



League of Women Voters of Minnesota Records

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Sex Equity

Statement, League of Women Voters of Minnesota,
for the ~~Special State Board~~ Seminar, Minnesota State Department of Education
June 30, 1980
by Elizabeth Ebbott, Chairperson, Girls' Athletic Project, LWR of Mn (?)

Two years ago the League of Women Voters of Minnesota began a project of assisting local Leagues in studying the treatment of girls in athletic programs within their local communities. Forty local Leagues participated, looking at 44 school districts as well as other agencies with athletic programs. ~~The purpose was to evaluate the programs serving that community. Was there compliance with the laws? Athletics is a highly visible area of life where there has been long-standing patterns of discrimination based on sex. If equality had not yet been achieved, the purpose was to involve the community in bringing about compliance.~~ The local Leagues reported on ^{Local League reports} what they did, what they found out, and what happened. From the responses, the ^{Study} report, What's the Score in Minnesota? was prepared last fall by the League of ~~Women Voters of Minnesota.~~ ^{Was previously provided to the Bd - have extra copies -}

The findings pertaining to schools, varied with the three different categories:

- 1) Interscholastic sports as exemplified by the Minnesota State High School League programs.
- 2) Physical education classes.
- 3) Programs for elementary age children.

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1) Interscholastic sports, ^{are the most visible, and are the easiest to evaluate.} ~~are the most visible, and are the easiest to evaluate.~~ ^{very} ^{relatively easy}
Many good things have been and are continuing to happen. There are greatly increased opportunities and girls' participation is expanding rapidly. However, the findings showed that much more is needed. The goal is not better treatment but equal treatment and this has not yet been achieved, ~~no~~ ^{no} matter what measuring stick is used. Equal dollars are not being spent on programs for girls and programs for boys. Participation numbers are not equal. Opportunities to participate are not equal. Offerings per season are not equal. Team sport offerings are not equal. Opportunities to play during prime time Friday nights are not equal. While there is variation among these various measuring standards and variation among schools, girls'

share of the athletic programs is only about 33% to 40%. Presumably girls are about 50% of the population being served by the schools.

There is still a ways to go and Leagues reported a fear that the momentum will be lost. ~~There were comments like:~~

~~... "We've come a long way is also an excuse for not going further."~~

~~... "Everyone points out how much progress has been made. Changes have not come easily, and further changes are viewed with hesitation. Most people seemed to feel that the additions made are about all that they want to see made."~~

~~... "Boys feel their programs are threatened. The community feels it is unrealistic to expect absolute equality."~~

~~Problems of declining enrollments and the need for cut backs are important issues facing local schools, but they should not be linked to denying equal rights to girls. It is not equal to cut out a boys' team and a girls' team in the same sport. The participation loss to girls will be far greater than the cut for boys since it represents a much larger portion of the fewer offerings girls have available.~~

2) Physical education classes ~~are co-ed at~~ the elementary ~~level, have been coed "for ever",~~ according to one League report. ~~There appeared to be~~ very little problem with these programs. ~~At the secondary level, the Leagues found examples of very poor compliance.~~ There were teachers who said flatly that they "did not teach girls". In several instances ~~there~~ a great deal of sexual bias was obvious. Those holding and expressing such attitudes should be made to understand that such views will not be tolerated. Just as with racial minorities, negative attitudes towards girls and their abilities and potentials are very destructive and should not exist in a public education system.

Physical education classes were frequently scheduled at the same time with two teachers. The girls would go with the female teacher, the boys with the male. The instruction was still based on sex, not skill or on some other non-sexist measurement. There were instances of girls sitting on the side lines, not participating because the boys would not let them have the ball. It would seem that the teacher was not being successful in offering a curriculum to help all children develop their skills.

If, as reported, some girls were sitting out because the play was too rough or otherwise not satisfying to them, then it would also be logical to assume that some boys were also finding the ~~an~~ experience unpleasant. There were reports of some schools who had changed their curriculum and were offering sports and athletic opportunities such as badminton, ~~by~~ bicycling, canoeing, orienteering, etc. that were non-sexist and were highly successful in holding the interest level and participation of all students.

3) Elementary programs outside of physical education classes presented the biggest area of non-compliance. The law at the time of the study mandated coed programs with no differentiation because of sex. (The law has now been changed to allow ~~f~~ girls at this age to have a girls' team if they show a demonstrated interest in having a separate sex team. The new law does not leave this decision up to the coaches or administrators and the other provisions of the law remain that programs are to be coed and all other criteria of equal treatment and equal opportunity apply.)

It is doubtful that the change in the law has changed the fact of non-compliance.

The Leagues reported that sports programs run by community groups, who frequently used school facilities, were not complying with the law. They ~~were~~ not only still having "boys" and "girls" teams, but there were considerably fewer opportunities for girls to participate.

A study done by the Minnesota Department of Education in 1979, based on a stratified random sample of 100 elementary schools, showed that only 21% said they offered after-school sports activities on a coed basis; 79% were either totally or some sex separated. When these schools were asked if the laws had affected their program in anyway, 79% said "no". It seems obvious that their programs should have been affected.

Leagues also noted in their studies that the number of women coaches and women physical education teachers were declining. One League reported that for the 1979-1980 school year there would be no female physical education teacher in the school. Affirmative efforts are needed to provide girls with female role models.

→ Many schools have equal pay for coaches, but ^{in some instances} sex differences remain. There were differences based on "physical hazzard" which was used to justify difference in pay between softball and baseball coaches. There were differences based on "audiance pressure" which rewarded the coach for the boys' team which got to play on Friday nights while the girls had to play on less popular ^{audiance} nights.

Equality for girls in athletics is stated in state and federal law. Equality has not yet been achieved, either legally or morally by the schools of the state. Much of the responsibility for ~~deining~~ ^{defining} the laws as well as a major role in enforcement rests with the Minnesota Board of Education. ~~The state~~ ^{Department} has been taking an increasingly larger leadership role in helping schools understand their responsibilities and implementing the laws. To this end there are the on-site reviews and workshops. The Department has also been requiring and collecting the reports that provide the basis of evaluating compliance, and the consolidation and simplifying of the reports is soon to be implemented. Rules had been prepared to explain the previous state law dealing with athletics and work is now underway to draft rules for the revised law. These are good steps and the League of Women Voters commends the efforts being made.

But the basic laws guaranteeing equality to women have been on the books now for many years. Equality is a right. Those being deprived must not be asked to except less than their rights. Those responsible for programs that do not provide equality must understand that attitudes have to change. Budget constraints, past program patterns, community attitudes are not acceptable reasons for denying equality. The State Board of Education and the Department of Education must do more to communicate a sense of urgency to the schools that changes must come now, no more excuses.

In areas of direct Department responsibility, priority should be given to:

- 1) Speedily get the rules explaining the girls' athletic law (MS126.21) finished and ready for public comment. The rules should cover all aspects of the law including "public services". In order to serve the public, it should be made very clear to anyone running a program, whether in school, on school facilities, or

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 on any other public facility that girls are to have equal opportunity rights in all athletic programs.

- 2) The newly designed reports that each school is to file should be carefully scrutinized to see that all objectives are being met. The reports should educate school officials by making it very clear what is expected under the various laws. The reports should be in a form that can easily measure compliance. The reports should be handled so they are readily available to the public. If they are to be stored in the computer system, the public needs to be informed that it can have easy access.

When the local League groups checked the reports locally, they encountered several difficulties that need to be kept in mind as the new process begins. Some Leagues ~~w~~ had great ~~difficu-~~ difficulty in even getting to see the public reports. Many Leagues found the filed reports had errors, were incomplete, and were sloppily done. They found "yes" answers which were not accurate. (One frequent error was saying that the school had an equal number of sports for boys and girls each season. Very few, if any schools have totally equal sports programs.

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The Board of Education should provide sufficient staff to check the reports for accuracy, and definite procedures or rules should be made to insure that the reports are filed by all schools, on time.

The Board of Education should plan to require annual summary totals of the filed material so that the Board, the education profession and the public ~~w~~ can continue to monitor progress. In the sports area it is important to continue to know the total numbers of boys and girls who are participants; boys' and girls' team opportunities; total dollars spent on boys' and girls' programs; dollars spent per participant when there are separate sex teams in the same sport; numbers of male and female coaches.

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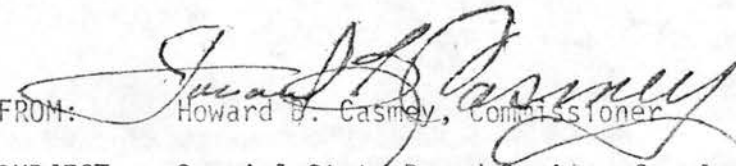
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Minnesota State Department of Education
Capitol Square □ 550 Cedar Street □ St. Paul, Minnesota 55101

Phone: 296-2358

TO:

FROM: 
Howard D. Casimier, Commissioner

SUBJECT: Special State Board Seminar for June 30, 1980

DATE: June 3, 1980

For the better portion of the last decade the State Board of Education has been concerned with expanding the opportunities for women in American society by way of creating elementary, secondary, and post-secondary vocational education opportunities more sensitive to an expanding consciousness of women's actual and potential roles. The Department of Education's staff has periodically been charged to contribute to the achievement of this goal by developing relevant curriculum and effecting appropriate employment expectations or opportunities for women.

On June 30, 1980, the State Board of Education is conducting a special meeting of a fact-finding nature to determine the following:

- 1) What policies and procedures under your general direction have been effected to implement improved non-sexist curriculum relevant to expanding opportunities for females?
- 2) What policies and procedures under your general direction have been implemented to expand employment expectations and opportunities for women?
- 3) What curriculum or employment thrusts are you currently pursuing which are relevant to curriculum improvement appropriate to an expanded consciousness regarding women's potential roles and expanded employment opportunities for women?

20
40
8.00
3
19
40
7.60

Page two
June 3, 1980

- 4) What activities do you anticipate effecting in the near or distant future to effect curriculum change or expanded employment opportunities for women?

As you observe, this Board meeting is in the nature of the Board attempting to compile a "scorecard" of the "hits, runs, and errors" scored by the Department in connection with improved and expanded opportunities for women thru the vehicle of elementary, secondary and post-secondary vocational education. I am inviting you to present 10 - 15 minutes of relevant testimony on the subjects of curriculum refinements and employment opportunities at the Board meeting on June 30, 1980, between the hours of 9:00 A.M. and 4:30 P.M. The meeting will occur at the Earl Brown Conference Center, St. Paul Campus of the University of Minnesota. A map is attached for your information. Also enclosed is a tentative agenda. Please refer any questions regarding this meeting to Greg Waddick, 612/296-5061 who is responsible for making the arrangements.

R.S.V.P. no later than June 20, 1980.

ngr

Att.

Sex Equity Meeting of the State Board of Education

June 30, 1980

- I. Opening Remarks by State Board President
- II. Departmental Responses in Curricular Areas
 - A. Division of Instruction
 - 1. Jerry Kleve
 - 2. Roger Wangen, Dave Dye, Dick Clark, Reynold Erickson, Laura Kiscaden, Gil Valdez, Carl Knutson
 - B. Division of Vocational-Technical Education
 - 1. Chuck Coskran
 - 2. Tom Strom, Donna Boben, Paul Day, Truman Jackson, Audrey Grote, Rick LeBurkien, Janice Templin, Jim Staloch, Florence Stater
 - C. Division of Special and Compensatory Education
 - 1. Will Antell
 - D. Division of Special Services
 - 1. Greg Waddick
 - 2. Archie Holmes, Toyse Kyle, Gayle Anderson, Joleen Durken
- III. Field Response in Curricular Areas
 - A. ASCD
 - B. PTSA
 - C. Curriculum Directors from Selected Districts
 - D. MHSL
 - E. MASA, MAESP, MASSP
 - F. Sex Bias Advisory Committee
 - G. MSBA
 - H. MEA/MFT
 - I. Institutions of Higher Education
 - J. EVE
 - K. Council on the Economic Status of Women
 - L. League of Women Voters

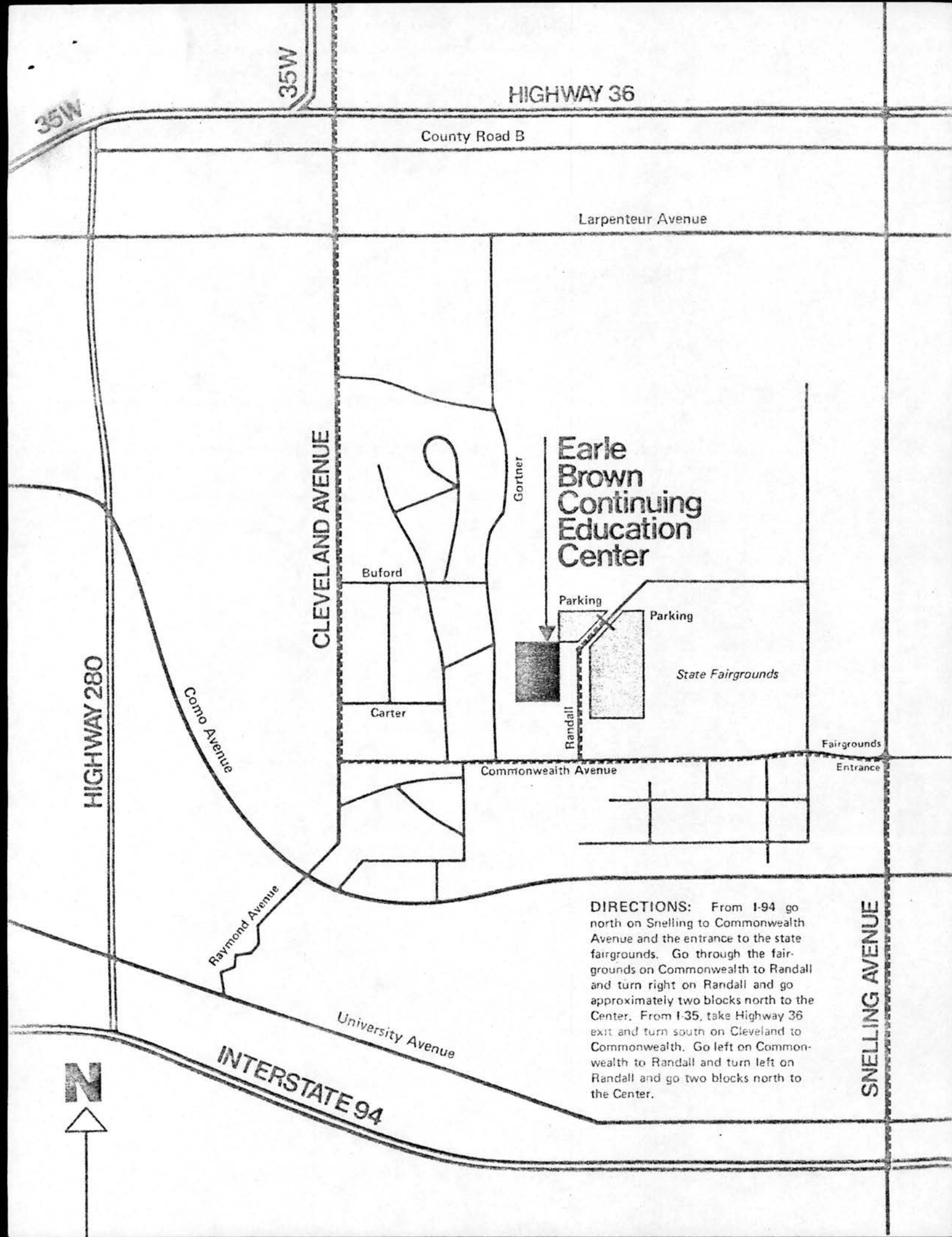
IV. Departmental Response in Employment Areas

- A. Commissioner Casmey and David Bergsven
- B. Archie Holmes
- C. Chuck Coskran
- D. Von Valletta
- E. George Droubie

V. Field Response

- A. MSBA
- B. MASA, MAESP, MASSP
- C. MCOSEE/AWE
- D. MCLU/WEAL
- E. PTSA
- F. CETA
- G. Selected School Districts
- H. Sex Bias Advisory Committee
- I. MEA/MFT
- J. Selected legislators

VI. State Board Reflections on the Day's Remarks



HIGHWAY 36

County Road B

Larpenteur Avenue

CLEVELAND AVENUE

Earle
Brown
Continuing
Education
Center

Gortner

Buford

Carter

Parking

Parking

State Fairgrounds

Randall

Commonwealth Avenue

Fairgrounds
Entrance

HIGHWAY 280

Como Avenue

Raymond Avenue

University Avenue

INTERSTATE 94

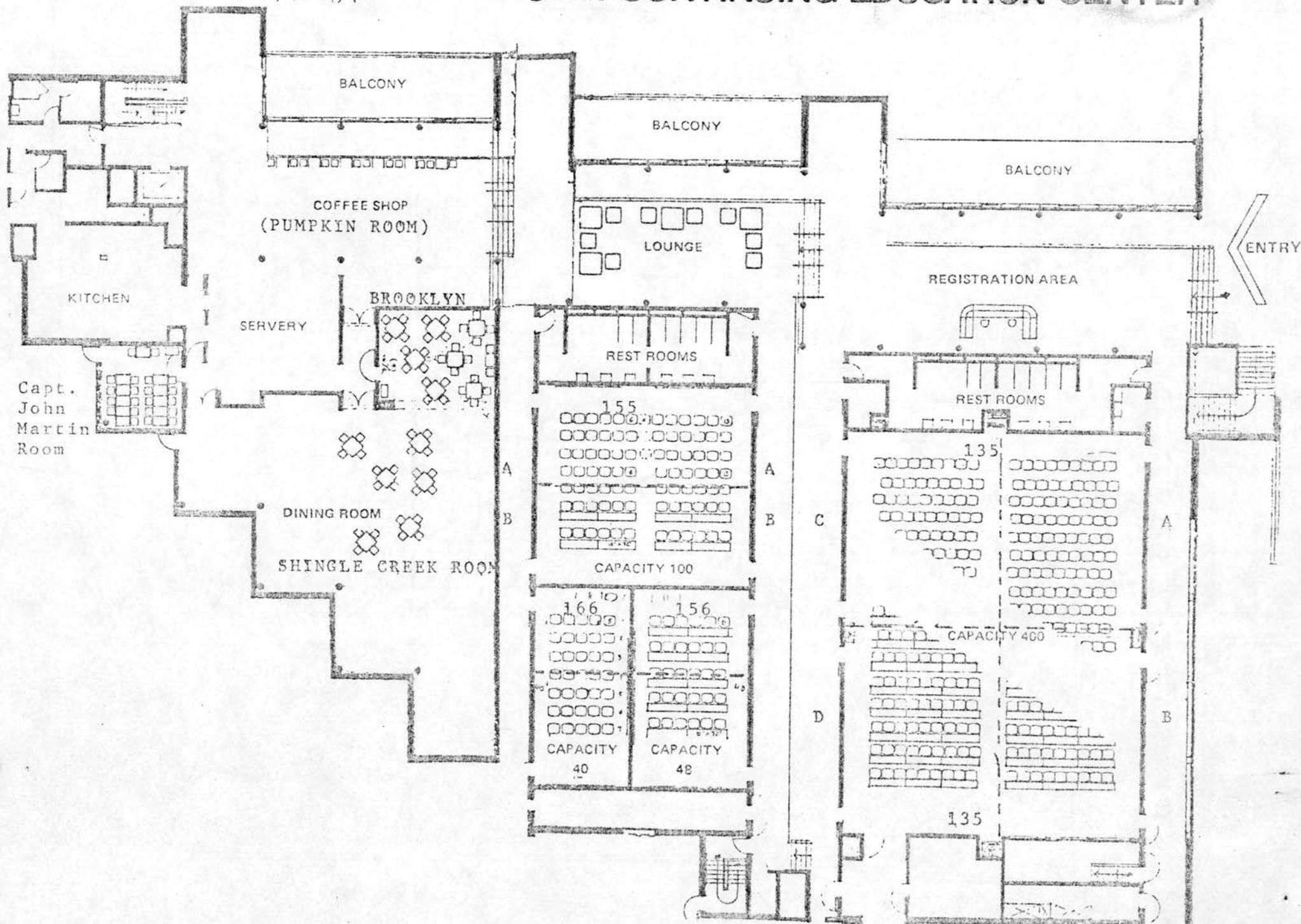


SNELLING AVENUE

DIRECTIONS: From I-94 go north on Snelling to Commonwealth Avenue and the entrance to the state fairgrounds. Go through the fairgrounds on Commonwealth to Randall and turn right on Randall and go approximately two blocks north to the Center. From I-35, take Highway 36 exit and turn south on Cleveland to Commonwealth. Go left on Commonwealth to Randall and turn left on Randall and go two blocks north to the Center.

ENTRY
FROM BUFORD AV

EARLE BROWN CONTINUING EDUCATION CENTER



T R I P

EVERYTHING YOU'VE ALWAYS WANTED TO KNOW
ABOUT SEX DISCRIMINATION, BUT WERE AFRAID TO ASK

Being a primer for teachers on
Title IX and Minnesota Statute ^{/26.2/} 338
about protections for teachers and
students against sex discrimination,
how to file a discrimination complaint
or avoid being the source of one, and
the protection your district should be
providing you and your students.

I N T R O D U C T I O N

Title IX of the Education Amendments of 1972 says:

"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 education program or activity receiving federal financial assistance.."

^(26.2)

Minnesota Statute 338 (Kahn Bill) defines equality in school athletic programs.

When you complete this TRIP you will be more aware of your rights as a teacher and your responsibilities to students; you will be much better prepared to avoid being the object of a complaint involving sex discrimination; and you will be aware of the obligations of your school district and the information and support available to you from MEA.

TRIP III consists of four parts with small group exercises, video-tape learning activities and a summary exercise developing strategies and completing an evaluation.

W O R K S H O P S C H E D U L E

Pre-test - evaluation	___ Minutes
Part 1:	20 Minutes
Part 2:	30 Minutes
Part 3:	20 Minutes
Part 4:	
a. Strategy:	10 Minutes
b. Evaluation:	10 Minutes

MAJOR CONCEPT

- I. Knowledge of Title IX is important in guaranteeing teachers' contractual rights and a discrimination-free working environment.

LEARNER OBJECTIVES

- I. Upon completion of Activity I, the learner will demonstrate an understanding of employee rights by:
 - A. Listing areas where contracts should be checked for compliance,
 - B. Identifying common discriminatory behaviors in the work environment,
 - C. Listing actions the district might take to end discriminatory employment practices.

LEARNING ACTIVITIES

- VIEW: Video-tape presentation:
 Discrimination-free Contracts Chuck Lentz
 10 minutes
- Video Vignettes: "Illustrations
 of Employment Discrimination 5 minutes
- REFERENCE: "List of Possible Discriminations"
 in your packet

In pairs, identify any of these discriminations that are part of your contract or school environment.

MAJOR CONCEPT

- II. Knowledge of teacher responsibilities to provide students with non-biased education will reduce the teacher's risk of being named in a complaint.
- A. Students must be provided unrestricted access to all courses.
 - B. Students must be provided with counseling that is free of sex bias.
 - C. Students must be provided equitable treatment in all school policies and programs and an environment free of stereotyped assumptions.
 - D. Students must be guaranteed access to any school program regardless of their marital or parental status.
 - E. Students must be provided equal opportunities to participate in athletics and extra-curricular activities.
 - F. Students must be provided financial assistance or employment without regard to sex.

LEARNER OBJECTIVES

- II. Upon completion of Activity II, the learner will demonstrate an understanding of protections given students under Title IX and Minnesota Statute ³³⁸_{26.21} by:
- A. listing three provisions from the laws which protect students,
 - B. identifying one school practice, policy or program that promotes sex fairness to students in the teacher's own building,
 - C. identifying one school practice, policy or program that needs to be changed to insure sex fairness to students in the teacher's own building.

LEARNING ACTIVITIES

- VIEW:** Video Vignettes: "Student Grievances" 3 minutes
- Video-tape presentation: "Rationale for Title IX" Nancy Wangen
5 minutes
- "How Schools Discriminate" Mary Peek
5 minutes
- SMALL GROUP:** A. In groups of four or five, answer the questions on the worksheet "Teachers and Title IX," in your packet. 7 minutes
- B. In groups of four or five, list on newsprint with magic marker:
1. One thing each of you is most pleased about in regard to sex fairness in your school 7 minutes
 2. One thing each of you would like to change in your school because it is still sex biased.
- REFERENCE:** "Teachers and Title IX", adapted from "What Teachers Should Know About Title IX", MEA Women's Caucus Publication.

MAJOR CONCEPT

- III. Knowledge of the obligations of school districts and the information and support available from MEA will assist teachers in complying with the law.
- A. Districts should complete their compliance requirements.
 - B. Districts should provide in-service on Title IX, Minnesota Statute 338 and sex discrimination.
126.21
 - C. MEA will provide information about Title IX and Minnesota Statute 338.
126.21
 - D. MEA will assist teachers in exercising their due process rights.

LEARNER OBJECTIVES

- III. Upon completion of Activity III, the learner will demonstrate an understanding of the obligations of school districts and the support available from MEA by:
- A. explaining two district Title IX compliance requirements,
 - B. identifying two topics for inclusion in a district in-service on Title IX, Minnesota Statute 338 and sex discrimination,
126.21
 - C. explaining what support MEA can give teachers.

LEARNING ACTIVITIES

- REFERENCE: Questionnaire on "District Compliance Requirements"
- DISCUSS: In pairs, respond to the questionnaire, indicating whether your district is in compliance. 10 minutes
- Prepare a list of items you think should be covered in further in-service on Title IX, Minnesota Statute 338 and sex discrimination. 126.21 10 minutes

STRATEGY AND EVALUATIONMAJOR CONCEPT

- IV. Experience in identifying sex bias will equip teachers to analyze and modify their own teaching practices and curriculum, as well as school district policies and practices.

LEARNER OBJECTIVES

- IV. Upon completion of Activity IV, the learner will demonstrate an understanding of the steps that might be taken to analyze and modify sex bias in their own teaching practices or curriculum, as well as district policies and practices by:
- A. Identifying one district program, policy or practice that is sex biased;
 - B. Identifying the means to correct this bias;
 - C. Designing a strategy to implement the correction.

LEARNING ACTIVITIES

- SMALL GROUP:** In Activity II, you listed things in your school that are still sex-biased. In groups of four or five, select one of these problems and work out a strategy for changing it by answering the questions on the sheet in your packet labeled "Activity IV". This sheet incorporates the following questions. (It would be a good idea to give a copy of this strategy sheet to your Title IX Coordinator.) 10 minutes
1. What will you work to accomplish? (Does your statement answer the questions what (will change), who (will change), how (they will change), and when (the change will occur)?
 2. Is this something you really want to achieve?
 3. What supports will you have in your favor?
 4. How can you best use them?
 5. What barriers will you encounter?
 6. How can they be overcome?

7. How will you know when your objective has been achieved?
8. State a time deadline for achieving the objective.

EVALUATION
FORM:

Fill out the evaluation form included in your packet for the workshop leader.

Revised:
5/10/77

EVALUATION

Date _____

School District _____

Check appropriate items:

Counselor _____ Teacher _____ Administration _____

Elementary _____ Secondary _____ Other _____

1. Utilizing the materials, information and ideas presented in this workshop, do you now feel able to: (Check as many as are appropriate.)

_____ help others understand Title IX

_____ protect yourself against discrimination

_____ protect your students against discrimination

_____ eliminate sex bias in your own system

2. What ideas and strategies do you plan to use in your educational setting as a result of this workshop?

3. Are there additional topics you would have liked included in this workshop?

4. What would you see as the most useful follow-up to this workshop?

3/21/77

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

FILE NO. 421814

* * * * *

Charlotte Striebel,

Plaintiff,

and

The State of Minnesota by
Marilyn E. McClure, Commissioner,
Department of Human Rights,

Plaintiff,

AFFIDAVIT OF
ELIZABETH EBBOTT

vs.

The Minnesota State High School
League,

Defendant.

* * * * *

STATE OF MINNESOTA)

) SS

COUNTY OF HENNEPIN)

Elizabeth Ebbott being duly sworn, on oath deposes
and says that:

1. She is a member of the League of Women Voters
and was present at the November 2, 1979, Representative
Assembly Meeting of the Minnesota State High School League
as an observer.

2. Marvin Helling gave an introductory statement
about the emergency procedure being implemented with regard
to voting on the proposed rule changes, a brief history of the
litigation in this matter, with several factual inaccuracies,
his view of the present posture of the case, and his view of
the Stipulation.

Mr. Helling stated that since legislation is pending
and since the Department of Human Rights and the Department of
Education are working on redrafting the rules why not have an
agreement to postpone extensive litigation. He implied that
this suggestion was made by the judge.

When Mr. Helling stated the provisions of the agreement, he stated that the staff of the Minnesota State High School League is to propose the Stipulation in good faith and seek approval and concluded his remarks by saying that 'the people proposing the Stipulation find it a good answer to provide local decisions.' These remarks were recorded.

3. Mr. Klint was present, but did not speak.

* 4. Following Mr. Helling's remarks, the assembly divided into ten groups. Approximately nine delegates per group, since there are 90 delegates and ⁸⁸~~99~~ of them ^{voted}~~attended~~.) Affiant attended the meeting of Group 9, introducing herself as an observer. Mr. E. Barret, a member of the St. Paul School Board, a member of the Minnesota State High School League Board, and a nonvoting representative also joined the group. Before the group began its discussion, he introduced himself, stated that he opposed the proposed changes and further explained:

The proposal was brought to the Minnesota State High School League Board the day they met, so they didn't have time to consider it and felt they had to agree. The Board did not want the case tried before the judge assigned as it appeared he wanted to open up the whole law and go into the whole thing. The Board felt the Stipulation had three advantages: 1) it would buy them time; 2) trial might be before a different judge; 3) the rules were being worked on and might resolve the problem. Mr. Barret then solicited the opinions of the rest of the group, and continued to intersperse his own comments. Responses from the group included unanimous negative response, strain on staff and facilities, problems with lockerroom supervision, concern that this would open door to dual seasons in all sports.

Then Mr. Barret said that bringing in the Stipulation was a tactical move, although the staff won't say so and that voting down the Stipulation will tell the judge what school people think of it.

The only mention of the law was an inquiry as to the status of proposed amendments. *in the legal lecture.*

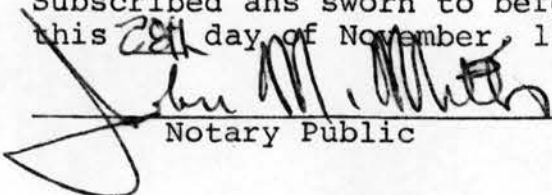
5. The group then reassembled and reported.

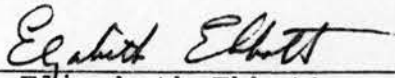
Affiant believes these reports were recorded. The reports were uniformly against the proposal, citing opinions similar to those set forth above, and voicing concern that the Minnesota State High School League's right to control athletics would be diminished. Again there was no mention of the existing law, no clarification by staff or others, and no statements made in support of proposal. While Affiant was only present at one of the small group meetings and therefore has no knowledge of what transpired in the others, she did note that the report given by Group 9 whose meeting she did attend was considerably "sanitized" and toned down from the discussion in the small group.

6. The delegates present voted unanimously against approval of the proposals.

Further Affiant sayeth naught.

Subscribed and sworn to before me
this 28th day of November, 1979.


Notary Public


Elizabeth Ebbott

Elizabeth Ebbott
409 Birchwood Ave.
White Bear Lake, Mn 55110
426-3643

Notes on the Representative Assembly Meeting, Minnesota State High School League
November 2, 1979

Delegates - 90 (8 of the 90 are female)

Delegates attending and voting - 88 (7 female)

MSHSL Board - 15 members (4 - A schools -school board or administrators

4 -AA " " " "

2 - Mn School Board Assoc.

4 - groups - speech, music. ?coaches male and female

1 - Commissioner of Education - Casmey

Several attended. I don't know how many nor who they are. Casmey did not attend.

