitals and outpatient facilities must treat drug addiction and alcoholism. It simply means, for example, that a cancer clinic may not refuse to treat cancer patients simply because they are also alcoholics.

38. *Education of institutionalized persons.* The regulation retains § 104.54 of the proposed regulation that requires that an appropriate education be provided to qualified handicapped persons who are confined to residential institutions or day care centers.

Subpart G—Procedures

In § 104.61, the Secretary has adopted the title VI complaint and enforcement procedures for use in implementing section 504 until such time as they are superseded by the issuance of a consolidated procedural regulation applicable to all of the civil rights statutes and executive orders administered by the Department.

Appendix B—Guidelines for Eliminating Discrimination and Denial Of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs

Note.—For the text of these guidelines, see 34 CFR Part 100, Appendix B

PART 106—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

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Subject Index to Title IX Preamble and Regulation

Appendix A—Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs.

Subpart A—Introduction

§ 106.1 Purpose and effective date.

The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Pub. L. 93-568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. This part is also intended to effectuate section 844 of the Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484. The effective date of this part shall be July 21, 1975.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682, as amended by Pub. L. 93-568, 88 Stat. 1855, and Sec. 844, Education Amendments of 1974, 88 Stat. 484, Pub. L. 93-380)

§ 106.2 Definitions.

As used in this part, the term—

(a) "*Title IX*" means title IX of the Education Amendments of 1972, Pub. L. 92-318, as amended by section 3 of Pub. L. 93-568, 88 Stat. 1855, except sections 904 and 906 thereof; 20 U.S.C. 1681, 1682, 1683, 1685, 1686.

(b) "*Department*" means the Department of Health, Education, and Welfare.

(c) "*Secretary*" means the Secretary of Education.

(d) "*Assistant Secretary*" means the Assistant Secretary for Civil Rights of the Department.

(e) "*Reviewing Authority*" means that component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this part.

(f) "*Administrative law judge*" means a person appointed by the reviewing authority to preside over a hearing held under this part.

(g) "*Federal financial assistance*" means any of the following, when authorized or extended under a law administered by the Department:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a

building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

(h) "*Recipient*" means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance, including any subunit, successor, assignee, or transferee thereof.

(i) "*Applicant*" means one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.

(j) "*Educational institution*" means a local educational agency (L.E.A.) as defined by section 801(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 881), a preschool, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraph (k), (l), (m), or (n) of this section.

(k) "*Institution of graduate higher education*" means an institution which:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

(l) "*Institution of undergraduate higher education*" means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

(m) "*Institution of professional education*" means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary.

(n) "*Institution of vocational education*" means a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.

(o) "*Administratively separate unit*" means a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

(p) "*Admission*" means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

(q) "*Student*" means a person who has gained admission.

(r) "*Transition plan*" means a plan subject to the approval of the Secretary pursuant to section 901(a)(2) of the Education Amendments of 1972, under

which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.3 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

(c) *Self-evaluation.* Each recipient education institution shall, within one year of the effective date of this part:

(1) Evaluate, in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices which do not or may not meet the requirements of this part; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the Assistant Secretary upon request, a description of any modifications made pursuant to paragraph (c) (ii) of this section and of any remedial steps taken pursuant to paragraph (c) (iii) of this section.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)
[40 FR 21428, June 4, 1975; 40 FR 39506, Aug. 28, 1975]

§ 106.4 Assurance required.

(a) *General.* Every application for Federal financial assistance for any education program or activity shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Assistant Secretary, that each education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Assistant Secretary if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 86.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Assistant Secretary of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* The Director will specify the form of the assurances required by paragraph (a) of this section and the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.5 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee which operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of Subpart B of this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.6 Effect of other requirements.

(a) *Effect of other Federal provisions.* The obligations imposed by this part are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; sections 799A and 845 of the Public Health Service Act (42 U.S.C. 295h-9 and 298b-2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); the Equal Pay Act (29 U.S.C. 206 and 206(d)); and any other Act of Congress or Federal regulation.

(Secs. 901, 902, 905, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1685)

(b) *Effect of State or local law or other requirements.* The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives or benefits from Federal financial assistance.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.7 Effect of employment opportunities.

The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.8 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part.

The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.9 Dissemination of policy.

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities which it operates, and that is required by title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the Assistant Secretary finds necessary to advise such persons of the protections against discrimination assured them by title IX and this part, but shall state at least that the requirement not to discriminate in education programs and activities extends to employment therein, and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of title IX and this part to such recipient may be referred to the employee designated pursuant to § 106.8, or to the Assistant Secretary.

(2) Each recipient shall make the initial notification required by paragraph (a) (1) of this section within 90 days of the effective date of this part or of the date this part first applies to such recipient, whichever comes later, which notification shall include publication in: (i) Local newspapers; (ii) newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and (iii) memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form

which it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this part.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and require such representatives to adhere to such policy.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Subpart B—Coverage

§ 106.11 Application.

Except as provided in this subpart, this Part 86 applies to every recipient and to each education program or activity operated by such recipient which receives or benefits from Federal financial assistance.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.12 Educational institutions controlled by religious organizations.

(a) *Application.* This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.

(b) *Exemption.* An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section, shall do so by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.13 Military and merchant marine educational institutions.

This part does not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.14 Membership practices of certain organizations.

(a) *Social fraternities and sororities.*

This part does not apply to the membership practices of social fraternities and sororities which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts and Camp Fire Girls.* This part does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts and Camp Fire Girls.

(c) *Voluntary youth service organizations.* This part does not apply to the membership practices of voluntary youth service organizations which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954 and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; Sec. 3(a) of P.L. 93-568, 88 Stat. 1862 amending Sec. 901)

§ 106.15 Admissions.

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by this part.

(b) *Administratively separate units.* For the purposes only of this section, §§ 86.16 and 86.17, and Subpart C, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of Subpart C.* Except as provided in paragraphs (d) and (e) of this section, Subpart C applies to each recipient. A recipient to which Subpart C applies shall not discriminate on the basis of sex in admission or recruitment in violation of that subpart.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients which are educational institutions, Subpart C applies only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* Subpart C does not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.16 Educational institutions eligible to submit transition plans.

(a) *Application.* This section applies to each educational institution to which Subpart C applies which:

(1) Admitted only students of one sex as regular students as of June 23, 1972; or

(2) Admitted only students of one sex as regular students as of June 23, 1965, but thereafter admitted as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of Subpart C unless it is carrying out a transition plan approved by the Secretary as described in § 106.17, which plan provides for the elimination of such discrimination by the earliest practicable date but in no event later than June 23, 1979.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.17 Transition plans.

(a) *Submission of plans.* An institution to which § 106.16 applies and which is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the Secretary a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education (FICE) Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes, as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which § 106.16 applies shall result in treatment of applicants to or students of such recipient in violation of Subpart C unless such treatment is necessitated by an obstacle identified in paragraph (b) (3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b) (4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 106.16 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs which emphasize the institution's commitment to enrolling students of the sex previously excluded.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§§ 106.18-106.20 [Reserved]

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§ 106.21 Admission.

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in §§ 106.16 and 106.17.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this Subpart applies shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not

have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;

(3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.22 Preference in admission.

A recipient to which this subpart applies shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.23 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which this subpart applies shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 106.3(a), and may choose to undertake such efforts as affirmative action pursuant to § 106.3(b).

(b) *Recruitment at certain institutions.* A recipient to which this subpart applies shall not recruit primarily or exclusively at educational institutions, schools or

entities which admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§§ 106.24-106.30 [Reserved]

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

§ 106.31 Education programs and activities.

(a) *General.* Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives of benefits from Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which Subpart C does not apply, or (2) an entity, not a recipient, to which Subpart C would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Discriminate against any person in the application of any rules of appearance;

(6) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at or who are graduates of the recipient institution; *Provided*, a recipient educational institution which administers or assists in the administration of such scholarships, fellowship, or other awards which are restricted to members of one sex provides, or otherwise makes available reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Programs not operated by recipient.* (1) This paragraph applies to any recipient which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient;

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient which this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.32 Housing.

(a) *Generally.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by such recipient.

(2) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole: (i) Proportionate in quantity and (ii) comparable in quality and cost to the student. A recipient may render such assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

(Secs. 901, 902, 907, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1686)

§ 106.33 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374)

§ 106.34 Access to course offerings.

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(b) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective

standards of individual performance developed and applied without regard to sex.

(c) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(d) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have such effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.35 Access to schools operated by L.E.A.s.

A recipient which is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.36 Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use

internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.37 Financial assistance.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not: (1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate; (2) through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or (3) apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein; *Provided,* That the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in subparagraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under subparagraph (b)(2)(i) of this paragraph; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and § 106.41.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

§ 106.38 Employment assistance to students.

(a) *Assistance by recipient in making available outside employment.* A recipient which assists any agency, organization or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient which employs any of its students shall not do so in a manner which violates Subpart E of this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.39 Health and insurance benefits and services.

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate

Subpart E of this part if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.40 Marital or parental status.

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.*

(1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the instructional program in the separate program is comparable to that offered to non-pregnant students.

(4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false

pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.41 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose of major activity of which involves bodily contact.

