

STATE OF NEW MEXICO
LEGISLATIVE EDUCATION STUDY COMMITTEE

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State Capitol North, 325 Don Gaspar, Suite 200
Santa Fe, New Mexico 87501
Phone: (505) 986-4591 Fax: (505) 986-4338
<http://www.nmlegis.gov/lcs/lesc/lescdefault.aspx>

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October 12, 2011 (*Revised October 24, 2011*)

MEMORANDUM

TO: Legislative Education Study Committee

FR: David Harrell

RE: **TITLE IX: *SCHOOL ATHLETICS EQUITY ACT***

Introduction

Enacted in 2009, the *School Athletics Equity Act* (CS/HB 432, or Laws 2009 Chapter 178) requires two phases of reports from public schools, for grades 7 to 12, to ensure that their athletic programs comply with provisions of federal and state laws that require the equitable treatment and support of boys' programs and girls' programs (see Attachment 1). The first of the two phases was due August 31, 2011; and the second will be due August 31, 2012. As these reports were being prepared and submitted, a number of questions and concerns arose; therefore, the Legislative Education Study Committee (LESC) requested that this topic be placed on the 2011 interim workplan.

This staff report will review:

- the requirements of federal law and regulation;
- the requirements of New Mexico law and regulation;
- the implementation of state requirements;
- concerns among districts and schools; and
- provisions in similar laws in other states.

In addition, two presenters will address the practical and legal aspects of the reporting requirements in more detail.

The Requirements of Federal Law and Regulation

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:
 - whether the interests and abilities of both sexes are accommodated;
 - the provision of equipment and supplies;
 - game and practice schedules;
 - travel and per diem allowance;
 - opportunities for coaching and academic tutoring;
 - assignment and compensation of coaches and tutors;
 - locker rooms and facilities for practice and competition;
 - medical and training facilities;
 - housing and dining facilities; and
 - publicity.

The Requirements of New Mexico Law and Regulation

The New Mexico *School Athletics Equity Act* mirrors a number of these federal requirements. Among other provisions, this law 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.” As noted above, the act prescribes two phases of reporting requirements.

- In the first phase, with a deadline of August 31, 2011, the law requires the department to collect, and schools to report, 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;
 - the name, gender, job title, and employment status of each team's coach and other team personnel;
 - the coach-to-athlete and staff-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 phase, with a deadline of August 31, 2012, the law requires the department to collect, and schools to report, the following data:
 - an account of the funding sources, including booster clubs, concessions, gate receipts and cash or in-kind donations, and the teams to which those funds are allocated;
 - any capital outlay expenditures for each school's athletic programs;
 - the expenditures for each program;
 - the expenditures for individual teams, including such items as travel, meals, lodging, equipment, banquets, publicity, and insurance;
 - replacement schedules for equipment, uniforms, and supplies;
 - practice and game schedules;
 - access to locker rooms, weight rooms, and other facilities; and
 - assistance in obtaining scholarships.

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 the Public Education Department (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 Implementation of State Requirements

Although the *School Athletics Equity Act* places the responsibility of state-level implementation on PED, another state-level organization, the New Mexico Activities Association (NMAA), has taken the initiative to assist its member schools in their compliance with state requirements. The joint efforts of these two agencies have resulted in a number of steps toward implementation of the law.

- In November 2009, PED promulgated a rule whose purpose is “to prohibit discrimination on the basis of gender in interscholastic sports.” This rule reflects the reporting requirements in law; and, like federal regulations, it requires each public school to “undertake self-evaluation and continuing reappraisal of student needs.”
- In August 2010, the Executive Director of the NMAA and the Secretary-designate of Public Education signed a memorandum of understanding (MOU) that reviews the requirements and outlines the responsibilities of both PED and the NMAA (see Attachment 2).
- Also in August 2010, the Secretary-designate sent a memorandum to district superintendents, high school principals, middle school principals, and directors of charter schools (Attachment 3) informing them of the requirements and outlining two reporting processes: one for schools that are members of the NMAA and one for those that are not. This memorandum also indicated that additional reporting instructions would be sent by July 2011.
- In June 2011, as a follow-up to the August 2010 memorandum, PED sent detailed reporting instructions for the two groups of schools noted above, adding that a new form will be developed for school year 2011-2012 and that NMAA-member schools will continue reporting through the NMAA data system.
- In addition, PED has made available on its website, in a link to the School Family and Support Bureau, the MOU, the August 2010 memo, the compliance assurance form (Attachment 4), and the Athletics Equity Act Data Form (Attachment 5). The department has also begun assembling the data that have been reported in anticipation of the report due in December.

