



League of Women Voters of Minnesota Records

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July 14 to the State Board -

Rules as Adopted

Chapter Thirty-Three: Prohibition of Discriminatory Practices in Education

5 MCAR § 1.0667 Athletic programs. Authority, scope and purpose. These rules are promulgated pursuant to Minn. Stat. § 126.21, subd. 5, as amended by Laws of 1980, ch. 355, § 1. These rules apply to both public and private elementary and secondary schools that operate athletic programs.

5 MCAR § 1.0668 Definitions. All the words below shall have the meaning herein ascribed to them:

A. "Athletic Program" - Means all interscholastic and intramural sports offered to students by public and private elementary and secondary educational institutions.

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

C. "Intramural Athletic Program" - Means all non-interscholastic athletic activities offered within a school, which are not a part of the regular physical education curriculum, designed to provide students athletic opportunities, experiences and the development of competencies in a variety of sports.

D. "Participate" - Means for interscholastic sports, a student has been selected by the coach to be a member of a particular athletic team, inclusive of both varsity, and junior varsity, and sophomore teams, after the try-out period has ended.

E. "Participation Rate for a Particular Sex in the Interscholastic Athletic Program" - Means the ratio of the number of participants of that sex in the athletic program to the number of students of that sex in the student body.

F. "Participation Rate for a Particular Sex in the Intramural Athletic Program" - Means the ratio of the number of participants of that sex in the athletic program to the number of students of that sex in the student body.

5 MCAR § 1.0669 Separation by teams.

A. Athletic programs for students in the seventh grade or above may include one or more teams limited to participants of one sex whose overall athletic opportunities have previously been limited. Athletic programs for students in the sixth grade or below shall be operated without restrictions on the basis of sex, except that when overall athletic opportunities for one sex have

previously been limited and there is demonstrated interest by members of that sex to participate on a team restricted to members of that sex, the educational institution may provide a team restricted to members of that sex. The educational institution shall make a biennial determination of students' demonstrated interest. The method used shall be reported to the Department of Education in conjunction with the report required by 5 MCAR § 1.0671. may contain-one-or-more-teams-which-are-limited-to-participants-of-one-sex-whose overall-athletic-opportunities-have-previously-been-limited-and-who-by demonstrated-interest-indicate-a-desire-to-participate-on-a-team-restricted-to members-of-that-sex.

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

C. When overall athletic opportunities for one sex have previously been limited, members of that sex shall be permitted to try out and, if successful, to participate on any team in any sport. This rule does not prohibit any elementary or secondary school from making participation on a team in a sport dependent upon a demonstrated level of skill and ability.

D. When an educational institution has established a team exclusively for members of the sex whose overall athletic opportunities have previously been limited, members of the other sex may not try out for or participate on that team.

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

5 MCAR § 1.0670 Duties of schools; penalty for failure to comply.

A. Public and private elementary and secondary schools shall make a biennial determination of student demonstrated interest. Schools shall report the method used to make the determination to the Department of Education as part of 5 MCAR § 1.0671. The first biennial determination shall be made prior to the end of the 1981-82 school year.

Student demonstrated interest shall be considered in the selection of those athletic activities to be provided in the athletic program for the purpose of providing separate teams or sports for members of previously excluded sex.

B. ~~A~~ Public and private elementary and secondary schools shall provide equal opportunity for members of each sex to participate in both their intramural and interscholastic athletic program by responding to the following considerations:

~~1. A biennial determination of student demonstrated interest is to be conducted by use of a methodology the nature of which will be reported to the Department of Education in conjunction with the report required by 5 MCAR § 1.0671. The first biennial determination shall be made prior to the end of the 1981-82 school year.~~

~~Student demonstrated interest shall be considered in the selection of those athletic activities to be provided in the athletic program for the purpose of providing separate teams or sports for members of the previously excluded sex.~~

1. ~~2.~~ The number of opportunities for females to participate on teams is to be comparable to the number of opportunities for males to participate on teams in each school year in the interscholastic athletic program and comparable, as well as in the intramural athletic program.

2. ~~3.~~ The equipment, supplies and uniforms for each sport are to be comparable for both sexes.

3. ~~4.~~ The locker rooms, practice, and competitive facilities are to be comparable for both sexes.

4. ~~5.~~ The medical services are to be comparable for both sexes.

5. ~~6.~~ The participation rates for members of both sexes are to be comparable while recognizing the voluntary nature of student involvement in interscholastic and intramural athletics.

C. B. When two teams in the same sport are provided pursuant to 5 MCAR § 1.0669 A., the two teams shall be treated in a substantially equal manner. Public and private elementary and secondary schools shall accomplish this to the extent that they are applicable in a given situation by providing that:

1. equipment, supplies, and uniforms for each team are comparable.

2. the games and competitive events for each team are scheduled so that the number of opportunities to perform before an audience are comparable.

3. the practice sessions and competitive events scheduled for each team are at equally desirable time periods.

4. the travel and per diem allowances per participant are comparable.

5. the amount of coaching provided for members of each team is comparable.

6. the locker rooms, practice, and competitive facilities for each team are comparable.

7. the medical services for each team are comparable.

8. the publicity produced by the school for each team is comparable.

9. the expenditure, excluding salary of the coach, per participant on each team is substantially equal. Per participant expenditure excludes gate receipts and other revenues generated by that sport. When an item or items of expense are not separated, the expense shall be prorated to the teams according to the number of participants.

D. G. The penalty for noncompliance with these rules by public elementary and secondary schools shall be the reduction of State Aids pursuant to procedures of Minn. Stat. § 124.15, subd. 3. In addition, nothing in these rules shall be interpreted as limiting the authority of the Human Rights Department over public and nonpublic schools and noncompliance may constitute a violation of Minn. Stat. Chap. 363, Human Rights Act.

5 MCAR § 1.0671 Compliance reports and submission of data. Annually, on or before October 15, each school/school district shall submit to the Commissioner of Education an elementary and secondary athletic program report containing information about both intramural and interscholastic athletics provided. The report shall contain by building: (a) Number of sports offered for each sex, (b) The season each sport is offered for each sex, (c) The number of weeks each sport is offered, (d) The number of teams in each sport, (e) The number of coaches assigned each sport, (f) The number of students by sex participating in each sport, (g) The dollar expenditure per sport ~~and~~, (h) The total unduplicated count of student participation in the ~~athletic~~ intramural program by sex, and (i) the total unduplicated count of student participation in interscholastic programs by sex.

5 MCAR § 1.0672 Duties of the Commissioner of Education. Upon receipt of an educational institution's athletic program report, the Commissioner of Education shall:

A. Evaluate the data contained in the report.

B. Forward reports requiring additional attention to the Commissioner of Human Rights, pursuant to Minn. Stat. § 124.15, subd. 2a.

State of Minnesota
County of Ramsey

Statement of Need and Reasonableness

In the matter of the Proposed Adoption of Rules of the State Board of Education
Relating to 5 MCAR § 1.0667-1.0672.

Statutory Authority to Adopt the Proposed Rules

Minnesota Statute, § 124.15, Subdivision 2a (1980), charges the State Board of Education with the responsibility of promulgating rules relating to local school board assurances of compliance with state and federal law prohibiting discrimination and which specify the information required to be submitted in support of the assurances.

Minnesota Statute § 363.03 (1980) prohibits discrimination in educational programs and activities on grounds of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability.

The express statutory authority to adopt these proposed rules is Minnesota Statute, Section 126.21, Subd. 5 (1980), which directs the State Board of Education, after consultation with the Commissioner of Human Rights, to promulgate rules to prevent discrimination in elementary and secondary school athletic programs operated by educational institutions.

In preparing for the implementation of this act and the preparation of these proposed rules, the Department of Education, Division of Special Services, Equal Educational Opportunities Section, has sought advice and input from the Department of Human Rights, school officials in Minnesota public schools, Minnesota State High School League, other educational professional organizations and concerned citizen groups.

The Need for These Particular Rules

Three basic issues can be cited as the underlying need for the proposed rules.

- (1) The 1980 Legislature has directed the State Board of Education to promulgate rules to extend athletic opportunities for females and to assure that athletic programs offered by educational institutions for elementary and secondary students are nondiscriminatory on the basis of sex.
- (2) There is a need to provide definitions and standards so that both the educational institutions and the beneficiaries of the athletic program can determine program equity for each sex using the same criteria.
- (3) There is a need to provide the State of Minnesota, Department of Education, with a set of criteria by which it can determine public and nonpublic schools' compliance with the Act.

5 MCAR § 1.0667 - Athletic Programs, Authority

5 MCAR § 1.0667 is deemed necessary to alert the education community that the rule applies to both public and private, elementary and secondary school athletic programs. It also sets forth the statutory authority for the board to promulgate the rules. The statute and rules are made applicable to private educational institutions through Minn. Stat. § 363.01, Subd. 20 (1980). Despite its location in the education code, it is clear that Section 126.21 is integrally related to and part of the Human Rights Act, Minn. Stat., Ch. 363 (1980).

5 MCAR § 1.0668 Definitions

5 MCAR § 1.0668 A is deemed necessary because it specifies and clarifies and because the statutory language is not clear whether intramural athletic activities are included in the term "athletic program". Therefore, it is necessary to clarify and provide educational institutions a common meaning for the term "Athletic Program". The reasonableness of this definition is supported by the Department of Education's position that the intramural program is an important component of the athletic program because it provides students an opportunity to develop athletic skills and competencies needed to perform in competitive sports, and therefore must be included in the definition of the "athletic program". Further the Department believes that, as financial resources become more scarce, interscholastic sports will diminish causing the intramural program to take on more importance since it is less costly. Therefore, students of both sexes should be provided equal opportunity to participate in the intramural athletic program. These rules will provide that opportunity.

5 MCAR § 1.0668 B through F is deemed necessary to provide educational institutions and citizens a common, working definition for the following terms and words:

B. "Interscholastic Athletic Program"

C. Intramural Athletic Program

D. Participate

E & F. Participation rate for a particular sex in both the Interscholastic and Intramural Athletic Program.

The reasonableness of these definitions is based upon their reliance upon common usage.

5 MCAR § 1.0669 - Separation by Teams

5 MCAR § 1.0669 (A) is deemed necessary to inform educational institutions that in order to provide equal opportunity for students to participate in the athletic program offered in the 7th grade and above it is permissible to offer some sports that are limited to one sex, and in the sixth grade and below it is permissible to offer some sports limited to one sex when a demonstrated interest indicates a desire to participate on such a team. Its reasonableness is based upon Minn. Stat. § 126.21, Subd. 3 (1980). Duplication of this legislative standard is crucial to a comprehension of the rule's meaning and effect.

5 MCAR § 1.0669 (B) is deemed necessary to provide educational institutions conditions under which they may provide separate or substantially separate teams in the same sport. Its reasonableness is based upon Minn. Stat. § 126.21, Subd. 3 (1980). Duplication of this legislative standard is crucial to a comprehension of the rule's meaning and effect.

5 MCAR § 1.0669 (C) is deemed necessary to provide educational institutions conditions under which students shall be permitted to try out and participate on any team in any sport. Its reasonableness is based upon Minn. Stat. § 126.21, Subd. 3 (1980). Duplication of this legislative standard is crucial to a comprehension of the rule's meaning and effect.

5 MCAR § 1.0669 (D) is deemed necessary to provide educational institutions conditions under which students may not be permitted to try out or participate on particular teams. Its reasonableness is based upon Minn. Stat. § 126.21, Subd. 3 (1980). Duplication of this legislative standard is crucial to a comprehension of the rule's meaning and effect.

5 MCAR § 1.0669 (E) is deemed necessary to provide educational institutions conditions under which separate teams must be provided for students. Its reasonableness is based upon Minn. Stat. § 126.21, Subd. 4. Duplication of the legislative requirement is essential to a comprehension of the rule's meaning and effect.

5 MCAR § 1.0670 - Duties of School Districts, Penalty for Failure to Comply

5 MCAR § 1.0670 (A) is deemed necessary to provide educational institutions criteria to be used to determine whether or not equal opportunity is being provided for members of each sex to participate in both their intramural and interscholastic athletic programs. Its reasonableness is based upon Minn. Stat. Section 126.21, Subd. 2 (1980). A reiteration and expansion of the legislative criteria is crucial to the implementation of the provisions and intent of the act. Medical services have been added because certain sports require medical services. Therefore, it seems reasonable to require that if medical services are provided to one sex they should be provided the other.

5 MCAR § 1.0670 (B) is deemed necessary to provide institutions criteria to be used to determine whether or not members of teams are being treated in a substantially equal manner when two teams in the same sport are offered by the institutions. Its reasonableness is based upon Minn. Stat. Section 126.21, Subd. 3(3) and Title IX. (Regulations implementing education amendments of 1972, Prohibiting Sex discrimination in Education, Section 86.41(C).) It seems reasonable to use comparable criteria in these rules as are set forth in Title IX in order that school may comply with both without being in conflict with either.

5 MCAR § 1.0670 (C) is necessary to inform local boards that the penalty for non-compliance with this Chapter is the reduction of state aids pursuant to Minnesota Statute 124.15, and that by statute the Human Rights Department has jurisdiction. See Minn. Stat. § 363.02, Subd. 3(b) (1980).

Ag. 16th to submit following

5 MCAR § 1.0671 - Compliance Reports and Submission of Data.

5 MCAR 1.0671 is necessary to set forth the date that each school district or educational institution must submit an elementary and secondary athletic program report and to specify the information that must be contained in the report. Its reasonableness is based upon Minn. Stat. 124.15, Subd. 2a (1975). Presently all the data specified is being collected for the "interscholastic athletic programs".

5 MCAR § 1.0672 (A and B) Duties of the Commissioner of Education.

5 MCAR § 1.0672 is necessary to provide direction to the Commissioner of Education in fulfilling the requirements of Minnesota Statute 124.15, Subd. 2a. This section also recognizes the role of the Commissioner of Human Rights in this area.

- Bill McKeone - High Pub school a degree-cross over for girls & senior girls can cross over
will decrease girls apply - not rule but statute
Waddick girls just won't do it - a spurious conclusion -
Dory Flint - Ath, MSHE - Law never intended to regulate interscholastic - became only HSL in
① what is "participation" for interscholastic - number hard to get. Legislative history -
interscholastic don't train for competitive -
② participation = opportunity to participate
"rates" = ratio to student body - rules - can't be on mathematical ratios -
"ratio" = in statute -
Judy Johnson - Mr. Womere Coachman
① Interscholastic intent of law not interscholastic only recreational -
② Opportunity to participate. Does not include cross over -
"comparable" - confirmed by A. B. C. team -
if cross-over count as "opportunity to participate" - problem -
③ Soliciting interest & kids can't be treated -
④ In team some sports = coaching -
Robert Andersby, Jr. Ed. -
① interscholastic program -
② mathematical formula -

II. MINN. STAT. § 126.21,
RELATING TO SEX DISCRIMINATION AND
EQUAL OPPORTUNITY IN ATHLETIC PROGRAMS
(Coded)

An act relating to education; providing equal opportunity for members of both sexes to participate in certain athletics; modifying the coverage and terms of the current law providing for equal opportunity in certain athletics; requiring the state board of education after consultation with the commissioner of human rights to promulgate certain rules; providing for the rights of certain parties in the case of certain sex discrimination charges; requiring the Minnesota state high school league to transact business in an open meeting; amending Minnesota Statutes 1978, Sections 126.21; 129.121, by adding a subdivision; and 363.02, Subdivision 3.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1978, Section 126.21, is amended to read:

126.21 Athletic Programs; Sex Discrimination.

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

Subdivision 2. Each educational institution or public service shall provide equal opportunity for members of both sexes to participate in its athletic program. In determining whether equal opportunity to participate in athletic programs is available for the purposes of this section, at least the following factors shall be considered to the extent that they are applicable to a given situation: whether the opportunity for males and females to participate in the athletic program reflects the demonstrated interest in athletics of the males and females in the student body of the educational institution or the population served by the public service; whether the variety and selection of sports and levels of competition effectively accommodate the demonstrated interests of members of both sexes; the provision of equipment and supplies; scheduling of games and practice time; assignment of coaches; provision of locker rooms; practice and competitive facilities; and the provision of necessary funds for teams of one sex.

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

(2) When an educational institution or a public service provides athletic teams for children eleven years old or younger or in the sixth grade or below, those teams shall be operated without restrictions on the basis of sex, except that when overall athletic opportunities for one sex have previously been limited and there is a demonstrated interest by members of that sex to participate on a team restricted to members of that sex, the educational institution or public service may provide a team restricted to members of that sex.

(3) When two teams in the same sport are in fact separated or substantially separated according to sex, the two teams shall be provided with substantially equal budgets per participant, exclusive of gate receipts and other revenues generated by that sport, and in all other respects shall be treated in a substantially equal manner. However, nothing in this section shall be construed to require the two teams to conduct combined practice sessions or any other combined activities related to athletics.

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

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

Subdivision 5. The state board of education, after consultation with the commissioner of human rights shall promulgate rules in accordance with chapter 15 to implement this section to prevent discrimination in elementary and secondary school athletic programs operated by educational institutions. The rules promulgated by the state board pursuant to this section shall not require athletic competition or tournaments for teams whose membership may be restricted to members of a sex whose overall athletic opportunities have previously been limited to be scheduled in conjunction with the scheduling of athletic competition or tournaments for teams whose membership is not so restricted by this selection. Any organization, association or league entered into by elementary or secondary schools or public services for the purpose of promoting sports or adopting rules and regulations for the conduct of athletic contests between members shall provide rules and regulations and conduct its activities so as to permit its members to comply fully with this section. The rules of that organization, association or league may provide separate seasons for athletic competition or tournaments in

a sport for teams whose membership may be restricted to members of a sex whose overall athletic opportunities have previously been limited from athletic competition or tournaments established for teams in that same sport whose membership is not so restricted by this section, and its rules may prohibit a participating student from competing on more than one school team in a given sport during a single school year.

Section 2. Minnesota Statutes 1978, Section 129.121, is amended by adding a subdivision to read:

Subdivision 5. For the purposes of section 471.705, the Minnesota state high school league shall be deemed to be a state agency required by law to transact business in meetings open to the public.

Section 3. Minnesota Statutes 1978, Section 363.02, Subdivision 3, is amended to read:

Subdivision 3. (EDUCATION) (a) It is not an unfair discriminatory practice for a religious or denominational institution to limit admission or give preference to applicants of the same religion. The provisions of section 363.03, subdivision 5, relating to sex shall not apply to a private educational institution, or branch or level of a private educational institution, in which students of only one sex are permitted to enroll. Nothing in this chapter shall be construed to require any educational institution to provide any special service to any person because of the disability of such person or to modify in any manner its buildings, grounds, facilities, or admission procedures because of the disability of any such person. Nothing in this chapter shall prohibit an educational institution from discriminating on the basis of academic qualifications or achievements or requiring from applicant's information which relates to academic qualifications or achievements.

(b))Notwithstanding any other provisions of this chapter or any law to the contrary, it is not an unfair discriminatory practice for an educational institution or a public service to operate or sponsor separate athletic teams and activities for members of each sex or to restrict membership on an athletic team to participants of one sex, if this separation or restriction meets the requirements of section 126.21.

(c) The department of human rights shall investigate all charges alleging sex discrimination in athletic programs in educational institutions and public services pursuant to the standards and requirements of section 126.21 and the procedures enumerated in chapter 363.

Rules as Proposed (all new material)

Chapter Thirty-Three: Prohibition of Discriminatory Practices in Education

5 MCAR § 1.0667 Athletic programs. Authority, scope and purpose. These rules are promulgated pursuant to Minn. Stat. § 126.21, subd. 5, as amended by Laws of 1980, ch. 355, § 1. These rules apply to both public and private elementary and secondary schools that operate athletic programs.

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C. "Intramural Athletic Program" - Means all non-interscholastic athletic activities offered within a school, which are not a part of the regular physical education curriculum, designed to provide students athletic opportunities, experiences and the development of competencies in a variety of sports.

D. "Participate" - Means for interscholastic sports, a student has been selected by the coach to be a member of a particular athletic team, inclusive of both varsity and junior varsity teams, after the try-out period has ended.

E. "Participation Rate for a Particular Sex in the Interscholastic Athletic Program" - Means the ratio of the number of participants of that sex in the athletic program to the number of students of that sex in the student body.

F. "Participation Rate for a Particular Sex in the Intramural Athletic Program" - Means the ratio of the number of participants of that sex in the athletic program to the number of students of that sex in the student body.

5 MCAR § 1.0669 Separation by teams.

A. Athletic programs for students in the seventh grade or above may include one or more teams limited to participants of one sex whose overall athletic opportunities have previously been limited. Athletic programs for students in the sixth grade or below may contain one or more teams which are limited to participants of one sex whose overall athletic opportunities have previously been limited and who by demonstrated interest indicate a desire to participate on a team restricted to members of that sex.

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

C. When overall athletic opportunities for one sex have previously been limited, members of that sex shall be permitted to try out and, if successful, to participate on any team in any sport. This rule does not prohibit any elementary or secondary school from making participation on a team in a sport dependent upon a demonstrated level of skill and ability.

D. When an educational institution has established a team exclusively for members of the sex whose overall athletic opportunities have previously been limited, members of the other sex may not try out for or participate on that team.

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

SMCAR § 1.0670 Duties of schools; penalty for failure to comply.

A.. Public and private elementary and secondary schools shall provide equal opportunity for members of each sex to participate in both their intramural and interscholastic athletic program by responding to the following considerations:

1. A biennial determination of student demonstrated interest is to be conducted by use of a methodology the nature of which will be reported to the Department of Education in conjunction with the report required by 5 MCAR § 1.0671. The first biennial determination shall be made prior to the end of the 1981-82 school year.

Student demonstrated interest shall be considered in the selection of those athletic activities to be provided in the athletic program for the purpose of providing separate teams or sports for members of the previously excluded sex.

4 (2. The number of opportunities for females to participate on teams is to be comparable to the number of opportunities for males to participate on teams in each school year in the interscholastic athletic program and comparable, as well as in the intramural athletic program.

3. The equipment, supplies and uniforms for each sport are to be comparable for both sexes.

4. The locker rooms, practice, and competitive facilities are to be comparable for both sexes.

5. The medical services are to be comparable for both sexes.

6. The participation rates for members of both sexes are to be comparable while recognizing the voluntary nature of student involvement in interscholastic and intramural athletics.

B. When two teams in the same sport are provided pursuant to 5 MCAR § 1.0669 A., the two teams shall be treated in a substantially equal manner. Public and private elementary and secondary schools shall accomplish this by providing that:

1. equipment, supplies, and uniforms for each team are comparable.
2. the games and competitive events for each team are scheduled so that the number of opportunities to perform before an audience are comparable.
3. the practice sessions and competitive events scheduled for each team are at equally desirable time periods.
4. the travel and per diem allowances per participant are comparable.
5. coaching for members of each team is comparable.
6. the locker rooms, practice, and competitive facilities for each team are comparable.
7. the medical services for each team are comparable.
8. the publicity produced by the school for each team is comparable.
9. the expenditure, excluding salary of the coach, per participant on each team is substantially equal. Per participant expenditure excludes gate receipts and other revenues generated by that sport. When an item or items of expense are not separated, the expense shall be prorated to the teams according to the number of participants.

C. The penalty for noncompliance with these rules by public elementary and secondary schools shall be the reduction of State Aids pursuant to procedures of Minn. Stat. § 124.15, subd. 3. In addition, nothing in these rules shall be interpreted as limiting the authority of the Human Rights Department over public and nonpublic schools and noncompliance may constitute a violation of Minn. Stat. Chap. 363, Human Rights Act.

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5 MCAR § 1.0672 Duties of the Commissioner of Education. Upon receipt of an educational institution's athletic program report, the Commissioner of Education shall:

- A. Evaluate the data contained in the report.
- B. Forward reports requiring additional attention to the Commissioner of Human Rights, pursuant to Minn. Stat. § 124.15, subd. 2a.

474-9190

EDU-81-001-GB

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE STATE BOARD OF EDUCATION

In the Matter of the Proposed Adoption
of Rules of the State Board of Education
Governing Prohibition of Discriminatory
Practices in Athletic Programs in Public
and Private Elementary and Secondary
Schools. 5 MCAR §§ 1.0667-1.0672.

REPORT OF THE
CHIEF HEARING EXAMINER

The above-entitled matter came on for review by the Chief Hearing Examiner pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4d (1980) which provides in part:

If the [hearing examiner's] report contains a finding that the proposed rule is substantially different from that which was proposed at the public hearing, or that the agency has not met the requirements of section 15.0412, subdivisions 4 through 4f, it shall be submitted to the chief hearing examiner for approval. If the chief hearing examiner approves the finding of the hearing examiner, he shall advise the agency of actions which will correct the defects, and the agency shall not adopt the rule until the chief hearing examiner determines that the defects have been corrected. If the chief hearing examiner determines that the need for and reasonableness of the rule has not been established pursuant to subdivision 4, clause (c), and if the agency does not elect to follow the suggested actions of the hearing examiner to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not proceed to adopt the rule until it has received and considered the advice of the commission; provided, that the agency is not required to delay adoption longer than 30 days after the commission's receipt of the agency's submission.

Based upon a review of the record in this proceeding, the Chief Hearing Examiner hereby approves the Report of the Hearing Examiner in all respects and specifically as to any finding of substantial change or of failure to comply with Minn. Stat. § 15.0412, subd. 4-4f (1980) or of failure to establish need for and reasonableness of the proposed rule.


In order to correct the defects enumerated by the Hearing Examiner, the agency shall either take the action recommended by the Hearing Examiner or reconvene the rule hearing if appropriate. If the agency chooses to reconvene the rule hearing, it shall do so as if it is initiating a new rule hearing, complying with all substantive and procedural requirements imposed on the agency by law or rule.

If the agency chooses to take the action recommended by the Hearing Examiner, it shall, prior to submitting the rules to the Attorney General for review, submit to the Chief Hearing Examiner a copy of the rules as initially published in the State Register, a copy of the rules as proposed for final adoption in the form required by the State Register for final publication, and

a copy of the agency's Findings of Fact and Order Adopting Rules. The Chief Hearing Examiner will then make a determination as to whether the defect in regard to substantial change and the requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) have been corrected.

Should the agency make changes in the rules other than those recommended by the Hearing Examiner, it shall also, prior to submitting the rule to the Attorney General, submit the complete record to the Chief Hearing Examiner for a review in regard to substantial changes.

Dated: May ~~5~~¹², 1981.


DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE STATE BOARD OF EDUCATION

In the Matter of the Proposed Adoption
of Rules of the State Board of Education
Governing Prohibition of Discriminatory
Practices in Athletic Programs in Public
and Private Elementary and Secondary
Schools. 5 MCAR §§ 1.0667-1.0672.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before State Hearing Examiner George A. Beck on March 27, 1981, at 9:00 a.m. on Conference Room D on the Fifth Floor of the Veterans Service Building in the City of Saint Paul, Minnesota.

This Report is part of a rule hearing procedure pursuant to Minn. Stat. §§ 15.0411-15.0417 and 15.052 to determine whether the proposed rules should be adopted by the State Board of Education. A copy of this Report may be obtained from the Office of Administrative Hearings for the cost of reproduction.

Members of the agency panel appearing at the hearing included: Dr. Gregory Waddick, Assistant Commissioner, Department of Education; Archie Holmes, Manager, Equal Educational Opportunities Section, Department of Education; Michael Bradley, Assistant Attorney General, representing the State Board of Education.

Twenty-seven people signed the hearing register. Ten public witnesses appeared and spoke at the hearing. The Department submitted 16 written exhibits. Twenty written comments were received from the public.

The State Board of Education must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4d (1980), this Report has been submitted to the Chief Hearing Examiner for his approval. If the Chief Hearing Examiner approves the findings of this Report, he will advise the State Board of Education of actions which will correct the defects and the State Board of Education may not adopt the rule until the Chief Hearing Examiner determines that the defects have been corrected. However, in those instances where the Chief Hearing Examiner identifies defects which relate to the issues of need or reasonableness, the State Board of Education may either adopt the Hearing Examiner's recommendations to cure the defects or, in the alternative, if the State Board of Education does not elect to adopt the recommendations, it may submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment. Provisions relating to this submission to the Commission may be found in Minn. Stat. § 15.0412, subd. 4d (1980).

If the State Board of Education elects to adopt the recommendations of the Hearing Examiner and makes no other changes and the Chief Hearing Examiner determines that the defects have been corrected, then the State Board of Education shall submit the rule to the Attorney General for review of form and legality. If the State Board of Education makes changes in the rule other than those recommended by the Hearing Examiner, then it shall submit the rule, with the complete record, to the Chief Hearing Examiner for a review of the changes before adopting it and submitting it to the Attorney General. Procedures relating to this subsequent review by the Chief Hearing Examiner are set forth in Minn. Stat. § 15.0412, subd. 4e (1980).

When the State Board of Education submits the rule to the Attorney General, it shall give notice on the day of submission to all persons who requested that they be informed of the submission to the Attorney General.

Based upon all the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On January 14, 1981, the Board filed the following documents with the Chief Hearing Examiner:

- (a) A copy of the proposed rules.
- (b) An Order for Hearing.
- (c) A proposed Notice of Hearing.
- (d) A Certificate of the Board's authorizing resolution.
- (e) An estimate of the attendance at and the length of the hearing.

2. On February 26, 1981, the Board filed the following documents with the Hearing Examiner:

- (a) A copy of the proposed rule.
- (b) The Notice of Hearing.
- (c) The Notice of Hearing and proposed rule as mailed.
- (d) The Certificate of the Board's authorizing resolution.
- (e) The Affidavit of Mailing.
- (f) The Affidavit of Additional Notice.
- (g) A Certificate of the accuracy of the mailing list.
- (h) An Affidavit concerning the mailing list.
- (i) The Statement of Need and Reasonableness.
- (j) A copy of the Notice of Intent to Solicit Outside Opinion, published May 5, 1980.
- (k) A copy of the State Register in which the proposed rules were published.

3. On March 4, 1981, the Board filed a statement indicating the names of the people who would appear at the hearing on behalf of the Board to testify in support of the proposed rules.

4. The proposed rules were published at 5 State Register 1295, on February 23, 1981.

5. On February 17, 1981, the Board mailed the Notice of Hearing to all persons and associations who have placed their name on file with the Board of Education for the purpose of receiving notice of rulemaking activity.

6. All of the documents cited above were available for inspection at the Office of Administrative Hearings from the date of filing to the date of the hearing.

7. The record remained open through April 16, 1981, for the receipt of written comments and statements, the comment period having been extended by order of the Hearing Examiner to 20 calendar days following the hearing.

Statutory Authority

8. The Board has cited as specific statutory authority for the proposed rules Minn. Stat. § 126.21, subd. 5 (1980), which reads as follows:

Subdivision 5. The state board of education, after consultation with the commissioner of human rights shall promulgate rules in accordance with chapter 15 to implement this section to prevent discrimination in elementary and secondary school athletic programs operated by educational institutions. The rules promulgated by the state board pursuant to this section shall not require athletic competition or tournaments for teams whose membership may be restricted to members of a sex whose overall athletic opportunities have previously been limited to be scheduled in conjunction with the scheduling of athletic competition or tournaments for teams whose membership is not so restricted by this selection. Any organization, association or league entered into by elementary or secondary schools or public services for the purpose of promoting sports or adopting rules and regulations for the conduct of athletic contests between members shall provide rules and regulations and conduct its activities so as to permit its members to comply fully with this section. The rules of that organization, association or league may provide separate seasons for athletic competition or tournaments in a sport for teams whose membership may be restricted to members of a sex whose overall athletic opportunities have previously been limited from athletic competition or tournaments established for teams in that same sport whose membership is not so restricted by this section, and its rules may prohibit a participating student from competing on more than one school team in a given sport during a single school year.

The Board referred to Minn. Stat. § 363.03 (1980), which provides at subdivision 5 that discrimination in any manner in the full utilization of or benefit from any educational institution is an unfair discriminatory practice. (Pursuant to Minn. Stat § 363.02, subd. 3(b), an educational institution or public service may sponsor separate athletic teams and activities by sex or restrict membership on a team by sex if they comply with Minn. Stat. § 126.21.) The Board also cited Minn. Stat. § 124.15, subd. 2a (1980) which directs the Board of Education to adopt rules requiring school districts to file with the Commissioner of Education assurances of compliance with state and federal laws prohibiting discrimination and specifying the information required to be submitted. Subdivision 3 of the statute authorizes the Commissioner to reduce special state aids to a school district for failure to correct violations of the rule or law.

The Board has demonstrated its general statutory authority to adopt the proposed rules.

9. As the above-quoted statutory excerpt indicates, the purpose of this rule hearing proceeding is to adopt rules prohibiting discrimination in elementary and secondary school athletic programs operated by educational institutions.

10. The Department of Education consulted with the Commissioner of Human Rights in the development of the proposed rules as is required by Minn. Stat. § 126.21, subd. 5 (1980). (Tr. 118).

General Comments

11. In addition to the comments received which address specific portions of the rules, some commentators provided general remarks concerning the rules as a whole. The League of Women Voters of Minnesota (Ex. L), the National Organization of Women (Tr. 59), the Women's Equity Action League (Ex. S) and the Commissioner of Human Rights (Tr. 118) all expressed general support for the rules as proposed.

12. Those comments which were generally opposed to the proposed rules came from the Alden Public Schools (Ex. A), the Hinckley Public Schools (Ex. O), the Tracy Public Schools (Ex. D), the Red Lake Falls Public Schools (Ex. F), the Cyrus Public Schools (Ex. B), which commented that the rules would hurt smaller rural schools, and the Minneapolis Public Schools, which stated that the rules would decrease opportunities for girls. (Ex. J; Tr. 19-21).

5 MCAR § 1.0668 - Definitions

13. Section 1.0668 A. defines "athletic program" to include both interscholastic and intramural sports. The phrase "athletic program" is not defined in the statute. The inclusion of the intramural sports program within the scope of these proposed rules drew a substantial number of comments. Although the inclusion of the intramural program is reflected throughout these rules, such as at § 1.0668 C. and F., § 1.0670 A., A.2., and A.6. and § 1.0671, the issue is discussed here since this is the first subsection of the proposed rules which speaks to the inclusion of intramural sports.

14. A number of public schools commented that including intramural programs within the proposed rules goes beyond the legislative intent as expressed in Minn. Stat. § 126.21 (1980). (Tr. 54; Exs. F, C, N, O, I). The Minnesota State High School Coaches Association for Girls Sports, Inc. ("Girls Coaches") (Ex. K, p. 1) and the Minnesota School Boards Association (Ex. M) also stated that the intent of the statute was to deal with interscholastic and not intramural programs. The Rochester Public Schools commented that intramurals should not be included in the rules since they operate on a volunteer student involvement level and are for the purpose of recreation rather than skill development. (Tr. 40). The Columbia Heights Public Schools commented that the statute was enacted because of a concern for equity in interscholastic athletic programs and that intramurals were not considered. The school commented that the term "athletics" was used in the statute in its most common understanding, namely interscholastic athletics and that the inclusion in the statute of provisions related to equipment and supplies, coaches, locker rooms and facilities suggests that the statute speaks only to interscholastic athletics. (Ex. G, p. 1-2; Ex. R, p. 1-2). The Minnesota State High School League commented that the intramural program was a great deal different from interscholastic sports since generally the school merely provides a facility for intramurals and coaches are not hired, there is no competition with other schools and students generally provide their own uniforms and equipment. The League points out that the inclusion of intramural sports creates some problems such as how to define participation and how to keep meaningful statistics. The League also suggests that the statute was drawn to deal with interscholastic sports and that pursuant to Minn. Stat. § 645.16,

the occasion and necessity for the law and the mischief to be remedied are to be considered in determining legislative intent. (Ex. H, p. 1-2; Ex. T).

15. The League of Women Voters (Ex. L, p. 1) and the Women's Equity Action League pointed out that nothing in the statute specifically excludes intramurals and commented that the Federal Title IX athletic regulations apply to intramurals and that inclusion in these rules would simplify enforcement. (Ex. S) Elizabeth Ebbott pointed out that § 126.21 is an exception to the general bar against separation contained in the Human Rights law, Ch. 363, and that § 126.21 speaks to all types of educational institutions and public services and that, therefore, intramurals should be included. (Tr. 48).

16. In reply, the Board of Education states that had the legislature meant to only deal with interscholastic athletics in § 126.21, it would have said so as it did in Minn. Stat. § 129.121, dealing with the High School League. The Board also points out that an amendment was made to Minn. Stat. § 126.21, subd. 3(2) during the 1980 session of the legislature which now permits separation by sex in the sixth grade or below when there is a demonstrated interest on the part of girls for a separate team. The Board argues that since there are no interscholastic sports programs in elementary school, the legislature obviously intended to regulate the intramural programs at this level. The Board also believes that the use of the term "levels of competition" in § 126.21, subd. 2 implies the inclusion of intramurals. The Board also pointed out that § 126.21, which allows limited separation by sex in athletic programs is an exception to the human rights statute contained in Ch. 363 which allows no separation or discrimination based upon sex. Accordingly, the Board believes that if intramurals are not included within the proposed rules, no separation at all would be allowed since Ch. 363 would apply. Finally, the Board suggests that the statute plainly speaks to "educational institution or public service" which would seem to contemplate a broader orientation than just interscholastic athletics. (Tr. 60-62; Ex. 16, pp. 2-4).

17. It is concluded that the regulation of intramural programs in these rules is authorized by Minn. Stat. § 126.21 (1980). As the High School League pointed out, the mischief to be remedied and the object to be attained are to be considered in ascertaining legislative intent. Minn. Stat. § 645.16 (1980). The expressed purpose of the statute authorizing these rules is to provide an equal opportunity for members of both sexes to participate in athletic programs. Minn. Stat. § 126.21, subd. 1 (1980). This is the object to be obtained and the phrase "athletic programs" cannot be narrowed without a strong indication elsewhere in the statute that that was intended by the legislature. It cannot be doubted that the legislature was concerned about equal opportunity in interscholastic athletics when it passed this legislation. A number of the factors to be considered relate only to the interscholastic program. This does not preclude inclusion of intramurals, however, especially in light of the legislature's clear intent to regulate intramurals at the elementary school level. (See, Minn. Stat. § 126.21, subd. 3(2) (1980).) The goal of equal opportunity would seem to be as important to students in the intramural program as to the students in the interscholastic program. The fact that equal opportunity may be more difficult to measure in

the intramural program should not prohibit the effort. Finally, should the argument be accepted that intramurals are not regulated by Minn. Stat. § 126.21, they would then fall under the general rule contained in Chapter 363 which would prohibit separation by sex. This result would apparently not be desired by the school districts and simply does not seem to be consistent with the goals set out in Minn. Stat. § 126.21.

18. Section 1.0668 B. defines "interscholastic athletic program". The School Boards Association stated that the reference to "an organized conference under the auspices of the high school league" may make for a more narrow definition than intended by the legislature since some teams do not play within an organized conference or be under control of the High School League. (Ex. M, p. 1). It would appear, however, that the last clause of the definition would cover the situation which the School Board Association is concerned about. The Board of Education may wish to review the definition to make sure it is as broad as the statute. However, the definition is needed and reasonable as proposed.

19. Section 1.0668 C. defines "intramural athletic program". Consistent with their comments with regard to § 1.0668 A., the School Boards Association (Ex. M, p. 1) and Columbia Heights Public Schools (Ex. G, p. 3), suggested that this definition be struck since it was outside the legislative intent. The definition is needed and reasonable as proposed.

20. Section 1.0668 D. defines the word "participate" as a student being selected for a team. This definition attracted several comments as did some subsequent rule subsections which revolved around the general question of whether or not the rules were concentrating on participation while the statute specifies only an opportunity to participate. Both the School Boards Association (Ex. M, p. 1) and the Minnesota Association of School Administrators (Ex. E) commented that the opportunity to participate should be the thrust of the rules, and not actual participation. The Minnesota State High School Coaches Association for Girls Sports, Inc. commented that the definition does not allow for the inclusion of students who came out initially for a team but were not selected or quit due to a lack of interest. It also noted that high schools often offer three levels of competition--varsity, junior varsity, and sophomore--while the rule subsection refers to only two levels. (Ex. K, p. 1). The Columbia Heights Public Schools suggested that the definition be modified to define "opportunity to participate". (Ex. G, p. 3). Defining the word "participate" does not mean, however, that the rules shift the emphasis from opportunity to participate to actual participation. Other sections of the rules speak in terms of opportunity to participate. Defining the word "participate" merely permits a determination as to whether or not the opportunity was present. As the Board pointed out in its post-hearing comments, a low participation rate for females would not show sex discrimination. It could be an indicator that further inquiry may or may not be necessary. (Ex. 16, p. 6). The definition is needed and reasonable as proposed. The Board may wish to consider whether or not a third category should be added in addition to varsity and junior varsity teams.

21. Section 1.0668 E. and F. define participation rates for a particular sex in the interscholastic and intramural athletic programs. Comments similar

to those in regard to the previous rule subsection were submitted in regard to these definitions. Some commentators thought that the use of a ratio was inappropriate since the proper question is whether or not there is an opportunity to participate and suggested deletion of these definitions. (Ex. O; Ex. G, p. 3). The High School League commented that these definitions were neither needed nor reasonable since the number of students who are selected to be on a given team is not an indication of whether equal opportunity exists in the first instance. The League believes that the use of mathematical ratios is not appropriate in determining equal opportunity, but that the statutory factor of a demonstrated interest in athletics is more appropriate. (Ex. H, pp. 2-3). The School Boards Association also supported deletion of these definitions because the statute does not speak to the usage of mathematical ratios based upon the actual number of team members. (Ex. M, p. 2). The Columbia Heights Public Schools stated that to count the number of team members in order to determine compliance is beyond the authority of the statute. (Ex. R, p. 2).

22. The Board has replied that it is not possible to determine whether opportunities are equal without looking at the results generated by the current athletic program. One way to measure the results is by determining the existing participation rates by sex. The Board suggests that the opportunity to participate must be a meaningful one. The Board admits that a lower participation rate for females would not conclusively show a failure to offer an equal opportunity to participate, but the Board believes that if a school district falls significantly below the statewide level, further investigation might be merited. (Ex. 16, pp. 5-7; Tr. 62-64). The Board has justified the need for and reasonableness of these two proposed rule subsections. It is true that the Board cannot employ any particular formula to determine whether or not equal opportunity to participate exists in an athletic program. However, it is reasonable to employ statistics such as the participation rates defined in these rule subsections in order to provide one measurement of whether or not the statute is being complied with. It is clear that the Board cannot go beyond the reach of the statute which only requires an opportunity to participate; that is, the Board cannot require certain participation levels. The mere accumulation of statistics, however, is reasonable and does not extend beyond the statutory requirement.

5 MCAR § 1.0669 - Separation By Teams

23. Section 1.0669 A. sets out the general rule which permits separation by sex in the seventh grade or above for girls teams and in the sixth grade or below where girls demonstrate an interest for a girls only team. The League of Women Voters and the Women's Equity Action League both suggested that this subsection be reworded to indicate what is stated in the statute, namely that sex integrated teams are the general rule. It also requested that demonstrated interest in the rule subsection be determined by the survey authorized by § 1.0670 A.1. (Ex. L, p. 1; Ex. S, p. 2). The National Organization of Women agreed with the rephrasing, but felt that the methodology for determining demonstrated interest in this section should differ from that contained

in § 1.0670 A.1. (Tr. 58). The language suggested by the League of Women Voters and the Women's Equity Action League is as follows:

Athletic programs for students in the sixth grade or below shall be operated without restrictions on the basis of sex, except that when overall athletic opportunities for one sex have previously been limited and there is demonstrated interest by members of that sex to participate on a team restricted to members of that sex, the educational institution may provide a team restricted to members of that sex. Demonstrated interest shall be determined by use of a methodology the nature of which will be reported to the Department of Education in conjunction with the report required by 5 MCAR 1.0671.

X The first sentence of the amendment does appear to more accurately reflect the statutory intent especially insofar as it emphasizes, as does the statute at Minn. Stat. § 126.21, subd. 3(2) that the general rule is that teams shall be operated without restrictions on the basis of sex. The Board's proposed rule subsection cannot, however, be said to be unneeded or unreasonable. The Board should consider whether the proposed amendment more accurately reflects the statutory intent.

24. The School Boards Association commented that this subsection should specifically say that girls only teams are not required to play against teams which are mostly boys. (Ex. M, p. 2). The High School League suggested that the rule subsection be amended to provide that the ages listed in the statute, namely 12 years old or older and 11 years old or younger be inserted into the rule. (Ex. H, p. 3). The Board replied that the age criteria is meaningful to non-school programs but is potentially conflicting and not meaningful to school programs. (Ex. 16, p. 7). The rule subsection is needed and reasonable as proposed.

25. Section 1.0669 B. sets out the rule that a school may provide two teams separated by sex in the same sport, but that the boys team may not be exclusively for boys. Both the High School League and the School Boards Association commented that this subsection should not be applicable to elementary programs. They also commented that the last clause was unclear. The School Boards Association suggested the following substitution:

B. If any public or private secondary school provides two teams in the same sport, one of these teams may be restricted to members of a sex whose overall athletic opportunities have previously been limited. Members of either sex shall be permitted to try out for a position on the other team.

(Ex. M, p. 2; Ex. H, p. 3). The Columbia Heights Public Schools also supported this revision. (Ex. G, p. 4).

X 26. Although the Board made no reply to these suggestions, it does appear that the inclusion of elementary schools in this subsection is potentially confusing since as indicated in § 126.21, subd. 3(2) the elementary schools are subject to a slightly different standard in regard to the creation of a second team for girls, namely, the demonstrated interest test. The inclusion of elementary schools within a rule which derives from § 126.21, subd. 3(4) seems to diminish the general requirement in § 126.21, subd. 3(2) that generally elementary teams are to be operated without separation by sex. Although these objections cannot be said to render the proposed rule unneeded or unreasonable, the Department should carefully consider these arguments and

specifically the language proposed by the School Boards Association since it appears, by more closely paraphrasing the statute, to provide greater clarity.

27. Section 1.0669 C. is the rule subsection which permits girls to try out for any team in any sport. The High School Coaches Association for Girls Sports, Inc. expressed the concern in regard to this section that the cross-overs for girls which are authorized should not be counted as opportunity to participate in compliance reports. (Ex. K, pp. 1-2). The subsection is needed and reasonable as proposed.

28. Section 1.0669 D. provides that boys may not try out for a girls only team. The School Boards Association suggested that a phrase "established a team exclusively for" be replaced by the phrase "restricted membership on a team exclusively to" so that the statute would be more accurately reflected. (Ex. M, p. 2). The Columbia Heights Public Schools agreed. (Ex. G, p. 4). The Board should consider the suggestion. The rule subsection is needed and reasonable as proposed.

29. Section 1.0669 E. provides that when a school does not provide equal opportunity to girls, it must provide separate teams for them in other sports in order to provide equal opportunity. The rule, as proposed, was objected to by a number of schools and organizations which thought that the rule did not reflect the necessity of a demonstrated interest and did not clearly indicate that the school is the final determiner of the type of program. (Ex. H, p. 3; Exs. I, E). It was also commented that "attempt to" accommodate should replace "will accommodate" to reflect the statute. (Ex. Q, pp. 1-2; Ex. C). The School Boards Association agreed that the statute requires separate teams for girls only when there is a demonstrated interest, that the educational institution is to make the final determination as to what sports are offered and that the statute speaks in terms of "attempt to" accommodate whereas the rule does not. (Ex. M, p. 2; see also, Ex. G, p. 4).

30. In its post-hearing comments, the Board agreed that the rule may create a tougher standard than the statute and proposed that the rule subsection be amended to read as follows:

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

when there is a demonstrated interest -

(Ex. 16, p. 9). The rule as originally proposed by the Board provides the schools less flexibility than does the statute. This is impermissible since a rule may not add to a statute or change the legal meaning of the statute. Holland v. State, 115 N.W.2d 161, 163-64 (Iowa 1962). This would constitute a violation of a substantive provision of law. The amendment proposed by the Board eliminates this problem except in one respect. The amendment still does not contain the statutory element that separate teams shall be provided where there is a demonstrated interest. The proposed amendment then still contains a violation of a substantive provision of law since it conflicts with the statute. To cure this defect, the Board could insert the phrase "where there is a demonstrated interest" after the word "school" and before the word "shall" in the last clause of the subsection as proposed to be amended. The

resulting modified rule would not be substantially different from that originally proposed.

5 MCAR § 1.0670 - Duties of Schools; Penalty for Failure to Comply

31. The first sentence of § 1.0670 A. requires schools to ensure equal opportunity by responding to the listed considerations. Both the School Boards Association and the High School League stated that this sentence should provide that schools should respond to the stated considerations only to the extent that they are applicable to a given situation. (Ex. H, p. 3; Ex. M, p. 3). Minn. Stat. § 126.21, subd. 2 provides that the factors listed therein shall be considered "to the extent that they are applicable to a given situation". Although the rule subsection cannot be said to conflict with the statute by failure to include the language requested, greater clarity may be achieved by including the language as the Board as agreed to do in § 1.0670 B. Such a change would not constitute a substantially different rule. The subsection is needed and reasonable as proposed.

32. Section 1.6070 A.1. requires a biennial survey of student interest. Both the High School League and the School Boards Association requested that the phrase "previously excluded sex" be replaced with the statutory language of "members of the sex whose athletic opportunities have previously been limited". They suggested that the existing phrase is vague. (Ex. H, p. 4; Ex. M, p. 3) The Coaches Association for Girls Sports, Inc. expressed some concern as to whether or not adolescent students would be able to successfully aid in selecting athletic activities. (Ex. K, p. 2). A very important point was made by the Cambridge-Isanti Public Schools which stated that the sentence should be rewritten in clear and consise English. The schools commented that it could simply be stated that "schools will report the method they use to conduct the survey" rather than using the more complicated language contained in the proposed rule. (Ex. Q, p. 1). The rule subsection as proposed is needed and reasonable; however, the Board should consider the drafting comments summarized in this paragraph. Such changes would not result in a substantially different rule.

33. Section 1.0670 A.2. requires that the number of opportunities for females to participate on teams is to be comparable to that for males. The Coaches Association for Girls Sports, Inc. expressed concern over the imprecise nature of the phrase "number of opportunities to participate" and the vagueness of the word "comparable". (Ex. K, p. 1). The High School League and the School Boards Association also noted the lack of a definition of "opportunity to participate" and stated that a student is afforded an opportunity to participate if he or she tries out for and does not make the team or even if he or she fails to try out due to a lack of interest. (Ex. H, p. 4; Ex. M, p. 3). The Columbia Heights Public Schools suggested deletion of the phrase "number of" in the rule subsection. (Ex. G, p. 4). The rule subsection is needed and reasonable as proposed. The Board could consider whether or not a definition of "opportunity to participate" would further clarify the proposed rules. However, it is unlikely that given the subject of these rules, more precise language than the word "comparable" could be drafted and none has been

suggested. See, Can Manufacturers Institute v. State, 289 N.W.2d 416, 423 (Minn. 1979).

34. Section 1.0670 A.6. requires participation rates for both sexes to be comparable while recognizing the "voluntary nature of student involvement". A number of schools, the High School League and the School Boards Association recommended deletion of this rule since they believe that participation rates or ratios are not indicative of an opportunity to participate since this cannot be measured through a mathematical formula. (Ex. H, p. 4; Tr. 40; Ex. M, p. 3; Ex. G, p. 5). The League of Women Voters, MCOSEE and the Women's Equity Action League all ask that the phrase "while recognizing the voluntary nature of student involvement in interscholastic and intramural athletics" be deleted from the proposed rule subsection. (Ex. S, p. 3; Ex. P; Ex. L, p. 2). They believe that these words serve no constructive purpose and may be interpreted as a rationale for continuing discriminatory practices. The comments did acknowledge the impracticality of requiring participation rates for girls in Minnesota's school athletic programs to rise to 50% "overnight".

35. The proposed rule subsection is needed and reasonable and does not violate any substantive provision of law insofar as it purports to only require that participation rates are a consideration in determining equal opportunity. This is the meaning which the participants in the rule hearing attached to the rule subsection. Because of the wording of the subsection, it might be misinterpreted to mandate "comparable" participation rates if it is not read in conjunction with the first paragraph of § 1.0670 A., which speaks in terms of "responding to the following considerations:". A mandatory interpretation would not be authorized by the statute, nor would it be supported by the facts presented by the Department which emphasize that participation rates were only a factor to be considered in determining whether equal opportunity to participate was being provided. There is a basic drafting problem with the entire § 1.0670 A. in that the initial paragraph speaks not in mandatory terms and yet § 1.0670 A.1., the requirement for a biennial determination, would appear to be a mandatory requirement. It is assumed that items A.2. through 6. are not mandatory, but are factors to be considered as indicated in the statute. The Board should consider whether a non-substantial redrafting of the subsection could be done to clarify that these items are factors to be considered and to clarify the status of the biennial determination. As discussed at Finding No. 22, the use of participation rates as one factor in measuring equal opportunity is reasonable. The Board may consider whether or not the "voluntary nature" language should be deleted, however. That is a matter of policy which is within the Board's discretion.