(c) *Equal opportunity.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(2) The provision of equipment and supplies;

(3) Scheduling of games and practice time;

(4) Travel and per diem allowance;

(5) Opportunity to receive coaching and academic tutoring;

(6) Assignment and compensation of coaches and tutors;

(7) Provision of locker rooms, practice and competitive facilities;

(8) Provision of medical and training facilities and services;

(9) Provision of housing and dining facilities and services;

(10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

§ 106.42 Textbooks and curricular material.

Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.43-106.50 [Reserved]

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

§ 106.51 Employment.

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives or benefits from Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way

which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this Subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

(b) *Application.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.52 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity which has

a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.53 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.54 Compensation.

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.55 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is a bona-fide occupational qualification for the

positions in question as set forth in § 106.61.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.56 Fringe benefits.

(a) *"Fringe benefits" defined.* For purposes of this part, "fringe benefits" means: Any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of § 106.54.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.57 Marital or parental status.

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job related purposes, including commencement, duration and extensions of leave,

payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.58 Effect of State or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(b) *Benefits.* A recipient which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.59 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a *bona-fide* occupational qualification for the particular job in question.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.60 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the

results of such inquiry are not used in connection with discrimination prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 106.61 Sex as a bona-fide occupational qualification.

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§§ 106.62-106.70 [Reserved]

Subpart F—Procedures [Interim]

§ 106.71 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 34 CFR 100.6-100.11 and 34 CFR Part 101.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

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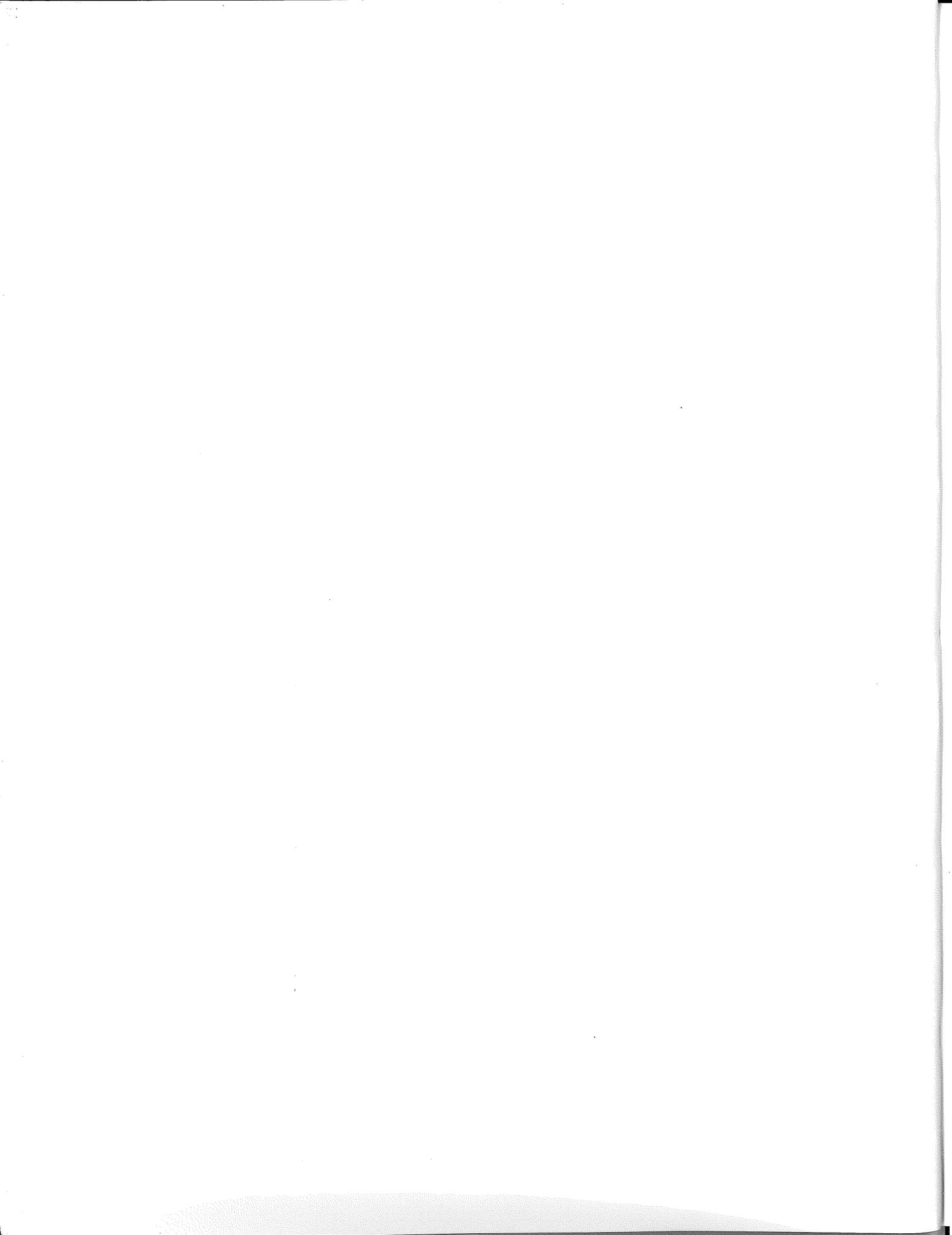
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- Appendix A—Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs**
 Note.—For the text of these guidelines, see 34 CFR Part 100, Appendix B [44 FR 17168, Mar. 21, 1979]
 [FR Doc. 00-13850 Filed 5-8-80; 0:45 am]
 BILLING CODE 4110-02-M



Policy Interpretation

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office for Civil Rights

Office of the Secretary

45 CFR Part 86

Title IX of the Education Amendments of 1972; a Policy Interpretation; Title IX and Intercollegiate Athletics

AGENCY: Office for Civil Rights, Office of the Secretary, HEW.

ACTION: Policy interpretation.

SUMMARY: The following Policy Interpretation represents the Department of Health, Education, and Welfare's interpretation of the intercollegiate athletic provisions of Title IX of the Education Amendments of 1972 and its implementing regulation. Title IX prohibits educational programs and institutions funded or otherwise supported by the Department from discriminating on the basis of sex. The Department published a proposed Policy Interpretation for public comment on December 11, 1978. Over 700 comments reflecting a broad range of opinion were received. In addition, HEW staff visited eight universities during June and July, 1979, to see how the proposed policy and other suggested alternatives would apply in actual practice at individual campuses. The final Policy Interpretation reflects the many comments HEW received and the results of the individual campus visits.

EFFECTIVE DATE: December 11, 1979

FOR FURTHER INFORMATION CONTACT: Colleen O'Connor, 330 Independence Avenue, Washington, D.C. (202) 245-6871

SUPPLEMENTARY INFORMATION:

I. Legal Background

A. The Statute

Section 901(a) of Title IX of the Education Amendments of 1972 provides:

No person in the United States shall, on the basis of sex, be excluded from participation, in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Section 844 of the Education Amendments of 1974 further provides:

The Secretary of (of HEW) shall prepare and publish . . . proposed regulations implementing the provisions of Title IX of the Education Amendments of 1972 relating to the prohibition of sex discrimination in federally assisted education programs which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports.

Congress passed Section 844 after the Conference Committee deleted a Senate floor amendment that would have exempted revenue-producing athletics from the jurisdiction of Title IX.

B. The Regulation

The regulation implementing Title IX is set forth, in pertinent part, in the Policy Interpretation below. It was signed by President Ford on May 27, 1975, and submitted to the Congress for review pursuant to Section 431(d)(1) of the General Education Provisions Act (GEPA).

During this review, the House Subcommittee on Postsecondary Education held hearings on a resolution disapproving the regulation. The Congress did not disapprove the regulation within the 45 days allowed under GEPA, and it therefore became effective on July 21, 1975.

Subsequent hearings were held in the Senate Subcommittee on Education on a bill to exclude revenues produced by sports to the extent they are used to pay the costs of those sports. The Committee, however, took no action on this bill.

The regulation established a three year transition period to give institutions time to comply with its equal athletic opportunity requirements. That transition period expired on July 21, 1978.

II. Purpose of Policy Interpretation

By the end of July 1978, the Department had received nearly 100 complaints alleging discrimination in athletics against more than 50 institutions of higher education. In attempting to investigate these complaints, and to answer questions from the university community, the Department determined that it should provide further guidance on what constitutes compliance with the law. Accordingly, this Policy Interpretation explains the regulation so as to provide a framework within which the complaints can be resolved, and to provide institutions of higher education with additional guidance on the requirements for compliance with Title IX in intercollegiate athletic programs.

III. Scope of Application

This Policy Interpretation is designed specifically for intercollegiate athletics. However, its general principles will often apply to club, intramural, and interscholastic athletic programs, which are also covered by regulation.¹

¹The regulation specifically refers to club sports separately from intercollegiate athletics. Accordingly, under this Policy Interpretation, club Footnotes continued on next page

Accordingly, the Policy Interpretation may be used for guidance by the administrators of such programs when appropriate.

This policy interpretation applies to any public or private institution, person or other entity that operates an educational program or activity which receives or benefits from financial assistance authorized or extended under a law administered by the Department. This includes educational institutions whose students participate in HEW funded or guaranteed student loan or assistance programs. For further information see definition of "recipient" in Section 86.2 of the Title IX regulation.

