

Booster Clubs and Title IX: Tough Times and Tough Decisions

By Peg Pennepacker, CAA

The current difficult national economy may be the driving force in many school budgets more so than federal and state policies. However, it is equally important for schools to understand and process the effect on Title IX compliance in an athletic program relative to booster club activity.

Booster clubs, alumni and in some instances corporate sponsors contribute to athletic program budgets. These groups may raise money for sport-specific teams or for the overall athletic program. As a result, a school may have a greater amount of resources for some teams or programs.

Boys programs have typically received more of these resources because they have been around longer and men earn more than women on average in this country. In many cases, the booster clubs may provide benefits or services to the boys teams that the girls teams do not receive.

Title IX does not require boys and girls budgets to match dollar for dollar; however, the bottom line is that the benefits provided must be equal. According to the interpretation of Title IX by the OCR (Office for Civil Rights), "Educational institutions cannot use an economic justification for discrimination."

When a school accepts funding from an outside source such as fundraising, corporate sponsors, booster clubs or private contributions, the school can use the money in the manner specified by the outside source. However, the school cannot use the circumstance or condition as a reason or excuse for discrimination. If the school accepts funds from any of these outside sources and the source benefits a boys sports program, the school is obligated by law to find resources somewhere to ensure that the girls program has the same benefit.

When considering all boys and girls sports, a school is obligated to distribute all of its resources including outside funding in a non-discriminatory method. A school may accept outside funding and/or donations and, depending upon the circumstances, may be used as the donor specifies. The outside funding cannot result in disparities between the boys and girls programs. If the outside sources results in an inequity between boys and girls programs, the school must correct the inequity using its own funding, if necessary.

According to the OCR:

"The private funds that are used to support district athletic programs, although neutral in principle, are likely to be subject to the same historical patterns that Title IX was enacted to address. In the experience of the OCR, sponsors, as a whole, are more

interested and willing to assist boys teams than girls teams, and male-oriented 'booster' activities generate more public interest than girls activities. If all benefits are not considered in examining interscholastic athletics, the purpose and effect of the Title IX requirements could be routinely undermined by the provision of unequal benefits through private financial assistance.” -1

“While it may appear that this policy is discouraging private initiatives (which are unquestionably valuable to recipients and students), we cannot diminish the protection of Title IX by exempting benefits, treatment, services or opportunities provided to athletes through the use of private funds. Private fundraising, including student-initiated fundraising, has been, and continues to be, permissible under Title IX.

It should also be noted that this does not mean that teams must “share” proceeds from fundraising activities. It does, however, place a responsibility upon the district to insure that benefits, services, treatment and opportunities overall, regardless of funding sources, are equivalent for male and female athletes.” -2

The bottom line is that the source of funds is irrelevant. The benefit provided is the measure. Booster club funds or monies designated for a particular purpose or team does not relieve the school’s obligation to provide equal benefits.

Title IX attorneys have long considered booster club money clandestine financing for major school sports programs, most of which are overwhelmingly male. According to federal law, booster club money is equivalent to regular taxpayer dollars. So, in effect, booster club money or any outside resource must be used to support each gender.

Generally speaking, athletic directors and superintendents as well as school boards have a difficult time understanding the concept of booster clubs and their effect on Title IX. It is often difficult for them to understand why a particular booster club that works hard to raise funds for a particular sport can cause a Title IX disparity.

While the OCR acknowledges that this policy may be seen as discouraging private initiatives that are arguably valuable to students, the protection of Title IX cannot be diminished by exempting benefits, treatment, services or opportunities provided to student-athletes through the use of outside resources.

To reiterate, outside resources are permissible. Teams need not “share” proceeds from fundraising. However, it is the responsibility of the school to ensure that benefits including services, treatment and opportunities regardless of the sources are equivalent for male and female student-athletes.

This is a difficult conversation to hold given the difficult economic times in this country. As a result, school districts tend to avoid implementing a plan for overseeing booster clubs and monitoring their activity. Many school districts will maintain that booster clubs are not their responsibility and that they are groups that function on their

own. Simply operating under the “that’s the way we have always done things” mentality is not an acceptable practice.

It is important for school boards, superintendents and athletic directors to keep fairness in mind while juggling limited budgets, a greater emphasis on academics, and the realization that one unhappy parent can be the catalyst in triggering a federal investigation. The key in monitoring a school’s Title IX compliance process in its athletic program is to support the athletic endeavors of girls, while not limiting the progress of boys. It is a delicate process that will require good governance and making difficult decisions in economically challenging times while following the law.

Footnotes

1 See Jurupa Unified School Dist., OCR File No. 09-01-1222 (Feb. 7, 1995).

2 Id.

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