Marvin Helling read a statement to clarify the proposal on tennis and swimming seasons. (This was taped.) He made the following points:

The normal process is to introduce rules at one meeting and vote on them at the next. MSHSL rules allow in cases of emergencies or for compelling need to speed up the process. In these circumstances the proposal is to be mailed out with a ballot to be mailed back. The rule can then go into effect but it is not final until ratified at the next meeting. This amendment came up during September. Since September and October is the time that Representatives are being selected and it was unclear who were the representatives, this ballot was held for vote until this meeting. The vote today is considered like an emergency ballot and if approved, would require final ratification at the next meeting.

Mr. Helling pointed out that he was a layman, not an attorney and then briefly gave a review of the legal history of the issue. (My dates and names are not complete - I couldn't write that fast, but this information you already have.)

The case is now between 3rd party interveners. In 1976 the Minnesota Legislature passed 126.21, the Kahn Law. It provides for equal opportunity to all students. Separation when necessary to provide equal participation. The question if sports must be co-ed has never been settled in the courts. Judge Hache(?) ruled _____ (date) against the St. Paul Schools (a quote from the first decision) "...shall provide co-ed sports except in contact sports unless separate is necessary for equal opportunity to participate." (This is a paraphrase I didn't have time to take the whole quote.) "If separate, must first have a showing of necessity" (Helling never corrected the "contact sport" statement.) _____ 1977, the St. Paul School Board 4-3 voted to change girls tennis from fall to spring; boys swimming to the fall to comply with the court ruling. The school board did not try to go back into court to show just cause for keeping the season separate.

Aug. 25, 1977 - Parents (?Stump) et al v St. Paul School Board asked for a restraining order. This was granted with Hache? ruling (allowing?) the seasons to go back as they were.

Sept. 12, 1977 Charlotte Striebel ask the court:

1. To hold St. Paul Board of Education in contempt for not abiding by the June decision.
2. That the case shouldn't have been in district court but should be before the Department of Human Rights.

Sept. 30, 1977. The court said St. Paul School Board couldn't be held in contempt for doing what the court ordered it to do. Striebel was granted the right to intervene. The High School League entered as a friend of Stump. 126 doesn't prevent separate seasons - until there are adequate facilities it appears

reasonable. (This last sentence is I believe what Helling said the memorandum said.)

The case then went into litigation between Striebel and the Dept of Human Rights on one side and the High School League on the other. Striebel sought an injunction¹ restraining the MSHSL from having separate seasons in tennis and swimming, and 2. An injunction from interference with coed teams in St. Paul.

Sept. 3 came to trial before Judge Gingold. There was lengthy discussion. The judge dismissed Stump and the St. Paul School Board. Since legislation is pending and since the Dept of Human Rights and the Department of Education are cooperating on rules, why not have agreement to postpone extensive litigation. ~~These other events could set aside any reason for the trial.~~ (Helling implied, I believe that this suggestion came from the judge.) If the stipulation is agreed to, it will end litigation.

The stipulation:

1. The trial date is postponed until Nov. 26.
2. Staff of the HSL is to propose in good faith the stipulation and seek approval.
3. The provisions - similar for tennis and swimming: for 1980-81 and each season after, there shall be spring and fall tournaments. The HSL handbook would show fall tennis and spring tennis.
4. Any school can have either or both season. Each school can chose its own time. It can be girls or boys or both in the fall or the spring. Any school "would certainly assess" the interest, do a survey of when students are interested and the school would then make its decision.
5. A school couldn't enter into more than one.
6. The MSHSL at the end of the season would survey how many and where the team were and would set the state tournament where or however the numbers warranted.
7. Competition would be for each sex in the tournament boys against boys. There would be total local control. Schools have absolute flexibility to best meet the needs and desires of their students.
8. Any rules agreed on by the Department of Human Rights and Department of Education will superseed if they touch on this area of conflict. The stipulation provisions are not binding on any future rules.
9. If adopted, if schools provide boys and girls sports in the same season, "we would recommend experimenting with mixed events"- tennis mixed doubles; swimming relays with mixed sex laps. If these event prove an interest, they could be implemented as regular events.

The people proposing the stipulation find it a good answer to provide local decisions.

At 10:25 the group broke into 10 small groups - by assigned delegate numbers. They were to select a chair; discuss the proposal; report back at 11:00. At random I sat in with Group 9, introducing myself as from White Bear Lake and an observer/ non-participant. In addition to the assigned delegates, Emory (Emil?) Barret, member of the St. Paul School Board, member of the MSHSL Board, non-voting delegate, joined the group. Before any discussion took place, he introduced himself and told the group he opposed the amendment. He further explained:

...that the proposal had just been worked out the morning of the Board meeting when it was brought to them. They felt they had to agree. They wanted to stop litigation before Judge Gingold. The judge was retired, brought back in for this. It appeared that he wanted to open up the whole law and go into the whole thing. ~~They felt~~ (He mentioned Judge Hache as not being available.) They felt the stipulation had three advantages. It would buy them time. They could hope for a better judge. They could hope the rules would come along and resolve the problem. All of this was said before any of the representatives expressed an opinion. Barret then wanted to know what the others thought. The following comments were made. (B) indicates the points made by Barret.

- ...there was unanimous disapproval.
- ...there would be a strain on the facilities
- ... " " " " " coaches. Contracts would be a problem. They would be adding a lot of people.
- ...lockerrooms and lockerroom supervision would be a problem
- ...the conferences will have to agree to when they all want to do what.
- ...If schools can pick their own seasons, we're opening the door to all sports, not just the two sports.
- ...We could be forced to have two teams at a time if just one girl came out we'd have to have a separate program just for her."
- (B)... "This means local autonomy. Every district will be forced to face this as a local decision. They will be forced to make the decision locally.
- ...I can't see how any judge could buy this - dominoes down the line. (In reference to co-ed sport activity.) *St. Paul School.*
- (B)... It was a dumb decision by our own board not to argue with the decision. Now we're out of it. I wasn't one of the 4...I brought this amendment to our Board before coming here. Striebel's Board member moved to support it. It died for lack of second. This time she didn't have the support. She was furious. ~~Now~~ I had brought it up and had spoken strongly against it. We voted 4-1 to oppose it.
- ... "We're comfortable the way things are right now."
- (B)... Girls programs need their own identity to strengthen them. They don't need intermingling.
- ... "Two tournaments will detract. Boys won't be hurt; girls will.
- ... "When we told our girls what that Dept. of Human Rights meant when it said that girls would have to play co-ed with boys, our girls didn't want any part of it."
- (B)... Bring in the stipulation is a tactical move. Staff won't say that, but I don't have to be bound by that. I can say what I think.
- (B)... Voting down the amendments will tell the judge what the school people think of it.
- ...It will tell the judge what the rest of the state feels, ~~and that's~~ It's not just a St. Paul issue.
- ...If you do this, other sports should be offered two seasons, too.

Someone asked Barret what had happened to the law change. "Can't we do that?" They agreed that the House was good, but they couldn't get the Senate to budge in conference. Barret said he felt it was going to be OK with the Dept of Ed and Dept of Human Rights writing the rules. (B) But "it could be an election issue." The House had been back home facing voters and they were all right. Just wait until the Senate faces election.

(The MSHSL Board is proposing an amendment to have a slot on the Board for a minority person, to be selected by ~~the~~ Bd of Education or MSchool Board Assoc- I didn't catch which. Barret was explaining that. He said they had discussed having the Commissioner of the Dept of Human Rights since that department does have some control (and the Commissioner of Dept of Ed is a member), but they felt the Board really makes education decisions, that it is an education issue and therefor an education body should make the appointment.)

The groups then assembled and reported - far more sanitized. All reports were made by representatives. I assume all of this was taped - at least they used microphones. The groups appeared to have the same reasons so that the later groups reported nothing new. No one indicated any support or even any questioning of a negative vote. No one made any reference to the law - to the flexibility to get into mixed play; to save money, etc. The reasons given by the 10 groups:

- ...problems with facilities
 - in one case, four schools must use one swimming pool now as it is scheduling problems, problems with time.
 - conflicts with the community education program's use of the school facilities.
- ...personnel problems
- ... scheduling competition would be a problem
 - would have to be done by conference, to have competition - they would dictate.
 - knowing in advance in time to schedule would be a problem
 - what would happen to "B" teams; J.V. teams?
 - it would require more travel to find competition, use more energy.
- ...feel it is a movement toward one team. It could carry over into other sports.
 - This might spread to other sports
 - Would probably set back girls' programs 6 years
 - The stipulation only talks about state tournament competition as being girls v girls. It's just a rhetorical question, but whom do girls play with during the season?
- ...other sports will be demanding the right to have different seasons.
- ...teams would be manipulated
 - coaches would juggle talent
 - two powers could agree to split and therefor both would win
 - maybe teams have enough talent to win both times
- ...MSHSL Rules provide that there must be 10% school participation to have a state tournament. What if there isn't 10%; must you still have the tournament?
 - May not justify a state tournament if not enough schools participate.
- ...A school could be fall and spring play-off champions and really lengthen the seasons.
- ...A local school board would be in the position of deciding seasons. This should be a High School League decision. They have traditionally done it and it should remain that way.
 - How can you decide if the kids want both seasons but the school can't afford it. Would you then be open to suit?
 - There may not be enough left to have a team.
- ...Representatives had received letters from parents and students saying they were satisfied with things as they are and they shouldn't be changed.
- ...We're not going to solve litigation by agreeing.
- ..."Return to the court room and defend the current set-up and the High School League's right to control athletics." - one group's statement.

No further comments were made; no corrections or clarifications by staff or anyone else. On a roll call vote - 88 no and 2 absents.

No law provided

→ They found it

Murrae Franz.

Separate season ticket. For A & AA BB tournament -

National Tournaments - ^{Opposed} 38-9 Defeated -

Drug program -

Minority slot on the Bd of Directors - From MSBA -

~~Plat 10~~

Nov 10 - public hearing - ^{Bd of Directors position -} ~~should~~ only lead varsity coaches
as it now is. _{apply to}

Energy saving:

Griff B & G.

B & SB - → on region but b & g? Baseball & Soft ball -

Track & Field all 4 < ^{A - B & G} AA - B & G

1

Marr Helberg.

To clarify - tennis & swimming seasons.

Normal process - rules introduced / meeting, voted on next

but emergency or compelling need to speed up - mail out,
final until ratified at next meeting. _{mail ballot}

Sep & Oct - members being solicited, so Amendment

this ballot emergency ballot - to be ratified

Lagomar, not attorney -

3rd party intervenor & 3rd party

1976 - Mn leg - 126.21 Kahn Law - = apptly to all student
organization when necessary to provide participation
consider

if must be co-ed - never been settled in courts

Hatchery ruling - against St. P. Schools - "shall provide co-ed
except contract unless separate one rec. for = apptly.

"if separate - must 1st have showing of necessity"-
1977- St Paul 4-3 voted to change girls tennis fall to spring
boys swimming to fall.

to comply w/ court.
didn't want try to show just came to court for keeping
separate -

Aug 25, 1977- Parents. Stungs et al v St. P B E - ^{actual} restraining
order - granted - to go back to

Sept. 12, 1977- Charlotte Strickh out
1- Held St. P B E in contempt to not abide by June decision.
~~St P~~
2- Shouldn't have been in District Ct. but DHR.

Sept 30, - couldn't hold St. P.
granted her right to intervene.
HSL friend of Stungs. - his remarks.
126- doesn't present separate season.
until facilities - appears -

Litigation - Strickh v DHR v HSL.
1- Injunction restraining MS#SL - separate season tennis & swim
2. - from interfering of co-ed teams in St. P.

Sept. 3 to trial. Gingold -

lengthy discussion -
Judge - dismissed Stungs & St. P Board -
since legislation pending &
- DHP & DEI are co-opting.

Why not agreement - to postpone so tennis litigation
that could set aside reason for the trial.

Stipulations -

If agreed to - would end litigation

- ① Nov. 26 trial date postponed -
- ② Staff to prepare in good faith to seek approval.

Tennis -

- ① - MSHSL - \$80 - 81 & after - spring & fall tournaments -

: their handbook would show fall tennis
spring "

- ② - Any school either or both seasons.
each school can choose time -
any school ^{g or b} would certainly assess
survey interest, survey when interested &
school would then make their decision -

- ③ - A school couldn't enter into more than 1 -

- ④ - Tennis tournament MSHSL - at end of fall -
would set up where or however the team #s
wanted

- ⑤ - Competition provide for each sex in tournament -
b/b

Total local control, school absolute flexibility as
you see best meeting needs & desires of this students

- 6 - Any rules DHR & DED - will supersede if area
of conflict - Stipulations not binding on rules

- 7 - If adopted - if providing b & g spots since
we would recommend experimenting of mixed
event - team double, senior relay - ^{if interest} could be implemented -

People propose stipulation - good answer to provide
local decision -

10:25 - 11:00

No mention of Law

Emil Bonet
Emory

Georg-Hoche

Facilities - strain -

concha - contracts - adding lots of people.

locker room -

conference will have to agree.

Can't time a man - but

we're opening the door to all of them - not just the 2 sports.

We could be forced to have 2 if just 1 girl came out with
have to have a separate program for just her.

(B) local autonomy - every district will be forced to have this as
local decision. will force local decisions

can't see how any judge could buy this - diminish
down the line -

(B) dumb decision by our board not to argue
we're carrying it the way things are right now -

(B) girls' programs need their own identity - to strengthen -
not intermingled

2 tournaments will detract - boys won't be hurt - girls will.
when we told our girls what that DHR meant that
girls would have to be co-ed - play w/ boys, our girls
surrendered, didn't want any part of it.

(B) But didn't have time to consider.

(B) Ickle move stuff won't say that, but I don't have to
be -

buying time; hope better judge, hope rules, hope voters down will
tell judge what sort of state rule - not just a St. Paul issue.

(B) Could be election issue - house had been back home they were already 24.
over

Minority on Board of HSL

Had thought maybe DHR lead come they do have some control, but thought education issues & ∴ Bill of Ed.

Other points should be offered 2 sessions, too

What happened to the law change - can't we do that -

(B) the rules ~~change~~ will be up D Ed & HR & they will be o.k.

10 guys. ? But member at each -

15 Board member - 4 - As } school or SB.
4 - AAs. }
4. other units
2. SB Assoc.
Carmy.

I - Vote No - numerous problems of Sanction -
4 school use new pool.
5 scheduling
personnel.

(2A) other sports 2 → consequently school use of school.
3 felt it was a movement toward team - could carry over to other sports -

5 could be said v spring play off changes - long the season.

II - ~~Opposition~~ - Schedule -

4 Conference cooperation
4 advance scheduling -
5 justifying talent by coach.
6 + may not have enough left to have a team -
5A - justifying state tournament, if not enough

III - Conference -

Class A & Class B tournaments

3A letters from parents v students - satisfied as is -
All the guys voted No
New Brighton.

IV - Agreement of previous -

5A Must have 10% participation to have state tournament

5 2 powers could agree to split v both win.

5 Maybe teams have enough talent to win both times

6 How to decide if ^{kids} want both but school can't afford -
would they be open to split.

V-7 Not going to solve litigation by agreeing -

~~Schedule, facilities~~

2A Other sports demanding right to have different

~~seasons -~~

5 ~~Strong team~~ will manipulate to win.

VI - 3 ~~Might spend to other sports~~

6 Local SB ^{would be} in position of deciding season.

sb HSL decisions - traditionally done & should remain

8 More equal - when energy is correct - have to expand radius.

VII - basically same.

4 ~~School authority is real, but conference would~~
~~have to dictate -~~

~~Would star space, time, coach staff.~~

3 ~~Would probably set back girls program 6 years -~~

~~Vote No~~

VIII - ~~had everything on their~~

3 ~~day season - girls v girls or v boys or joint in tournament -~~
~~rhetorical.~~

4 ~~B teams - where they go -~~

dup'd statement for keeping present system -

separate teams provided.

7 • return to court room & defend current set up &
their right to control athletics.

IX - unanimously 9

X - anything had been said -

unanimously No

Should go back to litigation.

Title IX
Grievances -

Read the
Laws &

Brd is responsible

Consent decree
w/ WEAL

Applications

P "Fit in"

> Senior yogo

P Reclassifying Secty -

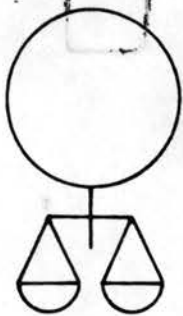
Indian Complaints "Girls Colls"

C "Boys Electronic"

P SS Kicker King - Manner -

Billboard -

telling girls ice machine broke -
Kotex machine in elevator ^{bath} rooms



weal WOMEN'S EQUITY ACTION LEAGUE
MINNESOTA DIVISION

1711 Laurel Avenue
St. Paul, Minnesota 55104
April 24, 1980

NEWS CONFERENCE

Monday, April 28, 1980

2:15 PM

Minnesota Press Club 338-4466
Radisson Hotel - 2nd Floor
45 South Seventh Street
Minneapolis, Minnesota

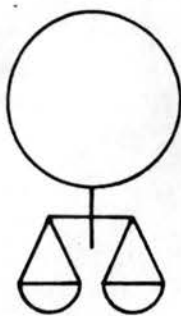
Landmark finding issued by HEW's Office for Civil Rights against Anoka-Hennepin School District 11 (Minnesota's 3rd largest school district) can have impact on other Twin Cities metropolitan school districts. The class action complaint, which alleged sex discrimination in employment practices, was filed by the Minnesota Division of the Women's Equity Action League.

FOR FURTHER INFORMATION CONTACT

Margaret J. Holden
President

644-2739 or 298-2469

WB - Jan 19, 1978
" "



weal WOMEN'S EQUITY ACTION LEAGUE
MINNESOTA DIVISION

FOR FURTHER INFORMATION:

April 28, 1980

Margaret J. Holden, President
Women's Equity Action League
(Minnesota Division)
1711 Laurel Avenue
St. Paul, Minnesota 55104
(telephone: 612/644-2739
612/298-2469)

or

Dick Bernard, Executive Director
Anoka-Hennepin Education Association
2001½ Second Avenue North
Anoka, Minnesota 55303
(telephone: 612/421-9110)

RELEASE: IMMEDIATE

EDITOR/NEWS DIRECTOR: for more detail, beepers, etc., call those above.

ANOKA, MINN. - (Special) - The Anoka-Hennepin Independent School District (ISD #11) has been found guilty by a top federal agency of sex discrimination in the hiring of an administrator.

In a Letter of Findings, the Department of Health, Education and Welfare (HEW) Office for Civil Rights (OCR) says the district, its school board and seven top administrators violated the WEAL Agreement and Title IX of the Education Amendments Act of 1972 and discriminated against women and that "this discrimination appears to be part of a pattern of discrimination engaged in by the school district" - which has a negative impact on students.

The class action complaint was filed in February 1979 on behalf of Sandra Ohlgren and other qualified females and potential applicants by the Minnesota Division of the Women's Equity Action League (WEAL), alleging that the district discriminated against women in filling administrative vacancies. Ohlgren, a teacher in the district since 1963, wanted to be a candidate for an assistant principalship.

(In 1973, WEAL filed a complaint with OCR alleging that 31 Metropolitan Area school districts, including ISD #11, had been and were discriminating against women in hiring administrators and social studies staff.

(Five years of negotiations involving WEAL, HEW and the 31 school districts resulted in an agreement (WEAL Agreement) in which every one of the districts agreed in February 1978 to - affirmatively "advertise for, recruit, and solicit applications from females for all vacancies in administrative and social studies positions.")

In August 1978, explains Minnesota WEAL President Margaret J. Holden, "only six months after signing the agreement with WEAL and HEW," ISD #11 (the state's third largest) hired James Elmquist as assistant principal of Coon Rapids Senior High School - "without adequate advertisement, proper posting, or interviewing of female candidates."

Ohlgren, a secondary special education teacher at Jackson Junior High School who had completed her administrative degree work at St. Cloud (Minn.) State University, tried to apply for the position, Holden continues, "but was told - without being interviewed - that the vacancy had been filled."

OCR found that Ohlgren was deprived of the opportunity to be considered and that the district's employment practices and selection process in effect "limited consideration to men only." Of 49 principals and assistant principals, only two were female - both elementary school principals.

"The exclusion of Ms. Ohlgren and potential women applicants," OCR asserts in its 9-page Letter of Findings, "constituted discrimination against the students because such a discriminatory practice has the effect of creating sexually identifiable roles and role models...and cannot but have a negative effect on students' perceptions of women in authoritative roles. Female students have had few role models in administrative positions with whom they could identify..."

Elmquist, Holden charges, did not file a written application and the district offered no interview notes, objectives or written guidelines for hiring him.

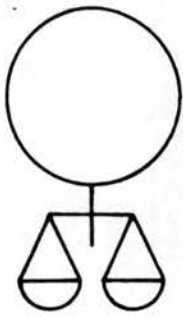
OCR found these procedures "vague and subjective" and that they effectively excluded women from being considered for the position. Had the district exercised its duty to give proper consideration to Ohlgren, OCR maintains, it would have been obliged to hire her because the applicants offered equal qualifications.

Executive Director Dick Bernard of the Anoka-Hennepin Education Association (AHEA), to which Ohlgren belongs, points out that the Ohlgren case is indicative of widespread practices.

"A study published in 1979," Bernard reports, "found that of the 43 reporting states, only four had a worse record than Minnesota in employing females as top level school administrators. The percentage ranged from 30.0 to 3.04. Minnesota had 5.55 percent women in these positions. Nationally, the average is 13 percent.

"Since 1971," Bernard continues, "the proportion of female elementary school principals in Minnesota has dropped by more than 50 percent. During the same period, the percentage of female secondary school principals has increased but is still less than one percent."

ISD #11 has been directed by OCR to - "within 90 days" - comply with pertinent law by developing a comprehensive plan that "resolves the violations cited in this letter to the satisfaction of the Department and assures the District's compliance with Title IX and the WEAL Agreement."



weal WOMEN'S EQUITY ACTION LEAGUE
MINNESOTA DIVISION

1711 Laurel Avenue
St. Paul, Minnesota 55104

April 28, 1980

BASIC BACKGROUND OF WEAL CLASS ACTION COMPLAINT AGAINST ANOKA-HENNEPIN SCHOOL DISTRICT

1. The Minnesota Division of the Women's Equity Action League (WEAL) filed class action complaints with the United States Department of Health, Education and Welfare on February 6, 1973, alleging discriminatory hiring practices in administrative and social studies positions.
2. The original complaints were resolved in a stipulated agreement, signed by representatives of WEAL, United States Department of Health, Education and Welfare and 31 metropolitan school districts, that went into effect February 13, 1978. The stipulated agreement included the following: "Each school district shall develop procedures to achieve representation of women on its administrative (superintendent, assistant superintendent, principal and assistant principal) and social studies staff...school districts will affirmatively advertise for, recruit, and solicit applications from females for all vacancies in administrative and social studies positions. No vacancy will be filled without considering the female applicants who responded, if any...consistent with...applicable state and federal statutes, school districts will make a conscious effort to select female administrators to correct existing inequities, if any, where all things are otherwise equal between applicants for the same position, including educational background,

degrees, certifications, qualifications, administrative potential, general experience, and experience demonstrating administrative skill (not necessarily or exclusively in educational administrative positions)."

In return for this commitment by the school districts, WEAL and HEW agreed to withdraw their complaint, to cease investigations, and that "this Agreement is not to be construed as an admission of discrimination, liability, violation of Title IX or any other act, or wrongdoing by any of the parties..."

Superintendent Lewis W. Finch of Anoka-Hennepin Independent School District No. 11 signed the Agreement on January 17, 1978.

3. Dispute with Anoka-Hennepin School District No. 11 erupted in September 1978 when Sandra Ohlgren questioned the procedures followed by the District in filling the position of assistant principal at Coon Rapids Senior High School.

A Title IX grievance was filed by the Anoka-Hennepin Education Association against the School District and on March 5, 1979, the School District, by consensus of the School Board, declared itself not guilty of discriminating.

In February 1979, WEAL filed with the United States Department of Health, Education and Welfare a class action complaint relating to the process of filling the administrative vacancy. This complaint has led to the Office for Civil Rights April 21, 1980, Letter of Finding that clearly states that the District did indeed discriminate against Sandra Ohlgren, other potential women applicants and the students.

SIGNATORIES OF WEAL AGREEMENT

Independent School District No.		Date Signed
	Women's Equity Action League	11/22/77
11	Anoka-Hennepin	1/17/78
271	Bloomington	1/13/78
286	Brooklyn Center	1/19/78
191	Burnsville	1/25/78
12	Centennial	1/20/78
13	Columbia Heights	2/ 1/78
273	Edina	1/16/78
831	Forest Lake	1/12/78
14	Fridley	1/25/78
274	Hopkins	2/ 2/78
199	Inver Grove Heights	1/16/78
1*	Minneapolis	1/18/78
276	Minnetonka	1/18/78
277	Mound	1/19/78
621	Mounds View	1/26/78
622	North St. Paul	1/23/78
279	Osseo	1/25/78
280	Richfield	1/19/78
281	Robbinsdale	1/30/78
623	Roseville	1/18/78
282	St. Anthony	1/16/78
283	St. Louis Park	1/17/78
625	St. Paul	1/12/78
833	South Washington County	1/18/78
720	Shakopee	1/20/78
6*	South St. Paul	1/20/78
16	Spring Lake Park	1/20/78
834	Stillwater	1/31/78
284	Wayzata	1/19/78
197	West St. Paul	1/20/78
624	White Bear Lake	1/19/78
	Department of Health, Education and Welfare	2/13/78

*Special School District



weal WOMEN'S EQUITY ACTION LEAGUE
MINNESOTA DIVISION

1711 Laurel Avenue
St. Paul, Minnesota 55104

April 28, 1980

STATEMENT BY MARGARET J. HOLDEN

The Minnesota Division of the Women's Equity Action League has won a significant victory for women, particularly women aspiring to administrative positions in the 31 metropolitan school districts.

The landmark decision, issued by the Department of Health, Education and Welfare's Office for Civil Rights, against Anoka-Hennepin, Independent School District No. 11, will impact other Twin Cities metropolitan school districts. The decision found that District 11 had violated both Title IX and the WEAL Agreement, a contract which was signed by the District on January 17, 1978.

A review of the Letter of Findings shows repeated references to the WEAL Agreement and, when questioned, Larry Washington, of the Office for Civil Rights, replied, "The WEAL Agreement is alive and well!"

This means that the WEAL Agreement has been acknowledged to be a bonafide contract that has to be honored and that it cannot be ignored by school district administrators.

The example set by the decision in Minnesota WEAL's class action complaint against Anoka-Hennepin should prompt the other 30 districts to review their hiring practices to insure that they are in compliance with both Title IX and the WEAL Agreement. They should be examining the steps that they have taken in order to balance the number of men and women administrators in their district.

Quoting from the Letter of Findings, "the exclusion of women applicants from consideration for administrative vacancies constituted discrimination against the students...such a discriminatory practice has the effect of creating sexually identifiable roles and role models in employment positions and has a negative effect on students' perceptions of women in authoritative roles. Female students have had few role models in administrative positions with whom they could identify, and all students are being denied the opportunity to benefit from the administrative expertise of a qualified woman...the discriminatory actions of the District demonstrate that the District is not providing educational services to students in an environment free of sex discrimination."

The success of this class action complaint is due in part to the efforts of Dick Bernard, Executive Director of the Anoka-Hennepin Education Association. He brought the case to our attention in October 1978 and provided much of the documentation which is so necessary in a complaint of this kind.

We acknowledge and commend the Anoka-Hennepin Education Association, the Minnesota Education Association and their members as they have been highly supportive of the teacher, Sandra Ohlgren, who questioned the hiring procedures when she was denied consideration for the position of assistant principal at Coon Rapids Senior High School.

We are encouraged by the fact that the District has, in the last year, taken some positive steps to improve its procedures to fulfill its obligations under the WEAL Agreement.

Minnesota WEAL is attempting to provide a climate under which negotiations for the settlement of this class action complaint may proceed. It is the responsibility of District 11 to develop, within the specified 90 day time constraints, a comprehensive plan which will resolve, to the satisfaction of the Department of Health, Education and Welfare, the violations cited, assure the District's compliance with Title IX and the WEAL Agreement, and remedy the effects of the discrimination against Sandra Ohlgren.



AHEA - MEA - NEA

Anoka Hennepin Education Association

2001½ SECOND AVENUE NORTH, ANOKA, MINNESOTA / (612) 421-9110

April 28, 1980

FOR IMMEDIATE RELEASE

Statement in behalf of Anoka-Hennepin Education Association
by Dick Bernard, its Executive Director

IN RE: SEX DISCRIMINATION FINDINGS AGAINST ANOKA-HENNEPIN ISD #11
BY OFFICE OF CIVIL RIGHTS, U.S. DEPT OF HEALTH, EDUCATION & WELFARE

The Anoka-Hennepin Education Association (AHEA) which represents the nearly 2000 teachers in the Anoka-Hennepin School District is elated at the findings of the Office of Civil Rights (OCR) of the U.S. Department of Health, Education and Welfare (HEW) in behalf of Sandy Ohlgren and all women.

The Education Association has been directly involved in this case since September, 1978.

OCR's findings verify our original contentions in behalf of Ms Ohlgren. The findings support commitments of the Association at the local, state and national levels to affirmative action in employment.

The findings of OCR/HEW speak to the performance of the Anoka-Hennepin District #11 prior to September, 1978. We are encouraged that the school district has begun to correct procedures and practices that led to this complaint at that time.

While much still needs to be done by the Anoka-Hennepin School District there have been recent efforts initiated by the School District regarding affirmative action in employment.

We applaud the Womens Equity Action League (WEAL) for their advocacy of womens rights. And we support their continuing efforts to reverse long standing patterns of discrimination in employment - especially employment discrimination in educational institutions throughout the state.

More information?
Dick Bernard, AHEA
(o) 612-421-9110

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE FOR CIVIL RIGHTS - REGION V
300 SOUTH WACKER DRIVE - 8TH. FLOOR
CHICAGO, ILLINOIS 60606

OFFICE OF THE
DIRECTOR

APR 21 1980

Dr. Lewis Finch, Superintendent
Anoka-Hennepin Independent District #11
12299 Hanson Boulevard
Coon Rapids, Minnesota 55433

Dear Mr. Finch:

In Reply, Please Refer To: V-79-1024

The Office for Civil Rights (OCR) has completed its investigation of the complaint filed in February, 1979 by Ms. Margaret Holden, President of the Minnesota Division of the Women's Equity Action League (W.E.A.L.). Her complaint alleged that Anoka-Hennepin Independent School District #11 deprived at least one qualified candidate, Sandra Ohlgren, the opportunity to be considered for an administrative vacancy in the position of Assistant Principal at Coon Rapids Senior High School in the District for the 1978-79 school year. The complaint further alleged that the District's limited publication of the vacancy and its employment practices in general effectively denied Ms. Ohlgren and other potential qualified women applicants inside and outside the District an opportunity to apply for the administrative position. In so doing, the District violated terms of the 1978 "Stipulation Agreement and Dismissal of Complaint" (hereafter referred to as the WEAL Agreement) of which the Women's Equity Action League, District #11, and the Department of Health, Education and Welfare (hereafter HEW) through Kenneth A. Mines were signatories. Further, the complaint alleged that the District also violated Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq.

The Office for Civil Rights has the responsibility to enforce Title IX of the Education Amendments of 1972, and its implementing regulations, 45 C.F.R. Part 86. This legislation prohibits discrimination on the basis of sex in programs and activities receiving Federal financial assistance. More specifically, 45 C.F.R. 86.31(a) generally prohibits sex discrimination against beneficiaries (students) of Federal financial assistance. Under that section of the regulation, we have jurisdiction to monitor employment practices of a recipient where discrimination against persons who furnish services to students, i.e., principals, assistant principals, teachers, and administrators, etc., adversely affects the ability of the district to provide services to the beneficiaries in a non-discriminatory manner and in an environment free of sex discrimination.

Pursuant to such enforcement responsibility, we interviewed witnesses and collected data pertinent to this complaint. As a result of this investigation, this Office has determined that the District not only violated the W.E.A.L. Agreement, but the other allegations of discrimination are supported by the greater weight of the evidence. In arriving at our determination of non-compliance, our investigation resulted in the following factual findings:

I. General Background

In February, 1978 HEW entered into a Stipulation Agreement and Dismissal of Complaint with W.E.A.L. and the 31 school districts in Minnesota including Anoka-Hennepin Independent School District #11. The Districts agreed to "develop procedures to achieve representation of women on its Administrative and Social Studies Staff.¹ The School Districts further agreed to affirmatively "advertise for, recruit, and solicit applications from females for all vacancies in Administrative and Social Studies positions. No vacancy would be filled without considering the female applicants who responded, if any. Each school district would "make a conscious effort to select female administrators to correct existing inequities, if any, where all things are otherwise equal between applicants for the same position." Further, each school district would be represented in a workshop on non-discriminatory employment, policies, and practices offered by the State Department of Human Rights, or other neutral offeror.