IV. Summary of Final Policy Interpretation

The final Policy Interpretation clarifies the meaning of "equal opportunity" in intercollegiate athletics. It explains the factors and standards set out in the law and regulation which the Department will consider in determining whether an institution's intercollegiate athletics program complies with the law and regulations. It also provides guidance to assist institutions in determining whether any disparities which may exist between men's and women's programs are justifiable and nondiscriminatory. The Policy Interpretation is divided into three sections:

- *Compliance in Financial Assistance (Scholarships) Based on Athletic Ability:* Pursuant to the regulation, the governing principle in this area is that all such assistance should be available on a substantially proportional basis to the number of male and female participants in the institution's athletic program.

- *Compliance in Other Program Areas (Equipment and supplies; games and practice times; travel and per diem; coaching and academic tutoring; assignment and compensation of coaches and tutors; locker rooms, and practice and competitive facilities; medical and training facilities; housing and dining facilities; publicity; recruitment; and support services):* Pursuant to the regulation, the governing principle is that male and female athletes should receive equivalent treatment, benefits, and opportunities.

- *Compliance in Meeting the Interests and Abilities of Male and Female Students:* Pursuant to the regulation, the governing principle in this area is that the athletic interests

Footnotes continued from last page
teams will not be considered to be intercollegiate teams except in those instances where they regularly participate in varsity competition.

and abilities of male and female students must be equally effectively accommodated.

V. Major Changes to Proposed Policy Interpretation

The final Policy Interpretation has been revised from the one published in proposed form on December 11, 1978. The proposed Policy Interpretation was based on a two-part approach. Part I addressed equal opportunity for participants in athletic programs. It required the elimination of discrimination in financial support and other benefits and opportunities in an institution's existing athletic program. Institutions could establish a presumption of compliance if they could demonstrate that:

- "Average per capita" expenditures for male and female athletes were substantially equal in the area of "readily financially measurable" benefits and opportunities or, if not, that any disparities were the result of nondiscriminatory factors, and

- Benefits and opportunities for male and female athletes, in areas which are not financially measurable, "were comparable."

Part II of the proposed Policy Interpretation addressed an institution's obligation to accommodate effectively the athletic interests and abilities of women as well as men on a continuing basis. It required an institution either:

- To follow a policy of development of its women's athletic program to provide the participation and competition opportunities needed to accommodate the growing interests and abilities of women, or

- To demonstrate that it was effectively (and equally) accommodating the athletic interests and abilities of students, particularly as the interests and abilities of women students developed.

While the basic considerations of equal opportunity remain, the final Policy Interpretation sets forth the factors that will be examined to determine an institution's actual, as opposed to presumed, compliance with Title IX in the area of intercollegiate athletics.

The final Policy Interpretation does not contain a separate section on institutions' future responsibilities. However, institutions remain obligated by the Title IX regulation to accommodate effectively the interests and abilities of male and female students with regard to the selection of sports and levels of competition available. In most cases, this will entail development of athletic programs that substantially expand opportunities for

women to participate and compete at all levels.

The major reasons for the change in approach are as follows:

(1) Institutions and representatives of athletic program participants expressed a need for more definitive guidance on what constituted compliance than the discussion of a presumption of compliance provided. Consequently the final Policy Interpretation explains the meaning of "equal athletic opportunity" in such a way as to facilitate an assessment of compliance.

(2) Many comments reflected a serious misunderstanding of the presumption of compliance. Most institutions based objections to the proposed Policy Interpretation in part on the assumption that failure to provide compelling justifications for disparities in per capita expenditures would have automatically resulted in a finding of noncompliance. In fact, such a failure would only have deprived an institution of the benefit of the presumption that it was in compliance with the law. The Department would still have had the burden of demonstrating that the institution was actually engaged in unlawful discrimination. Since the purpose of issuing a policy interpretation was to clarify the regulation, the Department has determined that the approach of stating actual compliance factors would be more useful to all concerned.

(3) The Department has concluded that purely financial measures such as the per capita test do not in themselves offer conclusive documentation of discrimination, except where the benefit or opportunity under review, like a scholarship, is itself financial in nature. Consequently, in the final Policy Interpretation, the Department has detailed the factors to be considered in assessing actual compliance. While per capita breakdowns and other devices to examine expenditures patterns will be used as tools of analysis in the Department's investigative process, it is achievement of "equal opportunity" for which recipients are responsible and to which the final Policy Interpretation is addressed.

A description of the comments received, and other information obtained through the comment/consultation process, with a description of Departmental action in response to the major points raised, is set forth at Appendix "B" to this document.

VI. Historic Patterns of Intercollegiate Athletics Program Development and Operations

In its proposed Policy Interpretation of December 11, 1978, the Department

published a summary of historic patterns affecting the relative status of men's and women's athletic programs. The Department has modified that summary to reflect additional information obtained during the comment and consultation process. The summary is set forth at Appendix A to this document.

VII. The Policy Interpretation

This Policy Interpretation clarifies the obligations which recipients of Federal aid have under Title IX to provide equal opportunities in athletic programs. In particular, this Policy Interpretation provides a means to assess an institution's compliance with the equal opportunity requirements of the regulation which are set forth at 45 CFR 86.37(c) and 86.41(c).

A. Athletic Financial Assistance (Scholarships)

1. *The Regulation*—Section 86.37(c) of the regulation provides:

[Institutions] must provide reasonable opportunities for such award [of financial assistance] for members of each sex in proportion to the number of students of each sex participating in . . . inter-collegiate athletics.¹

2. *The Policy*—The Department will examine compliance with this provision of the regulation primarily by means of a financial comparison to determine whether proportionately equal amounts of financial assistance (scholarship aid) are available to men's and women's athletic programs. The Department will measure compliance with this standard by dividing the amounts of aid available for the members of each sex by the numbers of male or female participants in the athletic program and comparing the results. Institutions may be found in compliance if this comparison results in substantially equal amounts or if a resulting disparity can be explained by adjustments to take into account legitimate, nondiscriminatory factors. Two such factors are:

a. At public institutions, the higher costs of tuition for students from out-of-state may in some years be unevenly distributed between men's and women's programs. These differences will be considered nondiscriminatory if they are not the result of policies or practices which disproportionately limit the availability of out-of-state scholarships to either men or women.

b. An institution may make reasonable professional decisions concerning the awards most appropriate for program development. For example, team development initially may require

spreading scholarships over as much as a full generation (four years) of student athletes. This may result in the award of fewer scholarships in the first few years than would be necessary to create proportionality between male and female athletes.

3. *Application of the Policy*—a. This section does not require a proportionate number of scholarships for men and women or individual scholarships of equal dollar value. It does mean that the total amount of scholarship aid made available to men and women must be substantially proportionate to their participation rates.

b. When financial assistance is provided in forms other than grants, the distribution of non-grant assistance will also be compared to determine whether equivalent benefits are proportionately available to male and female athletes. A disproportionate amount of work-related aid or loans in the assistance made available to the members of one sex, for example, could constitute a violation of Title IX.

4. *Definition*—For purposes of examining compliance with this Section, the participants will be defined as those athletes:

a. Who are receiving the institutionally-sponsored support normally provided to athletes competing at the institution involved, e.g., coaching, equipment, medical and training room services, on a regular basis during a sport's season; and

b. Who are participating in organized practice sessions and other team meetings and activities on a regular basis during a sport's season; and

c. Who are listed on the eligibility or squad lists maintained for each sport, or

d. Who, because of injury, cannot meet a, b, or c above but continue to receive financial aid on the basis of athletic ability.

B. Equivalence in Other Athletic Benefits and Opportunities

1. *The Regulation*—The Regulation requires that recipients that operate or sponsor interscholastic, intercollegiate, club, or intramural athletics, "provide equal athletic opportunities for members of both sexes." In determining whether an institution is providing equal opportunity in intercollegiate athletics, the regulation requires the Department to consider, among others, the following factors:

(1)²

(2) Provision and maintenance of equipment and supplies;

(3) Scheduling of games and practice times;

(4) Travel and per diem expenses;

(5) Opportunity to receive coaching and academic tutoring;

(6) Assignment and compensation of coaches and tutors;

(7) Provision of locker rooms, practice and competitive facilities;

(8) Provision of medical and training services and facilities;

(9) Provision of housing and dining services and facilities; and

(10) Publicity

Section 86.41(c) also permits the Director of the Office for Civil Rights to consider other factors in the determination of equal opportunity. Accordingly, this Section also addresses recruitment of student athletes and provision of support services.

This list is not exhaustive. Under the regulation, it may be expanded as necessary at the discretion of the Director of the Office for Civil Rights.⁴

2. *The Policy*—The Department will assess compliance with both the recruitment and the general athletic program requirements of the regulation by comparing the availability, quality and kinds of benefits, opportunities, and treatment afforded members of both sexes. Institutions will be in compliance if the compared program components are equivalent, that is, equal or equal in effect. Under this standard, identical benefits, opportunities, or treatment are not required, provided the overall effect of any differences is negligible.

