



Fair Playing field?

**Equity, Title IX, Board Policies
Activity Accounts and Booster Clubs**

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Topics To Be Reviewed

- Why do you need to monitor activities funds and booster activity?
- Federal Title IX
- New Mexico Athletic Equities Act
- New Mexico State Auditor Risk Advisory
- Best practices for board policies

Activity and Booster Club Fund Risks

- LOSS – Activities funding creates substantial risk for audit findings, losses, embezzlement, etc.
- EQUITY - Lack of tracking can lead to unequal treatment of students and could result in OCR complaints, investigations and loss of Federal funding



Title IX of the Education Amendments of 1972

- State and local educational agencies receiving federal funding may not discriminate based on sex in education programs or activities. 20 USC § 1681
- Enforced by US Department of Education, Office of Civil Rights
- Penalties include: loss of federal funding, loss of programs
- Students/parents may bring lawsuits to enforce Title IX for damages and attorneys fees

Title IX of the Education Amendments of 1972 - Athletics

- The local educational agency shall provide equal athletic opportunity for members of both sexes.
34 CFR § 106.41
 - Includes equipment, supplies, scheduling, travel, facilities, publicity, etc.
- Investigations may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex. 34 CFR § 106.41
 - Includes booster club funding

NM School Athletics Equity Act

§ 14-2-1, et seq.

- Applies to each public school with an athletics program for grades 7 -12. NMSA 1978, § 22-31-2
- Each public school shall operate its program in a manner that does not discriminate against students or staff on the basis of gender. NMSA 1978, § 22-31-2
- By August 31 each year, each school shall submit an assurance of compliance with Title IX to its local school board and NMPED

NM State Auditor

Risk Advisory – Student Activity Funds

- Issued September 2016
- Purpose: Alert schools of certain risks related to the handling of student activity funds, prevent and detect fraud, ensure applicable legal requirements are met
- All activity funds must be reported in financial statements and are subject to audit, must be treated as any other school funds
- School audits ID wide range of activity fund compliance issues
- Schools need strong internal controls
- Recognizes difference between internal booster clubs and external booster clubs
- Consequences include: financial liability, disciplinary actions, criminal charges

Title IX Examples

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/index.html>

Hingham Public School District (2012)

- OCR compliance review and findings of unequal treatment under Title IX. District required to enter into a compliance agreement with OCR.
- “OCR considers benefits and services provided through the use of private funds, including booster club funding, in combination with all benefits and services”
- “Where booster clubs provide benefits or services that assist only teams of one sex, the district must ensure that teams of the other sex receive equivalent benefits and services.”
- If booster clubs provide benefits and services to athletes of one sex that are greater than what the institution is capable of providing to athletes of the other sex, **then the institution shall take action to ensure that benefits and services are equivalent for both sexes.**
- **OCR determination that there was an unequal distribution of benefits that heavily favored one gender when factoring in benefits from booster clubs.**
 - District provided necessities evenly, but booster clubs gave unequal benefits such as varsity jackets, warm ups, travel bags, shoes, and trophies plus gifts and stipends to “volunteer coaches”
- Compliance Agreement: District to create and implement a comprehensive policy to regulate booster club funding and other private donations flowing into the athletics program

More Title IX Examples

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/index.html>

Indianapolis Public Schools (2014)

- “If booster clubs or private funds provide benefits and services to athletes of one sex that are greater than what the institution is capable of providing to athletes of the other sex, then the institution shall take action to ensure that benefits and services are equivalent for both sexes.”
- Agreement for district to regulate booster club funding and any other private donations flowing into the athletic programs so that district can take action to ensure equivalence for both sexes
- Required district to create a policy relating to the support provided by booster clubs

Portland Public Schools (2013)

- Booster club payments and gifts to volunteer coaches are considered benefits to the team

Resulting Booster Club Policy: Indiana Public Schools

- Board recognizes its legal obligation to offer equal gender opportunities to participate in athletics
 - Includes: equivalent facilities, equipment, benefits and services
- ALL booster club funding and other private donations must be contributed to the school's athletic department, district athletic department or foundation "generally"
- Superintendent to develop guidelines on how money, goods and services donated are allocated so that "both sexes receive equivalent benefit from the overall donations".

Booster Club Policy Components

- Statements of intent to comply with Title IX and the NM School Athletics Equity Act
- Booster Club funds dedicated to program use:
 - Funding must be submitted directly to the District for distribution by the District
 - Surplus funding
 - Equitably distributed by District among other sports programs

Booster Policy Components Continued....

- Penalties for failure to comply with board policy:
 - Prohibition of conducting fundraisers and handling activity funds
 - No use of school, activity, and event names and references
 - Repayment of misappropriated funds
 - Denial of acceptance of funds
 - Suspension of District-based booster club [not 501(C)(3)]
 - Suspension of program/group/activity that improperly accepts funds and benefits

SUMMARY/QUESTIONS

- Title IX requirements and OCR investigations regarding equal services and benefits in athletics
- NM School Athletics Equity Act requirement of no discrimination based on gender
- State Auditor requiring accounting of all activity funds
- Board Policies to comply with each of the above

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