

EXHIBIT C



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
MIDWESTERN DIVISION, CHICAGO OFFICE
111 NORTH CANAL STREET, SUITE 1093
CHICAGO, ILLINOIS 60606 - 7204

OFFICE OF THE
DIRECTOR

April 11, 2000

Mr. David V. Stead
Executive Director
Minnesota State High School League
2100 Freeway Boulevard
Brooklyn Center, Minnesota 55430-1735

Dear Mr. Stead:

This is in response to your correspondence requesting that the Office for Civil Rights (OCR) provide a definition of sport that you could share with school communities, administrators, and coaches as they address new initiatives for student-athletes. In your letter you stated your belief that the primary purpose of an activity defined as a sport would be competition, rather than support. Further, you identified other components which you believed would, if fully in place, define a sport. These included rules governing a regular season and competitors, the scheduling and character of competitions, and coaching and officiating requirements. As discussed below, an OCR-definition of sport would incorporate those factors you identified. I appreciate your interest in this matter and am pleased to respond to your request.

OCR enforces Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.* and its implementing regulation at 34 C.F.R. Part 106 (Title IX). The Title IX implementing regulation, at 34 C.F.R. § 106.41(a), states, in relevant part, that "[n]o person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient. . . ."

As part of its responsibility for enforcing the Title IX provisions regarding athletics, OCR must determine whether an activity is a sport for purposes of evaluating whether an equal opportunity is being provided. OCR does not rely on a specific definition of a sport. Nor does OCR rely solely on a claim by an institution that the activity in question is a sport. Rather, OCR's practice is to assess each activity on a case-by-case basis. OCR's determination would take into consideration factors which you identified in your letter and those identified by athletic organizations or associations to differentiate between an activity and a sport.¹

¹For example, in a 1995 Position Paper, the Women's Sports Foundation included, in part, the following elements in the definition of a sport activity: a physical activity with an acknowledged primary purpose of competition between teams or individuals within a competitive structure comparable to other sport activities, governed by explicit rules defining the time, space and purpose of the contest and the conditions under which a winner is declared. Recently, the NCAA Committee on Women's Athletics voted to amend the emerging sport guidelines to include language to differentiate between a support activity and a sport: sport is defined as "an institutionalized activity involving physical exertion with the primary purpose of competition within a defined competitive season and standardized rules with rating/scoring systems ratified by official regulatory agencies and governing bodies."

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To be as specific and responsive to your request as possible, the following discussion enumerates both the types of inquiries OCR would make and the process OCR would follow to assess whether an activity is a sport.

Types of Inquiries

In determining whether an activity is a sport OCR will consider on a case-by-case basis:

- whether selection for the team is based upon objective factors related primarily to athletic ability;
- whether the activity is limited to a defined season;
- whether the team prepares for and engages in competition in the same way as other teams in the athletic program with respect to coaching, recruitment, budget, try-outs and eligibility, and length and number of practice sessions and competitive opportunities;²
- whether the activity is administered by the athletic department; and,
- whether the primary purpose of the activity is athletic competition and not the support or promotion of other athletes.

OCR may also consider other evidence relevant to the activity, which might demonstrate that it is part of an institution's athletic program. Such evidence that may be considered includes, but is not necessarily limited to, the following:

- whether organizations knowledgeable about the activity agree that it should be recognized as an athletic sport;
- whether the activity is recognized as part of the interscholastic or intercollegiate athletic program by the athletic conference to which the institution belongs and by organized state and national interscholastic or intercollegiate athletic associations;
- whether state, national, and conference championships exist for the activity;
- whether a state, national, or conference rule book or manual has been adopted for the activity;
- whether there is state, national, or conference regulation of competition officials along with standardized criteria upon which the competition may be judged; and,
- whether participants in the activity/sport are eligible to receive scholarships and athletic awards (e.g., varsity awards).