If comparisons of program components reveal that treatment, benefits, or opportunities are not equivalent in kind, quality or availability, a finding of compliance may still be justified if the differences are the result of nondiscriminatory factors. Some of the factors that may justify these differences are as follows:

a. Some aspects of athletic programs may not be equivalent for men and women because of unique aspects of particular sports or athletic activities. This type of distinction was called for by the "Javits Amendment"³ to Title IX, which instructed HEW to make "reasonable (regulatory) provisions considering the nature of particular sports" in intercollegiate athletics.

Generally, these differences will be the result of factors that are inherent to the basic operation of specific sports. Such factors may include rules of play, nature/replacement of equipment, rates of injury resulting from participation.

¹ See also § 86.41(a) and (b) of the regulation.

² Section 644 of the Education Amendments of 1974, Pub. L. 93-380, Title VIII (August 21, 1974) 88 Stat. 612.

³ 86.41(c) (1) on the accommodation of student interests and abilities, is covered in detail in the following Section C of this policy interpretation.

⁴ See also § 86.37(a) of the regulation.

nature of facilities required for competition, and the maintenance/upkeep requirements of those facilities. For the most part, differences involving such factors will occur in programs offering football, and consequently these differences will favor men. If sport-specific needs are met equivalently in both men's and women's programs, however, differences in particular program components will be found to be justifiable.

b. Some aspects of athletic programs may not be equivalent for men and women because of legitimately sex-neutral factors related to special circumstances of a temporary nature. For example, large disparities in recruitment activity for any particular year may be the result of annual fluctuations in team needs for first-year athletes. Such differences are justifiable to the extent that they do not reduce overall equality of opportunity.

c. The activities directly associated with the operation of a competitive event in a single-sex sport may, under some circumstances, create unique demands or imbalances in particular program components. Provided any special demands associated with the activities of sports involving participants of the other sex are met to an equivalent degree, the resulting differences may be found nondiscriminatory. At many schools, for example, certain sports—notably football and men's basketball—traditionally draw large crowds. Since the costs of managing an athletic event increase with crowd size, the overall support made available for event management to men's and women's programs may differ in degree and kind. These differences would not violate Title IX if the recipient does not limit the potential for women's athletic events to rise in spectator appeal and if the levels of event management support available to both programs are based on sex-neutral criteria (e.g., facilities used, projected attendance, and staffing needs).

d. Some aspects of athletic programs may not be equivalent for men and women because institutions are undertaking voluntary affirmative actions to overcome effects of historical conditions that have limited participation in athletics by the members of one sex. This is authorized at § 86.3(b) of the regulation.

3. *Application of the Policy—General Athletic Program Components—*a. *Equipment and Supplies (§ 86.41(c)(2)).* Equipment and supplies include but are not limited to uniforms, other apparel, sport-specific equipment and supplies, general equipment and supplies,

instructional devices, and conditioning and weight training equipment.

Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

- (1) The quality of equipment and supplies;
- (2) The amount of equipment and supplies;
- (3) The suitability of equipment and supplies;
- (4) The maintenance and replacement of the equipment and supplies; and
- (5) The availability of equipment and supplies.

b. *Scheduling of Games and Practice Times (§ 86.41(c)(3)).* Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

- (1) The number of competitive events per sport;
- (2) The number and length of practice opportunities;
- (3) The time of day competitive events are scheduled;
- (4) The time of day practice opportunities are scheduled; and
- (5) The opportunities to engage in available pre-season and post-season competition.

c. *Travel and Per Diem Allowances (§ 86.41(c)(4)).* Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

- (1) Modes of transportation;
- (2) Housing furnished during travel;
- (3) Length of stay before and after competitive events;
- (4) Per diem allowances; and
- (5) Dining arrangements.

d. *Opportunity to Receive Coaching and Academic Tutoring (§ 86.41(c)(5)).*

(1) *Coaching*—Compliance will be assessed by examining, among other factors:

- (a) Relative availability of full-time coaches;
- (b) Relative availability of part-time and assistant coaches; and
- (c) Relative availability of graduate assistants.

(2) *Academic tutoring*—Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

- (a) The availability of tutoring; and
- (b) Procedures and criteria for obtaining tutorial assistance.

e. *Assignment and Compensation of Coaches and Tutors (§ 86.41(c)(6)).*⁶ In

⁶The Department's jurisdiction over the employment practices of recipients under Subpart E, §§ 86.51–86.57 of the Title IX regulation has been successfully challenged in several court cases. Accordingly, the Department has suspended enforcement of Subpart E, Section 86.41(c)(6) of the regulation, however, authorizes the Department to

general, a violation of Section 86.41(c)(6) will be found only where compensation or assignment policies or practices deny male and female athletes coaching of equivalent quality, nature, or availability.

Nondiscriminatory factors can affect the compensation of coaches. In determining whether differences are caused by permissible factors, the range and nature of duties, the experience of individual coaches, the number of participants for particular sports, the number of assistant coaches supervised, and the level of competition will be considered.

Where these or similar factors represent valid differences in skill, effort, responsibility or working conditions they may, in specific circumstances, justify differences in compensation. Similarly, there may be unique situations in which a particular person may possess such an outstanding record of achievement as to justify an abnormally high salary.

(1) *Assignment of Coaches*—Compliance will be assessed by examining, among other factors, the equivalence for men's and women's coaches of:

(a) Training, experience, and other professional qualifications;

(b) Professional standing.

(2) *Assignment of Tutors*—Compliance will be assessed by examining, among other factors, the equivalence for men's and women's tutors of:

(a) Tutor qualifications;

(b) Training, experience, and other qualifications.

(3) *Compensation of Coaches*—Compliance will be assessed by examining, among other factors, the equivalence for men's and women's coaches of:

(a) Rate of compensation (per sport, per season);

(b) Duration of contracts;

(c) Conditions relating to contract renewal;

(d) Experience;

(e) Nature of coaching duties performed;

(f) Working conditions; and

(g) Other terms and conditions of employment.

(4) *Compensation of Tutors*—Compliance will be assessed by examining, among other factors, the equivalence for men's and women's tutors of:

consider the compensation of coaches of men and women in the determination of the equality of athletic opportunity provided to male and female athletes. It is on this section of the regulation that this Policy Interpretation is based.

- (a) Hourly rate of payment by nature of subjects tutored;
- (b) Pupil loads per tutoring season;
- (c) Tutor qualifications;
- (d) Experience;
- (e) Other terms and conditions of employment.

f. *Provision of Locker Rooms, Practice and Competitive Facilities* (§ 86.41(c)(7)). Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

- (1) Quality and availability of the facilities provided for practice and competitive events;
- (2) Exclusivity of use of facilities provided for practice and competitive events;
- (3) Availability of locker rooms;
- (4) Quality of locker rooms;
- (5) Maintenance of practice and competitive facilities; and
- (6) Preparation of facilities for practice and competitive events.

g. *Provision of Medical and Training Facilities and Services* (§ 86.41(c)(8)).

Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

- (1) Availability of medical personnel and assistance;
- (2) Health, accident and injury insurance coverage;
- (3) Availability and quality of weight and training facilities;
- (4) Availability and quality of conditioning facilities; and
- (5) Availability and qualifications of athletic trainers.

h. *Provision of Housing and Dining Facilities and Services* (§ 86.41(c)(9)).

Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

- (1) Housing provided;
- (2) Special services as part of housing arrangements (e.g., laundry facilities, parking space, maid service).

i. *Publicity* (§ 86.41(c)(10)).

Compliance will be assessed by examining, among other factors, the equivalence for men and women of:

- (1) Availability and quality of sports information personnel;
- (2) Access to other publicity resources for men's and women's programs; and
- (3) Quantity and quality of publications and other promotional devices featuring men's and women's programs.

4. *Application of the Policy—Other Factors* (§ 86.41(c)). a. *Recruitment of Student Athletes.*¹ The athletic

¹ Public undergraduate institutions are also subject to the general anti-discrimination provision at § 86.23 of the regulation, which reads in part:

"A recipient . . . shall not discriminate on the basis of sex in the recruitment and admission of

recruitment practices of institutions often affect the overall provision of opportunity to male and female athletes. Accordingly, where equal athletic opportunities are not present for male and female students, compliance will be assessed by examining the recruitment practices of the athletic programs for both sexes to determine whether the provision of equal opportunity will require modification of those practices.

Such examinations will review the following factors:

- (1) Whether coaches or other professional athletic personnel in the programs serving male and female athletes are provided with substantially equal opportunities to recruit;
- (2) Whether the financial and other resources made available for recruitment in male and female athletic programs are equivalently adequate to meet the needs of each program; and
- (3) Whether the differences in benefits, opportunities, and treatment afforded prospective student athletes of each sex have a disproportionately limiting effect upon the recruitment of students of either sex.

b. *Provision of Support Services.* The administrative and clerical support provided to an athletic program can affect the overall provision of opportunity to male and female athletes, particularly to the extent that the provided services enable coaches to perform better their coaching functions.

In the provision of support services, compliance will be assessed by examining, among other factors, the equivalence of:

- (1) The amount of administrative assistance provided to men's and women's programs;
- (2) The amount of secretarial and clerical assistance provided to men's and women's programs.