36. Section 1.0670 B. sets out nine requirements when two teams are provided in the same sport. The High School League, the School Boards Association, the Columbia Heights Public Schools and the Cambridge-Isanti Public Schools all commented that the opening paragraph infers that a school must provide these items when the statute at § 126.21, subd. 2 requires that these items be provided only "to the extent that they are applicable in a given situation". (Ex. H, p. 4; Ex. M, p. 3; Ex. Q, p. 2; Ex. G, p. 5). The Columbia Heights Public Schools requested that the above-quoted statutory language be inserted in the opening paragraph after the word "this," and before the

word "by". (Ex. G, p. 5). In its post-hearing comments, the Board agreed to include this suggestion. (Ex. 16, pp. 7-8). So amended, the proposed subsection is needed and reasonable. The amendment would not result in a rule which is substantially different from that first proposed.

37. Section 1.0670 B.3. provides that practice sessions and competitive events for each team are to be scheduled at equally desirable time periods. The High School League commented that this required a subjective judgment as to what is a desirable time period and suggested that this factor be deleted. (Ex. H, pp. 4-5). The Board commented that one example of a problem for which the requirement was drafted is a situation where all girls events are scheduled on evenings before school days and all boys events on either Friday or Saturday night. The Board has demonstrated the need for and reasonableness of the subsection as proposed. Such determinations are not so subjective as to preclude a reasonable analysis by either the school or the Board.

38. Section 1.0670 B.5. provides that coaching for members of each team be comparable. The High School League, the Coaches Association for Girls Sports, Inc. and the School Boards Association all stated that this requirement would involve a subjective determination which would be difficult to make and requested that it be redrafted to provide that the opportunity of team members to receive coaching be comparable. (Ex. H, pp. 4-5; Ex. K, p. 2; Ex. M, p. 4). In its post-hearing comments, the Board agreed to amend the subsection to read as follows:

5. The amount of coaching provided for each team is comparable.

(Ex. 16, p. 8). So amended, the proposed subsection is needed and reasonable and avoids any violation of a substantive provision of law due to vagueness. The modified rule is not substantially different from the rule as originally published.

39. Section 1.0670 B.9. requires that expenditures per participant on each team be substantially equal excluding the coach's salary. The School Boards Association commented that the per participant expenditure will vary depending on team size, the schedule, travel distances, and the needs of players. (Ex. M, p. 4). The Hinckley Public Schools commented that it would be impractical to implement this rule since equipment purchases are made prior to the start of a new school year before the number of participants, whether boys or girls, are known. (Ex. O, p. 2). The League of Women Voters, the Women's Equity Action League and the National Organization of Women all supported including, as opposed to excluding, the coach's salary within this rule subsection. (Ex. L, p. 2; Tr. 58; Ex. S, p. 4). They commented that since coaching salaries constituted a large portion of the budget, to leave them out would render the cost comparisons implied in the law meaningless. They recognize that in some school districts, coaches in the same sport may legitimately receive different salaries due to their placement on the salary schedule and, thus, recommended that the first sentence of the rule subsection be amended to read as follows:

The expenditure per participant of each team is substantially equal, although fluctuations will be permitted if coaches' salaries differ due to placement on a salary schedule.

*Laston
that*

The Board replied that the coach's salary is not reasonably related to the object of these rules, since the rules relate to equality of athletic programs and not to the equality of employment. The Board believes that the salary of one coach as compared to another does not affect the equality of student opportunities. The Board has demonstrated the proposed rule subsection to be needed and reasonable.

40. Section 1.0670 C. sets out the penalties for noncompliance with the proposed rules by providing that public schools shall face a reduction of state aids and that both public and non-public schools may face a violation under the State's Human Rights Act. Several schools commented that the penalty should be equal as between public and private schools. (Exs. I, E, N). The Red Lake Falls Public Schools commented that withholding of funding would be unfair if a school could not comply with the rule. (Ex. F). The School Boards Association saw no need to repeat in the rule the statutory procedure for reduction of state aids. (Ex. M, p. 4). The Board commented that since non-public schools do not receive state aids, that penalty cannot be enforced against them. It is for that reason, however, that the proposed rule makes deliberate reference to the authority of the Human Rights Department. (Ex. 16, p. 9). The rule is needed and reasonable as proposed.

5 MCAR § 1.0671 - Compliance Reports and Submission of Data

41. This section requires that each school district annually submit a report giving certain information about its athletic program. The School Boards Association again commented that participation rate information is not relevant and should be deleted. (Ex. M, p. 4). The Columbia Heights Public Schools commented that three of the requirements were outside the statutory authority, namely the need to submit the season each sport is offered for each sex, the number of students participating by sex in each sport and the total unduplicated count of student participation in the athletic program by sex. As to the latter two items, the school district believes that how many students participate is not indicative of opportunity to participate. (Ex. G, p. 2). The Board acknowledged that Minn. Stat. § 126.21, subd. 5 prohibits a requirement in these proposed rules that seasons be identical where there are separate teams. The Board states that it seeks to develop statistics not for that purpose, but to determine whether patterns of discrimination develop in favoring the timing of seasons for one sex over the other, such as the boys teams being assigned to seasons when certain sports are normally played, while the girls teams are assigned to off seasons. (Ex. 16, pp. 9-10). The National Organization of Women suggested that a report of the participation rate for each sex and the expenditure per participant for each team be added as items to report in the rule. (Tr. 56). MOOSEE asked that data be listed separately for intramural and interscholastic sports. (Ex. P, p. 1).

42. The Board's reply in regard to the necessity of statistics to determine equal opportunity to participate is discussed earlier. In its post-hearing comments, the Board agreed to the suggestion of MOOSEE and suggested amendment of letter "h" in the proposed rule and new letter "i" read as follows:

X
(h) The total unduplicated count of student participation in the intramural program by sex and (i) the total unduplicated count of student participation in interscholastic programs by sex.

(Ex. 16, p. 8). So amended, the Board has demonstrated the need for and reasonableness of this rule. The addition does not result in a substantially different rule.

43. As the High School League noted, a number of the rule subsections duplicate statutory language or paraphrase the statutory language. (Ex. H, p. 3). It is specifically found that where this occurs, the duplication of the statutory language is crucial to the ability of a person affected by the rule to comprehend its meaning and effect within the meaning of Minn. Stat. § 15.0412, subd. 1 (1980).

44. All rule subsections which have not been specifically discussed above are found to be needed and reasonable based upon the Statement of Need and Reasonableness and the agency's oral presentation at the hearing.

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

CONCLUSIONS

1. That the Board of Education gave proper notice of the hearing in this matter.

2. That the Board of Education has fulfilled the procedural requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) and all other procedural requirements of law or rule.

3. That the Board of Education has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 3(4)(i) and (ii) (1980), except as noted at Finding of Fact No. 30.

4. That the Board of Education has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. § 15.0412, subd. 4c (1980).

5. That the amendments and additions to the proposed rules which were suggested by the Board of Education after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 15.0412, subd. 4d (1980) and 9 MCAR §§ 2.110 A. and 2.111 (1980 Ed.).

6. That the Hearing Examiner has suggested action to correct the defects cited in Conclusion No. 3 as noted at Finding of Fact No. 30.

7. That due to Conclusion No. 3, this Report has been submitted to the Chief Hearing Examiner for his approval pursuant to Minn. Stat. § 15.0412, subd. 4d (1980).

8. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

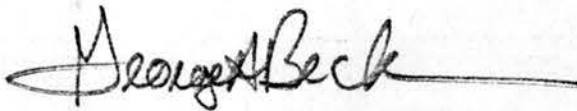
9. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Board of Education from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted except where specifically otherwise noted above.

Dated: May 1, 1981.

A handwritten signature in cursive script, reading "George A. Beck", written over a horizontal line.

GEORGE A. BECK
State Hearing Examiner

409 Birchwood Ave.
White Bear Lake, Mn 55110
June 5, 1980

Diane Johnson
Assistant to the Commissioner
Department of Human Rights
State of Minnesota
Bremer Building, St. Paul, Mn 55101

Dear Ms Johnson:

As an observer of Mn Stat 126.21 and its interpretation for the past two years, I am very pleased that rules are progressing and that such a good working relationship now exists between the Department of Human Rights and the Department of Education.

I would like to urge that at this time all of the major questions about girls' participation in athletics be clarified. If the rules you are now working on speak only to educational institutions, the rights and duties regulating programs serving girls run by "~~public services~~" will still need interpretation of how MS 126.21 and Chapter 363 apply. These programs do not have a working relationship with the Department of Education other than that the Department is to write rules about 126.21 after consultation with the Commissioner of Human Rights. It was established in the fall of 1978 that Human Rights should prepare the rules for 126.21 and the law change delegating some of this responsibility to the Department of Education speaks only of elementary and secondary school programs operated by educational institutions. Presumably the Department of Human Rights is still responsible for rules in the "~~public services~~" area.

It would seem ~~best for~~ the rules now in preparation to be written covering the full law, while both departments are working on them. It would resolve potential "foot dragging" excuses over who should do the rules at a future date.

From my observations, the major needs of clarification in the area of public service are:

1. Who is to regulate, monitor compliance. To assure that separate sex teams in the same sport are treated equally, public reports need to be available showing sport, participants by sex, coaches by sex, dollars expended. This is information similar to the data that will be reported by the schools.

What should happen to these reports?

2. How are public services to measure "demonstrated interest" to show they are providing equal opportunity to participate (126.21 Sub 2 - when girls have already demonstrated they aren't interested in football, ice hockey, wrestling) How are they to measure "demonstrated interest" that girls want to have a

girls only team, age 11 or under (126.21 Sub 3 (2)?

3. Who is responsible for enforcing the law when community, non-tax supported groups use public facilities? Is it the community group whose purpose is to serve the public or the operator of the public service, or both? What constitutes compliance, just saying they don't discriminate or documentation that based on demonstrated interest they are also offering equal opportunity to participate to all children in the community (when girls don't want football or ice hockey). Does the law that if they have sexually separated teams in the same sport they are being treated substantially equal - dollars per participant, scheduling, game opportunities, etc.- apply to community groups using public facilities (basketball, ice hockey, soccer, etc.)

4. The same kind of questions as #3 for totally private sports groups, serving youth that offer their programs to the public. The questions would be based on the US Supreme Court decision that Little League, although chartered by the US Congress and operating in totally private facilities yet could not discriminate against girls. How do these groups fit in under Minnesota's laws?

5. Are baseball/softball the same sport (126.21 Subd 3 (3) or different sports under 126.21 Subd 2?

6. If separate sex teams in the same sport, are they be called "boys" and "girls"? If a girls' team is set up to meet "demonstrated interests" in having a girls' team at 11 or under, may the other team be called "boys" or is it still operating under 126.21 Subd 3 (2) that "those teams shall be operated without restrictions on the basis of sex."?

I hope your agency will act now, in concert with the work begun by the Department of Education, and resolve all of the outstanding questions about girls' rights to participate in and have available equal athletic programs.

Thank you.

Very truly yours,

Elizabeth Abbott

~~SECRET~~

~~LEAGUE OF WOMEN VOTERS OF MINNESOTA~~



LEAGUE OF WOMEN VOTERS OF MINNESOTA

555 WABASHA • ST. PAUL, MINNESOTA 55102 • TELEPHONE (612) 224-5445

Feb. 26 X

December 11, 1980

Dr. Gregory J. Waddick, Assistant Commissioner
Division of Special Services
Minnesota State Department of Education
Capitol Square
550 Cedar Street
St. Paul, MN 55101

Dear Dr. Waddick:

The League of Women Voters of Minnesota has reviewed with interest the proposed rules for MS 126-21, subd. 5, as amended by Laws of 1980, Ch. 355,1. We are pleased to note that both secondary and elementary programs were included in the rules. We also appreciated the fact that the participation rate of both sexes was to be used as a measure of equal opportunity, as discussed in item 6 on page 3. Another positive feature, we feel, is the inclusion of a useful definition of the word "participate."

While we generally feel that these rules would make steps in the right direction, we suggest the following alterations:

1. Page 1, B. Definition of athletic program - The reference to "the high school league" should be deleted, since not all interscholastic sports are under the auspices of the Minnesota State High School League; for example, badminton, junior high, and elementary sports.
2. Page 2, Sec. A. The sentence about "demonstrated interest" in participating in a single sex team should include a reference to the biennial survey described on page 3, A.1.
3. Page 3, A. The addition of Community Service departments to this section would facilitate the progress toward sex equity in their athletic programs. In some districts the intramural program is conducted by the Community Service Department.
4. Page 3. Items 2 and 6 may be contradictory in some instances. We would like to see the emphasis on participation rate (item 6) rather than on opportunities to participate (item 2), since the ultimate goal is to have girls and boys participating in sports in comparable numbers.
5. Page 3, item 3. The equipment, supplies, and uniforms should be comparable for both sexes, not merely "adequate."

6. Page 3, item 6. Delete the words, "while recognizing the voluntary nature of.....athletic involvement." These words serve no constructive purpose and may be interpreted as a rationale for discriminatory actions.
7. Page 4, item 9. Coaches' salaries should not be excluded in figuring per participant expenditures. Coaches' salaries are an extremely important part of the cost of athletics. To leave them out would render the cost comparisons meaningless. We recognize that some differences in coaches' salaries are legitimate, such as those based on training and experience; however, the net impact should not be that coaches for boys' sports are paid more than coaches for girls' sports, or vice versa.
8. Page 5(g). The dollar expenditures should include coaches' salaries. It is not clear whether or not this was intended in this section.

We appreciate having the opportunity to offer these comments on the proposed rules before their presentation to the State Board of Education.

Thank you for your thoughtful consideration.

Yours sincerely,

Harriette Burkhalter
President
League of Women Voters of Minnesota

Rosemary Ritchie
Girls' Athletics Chair
League of Women Voters of Minnesota

B/R:M

CURRENT STATUS OF ATHLETIC RULES PURSUANT TO M.S. 126.21--as of June, 1981

ISSUE	HOW VIEWED BY SEX EQUITY ORGANIZATIONS	HOW VIEWED BY OTHERS INVOLVED	CURRENT STATUS	IS IMPROVEMENT STILL NEEDED?
1. Inclusion of intramurals	avored	opposed by MSBA, MSHSL, some schools	retained	no, but Board needs to be reminded of its importance
2. definition of participate	avored	opposed by above- named groups	retained	no
3. definition of participation rates	avored	opposed	retained	no
4. sex separation in elementary level programs	Wanted wording changed to make clear that sex separation should be the exception, not the rule.	no comment	wording changed to exactly what LWV & WEAL suggested	no
5. separate sports for girls	no comment	MSBA asked to add words "where there is demonstrated interest", and " <u>attempt to</u> accommodate their interests". (part E of Sec. 1.0669)	Wording changed as MSBA suggested-- hearing examiner said previous wording went beyond statutory intent.	no. This weakens the rules, but hearing examiner has a point.
6. comparable participation rates	wanted stronger by omitting "recognizing voluntary nature of student involvmt."	MSBA, MSHSL wanted that item deleted	retained as is	yes. Hearing exam- iner says Board could delete those words: Recognizing voluntary...
7. equal provisions for two teams in same sport	no comment	MSBA & MSHSL wanted to add "to the extent applicable in a given situation"	Wording added.-- Same wording is in the law.	no
8. equally desirable times for events and practices	no comment	opposed by MSHSL--said it was subjective.	retained	no
9. comparable coaching	no comment	opposed by MSBA, MSHSL, coaches for girls, as subjective	Changed to <u>amount of</u> coaching	no

ISSUE	HOW VIEWED BY SEX EQUITY ORGANIZATIONS	HOW VIEWED BY OTHERS INVOLVED	CURRENT STATUS	IS IMPROVEMENT STILL NEEDED?
10. expenditures equal	opposed excluding coaches' salaries from expenditures.	MSBA wanted the item of expenditures totally deleted	retained as is	yes. Coaches' salaries should be included.
11. penalty for non-compliance; state aids reduced.	no comment	Some schools felt it was unfair to penalize public, not private schools.	retained as is. Rules mention power of Dept. of Human Rts. to act in case of private schools.	no
12. statistical information required of all districts.	MCOSEE suggested separate data for intramural and interscholastic.	Some schools objected to request for data not mentioned in the law.	MCOSEE's suggestion adopted. Other objection rejected.	no

6/6/81

Rosemary Pitche



LEAGUE OF WOMEN VOTERS OF MINNESOTA

555 WABASHA • ST. PAUL, MINNESOTA 55102 • TELEPHONE (612) 224-5445

League of Women Voters of Minnesota Testimony
on

Proposed Rules for M.S. 126.21
(The Equal Opportunity in Athletics Law)

to be given at
Public Hearing, March 27, 1981

by
Rosemary Ritchie, Lobbyist

The League of Women Voters of Minnesota generally supports the proposed rules as written by the Department of Education. We feel that the following points deserve utmost consideration:

1. The League of Women Voters of Minnesota agrees with the proposed inclusion of all athletic programs, interscholastic and intramural, at all schools, for all ages of school children. Since there is nothing in the law excluding any form of athletic program, it would be inappropriate for the rules to exclude any. Equality of opportunity is as essential in school intramural programs as in all other school programs. Also, since Title IX's athletic rules apply to intramural as well as interscholastic programs, it will simplify enforcement and compliance if both laws are consistent.
2. The sentence on elementary athletic programs (5MCAR 1.0669, Section A, bottom of page 1) should be reworded to convey:
 - a) that sex-integrated teams are to be the general rule, and that sex-segregated teams shall be the exception, used only when there is a clear preference for such, and
 - b) that this clear preference or demonstrated interest be determined by means of a methodology referred to in Section A, Item 1, of 5MCAR 1.0670 (page 2).

Our suggested wording for this section is as follows: "Athletic programs for students in the sixth grade or below shall be operated without restrictions on the basis of sex, except that when overall athletic opportunities for one sex have previously been limited and there is demonstrated interest by members of that sex to participate

(more)

on a team restricted to members of that sex, the educational institution may provide a team restricted to members of that sex. Demonstrated interest shall be determined by use of a methodology the nature of which will be reported to the Department of Education in conjunction with the report required by 5MCAR 1.0671. This wording comes from Subdivision 3, Part 3, of the law and more accurately reflects the intent of the law than the proposed wording.

3. Delete the words, "while recognizing the voluntary nature of student involvement in ... athletics," 5MCAR 1.0670, Section A, Item 6. These words serve no constructive purpose and may be interpreted as a rationale for continuing discriminatory practices. Comparable participation rates for both sexes are a vitally important measure in the efforts toward providing equal opportunity in athletics. Although participation rates were not specifically mentioned in the law, Subdivision 2 states that "...at least the following factors shall be considered...", suggesting that the Legislature wished to allow consideration of factors other than those specifically mentioned. We do recognize the impracticality of requiring participation rates for girls in Minnesota's school athletic programs to rise from the current average of 37% to the desired figure of 50% "overnight." Thus we recommend that a time table be established which would allow for some variation but would generally require participation rates to become increasingly closer to equal over a period of years.
4. Coaches' salaries should not be excluded from consideration, as in 5MCAR 1.0670, Section B, Item 9. The law says in Subdivision 3, Part 3, that when there are two teams in the same sport substantially separated by sex, the two teams shall be provided with substantially equal budgets per participant. The law excludes gate receipts but not coaches' salaries. Since coaching salaries constitute a large portion of the budget in most sports, to leave them out would render the cost comparisons implied in the law meaningless. We do recognize that in some districts coaches for two sex-segregated teams in the same sport may legitimately receive different salaries due to their placement on the salary schedule, in districts where such a method is used to determine coaching salary. Thus we recommend that Item 9 read as follows: "The expenditure per participant of each team is substantially equal, although fluctuations will be permitted if coaches' salaries differ due to placement on a salary schedule." We further recommend

(more)

that the compliance reports described in 5MCAR 1.0671 (bottom on page 3) include the total dollar expenditure per sport, including coaching salaries. This would give the state the information it needs to clearly determine whether budgets per participants are substantially equal.

The League of Women Voters of Minnesota commends the Department of Education for its efforts to produce rules which fairly and accurately reflect M.S. 126.21. We believe that with the changes we have suggested, the rules will provide valuable assistance to school children in Minnesota by defining what constitutes equal opportunity in school athletic programs.



LEAGUE OF WOMEN VOTERS OF MINNESOTA

555 WABASHA • ST. PAUL, MINNESOTA 55102 • TELEPHONE (612) 224-5445

January 8, 1981

Mr. C. Peter Magrath, President
University of Minnesota
Room 202, Morrill Hall
100 Church Street
Minneapolis, MN 55455

Dear President Magrath:

The League of Women Voters of Minnesota has been actively encouraging compliance with Title IX by educational institutions for the past eight years.

For this reason, we urge you to oppose the proposal of the National Collegiate Athletics Association (NCAA) to provide championships for women's sports and to incorporate a small number of women into its governing structure. It is unreasonable that an organization that has fought Title IX since its inception, and which is still questioning its legality in court, should now propose to govern women's sports!

We fear that the progress the University of Minnesota has made in providing athletic opportunities for women would be greatly hindered if the NCAA proposal were to pass.

Thank you for your attention to this matter.

Sincerely,

Harriette Burkhalter
President

Rosemary Ritchie
Women's Athletics Chairperson

B/R:M



UNIVERSITY OF MINNESOTA

Office of the Vice President
for Administration and Planning
200 Morrill Hall
100 Church Street S.E.
Minneapolis, Minnesota 55455

January 12, 1981

Mrs. Ralph Ebbott
409 Birchwood Avenue
White Bear Lake, Minnesota 55110

Dear Mrs. Ebbott:

President Magrath referred your letter concerning the Association for Intercollegiate Athletics for Women to me.

The University of Minnesota agrees with your views on intercollegiate athletics and strongly supports the AIAW as the appropriate national governing organization for women's intercollegiate athletics. We have indicated that view to both the NCAA and the AIAW, and will make that position known through our voting at the national conventions of those two organizations.

Further, it is the position of the University of Minnesota that we will not affiliate our women's teams with the NCAA, should it offer championships in which we could compete, until and unless there are no other alternatives available.

Your continuing interest in our women's athletic program is greatly appreciated.

Cordially,

Nils Hasselmo
Vice President for
Administration and Planning

tla

MACALESTER
COLLEGE

Saint Paul,
Minnesota 55105

(612) 647-6207

The President

January 12, 1981

Ms. Elizabeth Ebbott
409 Birchwood Avenue
White Bear Lake, Minn 55110

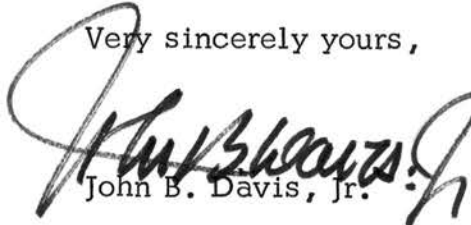
Dear Ms. Ebbott:

I am happy to tell you that Macalester will vote against the NCAA proposal to sponsor championships for women at the upcoming meeting. Indeed, we are co-sponsors of one of the resolutions that would have this effect in our division.

Macalester has supported AIAW from its inception, and we expect to continue to participate in events it sponsors. This past fall we had our first woman all-American, Linda Zeman, as cross country star, and our volleyball team, under the great coaching of Sheila Brewer, went to the national tournament.

I am pleased to know about your support for women's athletic programs and to assure you that I feel the same way!

Very sincerely yours,



John B. Davis, Jr.

JBD:hr



Dr. Vivian M. Barfield, Director
WOMEN'S INTERCOLLEGIATE ATHLETICS
UNIVERSITY OF MINNESOTA
Minneapolis, Minnesota 55455

TO Liz
FROM _____ DATE 12/23 1980

- | | |
|--|---|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Please draft suggested reply |
| <input type="checkbox"/> For your attention, please | <input type="checkbox"/> Please draft letter/memo
for my signature |
| <input type="checkbox"/> For your comment or
recommendation, please | <input type="checkbox"/> Please note and pass on to
_____ |
| <input type="checkbox"/> For your information—
no need to acknowledge or return | |
| <input type="checkbox"/> For your signature | <input type="checkbox"/> Please note and return |
| <input type="checkbox"/> Please reply in my behalf
with copy to my office | <input type="checkbox"/> Please see me |

COMMENT OR REPLY

How could we
gain support from
Leagues - nationally?

Wendy Moore

U of M President

Mon = Tues next week



UNIVERSITY OF MINNESOTA
TWIN CITIES

Women's Intercollegiate Athletics
Bierman Field Athletic Building
516 15th Avenue S.E.
Minneapolis, Minnesota 55455



Ms. Liz E. Bott
409 Birchwood Ave.
Birchwood, Minn.
55110

the YWCA Minneapolis Area /1130 Nicollet Avenue
Minneapolis, Minnesota /55403
telephone / (612) 332-0501



ACTION ALERT

December 4, 1980

EQUAL OPPORTUNITY FOR WOMEN IN ALL ASPECTS OF ATHLETICS, GUARANTEED UNDER TITLE IX, ARE IN DANGER. National Collegiate Athletic Association (NCAA) and National Association of Intercollegiate Athletics (NAIA) plan to offer championships for women. At its Convention January 13 - 15, 1981, the NCAA, a long-recognized foe of Title IX, proposes to incorporate women in its governing structure with only 18 percent of the seats on its major decision-making committees allocated to women.

The YWCA of the Minneapolis Area affirms its strong support for women under Title IX and equal opportunity in education, including athletics. The Board of Directors of the YWCA strongly opposes the establishment and conduct of national championships for women within the framework of the National Collegiate Athletic Association (NCAA) and the National Association of Intercollegiate Athletics (NAIA).

IN KEEPING WITH THE MANDATE OF THE YWCA TO EMPOWER WOMEN, WE ASK THAT YOU ACT IMMEDIATELY ON THIS CRUCIAL ISSUE.

- ++Women's college athletic programs have grown enormously over the past nine years, growing from virtual non-existence to full-fledged varsity programs with budgets of hundreds of thousands of dollars at the largest institutions.
- ++The Association for Intercollegiate Athletics for Women (AIAW), founded in 1971, is the national governing body for women's athletics.
- ++The AIAW and NCAA/NAIA play similar management roles in college sports, but the philosophies and practices of the NAIA/NCAA and AIAW differ dramatically.
- ++The NCAA proposal will require all women's programs to conform to NCAA/NAIA rules, thus potentially destroying the AIAW.
- ++The NCAA has been one of the leading and vocal opponents of the implementation of federal equal opportunity legislation in college sports--Title IX.
- ++The NCAA proposal reduces championship opportunities for women.