While PED has been engaged in these activities, the NMAA has so far assumed the greater state-level role in the reporting process even though the association is not mentioned in either state law or PED regulation. The presenter from NMAA will explain these arrangements and processes in more detail, but it should be noted here that, in assuming these responsibilities, the NMAA incurred a significant financial impact to enhance its reporting software and database and that it is anticipating additional expenses to include financial data from athletic programs in grades 7 and 8. Also, the NMAA is already preparing to receive the financial data that will be required in August 2012; and the format comprises nearly 40 pages of data fields even before any data have been entered.

Concerns Among Districts and Schools

As the preceding material suggests, the reporting requirements under the *School Athletics Equity Act* are significant and extensive. According to the NMAA, the responsibility for the first phase of reporting has fallen more upon school business officials (SBOs) and their staff than upon superintendents and athletic directors or coaches, although much of the data that the SBOs report likely comes from the athletic directors. The President of the Association of School Business Officials (ASBO) has reported some of the concerns among school districts and schools:

- The act is widely regarded as an unfunded mandate in that it requires additional reporting but provides no additional resources. Some districts do not have athletic directors or

athletics secretaries, and even those that do have found their time and resources stretched thin; and coaches involved in reporting have spent more time on that function and less on coaching.

- One of the greatest points of concern seems to be booster clubs.
 - Because booster clubs are unaccustomed to the sort of requirements imposed by the act, school officials have found it challenging to explain the change in circumstances from “just supporting our team” to detailed reporting of the various forms of support.
 - If they are 501(c) (3) organizations, ASBO says, schools cannot ask to see the booster clubs’ books but they can ask for reports. Under those conditions, SBOs cannot validate the data and, therefore, may be out of compliance without realizing it.
 - Similarly, SBOs are not always aware of the “goody bags,” team cook-outs, and other activities that have never been reported in the past but that, in some cases, must be reported now.
 - “Specific direction from Santa Fe,” ASBO reports, “would help Districts manage these organizations and be more confident in their reports.”
- Another point of concern has been the interpretation of the requirements. For example, while schools must report the employment status of coaches – whether full-time, part-time, contractual, or seasonal – they have received no instructions on how to make these determinations. As a result, these data are likely to be reported differently from school to school.
- Finally, schools and districts have also expressed concerns about the reporting process itself. As noted above, schools that are members of the NMAA may use the association’s enhanced software program; however, non-member schools, as ASBO notes, must report via a PED document, resulting in “significant differences simply due to the different systems.”

Provisions in Similar Laws in Other States

At least four other states – Florida, Georgia, Kentucky, and Minnesota – have enacted legislation similar to New Mexico’s, one (Minnesota) as early as 1975. In some cases, the provisions are similar to New Mexico’s, and in others they are different. A detailed analysis is beyond the scope of this report, but a few highlights may illustrate the point.

- Like the New Mexico law:
 - laws in Georgia, Florida, and Minnesota identify factors like those in federal requirements for considering whether equal athletic opportunity for members of both genders has been provided;
 - the law in Georgia requires an annual report from the state education department;
 - the law in Florida requires public schools to submit data necessary to determine compliance, in a format and according to a schedule determined by the Commissioner of Education; and
 - the Florida law requires public schools and the Florida College System institutions, as well as the state education department, to develop and implement methods and strategies to increase the participation of students of a particular race, ethnicity,

national origin, gender, disability, or marital status in programs or courses in which they have traditionally been underrepresented.