In exchange for the Districts' promises, W.E.A.L. agreed to withdraw and dismiss its complaint with HEW alleging that the Districts had engaged in sex discrimination in violation of Title IX. HEW agreed to cease its investigation of the complaint and not issue any findings. All administrative proceedings against the respondents would also be dismissed. W.E.A.L., Dr. Lewis Finch on behalf of District #11, and I, on behalf of the Department, signed the agreement. The Anoka-Hennepin School District is the third largest district in Minnesota and, as of March, 1978, out of a total of 33 Elementary and Secondary Schools in the district, there were 31 male principals, 16 male assistant principals, 2 female principals (both at elementary level), and no female assistant principals.

II. Posting of the Vacancy

On August 3, 1978, Arnold Boese, Assistant Principal of Coon Rapids Senior High School, orally advised his Principal, Mr. Rainbow, and the Director of Secondary Education, Mr. Lappin, of his intention to resign effective August 14, 1978. Superintendent Finch was similarly informed the next day, and on August 10, 1978, Boese's letter of resignation was received in the Superintendent's office. The School Board accepted Boese's resignation on August 14, 1978.

The District's only policy in August, 1978 regarding the posting of vacancies required that a vacancy be posted for a minimum of fifteen (15) days. This policy was in compliance with the negotiated working agreement between the School Board and the Anoka-Hennepin Principal's Association. All vacancies were required to be posted in each building of the district, the State Department of Education Placement Bureau, and with a selected number of colleges and universities. The Personnel Director had the responsibility to post vacancies.

¹"Administrative positions" were defined as superintendent, assistant principal, and assistant principal positions.

The first document which appeared regarding the vacancy was dated August 9, 1978. It merely stated that the District was accepting applications for immediate openings for Assistant Principal at Coon Rapids Senior High and Anoka Senior High. OCR has concluded that this document, regardless of its distribution, cannot be considered an adequate announcement of a vacancy because it fails to inform potential applicants of essential, relevant information such as to whom applications should be submitted, primary responsibilities of the position, the minimum qualifications, length of contract, minimum salary, and how long applications would be accepted.

In the case of Sandra Ohlgren, the document's failure to mention a closing date for applications is particularly relevant because the basis for the District's refusal to consider her for the position was that her application was not timely filed. It is unreasonable to assume that Ms. Ohlgren or other potential applicants who were not principals would know of the fifteen day posting requirement because this policy was in the Principal's collective bargaining agreement and not the teacher's agreement. Moreover, the entry in the District's chronological summary, for August 9, 1978 states that the "first posting of the Coon Rapids Senior High vacancy [was] prepared," which was confirmed by a subsequence posting of the notice of the vacancy dated August 15, 1978. The August 15, 1978 notice described the position, its primary responsibilities, minimum requirements, starting date as well as to whom applications should be mailed. Again, although the notice otherwise stated the relevant information, potential applicants in the district as well as outside the district who are not privy to the only published policy regarding posting of vacancies in the Principal's Agreement could not know when applications would not be accepted because the notice omitted any reference to a closing date for applications.

Notification for the vacancy at Coon Rapids Senior High School was first published by the Minnesota Department of Education Placement Bureau on August 24, 1978 and again on August 31. Beyond that publication, the District could not substantiate where the August 15, 1978 vacancy was posted. The evidence indicates that Blaine Senior High and Coon Rapids Senior High were the only schools where the posting was seen. A notice was not posted in Jackson Junior High where Sandra Ohlgren was employed. Nor did the notice appear on the St. Cloud University mailing list which Sandra Ohlgren received. Finally, the Anoka-Hennepin Education Association did not receive notification of the vacancy as had been the practice since June 1, 1977.

Among the material submitted by the District was an affidavit of the Director of Personnel which stated that the August 9, 1978 "notice" was distributed to all the schools in the district. The sole basis for her statement seems to be the fact that the August 9, 1978 "notice" was in the Personnel Department posting book that records all posting. However, the Director of Personnel could not determine which of her employees typed the "notice".

The presence of the "notice" in the posting book without more substantiation under the circumstances only demonstrates that the "notice" was in the posting book and was at best seen by building principals. It cannot provide a basis for the conclusion that it was distributed throughout the district and the State. In any event, as noted in the previous discussion, the August 9, 1978 "notice" was insufficient to inform any potential applicants of necessary information.

III. Selection Process

In lieu of a standard application form for administrative positions, the District's practice was to consider a letter of application, a current resume and up-to-date credentials and/or letters of recommendation. The District also considered personnel files of applicants currently employed in the district as part of this application.

When asked to provide copies of applications and interview notes for all applicants for the assistant principal position, the date of his/her application and to whom it was submitted, the District replied, that because the 1978-79 school year was about to open, applications were accepted by telephone to the Building Principal, Mr. James Rainbow. During the telephone conversations, the qualifications, background and other information was discussed with each applicant, all of whom were male. Two males considered were employed in the district and one male was employed in a neighboring district. (All three are discussed below.) The applicants submitted no written applications or other information. Nor were interview notes maintained by the building principal.

There was a discrepancy in the data provided by the District regarding the number of applicants for the vacancy. The "Summary Report" filed by the District in the Title IX grievance procedure stated "two formal applications for the Coon Rapids Senior High vacancy were received, and there were a number of telephone inquiries". However, in response to specific OCR inquiries, the District wrote "Both applicants were interviewed". Moreover, when OCR requested additional data, the District responded in a letter dated July 5, 1979 that "three" applications for the vacancy were submitted to the building principal via telephone conversations.

The applicant selected, James Elmquist, applied by telephone conversation on August 12, 1978. Tom Albrecht also applied by telephone on August 18, 1978, and Howard Dahl applied similarly on August 25, 1978. Despite two OCR requests, the District failed to provide the applicant data relied on in making the selection for the vacancy. The School Board approved the appointment of Elmquist for the position of Assistant Principal at Coon Rapids Senior High School on August 28, 1978.

On August 28, 1978, after seeing the notification of the vacancy in the State Department of Education Placement Bureau, Sandra Ohlgren wrote a letter to Mr. Lappin, the Director of Secondary Education, to apply for the Assistant Principal at Coon Rapids Senior High School. On August 30, 1978 she was telephoned by Mr. Lappin, Secondary Education Director, and informed that the Coon Rapids Senior High vacancy had been filled. The reason offered by the District for not granting Ms. Ohlgren an interview was that she filed after the closing date.

Since the district dated a version of the vacancy notice "August 15, 1978", the closing date as determined by the 15-day requirement could not have been earlier than August 30, 1978. (OCR remains critical of the sufficiency of both the August 9 and August 15 postings, but posted the August 30 closing date to show that even under the construction most favorable to the school district, the process was unfair.) Yet, the selection of Elmquist was officially announced by the Board two days prior to August 30, 1978. Moreover, notice of the vacancy outside the district in the State Department Education Placement Bureau had only been published since the 24th of August, four days prior to the selection. The fact that the school year was about to open is no justification for the limited amount of time allowed for notification and consideration of applicants for this position. An Acting Assistant Principal could have been appointed in the interim to allow for broader advertisement of the vacancy and effective consideration of all applicants.

The District in its vacancy announcement for the position of Assistant Principal required that applicants meet the following minimum qualifications:

Education:	M.A. or Specialist
Experience:	Teaching experience
Certification:	Minnesota Certification for Assistant Principal

The building principal recommended his choice for the position from among the applicants. After the Director of Secondary Education and the Superintendent concurred, that candidate was recommended to the Board of Education who voted its approval. Other than the brief description of the qualifications in the notice, there were no objectives, or written guidelines for hiring utilized by these decision makers.

The WEAL Agreement imposed an affirmative duty on the District to develop procedures which would achieve increased representation of women on its Administrative and Social Studies staff. The District was required to affirmatively advertise for, recruit, and solicit applications from females. Moreover, the WEAL Agreement stated that no vacancy will be filled without considering the female applicants who responded, if any, and where all things are otherwise equal between applicants for the same position, the District would "make a conscious effort to select female administrators to correct existing inequities".

This agreement is consistent with Section 86.3(b) of the Title IX Regulations, 45 C.F.R. 86.3(b), which provides:

- (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.

At the time she applied for the vacant position, Sandra Ohlgren was eligible for administrative certification. She had received an M.A. in Educational Administration in Spring, 1976 and a Specialist degree in the same field in Summer, 1978. She had taken courses covering the full range of educational administration and she had completed all the requirements for full certification in Educational Administration as of August, 1978. At the time Ms. Ohlgren applied for the Assistant Principal position, she was fully certifiable.

Contrary to the District's position, the fact that she did not have her certification "in hand" did not mean she was not "properly licensed". OCR found that it is not uncommon for an individual to be fully certifiable short of the paper processing. Moreover, we are aware of no other cases in which the District has prevented an individual otherwise qualified from being considered because that individual failed to have his license in hand. For example, in a subsequent job application for a Deanship, Ms. Ohlgren lost the position to an individual who did not receive his Minnesota license until two months after he began working. The District's obligation under the WEAL Agreement was not met where lack of certification "in hand" was considered an obstacle to a woman's consideration for a position and not a male similarly situated.

Ms. Ohlgren's teaching experience included fifteen years in the District as a Music and Special Education Teacher. She completed an administrative practicum in 1976 at a Junior High School in the district, during which her duties required her to function in the capacity of an Assistant Principal. Further, she served as the Acting Building Administrator at the same Junior High School during the absence of one or both principals.

Thus, Sandra Ohlgren had been identified as a potential candidate for administrative positions in the district. Although the teacher's working agreement provided for notification of vacancies during the summer to teachers who left a self-addressed envelope with the District, such a procedure was insufficient to meet the District's obligations imposed by the WEAL Agreement. The District was obliged to affirmatively advertise, recruit, and solicit women applicants.

Other than the fact that he formerly occupied the Deanship position at a Junior High School, OCR was given no data from which to measure Mr. Elmquist's qualifications with the other male applicants and Ms. Ohlgren. On the basis of the data made available to us, we conclude Elmquist and Ohlgren were similarly qualified.

In conclusion, the weight of the evidence establishes that the District utilized vague and subjective standards and procedures which provided to enter into the selection process. The District's procedures for filling administrative vacancies effectively excluded women from being considered for the position. This conclusion is supported by the

following evidence:

- (1) The District had very little published, written policy for filling administrative vacancies, and, that policy related only to announcements and was not widely disseminated;
- (2) No formal records were kept of interviews, applications;
- (3) There were no written objective guidelines utilized by the decision makers in selecting the successful applicant for the position;
- (4) The district's procedures for posting, effectively limited consideration to men only.

We find that the District's procedures had the effect of discriminating against women. Moreover, this discrimination appears to be part of a pattern of discrimination engaged in by the school district. Out of 49 principal and assistant principal positions in the District as of December 13, 1978, in Elementary, Junior, and Senior High Schools, there were only two female Elementary School Principals.

Further, the finding of sex discrimination is supported by the District's failure to consider Sandra Ohlgren for the position of Assistant Principal at Coon Rapids Senior High. Any lack of female applicants is caused in large part by the District's failure to adequately advertise positions. The District's stated reasons for not considering Sandra Ohlgren, the only woman to apply for the vacancy do not sufficiently rebut the overwhelming evidence which suggest the District in its employment practices effectively excluded women in general and Sandra Ohlgren, in particular, from consideration for this position. The error is particularly onerous since she appears to be as qualified to hold the position as the man who was selected.

Further, the District's action violated the letter and intent of WEAL Agreement. The District wholly failed to implement procedures to fulfill its obligations to advertise for, recruit, and solicit women applicants. Rather, the District's procedures effectively limited consideration to only a very few male applicants. Furthermore, had it exercised its duty to give proper consideration to Sandra Ohlgren's application, the District would have been obliged to hire her because Ohlgren and Elmquist, the man selected, seem equally qualified.

III. Impact on Students

We find the greater weight of the evidence establishes a violation of 45 C.F.R. 86.31(a) which prohibits discrimination against students in programs or activities receiving Federal financial assistance.

The exclusion of Ms. Ohlgren and potential women applicants from consideration for administrative vacancies constituted discrimination against the students because such a discriminatory practice has the effect of creating sexually identifiable roles and role models in employment positions and cannot but have a negative effect on students' perceptions of women in authoritative roles. Female students have had few role models in administrative positions with whom they could identify, and all students are being denied the opportunity to benefit from the administrative expertise of a qualified woman, such as Sandra Ohlgren, in the position of Assistant Principal. Further, the discriminatory actions of the District demonstrate that the District is not providing educational services to students in an environment free of sex discrimination. Based upon the above analysis, we find the greater weight of the evidences establishing a violation of 45 C.F.R. 86.31(a).

OCR acknowledges the fact that the District in the past year has hired two women, one from within and one from outside the District, an Elementary Principal and a Junior High School Assistant Principal. We also note that the District has taken some action to improve its procedures to fulfill its obligations under the WEAL Agreement. Yet, much remains to be done in order to insure that the District implements practices, policies, and procedures which eliminate the opportunity for discrimination to occur and that the District remedy the effects of the discrimination against Ms. Ohlgren detailed herein.

Pursuant to the procedures for the implementation of Title IX of the Education Amendments of 1972, this Office is obligated to seek voluntary compliance with respect to the violations set forth above within 90 days after the issuance of this letter, 45 C.F.R. Sections 86.71 and 80.7(d)(1). To come into compliance with the statute, the District must develop a comprehensive plan for which, resolves the violations cited in this letter to the satisfaction of the Department, and assures the District's compliance with Title IX and the WEAL Agreement.

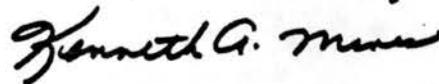
In the event that an acceptable plan is not developed, the Department is required to initiate administrative enforcement proceedings pursuant to 45 C.F.R. 80.8, 80.9, and 80.10.

Under the Freedom of Information Act as amended in 1977 by P.L. 93-502 (5 U.S.C. Section 552; 45 C.F.R. Part 5), it is the policy of the Office for Civil Rights to release this letter and all related material to any interested party upon request.

This determination is not intended and should not be construed to cover any other issues regarding compliance with Title IX which may exist and are not specifically discussed herein.

We would like to schedule a meeting with you and/or designated members of your staff at your earliest convenience to discuss this determination. If you have any questions or seek assistance, please call me or Lawrence P. Washington, Director, Elementary and Secondary Education Division (Chicago) at 312-353-2540.

Sincerely,

A handwritten signature in dark ink, reading "Kenneth A. Mines". The signature is written in a cursive style with a large, stylized "K" and "M".

Kenneth A. Mines
Director, Office for Civil Rights,
Region V

ORGANIZING A COMMUNITY LOOK AT GIRLS' ATHLETICS

Committee Guide

League of Women Voters of Minnesota
555 Wabasha, St. Paul, MN 55102

Table of Contents

	<u>Page</u>
INTRODUCTION	2 - 3
STEP-BY-STEP PROCEDURES	4 - 8
CHECK LIST	9
WHEN ALL ELSE FAILS	10 - 11
TYPICAL QUESTIONS	12 - 14
LAWS AND RULES	15 - 18
VIEWS OF THE LAW: Judge Ronald E. Hachey	19
George A. Beck, Hearing Examiner ...	20
Department of Human Rights	21
Newspaper Comment	22
Minnesota State High School League .	23 - 27
National Organization for Women	28
FORMS: Assurance of Compliance with State and Federal Law Prohibiting Discrimination, Dept. of Education	29 - 30
Senior High Interscholastic Student Athletic Activities	31 - 33
ATTITUDE SURVEY FOR STUDENTS	34
ATTITUDE SURVEY FOR TEACHERS AND COACHES	35
QUOTES	36 - 39
AVERAGE SALARY FOR EXTRA-CURRICULAR SPORTS, MINNESOTA 1976-77	40
BIBLIOGRAPHY	41
CONTACT PEOPLE	41

INTRODUCTION

- Purpose The League of Women Voters of Minnesota has been asked by the State Department of Human Rights to undertake a project aimed at monitoring laws designed to ensure equal opportunity for girls in athletics. The goal of League involvement is to achieve voluntary compliance with the laws through community awareness.
- Situation Anti-discrimination laws affecting girls' participation in athletics have been in force for several years. It is apparent to even the most casual observer of the high school athletic scene that there has been dramatic improvement in girls' activities. Programs are expanding; skills are developing; girls are getting college scholarships for athletic skills. But how equal are the athletic opportunities? The laws are now fully operational. It is time for a careful look by community people to see if the laws are being fully implemented. And if school budget cuts and teacher/coach layoffs are necessary in the future, what will this mean for girls' athletic opportunities?
- Laws Those which presently apply are described more fully on pages 15-18. They include:
1. Minnesota Statute 363.03, the Human Rights Act, which forbids discrimination because of sex in any service rendered by any educational institution or public service.
 2. Minnesota Statute 126.21, the Kahn Law, which:
 - a. Forbids separation by sex in athletic programs for students 12 or over unless it "is necessary to provide members of each sex with an equal opportunity to participate in the athletic program."
 - b. Provides that if separate teams in the same sport are provided, they must have substantially equal budgets, exclusive of gate receipts, and be treated in a substantially equal manner.
 3. Title IX of the Federal Higher Education Act which forbids discrimination on the basis of sex in education, including athletics.
- Also relevant are the 1976 court decision interpreting these laws by Ramsey County District Judge Hachey (page 19); enforcement powers of the Department of Human Rights and the Department of Education; Department of Education rules; and Minnesota State High School League rules.

Problems Some examples of the kinds of problems that might exist in a school or community: (Discussed further on pages 4-9)

On the elementary level, where it is now against the laws to segregate on the basis of sex: How many girls are on the teams playing in the community's ice hockey program, basketball program? How many boys are participating in the gymnastic program? Are additional efforts being made to encourage both sexes to participate and to teach both sexes the needed skills?

Junior high or older: If separate teams are offered for girls and boys in the same sport, do the two teams practice as often and as long; do they rotate the time or use of limited practice facilities; are the same number of coaches assigned to each team; are travel and distant meet opportunities the same for both teams; are the coaching staffs equally trained? Is someone designated within the athletic program to develop and interest girls in greater athletic opportunities? If not many girls are out for ice hockey/wrestling, what has been done to find out what sports girls would prefer in the winter season?

Remedies It may be that violations of the laws exist and that practices that are now illegal have not been changed. Charges of non-compliance can be filed with the Department of Human Rights. Remedies for violations of Title IX can be sought from HEW. The laws exist that can cut off state and federal education support to a local district until there is compliance.

But the League of Women Voters' purpose is to seek remedies within the community by encouraging school districts and other responsible agencies to bring themselves voluntarily into compliance. Rather than getting into individual cases requiring litigation, and perhaps costly penalties, it is far more effective to analyze the local situation in the light of the law, define shortcomings, arouse public awareness, and bring community pressure on those locally responsible for the programs. The League's concern is with the students and with equal opportunity.

STEP-BY-STEP PROCEDURES

I. The Committee

1. League should be responsible and in control, but the membership should represent broadly based community interests.
2. Set the size - small enough to work well; large enough to represent various backgrounds.
3. Tentatively plan the scope - will you look just at the school district? K-12? interscholastic? intramural? class instruction?
 - Will you look at private schools in the area? (A separate committee could be formed for that, if you wish.)
 - Will you look at the community recreation program? the other youth sports programs using public facilities? (A separate committee could be formed for that, if you wish.)
4. Tentatively estimate a time table.
School district budget processes start by December-January. This could be a target date. At any rate, you should complete your study so that recommendations can be ready by April, 1979.
5. Once you have decided on a framework, seek out people for the committee who have an interest and have something to contribute.
 - Committee members should be interested in athletic opportunities for girls and committed to seeing that equal opportunities are achieved.
 - Committee members should not be members of the groups responsible for the programs (school board members, staff members, Title IX coordinator, coaches, etc.).
 - Sources of members - AAUW, PTA, Parents Councils in the schools, local Human Rights Commission members, WEAL, Business and Professional Women, parents of girls in athletic programs (fathers and mothers, seek racial, economic, residential area mix), high school/college girls involved in sports.
 - You may want to make a public announcement for people in the community who would like to serve. (If this brings too large a response, limit those you use to the numbers and criteria you set in advance.)

II. Function of the Committee

1. Familiarize yourself with the purpose of the study, the law and other background information in the Committee Guide.
2. Agree on scope, timetable and procedure.
3. Plan how to inform and involve the whole community (suggestions on page 5).
4. Assign responsibilities within the committee.
5. Collect data, interview people (see pages 5-8). Collect facts and some typical subjective quotes. (It is best to stick to the general, over-all picture and programs, avoiding individual cases.)
6. Closely scrutinize the information. Are the signed school reports accurate? Look for patterns of behavior. If there are areas where the law is not being followed, get documentations. (Review Check List, page 9.)
7. Prepare to report to the community what you've found - the good things; areas needing improvement; areas in violation of the laws.
8. Take the report to the school board, or board of trustees of a private school, or the public body controlling the community recreation program.
9. Publicize the results. Take them to community groups, Chamber of Commerce, women's groups, church groups.
10. Push for changes where needed (see page 10-11). If it seems warranted, consider filing charges, carrying action beyond your community.
11. Interest the community in support of girls' activities, sponsoring awards, trips to tournaments, etc. Use the students to tell the story. Girl athlete role-models are badly needed. Use them in programs for elementary schools. Seek expanded/equal media coverage of girls' athletics.

12. Submit reports to LWV state office - by December 1, report on your committee and your plans; by May 15, 1979, a year-end report.
13. Plan for an on-going monitoring program to see if changes are made.

III. To inform and involve the whole community.

1. Talk with the newspaper people and explain what you are doing. Offer to prepare a background article for their use on the laws and current status of girls' athletics.
2. Announce through the press what you are doing. Invite participation. Give name or phone number where people can reach you if they have something to contribute or want to get involved.
3. A slide/tape presentation has been prepared by the Department of Human Rights and is available in the state LWV office. It is about 15 minutes long, requires a tape cassette player and a 35mm slide projector holding 100 or more slides. The sound should be amplified for a large meeting. The presentation is intended to stimulate discussion.
4. Consider setting up a meeting or making an opportunity for public testimony and comments. Make sure students and parents have a chance to be heard. The committee could hold an open meeting to receive testimony. It would be well to know in advance if some problems exist that people wish to bring into the open. Those responsible for the programs should be invited to attend. It is also important to be available in an off-the-record session to give those afraid of publicity or pressure an opportunity to be heard.
5. Publicize the report of your evaluation. It should be news. Call a press conference. Seek an editorial supporting your conclusions.

IV. Collecting Data: -- School District

1. Visit the Superintendent of Schools. Explain the project and the purposes you hope to achieve -- better opportunities for girls; better understanding of the laws by students, staff, administrators, the public; insuring compliance with the laws. Go over the information you want and confirm who has it.
2. Title IX Coordinator - (The title may vary, but someone within the district has the responsibility for insuring compliance with anti-discrimination legislation and seeing that the school community is aware of the laws.)
 - a. Has this person been designated?
 - b. Have staff and students been notified about the laws, their rights, where to seek assistance?
 - c. Have the required reports showing compliance with the laws been filed with the Minnesota Department of Education?
 - d. Get a copy of the following reports (pay for copying costs);
 - Assurance of Compliance with State and Federal Law Prohibiting Discrimination, Form 1.0660. (Pages 1 and 4 are copied on pages 29-30.) This report was filed last November and will be due again this November. The portion dealing with sports is on page 4 only.
 - Senior High Interscholastic Student Athletic Activities Program Report, Parts 1 and 2 (a sample on page 31-33). This report was due to be filed this past July 15. A similar report was to have been filed a year earlier. While compliance is voluntary, most districts have filed this report.
 - Junior High Interscholastic Student Athletic Activities Program Report, Parts 1 and 2 - same as the senior high report.

The latter two reports are essential and are available in the district. They will supply the data of sports opportunities per season, by sex; participation by sex; costs, costs per participant. This information, if it is accurate, will provide a starting point for assessing the degree of compliance with the law.

- e. Ask to see the Self-evaluation that the district has been required to complete and have on file identifying any policies or practices which do not

comply with Title IX. Modifications and remedial steps should have been planned or taken. The self-evaluation may indicate shortcomings in implementing Title IX as it relates to sports.

3. Athletic Director (Find out his/her area of responsibility - interscholastic? intramural? Senior High? Junior High? all teams? male or female only?)
 - a. Get a copy of the participation data of numbers of girls and boys that is sent to the Minnesota State High School League. (See page 25 for type of information.)
 - b. Does he/she believe the district is complying with the laws?
 - c. Does he/she believe he/she understands the laws?
 - d. What is being done to find what sports girls are interested in and to offer sports that meet their interests?
 - e. What is being done to upgrade girls' skills and encourage them to participate?
 - f. Where there are two teams, based on sex, in the same sport, are they run jointly in any way? Are there plans for moving in this direction? What kind of timetable? Are boy/girl basketball doubleheaders being considered?
 - g. Taking a few of these teams in (e) above, get specific facts, such as:
 - Basketball: Number of teams - boys and girls - 7,8,9, Soph., JV, Varsity
 Number of coaches in total 7-12 - boys and girls
 Do the boys play in a Christmas vacation tournament? Where?
 Do the girls play in a Christmas vacation tournament? Where?
 Total bus costs for boys; for girls
 When do the girls practice; which gym - boys; which gym?
 Expenditures for uniforms; replacements
 - Track - Cross Country: Get a list of meets for boys and girls - are the numbers and travel involved equal? How many overnight trips?
4. Head of Girls' sports (Find out his/her areas of responsibility. Is the administration of the sports program integrated?)
 - a. Does he/she believe the district is complying with the laws?
 - b. Does he/she believe he/she understands the laws?
 - c. What is being done to find what sports girls are interested in and to offer sports that meet their interests?
 - d. What is being done to upgrade girls' skills and encourage them to participate?
 - e. Where there are two teams, based on sex, in the same sport, are they run jointly in any way? Are there plans for moving in this direction? What kind of timetable? Are boy/girl basketball doubleheaders being considered?
 - f. What sports would the girls like that they now don't have?
 - g. What process is used to start a new sport? Do the girls have to initiate the process?
5. Principal at Junior and Senior High buildings (possibly responsible for intramurals. If there are several secondary schools in the district, probably talking to one at each level is sufficient.)
 - a. Does he/she believe the district is complying with the laws?
 - b. Does he/she believe he/she understands the laws?
 - c. What is being done to find what sports girls are interested in and to offer sports that meet their interests?
 - d. What is being done to upgrade girls' skills and encourage them to participate?
 - e. Where there are two teams, based on sex, in the same sport, are they run jointly in any way? Are there plans for moving in this direction? What kind of timetable? Are boy/girl basketball doubleheaders being considered?
 - f. Look at the gyms, locker rooms, other facilities - are they equal?
 - g. What arrangements are made for laundry, uniforms, towels - are they equal?
 - h. How many intramural teams - what sports?
 - Are they co-ed? If so, how many girls and boys in total? (Check rosters.)
 - Are they segregated by sex? If so, are the numbers of sports equal? If

not, have efforts been made to encourage participation by girls or to meet their interests by offering them other sports?
 What costs are paid by the school - coaches; travel; trophies; equipment?
 Are they equal per participant for girls and boys?

6. Physical education teacher - Junior and Senior High School (Talk to one or two at each level.)
 - a. What is being done to implement the law and remove all sex designation?
 - b. What has been done to teach the teachers about the law and how to implement it?
 - c. What activities are now being taught? Has this changed because of the laws?
 - d. What is your reaction to now having boys or girls in your classes?
 - e. Are girls participating more or less than before the law? Why?
 - f. What is being done to improve girls' skills?
 - g. Do you divide your class into groups for team play? On what basis do you do this?
7. Elementary Director or Physical Education Instructor (or if there is no such position, talk to an elementary phy. ed. teacher)
 - a. What is being done to implement the law and remove all sex designation?
 - b. Are girls participating more or less than before the law? Why?
 - c. What is being done to improve girls' skills?
 - d. What has been done to teach the teachers about the law and how to implement it?
 - e. Are spring inter-school track meets held? Who competes against whom? How many girls were winners?
8. Elementary Principal (Talking to one or two would probably be sufficient.)
 - a. What is being done to implement the law and remove all sex designation?
 - b. What has been done to teach the teachers about the law and how to implement it?
 - c. What activities are now being taught? Has this changed because of the laws?
 - d. What is your reaction to now having boys or girls in your classes?
 - e. Are girls participating more or less than before the law? Why?
 - f. What is being done to improve girls' skills?
 - g. Do you divide your class into groups for team play? On what basis do you do this?
 - h. What happens during play at recess and lunch time. Is any effort made to change behavior patterns?
 - i. Seek permission to do an attitudinal questionnaire of students and teachers (pages 34-35 has some suggested questions).
9. Students and Parents
 - a. Do girls now have equal opportunity to participate in athletics?
 - b. With separated teams based on sex, is the coaching equal; practice time; facilities; schedules; trips?
 - c. If the different sports opportunities per season are less for girls than boys, have efforts been made to find what interests girls; to help develop interests; to encourage participation?
 - d. Do cheerleaders come to girls' games on an equal basis as boys'?
 - e. Are girls' games given equal attention in the school paper; pep assemblies; award ceremonies?

Do a questionnaire of secondary students and teacher/coaches. (Perhaps this can be arranged through student government.) (Pages 34-35 has suggested questions.)
10. School Board member who is the district's representative to the Minnesota State High School League
 - a. Do you believe that girls have equal opportunities in participating in athletics?
 - b. Do you believe that your separate sex teams are substantially equal? On what do you base this decision?

- c. Has a girl on a separate sex team asked to participate on the boys' team?
What was the school's response?
 - d. What is being done to run separate sex teams jointly? Same schedule, same coaching, same practice, etc.? Are girl/boy Friday night basketball double-headers being considered?
 - e. What is the League doing to expand girls' participation; encourage girls to develop skills?
 - f. Is the League working toward coed teams to the extent that they don't limit girls' participation?
11. The same kinds of questions should be asked of the appropriate people in private schools.
12. For the community recreation program: The Director:
 What is being done to comply with the law?
 Who is responsible for seeing that there is compliance?
 Have coaches, participants been told about the laws? Do they understand them?
 What changes has the law made in your programs?
- Under 12: Have all designations by sex been removed?
 How many of the team rosters are mixed? Is it real mixing or tokenism?
 (Look at them; count; make a record.)
 What is the ratio of girls on the various teams - basketball, baseball, touch football, ice hockey, wrestling, etc.
 Ratio of women coaches of the teams?
 Where participation is limited, is the division based solely on skill and ability (not sex)?
- 12 and over: When there aren't separate teams, how many girls play?
 When there are separate sex teams in the same sport:
 Number of male teams; number of female teams
 Money spent on each
 Facilities used by each
 Awards, trophies, trips, etc.
 Are these and other factors substantially equal based on participation (look at rosters; count yourself)?
- Also talk to students/parents, similar to #9 above.
13. Leaders of some of the independently run sports programs for youth that use public facilities (Little League, hockey associations, clubs, etc.) should be asked questions similar to those applying to the community recreation program.
 #12 above.

CHECK LIST

A. For students in 7th grade and above or 12 years old and older:

1. When just one team considered a "boys'" team is available in a sport, is it open to girls on an equal basis? (Football, wrestling, ice hockey, other sports with only one team)
- *2. For the above sports in total, how many girls are involved? Ratio of girls to boys? Total dollars spent on girls? boys?
3. Are the number of sports for each sex each season equal? (Inequality may not necessarily indicate discrimination.)
4. Where there are separate sex teams in the same sport:
are expenditures per participant (exclusive of revenues generated) substantially equal?