The YWCA of the Minneapolis Area strongly believes that opportunities to participate must be equal and/or comparable to those afforded by our institutions to men. We, therefore, urge the members of the YWCA to write to the chief executive officer of the college or university from which you graduated or in which you may have an interest urging him/her to vote to retain the Association for Intercollegiate Athletics for Women (AIAW) as the governing body for Women's intercollegiate athletics and to vote against any measure proposed by any male athletic governing association which would have the effect of offering championships for women.

For further information call the YWCA Public Policy Dept. at 332-0501, ext. 132.

SEE SAMPLE LETTER ON BACK

Program for Action / To thrust our collective power toward
the elimination of racism wherever it exists and by any means necessary.

The Young Women's Christian Association of the Minneapolis Area An Agency of United Way

*for
Robinson*

SAMPLE LETTER

TO: The Chief Executive Officer of College or University

FROM: An Alumnus or interested individual

Dear President _____,

I am an alumnus or supporter of the (college/university name). I respectfully encourage you to ensure that our women's athletic program does not affiliate with the (NAIA or NCAA). A great many of our alumnae or friends who were former athletes feel the same way.

I would like to make it very clear that I favor our institution's membership in the Association for Intercollegiate Athletics for Women (AIAW). It is important for young women to be exposed to other women as leadership role models. Membership in AIAW is a visible example of our school's commitment to equal opportunity for women.

I sincerely hope you will continue to act to encourage women's athletic governance by women, for women. Women are in dire need of these leadership and participation opportunities at this time in the development of inter-collegiate athletics for women.

Thank you for your attention to this request.

Sincerely,

(Class of Alumn)

NOTE: Insert appropriate information for your school.

Other recommendations you may wish to include in your letter to the President of a college or university:

- ++Oppose and/or postpone any action to initiate women's championships by the NCAA/NAIA.
- ++Oppose the adoption of the NCAA Governance Plan to be submitted at convention in January, 1981 in Miami, Florida.

President: C. Peter Magrath -
President U of M.
Room 202 Morrill Hall
100 Church St S.E

Mpls - 55455

Joana Andreg - St. Thomas
373-2253-

224-

409 Birchwood Ave.
White Bear Lake, Mn 55110
January 5, 1981

C. Peter Magrath
President, University of Minnesota
Room 202 Morrill Hall
100 Church Street S.E.
Minneapolis, Mn 55455

Dear President Magrath:

At the January 13-15 meeting of the National Collegiate Athletic Association (NCAA), a plan will be submitted to begin championship competition for women's sports, to impose NCAA rules, and in effect to take over the governance of women's athletics from the Association for Intercollegiate Athletics for Women (AIAW). This is strongly opposed by the AIAW, women coaches, and those who support them.

The dramatic growth in women's athletics over the past decade has occurred because of federal legislation, Title IX, the dedicated work of women coaches, and the administrators who have assisted the programs' growth. The AIAW was founded in 1971 by the women coaches to be the governing body for collegiate women's sports. They are the people who have worked so hard to expand college programs to give women a more equal opportunity in sports' competition. The NCAA was totally uninterested in supporting the growth of women's sports and has continually opposed implementing Title IX.

Now that the women's program has begun to gain stature and funding support, it is very cynical of the NCAA to seek to step in and usurp the leadership, putting the programs under male domination. Women's sports need leadership from women. Women athletes and the whole college community need the role model of women in leadership roles.

I hope you will use your influence to see that the University of Minnesota opposes the proposed action by the NCAA and continues to give the University's support to the women coaches and the AIAW.

Thank you for your consideration.

Very truly yours,



Mrs. Ralph Ebbott

409 Birchwood Ave.
White Bear Lake, Mn 55110
January 5, 1981

Mohn Davis
President, Macalester College
Summit Ave at Snelling Ave. South
St. Paul, Mn

Dear President Davis:

For several years, for the League of Women Voters, I have been following the development of girls' athletics. At the college level, the interscholastic competitive sports are now being threatened by a proposal before the National Collegiate Athletic Association (NCAA) meeting January 13-15. That convention will be voting on a plan to begin championship competition for women's sports, to impose NCAA rules, and in effect to take over the governance of women's athletics from the Association for Intercollegiate Athletics for Women (AIAW). This is strongly opposed by the AIAW, women coaches, and those who support them.

The dramatic growth in women's athletics over the past decade has occurred because of federal legislation, Title IX, the dedicated work of women coaches, and the administrators who have assisted the programs' growth. The AIAW was founded in 1971 by the women coaches to be the governing body for collegiate women's sports. They are the people who have worked so hard to expand college programs to give women a more equal opportunity in sports' competition. The NCAA was totally uninterested in supporting the growth of women's sports and has continually opposed implementing Title IX.

Now that the women's program has begun to gain stature and funding support, it is very cynical of the NCAA to step in and usurp the leadership, putting the programs under male domination. Women's sports need leadership from women. Women athletes and the whole college community need the role model of women in leadership roles.

I hope you will use your influence to see that Macalester opposes the proposed action by the NCAA and continues to give support to the women coaches and the AIAW.

Thank you for your consideration.

Very truly yours,


Elizabeth Ebbott

STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

File No.

Margaret J. Holden,

Plaintiff,

vs.

Minnesota State Board of Education;
Henry J. Bromelkamp, individually and
in his capacity as Board of Education
Member; Beverly J. Carpenter, indiv-
idually and in her capacity as Board
of Education Member; Erling O.
Johnson, individually and in his
capacity as Board of Education Member;
Margaret W. Marvin, individually and
in her capacity as Board of Education
Member; Ruth A. Myers, individually
and in her capacity as Board of
Education Member; William J. Ridley,
individually and in his capacity as
Board of Education Member; Louis R.
Smerling, individually and in his
capacity as Board of Education
Member; Patricia A. Weber, individual-
ly and in her capacity as Board of
Education Member; and Marilyn Witty,
individually and in her capacity as
Board of Education Member,

Defendants.

AFFIDAVIT OF
MARGARET J. HOLDEN

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

Margaret J. Holden, being duly sworn on oath, hereby
deposes and states as follows:

1. That she is the plaintiff in the above-entitled
matter and therefore knows the following to be true.
2. That she is a member and former president and cur-
rent treasurer of the Women's Equity Action League, Minnesota
Division (WEAL); that she has in such capacity been actively in-
terested in the role of women in educational administration and
that she has therefore closely followed the proceedings before the
Minnesota Board of Education (hereinafter Board) in regard to the
hiring of a new Commissioner of Education (hereinafter Commissioner).

3. That the current Commissioner has resigned effective June 30, 1981, and the Board is to hire a new Commissioner effective as of July 1, 1981.

4. That the Board publically adopted as its policy for filling the vacancy, the Policies which are attached to the Petition in the above-entitled matter as Exhibit A; and appointed a four member committee, Commissioner Search Committee (hereinafter Committee), to which the responsibility for screening applicants was delegated.

5. That the Committee has now completed its duties and reported the names of three finalists to the Board; and that the Board has announced its intention to name the new Commissioner at noon on Monday, June 1, 1981.

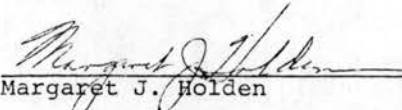
6. That the Committee has failed to date to comply with Section 4 F, G and H of the Policies which required private evaluation by the Committee members individually using a standard form; and that at least one of the Committee members, Ruth Myers, stated at a public meeting that the Committee members had not used standard evaluation forms.

7. That the use of standard evaluation forms, completed privately, is an important element of the hiring process because it brings maximum objectivity into the hiring process.


8. That the Committee and the Board have also failed to comply with Section 2 of the Policies which requires that all aspects of the search be conducted in accord with national and state affirmative action and equal opportunity laws.

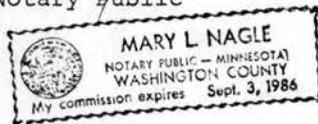
9. That, of the eight finalists, only one was a woman, Jean La-Yvonne Valletta; that a copy of her application is attached hereto as Exhibit A; that Ms. Valletta meets all the requirements for the position which are set forth in Section 9 of the Policies; and that Ms. Valletta is in fact more qualified for the position of Commissioner inasmuch as she is the only semi-finalist with experience in educational administration in the Department of Education.

10. That the Department of Education is out of compliance with its own Affirmative Action Goals and Timetables, a copy of which is attached hereto as Exhibit B, in that in the category of "manager", 1-2 females need to be hired in 1981-83; and that only 18.51% of managers are women out of an available labor pool of 24.11%.


Margaret J. Holden

Subscribed and sworn to before me
this 29th day of May, 1981.


Notary Public



STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

File No.

Margaret J. Holden,

Plaintiff,

vs.

Minnesota State Board of Education;
Henry J. Bromelkamp, individually
and in his capacity as Board of
Education Member; Beverly J. Carpenter,
individually and in her capacity as
Board of Education Member; Erling O.
Johnson, individually and in his
capacity as Board of Education
Member; Margaret W. Marvin,
individually and in her capacity as
Board of Education Member; Ruth A.
Myers, individually and in her cap-
acity as Board of Education Member;
William J. Ridley, individually and
in his capacity as Board of Education
Member; Louis R. Smerling, individual-
ly and in his capacity as Board of
Education Member; Patricia A. Weber,
individually and in her capacity as
Board of Education Member; and Marilyn
Witty, individually and in her capacity
as Board of Education Member,

PETITION

Defendants.

1. Plaintiff, Margaret J. Holden, brings this action against defendants seeking a writ of mandamus ordering the Minnesota State Board of Education (hereinafter Board) and the other named defendants (hereinafter Board Members) to comply with the policies utilized in that document entitled Policies Relative to the Search for a New Commissioner, attached hereto and incorporated herein as Exhibit A, particularly Section 2, 4A, F, G and H and restraining defendants from appointing a new Commissioner of Education until such policies have been complied with.

2. Plaintiff, Margaret J. Holden, is a citizen of the State of Minnesota, currently residing at 1711 Laurel Avenue, St. Paul, Minnesota 55104, and, as such, is interested in the proper execution of the laws, regulations and policies of the State of Minnesota.

3. Defendant State Board is an agency duly organized under the laws of the State of Minnesota. Pursuant to said laws, defendant State Board is duly authorized to appoint the Commissioner of Education for a 4 year term subject to approval by the Governor and confirmation by the State Senate.

4. The present Commissioner of Education's term expires on June 30, 1981.

5. In anticipation of appointing a new Commissioner of Education to fill the vacancy on July 1, 1981, defendants considered policies to be utilized in the search for qualified candidates. On January 12, 1981 that document entitled Policies Relative to a Search for a New Commissioner (hereinafter Policies) was adopted by defendant Board and Board Members. See Exhibit A.

6. Said policies defined the policies and procedures to be utilized in selecting a candidate for the position of Commissioner of Education.

7. Section 2 of said Policies provides as follows:

Section 2. Compliance with Affirmative Action and Equal Opportunity Regulations. All aspects of the search for a new Commissioner shall be conducted in accordance with national and state affirmative action and equal opportunity laws, regulations, policies and procedures.

8. Section 4A, F, G and H of said Policies provide as follows:

Section 4. Committee Evaluation Procedures.

- A. The procedures outlined in this section and Section 6 will be used by the Search Committee to secure evidence that the candidates possess the abilities listed in Section 9 below. On the basis of this evidence, the Committee will determine which candidates it will recommend to the State Board for appointment as Commissioner.
- F. Whenever the Committee evaluates candidates, each Committee member shall privately and without consultation, using a standard form prepared by the Committee, evaluate each candidate being considered as to his or her possession of the KSA's referred to in Section 9 below.
- G. In making evaluations, Committee members will use the following categories: (1) no evidence, (2) unacceptable, (3) acceptable, (4) most acceptable. In this context, the term

"acceptable" means that in the judgment of the person making the evaluation the candidate is able to fill the position, and if the position were offered to and accepted by that candidate, the evaluation could and would support the individual in that position.

- H. The written evaluations, referenced in paragraphs 4 F and G, will be submitted to the Chairperson who will compile them and inform the Committee members of the results of their evaluations. After the evaluation has been reported, the Committee will conduct a written ballot to determine which candidates it will continue to consider during the next phase of the search.

9. On March 27, 1981 eight semi-finalists for the position of Commissioner of Education were selected by defendants. The semi-finalists included seven males and one female.

10. On May 11, 1981 defendant Board Members selected three male candidates as final candidates.

11. Defendant Board and Board Members have announced that they will appoint the new Commissioner of Education from the three finalists on June 1, 1981.

12. Defendant Board and Board Members failed to conduct the search for a new Commissioner in accordance with national and state affirmative action and equal employment opportunity laws, regulations, policies and procedures.

13. Defendant Board and Board Members have failed to utilize the procedures outlined in Section 4 F, G and H in that the formal evaluation sheets designed to secure evidence that the candidates possessed the necessary qualifications were not used.

14. As a result of the failure of defendant Board and Board Members to proceed in accordance with the Policies, in particular Section 2, 4A, F, G and H, the three finalists selected for consideration are not the most qualified in terms of the criteria outlined in Section 9 of the Policies.

WHEREFORE, plaintiff requests that the attached alternative Writ of Mandamus issue against defendants ordering that defendant Board and Board Members comply with the policies outlined in

Exhibit A, in particular with Sections 2 and 4A, F, G and H, and that defendants be restrained from appointing a new Commissioner of Education until such policies have been complied with.

Dated: May 29, 1981.

Judith L. Oakes
Judith L. Oakes
Attorney for Plaintiff
OAKES & KANATZ
Park Square Court
400 Sibley Street
St. Paul, Minnesota 55101
227-0804

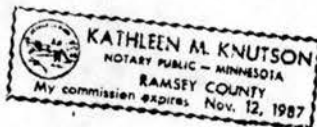
STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

Margaret J. Holden, being first duly sworn on oath, deposes and says: That she is the plaintiff herein; that she has read the foregoing Petition and knows the contents thereof, and that the same is true of her own knowledge except as is therein stated on information and belief and, as to such matters, she believes them to be true.

Margaret J. Holden
Margaret J. Holden

Subscribed and sworn to before
me this 29th day of May, 1981.

Kathleen M. Knutson
Notary Public



Minnesota Coalition of Organizations for
Sex Equity in Education

MCOSEE

449 Desnoyer
St. Paul, Minnesota 55104
June 5, 1981

Governor Albert Quie
State Capitol Building
St. Paul, Minnesota 55155

Dear Governor Quie:

Before you approve the State Board of Education's choice for Commissioner of Education, it is imperative that you be apprised of the serious issues which have arisen regarding the selection and its process. It would be unfortunate if doubts about the integrity of the process were to hamper the effectiveness of the new Commissioner. The magnitude of the problems facing public education today demand that the best possible person be selected for the position of Commissioner and that the process of selection be viewed as thorough, fair, and entirely legal.

The Board is to be commended for adopting an admirable set of procedures; it is the failure to follow these procedures which concern us:

1. The procedure which the board adopted has been violated in several ways:
 - a. The procedure states clearly that Search Committee members shall complete independent evaluations of each candidate. These evaluations were to be reviewed, compiled, and retained. It would appear that these evaluations have not been completed, nor are they available as part of the public record.
 - b. Search Committee members were to use a standard evaluation form which required Committee members to record their judgements. It appears that these forms were not used.

2. The Board has failed to follow its own affirmative action guidelines. We feel it is important for Minnesota to improve its record in terms of employment of women in administrative positions in education. Minnesota ranks near the bottom of the fifty states in the number of female school administrators. Strong affirmative action commitment in the selection process for the Commissioner's position would provide a positive model for Minnesota's school districts.

The candidate which the board has recommended, John Feda, has indicated that he sees the Department of Education in the role of a "service agency", one which would not "meddle in the affairs of local school districts". That philosophy, however, disregards the basic purpose of any state agency, which is to enforce and administer state laws (and federal laws, in some instances). Sometimes that requires providing leadership and direction which local districts do not request or even desire. Under Howard Casmey's direction, the Department of Education has taken strong measures to assure continued quality education in Minnesota. While there have been concerns that the department has not been as decisive and thorough as we would like in enforcing laws prohibiting sex discrimination, we credit the department with at least making efforts to improve sex equity for Minnesota's students. Effective enforcement of laws requires strong leadership from the Department and a Commissioner who is dedicated to providing such leadership.

The State Board of Education, and, in particular, the Search Committee undoubtedly acted in good faith throughout the selection process; however, the questions which have arisen require action so that the doubts raised can be eradicated and so that the new Commissioner may begin on a positive note.

The presence of representatives of MCOSEE's organizations at the interviews of the three finalists, Monday, June 1, is evidence of the widespread concern about the selection process. (A list of MCOSEE's member organizations is enclosed).

The most appropriate action for you to take at this time, and the one we recommend to you, is that you reject the appointment of John Feda as Commissioner and that you advise the Board to begin the selection

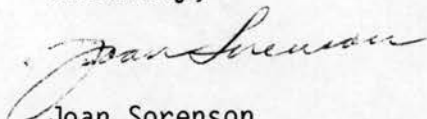
Governor Albert Quie

-3-

June 5, 1981

process again. We realize that this would require time, but the investment in Minnesota's educational future is great. The task ahead for the new Commissioner will be difficult at best. The citizens of Minnesota need to be sure that the most qualified person has been selected.

Sincerely,


Joan Sorenson
President

cc: Members of the State Board of Education

Mr. Henry J. Bromelkamp
Ms. Beverly J. Carpenter
Dr. Erling O. Johnson
Mrs. Margaret W. Marvin
Ms. Ruth A. Myers
Mr. William J. Ridley
Mr. Louis R. Smerling
Mrs. Patricia A. Weber
Mrs. Marilyn Witty
Commissioner Howard B. Casmey

Enc.

MINNESOTA COALITION OF
ORGANIZATIONS FOR SEX EQUITY IN EDUCATION

minutes--May 18, 1981

NEXT MEETING: Monday, June 15
at 7:30 pm
at Joan Sorenson's home
449 Desnoyer, St. Paul

The meeting was called to order at 7:30 pm by President Joan Sorenson.

THOSE PRESENT: Joan Sorenson, MWEE; Joan Fehlen, AWE; Margaret Holden, WEAL;
Sandy Ohlgren, MEA; Carol Freeman, MFT; Rosemary Ritchie, NOW.

SECRETARY'S REPORT: Minutes were approved as presented.

TREASURER'S REPORT: Margaret Holden reported that MCOSEE has \$585.41 as of this day, \$150 of which is in the special fund for the compliance review follow-up project. Dues still have not been paid by the Mn. Congress of Parents, Students and Teachers, the DFL Feminist Caucus, and the Mn. Vocational Assoc.

ATHLETICS: Mn. rules for MS 126.21 providing equal opportunity for both sexes in athletics: The report of the hearing examiner has been completed and is available to the public. Rosemary will have more details next month.

College women's athletics: the AIAW has prepared a brochure to explain its philosophy, to encourage colleges to affiliate their women's program with them. Major women athletes have signed a letter supporting AIAW. League of Women Voters of Mn. is urging LWVUS to pass resolution of support for AIAW. AAUW of Mn. also passed resolution of support. For more information or assistance in gaining support from your organization, call SPRINT, a free public information service on equal opportunity in athletics. SPRINT is a project of WEAL, and publishes the monthly newsletter, In the Running. Their toll-free number is 800-424-5162.

LEGISLATIVE UPDATE: Dietrich's affirmative action bill has been withdrawn. Sandy Ohlgren reported on Staten's bill on human rights cases (HF 1072/Staten, SF 939/Berglin). It has passed both houses, and would allow plaintiffs in discrimination cases to be awarded larger punitive damages, as well as damages for mental anguish, and to file in District Court.

COMPLIANCE REVIEWS: Margaret has copies of most of them, and will be receiving all reviews plus copies of the letters to the school districts advising them of the findings. Joan and Joan noted some discrepancies between the review (names of people interviewed in the St. Paul district) and what actually happened.

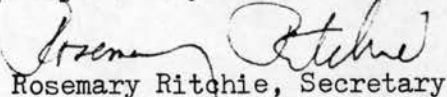
MCOSEE'S PROPOSAL: Rosemary reported that the Ford Foundation's criteria sound very favorable to our proposal, but we need to reword some parts before sending it to them (i.e. deleting references to federal funding). Those interested in helping on this rewording will meet at Joan Sorenson's June 11. (This has been changed to June 9, 2:30--secretary's note.)

COMMISSIONER OF EDUCATION SELECTION: Margaret asked Erling Johnson of the State Board of Ed. about the selection of 3 finalists from the 8. He said they interviewed all 8 in one day, and were exhausted after that, so did not vote then. Voted a week later. ("They" was the selection committee, Ruth Myers, E. Johnson, Pat Weber, Bob Ridley.) Three were eliminated on first ballot. Any candidate with 3 or more no's was elim. Next ballot, Lew Finch elimm.; then Von Valletta. Then they were down to three, so they quit voting. Then they conducted on-site visits with the three. Johnson visited Feda, said he is well-thought of in south-west Mn. Employees of Dept. of Ed. are unhappy with the elimination of Valletta. Board will vote on the three June 1. Then Gov. Quie will have to approve their recommendation. The Senate will approve it next January. Possible MCOSEE action was discussed. Rosemary will write letter to Quie expressing our dismay that a woman was not among the threefinalists.

MISCELLANY: Congratulations to Margaret Holden for receiving the Advocate Award from AWE recently. Congratulations also to Vivan Barfield for her recognition as an outstanding woman at the YWCA Leader Lunch. Sandy reported on her lawsuit. OCR has asked the school district to provide more information, about 50 items; will be hard to furnish. Her attorney will do no more until this summer. They are waiting to get into federal court.

Meeting was adjourned at 9:30.

Respectfully submitted,


Rosemary Ritchie, Secretary

Minnesota Coalition of
Organizations for Sex Equity in Education

Minutes--September 21, 1981

Next Meeting: October 22, 1981
at 7:30 p.m.
at Joan Sorenson's home
449 Desnoyer
St. Paul

The meeting was called to order by President Joan Sorenson
at 7:40 p.m.

THOSE PRESENT: Vivian Barfield, GOP Feminist Caucus;
Kathy Bronner, MSCA; Geri Evans, WEAL; Joan Fehlen, AWE;
Margaret Holden, WEAL; Joan Sorenson, MWEE.

SUGGESTED MEETING TIME

Third Thursday of each month. Please phone Vivian Barfield
(724-6819) if this time change does not fit your schedule.

SECRETARY'S REPORT

Minutes were approved as distributed.

TREASURER' REPORT

Bank balance is \$575.41 of which \$175 is earmarked for the
compliance review letter project. Approved reimbursement
of Rosemary Ritchie for \$5.45 for copying and postage expense.

UNIVERSITY OF MINNESOTA

Concern expressed that search committee has not been formed
to replace Athletic Director Vivian Barfield.

FUNDRAISER FOR LAWSUIT REGARDING COMMISSIONER OF EDUCATION SELECTION

Date: Tuesday, October 13
Time: 7:30 - 9:30 p.m.
Place: Joan Sorenson's home - 449 Desnoyer, St. Paul
Admittance: \$10
Cash bar (wine)
Pottery by Joyce Klepp will be raffled
Make checks payable to Minnesota Women for Education Equality

Phone Joan Sorenson (644-2805) to let her know what you will
bring (snacks and/or wine) or if you have any questions.

Funds will be used to pay legal fees (\$1600+) for suit filed
by Margaret Holden on behalf of concerned people. (See June
minutes for details.)

Judge Joseph Summers has denied appeal because John Feda has assumed position as Commissioner of Education - thus the matter is moot.

ATHLETICS NEWS

Nothing new.

GRANT PROPOSAL

Needs to be proof read.

NOMINATING COMMITTEE

Meeting tonight.

COMPLIANCE REVIEW

Margaret will compose a letter to Pat Weber, President, State Board of Education, expressing concern that little, if any, improvements have occurred in school districts toward compliance since last year. School districts reviewed in 1980-1981 will be sent a letter that MCOSEE is concerned that there has not been much improvement in the schools' compliance to state and federal laws for the handicapped, sex and race.

CONGRATULATIONS

Ruth Randall is Superintendent of the Rosemount Independent School District.

Joan Fehlen is teaching math at Como Senior High.

LETTERS

Joan Sorenson responded to John Feda reminding him that a MCOSEE representative should serve on the Sex Bias Advisory Committee of the State Board of Education.

NEW BUSINESS

There was none.

The meeting was adjourned at 9:30 p.m.

Respectfully submitted,

Vivian Barfield
Secretary Pro Tem



MINNESOTA STATE HIGH SCHOOL LEAGUE
2621 FAIROAK AVENUE • ANOKA, MINNESOTA 55303
Phone: (612) 427-5250

MURRAE FRENG
EXECUTIVE DIRECTOR

ORVAL BIES
ASSISTANT TO THE EXECUTIVE DIRECTOR

MARVIN HELLING
ASSOCIATE EXECUTIVE DIRECTOR

July 19, 1979

DOROTHY McINTYRE
ASSISTANT TO THE EXECUTIVE DIRECTOR

TO: Designated School Representatives

FROM: Minnesota State High School League

RE: REPEAL OF MSHSL ATHLETIC RULE, ARTICLE I, SECTION 12B, Page 53, OF THE
OFFICIAL MINNESOTA STATE HIGH SCHOOL LEAGUE HANDBOOK

Upon recommendation of the League's Board of Directors, the Representative Assembly has by mail ballot repealed the MSHSL Team Membership Rule, effective for the 1979-80 school year.

The repealed rule reads as follows:

"SEPARATE TEAMS.

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 team 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."

The Board of Directors recommended the deletion of this section from the Athletic Rules on the following rationale:

In 1974, MSHSL team membership rules were established by the Representative Assembly. This was a farsighted action by the Assembly setting the standards through which the schools could innovate and develop athletic programs designed for girls. At that time, no other standards were available from the state or federal governments.

- over -



An Equal Opportunity Employer

In 1975, however, both levels of government came into the picture. First, the Title IX interpretations applying to all high schools in the nation were released to our member schools. The MSHSL standards conformed with the spirit and intent of these Federal guidelines and progress appeared assured.

However, conflict and confusion were created when the State Legislature passed M.S. 126.21. Interpretations were offered by the proponents of this legislation and the Department of Human Rights which, in some instances, conflicted with Title IX. Following costly litigation and ineffective rule-writing efforts by the Department of Human Rights, legislation was proposed to the 1979 State Legislature which would have clarified Minnesota law and brought consistency with Federal law. (Title IX). Unfortunately, it stalled in the hands of a conference committee.