- Unlike the New Mexico law:
 - the Georgia law requires each school system to conduct a student survey to determine whether there is sufficient interest for a particular sport;
 - the Minnesota law requires that girls' teams and boys' teams in the same sport "be provided with substantially equal budgets per participant, exclusive of gate receipts and other revenues generated by that sport" (emphasis added);
 - laws in Florida, Kentucky, and Minnesota apply to broader grade ranges:
 - the Florida law applies to students in grades K-20;
 - the Kentucky law applies to public and private preschools, elementary schools, and secondary schools; and
 - the Minnesota law distinguishes between provisions for students in grade 7 and above and grade 6 and below; and
 - laws in Florida, Georgia, and Kentucky provide penalties for noncompliance:
 - in cases of willful noncompliance, Georgia law allows the State Board of Education to prohibit a school's team or teams from participating in interscholastic postseason athletic contests; and, if the team continues to participate in those contests, to withhold state funds "in an amount that the state board determines is sufficient to secure the local school system's compliance with this Code section." Once the school system is in compliance, however, the withheld funds shall be allotted;
 - Florida law requires the State Board of Education to declare a noncompliant school district ineligible for competitive state grants or to withhold enough general revenue to obtain compliance; and
 - Kentucky law allows a state agency that extends state financial assistance to any education program or activity to terminate the assistance in cases of noncompliance; and it allows a recipient whose assistance has been terminated to seek a judicial review.

Presenters

For this presentation:

- Ms. Sally Marquez, Assistant Executive Director, New Mexico Activities Association, will explain the NMAA's role in the reporting process, identify any issues or problems encountered, and suggest amendments that might be considered; and
- Ms. Dorene A. Kuffer, Legal Director, Southwest Women's Law Center, will address the legal context of the reporting requirements and New Mexico's law in the national context.

ARTICLE 31
School Athletics Equity

Section	
22-31-1	Short title.
22-31-2	Applicability; nondiscrimination.
22-31-3	Data reporting.
22-31-4	Disclosure to students and public.
22-31-5	Assurance of compliance.
22-31-6	Report to governor and legislature.

22-31-1. Short title.

This act [22-31-1 through 22-31-6 NMSA 1978] may be cited as the "School Athletics Equity Act".

History: Laws 2009, ch. 178 , § 1.

Effective dates. — Laws 2009, ch. 178 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

22-31-2. Applicability; nondiscrimination.

The School Athletics Equity Act applies to each public school that has an athletics program for grades seven through twelve. Each public school shall operate its program in a manner that does not discriminate against students or staff on the basis of gender.

History: Laws 2009, ch. 178, § 2.

Effective dates. — Laws 2009, ch. 178 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

22-31-3. Data reporting.

The department shall collect annual data from public schools on their athletics programs. Each public school shall collect and submit the prior-year data required in this section in a format required by the department. The data submitted shall include:

- A. by August 31, 2011, the following information pertaining to enrollment:
 - (1) the total enrollment in each public school as an average of enrollment at the eightieth and one hundred twentieth days of the school year;
 - (2) student enrollment by gender;
 - (3) total number of students participating in athletics;
 - (4) athletics participation by gender; and
 - (5) the number of boys' teams and girls' teams by sport and by competition level;
- B. by August 31, 2011, the following information pertaining to athletic directors, coaches and other school personnel:
 - (1) the name and gender of each public school's athletic director;
 - (2) the name of each team's coaches and other team personnel, with their gender, job title and employment status, such as full-time, part-time, contract or seasonal, specified;
 - (3) the coach-to-athlete and staff-to-athlete ratio for each team; and

(4) the stipend or other compensation for coaching paid to coaches of boys' teams and to coaches of girls' teams for each public school;

C. by August 31, 2012, an accounting of the funding sources that are used to support the school's athletics programs and to which teams those funds are allocated; funding sources include state funding, federal funding, fundraising or booster clubs, game and concession receipts, gate receipts, cash or in-kind donations, grants and any other source;