Are other factors equal - equipment and supplies, coaches, coaches' training, scheduling games and practice, travel, use of facilities, etc.?
5. What is done to interest girls to participate in sports; what is done to let them show their interest in sports not presently available? (Indicates good faith intent to comply.)
6. Go over the above questions for: junior high interscholastic sports
junior/senior high intermural sports
community recreation program
private schools

B. For students 6th grade or younger or 11 years or younger:

1. Are all athletic programs designed for and open to members of both sexes on an equal basis?
2. Have all divisions by sex been eliminated in the programs?
3. Are the athletic skills taught equally to all children; is remedial help given to those who have difficulty mastering a skill?
4. What is the sex ratio/team on all teams in the program?
5. Have the teachers had training/workshops explaining the law and how to implement it?
6. What has been done to interest girls/explain to girls their opportunities to have equal participation in all athletics?
7. Go over the above questions for: community recreation programs
private schools

C. Has the district filed accurate reports with the State Department of Education: November 15, 1977; July 15, 1978? (pages 29-33)

D. *Evaluate over a period of time the press coverage given girls/boys' athletics. Evaluate radio/TV coverage. (Compare inches, column location, page.)

WHEN ALL ELSE FAILS

In the event that an education institution or a community recreation program is not complying with the laws prohibiting discrimination based on sex in athletic programs, you will want to take action. First, be sure that your findings are substantiated by dates, data, and staff personnel and/or students involved. Then

- . Inform the non-complying institution of the problems you have found. Request action. Offer to help. It is possible that you will find areas of minimal legal compliance. In those cases, you should encourage initiative in the institution to go beyond mere compliance.
- . Complain to the non-complying institution. Start by talking to the Title IX coordinator and the person responsible for the program in question.
- . Notify the school board members or the trustees of a non-public institution or the public body controlling community recreation programs of the non-compliance. Attend their meetings; ask to make presentations which include graphic examples or specific information about the effects of non-compliance. Demand action!
- . Consider filing charges or assisting those involved in filing charges. Whether or not you decide to file, this in no way limits any other individual or group's right to file charges. Charges must be filed within 6 months of the alleged discrimination, so do not delay too long in seeking to work out the problem locally.

Charges can be filed with the Minnesota Department of Human Rights, 240 Bremer Building, St. Paul 55101 (phone 612-296-5663). Some local Human Rights Commissions can deal with charges. It is your decision where to go; however, filing a charge with one agency precludes the option of filing the same charge with the other agency. Complaints of violations of Federal Law, Title IX, should be filed with HEW, Region V, 300 South Wacker Drive, Chicago, Illinois 60606. They must be filed in writing within 180 days of the alleged discriminatory act.

- . Make the non-compliance a public, community issue. Use the media to inform the community. Keep newspapers and television and radio stations aware of what you are doing and what you find. Expose the non-compliance. Stage public information seminars and media events. For example, with the permission of the principal, take the media on a tour of the school's separate and unequal gym facilities for girls and boys. Use pictorial charts showing inequalities in participation, programs, monies spent for girls and boys in athletics.
- . Bring specific examples of non-compliance to the attention of the Minnesota Department of Education, EEO Section, 550 Cedar, St. Paul 55102; State Commission on the Economic Status of Women, 410 State Office Building, St. Paul 55155; and your state representatives. Request their support for the enforcement of the laws and the end of non-compliance.
- . Don't stop there! Talk about your findings with others - in your church, your union, your business or professional groups. Arrange a speaker's bureau with concerned

citizens. Take turns making formal presentations to request other people's involvement. Talk to friends and ask them to help.

- Urge the parents and students affected by the non-compliance to speak up. Build public pressure for the issue.
- Give awards for either good jobs or bad ones. Publicize the presentation of awards by inviting the media. Don't hesitate to embarrass non-compliers.
- Continue your involvement; request updates on the progress of the case and supply additional information you learn. Compliance must be continuous, so much monitoring. Watchdog.

KEEP A RECORD OF: What you find.
What you recommend.
What you do.

(Adapted from Monitoring
Title IX. AAUW.)

TYPICAL QUESTIONS:

1. If a sport is offered to boys, does it have to be offered as a separate sport to girls?

No, but girls have the option of trying out for that sport. This is the case presently in wrestling, hockey, football, and in some schools, soccer.

2. If a sport is offered to boys and a girl comes out for the team, does she have to be allowed on the team?

Yes, unless she fails to meet the same standards that are used to cut boys from the team. To be cut from the team, there should be a measurable difference between her skill level and those who are not cut.

3. If a sport is offered to boys, and girls do not seem interested in participating, does that end the responsibility of the school district in complying with the law?

No, Title IX states that the schools are to meet the interests and abilities of the students. An assessment of what would interest girls would logically be called for. Judge Hachey in ruling on Minnesota law in the case involving the St. Paul School District ordered that if there is a lack of interest on the part of girls for a separate team on any sport, then other sports shall be provided to girls to equalize the number of sports available to each sex. The same number of sports are to be made available to each sex in each season, although not necessarily the same sport in each season.... In addition, the school was ordered to develop an educational program to train girls in athletics and skills.

4. May schools prevent girls from participating in contact sports? (Football, ice hockey, wrestling, basketball)?

No. Minnesota law allows separate sex teams only when necessary to give equal opportunities to participate to both sexes. Minnesota law does not allow separation in contact sports as Title IX in the federal law does. Since Minnesota law is the stronger law and carries out the intent of the federal law, the Minnesota law prevails.

5. Where a sport is offered to girls (volleyball), can a boy compete on the team?

No, at this time. Minnesota State High School League rules don't permit it. At the current level of girls' skill development and their past history of not having equal opportunities to participate, if many boys who were good athletes choose to compete on the team, it would limit girls' opportunities to participate. If only a few, less skilled boys sought to play, then this would probably not unduly limit girls' opportunities. This issue is in the courts in other states.

6. Where there are separate teams in the same sport for girls and boys, how separate may they be? (Tennis, golf, gymnastics, track, cross country, skiing, basketball, baseball, softball)

According to Judge Hachey in interpreting Minnesota law, the teams are to be considered co-educational or not separated throughout their operation. Separation is only justified where it is necessary to allow girls an equal opportunity to participate. Each aspect of the team program, practice, coaching, scheduling, meets, etc., must be justified separately if the girls and boys' programs are to be kept separate.

At the present time, it is logical to assume that actual competition would be segregated by sex or scored in competition with the same sex, but for the other activities, if there is no limitation on girls' opportunities to participate, the programs may be run on a co-educational basis.

7. If the school has separate teams for each sex in the same sport, can a girl compete on the boys' team?

No, but possibly yes. Minnesota High School League rules state that if the teams are substantially equal, then each sex is to stay on its own team. The decision on whether the teams are "substantially equal" rests with the local school district. If they are not substantially equal, girls can compete on the boys' teams.

This issue was dealt with by hearing examiner George A. Beck (page 20). However, his decision was ruled moot since the girl filing the complaint left the state. At the present time, the MSHSL rules prevail. Schools, if they wish, could request clarification of the law by the Attorney General.

The girl who is denied permission to compete on the boys' team could file charges with the Department of Human Rights, but this process is lengthy and slow and probably would not help the individual involved.

8. If the school has separate teams for each sex in the same sport, what constitutes substantially equal treatment in order to comply with the law?

There shall be substantially equal budgets per participants. These dollar figures may be less than equal if tenure is a factor in coaching salaries, if the girls' team has start-up costs of uniforms and equipment, if an unexpected change in numbers of participants occurred after the budgets and coaching numbers were set. However, efforts should be made to anticipate interest and plan accordingly.

In calculating equal budgets per participant, admissions and other revenue generated by the sport may be subtracted from that sport. At the present time, the standard school accounting system does not report sports revenues as an off-set to expenditures.

It is not substantially equal treatment to have freshman, sophomore, JF and Varsity teams for boys and one team for girls.

The practice facilities, skill of coaches, attitude of coaches, number of coaches, practice times, schedules, travel arrangements and distances, overnight trips, number of meets, kinds of meets, attention to the sport by the rest of the school, uniforms, medical attention, etc., are all to be substantially equal.

9. Do the separate season in tennis, gymnastics and swimming violate the law? (Having girls' tennis in the fall, boys' in the spring; boys' gymnastics in the fall, girls' in the winter; girls' swimming in the fall, boys' swimming in the winter.)

At the present time, no. Judge Hachey ruled that they did, but this issue is still in the courts. The final decision has not yet been made.

10. At the present time, what are the requirements for coaching a girls' sport?

None. Up until recently 18 credits of instruction were required for girls' coaches. Only 9 credits were required to coach boys' teams, and this applied to only six sports. Rules were then proposed to make a standard requirement regardless of the sex of the team being coached. In anticipation of new rules, the requirements for coaching girls were dropped, but not those for coaching boys. The new rules also would have required certification and licensing for all interscholastic coaches,

junior and senior high, head coach and assistants, and all sports. This broadening of requirements has become an issue between the State Board of Education and the Board of Teaching. A hearing examiner and the Board of Education rejected the new rules. They are currently back in the Board of Teaching being rewritten. In the meantime, there is no requirement on qualifications for coaching girls' sports.

11. May junior and senior high physical education instruction be segregated by sex?

No. Title IX, state law, and Department of Education rules covering instruction provide that no course may be provided on the basis of sex. Separation by sex is allowed in locker room use and in classes in human sexuality. Ability grouping is allowed providing that this doesn't have an adverse effect on one sex.

12. Do Title IX and Minnesota law apply to colleges and universities as well as school districts?

Yes. There has been very little public attention in applying Minnesota Law on equal opportunity in athletic programs to colleges and universities, but the state laws do apply.

13. Do community recreation programs come under the laws?

Yes. Under age 12 there can be no sexual differentiation in their programs. Age 12 and older, programs and teams segregated by sex can only be justified if they are necessary to give equal opportunity for participation to both sexes. The number of offerings for each sex should be substantially equal; where separate programs are offered based on sex in the same sport, they shall be treated substantially equal, equal money spent per participants, equal competition, number of meets, number of awards, equal umpiring/refereeing, etc.

14. Do private community groups running sports programs come under the law? (Little League baseball, hockey associations, sports clubs, etc.)

Yes, if the programs use public facilities, publicly paid coaches or are in any way supported by public funds. (Federal law specifically exempts Boy Scouts, Girl Scouts, Campfire Girls.)

15. Do private schools come under the laws?

Yes, the laws apply to "educational institutions" which means private as well as public.

LAWS AND RULES DEALING WITH SEX EQUALITY IN ATHLETICS IN MINNESOTA - 1978
(not fully quoted)

Minnesota Human Rights Act as amended through July, 1977 - MN Stat. 363.03 Subd. 5(1)

"Education Institution. It is an unfair discriminatory practice to discriminate in any manner in the full utilization of or benefit from any educational institution, or the services rendered thereby to any person because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability."

MN Stat. 363.03 Subd. 4 "Public Services. It is an unfair discriminatory practice: To discriminate against any person in the access to, admission to, full utilization of or benefit from any public service because of race...sex...."

Definitions:

- 363.01 Subd. 10 - Discriminate includes segregate or separate.
- 363.01 Subd. 19 - Public Service - any facility, department, agency, board or commission owned, operated or managed by or on behalf of the State of Minnesota or any subdivision - county, city, township, or independent district in the state.
- 363.01 Subd. 20 - Educational Institutions - public or private institutions - nursery through college, business, vocational schools, etc.
(363.02 Subd. 3 - the sex provision of the law does not apply to private educational institutions which permit students of only one sex to enroll.)
- 363.05 - Duties of the Commissioner - to administer the law, enforce compliance; to use education, conferences, persuasion to eliminate unfair discriminatory practices; shall conduct research and study discriminatory practices; shall create such local and statewide advisory committees as will effectuate the purposes of the department.

Enforcement Powers - MN Stat. 124.15

Districts are required to file assurances of compliance with state and federal laws prohibiting discrimination. The filing is to be done with the Department of Education. These are reviewed by the Department of Human Rights to determine compliance. If not in compliance, the Department of Education proceeds against the district with the power to reduce state financial aids.

Department of Education Rules - EDU 4

In curriculum, no school shall provide any course or activity on the basis of sex, (health (except human sexuality), phy. ed., home ec., industrial arts).

Department of Education Rules - EDU 660-669

In areas of equal educational opportunity and desegregation:

- Schools shall disseminate a policy on non-discrimination on a continual basis.
- Reduction in state aids can be the penalty for non-compliance with the rules.
- Schools must submit data in this area as required by the Department of Education.

[126.21] Discrimination; Athletics; Equal Opportunity.

Subdivision 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:

(1) to restrict membership on an athletic team to participants of one sex, if this restriction is necessary to provide members of each sex with an equal opportunity to participate in the athletic program; provided, if a membership restriction on the basis of sex results in the operation of two teams in the same sport which are separated or substantially separated according to sex, the two teams shall be operated in compliance with all the provisions of clause (2) of this subdivision; or

(2) to provide two teams in the same sport which are in fact separated or substantially separated according to sex, if the two teams are provided with substantially equal budgets per participant, exclusive of gate receipts and other revenues generated by that sport, and in all other respects are treated in a substantially equal manner. The two teams shall be operated separately only in those activities where separation is necessary to provide the members of each sex equal opportunity to participate in the athletic program.

Subdivision 2. Any organization, association or league entered into by educational institutions or public services for the purpose of promoting sports or adopting rules and regulations for the conduct of athletic contests between members shall, effective July 1, 1976, provide rules and regulations and conduct its activities so as to permit its members to comply fully with subdivision 1 and section 363.03, subdivisions 1 and 5.

Subdivision 3. Educational institutions and public services shall make every reasonable effort to provide substantially equal budgets per participant pursuant to subdivision 1 during the school year 1975-1976, and thereafter shall provide substantially equal budgets per participant pursuant to subdivision 1. Educational institutions and public services shall phase out separation based on sex in athletic programs designed for participants 11 years old or younger and in the sixth grade or below during the school years 1975-1976, 1976-1977, and 1977-1978, and thereafter shall comply fully with subdivision 1 and section 363.03, subdivisions 4 and 5.

Section 2. Laws 1974, Chapter 355, Section 68, Subdivision 4, is repealed.

Approved June 4, 1975.

Assurance of Compliance with State and Federal Laws Prohibiting Discrimination, Department of Education Report 660

1. All athletic programs 6th grade or 11 years or younger are to be designed for and open to both sexes equally.
2. For 7th grade or above or 12 years or older, teams are to be open to members of both sexes on an equal basis# (except where there are separate teams to ensure equal opportunity to members of both sexes*).
3. If the district provides separate teams for each sex*, the number of sports for each sex each season is to be equal.
4. If there are separate boys and girls teams*, expenditure per participant (exclusive of revenues generated by the sport) is to be substantially the same for each sex. Other services are also to be equal - equipment and supplies; scheduling games and practice time; travel; coaching; use of facilities; etc.

Title IX - Federal Higher Education Act

Benefits under any educational program or activity receiving federal financial assistance, including athletics, cannot be denied on the basis of sex.

Title IX Rules

86.8 - At least one employee is to be designated to ensure compliance. Students and employees are to be notified who this is.

86.41 - Athletics

Cannot exclude from participation, be denied benefits, be treated differently from another person in interscholastic, club or intermural athletics based on sex; cannot provide separate programs based on sex.

Can be separate by sex when based on competitive skill.

Can be separate by sex when a contact sport+.

If only offered to one sex, the sex previously limited can try out unless it is a contact sport+.

Determining facts in equal athletic opportunity:

selection of sports and level of competition accommodates the interests and abilities of members of both sexes (obligation to survey not mentioned).
equal services - equipment and supplies, scheduling games and practice times, travel, coaching, use of facilities, etc.

It does not constitute noncompliance if there are unequal aggregate expenditures per sex in total or if there are unequal expenditures if there are two separate teams based on sex, but failure to provide necessary funds may indicate noncompliance.

Elementary schools must comply by 1976; secondary by July 21, 1978.

86.34 - Access to course offerings, including athletics

No separation based on sex; no refusal to allow participation based on sex. Grouping according to ability is allowed, but if a single standard of measuring skill or progress has adverse effect on one sex, appropriate standards can be set that don't have this effect.

Elementary and secondary classes in human sexuality can be separated by sex.

Phy. ed. classes or activities can separate by sex in contact sports*.

Athletic scholarships can be granted proportional to the number of students of each sex in interscholastic athletics.

86.14 - Excluded from coverage

YMCA, YWCA, Girl Scouts, Boy Scouts, Camp Fire Girls, voluntary youth service organizations exempt from taxation (Int. Rev. Code Sect. 501 (a)) where membership has been traditionally limited to one sex.

"teams open to members of both sexes on equal basis if there is only one team" - football, hockey, wrestling, soccer, ski jumping, baseball.

* "separate teams in each sport" - basketball, track and field, swimming, tennis, gymnastics, golf, skiing (except jumping), cross country, baseball-softball.

+ "contact sports" - wrestling, boxing, rugby, ice hockey, football, basketball, and other sports where the purpose or major activity involves body contact.

If "significant assistance" is provided by public money to a sport - school, public playground, publicly paid coaches, etc., the sport comes under the provisions of Title IX.

The U.S. Supreme Court ruled that girls had to be allowed to play on Little League teams in 1974.

MN Stat. 129-21, Subd. 1, establishes the Minnesota State High School League to regulate interscholastic and extracurricular activities in high schools.

Minnesota State High School League (MSHSL) - technically this is a voluntary organization. High schools don't have to join, although this rarely happens. With membership, schools may compete in state tournaments and must abide by League rules. These rules set sports' seasons:

<u>Fall</u>	<u>Winter</u>	<u>Spring</u>	
Volleyball - G	Gymnastics - G	Tennis - B	
Football - B - Unitary	Basketball - B & G	Baseball-Softball - B & G	G
Soccer - B - Unitary	Wrestling - B - Unitary	Golf - B & G	
Gymnastics - B	Hockey - B - Unitary	Track - B & G	
Tennis - G	Skiing - cross country & down hill - B & G		
Swimming - G	Swimming - B		
Cross Country - B & G			
4 Girls	3 Girls	3 Girls	
4 Boys (2 Unitary)	5 Boys (2 Unitary)	4 Boys	

Girls can try out for boys' teams if there is no girls' team in the sport. This includes "Unitary" sports. Girls are restricted to girls' teams when single sex teams in the same sport are substantially equal. Each school determines if the teams are substantially equal. (This was successfully challenged in the case of a Burnsville swimmer, and the Minnesota State High School League (MSHSL) rules were declared in violation of MN Stat. 126.21. On appeal, the ruling was voided as moot, since the girl had left the state. The MSHSL rules currently stand.)

VIEWS OF THE LAWS (MN Stat. 363.03 Subd. 5; MN Stat. 126.21)

Findings by Judge Ronald E. Hackey, District Court, Ramsey County, June 14, 1976, in the case brought by Charlotte Striebel and others similarly situated against the St. Paul Board of Education:

It is legislative intent to provide coeducational athletic programs in educational institutions for all participants 12 years of age or older, unless justification is shown to restrict membership on an athletic team to participants of one sex in order to provide members of each sex with equal opportunities to participate in the athletic program.

If membership is restricted on the basis of sex, then each team shall provide substantially equal benefits per participant, exclusive of gate receipts and other revenues generated by that sport, and in all other respects there shall be treatment in substantially the same manner including arranging for the same seasons for each sport*, equal access to skilled coaching, equally desirable practice time, practice facilities, etc.

The word "activities" in MN Stat. 126.21, Subd. 1 Clause (2) means active or overt acts in furtherance or creation of an athletic program including practice schedules, equal time in use of facilities.

It is the intent of the Legislature to provide that separate teams are to be an exception to the rule of providing coeducational sports programming, and there must be a showing, based on reasonable facts, of the necessity for providing separate teams and for having separate "activities" for each team. Sports designated as contact sports - boxing, wrestling, Rugby, soccer, ice hockey, football, basketball, are included in the Minnesota law.

If a sport is provided for boys only, then a corresponding scheduled sport for girls shall be provided. If there is a lack of interest on the part of girls for a separate team in any sport, then other sports shall be provided to girls to equalize the number of sports available to each sex. The same number of sports are to be made available to each sex in each season, although not necessarily the same sport in each season.

The St. Paul School District was ordered to change its sports program to reflect the findings. In addition, it was ordered to develop an educational program to train girls in athletics and skills.

* The judge, in ordering that the same seasons be arranged for sex separate team sports, stated that they must show nondiscriminatory reasons for having separate seasons in the same sport. Wherever the primary problem appears to be lack of facilities, then the school district must show justification why the total number of athletes cannot be divided into two seasons based upon skill criteria rather than by sex - varsity in one season, junior varsity in another season, comprised of membership of both sexes.

This latter provision has been appealed, and the issue is still in the courts.

Memorandum, November 23, 1977, by George A. Beck, Hearing Examiner, in the complaint against the Burnsville School District in which the school district was found in violation of sex discrimination laws by excluding Paula Macdonald from the boys' high school swimming team. The finding also ruled that the Minnesota State High School League's rule that prevents girls from being on boys' teams was in violation of law. The examiner ordered that Paula Macdonald and any other girl within the school district who so desires was to be allowed to participate as a member of the boys' swim team.

MN Stat. 363.03, Subd. 5, prohibits discrimination based upon sex. MN Stat. 126.21 provides that it is not an unfair discriminatory practice to restrict membership on athletic teams to participants of one sex if the restriction is necessary to provide members of each sex with an equal opportunity to participate in the athletic program. The burden to show that a sex restriction is necessary falls upon the School District. MN Stat. 126.21 establishes a presumption against teams completely segregated by sex and does not appear to allow very much discretion to school districts in determining when such segregation is appropriate.

The MN High School League rule that prevents girls from being on boys' teams conflicts with MN Stat. 126.21 in that the law permits crossovers even where two teams are treated in a substantially equal manner if the school district is unable to show that separate teams are necessary to provide members of each sex with an equal opportunity to participate in the athletic program. Consequently, a school's reliance on a rule may well lead them to violate the statute. A school district cannot justify restriction of membership by sex simply by providing substantially equal sex-segregated teams, since this would nullify MN Stat. 126.21, Subd. 1 (1), and would also render meaningless the "substantially separated" language of subdivision 1(2). Because the League's rule permits segregation where the school judges equality to exist, it must necessarily fall in the face of the statutory mandate. MN Stat. 126.21, Subd. 2, specifically directed the League to provide rules and conduct its activities so as to permit its members to comply fully with the law by July 1, 1976. The League failed to revise the rule in question which had been in effect since 1974.

On appeal by the Minnesota High School League, the findings and order were declared moot, since the girl involved no longer attended the school. The effect has been to reinstate the Minnesota High School League rule.

Department of Human Rights:

"The department has held the position for some time that girls should not be prohibited from participating fully in school athletic programs in the same manner as males are currently allowed to participate. Athletes, regardless of sex, should have the opportunity to play on any team which is part of a school's athletic program. More specifically, athletes should not be denied the best coaching, the best facilities, the best competition (regardless of sex) available in a school's athletic program simply because they are females. If female students are interested in a sport, they must be given the opportunity to compete and should be encouraged to participate in that sport. A female athlete must be given the opportunity to compete against male athletes if she wishes. The department bases this position on a prohibition contained in the Minnesota Human Rights Act which bars discrimination in education because of sex.

"Before action can be taken to eliminate discriminatory practices and their effects, a standard must exist so that it is possible to assess attempts to achieve equal opportunity. In conciliating the school district charges of sex discrimination, the Department has established the concept of sexual parity; that is, all else being equal, the proportion of girls and boys participating in athletic programs offered by a school district would be in direct proportion to the number of girls and boys enrolled in that school system. Not all circumstances that result in less than sexual parity would be sexually discriminatory. Sexual parity, according to Commissioner Wilson, is a goal rather than a requirement. However, where it has been found that sex discrimination is responsible for lack of parity, remedial action must be taken. Some permissible reasons for less than proportional representation of girls on athletic teams might be a lack of interest or lack of needed skills. The department's goal is to ensure that girls are not excluded from participating in sports programs offered by state school districts."

Department of Human Rights Press Release
September, 1978

"....department policy....views separate-but-equal provisions based on sex for any level of athletics in Minnesota as illegal."

Equality Issues, MDHR, July-August, 1978

Minneapolis Star - September 8, 1978

Editorials

'Sexual parity' and football

COMMISSIONER WILSON is not entirely free of blame for the widespread misinterpretation of his use of the phrase "sexual parity." The phrase appeared six times in 19 remedies the Human Rights Department proposed to two suburban school districts alleged to be discriminating against girls in their athletic programs.

portion to the number of girls and boys enrolled in the school system . . . Where it is found that sex discrimination is responsible for lack of parity, remedial action must be taken."

The department does not object to disproportionate same-sex teams where they exist for reasons other than sex

St Paul

Pioneer

Press

Dispatch

'Sexual parity' in prep sports concerns school

ANOKA, Minn. (AP) — Anoka-Hennepin school districts officials are concerned about a Minnesota Department of Human Rights document which appears to go further than state law in defining "sexual parity" in high school athletics.

"We're looking at it and saying this is incredible, it's unreal," says Superintendent Lew Finch.

The Human Rights Department says athletic teams and programs must have "parity" based on the percentage of male and female students in the district.

This appears to mean that if the varsity football squad has 40 players, and if 50 percent of the students in the district are girls, the team must be half girls.



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MINNESOTA STATE HIGH SCHOOL LEAGUE
2621 Fair Oak Avenue
Anoka, Minnesota 55303

I. Foundations for Growth.

In 1969, the Minnesota State High School League initiated the development of the first statewide girls athletic program among its 522 members. Never before had such an opportunity been proposed for high school girls in Minnesota.

The approval capped nearly a decade of efforts to change society's biased attitude toward the girls who enjoyed sports. Until the late 1960's a girl faced a stereotyped model of femininity which excluded the development of fitness, skill and strenuous physical activity. She was taught that something might get 'shook up' if she engaged in competitive sports and warned that her peers, particularly the boys, preferred a companion who "played like a girl."

Until 1969 school-sponsored athletic programs for girls in Minnesota had been limited and virtually non-existent. During the 1900's to 1940's occasional inter-school basketball league's existed in some areas of the state. The girls game was played under a variety of rules ranging from a 3-court limited dribble game to, as one former player described it, "whatever rules the visiting team wanted to play." From 1924-42, eleven schools in Minnesota's Iron Range participated in a program of girls swimming and a state meet was conducted for these schools by the Minnesota State High School League until 1942. At that time, girls and womens programs were discontinued across the nation as a wave of public censure discouraged all school-sponsored sports for girls and women and an occasional play-day or intramural program became the only source of competitive activities during the 1940's, 50's and 60's. It was a frustrating period for the highly skilled and motivated young woman.

Change requires leadership. In Minnesota, this leadership in the 1960's was initiated by several organizations: The Minnesota State High School League, The Minnesota Association for Health, Physical Education and Recreation, its Division for Girls and Women's Sports and the Minnesota State Department of Education.

The mood for change was brought before the public by the combined efforts of secondary school physical education teachers, administrators, college and university educators and personnel of state education agencies. From 1963-69, these leaders set aside old stereotypes and biases, and an outline took shape for a comprehensive statewide program of athletics for girls. The philosophy and objectives for girls athletics was developed and proposed to the legislative body of the Minnesota State High School League in November 1968. In March 1969 the Representative Assembly voted to add a parallel girls athletic program to existing programs of boys athletics, music, drama and speech. The movement began slowly at first but gradually gained momentum and maturity as the efforts of civic and community organizations, as well as state and federal laws added strength and validity to the statewide program.



II. GIRLS SPORTS: Number of High School Interscholastic Varsity Teams.

The chart illustrates the growth of the program for the ten (10) girls sports which culminate in League-sponsored state tournaments.

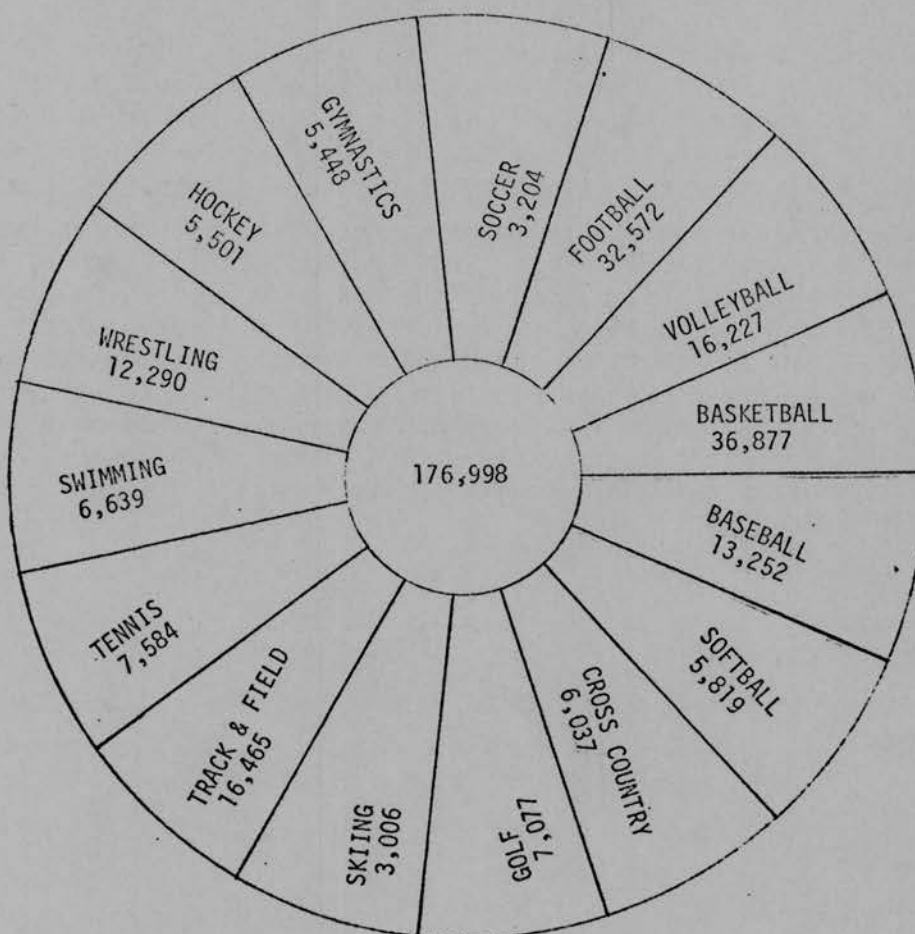
SPORT	1971-72	1972-73	1973-74	1974-75	1975-76	1976-77	1977-78	1978-79
Basketball	84	127	218	407	* **489	493	504	500
Cross Country	4	1	4	29	*123	158	179	**217
Golf	8	13	32	32	103	*132	160	**188
Gymnastics	61	77	120	*156	186	173	172	**181
Skiing	1	8	19	22	* 52	60	65	73
Softball	12	13	6	16	75	*110	161	**183
Swimming	20	45	72	80	*108	114	122	129
Tennis	8	42	84	*134	168	179	188	**187
Track & Field	*164	198	420	463	**494	494	474	469
Volleyball	62	111	220	*250	**460	476	483	490
TOTAL:	424	635	1,195	1,589	2,258	2,389	2,508	2,617

CODE:

- * Year in which State Tournament series initiated.
- ** Year in which State Tournament expanded to two classes, A-AA.

III. PARTICIPATION: Minnesota State High School Athletic Teams.

- A. The following chart depicts the number of student athletes who were members of high school teams in each League-sponsored sport; 1977-78:



B. Participation Statistics - Schools and Students.

SPORT	BOYS			GIRLS		
	1977-78 TEAMS	1978-79 TEAMS	STUDENTS	1977-78 TEAMS	1978-79 TEAMS	STUDENTS
Baseball	424	414	13,252	- -	- -	- - -
Basketball	514	508	19,883	504	500	16,994
Cross Country	264	257	4,290	179	217	1,747
Football	504	488	32,572	* - -	- -	- - -
Golf	306	308	5,204	160	188	1,873
Gymnastics	45	43	762	172	181	4,686
Hockey	148	146	5,051	* - -	- -	- - -
Skiing	60	68	1,576	65	73	1,430
Soccer	48	52	3,204	* - -	- -	- - -
Softball	- -	- -	- - -	161	183	5,819
Swimming	127	128	3,201	122	129	3,438
Tennis	180	179	3,788	188	187	3,796
Track & Field	461	460	16,465	474	469	15,533
Volleyball	- -	- -	- - -	483	490	16,227
Wrestling	366	366	12,290	* - -	- -	- - -
TOTALS:	3,447	3,417	121,538	2,508	2,617	71,543

* Team for girls not provided in that sport, girls eligible for team membership and participation.