As a result, schools faced the predicament of attempting to manage their athletic programs under three (3) sets of policies and laws:

1. Federal Law - Title IX
2. Minnesota Statute 126.21
3. MSHSL Team Membership Rules

The Board of Directors believes that the goals of equal opportunity can be reached through the joint efforts of the League, the State Department of Human Rights and the State Department of Education. These state agencies are ultimately responsible for the prevention of discrimination by sex in interscholastic athletic programs, both for Title IX and the State Human Rights Act.

With the opening of the 1979-80 school year:

1. Title IX will continue to serve as the foundation of the athletic programs. Rules, regulations and guidelines are established and available through each school's Title IX compliance officer and the Minnesota State Department of Education.
2. Minnesota Statute 126.21 - The initial efforts of the Department of Human Rights to write interpretations to M.S. 126.21 were not successful. However, the Department of Human Rights and the State Department of Education will now be working together to promulgate interpretations and guidelines for State Law.

MNF:jsw

COED GYM—It's a Whole New Ballgame

This survey reveals the students' attitudes about coeducational physical education classes

By Mary Domb Mikkelsen

What is happening in schools where Title IX is now working? Has anybody thought to ask how students enrolled in coed gym classes feel about them? Fifteen-year old Esther Saidman of San Diego, California did. An ardent and involved feminist, she turned an in-depth study of student attitudes toward mixed "phys. ed." into an excellent science fair project.

The basic findings showed that given a choice, 76.6% of the female students and 51.7% of the male students would opt for mixed classes. For some of the girls the rationale was cause related—"Why shouldn't the girls have exactly the same opportunities as those enjoyed by the boys?" Most, however, were more thoughtful, more conscious of their own motivations. Although aware that past

and in mixed company, they performed well, enjoying both the challenge and the novelty. Being at ease around the boys was by far the more important factor. Seventy percent of the girls who considered themselves poor at sports but who were, nevertheless, comfortable in coed activities, also favored mixed gym. But only 33.3% of those who answered "yes" to question 11 and "no" to 12 liked



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Phyllis L. Kahn

District 57A

Hennepin County

Committees:

Appropriations

Division on State Departments,

Vice-Chairman

Division on Semi-State

Agriculture

Environment and Natural Resources



Minnesota House of Representatives

Martin Olav Sabo, Speaker

May 18, 1978

Ms. Carol Lind, Chair
Board of Education
Special School District #1
807 N.E. Broadway
Minneapolis, MN 55413

Dear Carol:


I am writing to support the right of Brian Backstrom to play on the badminton team of his school, Marshall University High School. As the chief author of Minnesota Statutes, 126.21, the state law providing for equal educational opportunity, I believe that any attempt to exclude him would be in direct violation of the law.

The law specifically states that one may "restrict membership on an athletic team to participants of one sex only if this restriction is necessary to provide members of each sex with an equal opportunity to participate in the athletic program." This is clearly not the case when one boy wishes to play on the school team. I have difficulty in understanding why badminton is a girls sport rather than a coed sport. It would seem to me that the most logical solution is to make it a coed sport and then if there is sufficient interest on the part of boys and a lot of participation with evidence that the boys, as a class, tend to be more effective players, to stage meets with individual events separated by sex.

It is evident to me from a study of recent court cases that the right of this boy to not be deprived of the opportunity to participate purely on the basis of his sex will be upheld. I would refer the board to the case (File #397836), where the court ruled against the St. Paul School System for non-compliance with M.S. 126.21 and M.S. 363.03 (The Human Rights Act). It should be noted that the St. Paul School Board lost and had to pay court costs and attorneys fees. It would seem to us to make fiscal sense for the Minneapolis School Board to simply read that decision and not waste public funds on fruitless legal action against one young boy.

I urge you to support the original decision of Bill McMoore and allow Brian to play. I further urge disciplinary action against any members of the school community who appear to be conspiring against his rights.

Sincerely,


Phyllis Kahn
State Representative

cc: School Board Members
Charles & Barbara Backstrom

Reply to: ☐ 237 State Office Building, St. Paul, Minnesota 55155 (612) 296-4257

☐ 100 Malcolm Ave S.E., Minneapolis, Minnesota 55414



70 Arthur Ave SE
Minneapolis MN 55414
May 15, 1978

Board of Education
Special School District No. 1
807 N.E. Broadway
Minneapolis MN

Dear Board Member:

We understand that the issue of the right of boys to participate on the public school's badminton teams is on the agenda of your May 23 meeting.

We request that you rule that boys have an equal right to participate in badminton.

We are the parents of Brian Backstrom, a student at Marshall-University High School, who requested in February that he be permitted to participate on the badminton team. The Coach, Dagny Waldeland, told him that he could practice with the team, but that he did not have the right to play in team matches. Brian appealed to Dr. Michael Joseph, Marshall-University principal, who requested an opinion from Bill McMoore, Athletic Director of Minneapolis school system. Mr McMoore agreed that Brian should be allowed to play in matches, and obtained an opinion from Attorney Jerrold F. Bergfalk of Lindquist and Vennum, school district attorneys, that McMoore could legally allow boys to play on the badminton team.

Mr. McMoore so ruled. Brian played in Junior Varsity matches April 4 against North, and April 11 against South. All other coaches forfeited rather than have their player play him. Coach Waldeland told Brian that the badminton coaches had met and agreed not to play their students against Brian. We believe this action violated Brian's right to participate in a school activity duly prescribed by the school district's Athletic Director, and was therefore a serious breach of professional conduct.

We now understand that on May 4 the Athletic Council of Minneapolis schools supported a resolution that boys not be permitted to play on any girls' teams. Mr. McMoore still believes this would be discriminatory.

We earnestly request that you do not support the Athletic Council resolution, but instead uphold the Athletic Director, so far as his ruling pertains to allowing boys to participate in badminton. Our reasoning is as follows:

1. There is no separate boys' team for badminton. Since there is no opportunity for a boy to play badminton, except on the school's one team, denying him the right to play would not be equal treatment.

2. Badminton is a lifetime sport for men and women, including in tournament play mixed doubles, showing that it is not unusual to have people of both genders playing this sport together.

3. Badminton is the sport of choice for some boys, who should have an opportunity to participate in the school's badminton team in order to develop their skills.

4. Minnesota law does not in fact allow separate teams in sports such as badminton, where separation is not necessary to provide equal opportunity to participate. (Mn. Stat. 126.2)

5. Moreover, Minnesota law does not allow a sport to be restricted to one gender, unless it can be proved that without such restriction all opportunity to participate would be lost to one gender. This cannot be proved for badminton in the Minneapolis schools. It is doubtful that large numbers of boys would come out for badminton, and those boys who did come out would not necessarily dominate the sport.

6. The opposition, who rely on an interpretation of Title IX purporting to require federal rules that differ from state law, is wrong. Court rulings in Minnesota (by Judge Hachey in the St. Paul case) are unanimous that Minnesota state law does not contradict Title IX or any federal rule, and indeed is more specific in spelling out the rights of participants.

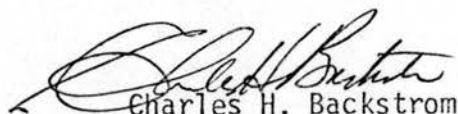
7. The historical argument -- that badminton was a girls sport and therefore must continue as such -- is inapposite. Our students are participating in the here and now.

8. Minneapolis now has substantial equality between girls and boys sports, there being 10 boys and 9 girls activities.

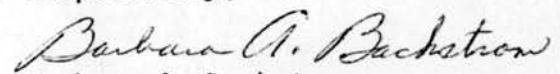
9. Finally, any particular boy should not be denied the opportunity to participate in the sport he chooses simply because other opportunities may be available to other boys who choose them.

The decision before you does not have to be, and should not be, stated in terms of all sports, as the Athletic council resolution states. This raises other issues about contact sports and sports with separate teams available now, which are irrelevant to the badminton issue. Instead you should rule on the question of badminton alone, or at least as to all non-contact sports where there are no separate boys and girls teams.

Thank you for considering these points. We trust that you will rule for non-discrimination as to gender in badminton in Minneapolis Public Schools.


Charles H. Backstrom

Respectfully,


Barbara A. Backstrom

cc: Marsh Kaner
Bill McMoore
Michael Joseph

Wed., Jan. 21, 1978



Star Photos by William Seaman

Girl player for Butler team brought ball down court

Mixed basketball

By DAVID E. EARLY
Minneapolis Star Staff Writer

Erling Ringquist, 9, was cooling it on the sidelines watching his Longfellow Park Sparkplugs get clubbed by the Minnehaha Falls Athletic Club Bluejays in Pee Wee basketball. He was asked how he like playing on the same team with girls.

Hanson says the coaches who griped to him "were worried about their won-lost records" and feel the boys' development will be slowed by playing with girls. The program, Hanson said, may encourage coaches to stress things other than winning.

Tom Johnson, southwest district supervisor, said he has gotten flack

of girls enrolling will not continue. People should give it a chance."

PARENTS AT Thursday's game were apprehensive as they silently watched their kids run onto the court that first time together for warm-ups. It soon was evident, however, that the difference in natural skill, strength and coordination between 9-year-old boys and



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ALBERT H. QUIE
GOVERNOR

STATE OF MINNESOTA

OFFICE OF THE GOVERNOR

ST. PAUL 55155

March 26, 1979

TO THE MEMBERS OF THE HOUSE EDUCATION COMMITTEE:

The consideration of equal opportunity for members of both sexes to participate in athletic programs, as established in MS 1978 Chapter 363, is one of significant portent for the future development of Minnesota's commitment to equality of access to educational opportunity. While the need to seek clarification of the statute appears to be acknowledged generally, the method of achieving that clarification has not found universal agreement.

In view of the fact that a major element contributing to the current discussion to seek statutory revision has been the recent history of the effort by the Human Rights Department to draft rules, it would seem to be appropriate for further action to be postponed until the new Commissioner of Human Rights can be apprised of the arguments. I therefore am prepared to:

1. Request Commissioner McClure to address the specifics of the case at the earliest possible time following her assumption of office, and
2. Provide the assistance of my office in achieving the cooperation of the Department of Human Rights and the State Department of Education to jointly develop appropriate and workable rules to clarify MS 1978 Chapter 363.

I trust this approach will provide a positive contribution to the discussion of the issues.

Sincerely yours,

Al Quie
Albert H. Quie
Governor

AN EQUAL OPPORTUNITY EMPLOYER

REPORT TO MCOSEE FROM THE AD HOC COMMITTEE ON SEX EQUITY IN SCHOOL ATHLETICS

Elizabeth Ebbott, Chair
October 8, 1979

The committee was established by MCOSEE to assist participating groups to examine the issues in sex equality in school athletics with respect to the adoption of rules; to find consensus where it exists; and to define alternatives where there is no consensus.

The committee had hoped to bring together and facilitate communication among not only MCOSEE members but the state departments of Human Rights and Education, the Governor's office, the Minnesota School Board Association and the Minnesota State High School League who have all been very involved with the issues. None of these groups chose to participate. They were kept fully informed of the committee's activities. After the committee was formed, agreement was reached between the state departments, the Governor and the authors of 1979 legislation that rules would be drafted to clarify the current laws. The Department of Education was to draft the rules by October; the Department of Human Rights will review them in time to go to the legislative authors for further review before the beginning of the 1980 session. The public hearing process will not begin until after all of these reviews.

With the government departments focusing on rules, the committee also put its emphasis on rules. It was decided that it would be impractical to prepare a meaningful statement of position for MCOSEE to adopt as representing the thinking of the member groups. Instead it is the committee's recommendation that MCOSEE not make an official statement but that rather all groups should be encouraged to draft their own position statements or suggested rules using the information gathered at the meetings.

The committee held eight meetings between July 2 and September 24. Representatives of the following groups attended one or more meetings as either participants or observers: MCOSEE, NOW, NEAL, LMV of Minnesota, AAUW, Minnesota Women's Political Caucus, DFL Feminist Caucus, COP Feminist Caucus, Minnesota Civil Liberties Union, Minnesota Parent Teacher Student Association, Minnesota Education Association, Minnesota Student Counselors, Minnesota State High School Coaches Association for Girls' Sports, and Minnesota Association of School Administrators.

The discussions used a proposed draft of rules prepared by Charlotte Striebel as a means of looking at issues that must be resolved. The meetings were helpful in improving everyone's understanding of the complexities of the issues. Modifications were made in the draft rules. (Available are some of the materials prepared for the committee - the draft rules, alternative 1, alternative 2, position statement of Women's Coaches Association.)

While not committing any group to any position, the discussions did produce areas of agreement: (In fact far more agreement on principles and purposes than disagreement)

- Rules are needed.
- Sport needs to be defined.
- Equity needs to be defined.
- "Under represented" needs to be defined.

Counting "sport opportunities" for either sex must mean actual participants on the team. The mere opportunity to "go out" does not count. A standardized time should be established for counting numbers of participants. It should be only those who actual play, not those just "trying out." It should be done at a uniform time with the Minnesota State High School League's reporting process.

A vehicle to measure compliance is needed, showing opportunities and participants. If there is not compliance, action to evaluate the program should be required and a plan implemented to bring the school into compliance. There should be annual public reporting of the programs' status. If the under-represented sex has failed to participate due to lack of interest, the school should provide money for special efforts to encourage interest.

Some one or ones within the school system should be designated as responsible to insure that each sport complies with the laws and rules. There is merit in establishing "maximum numbers of participants" per sport. The number of participants per coach is one indication of equality.

There is merit in using affirmative action principles, i.e. extra protection for the disadvantaged group, until equality is achieved.

There is merit in acknowledging in the rules the differences between participating in team sports and individual sports.

There is merit in keeping the rules short, simple, and easily understood.

The committee urges all MCOSEE members to seek involvement of their groups in the issues. Many hurdles remain:

How the rules get drafted;

What happens to them as the two state departments work on them;

What happens when they go to the legislative authors.

Even if rules faithful to the law and to the rights of girls' participation survive, there still must be public involvement in the rules' hearings and the lengthy follow-up needed to get rules adopted.

Even when all of this has occurred, these rules deal only with that portion of law affecting interscholastic secondary sports. Enforcement is needed of the other parts of the law - elementary age programs; school intermural, park and recreation, city programs; community groups using public facilities or providing public services; physical education classes; private schools; colleges.

I would personally like to thank the many groups that showed their interest by sending people to the meetings and especially those people who were so faithful in attending. All of us, now, have a much better understanding of the law, how rules are written, and the issues.

Review of Legal Equity in Schools ROLES



A Publication of the Center for Urban and Multicultural Education • School of Education • Indiana University

Summer 1980

Sex Equity

INTRODUCTION

"ROLE" is a term borrowed by social scientists from the language of the theatre. The French word "role" refers to the roll of paper containing an actor's part. The relevant point being that a role is not the same as the person who is performing it at the moment.

A role, as defined by social scientists, is any pattern of behavior which a given individual, in a specified situation, is both (1) expected and (2) encouraged or trained to perform. The most complex and demanding role which members of our culture learn to play is that of male and female.

Educational institutions have been, and continue to be, a prime mode of training boys and girls for male and female roles. The "traditional" male-female role model is the view most commonly encouraged by the schools. This "traditional" approach views males as future wage earners-aggressive and achieving. Boys, therefore, are expected to be athletes, to study math and science in preparation for college or to take vocational classes. Females are viewed as future homemakers-passive and supportive. Girls, therefore, are expected to be cheer-leaders, to study English and literature in preparation for college or to take home economics classes. These are generalizations, but based in fact, and useful to demonstrate the school's activist role in teaching and maintaining the "traditional" view of male-female behavior.

This traditional definition of male and female has not held up well under questioning in the last decade. Many of the basic assumptions which support this view have been disproven. Sociological and biological research has revealed that sex associated behavior is for the most part learned rather than biologically determined. Economic studies have shown that the traditional woman's role has hurt her economically and rather than protecting her from life's realities and giving her a privileged status, has deprived her of opportunities.

Social and economic changes have made "traditional" male-female behavior dysfunctional. Inflation has overcome personal income to the point where the majority of families cannot survive on one income. World population growth, combined with an increasing scarcity of fundamental resources, has made it unwise and unnecessary to keep 53% of the nation's population employed in child bearing. High mobility and urbanization no longer require or desire a large nuclear family for subsistence.

All of these factors, plus the growing demands for individual freedom of choice on the part of women, are responsible for the concept of sex equity becoming the law of the land.

Today, an individual may still choose to perform the traditional sex role. It now is illegal, however, for governmental entities and employers, including educational institutions, to make that choice for the individual.



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UNIVERSITY OF MINNESOTA
TWIN CITIES

Law School
285 Law Building
229 19th Avenue South
Minneapolis, Minnesota 55455
(612) 373-2717

Dear Colleague:

We are writing to bring to your attention an issue which should be of concern to all of us: The potential loss of autonomy for women in college sports.

Before you toss this aside, thinking that athletics is not important to higher education and consequently doesn't deserve any attention or effort from faculty or professional women, heed our comments. While we concur with the opinions of many that athletics on campus is an auxiliary enterprise which receives far more attention than is warranted, there is a larger question before us.

No one among us can deny the central role that sports generally play in our culture; one only has to read a newspaper, listen to a television or radio news broadcast, or eavesdrop on cocktail party conversations. We are not now and never have been athletes and have little interest in sports. Given the importance of athletics, however, we strongly believe that opportunities for women to participate must be equal to those afforded by our institutions to men.

Ever since Congress passed Title IX in 1972, colleges and universities have been obligated to provide equal opportunities for women in all aspects of their activities. That part of Title IX which has received the most publicity--and the most criticism from the men's athletic establishment--has been the sections dealing with intercollegiate athletics. Despite widespread institutional resistance and foot-dragging, women's college athletic programs have grown enormously over the past nine years, growing from virtual non-existence to full-fledged varsity programs with budgets of hundreds of thousands of dollars at the largest institutions.

In response to a need for uniform rules related to competition, financial aid, eligibility, and so forth, the Association for Intercollegiate Athletics for Women (AIAW) was founded in 1971. It plays the same role in women's college athletics that the National Collegiate Athletic Association (NCAA) has played for men since 1906: that of national governing body.

Although the AIAW and the NCAA play similar management roles in college sports, the philosophies and practices of the two organizations differ dramatically. The AIAW has had the opportunity to learn the lessons of history; it has attempted to avoid the mistakes and excesses of some men's programs and has tried to foster the growth of women's programs that are financially prudent, educationally sound, and which accord with democratic norms of due process and fair play.

Everything the AIAW has accomplished, and all that it hopes to accomplish, is

in danger. The NCAA voted last year to initiate programs for women in its Division II and III schools (the smaller four-year-plus institutions of higher education) and has proposed to incorporate women in its governance structure.

On its face, that may not appear all bad. Appearances, in this case, are decidedly deceiving. The NCAA is comprised of over 700 member institutions (the AIAW has over 950). Each institution has a faculty representative who speaks and votes on behalf of his administration, faculty, and athletic program. The pronoun gender is not an error; because the NCAA has always governed only men's programs, the overwhelming majority of faculty representatives are male. Although institutional positions on issues related to athletics are nominally the collective responsibility of chief executives and the faculty, for the most part it is the NCAA faculty representative and athletic directors who determine how the votes will be cast at the legislating conventions. Occasionally a faculty committee may play a role.

Our concern--and dismay--arises as a result of the NCAA actions and proposals mentioned previously. This body of men has decided, in its infinite wisdom, to incorporate women in its programs. The championship vote at the last convention and the governance proposal to be voted on next January are decided by men, not women. The AIAW has gone on record (last January) as all but unanimously opposed to having women's programs brought under the umbrella of the NCAA. That fact, it has become clear, does not bother the NCAA; it has proceeded with its plans to present the governance proposal to its membership and has every expectation that it will be adopted.

The NCAA proposals are said to be permissive, not mandatory; each institution supposedly has the option to decide whether it will continue to affiliate its women's programs with the AIAW or switch to the NCAA. No women's program can belong to both because a number of the rules of the two associations are mutually exclusive; adhering to one set puts an institution in violation of the other. (The differences are due to the different philosophies of the two associations and the orientation of the AIAW to the special needs of women.) That which is ostensibly merely permitted, however, will in fact be mandatory. The final decision-maker at most institutions is the (male and men's) athletic director; women, sad to say, normally hold only assistant or associate positions in most athletic departments. Many women opposed to switching from the AIAW to the NCAA will be powerless to prevent such a change.

Further, the NCAA has included language in its proposal which will eventually require all women's programs to conform to NCAA rules. At that point, unless the women's program at an institution complies, the men's program will be disqualified from competition. The NCAA has made it clear that it will use its leverage over men's athletics to force the women into line. If that pressure is successful, there will be no reason to have an AIAW; why have two different associations which perforce have identical rules?

We find this wholly unacceptable. The NCAA has been one of the leading and vocal opponents of the implementation of federal equal opportunity legislation in college sports. Its voting members have consistently refused to adopt legislation which would achieve economies in athletics, have refused to recognize that due process has a place in the treatment of students and coaches, and is invested with almost absolute power over its member institutions. Hauled before Congress two years ago, it refused to implement recommendations relating

to fundamental fairness in the treatment of student athletes. The NCAA has long been acknowledged as the "bully of college sports."

This august body has now decided to extend its beneficence and wisdom to women. It has proposed to guarantee women 20% of the seats on its major decision-making committees--a minimum which they will probably never substantially exceed. It has proposed to continue one school, one vote--which means that the faculty representative for men will, overnight, acquire responsibility for voting on behalf of the women's programs as well. (We doubt there will be any stampede to increase the number of women serving as faculty representatives.) It has proposed no changes in the rules governing its men's programs, some of which will work to the disadvantage of women--and the entire body of which are of questionable wisdom. If this move is successful, it will not only bring about the demise of one of the strongest voices speaking on behalf of women in sports, it will also effectively eliminate any chance for progressive changes in athletics generally.

We are writing to ask that you urge the chief executive and faculty representative of your institution or your alma mater, as appropriate, to oppose these measures when they come before the NCAA convention in January of 1981. Drop them a note, give them a call, or raise the issue with your faculty senate if you're on campus. Communicate your views in some fashion. Unfortunately, many of the women in athletics are in no position to exert influence themselves. Unless our institutions oppose the NCAA proposals, a strong and effective voice for women and women's issues will suffer a serious blow.

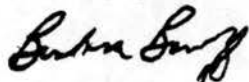
In addition to contacting the president and NCAA faculty representative of your institution or alma mater, you can help in other ways:

- Contact the local women in athletics and let them know you are aware of the situation and are willing to lend your support.
- Feel free to circulate this letter to colleagues who might be interested or willing to help.

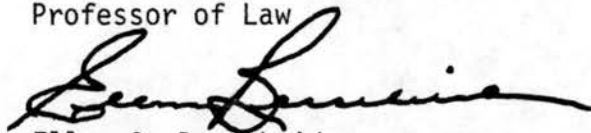
If you have questions or comments, or wish additional information, please contact either of us or, better yet, Gary Engstrand, who is acting as a clearing house for the University of Minnesota's efforts in support of the AIAW. His address is: 200 Morrill Hall, 100 Church Street S.E., Minneapolis, Minnesota 55455, (612) 373-5169.

Thank you for your help.

Sincerely yours,



Barbara Banoff
Professor of Law



Ellen S. Berscheid
Professor of Psychology

P.S. We have attached, for your information, the text of two resolutions passed by our Assembly Committee on Intercollegiate Athletics and a recent article from the New York Times.

"The University of Minnesota reaffirms its strong support for women's athletics and for continuing the conduct of sporting events and national championships under the aegis of the Association for Intercollegiate Athletics for Women. Further, the University strongly opposes the establishment and conduct of national championships for women within the framework of the National Collegiate Athletic Association. Finally, the University of Minnesota will not participate in NCAA-sponsored championships for women unless there subsequently prove to be no other opportunities for regional, national, and post-season competition."

Adopted unanimously by the Assembly Committee on Intercollegiate Athletics, University of Minnesota, Twin Cities Campus, 2/8/80

"The University of Minnesota, Twin Cities Campus, does not support the 'general direction the committee is taking in fulfilling its assignment.' Moreover, the University objects to the creation of the Special Committee and the very nature of its assignment. Finally, the University of Minnesota is strongly opposed to the sponsorship of legislation at the 1981 NCAA Convention which would 'accommodate women's intercollegiate athletics within the NCAA structure.'"

Adopted unanimously by the Assembly Committee on Intercollegiate Athletics, University of Minnesota, Twin Cities Campus, 2/15/80, in response to the first paragraph of the January 31, 1980, memorandum from James Frank, Chairman of the Special Committee on NCAA Governance, Organization, and Services, and in response to Item 4, Page 6 of the Preliminary Report of the Special Committee

N.C.A.A. Discovers Women Athletes: A Valuable Resource

By CANDACE LYLE HOGAN

WE'RE getting used to thinking of Olympic athletes as pawns, but we're going to have a hard time swallowing the idea of athletes as oil. Yet that's exactly how two governing bodies of men's athletics are conceiving of female college athletes. Suddenly, it seems, female college athletes have become to the National Collegiate Athletic Association and the National Association of Intercollegiate Athletics as precious a commodity as oil.



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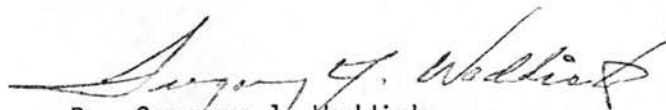
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Minnesota State Department of Education
Capitol Square □ 550 Cedar Street □ St. Paul, Minnesota 55101

Phone: _____

TO: Ms. Elizabeth Ebbott
MN League of Women Voters

FROM: 
Dr. Gregory J. Waddick
Assistant Commissioner
DIVISION OF SPECIAL SERVICES

SUBJECT: Proposed Athletic Rule, Chapter 126.21

DATE: August 11, 1980

The 1980 Legislature amended Chapter 126.21, as you know, and directed the Department of Education to promulgate rules relevant to the amended statute. The Legislature also directed the Department of Education to consult with the Commissioner of Human Rights in the process of rule development. The two Departments have recently consulted and are in agreement about a proposed draft rule. The Departments have agreed that the next step in the process should be an informal consultation with other interested parties to determine their reactions to our work before proceeding to public hearing.