5. *Overall Determination of Compliance.* The Department will base its compliance determination under § 86.41(c) of the regulation upon an examination of the following:

- a. Whether the policies of an institution are discriminatory in language or effect; or
- b. Whether disparities of a substantial and unjustified nature exist in the benefits, treatment, services, or opportunities afforded male and female

students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action . . . and may choose to undertake such efforts as affirmative action . . .

Accordingly, institutions subject to § 86.23 are required in all cases to maintain equivalently effective recruitment programs for both sexes and, under § 86.41(c), to provide equivalent benefits, opportunities, and treatment to student athletes of both sexes.

athletes in the institution's program as a whole; or

c. Whether disparities in benefits, treatment, services, or opportunities in individual segments of the program are substantial enough in and of themselves to deny equality of athletic opportunity.

C. *Effective Accommodation of Student Interests and Abilities.*

1. *The Regulation.* The regulation requires institutions to accommodate effectively the interests and abilities of students to the extent necessary to provide equal opportunity in the selection of sports and levels of competition available to members of both sexes.

Specifically, the regulation, at § 86.41(c)(1), requires the Director to consider, when determining whether equal opportunities are available—

Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes.

Section 86.41(c) also permits the Director of the Office for Civil Rights to consider other factors in the determination of equal opportunity. Accordingly, this section also addresses competitive opportunities in terms of the competitive team schedules available to athletes of both sexes.

2. *The Policy.* The Department will assess compliance with the interests and abilities section of the regulation by examining the following factors:

- a. The determination of athletic interests and abilities of students;
- b. The selection of sports offered; and
- c. The levels of competition available including the opportunity for team competition.

3. *Application of the Policy—Determination of Athletic Interests and Abilities.*

Institutions may determine the athletic interests and abilities of students by nondiscriminatory methods of their choosing provided:

- a. The processes take into account the nationally increasing levels of women's interests and abilities;
- b. The methods of determining interest and ability do not disadvantage the members of an underrepresented sex;
- c. The methods of determining ability take into account team performance records; and
- d. The methods are responsive to the expressed interests of students capable of intercollegiate competition who are members of an underrepresented sex.

4. *Application of the Policy—Selection of Sports.*

In the selection of sports, the regulation does not require institutions

to integrate their teams nor to provide exactly the same choice of sports to men and women. However, where an institution sponsors a team in a particular sport for members of one sex, it may be required either to permit the excluded sex to try out for the team or to sponsor a separate team for the previously excluded sex.

a. **Contact Sports**—Effective accommodation means that if an institution sponsors a team for members of one sex in a contact sport, it must do so for members of the other sex under the following circumstances:

(1) The opportunities for members of the excluded sex have historically been limited; and

(2) There is sufficient interest and ability among the members of the excluded sex to sustain a viable team and a reasonable expectation of intercollegiate competition for that team.

b. **Non-Contact Sports**—Effective accommodation means that if an institution sponsors a team for members of one sex in a non-contact sport, it must do so for members of the other sex under the following circumstances:

(1) The opportunities for members of the excluded sex have historically been limited;

(2) There is sufficient interest and ability among the members of the excluded sex to sustain a viable team and a reasonable expectation of intercollegiate competition for that team; and

(3) Members of the excluded sex do not possess sufficient skill to be selected for a single integrated team, or to compete actively on such a team if selected.

5. **Application of the Policy—Levels of Competition.**

In effectively accommodating the interests and abilities of male and female athletes, institutions must provide both the opportunity for individuals of each sex to participate in intercollegiate competition, and for athletes of each sex to have competitive team schedules which equally reflect their abilities.

a. Compliance will be assessed in any one of the following ways:

(1) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or

(2) Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest

and abilities of the members of that sex; or

(3) Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

b. Compliance with this provision of the regulation will also be assessed by examining the following:

(1) Whether the competitive schedules for men's and women's teams, on a program-wide basis, afford proportionally similar numbers of male and female athletes equivalently advanced competitive opportunities; or

(2) Whether the institution can demonstrate a history and continuing practice of upgrading the competitive opportunities available to the historically disadvantaged sex as warranted by developing abilities among the athletes of that sex.

c. Institutions are not required to upgrade teams to intercollegiate status or otherwise develop intercollegiate sports absent a reasonable expectation that intercollegiate competition in that sport will be available within the institution's normal competitive regions. Institutions may be required by the Title IX regulation to actively encourage the development of such competition, however, when overall athletic opportunities within that region have been historically limited for the members of one sex.

6. **Overall Determination of Compliance.**

The Department will base its compliance determination under § 86.41(c) of the regulation upon a determination of the following:

a. Whether the policies of an institution are discriminatory in language or effect; or

b. Whether disparities of a substantial and unjustified nature in the benefits, treatment, services, or opportunities afforded male and female athletes exist in the institution's program as a whole; or

c. Whether disparities in individual segments of the program with respect to benefits, treatment, services, or opportunities are substantial enough in and of themselves to deny equality of athletic opportunity.

VIII. **The Enforcement Process**

The process of Title IX enforcement is set forth in § 86.71 of the Title IX regulation, which incorporates by reference the enforcement procedures applicable to Title VI of the Civil Rights

Act of 1964.⁸ The enforcement process prescribed by the regulation is supplemented by an order of the Federal District Court, District of Columbia, which establishes time frames for each of the enforcement steps.⁹

According to the regulation, there are two ways in which enforcement is initiated:

• **Compliance Reviews**—Periodically the Department must select a number of recipients (in this case, colleges and universities which operate intercollegiate athletic programs) and conduct investigations to determine whether recipients are complying with Title IX. (45 CFR 80.7(a))

• **Complaints**—The Department must investigate all valid (written and timely) complaints alleging discrimination on the basis of sex in a recipient's programs. (45 CFR 80.7(b))

The Department must inform the recipient (and the complainant, if applicable) of the results of its investigation. If the investigation indicates that a recipient is in compliance, the Department states this, and the case is closed. If the investigation indicates noncompliance, the Department outlines the violations found.

The Department has 90 days to conduct an investigation and inform the recipient of its findings, and an additional 90 days to resolve violations by obtaining a voluntary compliance agreement from the recipient. This is done through negotiations between the Department and the recipient, the goal of which is agreement on steps the recipient will take to achieve compliance. Sometimes the violation is relatively minor and can be corrected immediately. At other times, however, the negotiations result in a plan that will correct the violations within a specified period of time. To be acceptable, a plan must describe the manner in which institutional resources will be used to correct the violation. It also must state acceptable time tables for reaching interim goals and full compliance. When agreement is reached, the Department notifies the institution that its plan is acceptable. The Department then is obligated to review periodically the implementation of the plan.

An institution that is in violation of Title IX may already be implementing a corrective plan. In this case, prior to informing the recipient about the results of its investigation, the Department will determine whether the plan is adequate.

⁸ These procedures may be found at 45 CFR 80.6-80.11 and 45 CFR Part 81.

⁹ *WEAL v. Harris*, Civil Action No. 74-1720 (D. C. D.C. December 28, 1977)

If the plan is not adequate to correct the violations (or to correct them within a reasonable period of time) the recipient will be found in noncompliance and voluntary negotiations will begin. However, if the institutional plan is acceptable, the Department will inform the institution that although the institution has violations, it is found to be in compliance because it is implementing a corrective plan. The Department, in this instance also, would monitor the progress of the institutional plan. If the institution subsequently does not completely implement its plan, it will be found in noncompliance.

When a recipient is found in noncompliance and voluntary compliance attempts are unsuccessful, the formal process leading to termination of Federal assistance will be begun. These procedures, which include the opportunity for a hearing before an administrative law judge, are set forth at 45 CFR 80.9-80.11 and 45 CFR Part 81.

IX. Authority

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374, 20 U.S.C. 1681, 1682, sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 612; and 45 CFR Part 88)

Dated: December 3, 1979.

Roma Stewart,

Director, Office for Civil Rights, Department of Health, Education, and Welfare.

Dated: December 4, 1979.

Patricia Roberts Harris,

Secretary, Department of Health, Education, and Welfare.

Appendix A—Historic Patterns of Intercollegiate Athletics Program Development

1. Participation in intercollegiate sports has historically been emphasized for men but not women. Partially as a consequence of this, participation rates of women are far below those of men. During the 1977-78 academic year women students accounted for 48 percent of the national undergraduate enrollment (5,496,000 of 11,287,000 students).¹ Yet, only 30 percent of the intercollegiate athletes are women.²

The historic emphasis on men's intercollegiate athletic programs has also contributed to existing differences in the number of sports and scope of competition offered men and women. One source indicates that, on the average, colleges and universities are

providing twice the number of sports for men as they are for women.³

2. Participation by women in sports is growing rapidly. During the period from 1971-1978, for example, the number of female participants in organized high school sports increased from 294,000 to 2,083,000—an increase of over 600 percent.⁴ In contrast, between Fall 1971 and Fall 1977, the enrollment of females in high school decreased from approximately 7,800,000 to approximately 7,150,000 a decrease of over 5 percent.⁵

The growth in athletic participation by high school women has been reflected on the campuses of the nation's colleges and universities. During the period from 1971 to 1978 the enrollment of women in the nation's institutions of higher education rose 52 percent, from 3,400,000 to 5,201,000.⁶ During this same period, the number of women participating in intramural sports increased 108 percent from 276,167 to 576,167. In club sports, the number of women participants increased from 16,388 to 25,541 or 55 percent. In intercollegiate sports, women's participation increased 102 percent from 31,832 to 64,375.⁷ These developments reflect the growing interest of women in competitive athletics, as well as the efforts of colleges and universities to accommodate those interests.