IV. Team Membership.

The Minnesota State High School League and its member schools recognize that separation of students and their activities can create discriminatory practices but that some separation on the basis of sex in athletics has been recognized in state and federal laws and may be necessary to provide equal opportunity to members of both sexes.

Therefore, during the development of the girls athletic program, the following League policies have defined the options available to girls:

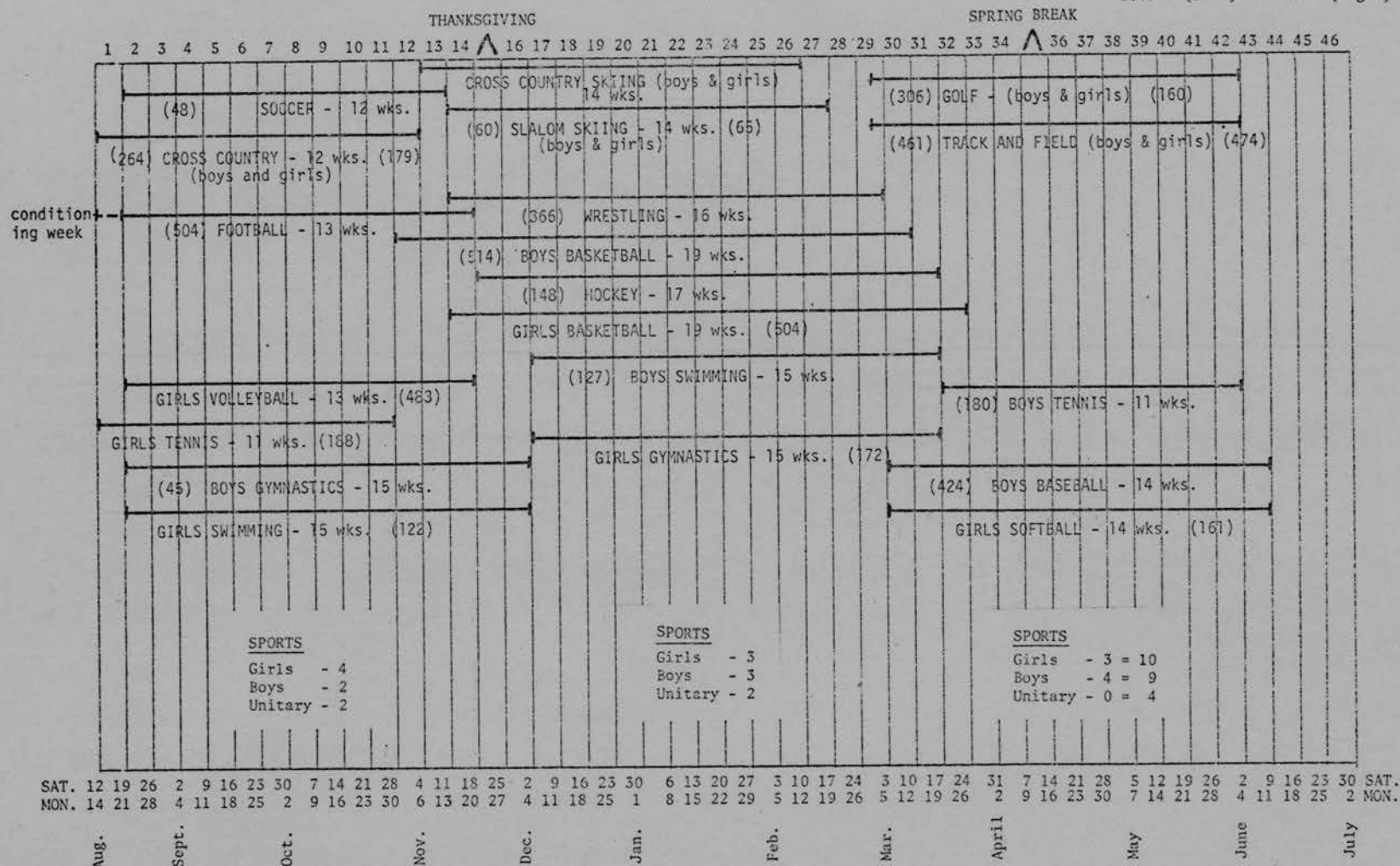
1. In a school where substantially equal and separate teams in the same sport are provided, students shall be limited to membership or participation on teams designed for their sex. The determination of substantial equality between the girls and boys teams shall be made by the member school.
2. When a school determines that the team designed for girls has not achieved substantial equality with the team designed for boys, the school may permit a girl to compete for membership and participation on the boys team.
3. Girls may compete for membership or participation on a team designed for boys when a separate team in that sport is not provided for girls.
4. Boys shall not be eligible for membership or participation on a team designed for girls.

V. 1978-79 Calendar of Seasons.

When schools have provided two teams in the same sport which are separated or substantially separated according to sex, the activity is conducted in the same season with the exception of tennis, swimming and gymnastics. In those three (3) activities, the separation of seasons most effectively provides the members of each sex an equal opportunity to participate in the athletic program.

* 1978-79 CALENDAR OF SEASONS

Number of Teams - 1977-78
BOYS - (left) GIRLS - (right)



VI. The Organization and Its People.

The Minnesota State High School League was first organized in 1916 as the State High School Athletic Association. Its primary purposes were (1) to promote amateur sports, and (2) to establish uniform eligibility rules for interscholastic athletic contests.

In 1929 it expanded its scope with the addition of speech and debate. At that time the name was changed to the Minnesota State High School League. Music was added in 1965 and Girls' Athletics in 1969.

The opportunities provided through League-sponsored activities has grown from the original program of football, basketball, track and baseball to include 23 athletic activities for girls and boys; a music program which includes 89 different areas of competition; one-act play contests, a debate program and 11 different divisions of speech. Over 350,000 student participations will occur in League activities during the 1978-79 school year.

The League has existed as a non-profit, voluntary association of the high schools since its inception. In 1960 it was officially incorporated under the laws of the State of Minnesota as a non-profit corporation.

Five hundred and twenty-two (522) public and non-public schools in Minnesota are members of the Minnesota State High School League. The policies, procedures, rules and regulations of the League are developed and changed by action of the member schools and their publics.

BOARD OF DIRECTORS

(15 members)
School Representatives

- 4 - Class AA
- 4 - Class A
- 2 - School Board A-AA
- 1 - Commissioner of Education

Activity Representatives

- 1 - Boys Sports
- 1 - Girls Sports
- 1 - Music
- 1 - Speech

LEGISLATIVE ASSEMBLY

(90 members)

- 32 - A Districts
- 32 - AA Sub-Regions
- 2 - Music A-AA
- 2 - Speech A-AA
- 2 - Athletic Directors Assn.
- 2 - Coaches Assn. - Girls Sports
- 2 - Coaches Assn. - Boys Sports
- 8 - A School Board Representatives
- 8 - AA School Board Representatives

CLASS A-AA

REGION COMMITTEES

Minimum - 4 Members

CLASS A

DISTRICT COMMITTEES

Minimum - 4 Members

CLASS AA REGIONS - SUB-REGIONS

(# of Schools)

1AA (16)	2AA (16)	3AA (16)	4AA (16)
5AA (17)	6AA (16)	7AA (16)	8AA (15)

(128)

522 MEMBER SCHOOLS

2 Official School Representatives from each member school to District and/or Region Meetings.
Eligible: one - school board member; one - administrator or full time faculty member of member school

FINE ARTS COUNCIL

(11 members)

- 3 - Board of Directors
- 2 - Minn. Assn. of School Adm.
- 2 - Minn. Assn. Secondary School Prin.
- 2 - Fine Arts Coordinators
- 1 - Speech Assn. of Minnesota
- 1 - Minn. Music Educ. Assn.

ADVISORY COMMITTEES

(18 members)

- 5 - Speech Advisory Committee
- 5 - Theatre Advisory Committee
- 3 - Debate Advisory Committee
- 5 - Music Advisory Committee

JUDGES AND CLINICIANS

Selected for state tournaments and rule interpretation meetings.

CLASS A REGIONS - DISTRICTS

(# of Schools)

I (48)	II (50)	III (48)	IV (48)
V (47)	VI (57)	VII (43)	VIII (54)

(395)

- ATHLETIC COUNCIL**
(15 members)
- 2 - Minn. Assoc. of School Administrators
 - 2 - Minn. Assoc. of Secondary School Principals
 - 2 - Minn. State High School Coaches Assn.
 - 2 - Minn. State High School Coaches Assn. - Girls Sports
 - 2 - Minn. State Athletic Directors Assn.
 - 2 - Athletic Coordinators - Girls Sports
 - 1 - Act. Rep. - Board of Directors - Boys Sports
 - 1 - Act. Rep. - Board of Directors - Girls Sports
 - 1 - Vice President - Board of Directors

SPORTS ADVISORY COMMITTEES

BOYS SPORTS

Baseball
Basketball
Cross Country

Football
Golf
Gymnastics
Hockey
Skiing
Soccer
Swimming
Tennis
Track and Field
Wrestling

GIRLS SPORTS

Basketball
Cross Country
Golf
Gymnastics
Skiing
Swimming
Tennis
Track and Field
Volleyball
Softball

OFFICIALS AND CLINICIANS

Selected for state tournaments and rule interpretation meetings.

National Organization For Women, Twin Cities Chapter

"What Does the Law Say - Generally

Athletics should be conducted in a coed way unless there is a good reason for sex segregation.

The choice as to which sport and which team (boys' team or girls' team if there are two) to try out for should be left to the students and their parents.

This choice should be overruled by the school only if there is a good reason for doing so.

The only good reason recognized by the statute is the necessity 'to provide the members of each sex with an equal opportunity to participate in the athletic program.'

If a boys' team and a girls' team are provided in the same sport, then they must be treated the same in all respects including budget per participant.

"What Does the Law Require - Specifically

In each school an athletic program with

the same number of boys and girls participating,

the same number of sports for girls as for boys.

Same salary for coaches of boys and girls teams.

Boys and girls teams should be treated the same with regard to such things as uniform and equipment, use of facilities, expertise of coaches, and season.

One coed team rather than two sex segregated teams in sports where this is possible; that is, in cross country

golf

gymnastics

skiing

swimming

tennis

track

In sports where coed teams are not possible, there should be some coed activities such as basketball doubleheaders (the boys' game and the girls' game on the same night).

Boys should not be permitted to participate on girls' teams.

Girls should be permitted to participate on boys' teams if they wish to, and if they can make the team.

"How Does the High School League Violate the Law

By prohibiting and/or discouraging coed teams.

By providing championship tournaments in different seasons for boys and girls in gymnastics, swimming, and tennis.

By prohibiting girls from participating on boys' teams.

"What Can Be Done

The Attorney General could issue an opinion interpreting and clarifying the law.

The Department of Human Rights could draft rules and regulations interpreting and clarifying the law."



EEO SECTION
CAPITOL SQUARE BLDG., 550 CEDAR
ST. PAUL, MN 55101

STATE OF MINNESOTA
State Department of Education

Assurance of Compliance with State and Federal Law
Prohibiting Discrimination
(See 5MCAR § 1.0660-1.0666)

Name of School District _____ Number _____

The undersigned hereby affirm that the above named school district is in compliance with the following state and federal laws prohibiting discrimination:

1. Minn. Stat. 363.03, Minnesota Human Rights Act, which prohibits discrimination in education programs and activities on grounds of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability.
2. Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the district receives federal financial assistance.
3. Title VII of the Civil Rights Act of 1964 (P.L. 88-352), as amended by the Equal Employment Opportunity Act of 1972 (P.L. 92-261), which prohibits discrimination in employment because of an individual's race, color, religion, sex, or national origin.
4. Title IX of the Education Amendments of 1972 (P.L. 92-318), which prohibits discrimination on the basis of sex in education programs and activities receiving or benefiting from federal financial assistance.
5. The Age Discrimination in Employment Act of 1967 (P.L. 90-202), which prohibits discrimination on the basis of age (40 through 64).
6. Minn. Stat. 126.21, which prohibits sex discrimination in athletic programs.
7. EDU 4 (§ 1.004), curriculum, which provides that "No school shall provide any course or activity on the basis of sex. This includes health, physical education, home economics, and industrial education."
8. EDU 620-639 (§ 1.0620-1.0639), relating to equality of educational opportunity and school desegregation.

This assurance is given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discount, or other federal and state financial assistance extended after the date hereof to the district by the Department of Health, Education, and Welfare and the State Department of Education, including installment payments after such date on applications for federal financial assistance and state aid allotments which were approved before such date. The district recognizes and agrees that such federal and state financial assistance will be extended in reliance on the representations, supporting information required by Minn. Stat. 214.15, subd. 2a, and agreements made in this assurance. This assurance is binding on the district and the person or persons whose signatures appear below and who are authorized to sign this assurance on behalf of the district.

The attached form, Information Needed to Evidence Compliance, with this assurance statement is made a part thereof.

Dated _____

By _____
(School Superintendent)

By _____
(President or Chairperson of School Board)

By _____
(Clerk of School Board)

Yes No EDUCATIONAL SERVICES

12. Student marital/parental status?

- _____ a. Does the district have a written policy which specifies that pregnant students shall not be excluded from any educational program or activity except when the student requests voluntarily to participate in a separate portion of the program or activity?
- _____ b. If a medical certificate is required of pregnant students, is it also required of all other students for physical and emotional conditions requiring the attention of a physician?

13. Athletics:

- _____ a. Are all athletic programs for the sixth grade and below, or for 11 years old and younger, designated for and open to members of both sexes on an equal basis?

If no, explain _____

- _____ b. Are the district athletic programs for 7th grade and above, or for 12 years old and older, designated for and open to members of both sexes on an equal basis (except when separate teams are necessary to provide equal opportunity to members of both sexes)?

If no, explain _____

- _____ c. If the district provides separate teams for each sex, are the number of sports in each season the same for boys and for girls?

If no, explain _____

- _____ d. If the district provides separate teams for each sex, are the following services equal for members of both sexes?

- _____ – provision of equipment and supplies?
- _____ – scheduling of games and practice time?
- _____ – travel and per diem allowance?
- _____ – opportunity to receive coaching of equal expertise?
- _____ – assignment and compensation of coaches?
- _____ – provision of athletic facilities, including locker rooms?
- _____ – publicity?

If no, explain _____

- _____ e. If the district provides separate teams in the same sport, for boys and girls, is the expenditure per student (exclusive of gate receipts) the same for members of each sex?

If no, explain _____

EMPLOYMENT PRACTICES

14. Are all employment and personnel practices free from discrimination on the basis of age (40 to 64), race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability (except when based on a bona fide occupational qualification) as follows:

- _____ a. Are district employment application forms free from all reference to any of the above categories?



Minnesota
State Department
of Education

SENIOR HIGH INTERSCHOLASTIC STUDENT ATHLETIC ACTIVITIES PROGRAM REPORT - PART I

ED 00196-02
(F24-79)

READ ACCOMPANYING INSTRUCTIONS AND
CLARIFYING COMMENTS BEFORE ENTERING
DATA. DO NOT SEPARATE SHEETS OF THIS
REPORT UNTIL ALL DATA HAS BEEN ENTERED.

COMPLETE THIS REPORT AND RETURN
IT TO THE FOLLOWING ADDRESS BY JULY 15
633 CAPITOL SQUARE - 550 CEDAR
ST. PAUL, MINNESOTA 55101

District No.

Name of Person Completing Report

Date

Telephone (including area code)

Ext.

INTERSCHOLASTIC ATHLETIC ACTIVITY		FALL TERM						WINTER TERM						SPRING TERM								
		A	B	COACHES		E	F	G	H	I	COACHES		L	M	N	O	P	COACHES		S	T	U
		No. Weeks	Total Partic.	Male	Female	Total Coaches Salaries	Total Activity Budget	Grades Partic.	No. Weeks	Total Partic.	Male	Female	Total Coaches Salaries	Total Activity Budget	Grades Partic.	No. Weeks	Total Partic.	Male	Female	Total Coaches Salaries	Total Activity Budget	Grades Partic.
BOYS ATHLETIC ACTIVITIES (ALSO OFFERED TO GIRLS)	Basketball	✓	B 01																			
	Track & Field	✓	B 02																			
	Swimming	✓	B 03																			
	Tennis	✓	B 04																			
	Gymnastics	✓	B 05																			
	Golf	6	B 06																			
	Skiing (downhill)	3	B 07																			
	Skiing (cross-country)	4	B 08																			
	Cross-country (running)	1	B 09																			
	Baseball		B 10																			
	Soccer		B 11																			
Other (specify)		B																				
GIRLS ATHLETIC ACTIVITIES (ALSO OFFERED TO BOYS)	Basketball		G 01																			
	Track & Field		G 02																			
	Swimming		G 03																			
	Tennis		G 04																			
	Gymnastics		G 05																			
	Golf		G 06																			
	Skiing (downhill)		G 07																			
	Skiing (cross-country)		G 08																			
	Cross-country (running)		G 09																			
	Soccer		G 10																			
	Other (specify)		G																			

Department of Education Copy (White)
Department of Human Rights Copy (Yellow)
School District Copy (Green)



Minnesota
State Department
of Education

SENIOR HIGH INTERSCHOLASTIC STUDENT ATHLETIC ACTIVITIES PROGRAM REPORT - PART II

ED 00196-02

READ ACCOMPANYING INSTRUCTIONS AND
CLARIFYING COMMENTS BEFORE ENTERING
DATA. DO NOT SEPARATE SHEETS OF THIS
REPORT UNTIL ALL DATA HAS BEEN ENTERED.

COMPLETE THIS REPORT AND RETURN IT
TO THE FOLLOWING ADDRESS BY JULY 15
633 CAPITOL SQUARE - 550 CEDAR
ST. PAUL, MINNESOTA 55101

District No.

Name of Person Completing Report

Date

Telephone (including area code)

Ext.

INTERSCHOLASTIC ATHLETIC ACTIVITY		FALL TERM									WINTER TERM									SPRING TERM								
		PARTICIPATION			COACHES		Total Coaches Salary	Total Activity Budget	Grades Partic.	PARTICIPATION			COACHES		Total Coaches Salaries	Total Activity Budget	Grades Partic.	PARTICIPATION			COACHES		Total Coaches Salaries	Total Activity Budget	Grades Partic.			
		No. Weeks	Boys	Girls	Male	Female				No. Weeks	Boys	Girls	Male	Female				No. Weeks	Boys	Girls	Male	Female						
UNITARY TEAM ACTIVITIES (SEE INSTRUCTIONS)	Football	U	21																									
	Hockey	U	22																									
	Soccer	U	23																									
	Wrestling	U	24																									
	Ski Jumping	U	25																									
	Baseball	U	26																									
ATHLETIC ACTIVITIES OFFERED SEPARATELY TO BOYS ONLY	Softball	M																										
	Volleyball	M																										
	Other:	M																										
		M																										
		M																										
		M																										
		M																										
		M																										
ATHLETIC ACTIVITIES OFFERED SEPARATELY TO GIRLS ONLY		F																										
		F																										
		F																										
		F																										
		F																										
		F																										
		F																										
		F																										

Department of Education Copy (White)
Department of Human Rights Copy (Yellow)
School District Copy (Green)

I N S T R U C T I O N S

1977-1978 JUNIOR AND SENIOR HIGH INTERSCHOLASTIC STUDENT ATHLETIC ACTIVITIES REPORT

- (1) These reports are to be completed and returned by July 15, 1978. Please retain the district copy and return the remaining two copies to: 633 Capitol Square Building, 550 Cedar Street, St. Paul, 55101.
- (2) Data furnished on these reports should cover the past years program, 1977-1978.
- (3) DO NOT INCLUDE extra curricular activities such as cheerleading, drill teams, etc. on these interscholastic athletic activity report forms.

- (4) On PART I - in the areas designated Boys Athletic Activities or Girls Athletic Activities - provide information only for those activities where both sexes are offered the same sport but separately, e.g. girls basketball, boys basketball; girls tennis, boys tennis, etc.

- (5) On PART I and PART II in columns designated TOTAL ACTIVITY BUDGET only include the total of the following:

equipment costs (5-1230.3)*	(custodians (1-610.2)	awards (1-1001)
transportation costs (1-1001)	(utilities (1-640)	uniforms (1-1001)
supplies (1-1001)	referees (1-1001)	lodging (1-1001)
insurance (1-1001)	tournament entry fees (1-1001)	

DO NOT INCLUDE any of the following:

gate receipts, ^{participation fees} gifts, coaches salaries (salaries for coaches are to be included separately under columns E, L, and S on PART I, and columns F, N and V on PART II)

- (6) On PART I and PART II in columns designated GRADES PARTICIPATING indicate those grades that participate in that particular athletic activity; e.g. you may be reporting the Senior High program but your Senior High Interscholastic swimming team is open to grades 8 through 12.
- (7) On PART II ^{fill in information for all teams not listed in part I.} in the areas designated ~~UNITARY TEAM ACTIVITIES~~ indicate ~~only those activities where both boys and girls are competitive members of the same interscholastic athletic team.~~
- (8) On PART II in the areas designated ATHLETIC ACTIVITIES OFFERED SEPARATELY TO GIRLS ONLY, or ATHLETIC ACTIVITIES OFFERED SEPARATELY TO BOYS ONLY, list all interscholastic athletic activity that is offered for girls and not for boys, or for boys and not for girls within the school district program.
- (9) Clarifying comments may be made upon a separate sheet of paper and attached to the State Department of Education copy.

*Manual of Instructions for Uniform Financial Accounting for Minnesota School Districts

ATTITUDE SURVEY FOR STUDENTS

1. Are you a boy or girl?
2. Do you like physical education?
3. Do you like physical education with boys and girls together?
4. For the past year, what sports did you play during school time?

a. Volleyball	h. Skiing	o. Track
b. Football	i. Tennis	p. Other _____
c. Ice hockey	j. Golf	_____
d. Floor hockey	k. Swimming	_____
e. Soccer	l. Baseball	
f. Basketball	m. Softball	
g. Wrestling	n. T-Ball	
5. For the past year what organized group sports did you play outside of school classes?

a. Volleyball	h. Skiing	o. Track
b. Football	i. Tennis	p. Other _____
c. Ice hockey	j. Golf	_____
d. Floor hockey	k. Swimming	_____
e. Soccer	l. Baseball	
f. Basketball	m. Softball	
g. Wrestling	n. T-Ball	
6. Who organized the sports in #5 above?

a. Community-recreation program	
Sports _____	
b. The school	
Sports _____	
c. Church	
Sports _____	
d. Club	
Sports _____	
e. Other	
Sports _____	
7. Which sports in #5 had both girls and boys on the team?
8. What sports do you play with friends, family, by yourself that are not in an organized program?
9. What organized group sport would you like to play that you now don't?
10. What new sports would you like to learn about that you now don't know?
11. Do you want to be a professional athlete? If so, in what sport?

ATTITUDE SURVEY FOR TEACHERS AND COACHES

1. Are you aware of the laws prohibiting discrimination in athletics based on sex?
(MN Stat. 126.21; MN Stat. 363; Federal Law Title IX)
2. In your opinion, do you agree with these laws?
3. In implementing these laws, would you say that they have had an impact on the students involved? If so, in what way?
4. Do you believe students like the provisions of the laws?
5. Do you provide extra help for those students who have skill levels below the group average?
6. In coed team play, if the boys do not involve the girls equally in the action, what do you do about it?
7. Your sex:
8. Other comments:

QUOTES

Excerpts from "They Told You You Couldn't Compete With Men and You, Like A Fool, Believed Them. Here's Hope," by Dr. Jack H. Wilmore, Women Sports, June, 1975:

"There seems to be some dark, foreboding fear that participation in competitive athletics will somehow make women sprout rippling muscles and grow moustaches. And they certainly shouldn't be allowed to compete with men. Why everybody knows they're just not strong enough.

"These notions about women are not simply prejudice. Certainly, the world's sports records support the assumption that females are inferior athletes. In track, for example, the world's record for men in the 100-yard dash is 9.1 seconds; for women it is 10 seconds. In the high jump, men have reached the height of 7'6½"; women only 6'3½". Even in a recreational activity like golf, the lowest 18-hole score is 55 for men, 62 for women.

"And if the sports records aren't convincing enough, there's ample scientific evidence demonstrating that girls do as well as boys in a variety of physical activities up to the age of 8 to 10 years. After that, boys continue to improve. The girl, athletically speaking, is over the hill by the time she reaches 15.

"These findings strongly imply that the female is biologically inferior to the male. But recent evidence suggests that these differences may be more a result of social and cultural restrictions forced upon the developing female just about the time she begins menstruating. It simply isn't socially acceptable for girls to engage in strenuous sports beyond this age. Learning that she shouldn't be athletic is what makes the female inferior - not the other way around.

"Are females biologically equal to males? Can women expect to perform successfully in sports that traditionally had the participation of only males? Will hard training defeminize a woman's natural appearance? In the three major dimensions used to evaluate athletic performance:

Strength. Women can develop substantial strength through weight training without developing the same musculature as men. Muscle bulk is due primarily to the male hormone testosterone. Lack of musculature does not necessarily limit the strength females can develop. Athletes probably use no more than 20% of their muscle potential anyway. Strong females with small muscles apparently use a higher percentage of their muscle fiber. The size of a woman's muscles should not prevent her from approaching the strength of a man. And if strength is looked at in terms of the size of a person relative to lean body weight (total weight minus weight of fat), the strength potential is theoretically similar for both men and women.

Endurance. This is measured by the maximum oxygen the body can use when exercising strenuously. Up to the age of 10-12 years, boys and girls have identical maximum values of oxygen uptake. Beyond this, the average untrained male has a substantially larger value (about 30%) than the untrained female of the same age. However, the oxygen uptake capacity decreases rapidly with a sedentary lifestyle. It has been shown that a female athlete has a capacity as much as 25% greater than that of a sedentary male. And studies of long distance female runners show capacities only little lower than male distance runners. If these values are calculated relative to lean weight, the difference would be very slight. It seems that if training for women emphasized greater endurance, the small difference in oxygen uptake capacity between male and female endurance athletes would be reduced even further.

Body Composition. After puberty, the female has a higher percentage of her body weight in fat than does the male, even though the male is generally taller and heavier. However, in female distance runners, body fat composition was lower than that of the average college-age male. Two of the runners had under 7% body fat. A study of 114 male competitors at the 1968 Olympics showed a mean relative fat value of 7.5%.

"All of our findings on strength, endurance and body composition indicate that, in fact, there are few actual differences between the best female and male athletes when tested in the laboratory.

In sports where women have been competing at an international level for considerably longer than in track, the gap between men and women's times seem to be narrowing. For example, the 400 meter freestyle swim. In the 1924 Olympics, men finished 16% faster than women. It was only 7.3% faster in the 1972 games. In fact, women are swimming faster today than Johnny Weissmuller did in the 1924 Olympics. We suspect that the 14% gap in the mile run (3.51.1 minutes for men to 4.29.5 for women) in which females have been competing for a relatively short period of time, will similarly close with time.

"The factors that have led to the performance difference are the same ones that will help close the gap: the degree to which a sport has been recognized or emphasized for women, and the time and effort given to coaching, facilities and training techniques. Perhaps when these have been equalized, we will discover some basic structural differences between men and women that may place the female at a decided advantage (or disadvantage) in certain events. For example, the female's wider pelvis, lower center of gravity, or smaller stride might help or hinder her athletic competence.

"For a long time, women have been discouraged from participating in athletics because they were not good athletes. What we've found is that there isn't really much difference between men and women. This finding has a number of implications, one being that, at least in non-contact sports like the marathon, men and women can compete fairly.

"Our findings also demonstrate that there is no need for different training or conditioning programs for the two sexes. Their needs are essentially the same. Where weight training for women was previously condemned as a means of gaining strength, we have shown that increased muscle bulk is not necessarily a consequence of weight training. And we also question the seeming necessity of body fat. Our findings show that a female can reduce the stores of fat to perform better in running and jumping events. Yet reduction of body fat does not necessarily mean a reduction in the femininity of a woman's figure.

"Above all, our studies show that women can compete quite successfully in just about any sport, even those that are currently considered suitable for men only. While her initial performance may not be of the same quality as the male's, a woman should be permitted the same opportunities to perform. She should also be given equal opportunities to develop her strength - usually the weakest link in the physical makeup of a woman - so that she can more effectively compete. As our findings demonstrate, the source of the inferiority of the female athlete lies more in the realm of available opportunities than in any physiological limitations.

Dr. Jack H. Wilmore, Associate Professor of physical education at the University of California at Davis is a member of the Board of Trustees of the American College of Sports Medicine.

Quotes:

TIME - 1978:

"Women no longer feel that taking part in athletics is a privilege. They believe it is a right." Joan Warrinton, executive secretary of the Association for Inter-collegiate Athletics for Women.

"The stigma is nearly erased. Sweating girls are becoming socially acceptable." Liz Murphey, coordinator of women's athletics at the University of Georgia.

Eight years ago, 294,000 high school girls participated in interscholastic sports. During the 1976-77 academic year, the number was 1.6 million, nearly a six-fold increase.

"Sports was the laboratory where they turned boys into men. As for girls, they were supposed to stand out in the hall, quaking in their tennis shoes. The penalty for daring to take part was to be labeled unfeminine, a social deviant. What is considered healthy psychological development in a man - aggressiveness, independence, ambition, courage, competitiveness - was viewed as unhealthy in a woman. Yet, it is precisely those qualities that are found in every athlete, male or female. Whatever it is that works for little boys also works for little girls." Dr. Dorothy Harris, Penn State Psychologist.

Nature certainly designed women better than men for sport in one basic way. A man's scrotum is much more vulnerable than a woman's ovaries which sit inside a great big sac of fluid - beautifully protected. A woman's breasts are also not easily damaged. There is no evidence that trauma to the breasts is a precursor of cancer. Such injuries as girls and women do suffer can often be blamed on improper condition or coaching. Girls are more loose-jointed than boys, making them somewhat more susceptible to injuries like dislocated shoulders.

Then there is the canard that a woman's menstrual cycle inhibits peak performance. World and Olympic records, however, have been set by women who were having their periods. Nor does exertion disrupt the cycle for most women athletes.

THE FEMALE ATHLETE, Klafs and Lyon

Young boys and girls up to age nine mature about evenly. Then the girl makes a quantum jump, becoming taller, heavier, better coordinated and generally more competent. But the girl's growth terminates at age fifteen or sixteen, while the boy continues to develop, not reaching his maximum growth till somewhere between twenty and twenty-one. Girls have a significantly lower center of gravity than boys, due to a combination of female weight in the thighs and bottom, and male weight in the upper torso and arms. This means that girls have a better sense of balance and can less easily be knocked off stride once they are moving forward.