D. by August 31, 2012, the following information regarding expenses, including:

- (1) any capital outlay expenditures for each public school's athletics programs;
- (2) the expenditures for each public school's athletics programs; and
- (3) the expenditures for individual teams, including travel expenses such as transportation, meal allowances and overnight accommodations; equipment; uniforms; facilities; facilities improvements; publicity expenses; awards; banquets; insurance; and any other expenses incurred by each team; and

E. by August 31, 2012, a statement of benefits and services to each team, including:

- (1) replacement schedules for equipment, uniforms and supplies;
- (2) practice and game schedules;
- (3) access to locker rooms, weight rooms and practice, competitive and training facilities; and
- (4) assistance in obtaining scholarships.

History: Laws 2009, ch. 178, § 3.

Effective dates. — Laws 2009, ch. 178 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

22-31-4. Disclosure to students and public.

A. Each public school shall make its data available to the public, including all materials relied upon to compile the data. Each public school shall inform all students at the public school of their right to review the data.

B. The department shall publish the following information:

- (1) each public school's data; and
- (2) a list of public schools that did not submit fully completed data.

C. Each public school shall maintain its data and all materials relied upon to complete the data for at least three years. Each public school shall publish its data in a newspaper of general circulation in the state or make the data available on a publicly accessible web site.

History: Laws 2009, ch. 178, § 4.

Effective dates. — Laws 2009, ch. 178 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

22-31-5. Assurance of compliance.

A. Each public school shall submit an assurance of compliance with Title 9 to its local school board or governing body and provide a copy to the department no later than August 31 of

each year. The assurance shall be signed by the superintendent of the district or the head administrator of the charter school. The department shall publish, in a newspaper of general circulation in the state or on a publicly accessible web site, a list of public schools that fail to submit the assurance of compliance with Title 9.

B. As used in this section, "Title 9" means federal Public Law 92-318, Title 9, of the Education Amendments of 1972, which is codified at 20 U.S.C. 1681, et seq., and the regulations promulgated pursuant to that act.

History: Laws 2009, ch. 178, § 5.

Effective dates. — Laws 2009, ch. 178 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

22-31-6. Report to governor and legislature.

Beginning December 1, 2011, the department shall submit annually a report on the School Athletics Equity Act to the governor and the legislature, including a summary of the data received from the public schools. The report shall include recommendations on how to increase gender equity in athletics in public schools. The department shall post the report on its web site.

History: Laws 2009, ch. 178, § 6.

Effective dates. — Laws 2009, ch. 178 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

MEMORANDUM OF UNDERSTANDING

Between the New Mexico Public Education Department (NMPED)
and the New Mexico Activities Association (NMAA)

This **MEMORANDUM OF UNDERSTANDING** (MOU) is made by and between the New Mexico Public Education Department (PED) and the New Mexico Activities Association (NMAA)

WHEREAS, Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, is a comprehensive federal law that prohibits discrimination on the basis of sex in any federally funded education program or activity.

WHEREAS, The School Athletics Equity Act (22-31-1 NMSA 1978 *et seq.*) is a New Mexico law under the Public School Code that provides a means to gather school district data on their athletics programs.

WHEREAS, the School Athletics Equity Act applies to each public school that has an athletics program for grades seven through twelve.

WHEREAS, under the School Athletics Equity Act, PED is required to collect annual data from public schools on their athletics programs.

WHEREAS, under the School Athletics Equity Act, each public school shall collect and submit the prior-year data required under the Act in a format required by PED.

WHEREAS, the New Mexico Activities Association (NMAA) is a private/non-profit organization whose principal purpose is the regulation, direction, administration and supervision of interscholastic activities in the State of New Mexico.

WHEREAS, the NMAA is comprised of New Mexico public, private and parochial middle/junior high and senior high schools that pay membership dues on an annual basis.

WHEREAS, the NMAA is willing to assist the PED by collecting annual data required to be collected by PED under the School Athletics Equity Act from NMAA member public high schools (grades nine through twelve);

WHEREAS, the parties wish to formalize a cooperative agreement between NMPED and NMAA regarding the collection of information required under the School Athletics Equity Act.