3. The overall growth of women's intercollegiate programs has not been at the expense of men's programs. During the past decade of rapid growth in women's programs, the number of intercollegiate sports available for men has remained stable, and the number of male athletes has increased slightly. Funding for men's programs has increased from \$1.2 to \$2.2 million between 1970-1977 alone.⁸

4. On most campuses, the primary problem confronting women athletes is

the absence of a fair and adequate level of resources, services, and benefits. For example, disproportionately more financial aid has been made available for male athletes than for female athletes. Presently, in institutions that are members of both the National Collegiate Athletic Association (NCAA) and the Association for Intercollegiate Athletics for Women (IAAW), the average annual scholarship budget is \$39,000. Male athletes receive \$32,000 or 78 percent of this amount, and female athletes receive \$7,000 or 22 percent, although women are 30 percent of all the athletes eligible for scholarships.⁹

Likewise, substantial amounts have been provided for the recruitment of male athletes, but little funding has been made available for recruitment of female athletes.

Congressional testimony on Title IX and subsequent surveys indicates that discrepancies also exist in the opportunity to receive coaching and in other benefits and opportunities, such as the quality and amount of equipment, access to facilities and practice times, publicity, medical and training facilities, and housing and dining facilities.¹⁰

5. At several institutions, intercollegiate football is unique among sports. The size of the teams, the expense of the operation, and the revenue produced distinguish football from other sports, both men's and women's. Title IX requires that "an institution of higher education must comply with the prohibition against sex discrimination imposed by that title and its implementing regulations in the administration of any revenue producing intercollegiate athletic activity."¹¹ However, the unique size and cost of football programs have been taken into account in developing this Policy Interpretation.

Appendix B—Comments and Responses

The Office for Civil Rights (OCR) received over 700 comments and recommendations in response to the December 11, 1978 publication of the proposed Policy Interpretation. After the formal comment period, representatives of the Department met for additional discussions with many individuals and

¹ Figures obtained from *IAAW Structure Implementation Survey Data Summary*, October, 1978, p. 11.

² 121 Cong. Rec. 29791-96 (1975) (remarks of Senator Williams); Comments by Senator Bayh, Hearings on S. 2106 Before the Subcommittee on Education of the Senate Committee on Labor and Public Welfare, 94th Congress, 1st Session 48 (1975); "Survey of Women's Athletic Directors," IAAW Workshop (January 1978).

³ See April 18, 1978, Opinion of General Counsel, Department of Health, Education, and Welfare, page 1.

⁴ U.S. Commission on Civil Rights, Comments to DHEW on proposed Policy Interpretation: Analysis of data supplied by the National Association of Directors of Collegiate Athletics.

⁵ Figures obtained from National Federation of High School Associations (NFHS) data.

⁶ *Digest of Education Statistics 1977-78*, National Center for Education Statistics (1978), Table 40, at 44. Data, by sex, are unavailable for the period from 1971 to 1977; consequently, these figures represent 50 percent of total enrollment for that period. This is the best comparison that could be made based on available data.

⁷ *Ibid.*, p. 112.

⁸ These figures, which are not precisely comparable to those cited at footnote 2, were obtained from *Sports and Recreational Programs of the Nation's Universities and Colleges*, NCAA Report No. 1, March 1978. It includes figures only from the 722 NCAA member institutions because comparable data was not available from other associations.

⁹ Compiled from *NCAA Revenues and Expenses for Intercollegiate Athletic Programs*, 1978.

¹ *The Condition of Education 1978*, National Center for Education Statistics, p. 112.

² Figure obtained from Association for Intercollegiate Athletics for Women (IAAW) member survey, *IAAW Structure Implementation Survey Data Summary*, October 1978, p. 11.

groups including college and university officials, athletic associations, athletic directors, women's rights organizations and other interested parties. HEW representatives also visited eight universities in order to assess the potential of the proposed Policy Interpretation and of suggested alternative approaches for effective enforcement of Title IX.

The Department carefully considered all information before preparing the final policy. Some changes in the structure and substance of the Policy Interpretation have been made as a result of concerns that were identified in the comment and consultation process.

Persons who responded to the request for public comment were asked to comment generally and also to respond specifically to eight questions that focused on different aspects of the proposed Policy Interpretation.

Question No. 1: Is the description of the current status and development of intercollegiate athletics for men and women accurate? What other factors should be considered?

Comment A: Some commentators noted that the description implied the presence of intent on the part of all universities to discriminate against women. Many of these same commentators noted an absence of concern in the proposed Policy Interpretation for those universities that have in good faith attempted to meet what they felt to be a vague compliance standard in the regulation.

Response: The description of the current status and development of intercollegiate athletics for men and women was designed to be a factual, historical overview. There was no intent to imply the universal presence of discrimination. The Department recognizes that there are many colleges and universities that have been and are making good faith efforts, in the midst of increasing financial pressures, to provide equal athletic opportunities to their male and female athletes.

Comment B: Commentors stated that the statistics used were outdated in some areas, incomplete in some areas, and inaccurate in some areas.

Response: Comment accepted. The statistics have been updated and corrected where necessary.

Question No. 2: Is the proposed two-stage approach to compliance practical? Should it be modified? Are there other approaches to be considered?

Comment: Some commentators stated that Part II of the proposed Policy Interpretation "Equally Accommodating the Interests and Abilities of Women" represented an extension of the July

1978, compliance deadline established in § 88.41(d) of the Title IX regulation.

Response: Part II of the proposed Policy Interpretation was not intended to extend the compliance deadline. The format of the two stage approach, however, seems to have encouraged that perception; therefore, the elements of both stages have been unified in this Policy Interpretation.

Question No. 3: Is the equal average per capita standard based on participation rates practical? Are there alternatives or modifications that should be considered?

Comment A: Some commentators stated it was unfair or illegal to find noncompliance solely on the basis of a financial test when more valid indicators of equality of opportunity exist.

Response: The equal average per capita standard was not a standard by which noncompliance could be found. It was offered as a standard of presumptive compliance. In order to prove noncompliance, HEW would have been required to show that the unexplained disparities in expenditures were discriminatory in effect. The standard, in part, was offered as a means of simplifying proof of compliance for universities. The widespread confusion concerning the significance of failure to satisfy the equal average per capita expenditure standard, however, is one of the reasons it was withdrawn.

Comment B: Many commentators stated that the equal average per capita standard penalizes those institutions that have increased participation opportunities for women and rewards institutions that have limited women's participation.

Response: Since equality of average per capita expenditures has been dropped as a standard of presumptive compliance, the question of its effect is no longer relevant. However, the Department agrees that universities that had increased participation opportunities for women and wished to take advantage of the presumptive compliance standard, would have had a bigger financial burden than universities that had done little to increase participation opportunities for women.

Question No. 4: Is there a basis for treating part of the expenses of a particular revenue producing sport differently because the sport produces income used by the university for non-athletic operating expenses on a non-discriminatory basis? If, so, how should such funds be identified and treated?

Comment: Commentors stated that this question was largely irrelevant because there were so few universities

at which revenue from the athletic program was used in the university operating budget.

Response: Since equality of average per capita expenditures has been dropped as a standard of presumed compliance, a decision is no longer necessary on this issue.

Question No. 5: Is the grouping of financially measurable benefits into three categories practical? Are there alternatives that should be considered? Specifically, should recruiting expenses be considered together with all other financially measurable benefits?

Comment A: Most commentators stated that, if measured solely on a financial standard, recruiting should be grouped with the other financially measurable items. Some of these commentators held that at the current stage of development of women's intercollegiate athletics, the amount of money that would flow into the women's recruitment budget as a result of separate application of the equal average per capita standard to recruiting expenses, would make recruitment a disproportionately large percentage of the entire women's budget. Women's athletic directors, particularly, wanted the flexibility to have the money available for other uses, and they generally agreed on including recruitment expenses with the other financially measurable items.

Comment B: Some commentators stated that it was particularly inappropriate to base any measure of compliance in recruitment solely on financial expenditures. They stated that even if proportionate amounts of money were allocated to recruitment, major inequities could remain in the benefits to athletes. For instance, universities could maintain a policy of subsidizing visits to their campuses of prospective students of one sex but not the other. Commentors suggested that including an examination of differences in benefits to prospective athletes that result from recruiting methods would be appropriate.

Response: In the final Policy Interpretation, recruitment has been moved to the group of program areas to be examined under § 88.41(c) to determine whether overall equal athletic opportunity exists. The Department accepts the comment that a financial measure is not sufficient to determine whether equal opportunity is being provided. Therefore, in examining athletic recruitment, the Department will primarily review the opportunity to recruit, the resources provided for recruiting, and methods of recruiting.

Question No. 6: Are the factors used to justify differences in equal average per capita expenditures for financially

measurable benefits and opportunities fair? Are there other factors that should be considered?

