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November 15, 2011

**MEMORANDUM**

**TO:** Legislative Education Study Committee

**FR:** David Harrell

**RE: STAFF REPORT: LESC WORK GROUP ON THE *SCHOOL ATHLETICS EQUITY ACT***

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**Introduction**

During the October 2011 meeting of the Legislative Education Study Committee (LESC), the committee heard a presentation by staff and representatives of the New Mexico Activities Association (NMAA) and the Southwest Women’s Law Center (SWLC) about the reporting requirements in the *School Athletics Equity Act* (CS/HB 432, or Laws 2009 Chapter 178). In response to this presentation, committee members expressed concerns about the extensive nature of the requirements and the challenges that school officials have faced in complying with those requirements. To address these concerns, the Chair requested that a work group be formed to examine the requirements and suggest amendments to the act, as needed. Six members of the committee were designated as members of this work group: Representatives George Dodge, Jimmie C. Hall, and Dennis J. Roch; and Senators Vernon D. Asbill, Howie C. Morales, and Cynthia Nava. In addition, staff invited representatives of organizations involved with or affected by the act to serve as well (see Attachment 1 for the full membership).

This staff report will provide a brief account of the initial meeting of the work group and the recommendations that resulted from that meeting. The report concludes with a background section that enumerates the reporting requirements in law.

## Meeting of the Work Group

The LESC Work Group on the *School Athletics Equity Act* (SAEA) met on November 1, 2011, at the NMAA office in Albuquerque. Also in attendance were Representative Danice Picraux, the sponsor of the legislation, and Ms. Julianne Koob, with the SWLC.

The meeting began with a brief staff overview of several documents that members had been sent beforehand:

- *Title IX, Education Amendments of 1972*;
- the federal regulations regarding Title IX, *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*;
- HR 458, *High School Athletics Accountability Act of 2011*, a bill pending in Congress that would require reporting similar to that required under the SAEA;
- a revised version of the October LESC staff report; and
- a table of possible amendments to the SAEA that had been suggested by the NMAA, the Public Education Department (PED), the New Mexico Association of School Business Officials (ASBO), or the SWLC.

LESC staff reminded work group members that, as reported in October, at least four other states – Florida, Georgia, Kentucky, and Minnesota – have state laws similar to the SAEA; and staff reported the results of a query sent through the Legislative Education Staff Network to try to identify other states with similar legislation. Of 12 states responding, 10 reported that they have no such legislation: Arizona, Louisiana, Maryland, Nebraska, Nevada, Ohio, Oklahoma, Tennessee, Utah, and West Virginia.<sup>1</sup> Two states – California and Kentucky – did report having similar legislation.

- The California legislation places the ultimate responsibility for Title IX compliance with the local school boards; and it requires the NMAA counterpart – the California Interscholastic Federation – to provide parents and students with information about complaint procedures. In California, complaints may be filed with a local school district or the state department of education; and the department of education may specify remedies or begin legal proceedings against an entity that the department has found to be out of compliance.
- Under Kentucky law, in addition to the provisions reported in the October LESC staff report, the Kentucky High School Athletics Association, per designation by the state board of education, manages high school athletics and conducts field audits of its member schools to ensure compliance with Title IX. Each school must submit an annual certification of compliance, form a gender equity review committee, create a Title IX compliance plan, and file annual reports.

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

- one purpose of the bill 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

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<sup>1</sup> Since the work group meeting, LESC staff has learned that Iowa has no legislation similar to the SAEA.

transparency, to illustrate the practices at schools in order to prevent complaints or lawsuits;

- to achieve these purposes the bill must be as simple as possible and sustainable;
- 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;
- prior to the SAEA, the school-level data reported to the NMAA focused on varsity teams and consisted mainly of information about coaches and schedules, whereas the SAEA has added sub-varsity athletics, booster clubs, salaries, and gender designations;
- data from grades 7 and 8 are important partly because those grades serve as a “farm” system for the higher grades;
- many athletic activities at the middle school level are conducted not within schools but under the auspices – and funding – of other entities such as Little League and the YMCA, suggesting that school-related data present only part of the overall picture;
- 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.

### **Recommendations of the Work Group**

To address issues such as those noted above, the work group considered a number of approaches, such as having schools report to their local school boards rather than to PED; expanding the NMAA software program to accommodate reports from nonmember schools; and requiring PED to expand its rule to provide reporting guidance for schools. As the discussion progressed, the work group produced two kinds of consensus recommendations: (1) a number of specific amendments to the SAEA, and (2) the creation of a smaller work group to draft reporting guidelines for schools.

- The specific amendments that the work group has recommended are illustrated in Attachment 2. Described somewhat broadly, these amendments:
  - eliminate the second phase of reporting requirements – the financial data – for grades 7 and 8;
  - require data to be reported by program – that is, boys’ basketball and girls’ basketball – rather than by team – that is boys’ varsity basketball, boys’ junior varsity basketball, and boys’ C team basketball, etc.

- strike “assistance in obtaining scholarships” from the data points in the second phase of reporting;
  - focus the reporting requirements on athletic program staff, like coaches and athletic directors, rather than on team personnel in general; and
  - address certain practical or technical issues.
- The other work group recommendation was that a legislative member of the group make a motion that the LESC create a smaller group, comprising representatives of certain affected or involved entities, to draft reporting guidelines to help schools comply with the SAEA.
    - As noted above, the law provides no source of guidance for schools required to report.
    - The act does charge PED with receiving reports and documents of assurance of compliance with Title IX; publishing a list of schools not filing assurance documents; and reporting to the Governor and the Legislature, including “recommendations on how to increase gender equity in athletics in public schools.” However, PED is unwilling to take on more responsibilities, citing limited staff and limited expertise and experience with Title IX.
    - In addition, the other entities that have been involved in the implementation of the SAEA – among them the NMAA, the New Mexico Athletic Directors Association, ASBO, the SWLC, and the New Mexico Coalition of School Administrators – are not mentioned in the act; yet their experience and expertise could be helpful in offering guidance, if provided with some official recognition. Already, as noted in the October staff report, the NMAA has incurred considerable expense in volunteering its assistance to member schools.

## **Background**

The New Mexico *School Athletics Equity Act* 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 prescribes two phases of reporting requirements.

- In the first phase, with a deadline of August 31, 2011, the law requires PED 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 PED 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 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."

**LESC WORK GROUP ON THE *SCHOOL ATHLETICS EQUITY ACT***

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Lisa Sullivan, Staff Attorney  
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AMENDMENTS PROPOSED BY THE  
LESC WORK GROUP ON THE *SCHOOL ATHLETICS EQUITY ACT*

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".

**22-31-2. Applicability; nondiscrimination.**

Except as provided in Subsections C, D and E of Section 22-31-3, [F]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.

**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]~~ second and third reporting dates;

(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~~[-]~~ and coaches ~~[and other school personnel]~~:

(1) the name and gender of each public school's athletic director and other athletic program staff;

(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]~~ volunteer, 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 in grades nine through twelve and to which ~~[teams]~~ programs 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 for athletics programs in grades nine through twelve, 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] athletic program; and

E. by August 31, 2012, a statement of benefits and services to each [team] athletic program in grades nine through twelve, including:

(1) replacement schedules for [equipment,] uniforms [~~and supplies~~];

(2) practice and game schedules; and

(3) [~~access to~~] locker rooms, weight rooms and practice, competitive and training facilities[~~;~~and]

~~[(4)assistance in obtaining scholarships].~~

#### **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.

**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.

**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.

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