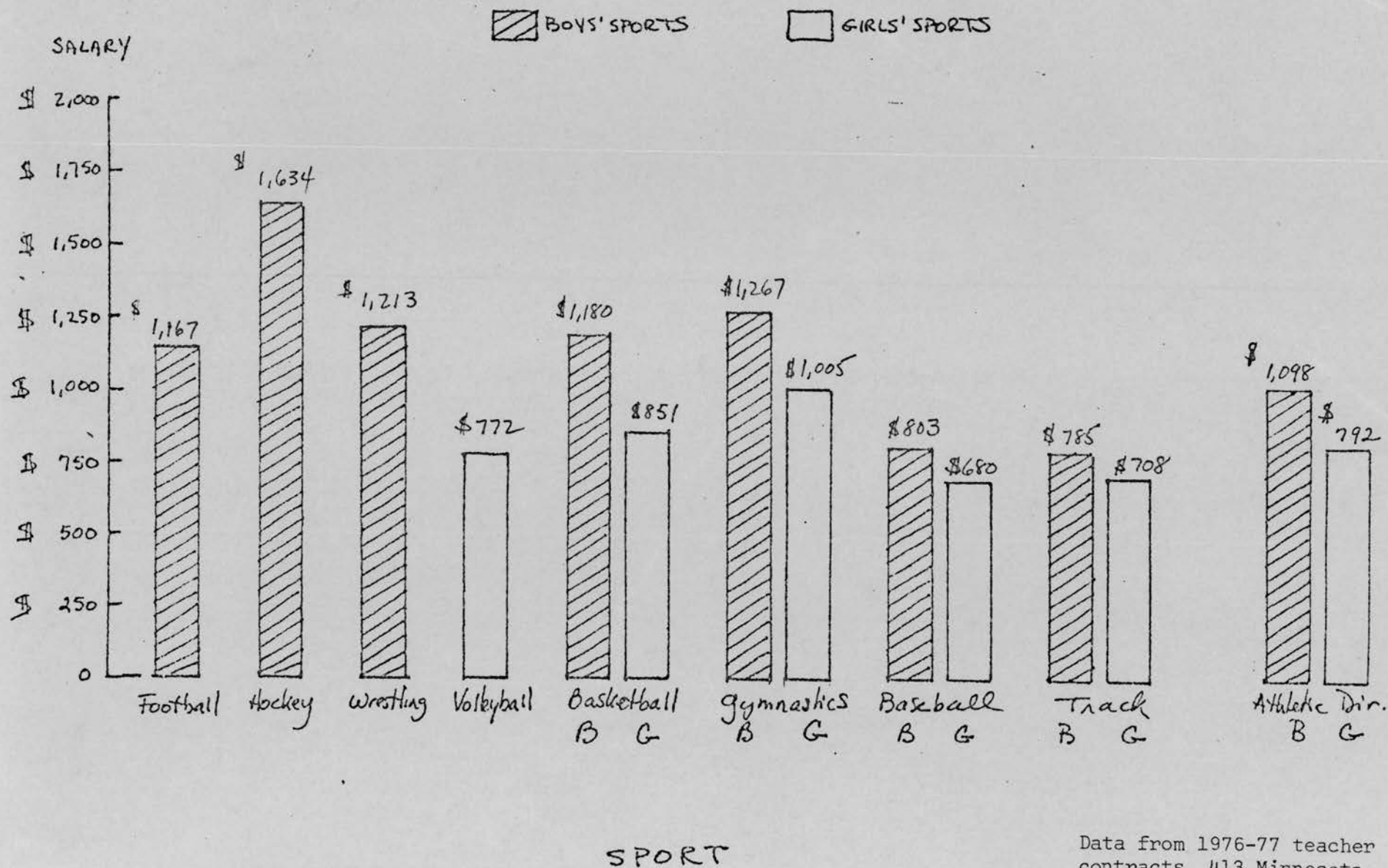
At "Little League" age, girls tend to be two inches taller, four or five pounds heavier, stronger and have superior body control than boys. These advantages are only temporary.

NATION'S SCHOOLS, Dr. H. Royer Collins, Chief of Sports Medicine at the Cleveland Clinic

1. Are sports harmful to girls? No.
2. Do sports endanger girls' reproductive organs? No. Boys are subject to much greater danger. But breasts should be protected.

3. Do sports impede menstruation? No, they help.
4. Dare a girl participate in sports during her period? Of course, unless she normally experiences severe cramps.
5. Are girls' bones more fragile than boys'? No, they are smaller.
6. Should girls in junior and senior classes in high schools be allowed to compete with boys in contact sports? No. The boys are too heavy. But girls should be allowed to compete against boys in tennis and golf.
7. Do girls suffer a higher injury rate than boys. No, it is much lower.
8. If girls had the same opportunities as boys, would their athletic performances improve? Definitely. "I'm wholeheartedly in favor of both men and women participating in sports because this is one of the best ways I know to achieve a healthy society."

SELECTED AVERAGE SALARIES FOR EXTRA-CURRICULAR SPORTS, MINNESOTA 1976-1977



Data from 1976-77 teacher contracts, 413 Minnesota school districts, compiled by the Minnesota Education Association. Chart prepared by Nina Rothchild.

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- "In The Running," a national clearinghouse of information on sex equality in sports, Women's Equity Action League, 805 15th Street N.W., Washington, D.C. 20005.
- Monitoring Title IX, American Association of University Women, 2401 Virginia Avenue N.W., Washington, D.C. 20037, 1977.
- Gerber, Ellen W., et al. The American Woman in Sport, Reading, Mass.: Addison-Wesley Publishing Company, 1974.
- Michener, James A., Sports in America. Chapter V, "Women in Sports." New York, N.Y.: Random House. 1976.

PEOPLE YOU MAY WISH TO CONTACT:

- | | |
|---|--------------|
| League of Women Voters of Minnesota, 555 Wabasha, St. Paul, MN 55102 | 612-224-5445 |
| Elizabeth Ebbott, Girls' Athletics Project Chair, 409 Birchwood Ave., White Bear Lake, MN 55110 | 612-426-3643 |
| Representative Phyllis Kahn, State Office Building, St. Paul, MN 55155 | 612-296-4257 |
| Department of Human Rights, 240 Bremer Building, St. Paul, MN 55101 | 612-296-5663 |
| to inquire about filing a charge | 612-296-9926 |
| Mary Hoeve, girls' athletics | |
| Attorney General staff working with sex discrimination, 240 Bremer Building, St. Paul, MN 55101 | |
| Mark Levinger | 612-296-9058 |
| Charlene Smith | 612-296-7861 |
| Department of Education, Capitol Square Building, 550 Cedar, St. Paul, MN 55102 | |
| Archie Holmes, Supervisor, EEO Section | 612-296-5020 |
| Don Hatfield, Human Relations Specialist, EEO Section | 612-296-5082 |
| MN State High School League, 2621 Fair Oaks Avenue, Anoka, MN 55303 | |
| Dorothy McIntire, Assistant to Director | 612-427-5250 |
| League of Human Rights Commissions | |
| Maria Larson, V.P., 2001 Duluth Street, St. Paul, MN 55109 | 612-484-3630 |
| Council on the Economic Status of Women, Room 400, State Office Building, St. Paul, MN 55155 | |
| Nina Rothchild, Director | 612-296-8590 |

1973-4 - MSAL - No Rule - 130 girls or boys team.
20 boys or girls

MSAL Rule, page 6 -
schools / sport MSAL - page 13

the exception is 126.21 sub 1
is that to restrict to 1 sex
only in order to provide each
sex an equal opportunity to participate

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF HUMAN RIGHTS

Mn. HSAL Rule violated
Mn Stat A 126.21

Page 25 - Only exception
up to schools to prove need for separate sex -

State of Minnesota by
William L. Wilson, Commissioner,
Department of Human Rights,

1976-77 (3562 boys team.
2389 girls team
vs.)
Complainant,

Independent School District No. 191
and the Minnesota State High School
League,

Respondents.

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
ORDER AND MEMORANDUM

The above-entitled matter came on for hearing on August 8, 1977, before George A. Beck, Hearing Examiner, duly appointed by the Chief Hearing Examiner to hear this matter, at the Department of Commerce Hearing Room on the Fifth Floor, of the Metro Square Building in the City of Saint Paul, County of Ramsey, State of Minnesota. The hearing was also subsequently convened on August 10 and 11, 1977, and September 6, 7, 8, and 9 of 1977. The last four days of hearing were held in the Community Service Room of the Ridges Medical Center in the City of Burnsville, County of Dakota, State of Minnesota. The final written briefs in this matter were filed on October 11, 1977, and final oral argument was held on October 12, 1977.

Erica Jacobson, Special Assistant Attorney General, and Mark B. Levinger, Special Assistant Attorney General, 240 Bremer Building, Saint Paul, Minnesota, 55101, appeared on behalf of the Complainant. Charles Weaver, Esq., of the firm of Weaver, Talle & Herrick, 316 East Main Street, Anoka, Minnesota appeared representing Respondent Minnesota State High School League. Paul W. Hetland, Esq., of the firm of Peterson, Popovich, Knutson and Flynn, 314 Minnesota Building, Saint Paul, Minnesota, appeared representing Respondent Independent School District No. 191.

The following witnesses appeared at the hearing: Karen

Macdonald, Paula Macdonald, Dennis Dale, Marybeth Spencer, Robert Macdonald, Linda Wiard, Mary Rothchild, Mark Grismer, Joyce Detlefson, Meg Brown, Kathy Hetterick, Peggy Chutich, Connie Sugden, Donald O'Shaughnessy, John O'Grady, Howard Hall, Judith Johnson, Jimmie Keelin, Harlan Eernisse, Cheryl Swanum, Jeanne Arth, Eldon Rouse, John Nordlinger, Joan Anderson, Marty Knight, Patricia Roy, Marvin Helling, Dorothy E. McIntyre, Charles Douglas Nesbitt, Sharon Ruggiero, Michelle Grismer and Charlotte Striebel.

Based upon the testimony, exhibits, briefs and argument herein, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The Complaint in this matter was issued pursuant to Minn. Stat. § 363.06.

2. The Hearing Examiner has jurisdiction of this matter pursuant to Minn. Stat. § 363.071 and Minn. Stat. § 15.052.

3. Robert Macdonald and Karen Macdonald on behalf of their daughter, Paula Macdonald, filed a charge of discrimination against the Minnesota State High School League on November 24, 1976, and against Independent School District No. 191 on November 26, 1976, said charges being filed with the Department of Human Rights.

(Ex. 15, 16) A copy of the charge was served upon each Respondent respectively by mail.

4. Subsequent to the filing of the charges, the Department conducted an investigation of the allegations contained in each charge, and on November 30, 1976, the Complainant found probable cause to believe that each Respondent had committed an unfair discriminatory practice. (Requests for Admissions)

5. The Department of Human Rights has attempted to conciliate this matter without success. (Requests for Admissions)

6. Paula Macdonald is currently a sophomore at Burnsville Senior High School which is located in Independent School District No. 191. Paula is currently a member of the girls' swim team at the high school. She first began swimming competitively at age 8 with the Burnsville AAU Swim Club and continued with the Club until

age 12, swimming two hours a day, five days a week. (T. I, p. 34) Paula swam with the St. Louis Park AAU Swim Club the summers of 1974 through 1976. She has participated in AAU meets and in the Junior Olympics. In 1977, Paula has swum with the Hamline AAU Swim Club. (T. I, p. 35) As a seventh grader (1974-75) and as an eighth grader (1975-76), Paula participated on the Burnsville Senior High School boys' swim team. She participated in dual meets and in the conference and regional competition. There was one other girl on the boys' team each year. (T. I, p. 36) Paula was awarded a letter as an eighth grader. According to the boys' swim coach, Dennis Dale, Paula's presence on the team generally caused no problems. Paula ranked around the middle of the 24 person team in terms of performance. (T. I, p. 76)

7. In May of 1976, Karen Macdonald was advised by Acting Athletic Director John O'Grady that Paula would be able to swim on the boys' swim team again for the 1976-77 school year. (T. I, p. 11; T. IV, p. 35; Ex. 13, p. 3) This decision was made after boys' swimming coach Dennis Dale had advised O'Grady that he believed the girls' and boys' teams to be unequal in terms of the level of competition in practice and the amount of time spent in practice. (T. I, p. 80; T. IV, p. 37) However, in early August of 1976, the new Athletic Director, Jim Keelin, visited the Macdonalds and told them that Paula would not be permitted to participate on the boys' team in 1976-77 since this would be a violation of the Minnesota High School League rules. (T. I, p. 11-12, 24; T. IV, p. 100) Keelin told the Macdonalds that Paula would be able to lead the girls' team to victories and could be a star on the girls' team. (T. I, p. 12; T. IV, p. 101)

8. Subsequently, Keelin sent a letter dated August 24, 1976, to the High School League describing the boys' and girls' swimming program at Burnsville Senior High School, and asking the League to determine whether or not the teams were substantially equal. (Ex. 12-C) The League provided an answer by letter dated September 1, 1976, wherein it stated that in its opinion, the swimming programs were being conducted on a substantially equal basis. (Ex. 12-B)

In late summer of 1976, Marvin Helling of the State High School League talked to Mr. Macdonald and told him that Paula's swimming on the boys' team would be a violation of League rules. (T. I, p. 180; T. VI, p. 47-48) Helling also told Burnsville Senior High School Principal Howard Hall at approximately the same time that if the swimming teams were equal, they should be segregated by sex. (T. IV, p. 72)

9. Keelin then sent a letter dated September 9, 1976, to the Macdonalds reciting League Rule 12B, advising that the school had determined that the girls' and boys' swimming programs were substantially equal, and pointing out that School Board policy was to comply with League rules. Keelin therefore reaffirmed to the Macdonalds his decision not to allow Paula to participate on the boys' team since the League rule prohibited such a crossover if substantially equal and separate teams are provided for girls and boys. (Ex. 12-A; T. I, pp. 12-13)

10. The Macdonalds then filed a grievance with Don O'Shaughnessy, the School District Affirmative Action Officer under federal legislation on October 12, 1976. O'Shaughnessy denied the grievance by a memorandum dated October 18, 1976. (Ex. 13; T. I, p. 15; T. IV, p. 10) This denial was appealed to the School Board. After requesting a legal opinion from its attorney (Ex. 14), the School Board met to consider the Macdonalds' grievance. The Board heard from a male student, Tom Sonderegger, who thought he would have lettered on the swimming team the past season if Paula had not been on the team, and from a girl swimmer, Sharon Ruggiero, who said that Paula needed the training given on the boys' team. (T. I, 18-19) In fact, the male swimmer was denied a letter due to poor attendance at practices. (T. I, p. 96) The School Board subsequently directed the Superintendent of Schools to uphold Mr. O'Shaughnessy's decision. (T. IV, p. 10) Paula then joined the girls' swim team on approximately September 20, 1976, three weeks after the girls' season started. (T. I, p. 13)

11. Minnesota State High School League was first formed in 1916. (T. VI, p. 31) The League operates under the authority of

Minn. Stat. § 129.121, subd. 1, of which reads as follows:

Subdivision 1. The governing board of any high school may delegate the control, supervision and regulation of interscholastic athletics and other extracurricular activities referred to in sections 123.17 and 123.38 to the Minnesota state high school league, a nonprofit incorporated voluntary association. Membership in said Minnesota state high school league shall be composed of such Minnesota high schools whose governing boards have certified in writing to the state commissioner of education that they have elected to delegate the control, supervision and regulation of their interscholastic athletic events and other extracurricular activities to said league. The Minnesota state high school league is hereby empowered to exercise the control, supervision and regulation of interscholastic athletics, musical, dramatic and other contests by and between pupils of the Minnesota high schools, delegated to it pursuant to this section. The Minnesota high school league may establish a policy or guidelines for the guidance of member high schools in the voluntary formation or alteration of athletic or other extracurricular conferences. The commissioner of education, or his representative, shall be an ex officio member of the governing body of such league, with the same rights and privileges as other members of its governing body. The rules and regulations of said league shall be exempt from the provisions of sections 15.0411 to 15.0422.

Each local school board designates two representatives to the League. (T. VI, p. 40) A representative assembly composed of school representatives and representatives of the School Board Association, the Athletic Directors Association, and the coaches organization has rulemaking authority. (T. VI, p. 42) Any school representative may propose a rule change. (T. VI, pp. 42-43)

12. From 1969 to 1973, the League rule in regard to cross-overs read as follows:

Section 8.--Limitations in the Competitive Program for Boys.

Girls shall be prohibited from participation in the boys' interscholastic athletic program either as a member of the boys' team or a member of the girls' team playing on the boys' team. The girls' teams shall not accept male members.

(Ex. 3; T. VI, pp. 71, 101) In 1973, the League suspended this rule pursuant to a court decision. (T. VI, p. 102; Ex. 2) A League committee was then formed to draft the new rule which was passed by the representative assembly in the fall of 1974. During the year that the rule was suspended, approximately 130 girls participated on boys' teams and under 20 boys crossed over to girls'

teams. (T. VI, p. 103) It is likely that most of the girls who crossed over did not have the option of participating on a girls' team which was substantially equal to the boys' team. (T. VI, p. 141)

13. Section 12 of the rules of the Minnesota State High School League currently in effect is as follows:

Section 12. - Team Membership and Participation

A. Season Limitation.

A student is limited to membership or participation in one interscholastic season in a given sport each school year.

B. Separate Teams.

- all in violation of 126.21*
1. In a school where substantially equal and separate teams in the same sport are provided, students shall be limited to membership or participation on teams designed for their sex. The determination of substantial equality between the girls and boys teams shall be made by the member school.
 2. When a school determines that the team designed for girls has not achieved substantial equality with the team designed for boys, the school may permit a girl to compete for membership and participation on the boys team.
 3. Girls may compete for membership or participation on a team designed for boys when a separate team in that sport is not provided for girls.
 4. Boys shall not be eligible for membership or participation on a team designed for girls.

(Ex. 1)

14. The decision to allow Paula to participate with the boys' team in 1974-75 and 1975-76, was based upon a determination that the girls' and boys' teams were not substantially equal in terms of budget and length of season. (T. I, p. 79) Paula's desire to participate on the boys' swimming team is based upon her belief that she would receive better coaching, more strenuous practices and a higher level of competition in practices and meets. (T. I, pp. 47, 60)

15. The Burnsville Senior High School girls' swim team head coach during the school years 1974-75, 1975-76, and 1976-77 was Cindy Aldrich. The first year that the school had a girls' swim

team was 1974-75, and it was Aldrich's first year as a coach. (Ex. K, p. 8) She has taught mathematics at the school since 1973-74. Aldrich earned her college degree with a major in mathematics and a minor in recreation. As of April of 1977, she was one course short of completing her coaching certificate.

(Ex. K, p. 4) Aldrich swam on her high school girls' swim team for four years and she also swam competitively summers and after school with the Ascension AAU swim team from age 9 through age 16. (Ex. K, p. 6)

16. Aldrich, who is on sick leave this year due to pregnancy, customarily divided the girls' swim team into three roughly equal groups based upon their ability. She worked with the lower and middle groups of swimmers and the assistant coach worked with the top group of six girls. Aldrich took care of the administrative paperwork. (Ex. K, pp. 9-10) The lower and middle group was generally in the pool from 2:15 to 4:00 p.m., and the top group usually stayed 30 minutes longer. (Ex. K, p. 11) Practices were held Monday through Friday except that no practice was held the day of a meet. (Ex. K, p. 12) The lower and middle group would swim approximately 3000 to 4000 yards during a practice, and the top group would swim approximately 6000 to 7000 yards. (Ex. K, p. 12; T. V, p. 6)

17. Cheryl Swanum is currently assistant swim coach for the girls' team as she was in 1976-77. (Ex. IX, p. 10; T. V, p. 4) She is a graduate of Burnsville High School and is completing her degree at the University of Minnesota. Swanum swam competitively in AAU from fifth to twelfth grade, and swam four years in college. (T. V, p. 5) She has coached novice swimmers in the Burnsville AAU Club and the St. Paul Swim Club. (T. V, p. 5) In addition to coaching the top group of girls, Swanum prepared the worksheet for the practice. (Ex. K, p. 10)

18. During the 1974-75 and 1975-76 seasons, the team was in the Minnesota Conference with four or five other teams. In 1976-77, the team competed in the Blue Division of the Lake Conference with eight to nine other schools. (Ex. K, p. 15) The first girls'

state meet was held in 1975-76. (Ex. K, p. 17) The team finished third in the Missota Conference in 1974-75 and 1975-76. The team was last in the Lake Conference in 1976-77, losing all nine conference meets, but winning four or five non-conference meets. (Ex. K, pp. 17-18) The girls' team had a 12-week season until 1976-77 when the season went to 15 weeks, the same as the boys' team. (Ex. K, p. 20)

19. At the beginning of the 1976-77 season, Paula Macdonald was allowed to stay until 5:00 p.m. at her request and as a result, swam approximately 7000 to 8000 yards per practice. (Ex, K, pp. 11-12, 14; T. V, p. 11) This arrangement lasted only a few weeks, however, and then Paula began to leave with the other girls based upon the decision of Cheryl Swanum, the assistant coach, who worked with Paula. (T. I, p. 50; T. I, pp. 136-137; T. V, p. 13, p. 16; T. VII, p. 49)

20. While Paula Macdonald was a member of the girls' team during 1976-77, she had no competition in practice since she is so far superior to any of the other girl swimmers. (T. I, p. 47; T. V, p. 10; T. VII, p. 73) Paula's best time in the 500 freestyle event was 5:32 and the next best girl swimmer recorded a time of 6:20. (T. I, p. 64) Paula's best time in the 200 IM was 2:18, and the next best girl swimmer at Burnsville recorded a time of 2:30. (T. I, p. 64; T. VII, pp. 73, 123) Paula was capable of swimming harder in practice than any of the other girl swimmers. (T. VII, p. 83; T. II, pp. 65-66) The competitive situation for Paula on the girls' swim team during the current school year has changed little. (T. VII, p. 128)

21. In the 1976 State Girls' Swimming Meet, Burnsville finished 17th with 22 points. Paula Macdonald won 20 of these points. (T. I, p. 46) The team champion was Minnetonka with 172 points. In the State finals, Paula Macdonald finished fourth in the 200 yard individual medley (IM) with a time of 2:19.60. The event was won by Karen Anderson of Osseo with a time of 2:13.94. Paula finished sixth in the 500 yard freestyle with a time of 5:38.08. This event was won by Judy Anderson of Osseo with a time of 5:01.61. (Ex. A)

22. During the 1976-77 school year, the boys' swimming team initially swam between 6000 and 9000 yards in practice and peaked out at between 10,000 and 12,000 yards. (T. VII, p. 12) The boys would average approximately 8000 to 9000 yards in practice, or 45,000 to 55,000 yards per week. (T. I, pp. 40, 90) The boys' practice time generally runs from two to three hours, or approximately 15 hours per week. (T. I, pp. 40, 95) The girls' swim team in 1976-77 swam approximately 4000 to 5000 yards in practice, or 30,000 yards or less per week. (T. I, pp. 40, 90) The girls' practices would generally last 1-1/2 to 2 hours, or approximately eight hours per week. (T. I, pp. 40, 95; T. VII, p. 124) The boys' team did some weight work which the girls' team did not do (T. I, p. 94), and the time intervals between practice sets were usually less in the boys' practices than were in the girls' practices. (T. I, p. 44) The boys' practices were more disciplined with less wasted time. (T. VII, p. 8) The most important things to concentrate on in practice for a swimmer are stroke correction and conditioning. (T. I, p. 94) Almost all of the girls' meets are held at 4:00 p.m., and attract sparse attendance while the boys' meets are held at 7:00 or 7:30 p.m. before full stands of spectators. (T. V, p. 25; T. VII, p. 39)

23. Dennis Dale is beginning his fifth year as the boys' swimming coach and physical education teacher this fall at Burnsville Senior High School. (T. I, p. 73) Dale has had 16 years of competitive swimming experience including four years at Benilde High School, four years at the University of Minnesota, five seasons with the Ascension AAU Club and three years with the Gopher Swim Club. Dale has a B.S. degree in business administration and education from the University of Minnesota. (T. I, p. 74) He has a total of 18 seasons of coaching competitive swimming including coaching experience for one season at the University of Minnesota, four seasons at St. Louis Park High School, three years at De LaSalle High School, four years at Burnsville High School and six seasons of coaching AAU swim teams. (T. I, p. 75)

24. According to high school swimmers at Burnsville, Dennis Dale is a very good coach. (T. VII, p. 7) The swimmers believe that Dale is experienced (T. VII, p. 124), has knowledge of the physiological aspects of swimming, and is a good disciplinarian. (T. II, pp. 67-68) He writes up and supervises challenging workouts and corrects mistakes and strokes so that they do not become a habit. (T. I, p. 40) Paula Macdonald believes that Dale is able to elicit her best performance, (T. I, p. 40) and that she learned more from Dale than she did on the girls' team. (T. I, pp. 44-45)

25. Paula Macdonald's presence on the boys' swimming team as a seventh grader and as an eighth grader did not cause any problems and, in fact, she was treated like any other swimmer on the team according to her coach, (T. I, p. 88) her teammates, (including those who competed directly against her) (T. VII, pp. 9-10, 25) the boys' swim captain (T. II, p. 65) and the student manager of the boys' team (T. VII, p. 122). The record indicates that while some boys on the team may have tried harder when competing against Paula, (T. I, p. 88) at least one of the boy swimmers felt that losing out to a girl was no better or no worse than losing to a boy swimmer. (T. VII, p. 25) Paula herself received no complaints from boys on the team or knew of any problems caused by her presence. (T. I, p. 36) AAU swim practices are integrated by sex as are some college swim team practices without any problems or antagonism. (T. I, p. 76; T. V, pp. 159-160) Since Paula's ability placed her in approximately the middle range of the boys' swim team, her presence on the boys' team caused a boy to swim "B" team instead of varsity in certain events. This would also have occurred in 1976-77, had Paula been permitted to participate on the boys' swim team. (T. I, p. 86; T. IV, pp. 103-104) Paula also displaced a boy from regional competition in her last year on the boys' swim team. (T. I, p. 110)

26. Paula Macdonald's best times for the past three seasons were as follows:

	<u>200 IM</u>	<u>100 Butterfly</u>	<u>500 Freestyle</u>
Seventh Grade			
Conference Meet		1:06	5:46
Regional Meet		1:05.9	
Eighth Grade			
Conference Meet	2:20	1:04	
Regional Meet	2:18		5:28
Ninth Grade			
State Meet	2:18		5:32

(T. I, pp. 37-39, 45) Paula believes that the lack of improvement from her eighth grade year to her freshman year was due to being on the girls' team in her freshman year and receiving, in her opinion, less effective coaching and less rigorous workouts.

(T. I, p. 45) The boys' swimming coach testified that Paula was in her best condition ever while she was on the boys' swim team.

(T. I, p. 88) Improving her swimming times is more important to Paula than winning. (T. I, p. 46)

27. While some swimmers are able to improve in practice by swimming against the clock in the absence of competition, (T. V, pp. 141-143) some swimmers need actual competition in practice in order to push themselves and in order to improve. (T. V, pp. 160-161; T. VII, p. 11; T. II, p. 66; T. V, p. 17) Paula Macdonald is the type of swimmer who needs competition in practice in order to improve her performance. (T. I, p. 41; T. I, p. 110; T. V, p. 161) The Burnsville boys' swimming coach testified that the lack of competition in practice can make a season "drag" for a swimmer and that lessening the amount of yardage swum during a season retards the future development of a swimmer. (T. I, pp. 91, 133) While some outstanding girl high school athletes who testified indicated that they improved while playing on a girls' team without any competition in practice, (T. III, p. 25; T. V, pp. 141-142) they admitted that competition does help an athlete develop. (T. III, p. 25; T. V, p. 150)

28. The girls' head swimming coach at Burnsville Senior High School for the year 1977-78 is Vicky Sidwell, who was hired this year to teach physical education and health. She is also head track coach for the girls. She participated in track, volleyball

and gymnastics in college, but has had no competitive swimming experience and has never coached swimming. (T. IV, p. 59, pp. 61-62; T. V, p. 23; T. I, p. 105) During the first few weeks of the 1977-78 girls' swim season, Assistant Coach Cheryl Swanum has in fact coached the team since Vicky Sidwell is unfamiliar with how swim practices should be run or how correct strokes should be taught. (T. VII, pp. 43, 75) During the first two weeks of practice, Vicky Sidwell remained in the swim office doing administrative work. (T. VII, p. 74)

29. In looking for a teacher to fill the physical education/health position at Burnsville Senior High School, it is the policy of the school district to look for the best possible teacher that can be found and to consider secondarily coaching experience. (T. IV, p. 58; T. VII, p. 108) A male was not considered for this position since locker room supervision was one of the necessary duties. (T. VII, pp. 106, 108) The school district also believes that it has a duty to hire women coaches as a part of its equal employment effort. (T. VII, p. 96) While it is possible for the school district to hire a graduate student or a teacher from another school to coach a team (T. VII, p. 102), the school district believes that whenever possible head coaches should also be full-time teachers at the school. (T. VII, p. 115) It is sometimes difficult to find the desired combination of academic qualifications and coaching credentials in an applicant for a teaching position. (T. IV, p. 57)

30. Although Burnsville administrators believe that experience as a participant in a sport is not a prerequisite for a good coach, (T. IV, p. 77) and that it was in fact the last factor considered in hiring a coach (T. IV, p. 122), others testified that experience as a competitive athlete and as a coach is important to good coaching. (T. V, p. 107) Assistant Coach Cheryl Swanum testified that competitive swimming background is important and that experience as a coach improves coaches performance. (T. V, pp. 21-22) Burnsville basketball coach Judy Johnson testified that quality coaching is a

factor in equality between girls' and boys' teams. (T. IV, p. 94) Others testified that experience as a player helps you as a coach, (T. V, p. 44) and that a good coach needs previous experience and a competitive background. (T. V, pp. 57-58)

31. The early years of a new high school athletic team usually exhibit a lower competitive level as compared to a established team. (T. V, p. 111) A good coach may well demand less of athletes on a new high school team in order to avoid discouraging the students and to develop the program. (T. IV, p. 110; T. V, p. 112) The boys' swimming program is currently more developed than the girls' program. (T. I, p. 41)

32. Paula Macdonald and her parents incurred approximately \$80 in membership and coaching fees for AAU practices for Paula between December of 1976 and April of 1977, which is approximately the boys' swimming season. They also incurred greater transportation costs for AAU practices that would have been the case had Paula been on the boys' swim team. (T. I, pp. 22-23) However, if Paula had been on the boys' swim team during the 1976-77 school year, it is likely that she would have comparable costs and fees during the girls' fall season for AAU or other swimming. (T. I, p. 29)

33. The record amply demonstrates the dramatic improvement in girls' high school sports both at the Burnsville Senior High School and in the State of Minnesota since 1970. The School District has made great strides in the last three to four years in improving the girls' sports program. (T. IV, pp. 93, 183) During this period, the School District has equalized the budget, the length of season, and the number of coaches as between comparable girls' and boys' teams. (T. IV, pp. 7-8, 46) Statewide, the number of interscholastic sports open to high school girls has increased at a rapid pace. (Ex. C, p. 2; T. III, p. 28) The State High School League has moved from no statewide championships for girls in 1970, to ten statewide championships for girls in the school year 1977-78. (T. VI, pp. 96, 107)

34. The number of participants in sports at Burnsville Senior

High School in girls' and boys' teams for the past four seasons is as follows:

SPORT-BOYS

	1973-74		1974-75		1975-76		1976-77	
	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls
Baseball	20	0	20	0	20	0	40 (est)	0
Basketball	43	0	55	0	69	0	37	0
Football	102	0	92	0	87	0	102	0
Golf	10	0	11	0	10	0	14	0
Gymnastics	28	0	18	0	24	0	19	0
Hockey	52	0	50	0	56	0	47	0
Soccer	21	0	25	0	28	0	24	0
Swimming	21	0	19	2	17	2	26	0
Tennis	30	0	38	0	44	0	40	0
Track	67	0	65	0	82	0	80	0
Wrestling	34	0	37	0	43	0	36	0

SPORT-GIRLS

	1973-74		1974-75		1975-76		1976-77	
	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls
Basketball	0	35	0	40	0	47	0	38
Golf	No Program		0	8	0	15	0	30
Gymnastics	0	30			0	25	0	27
Softball	No Program		No Program		No Program		0	40
Swimming	No Program		No Program		0	25	0	21
Tennis	No Program		0	16	0	24	0	35
Track	No Program		0	50	0	65	0	40
Volleyball	No Program		No Program		0	32	0	24

COED

	1973-74		1974-75		1975-76		1976-77	
	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls
Cross Country Run	25	1	20	2	25	7	18	10
Cross Country Ski	No Program		No Program		No Program		26	14

(Ex. 11) Soccer has been added as a competitive sport for girls for the 1977-78 school year. (T. IV, p. 108)

35. The number of interscholastic girls' high school sport teams in Minnesota over the past six seasons, together with the years in which the State High School League initiated a state tournament for girls is shown in the following chart:

INCREASE IN GIRLS' SPORTS PARTICIPATION BY ACTIVITY

<u>Sport</u>	<u>Number of Interscholastic Teams</u>					
	<u>1971-72</u>	<u>1972-73</u>	<u>1973-74</u>	<u>1974-75</u>	<u>1975-76</u>	<u>1976-77</u>
Basketball	84	127	218	407	<u>489</u>	493
Cross Country	4	1	4	29	<u>123</u>	158
Golf	8	13	32	32	103	<u>132</u>
Gymnastics	61	77	120	<u>156</u>	186	173
Skiing	1	8	19	22	<u>52</u>	60
Softball	12	13	6	16	75	<u>110</u>
Swimming	20	45	72	80	<u>108</u>	114
Tennis	8	42	84	<u>134</u>	168	179
Track & Field	<u>164</u>	198	420	463	494	494
Volleyball	62	111	220	<u>250</u>	460	476
 TOTAL:	 424	 635	 1,195	 1,589	 2,258	 2,389

_____ Year in which State Tournament series initiated.

(Ex. 4)

36. The number of high schools in Minnesota offering various sports for boys and girls in 1975-76 and 1976-77 is indicated in the following chart:

NUMBER OF SCHOOLS PARTICIPATING IN ATHLETIC PROGRAMS

1975-76 and 1976-77

<u>Sport</u>	<u>1975-76</u>		<u>1976-77</u>		<u>Increase or Decrease</u>	
	<u>No. of Schools</u>	<u>No. of Schools</u>	<u>No. of Schools</u>	<u>No. of Schools</u>	<u>No. of Schools</u>	<u>No. of Schools</u>
	<u>Boys</u>	<u>Girls</u>	<u>Boys</u>	<u>Girls</u>	<u>Boys</u>	<u>Girls</u>
Baseball	452		438		-14	
Basketball	517	489	519	493	+ 2	+ 4
Cross Country	286	123	280	158	- 6	+35
Curling	19*		17*		- 2*	
Football	511*		509*		- 2*	
Golf	319	103	325	132	+ 6	+29
Gymnastics	63	186	57	173	- 6	-13
Hockey	146*		148*		+ 2*	
Skiing	60	52	65	60	+ 5	+ 8
Soccer	43*		48*		+ 5*	
Softball		75		110		+35
Swimming	124	108	128	114	+ 4	+ 6
Tennis	181	168	183	179	+ 2	+11
Track & Field	481	494	472	494	- 9	
Volleyball		460		476		+16
Wrestling	375*		373*		- 2*	
 TOTAL:	 3,577	 2,258	 3,562	 2,389	 -15	 +131

*Unitary teams - teams may be composed of members of both sexes.

