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June 18, 2012

MEMORANDUM

TO: Legislative Education Study Committee

FR: David Harrell

**RE: STAFF BRIEF: *SCHOOL ATHLETICS EQUITY ACT* REPORTING
GUIDELINES: UPDATE**

Introduction

As discussed more fully under "Background," below, during the 2011 interim the Legislative Education Study Committee (LESC) heard two presentations on the *School Athletics Equity Act* (SAEA). In response to those presentations and to the recommendations of a work group that the LESL formed to examine the reporting requirements in the act, the LESL adopted a motion (Attachment 1) to create another work group to draft reporting guidelines to help schools comply with the requirements of the SAEA. One provision in the motion was that the work group make a status report to the LESL at the first meeting of the 2012 interim.

One of the points raised during the 2011 interim was a memorandum of understanding (2010) between the New Mexico Activities Association (NMAA) and the Secretary-designate of Public Education that outlined the dual reporting process employed during 2011, a process further explained in an August 2010 memo from the Secretary-designate to district superintendents, high school principals, middle school principals, and directors of charter schools. That is, through an initiative of the NMAA, member schools filed their 2011 data through the association's data system, and non-member schools filed with the Public Education Department (PED). While this dual reporting method seemed to suffice for 2011, there was some concern over the potential for inconsistent reporting going forward, as well as the costs that the NMAA had incurred in adapting the association's data reporting system.

As part of the presentation to the committee on this topic, this staff report will review the meetings and activities of the drafting work group thus far and provide some background to the efforts. In addition, a representative of the Southwest Women's Law Center (SWLC), the organization charged in the motion with coordinating the project, will apprise the committee on the scope and direction of the work through the upcoming summer and fall of 2012.

Work of the LESC Drafting Group

The work group has met three times, in January, February, and May 2012 (see Attachment 2 for the membership).

- At the meeting on January 4, members discussed the purpose and scope of the reporting guidelines, emphasizing, among other points, that the document should address only the state law, not the federal Title IX. Members also agreed that the reporting guidelines should be a fluid, rather than fixed, document that could be amended or updated as needed; and they outlined the contents of the reporting manual.
- At the meeting on February 22, members agreed on drafting assignments per the outline adopted in January. For each chapter, one entity or person was identified as the lead and others were identified as participants.
- The meeting on May 30 was intended to review members' progress on their respective assignments and to decide on next steps. However, between the meetings in February and May, the PED made notable changes in the reporting method that resolved one of the major concerns raised during the 2011 interim and that affected the subsequent work of the drafting group.
 - In reporting instructions disseminated to schools in spring 2012, PED announced:
 - that the department had developed an electronic reporting system to replace the paper reports filed with PED in 2011; and
 - that, beginning with the August 2012 report, all schools – including NMAA-member schools – would report directly to PED.
 - Given these developments, PED representatives on the work group questioned whether a reporting manual of the sort envisioned in the LESC motion was still necessary.
 - The consensus of members at the May meeting was that, while the new PED system will standardize and enhance the reporting process, it is unlikely to resolve the wide variety of questions of interpretation that came to the attention of the LESC in 2011. Therefore, members agreed to use the PED instructions as the base document and to supplement it with questions and answers, illustrative scenarios, and other explanatory material to address questions and issues raised by school officials and others.
 - Other points of agreement during the May meeting were that the data collected and displayed should be in a format that parents can readily understand; and that the final

document should offer some guidance on interpreting the data and understanding what the data mean.

Background

Review of the SAEA in 2011

At the October 2011 interim meeting, the LESC heard a presentation by committee staff and representatives of the NMAA and the SWLC about the reporting requirements under the SAEA.

- Committee staff reviewed the provisions in federal and state law, the implementation of the SAEA, and concerns that had arisen among districts and schools.
- The NMAA representative reviewed the role that the NMAA had taken in the implementation of the SAEA, including adapting its MVP Database so that member schools could file their reports.
- The SWLC representative reviewed the state law within the context of federal Title IX (see “Federal Law and Regulations,” below).

As explained more fully under “State Law,” below, the SAEA requires two categories of data reporting, phased in over a period of two years:

- the first, which was due by August 31, 2011, covers enrollment, participation, and staffing data; and
- the second, which will be due by August 31, 2012, covers funding sources, expenses, and benefits and services.

As a result of the presentation in October, the LESC became concerned about the extensive nature of these reporting requirements and the challenges that school officials faced in complying with the first phase and the challenges they will face in complying with the second phase, concerns that led to the formation of a work group to review the law.

On November 1, 2011, this work group held its first – and only – meeting. During this meeting, members reviewed the information from the October LESC meeting, the provisions of the federal Title IX and related regulations, provisions in similar laws in other states, and a list of amendments that had been suggested by the NMAA, the SWLC, the PED, or the New Mexico Association of School Business Officials.