NOW, THEREFORE, the parties mutually agree as follows:

A. Scope of Agreement

Responsibilities of NMAA

1. The NMAA shall assist the PED and collect annually the following information on athletics programs from NMAA member public high schools for grades nine through twelve. The data collected shall be the following:

By August 31, 2011, for NMAA member public high schools, the following information pertaining to enrollment shall be collected:

- a. total enrollment in each school as an average of enrollment at the eightieth and one hundred twentieth days of the school year;
- b. student enrollment by gender;
- c. total number of students participating in athletics;
- d. athletics participation by gender; and
- e. the number of boys' teams and girls' teams by sport and by competition level.

2. Additionally, by August 31, 2011, for NMAA member public high schools which have athletic programs, the following information pertaining to athletic directors, coaches and other school personnel shall be collected by NMAA for use by the PED:

- a. the name and gender of each school's athletic director;
- b. the name of each team's coaches and other team personnel, with their gender, job title and employment status, such as full-time, part-time, contract or seasonal, specified;
- c. the coach-to-athlete and staff-to-athlete ratio for each team; and
- d. the stipend or other compensation for coaching paid to coaches of boys' teams and to coaches of girls' teams for each school;

3. Beginning August 31, 2012 and each year thereafter no later than August 31st, NMAA shall collect the following data from NMAA member public high schools: an accounting of the funding sources that are used to support the school's athletics programs and to which teams those funds are allocated. Funding sources include state funding, federal funding, fund raising or booster clubs, game and concession receipts, gate receipts, cash or in-kind donation, grants, and any other sources.

4. Beginning August 31, 2010 and each year thereafter no later than August 31st, NMAA shall collect the following data from NMAA member public high schools:

- a. any capital outlay expenditures for each school's athletics programs;
- b. the expenditures for each school's athletics programs; and
- c. the expenditures for individual teams, including travel expenses such as transportation, meal allowances and overnight accommodations; equipment; uniforms;

facilities; facilities improvements; publicity expenses; awards; banquets; insurance; and any other expenses incurred by each team.

5. Beginning August 31, 2012, and each year thereafter no later than August 31st, NMAA shall collect from NMAA member public high schools, a statement of benefits and services to each team, including:

- a. replacement schedules for equipment, uniforms and supplies;
- b. practice and game schedules;
- c. access to locker rooms, weight rooms and practice, competitive and training facilities; and
- d. assistance in obtaining scholarships.

6. Upon obtaining the above data, NMAA shall notify its member public schools that the data is ready for submission to the NMPED and that they should promptly submit it. Members schools shall be notified no later than September 15th of each year that the data is ready for submission

7. On or about August 1 of each year, NMAA shall forward to NMPED a list of all NMAA member public high schools from which NMAA will be collecting all of the above-mentioned data.

Responsibilities of NMPED

1. NMPED shall notify each NMAA member public high school of their obligation under the School Athletics Equity Act to provide the above-mentioned data annually.

2. NMPED shall notify each aforementioned NMAA member public high school that such data must be provided to NMAA who assisting the NMPED in the collection of data under the School Athletics Equity Act.

3. NMPED shall provide NMAA and all applicable public schools the format necessary for submission of the above-mentioned data to the NMPED through NMAA.

C. Amendments

Any and all amendments, changes, and/or modifications to this MOU shall be made in writing, signed and dated by both parties before becoming effective. Neither NMPED nor NMAA are obligated to perform tasks related to any changes and/or modifications not approved in writing by both parties.

D. Liability

Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation or alleged violation of requirements to the performance of this MOU.

Each party shall be liable for its own actions resulting from the performance of this MOU.

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitation of the New Mexico Tort Claims Act.