Comment: Most commentors indicated that the factors named in the proposed Policy Interpretation (the "scope of competition" and the "nature of the sport") as justifications for differences in equal average per capita expenditures were so vague and ambiguous as to be meaningless. Some stated that it would be impossible to define the phrase "scope of competition", given the greatly differing competitive structure of men's and women's programs. Other commentors were concerned that the "scope of competition" factor that may currently be designated as "non-discriminatory" was, in reality, the result of many years of inequitable treatment of women's athletic programs.

Response: The Department agrees that it would have been difficult to define clearly and then to quantify the "scope of competition" factor. Since equal average per capita expenditures has been dropped as a standard of presumed compliance, such financial justifications are no longer necessary. Under the equivalency standard, however, the "nature of the sport" remains an important concept. As explained within the Policy Interpretation, the unique nature of a sport may account for perceived inequities in some program areas.

Question No. 7: Is the comparability standard for benefits and opportunities that are not financially measurable fair and realistic? Should other factors controlling comparability be included? Should the comparability standard be revised? Is there a different standard which should be considered?

Comment: Many commentors stated that the comparability standard was fair and realistic. Some commentors were concerned, however, that the standard was vague and subjective and could lead to uneven enforcement.

Response: The concept of comparing the non-financially measurable benefits and opportunities provided to male and female athletes has been preserved and expanded in the final Policy Interpretation to include all areas of examination except scholarships and accommodation of the interests and abilities of both sexes. The standard is that equivalent benefits and opportunities must be provided. To avoid vagueness and subjectivity, further guidance is given about what elements will be considered in each program area to determine the equivalency of benefits and opportunities.

Question No. 8: Is the proposal for increasing the opportunity for women to

participate in competitive athletics appropriate and effective? Are there other procedures that should be considered? Is there a more effective way to ensure that the interest and abilities of both men and women are equally accommodated?

Comment: Several commentors indicated that the proposal to allow a university to gain the status of presumed compliance by having policies and procedures to encourage the growth of women's athletics was appropriate and effective for future students, but ignored students presently enrolled. They indicated that nowhere in the proposed Policy Interpretation was concern shown that the current selection of sports and levels of competition effectively accommodate the interests and abilities of women as well as men.

Response: Comment accepted. The requirement that universities equally accommodate the interests and abilities of their male and female athletes (Part II of the proposed Policy Interpretation) has been directly addressed and is now a part of the unified final Policy Interpretation.

Additional Comments

The following comments were not responses to questions raised in the proposed Policy Interpretation. They represent additional concerns expressed by a large number of commentors.

(1) *Comment:* Football and other "revenue producing" sports should be totally exempted or should receive special treatment under Title IX.

Response: The April 18, 1978, opinion of the General Counsel, HEW, concludes that "an institution of higher education must comply with the prohibition against sex discrimination imposed by that title and its implementing regulation in the administration of any revenue producing activity". Therefore, football or other "revenue producing" sports cannot be exempted from coverage of Title IX.

In developing the proposed Policy Interpretation the Department concluded that although the fact of revenue production could not justify disparity in average per-capita expenditure between men and women, there were characteristics common to most revenue producing sports that could result in legitimate non-discriminatory differences in per capita expenditures. For instance, some "revenue producing" sports require expensive protective equipment and most require high expenditures for the management of events attended by large numbers of people. These characteristics and others described in the proposed Policy Interpretation were

considered acceptable, non-discriminatory reasons for differences in per capita average expenditures.

In the final Policy Interpretation, under the equivalent benefits and opportunities standard of compliance, some of these non-discriminatory factors are still relevant and applicable.

(2) *Comment:* Commentors stated that since the equal average per capita standard of presumed compliance was based on participation rates, the word should be explicitly defined.

Response: Although the final Policy Interpretation does not use the equal average per capita standard of presumed compliance, a clear understanding of the word "participant" is still necessary, particularly in the determination of compliance where scholarships are involved. The word "participant" is defined in the final Policy Interpretation.

(3) *Comment:* Many commentors were concerned that the proposed Policy Interpretation neglected the rights of individuals.

Response: The proposed Policy Interpretation was intended to further clarify what colleges and universities must do within their intercollegiate athletic programs to avoid discrimination against individuals on the basis of sex. The Interpretation, therefore, spoke to institutions in terms of their male and female athletes. It spoke specifically in terms of equal, average per capita expenditures and in terms of comparability of other opportunities and benefits for male and female participating athletes.

The Department believes that under this approach the rights of individuals were protected. If women athletes, as a class, are receiving opportunities and benefits equal to those of male athletes, individuals within the class should be protected thereby. Under the proposed Policy Interpretation, for example, if female athletes as a whole were receiving their proportional share of athletic financial assistance, a university would have been presumed in compliance with that section of the regulation. The Department does not want and does not have the authority to force universities to offer identical programs to men and women. Therefore, to allow flexibility within women's programs and within men's programs, the proposed Policy Interpretation stated that an institution would be presumed in compliance if the average per capita expenditures on athletic scholarships for men and women, were equal. This same flexibility (in scholarships and in other areas) remains in the final Policy Interpretation.

(4) *Comment:* Several commentors stated that the provision of a separate dormitory to athletes of only one sex, even where no other special benefits were involved, is inherently discriminatory. They felt such separation indicated the different degrees of importance attached to athletes on the basis of sex.

Response: Comment accepted. The provision of a separate dormitory to athletes of one sex but not the other will be considered a failure to provide equivalent benefits as required by the regulation.

(5) *Comment:* Commentors, particularly colleges and universities, expressed concern that the differences in the rules of intercollegiate athletic associations could result in unequal distribution of benefits and opportunities to men's and women's athletic programs, thus placing the institutions in a posture of noncompliance with Title IX.

Response: Commentors made this point with regard to § 86.6(c) of the Title IX regulation, which reads in part:

"The obligation to comply with (Title IX) is not obligated or alleviated by any rule or regulation of any . . . athletic or other . . . association . . ."

Since the penalties for violation of intercollegiate athletic association rules can have a severe effect on the athletic opportunities within an affected program, the Department has re-examined this regulatory requirement to determine whether it should be modified. Our conclusion is that modification would not have a beneficial effect, and that the present requirement will stand.

Several factors enter into this decision. First, the differences between rules affecting men's and women's programs are numerous and change constantly. Despite this, the Department has been unable to discover a single case in which those differences require members to act in a discriminatory manner. Second, some rule differences may permit decisions resulting in discriminatory distribution of benefits and opportunities to men's and women's programs. The fact that institutions respond to differences in rules by choosing to deny equal opportunities, however, does not mean that the rules themselves are at fault; the rules do not prohibit choices that would result in compliance with Title IX. Finally, the rules in question are all established and subject to change by the membership of the association. Since all (or virtually all) association member institutions are subject to Title IX, the opportunity exists for these institutions to resolve

collectively any wide-spread Title IX compliance problems resulting from association rules. To the extent that this has not taken place, Federal intervention on behalf of statutory beneficiaries is both warranted and required by the law. Consequently, the Department can follow no course other than to continue to disallow any defenses against findings of noncompliance with Title IX that are based on intercollegiate athletic association rules.

(6) *Comment:* Some commentors suggested that the equal average per capita test was unfairly skewed by the high cost of some "major" men's sports, particularly football, that have no equivalently expensive counterpart among women's sports. They suggested that a certain percentage of those costs (e.g., 50% of football scholarships) should be excluded from the expenditures on male athletes prior to application of the equal average per capita test.

Response: Since equality of average per capita expenditures has been eliminated as a standard of presumed compliance, the suggestion is no longer relevant. However, it was possible under that standard to exclude expenditures that were due to the nature of the sport, or the scope of competition and thus were not discriminatory in effect. Given the diversity of intercollegiate athletic programs, determinations as to whether disparities in expenditures were nondiscriminatory would have been made on a case-by-case basis. There was no legal support for the proposition that an arbitrary percentage of expenditures should be excluded from the calculations.

(7) *Comment:* Some commentors urged the Department to adopt various forms of team-based comparisons in assessing equality of opportunity between men's and women's athletic programs. They stated that well-developed men's programs are frequently characterized by a few "major" teams that have the greatest spectator appeal, earn the greatest income, cost the most to operate, and dominate the program in other ways. They suggested that women's programs should be similarly constructed and that comparability should then be required only between "men's major" and "women's major" teams, and between "men's minor" and "women's minor" teams. The men's teams most often cited as appropriate for "major" designation have been football and basketball, with women's basketball and volleyball being frequently selected as the counterparts.

Response: There are two problems with this approach to assessing equal

opportunity. First, neither the statute nor the regulation calls for identical programs for male and female athletes. Absent such a requirement, the Department cannot base noncompliance upon a failure to provide arbitrarily identical programs, either in whole or in part.

Second, no subgrouping of male or female students (such as a team) may be used in such a way as to diminish the protection of the larger class of males and females in their rights to equal participation in educational benefits or opportunities. Use of the "major/minor" classification does not meet this test: where large participation sports (e.g., football) are compared to smaller ones (e.g., women's volleyball) in such a manner as to have the effect of disproportionately providing benefits or opportunities to the members of one sex.