As the work group discussion proceeded, members raised a wide variety of points and concerns, among them:

- one purpose of the SAEA is to reinforce the value of athletics in schools, encouraging athletes to be serious students and to ensure their safety; and another is to provide transparency, to illustrate the practices at schools in order to prevent complaints or lawsuits;
- little is known about the extent to which noncompliance with Title IX is an issue in schools throughout New Mexico partly because, according to PED, the department is never involved in any complaints that may be filed; however, some members were aware

of problems in particular areas and others noted that the participation rates for girls are generally lower than those for boys;

- the extensive reporting requirements, applicable to all schools regardless of their compliance with Title IX, seem to create the presumption of guilt;
- the SAEA provides no guidance for schools required to report and no enforcement authority or measures for schools not complying with the requirements;
- in the absence of state-level guidance, schools, districts, and their attorneys are interpreting the requirements in different ways;
- the use of two reporting systems – one for NMAA member schools through the association’s software program and the other for non-NMAA members schools through forms developed by PED – results in inequitable and inconsistent reporting; and
- the reporting requirements do not accommodate unusual circumstances, such as the case of several small schools pooling students to create a single football team or one coach working half-time at each of two schools.

At the November 2011 interim meeting of the LESC, the work group presented its recommendations, which fell into two categories:

- a number of specific amendments to the SAEA, which were incorporated into LESC-endorsed legislation enacted in 2012 (Laws 2012, Chapter 24) and which reduced the reporting burden on schools; and
- the creation of a smaller work group to draft reporting guidelines for schools.

State Law

As amended in 2012, the SAEA requires that each public school that has an athletics program for grades 7 through 12 “operate its program in a manner that does not discriminate against students or staff on the basis of gender.” The act further prescribes two categories of reporting requirements, implemented through a two-year phase-in that began with the first category of data to be reported by August 31, 2011.

- In this first category, the law requires schools to report, and PED to collect, the following data:
 - total school enrollment;
 - student enrollment by gender;
 - total number of students participating in athletics;
 - athletics participation by gender;
 - the number of boys’ teams and girls’ teams by sport and by competition level;
 - the name and gender of each public school’s athletic director and other athletic program staff;
 - the name, gender, job title, and employment status of each team’s coach;
 - the coach-to-athlete ratio for each team; and
 - the stipend or other compensation paid to coaches of boys’ teams and of girls’ teams.
- In the second category, with a first deadline of August 31, 2012, the law requires schools to report, and PED to collect, the following data for athletics programs in grades 9 through 12 only:

- an account of the funding sources, including booster clubs, concessions, gate receipts and cash or in-kind donations, and the programs to which those funds are allocated;
- any capital outlay expenditures for each school’s athletic programs;
- the expenditures for each program, including such items as travel, meals, lodging, equipment, banquets, publicity, and insurance;
- replacement schedules for uniforms;
- practice and game schedules; and
- locker rooms, weight rooms, and other facilities.

Among its other provisions, the act:

- requires each public school to:
 - make its data available to the public;
 - maintain its data and related materials for at least three years; and
 - submit an assurance of compliance with Title IX to its local school board or governing body, with a copy to PED; and
- requires PED to:
 - publish each school’s data, as well as a list of schools that did not submit fully completed data; and
 - beginning December 1, 2011, report annually to the Legislature and the Governor, including “recommendations on how to increase gender equity in athletics in public schools.” The 2011 report is posted on the PED webpage.

Federal Law and Regulations

The reporting requirements in the New Mexico SAEA correspond to federal law and regulations. Applicable to secondary and postsecondary schools alike, the federal Title IX education amendments of 1972 prohibit discrimination on the basis of sex:

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

Although the law does contain a number of exceptions – institutions controlled by religious organizations, social fraternities and sororities, and Boys and Girls State, to name a few – it seeks to ensure, among other things, that girls’ athletic programs are treated equitably with boys’ programs.

The federal regulations make these requirements and expectations more explicit. To illustrate, the regulations require:

- each recipient of federal funds (which includes public schools) to perform a self-evaluation of policies and practices and to modify any that seem out of compliance with law or regulation;

- every application for federal funds to be accompanied by an assurance that the educational program or activity operated by the applicant or recipient is operated in compliance with law and regulation;
- each recipient to designate at least one employee to coordinate its efforts toward compliance; and
- each recipient to consider a number of factors in determining whether the programs are in compliance, factors that are reflected in the New Mexico SAEA.

Presenter

For this presentation, Pamelya P. Herndon, JD, Executive Director of the SWLC, will apprise the committee on the scope and direction of the work to supplement the PED reporting instructions through the upcoming summer and fall of 2012.