E. Terms

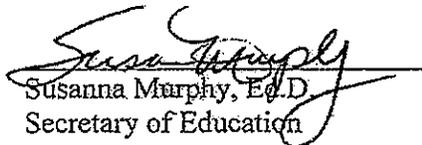
This MOU shall be effective upon execution by the parties and shall remain in effect until either party desires to renegotiate the terms or cancel the agreement. A party may terminate the agreement upon thirty (30) days written notice except where the cancellation is for cause, i.e. a material and significant breach of any of the provisions of this agreement. In the circumstances of a breach, this MOU may be cancelled upon delivery of written notice to the other parties.

F. Participation in Similar Projects

This MOU in no way restricts NMPED or NMAA from entering into MOUs with other public or private agencies, organizations and individuals or from participating in similar projects.

IN WITNESS WHEREOF, NMPED and NMAA do hereby execute the Memorandum of Understanding as of the last signed date below

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

BY: 
Susanna Murphy, Ed.D.
Secretary of Education

Date: 8/24/10

NEW MEXICO ACTIVITIES ASSOCIATION

BY: 
Gary Tripp
Executive Director

Date: 8-10-2010



STATE OF NEW MEXICO
PUBLIC EDUCATION DEPARTMENT
300 DON GASPAR
SANTA FE, NEW MEXICO 87501-2786
Telephone (505) 827-5800
www.ped.state.nm.us

DR. SUSANNA M. MURPHY

BILL RICHARDSON

August 25, 2010

MEMORANDUM

TO: District Superintendents, High School Principals, Middle School Principals,
Directors of Charter Schools

FROM: Susanna M. Murphy, Ph.D. 
Secretary of Education

RE: ATHLETICS EQUITY ACT REQUIREMENTS

This memorandum serves as a communication about the requirement for the "School Athletics Equity Act" - Section 22-31-1 thru 22-31-6 NMSA 1978. The Act requires each public school that has an athletic program for grades seven through 12 to submit prescribed data and an assurance of compliance with Title 9 to the Public Education Department (PED) annually. In order to comply with the Act, schools that have an Athletic Program will need to collect and input data for the 2010 – 2011 school year for submission to PED in August, 2011. For specific requirements, see 6.13.4 NMAC ("Governing Gender Equity in Participation in Interscholastic Sports"). The rule can be accessed at the following link:
<http://www.nmcpr.state.nm.us/nmac/parts/title06/06.013.0004.htm>.

In order to assist schools in meeting the requirement for the "School Athletics Equity Act," PED has entered into a Memorandum of Understanding (MOU) with the New Mexico Activities Association (NMAA) for collection of the required data for their member schools (enclosed). PED has developed the *Athletics Equity Act Data Form* for schools that are not members of NMAA (enclosed).

The process for collecting and submitting the data requirements to comply with the "School Athletics Equity Act" is as follows:

Schools that ARE Members of NMAA:

Step 1: Input all data into the NMAA *MVP* system. Follow NMAA guidelines for when data should be inputted by sport.

Step 2: Mid **August, 2011** (next fall) download the data from the NMAA data base and submit to PED (instructions on how to do this will come in July, 2011).

Step 3: Complete the Title 9 Assurance Form and submit to PED no later than August 31, 2011.

Schools that are NOT Members of NMAA:

Step 1: Go to << <http://www.ped.state.nm.us/sfsb/index.html> >> and download the *Athletics Equity Act Data Form*.

Step 2: Input into the *Athletics Equity Act Data Form*. In order to help ensure accuracy, it is best to input data at the end of each season.

Step 3: Mid **August, 2011** (next fall) submit the *Athletics Equity Act Data Form* to PED (instructions on how to do this will come in July, 2011).

Step 4: Complete the Title 9 Assurance Form and submit to PED no later than August 31, 2011.