² Aside from the question as to whether an activity is considered by OCR to be a sport, in order for the athletes who engage in the activity to be considered participants for purposes of a Title IX analysis of intercollegiate or interscholastic benefits and opportunities, they must be engaging in sports at the intercollegiate or interscholastic level of competition. Thus, club and intramural participants would be excluded from such a Title IX analysis.

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Process to be Followed

Certain school activities in which students are engaged may be activities that require a considerable amount of athleticism, but not every athletic activity qualifies as a sport. Consistent with earlier policy statements, there is a presumption by OCR that drill teams, cheerleading and other like activities are extracurricular activities and are not considered sports or part of an institution's athletic program within the meaning of the Title IX regulation. OCR remains prepared to assist any state or national athletic association in evaluating, on a case-by-case basis, whether a particular activity would be considered by OCR to be part of an athletic program for purposes of Title IX compliance. OCR's case-by-case approach to making this determination has worked effectively, and disputes over whether a particular athletic activity is part of an institution's athletic program rarely occur. For OCR to make such an evaluation, however, evidence about the activity in question which addresses the inquiries previously identified in this letter should be submitted to OCR.

I hope that this response clarifies for you the evidence OCR would consider and the process OCR would follow in determining whether an activity is part of an athletic program within the meaning of the Title IX regulation. If you have additional questions or if I may otherwise be of assistance, please do not hesitate to contact me at (312) 886-8433.

Sincerely,



Dr. Mary Frances O'Shea
National Coordinator
for Title IX Athletics
Office for Civil Rights



UNITED STATES DEPARTMENT OF EDUCATION
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OFFICE OF THE
DIRECTOR

May 24, 2000

Mr. David V. Stead
Executive Director
Minnesota State High School League
2100 Freeway Boulevard
Brooklyn Center, MN 55430-1735

Dear Mr. Stead:

This is in response to your letter, dated April 27, 2000, requesting further clarification from the Office for Civil Rights (OCR) regarding the definition of sport, the subject of my recent correspondence to you. Specifically, you asked that I provide definitions of the terms "drill team," "cheerleading," and "other like activities." You also asked for the names of any state or national athletic association that had requested OCR to evaluate whether an activity is part of an athletic program and for the results of such evaluation.

The OCR regulation interpreting Title IX of the Education Amendments of 1972, at 34 C.F.R. Part 106 (Title IX), does not provide definitions for "drill team," "cheerleading" and "other like activities," nor does OCR have definitions of these activities. My letter of April 11, 2000 to you, in which I used these terms, was intended to explain OCR's process when considering whether a particular activity should be considered a sport for purposes of Title IX. In the letter, I pointed out that "[c]onsistent with earlier policy statements, there is a presumption by OCR that drill teams, cheerleading and other like activities are extracurricular activities and are not considered sports or part of an institution's athletic program within the meaning of the Title IX regulation." For clarification, the term cheerleading in this context includes both competitive and sideline cheer; other like activities would include all extracurricular activities similar to drill teams and cheerleading, such as danceline, skateline, and pep squads.

Several state or national athletic associations have asked OCR to evaluate whether certain activities were part of an athletic program for purposes of Title IX compliance. I am aware that OCR received inquiries from: the Utah State Superintendent of Public Instruction (drill teams); the Minnesota Coalition of Organizations for Sex Equity in Education (danceline, skateline, pep squads); the Michigan High School Athletic Association (cheerleading); the Nebraska School Activities Association (competitive cheerleading, dance teams); the Colorado High School Activities Association (cheerleading, pompon, dance teams); and, the New Mexico Activities Association (cheerleading, drill teams, dance teams). In each case, based on the information submitted for evaluation, OCR did not recognize as a sport any of the identified activities.

If you have any questions or if I may otherwise be of assistance, do not hesitate to contact me.

Sincerely,

/signed/

Dr. Mary Frances O'Shea
National Coordinator for Title IX Athletics
Office for Civil Rights