Consequently, I am inviting you to participate in a rule review session scheduled to occur on Friday, August 22, 1980, 10:00 a.m. to 12:00 noon in Conference Room A, first floor, Capitol Square Building. Enclosed for your information is a copy of the proposed rule as well as a copy of M.S. 126.21 as amended. In the event that you have any questions regarding this meeting, please contact me directly (296-5061) or, in my absence, Ms. Nancy Ringold at 296-2626. I look forward to seeing you or your designee on August 22.

ngr

Enclosures

MONITORING ATHLETICS IN THE MINNEAPOLIS PUBLIC SCHOOLS

INTRODUCTION

In 1978 the Minnesota Department of Human Rights asked the League of Women Voters of Minnesota (LWVMN) to monitor local compliance with laws designed to give both girls and boys equal opportunities to take part in athletics. The goal of the project is to achieve voluntary compliance with the laws through community awareness of their local situation. The LWVMN agreed to take part; however, each project is under the complete control of the local League doing the work. Last year 45 Leagues monitored athletic programs in 51 school districts, since some Leagues encompass more than one district. During the 1979-80 school year, the League of Women Voters of Minneapolis (LWVMpls) began what is expected to be a continuing project.

The LWVMpls monitoring committee interviewed members of the Minneapolis Public Schools (MPS) administration, high school faculty members and coaches. The committee also conducted an attitude survey in the senior high schools and in all but two of the junior high schools. Members distributed questionnaires to randomly selected students (20 per grade level at each school), parents (10 per school), and teachers (10 per school). Responding to the questionnaire were 892 students, 72 parents, and 117 teachers. Participating schools were Anthony, Anwatin, Central, Edison, Folwell, Henry, Marshall-University, North Community, Northeast, Ramsey, Roosevelt, Sanford, South, Southwest, Washburn, and West.

LEGISLATION AFFECTING ATHLETICS

Following is a chronological list of laws assuring girls an equal opportunity to participate in athletics:

1972 Title IX of the Education Amendments of 1972. "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education program or activity receiving Federal financial assistance. . . ."

1975 Minnesota Education Act, MN Statute 126.21 - Forbids separation by sex in athletics programs for students age 12 or over unless it is necessary to provide members of each sex with an equal opportunity to participate in the athletics program.

-Provides that, if separate teams for the same sport are offered, they must have substantially equal budgets (exclusive of gate receipts), and be treated in a substantially equal manner. Equipment, supplies, scheduling of practices and games, travel, coaching, use of facilities, etc., must also be substantially equal.

(This legislation was intended to overcome sex bias, sex discrimination, and sex stereotyping in public education. M.S. 126.21 is stronger legislation than Title IX and is not in conflict with it.)

1977 Minnesota Human Rights Act as amended through July 1977, Minnesota Statute 363.03 Subd. 5(1). Forbids discrimination on the basis of sex in any service rendered by any educational institution or public service and includes "separation" in its definition of "discrimination". The Minnesota Human Rights Commission completed a draft of the regulations for M.S. 126.21 in early 1980.

- 1978 The Department of Health, Education, and Welfare (HEW) gave the Minneapolis Public Schools three more years to desegregate classes. This ruling included the athletic programs.
- 1980 House File 455 Chapter 355, 1980 Session Laws, provides for equal opportunity for members of both sexes to participate in certain athletics; it also modifies M.S. 126.21. It states that it is not an "unfair discriminatory practice" 1) to restrict membership on an athletic team to participants of one sex for participants 12 years or older or in the seventh grade or above; or 2) for an educational institution or a public service to operate or sponsor separate athletic teams and activities for members of each sex or to restrict membership on an athletic team to participants of one sex, if this separation or restriction meets the requirements of Section 126.21.

The bill requires the Minnesota State High School League (MSHSL) to hold open meetings.

Compliance with state and federal laws can be measured in several ways. One standard of equal opportunity is an equal number of participants. Another is the amount of public money spent. A third is equal numbers of sports offerings for each sex. Others include equal team opportunities within each sport, the number of team sports available and the kinds of sports provided each season.

In 1979 the State Department of Education found that the Minneapolis Public Schools (MPS) were not in compliance with some segments of Title IX laws prohibiting sex discrimination in any educational program or activity receiving Federal funds; in this case, athletics. The Minnesota Human Rights Commission ordered MPS to show that the cost per participant in a particular sport offered both to boys and girls and the total number of athletic activities available for both boys and girls were substantially the same. The total budget for boys was greater than for girls, due to the sports offered and equipment needed. (e.g. football and hockey). Coaches for both boys and girls in the same sport receive the same salary.

ORGANIZATION OF ATHLETIC PROGRAMS

The Minnesota State High School League (MSHSL), of which the Minneapolis school district is a member, supervises and regulates competitive interscholastic athletics and other activity contests for its 530 school district affiliates. MSHSL sponsors all state tournaments with the exception of badminton, an exclusively girls' sport that is sponsored locally. Most MSHSL representatives are men, many of whom are former coaches.

In the Minneapolis Public Schools (MPS), the Director of Athletics administers athletic programs and services as executive secretary of the Athletic Council. The Council is composed of two high school principals, two school athletic directors, two representatives from the boys' division of the Board of Coaches and two from the girls', one School Board member and the Director of Curriculum Services or someone he/she designates. A junior high school principal serves as an ex-officio member. The Athletic Council is responsible for the rules and regulations for MPS' athletic programs.

Each school principal appoints an athletic director for the building, who is responsible for the athletic program, including recommending coaches to the principal, scheduling events, and allocating funds. Each building receives two categories of funds: one for interscholastic sports and one for intramural. The athletic direc-

tor determines how much of the money available for interscholastic sports will be spent for each one. The principal determines how much money is allocated for each intramural program.

KINDS OF ATHLETIC PROGRAMS

The goals of the Minneapolis Public Schools include helping students become and/or remain physically fit, establish good lifelong health habits through physical and recreational activities, and develop the spirit of teamwork and cooperation. MPS sees athletic programs as an important part of the school curriculum because they provide both girls and boys an opportunity to grow and develop.

4-2

Physical Education

MPS provides junior and senior high school students with physical education classes and also extra-curricular intramural and interscholastic sports. According to the survey, MPS is in compliance with the state requirement that all physical education classes be co-educational. Students in senior high school are required to take two trimesters of physical education classes and those interested can take more of such classes if they wish.

MPS employs 60 junior and senior high school physical education teachers, both male and female. However, at the time of the survey, there were no female physical education teachers assigned to one of the high schools.

The majority of students, parents and teachers surveyed rated the physical education programs in their schools as "good", "very good", or "excellent". Only 14 percent rated them as "fair" or "poor". Teachers rated the programs higher than did either parents or students.

Intramural Sports (Competition within a school)

Definite information about intramural sports programs is hard to document and few high schools offer them. However, of the persons surveyed, 35 percent rated the intramural programs as "good" and another 30 percent rated them as "very good" or "excellent". Programs are carried out on the building level and offerings are determined by the needs of the buildings and the interests expressed by students.

Interscholastic Sports (Competition between schools)

MPS offers senior high school students the following interscholastic sports:

	<u>Boys</u>	<u>Girls</u>	
<u>Fall</u>	Cross Country	Cross Country	Total 11-10
	1 Football	Swimming	Team 4-2
	6 Soccer	Tennis	0 Full outdoor team.
	0 Gymnastics	Volleyball 1	0 Spring - "
			0 Girls ice
<u>Winter</u>	2 Basketball	Basketball 2	
	3 Hockey	Gymnastics	
	Skiing	Skiing	
	Swimming		
	Wrestling		

	Boys	Girls
<u>Spring</u>	4 Baseball	Badminton
	Golf	Golf
	Tennis	
	Track and Field	Track and Field

to Softball

The list above shows that MPS offers 11 sports activities for boys and 10 for girls. While many of these interscholastic sports cannot be considered life-time sport activities, those that fall into that category (tennis, golf, swimming, skiing) are provided for both boys and girls. The number of sports offerings each season differs for boys and girls, with no team sport such as softball or soccer for girls provided in the spring.

Students, parents and teachers surveyed felt that there were opportunities for both boys and girls to participate in athletics. More than 70 percent rated athletic opportunities for boys as "very good" or "excellent." About 50 percent rated athletic opportunities for girls as "very good" or "excellent."

During the 1979-80 school year, 3,344 boys and 2,171 girls participated in interscholastic athletics. The League survey showed that students, teachers and parents all felt that MPS was complying with state and federal laws providing equal treatment of boys and girls in athletics. However, more of the parents gave negative responses than did the students or teachers.

SOME POINTS TO CONSIDER

Role Models - At the time of the survey, one school had no female physical education teacher. Figures supplied by MPS indicate that the majority of the coaches for both boys' and girls' interscholastic teams are male. Thus, in many cases, there are few or no role models for girls in athletic programs.

Intramural Sports Offerings - While one of the goals of the MPS athletic program is to foster physical fitness, participation in athletic programs tends to be geared toward competition and specialization. Winning is emphasized and participation narrows greatly as the age level increases. The result is highly specialized and competitive teams that are not oriented toward general participation. Intramural programs could provide more opportunity for participation.

In response to the survey question, "What would you like to see offered in sports activities that are not offered at this time?", both parents and teachers frequently recommended soccer. However, students showed a much wider range of interest by mentioning softball, soccer, rugby, darts, handball, racquetball, boxing, water polo, lacrosse, rock climbing, martial arts, rollerskating, motocross, kickball, archery, frisbee, bowling, skateboarding and fencing. Many of these sports are inexpensive--at least compared with football, hockey and gymnastics--and would be suitable for intramural or club activity or for a physical education class.

Interscholastic Sports Participation by Girls - Fewer activities are offered to girls: there is no team sport similar to softball or soccer for girls in the spring. Girls grow up playing softball and soccer in the park program, but these sports are not available at the high school level. Field hockey, now an Olympic team sport for women, is not offered by the MPS (or any other high school in Minnesota). Soccer and field hockey could be offered to girls in the Fall; figure skating, speed skating or broomball could be offered in Winter; and softball could be offered in the Spring.

Students giving negative responses to the survey question about equal treatment of boys and girls in athletics specified "lack of publicity" for girls' sports. They

defined "publicity" to include notices for try-out times, eligibility requirements, and procedures for participation. "Lack of adequate equipment" was most often given as the reason girls did not receive equal treatment.

If girls do have the opportunities to participate, and if equal funds are being spent to support girls' athletic programs, why aren't more girls participating in sports programs? Are the sports they prefer being offered? Are there appropriate role models--such as teachers, coaches, athletic directors--for girls to emulate? Is it too soon to expect much from girls' athletic programs?

One of the survey questions was "What should be done to encourage more girls to participate in athletics?" Of the 136 students who responded, 31 thought that recognizing girls' sports through publicity, pep fests, etc., would encourage participation; 28 felt that allowing the sport to be fun would increase participation; 14 thought that improved training was needed; 12 said that better coaching would increase participation. Parents agreed with students that better training for girls' sports and better coaching were needed.

When girls are given the opportunity, support, publicity and a state tournament, they do participate in equal numbers. For example:

During the 1978-79 season, Director of Athletics Bill McMoore initiated a shared-time schedule for boys' and girls' basketball, with both boys' and girls' teams playing their games on the same nights. Athletics directors, principals, administrators, Minnesota State High School League personnel and some students and parents fought the proposal. (One reason for resistance by athletic directors may have been the fact that they receive \$35.00 for each evening the gym is open; thus shared time could decrease their compensation.) However, the arrangement proved to be very successful, as it allowed for maximum use of facilities, savings of energy, and increased attendance, especially for the girls' games.

This innovation, while involving some painful changes from the traditional ways (or perhaps a revival of older traditions that had long been unused) proved to be successful and offers a specific example which could be used in other sports.

Availability of Coaches - A good coach may be hard to find. Coaches need experience and training in whatever sports they are coaching, in guarding against injuries, and in aiding the psychological and sociological development of their students. They also need the ability to encourage hard work and goal setting--and still give the game an element of fun.

The State Board of Education requires all head coaches to have teaching certificates. There is a certification program for high school coaches in Minnesota; however, MPS does not require its coaches to have coaching certificates. Sometimes MPS lacks applicants for coaching positions. Perhaps it should be able to seek qualified people who have coaching certificates instead of requiring them to have teaching certificates.

Money - The interscholastic athletic budget for MPS for the 1979-80 school year was \$1.3 million. Because of budgetary cuts, it is difficult to build athletic programs or add to them. Expanding sports activities to include many more students than the select few who "make the team" would be expensive. It would also be expensive to offer more sports activities.

According to Director of Athletics Bill McMoore, the school district is now in compliance with state and federal laws because the total per-pupil cost for boys' athletics was \$110.36 and for girls' athletics it was \$109.44.

The Power of the School Athletic Director - The direction of each school's interscholastic athletic program is in his hands. (Currently, all are men.) He submits a proposed budget to the school administration for interscholastic activities. He can spend the money as he sees fit--provided that he is careful to spend an equal amount (boys and girls) per participant per sport. The intramural fund is separate.

CONCLUSION

The LWVWPLs committee found many positive factors. There are opportunities for girls who wish to participate in athletics, and they are doing so in increasing numbers. Some of the leaders in MPS athletics have a positive attitude about equality and are innovative in their way of encouraging girls' participation. Publicity through the media is helping promote athletics for girls. Students, parents, teachers and coaches surveyed all thought that opportunities for girls in athletics had been expanded and that efforts were being made to encourage girls to participate.

However, while girls' opportunities have increased, they are still not equal to those available to boys. Boys participate in school athletics in significantly greater numbers than do girls. A few educators do not yet support the idea of equality in athletics. And, while media coverage is improving, girls' events are often ignored. Answers to survey questions show that while girls do have options in athletics, they often lack equipment, facilities, local support, encouragement, good coaching, and choices of sport offerings. And girls do not always understand what their options are.

APPENDIX I
RESPONSES TO ATTITUDE SURVEY

(Respondents include parents, students and teachers)

1. Overall, how would you rate the following parts of the athletic program at your school?

	Numbers	Percent*
Physical Education Classes		
Poor	19	1.8
Fair	130	12.3
Good	481	45.4
Very Good	327	30.9
Excellent	102	9.6
Intramural Program		
Poor	147	14.2
Fair	218	21.1
Good	364	35.2
Very Good	240	23.2
Excellent	66	6.4
Interscholastic Program		
Poor	52	5.2
Fair	125	12.4
Good	275	27.3
Very Good	292	29.0
Excellent	262	26.0
Athletic Opportunities for Boys		
Poor	9	.9
Fair	65	6.2
Good	221	21.1
Very Good	398	38.0
Excellent	354	33.8
Athletic Opportunities for Girls		
Poor	42	4.0
Fair	146	13.9
Good	352	33.5
Very Good	332	31.6
Excellent	180	17.1
Participation of Boys		
Poor	21	2.0
Fair	118	11.4
Good	297	28.8
Very Good	368	35.7
Excellent	227	22.0
Participation of Girls		
Poor	49	4.7
Fair	197	19.0
Good	392	37.9
Very Good	267	25.8
Excellent	130	12.6

* Percentage is the adjusted frequency.

APPENDIX II
OPERATIONAL EXPENDITURES FOR INTERSCHOLASTIC SPORTS FOR SENIOR HIGH BOYS AND GIRLS
1978-79 (Does not include coaches' salaries or rental of facilities)

SPORT	EXPENDITURES		NUMBER OF PARTICIPANTS	
	<u>Girls</u>	<u>Boys</u>	<u>Girls</u>	<u>Boys</u>
Basketball	\$19,334	\$19,812	288	319
Cross Country	175	175	155	232
Golf	--	--	79	123
Gymnastics	5,159	* 234	244	--
Tennis	--	--	181	185
Track	2,858	4,354	473	468
Swimming	5,076	5,213	308	230
TOTALS	\$32,602 5,159 27,443	\$29,788 - 234 29,554	1,728 - 244 1,484	1,557

The above mentioned sports are shared sports meaning that boys and girls participate equally and are offered the opportunity to have their own team competition in these sports.

SPORT	EXPENDITURES		NUMBER OF PARTICIPANTS	
	<u>Girls</u>	<u>Boys</u>	<u>Girls</u>	<u>Boys</u>
Baseball	--	\$ 4,135	--	423
Football	--	18,470	--	904
Hockey	--	17,457	--	309
Wrestling	+ 5,200	5,795	--	267
Volleyball	\$ 3,684	--	269	--
Badminton	30	--	258	--
TOTALS	\$ 3,714 8,900	\$45,857 45,900	527 + 244 771	1,903 24.12

The above mentioned sports are non-shared sports. Girls are not allowed the opportunity to have their own teams, boys are not allowed to have their own teams, and neither boys nor girls are allowed to play on each others' teams.

* Expenditures for boys' gymnastics were for an unsuccessful boys' gymnastics program held at two high schools.

75,600
1978-9
36,000
32%
68%
2255
15.96
3460
21.85

Some schools have soccer - Principals discussing funds.

APPENDIX III
EXPENDITURES FOR JUNIOR HIGH INTERSCHOLASTIC SPORTS

<u>SPORT</u>	<u>Girls</u>	<u>Boys</u>
Basketball	--	\$6,837
Track	\$3,084	3,084
Volleyball	4,700	--
TOTALS	\$7,784	\$9,921

APPENDIX IV
SALARIES FOR SENIOR HIGH COACHES FOR INTERSCHOLASTIC SPORTS

(These figures represent total salaries for the district, not individual salaries)

<u>SPORT</u>	<u>GIRLS' COACHES SALARY</u>	<u>BOYS' COACHES SALARY</u>	<u>DIFFERENCE</u>
Basketball	\$34,800	\$34,800	-0-
Cross Country	10,250	10,250	-0-
Golf	10,250	10,250	-0-
Gymnastics	26,850	3,320	\$23,530
Tennis	10,250	10,250	-0-
Track	16,850	16,850	-0-
Swimming	16,850	16,850	-0-
TOTALS	\$126,100	\$102,570	\$23,530

The variance in coaches' salaries in different sport offerings are the following:

Baseball	-0--	\$26,850	- \$26,850
Football	-0-	55,300	- 55,300
Hockey	-0-	34,800	- 34,800
Wrestling	-0-	30,200	- 30,200
Badminton	\$10,250	-0-	+ 10,250
Skiing	11,400	-0-	+ 11,400
Volleyball	20,000	-0-	+ 20,000
TOTALS	\$41,650	\$147,150	- 105,500
GRAND TOTALS	\$167,750	\$249,720	- \$81,970

~~5,700~~
~~3,450~~
162,050

~~5,700~~
255,420

23
18
15
12
68,000

13,000 Central Office
45,000 Equipment.

APPENDIX V

COACHES FOR SENIOR HIGH SCHOOL INTERSCHOLASTIC TEAMS BY SEX

SPORT	MALE COACHES		FEMALE COACHES	
	Boys' Teams	Girls' Teams	Boys' Teams	Girls' Teams
Basketball	20	13	--	7
Cross Country	10	9	--	1
Swimming	20	14	--	6
Tennis	10	3	--	7
Volleyball	--	4 6	--	6 4
Gymnastics	--	3 4	--	7 5 10
Golf	10	9	--	1 0
*Skiing	9	9	1	1
Badminton	--	1 4	--	9 5 10

* Each school's boys' and girls' ski teams shared one coach

September 25, 1980

Dear Joan,

The following comments are not only factual errors but editorial-type comments. (Once I got started I just couldn't resist rewriting the report). It is all strictly for your use or non-use as you choose.

1. Page 2, pp 5 says the ~~Dept of~~ Human Rights Commission ordered compliance. Isn't it Dept of Human Rights? But is it ~~really~~ Dept of Human Rights; isn't it Dept of Education? ; and in the rest of that sentence apparently compliance rests with "cost per participant in a particular sport offered to boys and girls" What particular sport? and equal "total number of athletic activities for boys and girls."

Has compliance been achieved? Were they given a deadline? What ever happened?

And the next sentence goes on to talk about total budgets. Does this have anything to do with compliance? Did the Dept of Ed, or whoever comment on total budgets/boys and girls?

2. Page 2-3 Structure of the athletic program.

I don't think this is very accurate or complete. From what Mr. McMoore said at the meeting, he and his office deals with schedules, sets policy, allocates the school's funds to individual school on a formula basis. His budget pays for some expenses like umpires, officials, etc. and other things I'm sure...The figures in Appendix II are what is allocated per sport out of his central office funds.

Local schools can make some decisions. (Last time around each school had to cut out \$4,000 and they were free to do it where they wanted, so different schools cut different sports. This time round on the cut, he's planning on cutting out one boy's sport throughout all schools. The funds that go to the school are on a formula so much for each sport plus so much for each participant. This will give a \$ variation depending upon participation.

The intermural programs are very important and probably will become more so. I would think it important to figure out what is going on, how much does each school provide in funds (there must be supervision, costs for balls, etc.) and how many team opportunities are there for each sex?

3. Interscholastic sports. This should be done school by school. It is not a unanimous 10 of each, one for each school. Schools drop different ones with the \$4,000 cut. And Mr. McMoore indicated that some schools have more sports paid for out of principal's discretionary funds (soccer at Washburn?) and the financing figures have the additional individual school variation since parent boosters raise money for certain schools, certain sports. What does this do th the money spent?

4. Phy ed classes- You should be able to demand and get this information. Payroll will have it or individual principals. (There is the Freedom of Inormation Act if they give you the run around.) A Mn Fed Teacher person said it violated state regulation to have a school without a femal phy ed teacher.

5. Page 4 - If you get into speculating about soccer, you should talk in terms of it as a fall sport. The Mn State High School League has put it there.

6. Some additional ways to evaluating the school's programs:

- a. team play opportunities, 4 boys to 2 girls
- b. great season distortions in opportunities: 2 boys - 4 girls in fall; 5 boys - 3 girls winter; 4 boys - 3 girls spring.
- c. Girls - have no fall outdoor team (suggest soccer); no ice sport; no spring outdoor team sport (suggest softball)
- d. I'd explore suggesting softball instead of badmitton, if you have to substitute rather than add. Badmitton does not allow the chance for region and state competition. It really is not a sport equal in quality and opportunity to the other non-matched boy's sports that all can lead to state competition.

7. Problems with your financial figures.

Page 4, 2nd pp says 3344 boys and 2171 girls participated 1979-80. (Appendix II says for 1978-9 3460 boys, 2255 girls - the 1979-80 figures are down 116 boys and 84 girls. Looking at these figures and why might be interesting. Is it down because of declining students % drop in sport #s v % drop in total enrollment? Is it because of dropping sports? etc.

Page 5, second pp from bottom says the 1979-80 total budget is \$1.3 million.

" bottom pp - says \$110/boy and 109/girl - presumably this multiplies out times 3344~~xx~~ and 2171 to \$368,900 for boys and \$237,000 girls...total \$605,000. Subtracting this from \$1.3 million leaves \$700,000 unaccounted for.

These figures for \$110/boy and \$109 girl need much more identification and explanation. They are much higher than the per participant figure given in Appendix II (see below) What went into them? or why didn't the same information go into Appendix II?

And why are these figures used, anyway? (Except to imply that the program is =) The requirement for = \$ per participant is only for those sports that have boys & girls team. It does not apply to the whole program, including the footballs and badmittons. The figures League can use to best dramatise inequality is the total \$ for non-matched sports, by sex and/or the \$per participant for the non-matched sports.

If you use your figures in Appendix II, adjusted (see below), you get \$18.50/girl and \$18.98/boy in matching sports; the non-matched sports are \$16.89/girl and \$24.12/boy; totals are \$15.96/girl and \$21.85/boy. \$10.22/girl

~~While these dollars are only a small part~~

Appendix II and IV deal with 1978-9 figures, but the dollar amounts are very incomplete. Appendix II is only McMoore's office allocation per school for game officials and ? Missing is each school's expenditure from funds allocated by McMoore's office, based on the formula. (He mentioned that boys' baseball ~~get~~ for 1980-81 had \$13,000 from this fund (in addition of a figure similar to the \$4,000 in Appendix II) and football had \$45,000 from this fund.

To arrive at real costs you need:

McMoore's funds (Appendix II)

School allocated funds

Salaries (Appendix IV)

?Transportation costs (This is a large item in most school districts. Is it included in the above items?)

The amount raised by booster groups. (What happens to admissions? do they go back into the sports budgets? They can be deducted in calculating matching sport / participant costs....Do they have fees or charges for participation?)

Capital expenditures, discretionary budget funds for unusual expenses - new uniforms, weight machines, ice machines, funding Washburn's soccer program, etc.

Most schools don't allocate the following kinds of items, but they are part of the costs of the sports programs: Central athletic office staffs, McMoore's salary, staff, operating the office expense; The athletic director's salary, office costs/school; sport facilities upkeep, maintenance, heating light, janitor cost; costs for ticket takers, supervision at games, policing games, etc.

Appendix II should not include gymnastics in the matching sport category. This distorts the total making it look like girls receive more in these sports. (Gymnastics is an unmatched sport per your footnote & there were no boy participants, and clearly it was not intended to be an equal per sex sport.) If you subtract it from the matched sports you go from girl's \$ total of \$32,602 (52% of the total) to \$27,443 (48%) Boys \$ totals drop from \$29,788 to \$29,554. This makes the \$/participant which should be substantially = \$18.50/girl and \$18.98/boy.

Appendix IV - salaries. Gymnastic salaries belong below, which then bring the totals of the matched sports into ~~near~~ equality - which Mpls schools do have. But down below there is an error, again making it appear the girls have a more expensive program than they do. Skiing has one coach for both boys and girls. The salary has been entered only in the girl's column. It should be split at least 50-50... probably even a greater proportion to boys and girls because the participation

numbers are probably greater for boys than girls...interestingly enough, ~~participate~~ skiing is not listed at all in Appendix II, so you don't indicate how many participated at all.

Under your "Points to Consider, page 4 & 5 -

8. Male coaches are rapidly continuing to expand. (Note, salaries for coaches in the same sport are now equal). Mr. McMoore read off a few for 1980-81, I presume:

Appendix V - Volleyball 6 male, 4 female

Gymnastics 4 male, 5 female (apparently one school has dropped it)

Golf no female

Badminton - 4 male, 5 female (apparently one school has dropped it)

9. You could evaluate the whys of this. McMoore says it is because they quit coaching, don't want to put in the time...maybe have to go home and take care of the house.

You could look at several things - when they hire new women teachers are they looking for sports certification as was, at least the practice with hiring men, to make sure you had a football, etc. coach. These positions of coaching were not left to haphazard chance.

- what is the policy? Are they taking teaching men with coaching credentials over non-teaching (because they can't get a teaching job) women who are teachers and trained coaches?

- Are they taking teaching men with no experience in the sport over a skilled, experienced women who has played the sport although she may not have the credentials...this is allowed in all but the head coaching position (?in six sports or in all sports now? It might have changed.)

10. Page 5, pp2 - recommended surveys of interest and intent be taken of the students and use them to plan for program changes.

11. The League could analyze coaching patterns. (Matching sports are to have comparable coaching.) How long has each coach served that team...there must be a high turnover in girls' sports. Length of years experience in coaching - boy's teams, girls' teams. Have they ever played the sport? Questions like these might well show an overwhelming pattern of probably less capable coaches on the average for girls' programs.