The School Athletics Equity Act Data requirements include:

1. Beginning August 31, 2011, PED must collect data (in conjunction with the NMAA) from schools concerning total enrollment, enrollment by gender, number of students participating in athletics and by gender, number of boys' and girls' teams by competition level and specific information pertaining to athletic directors, coaches and other school personnel. A School Athletics Equity Act Assurance Form (enclosed) must be signed every year and submitted to the local board of education or governing body and then submitted to PED.
2. Beginning August 31, 2012, the law requires PED to collect from schools all the same data requirements previously stated plus a detailed accounting of the funding sources that are used to support the schools' athletics programs and to which teams those funds are allocated. In addition, beginning August 31, 2012, PED must collect information related to benefits and services to each team including information regarding equipment, uniforms and supplies, practice and game schedules, facilities access and scholarship assistance. **Although this data is not required to be collected for the 2010-2011 school year I would recommend you begin preparation for collecting this additional data for the next school year data as soon as possible.**

If you have questions or concerns about reporting, please contact Derek Irion at derek.irion@state.nm.us or 505-222-4750.

SMM/KM/di

Enclosures (3)

- (1) MOU between the PED and the NMAA
- (2) Athletics Equity Act Data Form for schools that are not members of NMAA
- (3) School Athletics Equity Act Assurance Form.

cc: Dr. Sheila Hyde, Deputy Secretary, Learning and Accountability
Steve Burrell, Deputy Secretary, Finance and Operations
Dr. Kristine Meurer, Acting Assistant Secretary, Student Success Division
Dr. William Blair, Assistant Director, School and Family Support Bureau
Derek Irion, Physical Education Coordinator, School and Family Support Bureau
Gary Tripp, Executive Director, New Mexico Activities Association

TITLE 9 ASSURANCE TO SCHOOL BOARD/GOVERNING BODY

Beginning with August 31, 2011, and every year thereafter, this form must be completed and submitted to your local school board or governing body of your charter school with a copy sent to the Public Education Department no later than August 31st of each year.

School District/State Charter Name:

School Name:

I assure my school board/governing body that to the best of my knowledge, the above-named school is in compliance with Title 9.

Principal's Printed Name:

Principal Signature

Date

Superintendent/Chief Administrator

Date

Mail or fax a signed copy of this form to:

**Derek Irion, Physical Education/Afterschool Coordinator
School and Family Support Bureau
New Mexico Public Education Department
5600 Eagle Rock Ave, Room 201
Albuquerque, NM New Mexico 87113**



Facsimile: (505) 222-4759

EXPLANATION OF WHY ASSURANCE MUST BE PROVIDED

The 2009 regular session saw the passage of House Bill 432, the “School Athletics Equity Act,” (Act) now found at 22-31-1 to 22-31-6, NMSA 1978 of the Public School Code. That Act applies only to schools “with an athletics program for grades 7 through 12”.

The Act implements state monitoring and district data reporting provisions related to the federal Title IX of the Education Amendments of 1972, which was originally enacted by Public Law 92-318 and is currently codified at 20 U.S.C. 1681.

Title 9 provides that, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...”

PED’s rule, which reflects the annual assurance requirement of Section 22-31-5, NMSA 1978 of the Act, requires that public schools, “*no later than August 31st of each year* submit an assurance of compliance with Title 9 to its local school board or governing body and provide a copy to the department.” 6.13.4(E) NMAC, (“Governing Gender Equity in Participation in Interscholastic Sports”). The PED interprets the assurance provision as applying to any school that offers instruction in any combination of grades 7 through 12 where athletic programs are offered to students in any combination of those grades.

FAILURE TO PROVIDE ASSURANCE TO PED

According to Section 22-31-5, “The department shall publish, in a newspaper of general circulation in the state or on a publicly accessible web site, a list of public schools that fail to submit the assurance of compliance with Title 9.” The Act does not permit the PED to waive this assurance-filing requirement or to extend the August 31st deadline.



New Mexico Public Education Department

Athletics Equity Act Data Form

Instructions

Hit the tab key in order to go to the next question.

1. District Name:
2. School Name:
3. School Athletic Director Name:
4. School Athletic Director Gender: Female

General Student Information:

1. Number of Female students enrolled in the school-Based on the average 80th and 120th day count:
2. Number of Male students enrolled in the school-Based on the average 80th and 120th day count:
3. Total School Enrollment-Based on the average 80th and 120th day count (add answer 1 and 2 above):
4. Total Number of Students participating in Athletic programs:
5. Number of boys' sports offered:
6. Number of girls' sports offered:

