

Fact Sheet Regarding Athletic and Fine Arts Participation in Minnesota State High School League Activities

The purpose of this resource is to provide guidance for Minnesota State High School League (MSHSL) member schools. This guidance will enable all athletic and fine arts programs to enjoy fair and equitable participation among member schools and will ensure fair, respectful, and legal access for students who participate in MSHSL-sponsored activities in accordance with applicable state and federal laws, rules and regulations.

- Minn. Stat. 121A.04 subd.3(d) “If two teams are provided in the same sport, one of the teams may be restricted to members of a sex whose overall athletic opportunities have previously been limited, and members of either sex shall be permitted to try out for the other team.”

- Title IX of the Education Amendments of 1972
 - prohibits discrimination on the basis of sex in education programs and activities that receive Federal financial assistance from the U.S. Department of Education.
 - requires recipients which operate or sponsor interscholastic, intercollegiate, club or intramural athletics to provide equal athletic opportunities for members of both sexes.
 - applies to interscholastic, intercollegiate, club and intramural athletic programs receiving federal funding from the U.S. Department of Education.

- An April 4, 2014 Dear Colleague letter from Russlynn Ali, Assistant Secretary for Civil Rights, United States Department of Education, addresses a school’s obligation to respond to sexual harassment and sexual violence. Further it is stated that “The Title IX obligations discussed in this letter also apply to gender-based harassment.”

- A concluding comment in the April 4, 2014 letter states that, “The Department is committed to ensuring that all students feel safe and have the opportunity to benefit fully from their schools’ education programs and activities. As part of this commitment, OCR provides technical assistance to assist recipients in achieving voluntary compliance with Title IX.”

- An April 29, 2014 letter from Catherine E. Lhamon, Assistant Secretary for Civil Rights, focused on Questions and Answers re: Title IX. The Assistant Secretary’s letter and attachment unequivocally states that, “Title IX’s sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity, and OCR accepts such complaints for investigation.”

- The April 4, 2014 and April 29, 2014 Dear Colleague letters from the U.S. Department of Education, Office for Civil Rights identify “...policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights, under the civil rights laws and implementing regulations that we (OCR) enforce.”
- Minn. Stat. 363A.03, subd. 44 defines sexual orientation and Minn. Stat. 363A.13, addresses Educational Institutions.
- Minn. Stat. 363A.24 and 363A.26 identify an Exemption Based on Public Accommodations and Religious Association.
- For Title IX purposes, the term “schools” refers to “...recipients of federal financial assistance that operate educational programs or activities.” An educational institution that is controlled by a religious organization is exempt from Title IX to the extent that the law’s requirement conflict with the organization’s religious tenets. 20 U.S.C. 1681(a)(3); 34 C.F.R. 106.12(a).
- Minnesota schools that receive state and federal financial assistance must follow state and federal laws, rules and regulations as applicable.
- A policy regarding participation based upon gender identity is not required in Minnesota. However, an article published in the September, 2014 National Federation of State High School Associations *High School Today* magazine identified 32 state high school associations that have a policy or posted recommendations related to gender identity.

In Minnesota:

- Minn. Stat. 129.12 was amended in 1973 and provided that membership in the Minnesota State High School League shall be available to any high school in Minnesota which satisfies compulsory attendance pursuant to Minn. Stat. Section 120.10.
- Minn. Stat. 128C.01. subd. 2 states that “The governing board of a high school may delegate its control of extracurricular activities to the league.”
- The annual **Resolution for Membership** in the Minnesota State High School League, adopted by the Governing Board and recorded in the official minutes of said Board, affirms that the Governing Board “...hereby adopts the Constitution, Bylaws, Rules and Regulations of said League and all amendments thereto as the same as are published in the latest edition of the League’s *Official Handbook* on file at the office of the school district or as appears on the League’s website, as the minimum standards governing participation in said League-sponsored activities, and that the administration

and responsibility for determining student eligibility and for the supervision of such activities are assigned to the official representative identified by the Governing Board.”

- Bylaw 412, as addressed in Minn. Stat. 121A.04 3(d), identifies the MSHSL Sponsored Activities for girls’ and the activities that are available for either sex.
- MSHSL Bylaws 301, 305, 306, 408, 412 and other Bylaws adopted by the MSHSL Representative Assembly as found in the *Official Handbook* or as appears on the League website, guide eligibility determinations.
- Minn. Stat. 121A.04, subd. 3(d) affirms that **a girl may try out for and may participate** on any MSHSL high school team open to members whose overall opportunities have previously been limited (ie. Football, Girls’ Volleyball, Soccer, Girls’ Soccer, Hockey, Girls’ Hockey, Wrestling, Golf, Girls’ Golf, Tennis, Girls’ Tennis, Baseball, Girls’ Softball etc.)
- Minn. Stat. 121A.04, subd. 3 (d) affirms that **a boy may not participate** on a team restricted to members of a sex whose overall athletic opportunities have previously been limited. (ie. Girls’ Volleyball, Girls’ Soccer, Girls’ Hockey, Girls’ Golf, Girls’ Tennis, Girls’ Softball, etc.).
- Minn. Stat. 363A.03, subd. 44, 363A.13, 363A.24, 363A.26, and other applicable statutes, define terms and address Educational Institutions and Exemptions based on Public Accommodations and Religious Association.
- Minnesota Rules, Chapter 3535, contain specific provisions for equal opportunity in schools.
- Title IX of the Education Amendments of 1972, and any other guidance provided by the U.S. Department of Education as may be applicable, prohibits discrimination on the basis of sex in education programs and activities that receive Federal financial assistance from the U.S. Department of Education.
- For Title IX purposes, an educational organization “...that is controlled by a religious organization is exempt from Title IX to the extent that the law’s requirements conflict with the organization’s religious tenets. 20 U.S.C. 1681(a)(3); 34 C.F.R 106.12(a).
- State and Federal laws, rules and regulations guide athletic participation for all students in Minnesota schools.

THEREFORE:

Participation in athletic and fine arts programs by students in member schools of the Minnesota State High School League is guided by a Minnesota school's annual **Resolution for Membership**, MSHSL Bylaws identified in the most current *Official Handbook* on file at the office of the school or as appears on the League's website, and as identified in Minnesota State Statutes, Title IX of the Education Amendments of 1972, and other state and federal laws, rules, regulations and guidance that may be promulgated regarding athletic participation in Minnesota schools.

As required, the **Resolution for Membership** in the Minnesota State High School League, submitted annually by a school, affirms "...that the administration and responsibility for determining student eligibility and for the supervision of such activities are assigned to the official representative identified by the Governing Board (of the school)"

Guidance for member schools in determining student eligibility to participate on a school team shall be consistent with state and federal laws, rules and regulations and MSHSL Bylaws.

Contact for assistance in determining the eligibility of a student to participate on an MSHSL-sponsored athletic team is available from

- the Minnesota School Boards Association.
- the Minnesota Association of School Administrators.
- the Minnesota Association of Secondary School Principals.
- the MSHSL Office.
- the Minnesota Department of Education, Division of Compliance and Assistance.
- the U.S. Department of Education, Office for Civil Rights.

When the eligibility of a student to participate on a MSHSL athletic team has been confirmed by the official representative identified by the Governing Board of the school, the student will be eligible to participate in MSHSL activities for the balance of the student's high school eligibility provided that all MSHSL eligibility bylaws, state and federal laws, rules and regulations have been met.

If a school denies participation for a student, the student and the student's parent(s)/legal guardian(s) may appeal the decision of the school as identified in the MSHSL Fair Hearing Procedure as amended.

December 4, 2014