(8) *Comment:* Some commentors suggest that equality of opportunity should be measured by a "sport-specific" comparison. Under this approach, institutions offering the same sports to men and women would have an obligation to provide equal opportunity within each of those sports. For example, the men's basketball team and the women's basketball team would have to receive equal opportunities and benefits.

Response: As noted above, there is no provision for the requirement of identical programs for men and women, and no such requirement will be made by the Department. Moreover, a sport-specific comparison could actually create unequal opportunity. For example, the sports available for men at an institution might include most or all of those available for women; but the men's program might concentrate resources on sports not available to women (e.g., football, ice hockey). In addition, the sport-specific concept overlooks two key elements of the Title IX regulation.

First, the regulation states that the selection of sports is to be representative of student interests and abilities (86.41(c)(1)). A requirement that sports for the members of one sex be available or developed solely on the basis of their existence or development in the program for members of the other sex could conflict with the regulation where the interests and abilities of male and female students diverge.

Second, the regulation frames the general compliance obligations of recipients in terms of program-wide benefits and opportunities (86.41(c)). As implied above, Title IX protects the individual as a student-athlete, not as a basketball player, or swimmer.

(9) *Comment:* A coalition of many colleges and universities urged that there are no objective standards against which compliance with Title IX in intercollegiate athletics could be measured. They felt that diversity is so great among colleges and universities that no single standard or set of standards could practicably apply to all affected institutions. They concluded that it would be best for individual institutions to determine the policies and procedures by which to ensure nondiscrimination in intercollegiate athletic programs.

Specifically, this coalition suggested that each institution should create a group representative of all affected parties on campus.

This group would then assess existing athletic opportunities for men and women, and, on the basis of the assessment, develop a plan to ensure nondiscrimination. This plan would then be recommended to the Board of Trustees or other appropriate governing body.

The role foreseen for the Department under this concept is:

(a) The Department would use the plan as a framework for evaluating complaints and assessing compliance;

(b) The Department would determine whether the plan satisfies the interests of the involved parties; and

(c) The Department would determine whether the institution is adhering to the plan.

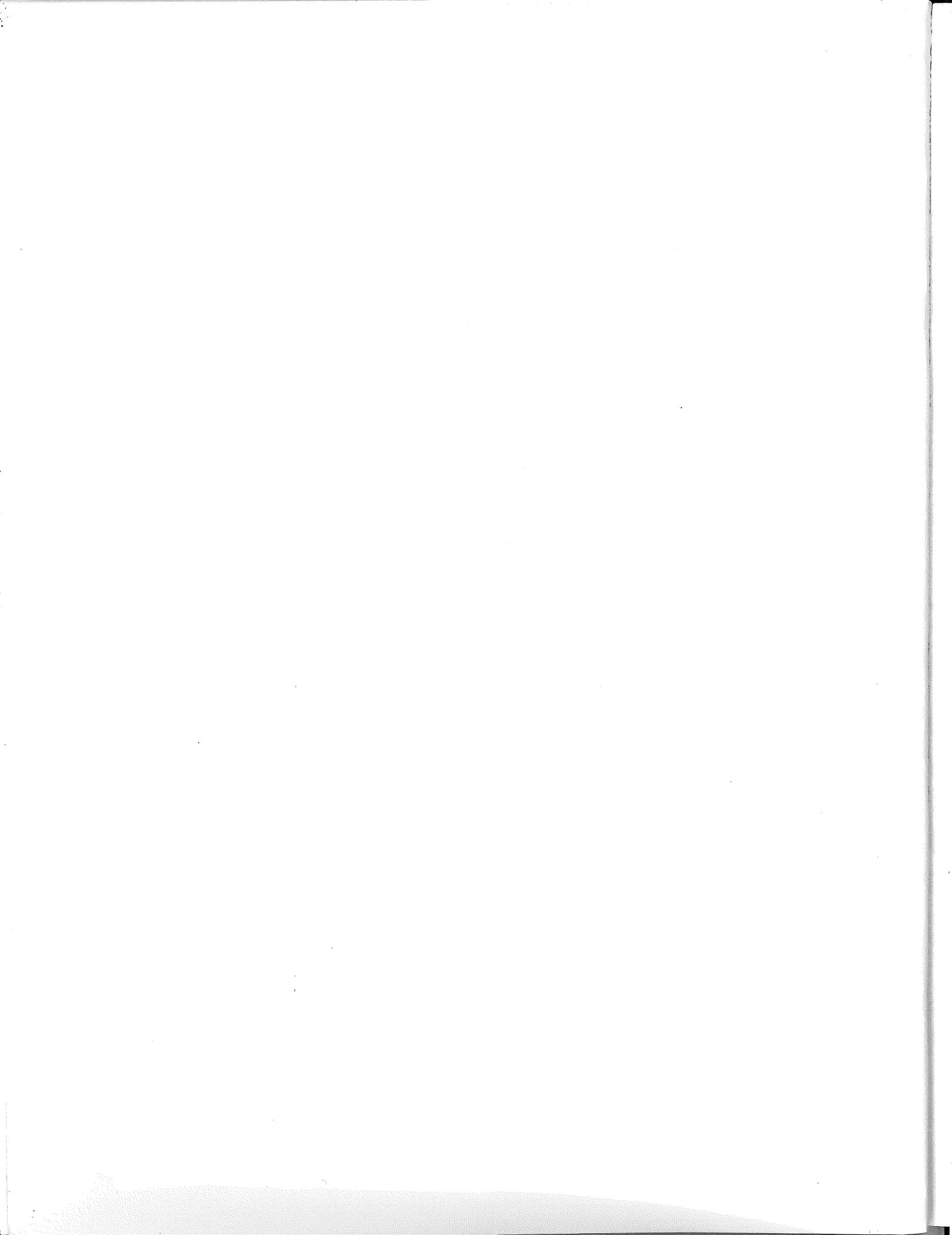
These commenters felt that this approach to Title IX enforcement would ensure an environment of equal opportunity.

Response: Title IX is an anti-discrimination law. It prohibits discrimination based on sex in educational institutions that are recipients of Federal assistance. The legislative history of Title IX clearly shows that it was enacted because of discrimination that currently was being practiced against women in educational institutions. The Department accepts that colleges and universities are sincere in their intention to ensure equal opportunity in intercollegiate athletics to their male and female students. It cannot, however, turn over its responsibility for interpreting and enforcing the law. In this case, its responsibility includes articulating the standards by which compliance with the Title IX statute will be evaluated.

The Department agrees with this group of commenters that the proposed self-assessment and institutional plan is an excellent idea. Any institution that engages in the assessment/planning process, particularly with the full participation of interested parties as

envisioned in the proposal, would clearly reach or move well toward compliance. In addition, as explained in Section VIII of this Policy Interpretation, any college or university that has compliance problems but is implementing a plan that the Department determines will correct those problems within a reasonable period of time, will be found in compliance.

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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

DEC 1 1992

Dear Colleague:

This year marks the twentieth anniversary of Title IX of the Education Amendments of 1972 (Title IX), which prohibits sex discrimination in federally assisted education programs. This historic civil rights law has helped bring about profound changes in American education and improved the educational opportunities of millions of youngsters.

The results of Title IX are seen in the growing participation of women and girls in all aspects of American education. For example, Title IX has helped girls and women to realize the benefits and educational opportunities of athletics programs. A year before Title IX became law, only 294,000 girls played high school sports. Today, that number is 2 million. At the college level, the number of female athletes has grown from 32,000 to 120,000.

While we applaud this progress, there is still much to do. The Office for Civil Rights (OCR) of the U.S. Department of Education has instituted a National Enforcement Strategy designed to help protect equal educational opportunity for all students. Nondiscrimination on the basis of sex in athletics programs is one of OCR's priority issues under the National Enforcement Strategy. A copy of OCR's National Enforcement Strategy is enclosed for your information.

The regulation implementing Title IX contains specific provisions related to school athletics (enclosed for your reference). The Title IX regulation states that no student may be excluded from participation, denied benefits, or treated differently from another student on the basis of sex in interscholastic, intramural, or club sports offered by a school or school district. A number of factors are considered when determining whether equal opportunities are available for students of both sexes. These factors are explained in the Intercollegiate Athletics Policy Interpretation issued December 11, 1979, which was developed to provide further guidance on what constitutes compliance with the Title IX regulation. Although the Policy Interpretation addressed intercollegiate athletics, its principles often apply to interscholastic, intramural, and club athletics. A copy is enclosed for your information.

As the director of your high school athletic association, you can directly advance equal athletic opportunities by encouraging schools and school districts in your State to review their athletics programs for Title IX compliance. Some schools have used

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our Title IX Athletics Investigator's Manual to conduct self-evaluations, although it was drafted specifically for OCR investigations. I have enclosed a copy of the Manual for your reference.

I appreciate your efforts to enhance opportunities for female athletes in your State. If staff in your association or the school districts have any questions about the requirements of Title IX, they should feel free to contact the OCR Regional Office that serves your State for information and technical assistance. For your convenience, I am enclosing a list of our Regional Offices.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael L. Williams". The signature is fluid and cursive, with a large initial "M" and "L".

Michael L. Williams
Assistant Secretary
for Civil Rights

Enclosures