(Ex. 6, 8) Virtually all of the members of the so-called "unitary teams" are boys. (T. VI, p. 64)

37. During the 1976-77 school year, the following items were equal as between the girls' and boys' swimming team at Burnsville: The budgets, the number of coaches, the coaching salaries, the length of season, the number of meets, and the awards given. (T. VI, p. 53; T. I, pp. 102-103) The budget and the coaches' salaries were equalized for the first time in 1976. (T. IV, pp. 49, 105)

38. Considerable testimony was given concerning the effect on the girls' swim team should Paula leave the team and cross over to the boys' team. The girls' team would have scored a great deal lower in the 1976 state meet since Paula had most of the points scored, and it is likely that fewer team points would have been scored in individual meets during the season. (T. II, p. 19; T. VII, p. 133) However, it is unlikely that Paula's absence would have affected the girls' won/loss record for the year. (T. I, pp. 53, 122; T. VII, p. 125) The swimmers on the Burnsville girls' swim team testified that there would be no effect on their performance whether or not Paula was a member of the team (T. II, pp. 5-6, 66-67; T. VII, p. 120), nor would the team morale be affected. (T. VII, pp. 72, 125) The girl swimmers did not perceive any negative reaction among members of the girls' team during the years when Paula was on the boys' team. (T. VII, pp. 71, 120; T. II, p. 65) Due to the large difference between Paula's swimming ability and that of the other girls on the team, she did not in fact provide competition for any of the other girl swimmers. (T. I, pp. 54, 121; T. II, pp. 21, 26-27) Girls' Coach Cindy Aldrich testified, however, that some of the girl swimmers were questioning what was wrong with their own program when Paula was on the boys' team. (Ex. K, pp. 22-23) Cindy Aldrich and Cheryl Swanum both testified that if outstanding girl swimmers are allowed to leave the girls' swim team, then the girls' program would not develop. (Ex. K, p. 24; T. V, p. 19) While Paula was on the boys' team, the girls' team continued to improve in terms of coaching, the intensity of

practice, and ranking in the regional meet. (T. V, pp. 28-29; T. VII, p. 126)

39. Other former Burnsville High School girl athletes who were on the basketball or tennis teams testified that the loss of an outstanding player could be discouraging to members of the girls' team since they would win less. (T. II, pp. 91, 100, 105-106) Some athletes and coaches from schools other than Burnsville who testified felt that outstanding girl high school athletes served as role models for younger girls and should remain on the girls' team for this reason. (T. III, pp. 12, 34; T. I, p. 157) A former high school tennis player testified, however, that an outstanding girl athlete performing on the boys' team still served as a role model for girls and benefited the girls' team. (T. II, p. 29) A number of coaches and administrators expressed the opinion that the loss of an outstanding athlete from a girls' team when she crosses over to a boys' team creates the impression that the girls' program is second class (T. IV, pp. 14-15, 84; T. VI, pp. 15, 130), takes recognition from the girls' team (T. IV, pp. 56, 105), and perhaps suggests that the girls' values should be with the male program. (T. VI, p. 133)

40. Students, coaches and administrators generally agreed that while the winning athletic contests may be one factor in whether or not the team is successful (T. II, p. 92; T. III, p. 17; T. IV, pp. 12-13; T. VI, p. 173), and may help the morale or esprit des corps of a team (T. I, p. 14; T. II, p. 100; T. IV, pp. 54-55), it was also generally agreed that winning is not the most important factor or the "end all" of high school sports. (T. I, pp. 55-56; T. IV, p. 66) A successful high school team does not necessarily have to be a winner. (T. VII, p. 113)

41. One female high school athlete stated that "My memories don't rest on the victories and the wins--my memories of track go so much deeper to the growing that took place through the pain and hard work...." (Ex. B; p. 3) Former Mahtomedi tennis player Mary Rothchild stated in regard to winning, "I think just as important

in the success of the team is how well the team works together, how well the coach relates to the players, how well the coach coaches the players,...." (T. II, p. 45) Burnsville girls' basketball coach Judy Johnson testified that, "I think winning is important, but it's not the end all. If you have a successful team, it's certainly a pat on the back for the team, but as far as the program goes itself, I think the enjoyment and the learning of the individual athletes far exceeds the winning aspects." (T. IV, p. 82) Subsequent to conducting five forums to survey the opinions of high school athletes in 1974-75, the State High School League concludes that "at no time, however, did students at any of the forums indicate that winning was the primary reason for their interest in an interscholastic athletic program." (Ex. D, p. 2) It may very well be that winning is more important to the high school coach than it is to the high school athlete. (T. V, p. 119)

42. Should girls be permitted to cross over to boys' teams, it is likely that the number of girls who do so will be quite small. (T. VI, p. 70; T. VII, p. 86) None of the Burnsville administrators or coaches were aware of any other girl athlete other than Paula Macdonald who wished to cross over to a boys' team this year. (T. IV, pp. 29, 67, 87, 124; Ex. K, p. 30) It appears that the crossovers which might occur would occur mostly in the sports of tennis and swimming. (T. V, p. 92) There are, in fact, a number of reasons for a girl not to crossover to a boys' team. Most girls will likely to be satisfied to be on the girls' team since there will be ample coaching and competition for their abilities. (T. VI, pp. 137-138) Some outstanding girl athletes, like swimmer Judy Anderson of Osseo (T. V, p. 142), or Meg Brown at Burnsville, simply prefer to remain on the girls' team. (T. IV, p. 81) A less talented girl athlete might very well be cut from a boys' team or would find herself at such a competitive disadvantage that she would not want to continue with the boys' team. (T. III, pp. 39-40; T. VI, p. 143) It can be expected that

as the girls' athletic programs and teams develop, there will be less desire on the part of a girl to crossover to a boys' team. (T. VI, p. 144; T. VII, p. 147) It is a reasonable assumption that the girls' first choice will normally be the girls' team, and that a crossover would occur only where a girl finds that the girls team does not provide an educational value for her. (T. V, p. 121) Given the rapid development of girls' teams, this would likely occur only with the most highly talented girl athletes. (T. V, p. 97)

43. In the State of Michigan, girls are currently permitted to crossover to boys' high school teams in non-contact sports. (T. V, p. 47) Boys, however, are prevented from crossing over to girls' high school teams. (T. V, p. 99) One current and one former athletic director of different large high schools in Ann Arbor, Michigan, testified at the hearing. Both schools have had crossovers of girls to the boys' swimming and tennis teams during the past five years. (T. V, pp. 47-48, 54, 91) Neither witness was aware of any significant problems created by the presence of the girls on the boys' teams. (T. V, pp. 51, 52, 93) Both stated that the corresponding girls' teams continued to improve despite the absence of some girl athletes. (T. V, pp. 54, 95-97, 122) Both witnesses testified that both in the prior school year and the current school year they were unaware of any girl crossing over to a boys' team in their schools, and they attributed this fact to the improvement in the girls' teams. (T. V, pp. 54, 92)

44. In April of 1973, the Indiana High School Athletic Association was ordered by an Indiana Court not to enforce its rule prohibiting girls from participating on boys' teams, in a case where a high school girl sought to be on a boys' team where there was no corresponding girls' team. (T. VI, pp. 7, 25) When changing its rule, the Association also adopted a rule allowing high school boys to crossover to girls' teams, although the court decision did not mandate this. As a result, up to approximately 15 girls' volleyball teams had boy members during the ensuing two year period. (T. VI, p. 15) The boys competing on the girls' teams created an

unequal competitive situation due to the boys' height and the boys' ability to hit the volleyball harder than most girls.

(T. VI, pp. 8, 11) In 1976, the Association changed its rule to bar boys from crossing over to the girls' teams since boys' past athletic opportunities at the high school level had not been limited. (T. VI, p. 14)

45. The New York State Education Department conducted an experiment from March 1, 1969 to June 30, 1970, during which they allowed high school girls to participate on boys' teams in approximately 100 different high schools. Most of the schools participated in only one sport. At the time of the experiment, most high schools in New York State did not sponsor inter-school teams for girls. (Ex. 17, pp. 1-2) Of the coaches, women supervisors, principals, directors, and girl participants who were asked the question, the vast majority reported there were no problems. When problems were cited, the most frequently mentioned were additional costs for women supervisors, unavailability of women supervisors, providing locker room and shower supervision, and refusal of some opponents to compete against a girl. (Ex. 17, p. 2) The New York State Department concluded that there was no evidence of physical, psychological or social harm to the girl participants or her male teammates resulting from the project. (Ex. 17, p. 58) The experiment resulted in a state rule which was approved in 1971, which allows girls to participate on the same team with boys on inter-scholastic athletic competition in 16 sports provided that the school does not maintain a girls' team in that sport. The rule also provides that in exceptional cases, the school principal may permit a girl or girls to participate on a boys' team notwithstanding the fact that the school maintains a girls' team in the same sport.

46. There are measurable physiological differences between post-pubertal boys and girls relative to athletic performance. The average boy has a significant advantage over the average girl in regard to oxygen consumption capacity and in regard to strength

as measured by muscle mass. However, some females are stronger than some males and some women have a higher aerobic capacity than some men. (Ex. L, pp. 1-2) In many sports therefore, the average boy will perform at a higher competitive level than the average girl. (T. V, p. 36)

47. That any of the above Findings of Fact which should properly be termed Conclusions of Law are hereby adopted as such.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. That the Department of Human Rights gave proper notice of the hearing in this matter; that pursuant to Minn. Stat. § 363.071, the Hearing Examiner has the authority to take the action requested by the Department of Human Rights; and that the Department of Human Rights has fulfilled all relevant, substantive and procedural requirements of law or rule.

2. That Minn. Stat. § 363.03, subd. 5(1) and (2), provides that:

Subd. 5. Educational institutions. It is an unfair discriminatory practice:

(1) To discriminate in any manner in the full utilization of or benefit from any educational institution, or the services rendered thereby to any person because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability.

(2) To exclude, expel, or otherwise discriminate against a person seeking admission as a student, or a person enrolled as a student because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability.

3. Minn. Stat. § 363.03, subd. 6, reads as follows:

Subd. 6. Aiding and abetting and obstruction. It is an unfair discriminatory practice for any person:

(1) Intentionally to aid abet, incite, compel, or coerce a person to engage in any of the practices forbidden by this chapter,

(2) Intentionally to attempt to aid, abet, incite, compel, or coerce a person to engage in any of the practices forbidden by this chapter,

(3) To intentionally obstruct or prevent any person from complying with the provisions of this chapter, or any order issued thereunder, or to resist, prevent,

impede, or interfere with the commissioner or any of his employees or representatives in the performance of duty under this chapter.

4. Minn. Stat. § 126.21 states:

126.21 Athletic programs; sex discrimination

Subdivision 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:

(1) to restrict membership on an athletic team to participants of one sex, if this restriction is necessary to provide members of each sex with an equal opportunity to participate in the athletic program; provided, if a membership restriction on the basis of sex results in the operation of two teams in the same sport which are separated or substantially separated according to sex, the two teams shall be operated in compliance with all the provisions of clause (2) of this subdivision; or

(2) to provide two teams in the same sport which are in fact separated or substantially separated according to sex, if the two teams are provided with substantially equal budgets per participant, exclusive of gate receipts and other revenues generated by that sport, and in all other respects are treated in a substantially equal manner. The two teams shall be operated separately only in those activities where separation is necessary to provide the members of each sex equal opportunity to participate in the athletic program.

Subd. 2. Any organization, association or league entered into by educational institutions or public services for the purpose of promoting sports or adopting rules and regulations for the conduct of athletic contests between members shall effective July 1, 1976 provide rules and regulations and conduct its activities so as to permit its members to comply fully with subdivision 1 and section 363.03, subdivisions 4 and 5.

Subd. 3. Educational institutions and public services shall make every reasonable effort to provide substantially equal budgets per participant pursuant to subdivision 1 during the school year 1975-1976, and thereafter shall provide substantially equal budgets per participant pursuant to subdivision 1. Educational institutions and public services shall phase out separation based on sex in athletic programs designed for participants 11 years old or younger and in the sixth grade or below during the school years 1975-1976, 1976-1977, and 1977-1978, and thereafter shall comply fully with subdivision 1 and section 363.03, subdivisions 4 and 5.
Added by Laws 1975, c. 338, §1.

5. That Independent School District No. 191 has failed to show that they come within the exception stated in Minn. Stat. § 126.21, subd. 1, in that they have failed to show that their

restriction of membership on the boys' swimming team at Burnsville Senior High School to boys only is necessary to provide members of each sex an equal opportunity to participate in the athletic program.

6. That Independent School District No. 191 is therefore in violation of Minn. Stat. § 363.03, subd. 5(1) and (2), in that they have excluded Paula Macdonald from the boys' high school swimming team because of her sex.

7. That Athletic Rule Article I, Section 12(b)(1), (2), and (3) of the rules of the Minnesota State High School League conflict with and are in violation of Minn. Stat. § 126.21.

8. That the Minnesota State High School League has committed an unfair discriminatory practice within the meaning of Minn. Stat. § 363.03, subd. 6, in that the League aided and abetted the school district's commission of an unfair discriminatory practice by failing to modify its rule and by actively attempting to enforce its rule as against the school district.

9. That Independent School District No. 191 is in violation of Minn. Stat. § 126.21, subd. 1(2), since it has failed to treat the girls' and boys' high school swimming teams in a substantially equal manner in that the coaching of the two teams is not substantially equal and in that the two teams do not have the same opportunity for practice time.

10. That the above Conclusions of Law are grounded upon the reasons set out in the Memorandum attached hereto, which is incorporated herein by reference.

Pursuant to the foregoing Conclusions of Law, the Hearing Examiner makes the following:

O R D E R

IT IS HEREBY ORDERED Respondent Independent School District No. 191 allow Paula Macdonald and any other girl within the school district who so desires to participate as a member of the boys' swim team at Burnsville Senior High School;

IT IS FURTHER ORDERED that Respondent Independent School

District No. 191 and Respondent Minnesota High School League are hereby ordered to cease and desist from enforcing the provisions of Athletic Rule Article I, Section 12(B) (1), (2), and (3), of the rules of the Minnesota State High School League.

Dated: November 23, 1977.


GEORGE A. BECK
Hearing Examiner

NOTICE

Pursuant to Minn. Stat. § 363.071, subd. 2, this Order is the final decision in this case and under Minn. Stat. § 363.072, the Commissioner of the Department of Human Rights or any other person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. § 15.0424, and Minn. Stat. § 15.0425.

M E M O R A N D U M

Minn. Stat. § 363.05, subd. 5, sets out the general rule in regard to discrimination in educational institutions in the State of Minnesota, and prohibits discrimination based upon sex. There is no dispute in this case that the School District excluded Paula Macdonald from the boys' high school swim team due to her sex. The only exception to the discrimination statute is contained in Minn. Stat. § 126.21 (commonly known as the "Kahn Law") which provides that it is not an unfair discriminatory practice to restrict membership on athletic teams to participants of one sex if the restriction is necessary to provide members of each sex with an equal opportunity to participate in the athletic program. A previous statutory exception, which expired on July 1, 1975, had provided a total exemption for athletic programs of educational institutions segregated on the basis of sex. The School District's essential claim is that such a restriction is, in fact, necessary in order to build viable girls' teams at Burnsville Senior High School, and that if girls' teams are hindered in their development by girls crossing over to boys' teams, girls will not be provided with an equal opportunity to participate in the athletic program.

The burden to show that a sex restriction is necessary falls upon the School District. In the case of Striebel v. Saint Paul Board of Education, No. 397836 (Ramsey County District Court, June 14, 1976), Judge Hatchey stated that:

The court further interprets the intent of the legislature to provide that separate teams are to be an exception to the rule of providing co-educational sports programming and there must be a showing, based upon reasonable facts, of the necessity for providing separate teams, and, further, that such provision for separate teams is necessary to afford equal opportunity to both sexes in athletic programs....

Opinion, pp. 5-6. The Complainant suggests and several witnesses concurred that the most reliable criteria for measuring whether a particular sex has equal opportunity to participate in the athletic program as a whole is the number of sports offered at a school, and

the total number of participants in sports broken down by sex. In 1976-77, there were 13 sports available to boys at Burnsville Senior High School with 509 male participants. Ten sports were offered to girls, with 279 participants. In the State of Minnesota during the school year 1976-77, there were 3,562 boys' teams as compared to 2,389 girls' teams. The Respondents have not suggested any other reasonable criteria to measure equal opportunity to participate, nor have they established that the above-cited figures were a result of lack of interest on the part of girl students at Burnsville or in Minnesota. Respondents instead argue that the word "necessary" in Minn. Stat. § 126.21, subd. 1, should be read to mean "advisable" and that since the School District finds it advisable as a matter of policy to segregate the swim teams, they have therefore come within the statutory exception.

There is considerable doubt that the Respondents' interpretation of the Kahn Law squares with the language of the statute, or legislative intent. The ordinary meaning of the word "necessary" is "required" or "needed", and not "advisable". The most obvious application of the language would be a situation wherein boys, e.g., begin joining girls' volleyball teams and, due to their superior ability, begin to exclude girls from the team. In such a case, girls' opportunity to participate in the athletic program might not be equal and the School District would be justified in restricting membership. On its face, the school district's restriction of girls to the girls' swim team seems to decrease girls' opportunities to participate since they are unable to join the boys' team, and there would presumably be greater opportunities on the girls' team for some girls in the absence of an outstanding girl athlete. The Kahn Law establishes a presumption against teams completely segregated by sex and does not appear to allow very much discretion to school districts in determining when such segregation is appropriate.

At any rate, the Respondents have failed to show that there would be any significant harm to the girls' swim team or the development of girls' athletics should Paula Macdonald be allowed to

participate on the boys' swim team. The girl swimmers themselves did not feel that Paula's absence would have any effect on the team performance or team morale. Significantly, the girls' team did continue to improve while Paula was, in fact, on the boys' swim team. The girls' swimming coaches offered only the sweeping conclusion that the girls' program would not develop if crossovers were permitted, but were unable to supply convincing reasons why or how this would occur. It is indeed possible that the loss of an outstanding girl athlete from a girls' team may affect, at least to some degree, the ranking of a team in regional or state competition, and may perhaps affect the won/loss record. The testimony in this matter, however, convincingly demonstrates that winning is a minor factor in a successful team, and that high school athletes display a great deal of maturity in excluding "winning" as the main reason for participation in athletics or as the most important factor in a successful team. At least one other state that permits crossovers of girls to boys' team, namely Michigan, has found that girls' teams have continued to improve despite the absence of some girl athletes.

Paula Macdonald, however, was harmed by the School District's decision in this matter. She was denied the best swimming coaching available at the high school. She was unable to have competition in practice which is necessary for her to improve. Paula was unable to swim the amount of yards with the girls' team which would continue her development as a swimmer. As a result, her times did not improve while she was a member of the girls' team.

There appears to be no serious contention in this case that boys' opportunity to participate in the athletic program would not be equal due to Paula Macdonald's membership on the boys' swimming team. Currently, no boy is cut from the team since the team does not have the maximum number of participants. There was considerable argument and some testimony devoted to what might occur if boys were permitted to cross over to girls' teams. The matter is not strictly relevant to this proceeding; however, it might be noted that the Complainant believes that Title IX would not prevent a

rule prohibiting boys crossing over to girls' teams, which is apparently the current situation in Indiana. Furthermore, it is likely that Minn. Stat. § 126.21, itself, would prohibit boys crossing over to girls' teams in any significant numbers. Some witnesses recognized that while it would be fair competition to allow girls to cross over to boys' teams, the reverse would not be fair due to physiological and societal factors which have favored boys. (T. V, pp. 126-127) Should a boy athlete actually be cut from a boys' team which had a girl member, the boy has had a fair opportunity even if he is denied membership on the girls' team. The matter was perhaps put in the proper perspective by a co-captain of the boys' swimming team who stated that, "I just go back to the opportunity that he had on the boy's team. If that girl that displaced him had been a boy, it would have been the same. You're talking about persons, not, I guess, male or female." (T. II, pp. 85-86)

Although the School District is apprehensive over the number of girls who might desire to cross over to the boys' team, the testimony demonstrates that the number of crossovers will be small. Paula Macdonald is apparently the only girl at Burnsville who has requested to cross over in the 1976-77 or 1977-78 school years. The number of crossovers in Minnesota in the year prior to the promulgation of the League's Rule 12(B) was not significant and most of those crossovers were apparently a result of no girls' team being offered. A girl athlete, given the number of valid reasons for remaining on a girls' team, will have to be highly motivated to seek to join the boys' team. The record supports the conclusion that this would likely occur only with the most highly talented girl athletes.

There is little doubt that the main factor which the School District relied upon in denying Paula Macdonald permission to cross over to the boys' team was the State High School League rule which prohibits crossovers when the school judges the teams to be substantially equal. Each school agrees to follow the rules when they join

the League. The athletic director specifically cited the rule to the Macdonalds as the reason for barring Paula from the boys' team. He also solicited and the League provided an opinion as to whether or not the swimming programs at Burnsville were being conducted on a substantially equal basis. A League official spoke both to Mr. Macdonald and to the high school principal advising them that Paula's swimming on the boys' team would be a violation of League rules.

[Handwritten marks: a large 'A' and a checkmark-like symbol are visible in the left margin next to this paragraph.]
The League rule conflicts with the Kahn Law in that the Kahn Law permits crossovers even where two teams are treated in a substantially equal manner if the school district is unable to show that separate teams are necessary to provide members of each sex with an equal opportunity to participate in the athletic program. Consequently, a school's reliance on a rule may well lead them to violate the statute. A school district cannot justify restriction of membership by sex simply by providing substantially equal sex-segregated teams since this would nullify the first part of subd. 1(1) of Minn. Stat. § 126.21, and would also render meaningless the "substantially separated" language of subdivision 1(2). Because the League's rule does permit segregation where the school judges equality to exist, it must necessarily fall in the face of the statutory mandate. Subdivision 2 of Minn. Stat. § 126.21, specifically directed the League to provide rules and conduct its activities so as to permit its members to comply fully with the Kahn Law by July 1, 1976. The League failed to revise the rule in question which had been in effect since 1974.

It must be concluded based on the record compiled that the School District, although they have made great strides in terms of equalizing the boys' and girls' swimming teams, is still not currently treating the teams in a substantially equal manner in at least one respect. That factor is coaching, which Judge Hatchey's opinion indicates is a proper consideration in determining whether two comparable teams are treated in a equal manner. A comparison of the competitive experience, the coaching experience, the student opinion, and other qualifications as between the girls' coaching

and the boys' coaching demonstrates that the girls' team is not being treated in an equal manner in this respect. This disparity is even more pronounced in the current school year than previously. Although the School District feels strongly that they should be the sole judge of whether or not an athletic coach is qualified, it is inescapable that the quality of coaching is a very important factor in judging equal treatment of teams.

Although a less intensive practice session may very well be appropriate for a developing athletic team, such as the girls' swim team, it would nonetheless appear that one factor of equal treatment would be that the girls' team would at least have an opportunity to spend the same number of hours in practice as the boys' team and an opportunity to attend the same number of practices as the boys' team. Paula Macdonald was denied the amount of practice time suited to her ability.

Although it is concluded that the School District is in violation of Minn. Stat. § 126.21, subd. 1(2), by failing to treat the swimming teams in a substantially equal manner in regard to coaching and practice time, the Hearing Examiner deems it inappropriate to order any specific remedy for that violation in a case where a charging party has not requested such action, and where the Complainant has not specifically requested such action in its prayer for relief in its Complaint. The record demonstrates that obtaining quality coaching in a high school setting is not a simple matter, and the record further demonstrates that the School District has made rapid progress toward equal treatment of boys' and girls' teams. Burnsville Senior High School is in fact a leader in this State in the interscholastic athletic opportunities it has provided for its girl athletes and deserves high praise for its commitment to provide equal budgets and equal coaching salaries for girls' and boys' teams. Nevertheless, the School District must make the effort to treat the swimming teams in a substantially equal manner in regard to coaching.

Based upon a complete review of the record in this matter, it is determined that punitive damages are inappropriate, and that the

Complainant has failed to prove compensatory damages based upon
Finding of Fact No. 32.

G.A.B.

*Separation allowed if = treatment
Restriction only if necessary to provide members of each sex of =
equality.*

In 1974 the supreme court ruled that girls had to be allowed to play on little league teams even though Little League had been granted a charter as an all-boy sport by an act of Congress 10 years earlier. As our pioneering younger sisters stepped out on the fields that year some of us may have wistfully believed that girls could look forward to a future where they didn't have to go to court everytime they wanted to play ball.

So far however this has not happened--at least in Minnesota--largely due to the intransigence and ineptitude of the Minnesota State High School League and the Department of Education. Not that we haven't tried. Minnesota has one of the strongest civil rights statutes in the country. With respect to education our law states that "it is an unfair discriminatory practice to discriminate in any manner in the full utilization of or benefit from any educational institution or the services rendered thereby to any person because of . . . sex." Similar language applies to parks, municipalities, athletic leagues and other providers of organized athletic activity. To eliminate the pernicious concept of "separate but equal" which permeated Southern school systems until a 1954 Supreme Court decision ended this sort of racial separation, our state law also contained a statement that "the term discriminate includes segregate or separate."

However in athletics a blanket application of a "segregation is discrimination" philosophy would clearly not lead to equal educational opportunity. As success in many of our more popular sports is a function of height and weight, it seemed unlikely

that just opening the current boys football, basketball and hockey teams to girls on an equal access basis would do much to remedy the gross inequality evident in such ways as very disproportionate school budgets for girls and boys athletics. In 1975 the state legislature passed Minnesota Statutes 126.21 which, drawing a fine line, stated when separation on the basis of sex is allowable to give equal educational opportunity. The current activity is an attempt by the High School League to contradict this law by a combination of obfuscation, tail dragging, scare tactics and expensive court actions.

M.S. 126.21 sets out several important distinctions which were based on demonstrated physiological differences between the sexes. First is a blanket prohibition of separation based on sex in athletic programs for participants below 12 or below the seventh grade on the grounds that with appropriate psychological and physical preparation, differences between the sexes at this stage are minimal. I might point out however that even in calling for an integrated program here there is no prohibition of sex separation due to ability or by individual events.

Second is a distinction between "separation" which might be just the establishment of two teams as boys basketball and girls basketball and "restriction" which would prohibit members of one sex from participating on the team designated for the other sex. "Separation" is allowed, if the two teams are then treated in a substantially equal manner. Restriction is only allowed when necessary to provide members of each sex with an equal opportunity

to participate. The law was written with an eye to passage of the Equal Rights Amendment so the restriction was written in sex neutral language. However it was intended to be used only to prevent the situation where the boys unable to make the boys basketball team then all tried out for the girls team and largely because of superior height, weight and skill, could totally wipe out the girls participation. A reverse direction example might be if a school had a competitive and limited figure skating program which would probably be dominated by girls and then started a program for boys who might at first need a similar type of protection from the more talented girls. This issue was discussed at length in the legislature and the example a few talented girls being placed on boys teams was explained and accepted. An attempt to allow blanket restriction or separation for contact sports was even defeated.

In addition M.S. 126.21 clearly calls for a good deal of coeducational athletic activity which has just not happened to date. All high school programs in individual sports such as golf, gymnastics, swimming, tennis and track should be coeducational. This would mean that boys and girls would practice together under the same head coach and assistant coaches. A team would participate in the same meet with, however, in most cases, boys competing against boys and girls against girls with the teams total score being the sum of the points earned in girls events plus the points in boys events plus mixed events such as mixed doubles in tennis. If facilities are limited such as room in the pool or number of

tennis courts the school should use a criteria other than sex for separation such as junior varsity in one season or at one time and varsity at another.

Finally the High School League is required to set rules and regulations so that school districts can be in conformance with 126.21 and the blanket equal educational opportunity requirement. This has not been done and this failure to adjust their rules and regulations is the heart of the case of the Burnsville swimmer Paula Macdonald who is now again through legal action being permitted to swim where her abilities place her, i.e., on the boys swimming team. The High School League's refusal to allow her to swim on the boys team because the school had a substantially equal girls team has been overturned by a hearing examiner, who ruled that H.S.L. was in violation of state statutes. This decision has now been appealed in Anoka District Court, requiring a further waste of public funds in an attempt to deny equal opportunity to one young high school sophomore.

The second point, after the league's inability to understand the statute is how unequal teams can be and still be ruled equal by a school board and the high school league. For example at Burnsville: The boys team swam 8,000 to 9,000 yards in practice or 45,000-55,000 yards each week, while the girls team swam 4,000-5,000 yards in practice or 30,000 yards or less per week (a difference of 50%); 15 hours of more disciplined practice for the boys team, 8 hours for the girls team. The boys coach is in his 5th year coaching the team and has had 16 years of competitive

swimming experience and 18 seasons of coaching competitive swimming. The girls head swimming coach this year has had no competitive swimming experience and has never coached swimming. From the hearing examiner's report we read that "During the first few weeks of the 1977-78 girls swim-season, (the assistant coach) has in fact coached the team since (the coach) is unfamiliar with how swim practices should be run or how correct strokes should be taught."

In addition Paula's abilities as demonstrated by racing times place her right in the middle of the boys team and far above the girls team. This not only gives her no competition in practice but because of the large ability difference she does not even provide competition for any of the other girl swimmers.

The league argues that if crossovers are permitted the girls teams cannot be equal because the top athletes will desert their team for the boys team. I maintain that the teams are demonstrably unequal by simple arithmetic computations and that a superior athlete must be allowed to realize her full potential without being constrained on account of sex. The report of the hearing examiner clearly shows that the coaches and administrators are far more likely to measure the worth of a program by its won and loss record. The students involved clearly state that participation is more important than winning and that "the enjoyment and learning of the individual athletes far exceeds the winning aspects." It is appalling to watch a student who says striving, hard work and self improvement are most important to be told by

the school system that winning and staying in your proper place (i.e. the girls team) should take precedence.

The argument that boys crossing over to the girls team must be allowed has been shown to be inappropriate as that may be prohibited by the language in the statute. In addition we have further examples in athletics of unequal crossover directions. For example, wrestlers and boxers are able to compete in classes above their weight limits, but not below. Junior high school students are sometimes allowed on high school varsity teams but the reverse is not allowed.

Finally, experience has shown that few girls will have either the ability or the initiative to compete on the boys team. As girls teams improve there will be even fewer. The hearing examiner correctly observes that "it is a reasonable assumption that a girls first choice will normally be the girls team and that a crossover would occur only where a girl finds that the girls team does not provide an educational value for her." With full adherence to M.S. 126.21 and the state Human Rights act, including a move to coeducational individual sports this case would be moot.