12. Mpls deserves credit for having same night basketball for girls and boys...but the girls always play first at 6 pm; the boys at 7:30. The report doesn't point this out. And what about other matching sports...are they at the same time; do they get equal emphasis

13. What is the source of Appendix III and what numbers went into the figures. It is unlikely that salaries are included.

14. The League should have double checked the facts with the Dept of Education's filled figures. The statistics of numbers, dollars, coaches were reported up until last year and will be reported again in Oct? or so this year. ~~xxx~~ The complaint and compliance report is on file with the Dept of Education. It is public. The business manager - administrator for the Mpls schools, the one paying the bills and keeping track of various funds, will have a detailed accurate record of what was actually spent, by account, by school. While they may not like it, it is public information and League can have access to it.

Enough.....

Yours,


Liz Ebbott

problems -

what is spent - total
boys
girls -

450
344
116

255
171
84

1979-80 1.3m p5 - not total for the law. Apper II + III
110/6 p5
109/9
#s - 84 3344 + 2171 = 8604,000 $\frac{60\%}{40\%}$

1978-9 - Apper II + Apper IV - but \$30 Badminton
budget salaries ? if buying
officials
to pre-tested overhead.

Total \$529,5

Problems - Apper II
① matching - exclude gymnastics - then -
\$27,4 to \$29,5 6

Gymnastics 1,484 to 1,557 - w/gym. in unwatched
forgot skiing -

68% - 32%

② -

Apper IV salaries.

61% 39%

① matching exclude gymnastics.

② Skiing, all girls - Apper V share a coach -
∴ skiing split + not all in girls total

Gymnastics 32,000
Badminton 10,300 (\$30)
Volleyball 23,700
66,000
25%

1978-9

Football - 73,800
Hockey 52,200
Wrestling 36,000
Baseball - 31,000
193,000
75% 259,000



STATE OF MINNESOTA
DEPARTMENT OF HUMAN RIGHTS

240 BREMER BUILDING • (612)296-5663 • SAINT PAUL, MINNESOTA 55101

Telephone: 296-5676

July 8, 1980

Ms. Elizabeth Ebbott
409 Birchwood Avenue
White Bear Lake, Minnesota 55110

Dear Ms. Ebbott:

Thank you for writing. I, too, am pleased that, even though the rules drafted jointly by Education and Human Rights were not promulgated, the cooperative effort resulted in a working relationship that will undoubtedly be mutually beneficial and beneficial to the people we serve.

I appreciate your observations about the need for clarification with respect to the law as it applies to equal opportunity in athletics provided by public service organizations. The Department of Human Rights is responsible for administering the law as it applies to discrimination in the extension or provision of a public service. We have not considered carefully how clarification may best be provided in this area. Should rules be the way in which we decide to proceed, such rules would be pursued by this department independently. It would appear that the Department of Education is not responsible for the law as it applies to public services, but I could envision seeking Education's help if we should decide to promulgate rules in this area.

This department has been involved for about two years in various phases of the rulemaking process on the topic of equal opportunity in athletics. We feel that it is important to consider this issue in conjunction with the department's other responsibilities and duties. The department has yet to undertake promulgation of rules and regulations with respect to employment discrimination even though about 80% of the charges received by the department are allegations of employment discrimination. We must carefully choose to channel our limited resources where they are most needed.



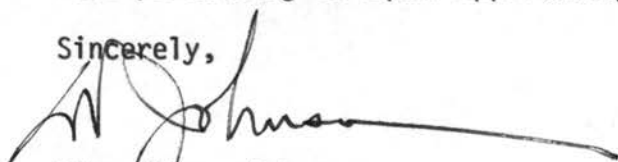
Ms. Elizabeth Ebbott

July 8, 1980
Page #2

We will not shrink from addressing the issue of equal athletic opportunity. Whether or not we will proceed by drafting rules has not been decided.

Thanks again for sharing your observations. We have appreciated your active interest in this issue. Please let me know of any other concerns you may have pertaining to equal opportunity in athletics.

Sincerely,

A handwritten signature in dark ink, appearing to read "Diane Vener Johnson", with a long horizontal flourish extending to the right.

Diane Vener Johnson
Asst. to the Commissioner

DVJ/edm

Date _____

1 CONFERENCE COMMITTEE REPORT ON H. F. NO. 455

2 A bill for an act

3 relating to education; providing equal opportunity
4 for members of both sexes to participate in
5 certain athletics; modifying the coverage and
6 terms of the current law providing for equal
7 opportunity in certain athletics; requiring the
8 state board of education to promulgate certain
9 rules and giving it exclusive jurisdiction over
10 certain sex discrimination charges; providing for
11 the rights of certain parties in the case of
12 certain sex discrimination charges; amending
13 Minnesota Statutes 1978, Sections 126.21 and
14 363.02, Subdivision 3.

15 February 29, 1980

16 The Honorable Fred C. Norton
17 Speaker of the House of Representatives
18

19 The Honorable Edward J. Gearty
20 President of the Senate
21

22 We, the undersigned conferees for H. F. No. 455,
23 report that we have agreed upon the items in dispute and
24 recommend as follows:
25

26 That the Senate recede from its amendments and that

27 H.F. No. 455 be further amended as follows:

28 Strike everything after the enacting clause and insert:

29 "Section 1. Minnesota Statutes 1978, Section 126.21,

30 is amended to read:

1 126.21 [ATHLETIC PROGRAMS; SEX DISCRIMINATION.]

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

8 Subd. 2. Each educational institution or public
9 service shall provide equal opportunity for members of both
10 sexes to participate in its athletic program. In
11 determining whether equal opportunity to participate in
12 athletic programs is available for the purposes of this
13 section, at least the following factors shall be considered
14 to the extent that they are applicable to a given
15 situation: whether the opportunity for males and females
16 to participate in the athletic program reflects the
17 demonstrated interest in athletics of the males and females
18 in the student body of the educational institution or the
19 population served by the public service; whether the
20 variety and selection of sports and levels of competition
21 effectively accommodate the demonstrated interests of
22 members of both sexes; the provision of equipment and
23 supplies; scheduling of games and practice times;
24 assignment of coaches; provision of locker rooms; practice
25 and competitive facilities; and the provision of necessary
26 funds for teams of one sex.

27 Subd. 3. (1) Notwithstanding any other state law to
28 the contrary, in athletic programs operated by educational
29 institutions or public services and designed for
30 participants 12 years old or older or in the seventh grade
31 or above, it is not an unfair discriminatory practice ~~+++~~
32 to restrict membership on an athletic team to participants
33 of one sex ~~if this restriction is necessary to provide~~

1 ~~members of each sex with an equal opportunity to~~
 2 ~~participate in the athletic program provided, if a~~
 3 ~~membership restriction on the basis of sex results in the~~
 4 ~~operation of two teams in the same sport which are~~
 5 ~~separated or substantially separated according to sex, the~~
 6 ~~two teams shall be operated in compliance with all the~~
 7 ~~provisions of clause (2); or whose overall athletic~~
 8 ~~opportunities have previously been limited.~~

9 (2) When an educational institution or a public
 10 service provides athletic teams for children eleven years
 11 old or younger or in the sixth grade or below, those teams
 12 shall be operated without restrictions on the basis of sex,
 13 except that when overall athletic opportunities for one sex
 14 have previously been limited and there is a demonstrated
 15 interest by members of that sex to participate on a team
 16 restricted to members of that sex, the educational
 17 institution or public service may provide a team restricted
 18 to members of that sex.

19 ~~(2) to provide~~ (3) When two teams in the same sport
 20 which are in fact separated or substantially separated
 21 according to sex, if the two teams are shall be provided
 22 with substantially equal budgets per participant, exclusive
 23 of gate receipts and other revenues generated by that
 24 sport, and in all other respects are shall be treated in a
 25 substantially equal manner. The two teams shall be
 26 operated separately only in those activities where
 27 separation is necessary to provide the members of each sex
 28 equal opportunity to participate in the athletic program.
 29 However, nothing in this section shall be construed to
 30 require the two teams to conduct combined practice sessions
 31 or any other combined activities related to athletics.

32 (4) If two teams are provided in the same sport, one
 33 of these teams may be restricted to members of a sex whose

1 overall athletic opportunities have previously been
2 limited, and members of either sex shall be permitted to
3 try out for the other team.

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

16 Subd. 2 5. The state board of education, after
17 consultation with the commissioner of human rights shall
18 promulgate rules in accordance with chapter 15 to implement
19 this section to prevent discrimination in elementary and
20 secondary school athletic programs operated by educational
21 institutions. The rules promulgated by the state board
22 pursuant to this section shall not require athletic
23 competition or tournaments for teams whose membership may
24 be restricted to members of a sex whose overall athletic
25 opportunities have previously been limited to be scheduled
26 in conjunction with the scheduling of athletic competition
27 or tournaments for teams whose membership is not so
28 restricted by this section. Any organization, association
29 or league entered into by educational institutions
30 elementary or secondary schools or public services for the
31 purpose of promoting sports or adopting rules and
32 regulations for the conduct of athletic contests between
33 members shall effective July 1, 1976 provide rules and

1 regulations and conduct its activities so as to permit its
2 members to comply fully with ~~subdivision 1 and section~~
3 ~~353.03, subdivisions 4 and 5~~ this section. The rules of
4 that organization, association or league may provide
5 separate seasons for athletic competition or tournaments in
6 a sport for teams whose membership may be restricted to
7 members of a sex whose overall athletic opportunities have
8 previously been limited from athletic competition or
9 tournaments established for teams in that same sport whose
10 membership is not so restricted by this section, and its
11 rules may prohibit a participating student from competing
12 on more than one school team in a given sport during a
13 single school year.

14 ~~Subd. 3. Educational institutions and public services~~
15 ~~shall make every reasonable effort to provide substantially~~
16 ~~equal budgets per participant pursuant to subdivision 1~~
17 ~~during the school year 1975-1976, and thereafter shall~~
18 ~~provide substantially equal budgets per participant~~
19 ~~pursuant to subdivision 1. Educational institutions and~~
20 ~~public services shall phase out separation based on sex in~~
21 ~~athletic programs designed for participants 11 years old or~~
22 ~~younger and in the sixth grade or below during the school~~
23 ~~years 1975-1976, 1976-1977, and 1977-1978, and thereafter~~
24 ~~shall comply fully with subdivision 1 and section 353.03,~~
25 ~~subdivisions 4 and 5.~~

26 Sec. 2. Minnesota Statutes 1978, Section 129.121, is
27 amended by adding a subdivision to read:

28 Subd. 5. For the purposes of section 471.705, the
29 Minnesota state high school league shall be deemed to be a
30 state agency required by law to transact business in
31 meetings open to the public.

32 Sec. 3. Minnesota Statutes 1978, Section 363.02,
33 Subdivision 3, is amended to read:

1 Subd. 3. [EDUCATION.] (a) It is not an unfair
 2 discriminatory practice for a religious or denominational
 3 institution to limit admission or give preference to
 4 applicants of the same religion. The provisions of section
 5 363.03, subdivision 5, relating to sex, shall not apply to
 6 a private educational institution, or branch or level of a
 7 private educational institution, in which students of only
 8 one sex are permitted to enroll. Nothing in this chapter
 9 shall be construed to require any educational institution
 10 to provide any special service to any person because of the
 11 disability of such person or to modify in any manner its
 12 buildings, grounds, facilities, or admission procedures
 13 because of the disability of any such person. Nothing in
 14 this chapter shall prohibit an educational institution from
 15 discriminating on the basis of academic qualifications or
 16 achievements or requiring from applicant's information
 17 which relates to academic qualifications or achievements.

18 (b) Notwithstanding any other provisions of this
 19 chapter or any law to the contrary, it is not an unfair
 20 discriminatory practice for an educational institution or a
 21 public service to operate or sponsor separate athletic
 22 teams and activities for members of each sex or to restrict
 23 membership on an athletic team to participants of one sex,
 24 if this separation or restriction meets the requirements of
 25 section 126.21.

26 (c) The department of human rights shall investigate
 27 all charges alleging sex discrimination in athletic
 28 programs in educational institutions and public services
 29 pursuant to the standards and requirements of section
 30 126.21 and the procedures enumerated in chapter 363."

31 Further, delete the title and insert:

32 "A bill for an act

33 relating to education; providing equal opportunity

1 for members of both sexes to participate in
2 certain athletics; modifying the coverage and
3 terms of the current law providing for equal
4 opportunity in certain athletics; requiring the
5 state board of education after consultation with
6 the commissioner of human rights to promulgate
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8 parties in the case of certain sex discrimination
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10 league to transact business in an open meeting;
11 amending Minnesota Statutes 1978, Sections 126.21;
12 129.121, by adding a subdivision; and 363.02,
13 Subdivision 3."



**LEAGUE OF WOMEN VOTERS
OF MINNESOTA**

PHONE (612) 224-5445

555 WABASHA • ST PAUL, MINNESOTA 55102

news release

For further information, contact:

Jeannette Kahlenberg - 224-5445 (o)
429-6070 (h)

Liz Ebbott - 426-3643

November 19, 1979

The League of Women Voters of Minnesota is pleased to present you with the attached complimentary copy of WHAT'S THE SCORE IN MINNESOTA?, a summary report of our monitoring project on "Equal Opportunity for Girls in Athletics."

FOR IMMEDIATE RELEASE

"Everyone points out how much progress has been made" for girls in athletics, but "the additions made to girls' programs are about all they want to see."

"'We've come a long way' is also an excuse for not going further." These are typical attitudes local Leagues of Women Voters encountered as they monitored compliance with state and federal laws requiring equal opportunity in athletic programs for Minnesota's school children.

A report of the LWV's monitoring project was released today. The year-long project involved 40 local Leagues of Women Voters monitoring 44 school districts around the state. The report concludes that at the secondary level, "there has been a tremendous increase in opportunities for girls in the last ten years. But the opportunities are still not equal. The number of girls participating is still not equal. The dollars being spent on girls' programs in this state are still not equal. The number of girls participating is still not equal. The dollars being spent on girls' programs in this state are still not equal. The varieties of sports in each season and levels of teams for girls are still not equal." Comparisons with other states show that Minnesota has a long way to go. High school girls' participation in Minnesota is about half that of boys, whereas in neighboring Iowa, 48.8% of high school athletes are girls.

The LWVs also found that the law's requirement for coed activities at the elementary age level is the most often violated aspect of the law, especially in programs outside the classroom. One LWV wrote, "It is fairly obvious that the community athletic association advertises coeducational sports at the elementary age with the plan to separate after the kids get there." Another reported: "The after-school program has coed volleyball, which has good participation but separate sex basketball and track."

LWVs looking at physical education programs found that required coed classes can be successful for all ages. On the secondary level, one LWV reported that girls tried harder when they played with boys and were pleased and surprised

(over)

news release

at their capabilities. Said one girl: "Our teacher is tough. He makes us do things we never thought we could do. It's neat finding out we can." A good attitude and a desire by teachers and school officials to make a coed program work generally results in success, the LWV found.

Eight of the Leagues conducted their own student attitude surveys. Two others reported on surveys that had been done by the schools themselves. The findings showed consistently that students like coed physical education.

Because of conflict over the definition of "equal opportunity" and controversy over the laws themselves, LWVMN found that state agencies which should be responsible for explaining and administering the laws have been reluctant to take on these responsibilities. The report recommends that administrative rules explaining the Minnesota law should be worked out, with involvement by all parties concerned, including the public. LWVMN further recommends that state agencies fulfill their obligations to work with the people handling athletic programs, so that they understand the law and realize that compliance is necessary. This is an especially acute problem for non-school programs, governmental and volunteer, that use public facilities. The Departments of Education and Human Rights should define their enforcement roles and the state forms on compliance should be clarified, according to the report.

The goal of the 1978-79 LWV monitoring projects in local communities was to encourage voluntary compliance with the law. Many LWVs believe that their questions and information-gathering had a positive impact in improving compliance. School district personnel were almost uniformly cooperative. Almost half the LWVs plan to continue with regular monitoring, and several new projects have gotten underway this fall.

#

This conference committee report
was drafted and approved by the
Revisors Office.

Date _____

1 CONFERENCE COMMITTEE REPORT ON H. F. NO. 455

2 A bill for an act

3 relating to education; providing equal opportunity
4 for members of both sexes to participate in
5 certain athletics; modifying the coverage and
6 terms of the current law providing for equal
7 opportunity in certain athletics; requiring the
8 state board of education to promulgate certain
9 rules and giving it exclusive jurisdiction over
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11 the rights of certain parties in the case of
12 certain sex discrimination charges; amending
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16 The Honorable Fred C. Norton
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23 report that we have agreed upon the items in dispute and
24 recommend as follows:
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30 is amended to read:

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25 and competitive facilities; and the provision of necessary
26 funds for teams of one sex.

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17 consultation with the commissioner of human rights shall
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19 this section to prevent discrimination in elementary and
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33 members shall effective ~~July 1, 1976~~ provide rules and

1 regulations and conduct its activities so as to permit its
 2 members to comply fully with ~~subdivision 1 and section~~
 3 ~~363.037 subdivisions 4 and 5~~ this section. The rules of
 4 that organization, association or league may provide
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 6 a sport for teams whose membership may be restricted to
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26 Sec. 2. Minnesota Statutes 1978, Section 129.121, is
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 33 Subdivision 3, is amended to read:

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11 disability of such person or to modify in any manner its
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14 this chapter shall prohibit an educational institution from
15 discriminating on the basis of academic qualifications or
16 achievements or requiring from applicant's information
17 which relates to academic qualifications or achievements.

18 (b) Notwithstanding any other provisions of this
19 chapter or any law to the contrary, it is not an unfair
20 discriminatory practice for an educational institution or a
21 public service to operate or sponsor separate athletic
22 teams and activities for members of each sex or to restrict
23 membership on an athletic team to participants of one sex,
24 if this separation or restriction meets the requirements of
25 section 126.21.

26 (c) The department of human rights shall investigate
27 all charges alleging sex discrimination in athletic
28 programs in educational institutions and public services
29 pursuant to the standards and requirements of section
30 126.21 and the procedures enumerated in chapter 363."

31 Further, delete the title and insert:

32 "A bill for an act

33 relating to education; providing equal opportunity

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10 league to transact business in an open meeting;
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12 129.121, by adding a subdivision; and 363.02,
13 Subdivision 3."



LEAGUE OF WOMEN VOTERS OF MINNESOTA

555 WABASHA • ST. PAUL, MINNESOTA 55102 • TELEPHONE (612) 224-5445

August 1, 1979

Dr. Von Valletta
Deputy Commissioner of Education - Operations
State Department of Education
Room 713 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101

Dear Dr. Valletta:

The League of Women Voters of Minnesota is pleased that attention is being given to writing rules to clarify the laws guaranteeing girls the right to have equal opportunities in athletic programs. High priority should be given to this effort. At best, the final adoption of rules can come only in time to affect the 1980-81 school year. Girls have waited a long time since the passage of these laws to have their rights clarified. We urge speedy action in drafting the proposed rules.

It is also important that the varying viewpoints that are in conflict over what the law means should be represented as you prepare the draft. The League of Women Voters was basically supportive of the rules drafted by the Department of Human Rights, although we were critical of some of the details. We would urge careful consideration of the concepts incorporated in those original proposed rules.

As a public group seeking public input in the rules process before the rules are drafted, as suggested in MN Stat. Chapter 15, the League of Women Voters would like to offer the following suggestions:

- I. That the scope of the rules be clearly defined. The law covers:
 - Interscholastic sports
 - Intramural programs
 - Private schools
 - Public service programs: park and recreation
 - Volunteer groups using educational institution or public service facilities

The League of Women Voters would like to therefore see the rules written to apply to all these categories.

- II. That the following be defined in the rules:
 - A. Athletic program. Does this apply to more than interscholastic sports programs? MN Stat. 126.21 uses the phrase so that it applies to elementary programs (Dept. of Ed. Rule, 5 MCAR #1.0662C, Exhibit B, # 13 (a)) as well as public service programs. Does this phrase also

include intramural? Does it mean physical education instruction?

- B. Sports. The easiest definition might be to list the present and potential sports by name as well as delegating to some agency the right to name new ones (DHR or SDE). Whatever the definition, we would like to have it made clear that danceline and cheerleading are not included. On the other hand, to limit the definition to just the MN State High School League tournament sports is not broad enough.
- * C. Substantially equal budget per participant, for the purpose of these rules, needs to be defined as substantially equal expenditure. This will resolve the confusion over this difference between Title IX and Minnesota law.
- D. Participation numbers should be clarified as to who is a participant and when the number is to be determined. Since this figure is used in calculating the "substantially equal" cost per participant described in MN Stat. 126.21 (2), it is important that the numbers be consistent and accurate.
- III. that the rules state how to measure "equal opportunity to participate." This should be related to the ratio of boys to girls in the total student body. A 5% deviation could be written in to accommodate temporary variations.
- Until equality in numbers is achieved, the level of interest needs to be measured and evaluated in order for schools to adjust the offerings.
- Until equality is achieved, efforts should be made to encourage participation and assist with skill development.
- IV. that the measurement of equal opportunity to participate apply to the opportunities offered each season.
- V. that the substantially equal manner of treating separate sex teams in the same sport be identified. Title IX has a listing of factors that could be used.
- VI. allowing the teams covered by MN Stat. 126.21(2) to operate separately in activities where separation is necessary should allow separate team practice in team sports such as basketball and baseball/softball. Separate practice would not be considered "necessary" in individual sports such as cross country, skiing, golf, etc.
- VII. that budgets for teams in different sports require substantially equal treatment between boys and girls' programs in terms of scope and quality of the specific sport, based on the needs of that sport.
- VIII. that girls whose opportunities to participate would otherwise be unequal should be allowed to try out for any team, based on what is best for the individual girl's development.

- IX. that the same sports for boys and girls be played in the same season to insure being treated "in a substantially equal manner." If they are in separate seasons, it is impossible to prevent the separate practices which the law prohibits unless "necessary to provide members of each sex equal opportunity to participate." (M.S. 126.21 (2))
- X. that Department of Education reports applying to athletics be required by the rules for public and private schools in order to show compliance.

The details of these report forms probably do not need to be spelled out in these rules. The LWVMN's report on our experience in monitoring compliance with the laws regarding equal opportunity for girls in athletics will be released in September and covers up to 50 school districts; the report includes a number of specific recommendations on how to clarify both the present Athletic Report and MN State Board of Education Rules, Chapter 33, 5 MCAR # 1.0662(C), Exhibit B, Section 13.

The League of Women Voters of Minnesota hopes that our views will be taken into consideration as the rules are drafted. We would be most pleased to meet with you personally to explain these views of the laws or to discuss other issues to be covered by the rules. Let us know if we can be of further help.

Sincerely yours,

Pamela Berkwitz, President
League of Women Voters of Minnesota

cc: Marilyn McClure, Commissioner, Minnesota Department of Human Rights
Dr. Cathy Tisinger, Special Assistant, Governor's Office
Suzanne Perry, Minneapolis STAR
Senators
 Braatas
 Knaak
 Merriam
 Peterson
 Staples
Representatives
 C. Johnson
 Kahn
 McEachern
 Olsen
 Weaver

B:M

- Should Women Seek The Same Values In Sport Which Men have Pursued?
- What Role Do Athletics Play In Achieving Success In Life?
- Should Physical Fitness Be A More Important Focus For Women Than Organized Sports?
- What Is Equality For Women In Athletics?



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

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Women And Sport: Past, Present And Future



Wednesday, May 21, 1980
5:00 - 9:30 p.m.

St. Paul YWCA, 65 East Kellogg Boulevard, St. Paul, Minnesota
Sponsored by THE LEAGUE OF WOMEN VOTERS OF MINNESOTA AND THE ST. PAUL YWCA



Women And Sport Past, Present, and Future

Wednesday, May 21, 1980

St. Paul YWCA



- 4:30** Registration
- 5:00** **"Dropkick Me, Jesus, Through the Goalposts of Life"-
Sport as a Secular Religion**
DR. JEREMIAH REEDY, Professor of Classics, Macalester College
- 5:45** **"What Makes Sally Run?"- The Competitive Edge and Lifetime Fitness:**
DR. VIVIAN BARFIELD, Director of Women's Intercollegiate Athletics, University of Minnesota
DR. DAVID WEE, Associate Professor of English and former coach of women's cross country team, St. Olaf College
DR. MARGARET SILBERBERG, Licensed Consulting Psychologist, St. Paul
- 6:30** Buffet Supper And Informal Discussions
- 7:00** **"And Jill Came Tumbling After"- A History of Women's Participation in
Sports and Games** Keynote Address, illustrated by Slides
DR. GRETCHEN KREUTER, Assistant Professor of History and Coordinator of Women's Studies, St. Olaf College
- 7:45** Break
- 8:00** **"What is This Thing Called Equality?"- Issues for Women in Sport**
LINDA OJALA, Attorney, Minnesota Civil Liberties Union
JOANN ANDREGG, Administrative Assistant, Athletics Department, and coach of women's tennis and volleyball, College of St. Thomas
DR. NAOMI SCHEMAN, Associate Professor of Philosophy, University of Minnesota
- 8:45** **"Minnesota, Hats Off to Thee!?"- The Laws and Compliance**
DR. PHYLLIS KAHN, State Representative, Minnesota House of Representatives
- 9:15** Interaction and Wrap-up

Sponsored by **The League of Women Voters of Minnesota and the St. Paul YWCA**
Made possible through a grant from **The Minnesota Humanities Commission**

Please register me for **WOMEN AND SPORT, Past, Present, and Future**

Name _____ Organization (if any) _____

Address _____

- ☐ Enclosed is \$7 which includes registration, buffet supper, and packet of materials
☐ I do not wish supper. Enclosed is a \$1 registration fee
☐ I am interested in obtaining 0.3 Continuing Education Units through Anoka Ramsey Community College. (Send social security number, phone number and extra \$1 fee by May 13.)

Please make checks payable to the League of Women Voters of Minnesota and mail to:
League of Women Voters of Minnesota,
555 Wabasha, St. Paul, MN 55102
Phone: (612) 224-5445
Meal reservations must be made by May 14 and prepaid.

The meeting is accessible to those using wheelchairs. A signer will be available for the hearing impaired, upon request. Please contact LWVMN at (612) 224-5445 to request this service.

WOMEN AND SPORT
Past, Present, and Future

Wednesday, May 21, 1980
5:00 - 9:30 p.m.

St. Paul YWCA
65 East Kellogg Blvd.

