



## **Athletic Liability Series – Part 1 of 3**

# **Play Ball! 6 Vital Tips for Legally Fit Athletic Fundraising**

**By: William D. Berard III, Esq., and Mary Jo McGrath, Esq.  
McGrath Training Systems**

In a perfect world, school district budgets would provide unlimited resources for education and extracurricular programs. In reality, budget constraints cause districts to continuously struggle to maintain existing programs, let alone introduce new ones. In the arena of school district athletics, administrators, athletic directors, and coaches are continuously seeking outside funding to supplement their budget shortfalls. More often than not, an athletic department's supplemental income is the result of donations or fundraising by teams or booster clubs. What many athletic directors fail to realize is that more and more courts are now finding that such funding initiatives do not comply with Title IX.

In 1972, Congress enacted Title IX in an effort to bring about gender equity in education, including men's and women's athletics, from K-12 school districts through the university level. The goal was to end gender discrimination in the way institutions run their programs.

In the area of fundraising and donations, Title IX permits school districts to raise or receive funds to supplement their athletic budgets, so long as boys' and girls' programs are compensated equitably. However, Title IX may prohibit individual teams from raising moneys for their own use. In other words, it is acceptable for boys' basketball teams and girls' softball teams to conduct fundraising campaigns, as long as revenue from each drive goes into the school's general athletic fund and does not result in an inequitable opportunity or program benefit enjoyed by only one gender.

Some courts have found it unacceptable for funds to be used solely by the individual teams that did the fundraising, even though this remains a common practice today. What further complicates this matter is the fact that a good portion of athletic fundraising is conducted by the respective teams' booster clubs or may be the donation of a parent benefactor who wants to specify use of those funds. Contrary to popular belief, Title IX restrictions apply to these types of income just as if the money was raised directly by the school.

In a recent case in Washington state, a boys' baseball booster club built a locker room and clubhouse to be used solely by the boys' team. The girls' softball team did not have such facilities and could not use the boys' facility because it was adjacent to a professional men's baseball diamond (and such playing fields do not meet girls' softball regulations). A parents' group inquired with the district regarding the inequity and gave the district an opportunity to respond prior to filing a formal OCR complaint.

In response, the district conducted a Title IX review. They found the boys' clubhouse to be improper and chose to shut down the facility. In addition, the Title IX review indicated that while the boys were playing in a minor league professional baseball stadium with many amenities, all three girls' softball teams were playing in comparably poor facilities. As a result, two of the girls' softball facilities were upgraded. A third girls' team, which had been playing in a city park that was prone to flooding during heavy rains, received a totally new softball facility from the district. The parents group was satisfied with the outcome and no OCR complaint was filed.

This case illustrates the need to plan ahead for equitable spending under Title IX. Had the district planned ahead in coordination with the booster club, those funds could have been applied more judiciously. The school district involved also demonstrated a proactive, legally fit response to the parent group's inquiry. They had a trained, skilled Title IX officer whom they trusted to conduct a thorough internal review and make sound recommendations, and they were prepared to follow those recommendations and correct inequities in their athletic programs.

## **Six Vital Tips For Title IX Compliance in Fundraising**

- 1.** Title IX requires your school district to have a Title IX officer in place. Make sure that this person receives comprehensive training and is fully prepared and supported in carrying out all duties.
- 2.** The district athletic director and Title IX officer must have a good working relationship. They should schedule regular occasions for discussion and planning on Title IX issues.
- 3.** Districts should conduct annual Title IX training programs for all athletic coaches and staff, including seasonal personnel.
- 4.** School districts should have a well organized and comprehensive policy concerning in-house and outside group fundraising and a fundraising/donation approval form that takes into consideration Title IX issues.
- 5.** All booster clubs should be overseen by the district and all of their fundraising efforts should receive prior written approval.
- 6.** The athletic director, site administrators and coaches should discuss all fundraising before the commencement of any campaign conducted by an athletic team or booster club to ensure that it complies with Title IX.

Supplementing your school district's athletic budget can be a key to student success on the field, in the classroom, and in the world. It is therefore imperative that districts understand Title IX and its ramifications before pursuing any type of supplemental income.

---

## **Start the 2006-2007 school year prepared!**

### **Prepare your coaches for the fall season...**

#### **McGrath Fall Sports Liability: Minimize the Risk Short Course Topics include:**

- Identify the greatest risks of harm and liability in fall sports and how to avoid them
- Liability for deliberate indifference toward hazing – don't let it happen to you
- Coaches' duties and responsibilities under the law
- Proper supervision of athletes and volunteers
- Checklists and report forms for facilities, practice sessions and events

*For: Principals, athletic directors and coaches of fall sports programs*

### **Prepare your district for an OCR audit...**

#### **McGrath OCR Civil Rights Compliance Short Course**

3 Modules (include 1, 2 or all 3 of these course offerings!)

- Disability Law Compliance
- Gender Equity (Title IX) Compliance
- Race and Bilingual Language Issues

What constitutes compliance, equity or accessibility? Learn the fundamentals of issue identification, how to analyze a situation or incident, and how to apply legal criteria to determine appropriate actions.

*For: District Office and School Site Administrators, Complaint Managers, Title IX or EEOC Compliance Officers, Risk Managers.*

Click here for a full list of fall [McGrath Short Course](#) offerings.

---

Contact:

[info@mcgrathinc.com](mailto:info@mcgrathinc.com)

800-733-1638

[www.mcgrathinc.com](http://www.mcgrathinc.com)

The McGrath electronic newsletter is a free service of McGrath Training Systems.

In September 2004, McGrath stopped publishing a mailable newsletter and began issuing electronic editions approximately twice per month. If you would like Mary Jo McGrath to address a particular issue related to one of our legally-based training topics (bullying, sexual harassment, cultural and racial diversity, employee supervision and evaluation, organizational leadership, or vulnerable employees liability), please email your request to [info@mcgrathinc.com](mailto:info@mcgrathinc.com). Back issues are also available upon request.

To subscribe, go to [www.mcgrathinc.com](http://www.mcgrathinc.com), click on the "Subscribe" button and fill in the form.

The McGrath electronic newsletter is intended as a service for educational administrators, human resources directors, risk managers and other school and public agency personnel. The articles are general in nature and are not intended to replace the advice of legal counsel.

You are receiving this email newsletter because you are a customer of McGrath Training Systems, you attended a conference or workshop where McGrath was presenting, you requested information, you subscribed to our newsletter online, your email address is public information, and/or you are a McGrath CyberSchool student.

If you do not wish to receive our bi-monthly electronic newsletter, please reply to this email and write "Unsubscribe" in the subject line. Thank you.

This newsletter may be forwarded electronically and printed for personal use as long as copyright information remains intact. No other permission is granted for reprint or publication of this article.

A Publication of McGrath Training Systems

© 2006 Mary Jo McGrath. All rights reserved.