Throughout most of the history of athletic programs in Minnesota schools participation has been almost totally limited to boys, perpetuating a notion that sports are for men only. The development of totally separate parallel programs rigidly sex segregated for women at best duplicates many services and is clearly extravagant and wasteful. At worst it blatantly provides

inferior programs for girls and trusts to traditional patterns of discrimination and lower expectations to keep complaints minimal. Men and women must compete and play on the same team in real life, in politics, in the business world. They should start by playing on the same team in school.

In an interview just before his inauguration Vice President Walter Mondale, reflecting on his youth, said "Sports were the most important thing in my life. . . I liked the sense of community that was developed among those who played. I enjoyed working with others seeing what I could do to help us win. It was a very important time in my life . . . I really hadn't developed much interest in politics." Women who will have Mondale's same experience of performing before others, of learning to win and lose, of cooperating in team efforts, will be more likely to run for political office, and better able to take public positions on issues in the face of public opposition. By working for balance, equality and integration in the area of physical activity, we may some day achieve a wholesome balanced, equal and integrated democratic society. And this perhaps is the real fear of the school boards and the high school league.

500

Memorandum -
Page 5 each side of separate must
operate together
practice, coaching, seasons

STATE OF MINNESOTA
 COUNTY OF RAMSEY

Page - 4 & 5 - content to be co-ed, unless to limit to 1 sec -
"substantially same manner" - same
Season -
Separate league to be an exception to the rule of co-ed sports programming.
 DISTRICT COURT
 SECOND JUDICIAL DISTRICT

p. 9 - to have segregated boys & girls teams - need to show necessity that it provides better = opportunity for both sexes.

Charlotte Striebel,
 Mary Lee Geisser, and
 others similarly situated,

need program to offer our sports to girls & where there is not a substantial program need educational program.
Arduous - speaks of contact sports
 Plaintiffs,
p. 9-10 - single season - divide by skill criteria - not sex.
 File No. 397836
p. 10 - to develop an ed. program to train girls.

vs.

The St. Paul Board of Education,
 Charlotte Mitau,
 Howard M. Guthmann,
 Emery Barrette,
 Robert D. Lowe, Sr.,
 James Griffin,
 William Magnusson,
 individually and as members of
 the St. Paul Board of Education,
 Wayne Gilleland,
 R. J. A. Hallen, and
 George P. Young,

Memorandum - p. 4 - conflict between league & law - must conform to law.
p. 3 - state statute control since not in conflict of fed law & regulations which would pre-empt the field, are there any discrepancies - when fed doesn't speak to league, then law resorted to.

Defendants.

Judge Hockey

The above-entitled matter came on for trial on January 19, 1976, in its regular place on the non-jury calendar. The plaintiffs were present and represented by Counsel, Ellen Lavin. The defendants were not present but were represented by Counsel, Richard J. Battis and Timothy W. J. Dunn, representing all of the defendants except George Young, who was represented by Counsel, Dean Larson.

Originally this complaint was filed with the Department of Human Rights, which on February 19, 1974, found probable cause existed to believe that the complaint had merit. Plaintiffs were

June 14, 1976

informed on March 11, 1974 by the Department of Human Rights, that pursuant to M.S. 363.14, they had a right to proceed to District Court. Thereafter, the complaint in the instant matter was filed and the matter came on for trial.

As the matter came on for trial on January 19, 1976, and after an examination of all of the files, records and proceedings had and filed in said matter, and upon further discussion between Counsel for all parties and the Court, it became apparent that the issues for trial were not clear, and that none of the Counsel present could present to the presiding judge the points of controversy or differences either in philosophy or in factual application or operation. Discussion in chambers also brought up the point that there existed recent legislation in regard to the matter (i.e. Kahn Bill), although that legislation was separate and apart from the alleged statutory violations in the instant matter, and enacted after initiation of this suit. The Court suggested that the parties attempt to reach accord on what differences they might have, if any, and present to the Court an agreed program or at least present the issues for trial that could be resolved. It was then agreed that the defendants would submit to plaintiffs a proposed program to bring the St. Paul Public School District Athletic Program into compliance with existing law, regarding sex discrimination in school athletics. It was further agreed that the parties would then meet with representatives of the State Department of Education and the State Department of Human Rights to review the proposal and prepare a final written program. The Court then ordered that

June 14, 1976

the matter would be returned within 90 days, at which time specific objections could or might be made to the plan submitted. This Court also retained jurisdiction until the matter was to be ultimately tried and resolved.

The matter came on again on April 19, 1976, at which time the plaintiffs moved the Court for an order adjudging the defendants in contempt of court for failure to negotiate in good faith; adopting the plan proposed by plaintiffs; and for other relief which is deemed just and equitable.

Following the hearing on April 19, 1976, Counsel requested and were granted permission to submit briefs, the last of which was received by the Court on June 1, 1976.

Within the past few days the Court has been in contact with the attorneys for the parties concerning their desires with respect to further trial and the taking of evidence, or whether the matter could be considered submitted on the basis of the briefs, which have been filed with the Court. After discussion with all attorneys who represent the parties, it is the consensus that the matter be considered as fully submitted; that is, the plaintiffs will agree that the program which the defendants claim is now in force and effect in the School District No. 625 is in all respects the program that does exist, and can be so considered by the Court. The defendants contend that their proposed plan complies in all respects with existing law. The plaintiffs contend that the proposed plan submitted by defendants does not comply with existing law, and have submitted to the Court a plan which plaintiffs feel

June 14, 1976

or believe would be in full compliance therewith.

Upon all of the files, records and proceedings had and filed in the above-entitled matter, arguments and briefs of Counsel, and further based upon the stipulation of the parties that the matter be fully submitted and that all facts as to the issues to be determined have been included in the briefs of the plaintiffs, defendants, and the Minnesota State High School League,

THE COURT FINDS:

X 1. That the intent of the legislature expressed in M.S. 363.03, Subd. (1), and M.S. 126.21 is to provide coeducational athletic programs in educational institutions for all participants 12 years of age or older, unless justification is shown to restrict membership on an athletic team to participants of one sex as necessary to provide members of each sex with equal opportunities to participate in the athletic program.

2. That the intent of the legislature is further expressed in M.S. 126.21 (1) and (2) to provide that if membership restriction on the basis of sex results in the operation of two teams in the same sport, which are separated substantially according to sex, then

- (a) two teams of the same sport shall be offered or provided in the same sport separated or substantially separated according to sex, and
- (b) each team shall be provided with substantially equal benefits per participant, exclusive of gate receipts and other revenues generated by that sport, and

June 14, 1976

(c) in all other respects are treated in substantially the same manner such as:

- * (1) arranging for the same seasons for each sport, with provision that seasons may be divided according to skill criteria, i.e. varsity or class A in one season and junior varsity or class B in another season, and
- (2) arranging, where possible, for equal treatment concerning total practice time, desirability of practice time, assigned equipment, practice facilities, and all other facilities provided for such sport, and
- (3) to make provisions that all athletes of both sexes have equal access to skilled coaching in that sport.

3. The Court further finds the intent of the legislature to provide that the word "activities" as used in M.S. 126.21, Subd. 1, Clause (2), means active or overt acts in the furtherance or creation of an athletic program including, but not limited to, practice schedules, equal time of use of facilities such as gymnasiums, stadiums, athletic fields, arenas, swimming pools, tennis courts, cross-country skiing facilities, volleyball and soccer courts, and playing sites and athletic fields of any and all sorts and descriptions used for athletic purposes.

4. The Court further interprets the intent of the legislature to provide that separate teams are to be an exception to the rule of providing coeducational sports programming and there must be a

June 14, 1976

showing, based upon reasonable facts, of the necessity for providing separate teams, and, further, that such provision for separate teams is necessary to afford equal opportunity to both sexes in athletic programs ^{includes} (with the exception of) those sports designated as contact sports such as boxing, wrestling, Rugby, soccer, ice hockey, football, basketball, or other sports which involve bodily contact as their major purpose or major activity.

5. The Court further finds that if the defendants find it necessary that separate teams are to be used in a specific sport before separate seasons, practicing schedules, and separate coaching personnel can be used or resorted to, a showing of necessity must be first shown as a means to provide equal opportunity to both sexes.

6. That if a contact sport is provided for boys only, then a corresponding scheduled sport for girls shall be provided.

7. That should there be a lack of interest on the part of the girls for a separate team in those sports designated as contact sports, or any other sport, then defendants shall provide other sports to girls to equalize the number of sports available to each sex. That is, the same number of sports are to be made available to each sex in each season, although not necessarily the same sport in each season.

8. That the defendants have made reasonable attempts to implement athletic programs in compliance with existing law but appear to be in default in the following respects:

(a) A substantial number of athletic programs are still

segregated into boys' teams and girls' teams, including but not limited to those sports specified as "contact", without a satisfactory showing of necessity that in so doing equal opportunity for both sexes can be better afforded;

- (b) That the number of different sports made available to girls is substantially less than those made available to boys, although the balance is improving. The imbalance is especially noted in the number of sports made available in each season to each of the sexes.
- (c) That coaching skills and experience are directed to a large extent to boys' teams, except those sports which are operated under a coeducational basis.
- (d) That there is a lack of program in offering new sports to girls, and where the response is lacking or not substantial there is no developed educational program to train girls in athletic skills, such as the teaching of physical and mental value of athletic participation, which in turn could attract additional girls to the newly-offered sport.
- (e) That preference as to seasons, practice times and athletic equipment tends toward a preference to boys' athletic programs.

9. That plaintiffs are not entitled to judgment against defendants assessing punitive damages against them, nor are plaintiffs

June 14, 1976

entitled to judgment that the defendants be held in contempt of court for lack of intent to implement athletic programs in compliance with existing law.

10. That plaintiffs are entitled to judgment awarding to them attorney's fees in the sum of \$2,500.00, plus costs and disbursements in the sum of \$271.00.

CONCLUSIONS OF LAW

1. That plaintiffs be and hereby are awarded judgment that by September 1, 1977, the defendants shall provide a coeducational athletic program in educational institutions for all participants in high schools and by September 1, 1978 for all participants in junior high school level (12 years of age or older or in the 7th grade or above), ^{including} ~~except~~ those sports known and designated as "contact" sports, such as boxing, wrestling, Rugby or soccer, ice hockey, football, basketball, or other sports which involve bodily contact as its major purpose or activity, unless it can be shown to the Court that separate teams are necessary to provide equal opportunity to both sexes.

2. That plaintiffs be and hereby are awarded judgment that if, by a showing of necessity, separate teams in certain sports are provided, in order to provide equal opportunity to both sexes, then in that event separate teams in the same sport shall be provided, which shall encompass:

(a) equal budgets for each of the sexes, exclusive of

Amended
July 9, 1976

June 14, 1976

gate receipts and other revenues generated by that sport;

- (b) equal practice time;
- (c) equal use of athletic equipment and facilities;
- (d) equal assignment of coaches based upon skill and experience.

3. That plaintiffs be and hereby are awarded judgment that if a contact sport is provided for boys only, then a corresponding sport shall be provided for girls.

4. That plaintiffs be and hereby are awarded judgment that, where separate teams are provided in a specific sport, before separate seasons, practicing schedule and separate coaching personnel can be used or resorted to, a showing must first be made of the necessity for such separate seasons, practicing schedule and coaching personnel as a means to provide equal athletic opportunity to both sexes.

5. That plaintiffs be and hereby are awarded judgment where separate teams are established, in the event of lack of interest on the part of girls to participate, other sport programs shall be offered to the girls so as to equalize the number of sports available to each sex on a seasonable basis (the same number of sports offered to each sex during each season - not necessarily the same sport). Defendants must show nondiscriminatory reasons for having separate seasons in the same sport (e.g. boys' swimming team competition in one seasons and girls' swimming team competition in another season), and wherever the primary problem appears to be

June 14, 1976

lack of facilities then defendants must show justification why the total number of athletes cannot be divided into two seasons based upon skill criteria rather than by sex - varsity or A team in one season, junior varsity or B team in another season, comprised of membership of both sexes.

6. That plaintiffs be and hereby are awarded judgment that in educational institutions which evince a lack of interest on the part of girls in certain areas of athletic activity, defendants shall develop an educational program to train girls in athletics and skills stressing, but not limited to:

- (a) the physical and mental value of participation in athletics;
- (b) classes, lectures and demonstrations;
- (c) discussion groups;
- (d) assembly programs;
- (e) other means that defendants deem necessary.

7. That defendants be and hereby are awarded judgment that plaintiffs take nothing by their complaint for punitive damages and that the same be dismissed.

8. That defendants be and hereby are awarded judgment that they are not in contempt of the court for failing to implement athletic programs in the educational institutions pursuant to existing law.


9. That plaintiffs be and hereby are awarded judgment awarding to them attorney's fees in the sum of \$2,500.00 and costs amounting

June 14, 1976

to the sum of \$271.00.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated at St. Paul, Minnesota, this 14th day of June, 1976.



RONALD E. HACHEY
Judge of the District Court

A 30 day stay is hereby granted.

M E M O R A N D U M

The primary statutes involved in the foregoing matter are M.S. 126.21, M.S. 363.01 et seq., and 20 U.S.C. 1681, and 45 C.F.R. 86.41. Title IX of the education amendments of 1972 and the departmental regulation (45 C.F.R. Part 86) promulgated thereunder, prohibit discrimination on the basis of sex in the operation of most federally assisted education programs. This law, which affects virtually every education institution in the country, became effective on July 21, 1975. Specifically, Title IX states that 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 athletics separately on such basis. The Title then goes on to state that notwithstanding the requirements of the first paragraph (just enumerated) a recipient may operate or sponsor separate teams for members of each sex where selection for such team is based upon competitive skill or the activity involved is a contact sport. When ever separate teams are sponsored for members of one sex only, the athletic opportunities for members of each sex must be equal, that is to say the opportunity must be open for both sexes to try out for any team for any sport offered unless the sport involved is a contact sport. A contact sport is defined as boxing, wrestling, Rugby, ice hockey, football basketball and other sports for the purpose of major activity which

June 14, 1976

involve bodily contact. The Act then goes on to enumerate some of the considerations that should be given in determining equality of the sexes and the opportunity to participate in all athletic programs. Among those factors to be considered are the selection of the sports and levels of competition that will accommodate the interests and abilities of the members of both sexes; the equipment and supplies; scheduling of games and the practice times, travel and per diem allowances; opportunity to receiving coaching and academic training; practice and competitive facilities; and publicity. Also under consideration is the matter of providing equal funds for the promotion of sports as to each of the sexes. Where selection is based on competitive skill or the activity involved is a contact sport, the Act provides that athletics may be provided through separate teams for males and females, or through a single team open to both sexes. If separate teams are offered, the institution may not discriminate on the basis of sex in provision of necessary equipment, supplies or facilities but equal aggregate expenditures are not necessarily required. In any event, the overriding mandate is that equal opportunity for both sexes must be provided.

M.S. 363.03, Subdivision 5, Educational institution, reads:

"It is an unfair discriminatory practice:

(1) To discriminate in any manner in the full utilization of or benefit from any educational institution, or the services rendered thereby to any person because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability."

M.S. 126.21 reads as follows:

"Subdivision 1. Notwithstanding any other state law to the contrary, in athletic programs operated by educational institutions

June 14, 1976

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:

(1) to restrict membership on an athletic team to participants of one sex, if this restriction is necessary to provide members of each sex with an equal opportunity to participate in the athletic program; provided, if a membership restriction on the basis of sex results in the operation of two teams in the same sport which are separated or substantially separated according to sex, the two teams shall be operated in compliance with all the provisions of clause (2) of this subdivision; or

(2) to provide two teams in the same sport which are in fact separated or substantially separated according to sex, if the two teams are provided with substantially equal budgets per participant, exclusive of gate receipts and other revenues generated by that sport, and in all other respects are treated in a substantially equal manner. The two teams shall be operated separately only in those activities where separation is necessary to provide the members of each sex equal opportunity to participate in the athletic program.

Subd. 2. Any organization, association or league entered into by educational institutions or public services for the purpose of promoting sports or adopting rules and regulations for the conduct of athletic contests between members shall effective July 1, 1976 provide rules and regulations and conduct its activities so as to permit its members to comply fully with subdivision 1 and section 363.03, subdivisions 4 and 5.

Subd. 3. Educational institutions and public services shall make every reasonable effort to provide substantially equal budgets per participant pursuant to subdivision 1 during the school year 1975-1976, and thereafter shall provide substantially equal budgets per participant pursuant to subdivision 1. Educational institutions and public services shall phase out separation based on sex in athletic programs designed for participants 11 years old or younger and in the sixth grade or below during the school years 1975-1976, 1976-1977, and 1977-1978, and thereafter shall comply fully with subdivision 1 and section 363.03, subdivisions 4 and 5.

All parties agree that the applicable statutes can be given controlling effect since they are not in conflict with the federal laws and regulations which would pre-empt the field were there any discrepancy between the two. In those instances, then, when the federal statutes do not deal with a specific point, resort will be made to the provisions of Minnesota laws. It would appear that

June 14, 1976

M.S. 363.03, Subdivision 5, is the broad umbrella under which M.S. 126.21 is written. The former proscribes sex-based discrimination in education and the latter makes specific requirements to prevent sex-based discrimination in athletics. It would further appear that as long as girls are afforded the protections of M.S. 126.21, and are not discriminated against within the purview of M.S. 363.05, Subdivision 5, they are being treated fairly.

The proposal of defendants is substantially a codification of the current practices. They do propose that a change will be made and that gradual implementation of additional girls sports on both the senior and junior high school levels will be forthcoming. Apparently, many of the practices now in effect in the school district rely upon the policy of the Minnesota State High School League. It should be noted that the high school league is not required to be in compliance with M.S. 126.21 until July 1, 1976 and current procedures within the league might not necessarily reflect the requirements of that statute. It is to be noted, furthermore that the defendant school district may not defend any of its policies on the ground that such policies are dictated by the league. In other words, if forced to choose between complying with the league requirements or the law, naturally the district must comply with the written law as it now exists. This Court has no doubt that the league will voluntarily change its policies and procedures to conform to judicial construction of M.S. 126.21 and

within the time limits set by the statute, inasmuch as inter-school athletic programs sponsored and managed by the league are most important.

Upon a careful reading of the statute, it would appear that separate teams are an exception to the general rule of section M.S. 363.03, Subdivision 5 (1) and in that connection the school district should and must give reasons why teams in these sports (except contact sports) are separated according to sex. Upon an examination of the facts as presented to the Court, the formal proposal of the school district does not contain a clear statement of what the justifications are for the provision of separate teams in some of the sports. Part of that issue is resolved by virtue of the fact that plaintiffs concede the necessity for separate teams, particularly in the contact sports, and for separate squads of a coeducational team in the individual sports.

Assuming that the defendant district had justification for the provision of separate teams, the plaintiffs and defendants differ as to whether the teams must be operated together in such things as practices and coaching, unless separation is necessary to provide equal opportunity. Defendants maintain that once the district has shown a necessity for providing separate teams, those teams may be completely separated, including the use of all facilities, coaching and so forth. The plaintiffs on the other hand argued that the statute allows only separation in such things as seasons, practicing or coaching staff only when joint operation would not provide equal

opportunity. All parties agree that separate teams must still be provided with substantially equal financial budgets for each participant and in all other respects be treated in a substantially equal manner. Defendants' present program provides for separate seasons for two teams in the same sport, that is to say, for example, the boys' swimming team competes in one season and the girls' swimming team competes in another. Under the statute this practice could amount to unequal treatment. It would appear, then, that the school district has the burden of showing nondiscriminatory reasons for separate seasons in the same sport for the two teams. If it should appear that the primary reason for separate seasons is that the total number of athletes cannot participate in the same season due to shortage of proper facilities, the school district should also demonstrate why it cannot divide up the total number of athletes into two seasons by a skilled criteria, rather than by sex. For example, the district could have the varsity squads of both sexes compete in one season and the junior varsity squads of both sexes compete in another season. The High School League in its brief points out to the Court that the league has the responsibility for establishing a system of uniform seasons for all of its 527 member schools. In doing so, the league cannot take into consideration the individual circumstances of each particular school, but must consider what is best and most reasonable for the State as a whole. Given the league's policy of encouraging the maximum amount of student participation and the limited facilities which exist in some if not most schools, the most reasonable and fair alternative is to provide separate seasons for boys and girls. The purpose of the

league's rules regarding separate seasons is to permit those schools where facilities and coaching are limited in those sports to be able to meet their obligation of providing equal athletic opportunity to members of a sex participating on a separate team. The Courts have recognized this obligation and have generally not interfered with the policies of a state high school association regulating interscholastic sports in the absence of evidence that it acted unreasonably, arbitrarily or capriciously. See Bucha v. Illinois High School Association, 351 Fed. Supp 69 (Illinois, 1972). The Court is not unmindful of the tremendous task and responsibility of the league in arranging interscholastic activities among the 527 schools under its jurisdiction. With relation to the newly-enacted statute, however, the provisions thereof must be fully complied with even though a change in scheduling of interscholastic events might be necessary. Again justification must be shown, first of all, for any separation of the sexes, and, once separate teams have been provided for, the school as well as any league or similar institution must provide equal opportunity for both sexes with respect to coaching, facilities, equipment and determination of seasons, keeping in mind that an equal number of sports must be offered to the girls as is now provided for the boys. It must be further kept in mind that one sex may not have priority over the other with respect to seasons, coaching skills and experience, use of facilities, practice time, desirability of practice time and all other features and facets that have been mentioned hereinabove. This could and might necessitate a revision of the league's schedules and planning to

June 14, 1976

some extent in complying with the law.

Relative to the segregation issue, the Court has little difficulty in adopting a schedule similar to that proposed by plaintiffs, that is, a program offering cross-country skiing, varsity and junior varsity tennis, swimming, gymnastics, track and golf, as coeducational sports at the high school level, with separate teams offered for field hockey, football, basketball, ice hockey, Rugby, volleyball, wrestling, softball and baseball, hereinabove described as contact sports. The plan proposed by the defendants indicates separate swimming, tennis, gymnastics, golf, and track teams for girls, and, in the court's opinion, such segregation being very possibly unnecessary, particularly in view of the budgetary advantages that resulted therefrom, and keeping the mandate of the law in mind. Reference is made in defendants' brief to limited facilities in some sports but as hereinabove set forth again, such problems might be resolved by offering varsity and junior varsity competition in such sports in different seasons.

Plaintiffs have objected to discrimination in the athletic program as it presently exists because the number of female participants is not substantially equal to the number of male participants. No doubt, part of the problem lies in the fact that the defendants have not offered or made available to the girls an equal number of sports that have been offered to the boys. Some steps in the right direction in this regard have been taken by the school district. While the progress seems slow to plaintiffs the Court is of the opinion that substantial effort has been made

and in view of plans that are on the drawing board at the present time much credit can be given to the defendants for a sincere attempt to comply with the law even though their interpretation in certain sections thereof might differ with plaintiffs or even with the Court. The Court is also not unmindful of the fact that legislation or court decision cannot create an interest in athletics in a group where it does not already exist. Perhaps the answer to this problem lies in the suggestion and the mandate that instructions in educational courses be given, with some rapidity in the future, to all girls in all levels of education to the end that further interest in athletics might prosper.

Plaintiffs also object to the labeling of coeducational teams as "boys teams". Defendants acknowledge this and the Court is of the opinion that the matter may be easily solved by dropping the male adjective.

Plaintiffs have objected to the method of providing coaching experience and skill to the various teams and the lack of skill and experience delegated or relegated to the girls teams where segregation is found to be necessary. As the Court sees it, this is a most difficult problem to solve. It may well be that only one coach at any one school has any substantial experience. The Court would be hard pressed to justify assignment of this person to one team or the other. The lack of qualified coaches might possibly be remedied by using the most qualified coach in such sports as "head coach" with assistants under him or her assigned to each team, with the head coach in turn spending time and expertise with each team as needed. In

any event, from the reading of the statute the time has passed when priority may or can be given to the boys' teams, and some provision for what is left over in the coaching experience be then assigned to the girls' program of athletics. What the law requires is that coaching experience and expertise is one of the activities or facilities that must be provided to each sex on an equal basis and neither one is expected to take second billing in this area.

Defendants have allowed females the opportunity to try out for, make and be a part of the boys' teams in all sports. On its face, considerable wind might be taken from the plaintiffs' sails. That is, if an individual girl can participate or at least try out for the boys' team or the girls' team, at her discretion, the spirit of the law might be said to be well honored, notwithstanding the fact that the newly-enacted law encourages a program of coeducational sports and that separate teams should be used only to afford equal opportunity for both sexes and then on a showing of necessity only. The Court is not unmindful of the fact that the provision of only one team, particularly in the area of contact sports, would fail to provide equal athletic opportunity for the girls, due to the differences in interest, and more particularly the ability of the sexes. For example, an institution would not be effectively accommodating the interest and abilities of women if it abolished all of the women's teams and open up its men's teams to women, but only a few women were able to qualify for the men's teams. While the law does make provision for an outstanding

girl athlete to apply for and perhaps be a member of a boys' team of any sort, equal to those abilities and achievements of great girls and women athletes of the present and past, such a program will not provide equal athletic opportunity to both sexes.

Relative to the requirement of providing equal budgets for the girls' teams and the boys' teams, the Court is of the opinion that substantial progress in this area has been made by defendants. Table 3 of Exhibit A within plaintiff's responsive brief reveals that for the school year 1974-75 the budget, per participant, for boys' sports amount to \$145.00, while the corresponding budget, per participant, for girls' sports was \$126.00, which computes to approximately 87 per cent of the budget for boys' sports. A review of the case law, both state and federal, reveals no definition of "substantially equal" which would aid the court in assessing the respective budgets set forth above. The question is reduced, essentially in the main, to whether the budget per participant for girls' team is essentially equal to that of the boys. Arguably, given the differences in the number of participants, 2,461 boys and 568 girls (figures for 1974-75 from Exhibit A, Table 3 of plaintiffs' responsive brief) this figure could possibly come within the substantially equal qualifications under the provisions of M.S. 126.21.

Plaintiffs further objected to the plan proposed by defendants hereinabove referred to in that there is no accompanying time table for implementation, and that the same has not yet been approved by the School Board. In the Court's opinion, the defendants

have made substantial progress, and unless it is shown that their actions are negligent or obviously dilatory in the adoption of the plan now proposed or similar plan, the Courts should permit it to conduct its business without undue interference.

As hereinabove set forth and described the Court was of the opinion that punitive damages against each defendant in favor of plaintiffs should not be awarded. Although such relief is permissible under M.S. 363.071, Subd. 2, the Court is of the opinion that the facts do not warrant judgment against each defendant for punitive damages.

Plaintiffs also seek reasonable attorney's fees pursuant to M.S. 363.14, Subd. 3, which states "In any action or proceeding brought pursuant to this section the Court, in its discretion, may allow the prevailing party, other than the department, reasonable attorney's fees as part of the costs." Plaintiffs did not present evidence in that area, and for that reason the Court is of the opinion that a sum of \$2,500.00 appears reasonable under the circumstances.

On the whole, defendants have made reasonable attempts to comply with the provisions of the recently enacted statutes, both state and federal, and the regulations on the federal level. There are a few areas that need attention and a reasonable time will be needed to meet the requirements. Budgetary considerations are equally important, and cannot be disposed of with rapidity. For these reasons, another year has been provided for defendants to bring their program into full compliance with existing law,

particularly at the senior high school level. Time for phase out at the junior high school level is provided in the statutes, and should coincide in most respects with the senior high school programs.

Finally and hopefully this decision should not be in any manner interpreted as an indication that any Court is prepared to organize and supervise athletic programs in our educational institutions. The Court's task is to set forth reasonable standards within the framework of the law and to provide equal athletic opportunities for both sexes.

Hachey, J.

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Charlotte Striebel,
Mary Lee Geisser, and
others similarly situated,
Plaintiffs,

- vs -

File No. 397836

The St. Paul Board of Education,
Charlotte Mitau,
Howard M. Guthmann,
Emery Barrette,
Robert D. Lowe, Sr.,
James Griffin,
William Magnusson,
individually and as members of
the St. Paul Board of Education,
Wayne Gilleland,
R. J. A. Hallen, and
George P. Young,
Defendants.

AMENDED

FINDINGS OF FACT AND

CONCLUSIONS OF LAW

The above-entitled matter came on for hearing
before the undersigned on July 9, 1976, pursuant to a motion and
notice thereof duly served and filed in which motion plaintiffs
seek an order of the Court amending Paragraph Four of the findings
of fact and Paragraph One of the conclusions of law, so as to
eliminate the exception relating to contact sports and to amend
Paragraph Ten of the findings of fact and Paragraph Nine of
conclusions of law, so as to increase the award of attorney's fees.

The parties were not present but represented by Counsel. Ellen Lavin for plaintiffs, defendant Young by Peter Van Bergen, and all other defendants by Timothy W. J. Dunn.

Upon all of the files, records and proceedings had and filed in said matter, arguments of Counsel, and after due consideration of the same,

IT IS ORDERED:

1. That plaintiff's motion to amend Paragraph Four of the findings of fact and Paragraph One of the conclusions of law so as to eliminate the exception relating to contact sports be and the same is hereby granted. Those paragraphs are to read as follows:

Paragraph Four of findings of fact. The Court further interprets the intent of the legislature to provide that separate teams are to be an exception to the rule of providing coeducational sports programming and there must be showing, based upon reasonable facts, of the necessity for providing separate teams, and, further, that such provision for separate teams is necessary to afford equal opportunity to both sexes in athletic programs, including those sports designated as contact sports, such as boxing, wrestling, Rugby, soccer, ice hockey, football, basketball, or other sports which involve bodily contact as their major purpose or major activity.

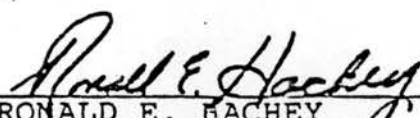
Paragraph One of conclusions of law. The plaintiffs be and hereby are awarded judgment that by September 1, 1977, the defendants shall provide a coeducational athletic program in educational institutions for all participants in high schools and by September 1, 1978, for all participants in junior high

school level (12 years of age or older or in the seventh grade or above), including those sports known and designated as contact sports, such as boxing, wrestling, Rugby, soccer, ice hockey, football, basketball, or other sports which involve bodily contact as its major purpose or activity, unless it can be shown to the Court that separate teams are necessary to provide equal opportunity to both sexes.

2. That plaintiffs' motion to increase the award of attorney's fees be and the same is hereby granted. It is ordered that the award be increased to the sum of \$4,500.00, plus costs amounting to \$271.00.

3. That all other provisions and contents of the findings of fact and conclusions of law remain as originally made and ordered.

Dated at St. Paul, Minnesota, this 9th day of July, 1976.



RONALD E. HACHEY
Judge of the District Court

M E M O R A N D U M

CONCERNING CONTACT SPORTS

Plaintiffs contend that the provisions of Paragraph Four of the findings of fact and Paragraph One of the conclusions of law are worded so as to eliminate the necessity of defendant permitting girls to try out for contact sports if they so desire.

First of all, it is again pointed out that defendants have allowed girls to try out for all boys teams and defendants indicate that they will continue that policy in the future, which in turn could make that issue moot.

It was not the Court's intention to eliminate the opportunity of permitting girls to try out for membership on all boys teams, including contact sports. Where it appears, however, that lack of interest develops on the part of girls in such activities or that the girls are being eliminated on the basis of skill, then a corresponding sport or similar sport must be provided for the girls, so as to provide equal opportunity. Again, the decision is always based upon a showing of necessity. Because of the possibility of interpreting the order otherwise, the Court has hopefully made it clear in the amended findings and conclusions of law.

There was some concern expressed on behalf of plaintiffs that this decision could be a precedent for possible litigation that might follow in other school districts throughout the State. This Court points out, respectfully, that this decision and the former order made and entered is at state district court

level, and need not be followed in other districts. It would be for the Supreme Court to establish state law as would then be applied in all districts.

ATTORNEY'S FEES

Based upon what the Court had before it on previous hearings, it was felt that an award of attorney's fees to plaintiffs in the sum of \$2,500 was fair and reasonable. Upon an examination of all the additional data submitted by plaintiff's counsel, the Court is inclined to raise that figure to the sum of \$4,500 but not to that figure asked for plaintiffs, namely \$6,825.

Hachey, J.