4:30 Registration

5:00 "Dropkick Me, Jesus, Through the Goalposts of Life" - Sport as Secular Religion

DR. JEREMIAH REEDY, Professor of Classics, Macalester College

What are some of the value issues in sport? Have athletics become a secular religion? Should women seek the same values in sport which men have pursued?

5:45 What Makes Sally Run?" - The Competitive Edge and Lifetime Fitness

DR. VIVIAN BARFIELD, Director of Women's Intercollegiate Athletics, University of Minnesota

DR. DAVID WEE, Associate Professor of English and former coach of the women's cross country team, St. Olaf College

Indians
DR. MARGARET SILBERBERG, Licensed Consulting Psychologist, St. Paul
What role do athletics play in achieving success in life? Is it a myth that participation in sports instills in individuals a competitive edge that can drive them to success in other areas? Does playing on a school or park recreation team promote a sense of cooperation among participants that transfers to other efforts later on? Should physical fitness be a more important focus than organized sports?

6:30 Buffet Supper and informal discussions

7:00 "And Jill Came Tumbling After" - A History of Women's Participation in Sports and Games - Keynote Address, Illustrated by Slides

DR. GRETCHEN KREUTER, Assistant Professor of History and Coordinator of Women's Studies, St. Olaf College

How have women's attitudes toward sport changed through the years? How has women's participation in athletics evolved?

8:00 "What is This Thing Called Equality?" - Issues for Women in Sport

LINDA OJALA, Attorney, Minnesota Civil Liberties Union

JOANN ANDREGG, Administrative Assistant, Athletics Department, and coach of women's tennis and volleyball, College of St. Thomas

Assistant
DR. NAOMI SCHEMAN, Associate Professor of Philosophy, University of Minnesota
How do we define equal? Can separate be equal? What are the practical questions? What is the influence of culture and history on what we define as "equal" for women in sport?

8:45 "Minnesota, Hats Off to Thee!?" - The Laws and Compliance

DR. PHYLLIS KAHN, State Representative, Minnesota House of Representatives, Rights

Can equality be legally determined? What are the provisions of the new Minnesota law on athletics and Title IX? What is the state of compliance in Minnesota?

9:15 Interaction and Wrap-up

Sponsored by THE LEAGUE OF WOMEN VOTERS OF MINNESOTA AND THE ST. PAUL YWCA
Made possible through a grant from the Minnesota Humanities Commission

Send advance registration and meal reservation by May 14 to:

The League of Women Voters of Minnesota, 555 Wabasha, St. Paul, MN 55102 (224-5445)

Cost: \$7 (includes buffet supper, registration, and packet of materials)

Without meal, \$1 registration fee.

.3 Continuing Education Unit available through Anoka-Ramsey Community College.

(Send social security number, phone number, and extra \$1 handling charge.)

This conference committee report
was drafted and approved by the
Revisor's Office.

Date _____

1 CONFERENCE COMMITTEE REPORT ON H. F. NO. 455

2 A bill for an act

3 relating to education; providing equal opportunity
4 for members of both sexes to participate in
5 certain athletics; modifying the coverage and
6 terms of the current law providing for equal
7 opportunity in certain athletics; requiring the
8 state board of education to promulgate certain
9 rules and giving it exclusive jurisdiction over
10 certain sex discrimination charges; providing for
11 the rights of certain parties in the case of
12 certain sex discrimination charges; amending
13 Minnesota Statutes 1978, Sections 126.21 and
14 363.02, Subdivision 3.

15 February 29, 1980

16 The Honorable Fred C. Norton
17 Speaker of the House of Representatives
18

19 The Honorable Edward J. Gearty
20 President of the Senate
21

22 We, the undersigned conferees for H. F. No. 455,
23 report that we have agreed upon the items in dispute and
24 recommend as follows:
25

26 That the Senate recede from its amendments and that
27 H.F. No. 455 be further amended as follows:
28 Strike everything after the enacting clause and insert:
29 "Section 1. Minnesota Statutes 1978, Section 126.21,
30 is amended to read:

1 126.21 [ATHLETIC PROGRAMS; SEX DISCRIMINATION.]

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

8 Subd. 2. Each educational institution ~~or public~~
9 ~~service~~ shall provide equal opportunity for members of both
10 sexes to participate in its athletic program. In
11 determining whether equal opportunity to participate in
12 athletic programs is available ~~for the purposes of this~~
13 ~~section~~, at least the following factors shall be considered
14 ~~to the extent that they are applicable to a given~~
15 ~~situation:~~ (1) whether the opportunity for males and females
16 to participate in the athletic program reflects the
17 ~~demonstrated interest~~ in athletics of the males and females
18 in the student body of ~~the educational institution or the~~
19 ~~population served by the public service;~~ (2) whether the
20 variety and selection of sports and levels of competition
21 effectively accommodate the ~~demonstrated interests of~~
22 members of both sexes; the provision of equipment and
23 supplies; scheduling of games and practice times;
24 assignment of coaches; provision of locker rooms; practice
25 and competitive facilities; and the provision of necessary
26 funds for teams of one sex.

27 Subd. 3. (1) Notwithstanding any other state law to
28 the contrary, in athletic programs operated by educational
29 institutions or public services and designed for
30 participants 12 years old or older or in the seventh grade
31 or above, it is not an unfair discriminatory practice ~~to~~
32 to restrict membership on an athletic team to participants
33 of one sex ~~if this restriction is necessary to provide~~

Girls only teams

~~1 members of each sex with an equal opportunity to~~
~~2 participate in the athletic program provided, if a~~
~~3 membership restriction on the basis of sex results in the~~
~~4 operation of two teams in the same sport which are~~
~~5 separated or substantially separated according to sex, the~~
~~6 two teams shall be operated in compliance with all the~~
~~7 provisions of clause (2) or whose overall athletic~~
~~8 opportunities have previously been limited.~~

9 (2) When an educational institution or a public
10 service provides athletic teams for children eleven years
11 old or younger or in the sixth grade or below, those teams
12 shall be operated without restrictions on the basis of sex,
13 except that when overall athletic opportunities for one sex
14 have previously been limited and there is a demonstrated
15 interest by members of that ^{girls} sex to participate on a team
16 restricted to members of that sex, the educational
17 institution or public service may provide a team restricted
18 to members of that sex.

19 ~~(2) to provide~~ (3) When two teams in the same sport
20 which are in fact separated or substantially separated
21 according to sex, if the two teams are shall be provided
22 with substantially equal budgets per participant, exclusive
23 of gate receipts and other revenues generated by that
24 sport, and in all other respects are shall be treated in a
25 substantially equal manner. ~~The two teams shall be~~
26 ~~operated separately only in those activities where~~
27 ~~separation is necessary to provide the members of each sex~~
28 ~~equal opportunity to participate in the athletic programs~~
29 However, nothing in this section shall be construed to
30 require the two teams to conduct combined practice sessions
31 or any other combined activities related to athletics.

32 (4) If two teams are provided in the same sport, one
33 of these teams may be restricted to members of a sex whose

can have girls only

*girls can
try out for
boys*

1 overall athletic opportunities have previously been
2 limited, and members of either sex shall be permitted to
3 try out for the other team.

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

*Same
Season
not required*

16 Subd. 5. The state board of education, after
17 consultation with the commissioner of human rights shall
18 promulgate rules in accordance with chapter 15 to implement
19 this section to prevent discrimination in elementary and
20 secondary school athletic programs operated by educational
21 institutions. The rules promulgated by the state board
22 pursuant to this section shall not require athletic
23 competition or tournaments for teams whose membership may
24 be restricted to members of a sex whose overall athletic
25 opportunities have previously been limited to be scheduled
26 in conjunction with the scheduling of athletic competition
27 or tournaments for teams whose membership is not so
28 restricted by this section. Any organization, association
29 or league entered into by ~~educational institutions~~
30 elementary or secondary schools or public services for the
31 purpose of promoting sports or adopting rules and
32 regulations for the conduct of athletic contests between
33 members shall ~~effective July 1, 1976~~ provide rules and

1 regulations and conduct its activities so as to permit its
2 members to comply fully with ~~subdivision 1 and section~~
3 ~~363.03, subdivisions 4 and 5~~ this section. The rules of
4 that organization, association or league may provide
5 separate seasons for athletic competition or tournaments in
6 a sport for teams whose membership may be restricted to
7 members of a sex whose overall athletic opportunities have
8 previously been limited from athletic competition or
9 tournaments established for teams in that same sport whose
10 membership is not so restricted by this section, and its
11 rules may prohibit a participating student from competing
12 on more than one school team in a given sport during a
13 single school year.

Can only
be on 1
team

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

26 Sec. 2. Minnesota Statutes 1978, Section 129.121, is
27 amended by adding a subdivision to read:

28 Subd. 5. For the purposes of section 471.705, the
29 Minnesota state high school league shall be deemed to be a
30 state agency required by law to transact business in
31 meetings open to the public.

32 Sec. 3. Minnesota Statutes 1978, Section 363.02,
33 Subdivision 3, is amended to read:

1 Subd. 3. [EDUCATION.] (a) It is not an unfair
2 discriminatory practice for a religious or denominational
3 institution to limit admission or give preference to
4 applicants of the same religion. The provisions of section
5 363.03, subdivision 5, relating to sex, shall not apply to
6 a private educational institution, or branch or level of a
7 private educational institution, in which students of only
8 one sex are permitted to enroll. Nothing in this chapter
9 shall be construed to require any educational institution
10 to provide any special service to any person because of the
11 disability of such person or to modify in any manner its
12 buildings, grounds, facilities, or admission procedures
13 because of the disability of any such person. Nothing in
14 this chapter shall prohibit an educational institution from
15 discriminating on the basis of academic qualifications or
16 achievements or requiring from applicant's information
17 which relates to academic qualifications or achievements.

18 (b) Notwithstanding any other provisions of this
19 chapter or any law to the contrary, it is not an unfair
20 discriminatory practice for an educational institution or a
21 public service to operate or sponsor separate athletic
22 teams and activities for members of each sex or to restrict
23 membership on an athletic team to participants of one sex,
24 if this separation or restriction meets the requirements of
25 section 126.21.

26 (c) The department of human rights shall investigate
27 all charges alleging sex discrimination in athletic
28 programs in educational institutions and public services
29 pursuant to the standards and requirements of section
30 126.21 and the procedures enumerated in chapter 363."

31 Further, delete the title and insert:

32 "A bill for an act
33 relating to education; providing equal opportunity

1 for members of both sexes to participate in
2 certain athletics; modifying the coverage and
3 terms of the current law providing for equal
4 opportunity in certain athletics; requiring the
5 state board of education after consultation with
6 the commissioner of human rights to promulgate
7 certain rules; providing for the rights of certain
8 parties in the case of certain sex discrimination
9 charges; requiring the Minnesota state high school
10 league to transact business in an open meeting;
11 amending Minnesota Statutes 1978, Sections 126.21;
12 129.121, by adding a subdivision; and 363.02,
13 Subdivision 3."

Liz

MINNESOTA HUMANITIES COMMISSION
LL 85 METRO SQUARE
ST. PAUL, MINNESOTA 55101

1. APPLICANT League of Women Voters of Minnesota DATE March 14, 1980
ADDRESS 555 Wabasha, St. Paul, MN 55102 TELEPHONE 224-5445
2. FISCAL AGENT Sally Sawyer, Executive Director, League of Women Voters of Minnesota
ADDRESS 555 Wabasha, St. Paul, MN 55102 TELEPHONE 224-5445
3. PROJECT TITLE Women and Sport: Past, Present, and Future
DATES AND LOCATIONS May 21, 1980. St. Paul YWCA
5 p.m. to 9:30 p.m.

4. DESCRIBE THE PROJECT AND HOW IT INVOLVES THE HUMANITIES:

- a. State the purpose of the project.
- b. Describe the topic or issue considered.
- c. Indicate the humanities disciplines and how they relate to the program.
- d. Describe program format and how public participation will be developed.

Since the days of the ancient Greeks, sport has been an essential aspect of the complete life. Early philosophers spoke of the necessity of maintaining a sound mind in a sound body. Much Greek art, including lyric poetry, sculpture, painting, and decorative pottery celebrates both men and women in athletic contests. To some, athletics were almost a secular religion. And so, some feel, it is in our own day. The United States has seen a recent growth of interest in physical fitness and a parallel growth of the women's movement. These three points: the importance of athletics in our culture; the new emphasis on fitness; and issues of equality between the sexes, raise many questions. What role does athletics play in achieving success in life? Is it a myth that participation in sports instills in individuals a competitive edge that can drive them to a success in other areas? Does playing on a school or park recreation team promote a sense of cooperation among participants that transfers to other efforts later on? Should physical fitness be a more important focus than organized sports? How do all these questions relate to equality issues for women? The League of Women Voters of Minnesota and the St. Paul YWCA plan a program called: "Women and Sport: Past, Present and Future" which will look at the past, present, and future involvement of women in physical exercise and organized athletics.

This subject relates to the humanities in several ways. To understand the present, it is often instructive to turn to the past. Therefore, the program will examine the participation of women in athletics historically to see how and why women were involved in games and sports. Several philosophies explain the importance of participation in sports: the idea of the competition on the playing fields at Eton has for centuries prepared youth, male of course, of England to win battles and keep the sun from setting on the Empire; the wholistic argument that the mind and the body are interrelated and must be developed together for peak performance, whether mental or physical; the philosophy that team play in sports leads to successful team play throughout life. The alternative philosophies will also be presented for balance, which contend that emphasis not be on competition but on lifetime sports, physical fitness, and individual activities. We will examine the differing points of view on athletics with the help of humanists in the areas of philosophy, history, and literature and look at the influence of the culture which has kept women more in the role of spectator than participant.

4. DESCRIPTION OF THE PROJECT (continued):

A description of the program format follows:

The Classical Perspective: Dr. Jeremiah Reedy, Classics Professor at Macalester College, will set the stage by raising some of the value issues in sport. Have athletics become a religion? Should women seek the same values in sport which men have pursued?

The Competitive Edge and Lifetime Fitness (a panel discussion): Dr. Vivan Barfield, Director of Women's Intercollegiate Athletics at the University of Minnesota, will present the viewpoint that competition in sports for women assists them in later life. Dr. David Wee, Professor of English at St. Olaf College, will emphasize physical fitness and lifetime sports for people of all ages. Dr. Wee coached the first women's cross country team at St. Olaf and is a runner himself by avocation. Dr. Margaret Silberberg will present the child psychologist's view of competition and teamwork; participation vs. spectator roles; and the physiological difference between boys and girls, both before and after age 12. The panelists' brief presentations will be followed by interaction among themselves and with the audience. During a buffet supper we will encourage participants to continue small group discussions of the issues raised by Dr. Reedy and the panel: competition emphasis vs. fitness; team sports vs. individual or lifetime sports; spectator vs. participation values; physiological differences and their significance or lack thereof for sport.

The Historical Perspective: Our dinner and keynote speaker will be Dr. Gretchen Kreuter. She will give an historical overview of women and sport, illustrated by slides.

The Philosophical Questions of Equality (a panel discussion): Linda Ojala, a lawyer with the Minnesota Civil Liberties Union, will present the philosophical stance that separate is never equal. JoAnn Andregg, Assistant to the Athletic Director of St. Thomas and coach of the tennis and volleyball teams, will address the philosophical issues from the perspective of the practicing coach. Philosopher Naomi Shieman will address the influence of the culture and history on what we define as "equal."

The Public Policy Issue: Diane Johnson, Assistant to the Commissioner of the Human Rights Department, will address the public policy questions relating to women and sport, with reference to present Minnesota law and to federal law, Title IX of the Education Amendments of 1972.

The Forum will conclude with an opportunity for interaction among all participants: speakers and audience.

PUBLIC ISSUE (if applicable):

The public policy issue of concern to parents, teachers, coaches, and legislators, as well as to young people and members of the general public, is that of how women can best receive equal treatment as they participate in athletics in rapidly increasing numbers. The issue is complex. What constitutes equality, not only with the women athletes but also for men? How can equal programs be set up? Are catch-up programs fair to both sexes? Can "separate" ever be "equal"? Can such a concept be legally determined?

This public policy issue is becoming increasingly complicated in an era of inflation and declining enrollment in many educational institutions, with resulting budget cuts. At the same time, the concern for justice is bringing new pressures on institutions and public policy makers to improve opportunities for women.



STATE OF MINNESOTA
DEPARTMENT OF HUMAN RIGHTS

240 BREMER BUILDING • (612) 296-5663 • SAINT PAUL, MINNESOTA 55101

Leg

*You have the rules, don't you? Let's
plan to go -
Jeanette*

FROM: Marilyn McClure, Commissioner, Department of Human Rights
Howard B. Casmer, Commissioner, Department of Education
SUBJECT: *James B. Casmer* *Marilyn E. McClure*
Rules Relating to Sex Discrimination in Athletic Programs
DATE: February 14, 1980

received 2/26/80

As you are aware, the Departments of Human Rights and Education were requested last summer by legislative leadership and the Governor to collaborate in drafting a proposed rule explicating the central philosophy found in Minnesota Statutes 126.21. The two Departments have been at work on this project for some period of time and recently shared draft materials with key legislative leadership and the Office of the Governor. Those materials are currently under study by those respective parties and the Departments anticipate being responsive to whatever input may be forthcoming.

Thurs The next step in the process to which the two Departments intend to move is to elicit input from various organizations which have a significant interest in the subject of equity in athletics. As a representative of such an organization, we are providing you with a copy of the draft materials as well as inviting you to attend an informational briefing and discussion to occur on March 13th in the Prentice Hall Room of the Holiday Inn, 161 St. Anthony Avenue, St. Paul, from 9:00 a.m. to 12:00 noon. Your attendance at this meeting is genuinely sought and you may be assured that we will be sincerely interested in your reactions to the proposed rules as they have evolved.

ngr

att.

House, Senate agree on athletic guidelines for Minnesota youths


Associated Press

House and Senate conferees broke a 10-month deadlock and reached agreement late Friday on a bill that spells out new guidelines for equal athletic opportunities for Minnesota youngsters.

schools.

Johnson said the three key elements in the compromise bill are:

■ High school girls would be permitted to try out for boys' teams but boys may not try out for girls' teams.



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DRAFT MATERIALS

Monday Aug 7.

January 15, 1980

→ Don possible to measure compliance -

RULES RELATING TO SEX DISCRIMINATION IN ATHLETIC PROGRAMS

Rules as Proposed

12 MCAR § 1.201 AUTHORITY, SCOPE, AND PURPOSE. These rules are promulgated pursuant to Minn. Stat. § 363.05, subd. 1 (8) (1978) to implement and enforce Minn. Stat. Sections 363.03, subd. 5 and 126.21 (1978) relating to equal opportunity in athletic programs. These rules apply to all educational institutions, public or private, that operate athletic programs for grades 7 through 12 or any combination thereof with the exception of 12 MCAR § 1.203 which applies to grades Kindergarten through 6.

12 MCAR § 1.202 DEFINITIONS. All terms defined in Minn. Stat. § 363.01 shall have the same meanings therein ascribed to them for the purpose of these rules. All the words below shall have the meaning herein ascribed to them:

- A. "Athletic Program" - means all interscholastic and intramural sports offered to students by an educational institution.
- B. "Team" - means a group of two or more students participating in interscholastic or intramural competition or practice for such competition under the auspices of an athletic program.
- C. "Individual Sport" - means a sport whose goal and objectives are achieved by an individual participating and competing against another individual or individuals at the same time and in the same location; examples of individual sports are golf, tennis, skiing, cross-country running, swimming and diving, wrestling, fencing, figure skating, track and field, gymnastics, badminton, archery, and curling.

- D. "Team Sport" - means a sport whose goal and objectives are achieved by individuals participating as a unit and competing against other similar units at the same time and in the same location; examples of team sports are hockey, basketball, football, soccer, baseball, softball, volleyball, field hockey, lacrosse, and water polo.
- E. "An Opportunity for Males to Participate on a Team" - exists when 20% or more of those students who are participants on a team in a sport are males.
- F. "An Opportunity for Females to Participate on a Team" - exists when 20% or more of those students who are participants on a team in a sport are females.
- G. "Participation Rate for a Particular Sex in the Interscholastic Athletic Program" - means the ratio of the number of participants of that sex in the program to the number of students of that sex in the student body.
- H. "Participation Rate for a Particular Sex in the Intramural Athletic Program" - means the ratio of the number of participants of that sex in the program to the number of students of that sex in the student body.

12 MCAR § 1.203 ATHLETIC PROGRAM. KINDERGARTEN THROUGH 6th GRADE.

- A. Educational institutions shall conduct all athletic programs offered for grades K through 6 without separation based on sex.
- B. Each educational institution shall provide locker, shower, and toilet facilities for both sexes, and may provide separate, comparable facilities for each sex.

12 MCAR § 1.204 SEPARATION BY TEAMS.

- A. An educational institution may provide two teams in the same sport which are separated or substantially separated according to sex if an opportunity for females to participate on a team in that sport would not exist if only one team were provided.
- B. Females shall be permitted to try out and participate on any team in any sport. This rule does not prohibit any educational institution from making participation on a team in a sport dependent upon a demonstrated level of skill and ability.
- C. Males shall not be permitted to try out or participate on any team established for females.

*Controversial
Dy of H.R.
rule*

12 MCAR §1.205 SEPARATE TEAMS IN TEAM SPORTS. In team sports in which two separate teams have been provided pursuant to MCAR §1.204A, the teams may be operated separately for competition and for the purpose of developing the required skills and expertise necessary to participate as a team in an interscholastic or intramural program.

12 MCAR §1.206 SEPARATE TEAMS IN INDIVIDUAL SPORTS. In individual sports where two teams are provided pursuant to MCAR §1.204A, participants of the teams shall, when feasible and to the extent possible, practice and drill together without separation on the basis of sex. (facilities. Soccer some season -

12 MCAR §1.207 DUTIES OF EDUCATIONAL INSTITUTIONS, PENALTY FOR FAILURE TO COMPLY.

- A. An educational institution shall provide members of each sex an equal opportunity to participate in its athletic program.
- B. An educational institution shall provide equal opportunity for males and females to participate in its intramural and interscholastic athletic programs by assuring that:

- (a) an annual survey of the student body is conducted to assure that the sports selected for and offered in an interscholastic and intramural athletic program accommodate the interests and abilities of members of both sexes. The results of the survey shall be preserved for a period of two years by an educational institution;

Sport ball &
Volleyball =

- (b) the number of opportunities for females to participate on teams is equal to the number of opportunities for males to participate on teams in each season in both intramural and interscholastic programs;
- (c) the equipment, supplies, and uniforms for each sport are adequate for both sexes;
- (d) the locker rooms, practice, and competitive facilities are adequate for both sexes;
- (e) the medical services are comparable for both sexes;
- (f) the skill level of officials used at competitive events and games is comparable for both sexes.

C. When two teams in the same sport are provided pursuant to 12 MCAR §1.204A, the two teams shall be treated in a substantially equal manner. An educational institution shall accomplish this by providing that:

- (a) equipment, supplies, and uniforms for each team are substantially equal;
- (b) the games and competitive events for each team are scheduled so that the number of opportunities to perform before an audience are equal;
- (c) the travel and per diem allowances for each team are substantially equal;
- (d) the ratio of participating athletes per coach for each team is substantially equal;

- (e) the criteria used to assign and compensate coaches for each team are the same;
- (f) the locker rooms, practice, and competitive facilities for each team are comparable;
- (g) the medical services for each team are comparable;
- (h) the publicity for each team is comparable;
- (i) the practice sessions and competitive events scheduled for each team are at equally desirable time periods;
- (j) the skill level of officials used for each team at competitive contests and games is comparable;
- (k) the expenditure per participant on each team is substantially equal. Per participant expenditure will be determined from general school funds and will not include gate receipts and other revenues generated by that sport. When an item or items of expense are not separated, the expense shall be pro-rated to the teams according to the number of participants.

D. In any year in which the participation rate of one sex in either an interscholastic or intramural athletic program provided by an educational institution is less than 75% of the participation rate of the other sex, the educational institution shall attempt corrective action to remedy the imbalance in participation. Corrective action may include any or all of the following:

- (a) recruitment efforts to increase the participation of members of the under-represented sex in the

Less willing for
70 %
65 %

athletic program;

- (b) revision of the athletic program to include sports which accommodate the interests of members of the under-represented sex;
- (c) promotional and educational efforts to enhance an awareness of the value of participation in athletics for members of the under-represented sex;
- (d) developmental efforts to build athletic skills among members of the under-represented sex.

12 MCAR § 1.208 ORGANIZATION, ASSOCIATION, OR LEAGUE. ~~An organization, association,~~ or league entered into by an educational institution for the purpose of promoting sports or adopting rules and regulations for the conduct of athletic contests among students shall:

- A. Establish rules, regulations, or policies which do not inhibit or prevent its member schools from complying with these rules;
- B. Establish rules, regulations, or policies which do not deny females an equal opportunity to participate in athletic programs;
- C. Provide and conduct contests and tournaments in each sport for males and females in the same season except in any sport in which a lack of facilities or other conditions make it impossible for all students to participate in the same season. In such a sport, the organization association, or league may then conduct competitive events and tournaments for that sport in two seasons provided that:
 - (a) the competitive events and tournaments are conducted in two seasons without sex designation in that sport;

- (b) an educational institution may sponsor males' or females' teams in either one or both seasons;
- (c) the competitive events and tournaments provided in either season are open to both males' and females' teams with comparable competitive events provided for each sex.

12 MCAR § 1.209 COMPLIANCE REPORTS AND SUBMISSION OF DATA. Annually, on or before November 15, each educational institution shall submit to the commissioner of education an athletic program report containing information about both intramural and interscholastic athletics provided by the institution. The commissioner of education shall determine the format and content of this report.

12 MCAR § 1.210 DUTIES OF THE COMMISSIONERS OF EDUCATION AND HUMAN RIGHTS. Upon receipt of an educational institution's athletic program report, the commissioner of education shall:

- A. Evaluate the data contained in the report.
- B. Forward the report of any educational institution which appears to be in violation of Minn. Stat. § § 126.21 or 363.05 (1978) to the commissioner of human rights pursuant to Minn. Stat. § 124.15, subd. 2.

12 MCAR § 1.211 COMPLAINTS.

- A. Any person who feels aggrieved by a practice prohibited by Minn. Stat. § § 126.21 or 363.05 (1978) regarding participation

within an athletic program, as described in these rules, may file a charge of discrimination with the commissioner of human rights pursuant to Minn. Stat. § 363.06, subd. 1.

- B. The commissioner of human rights shall consider any report received from the commissioner of education pursuant to 12 MCAR § 1.209 in determining whether probable cause exists to credit an allegation of an unfair discriminatory practice relating to participation within an athletic program as described in these rules.