



LEGAL NOTES

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Leveling the Playing Field In Youth Sports Programming

by Arnold M. Alvarez-Glasman

The quality of life in our communities depends largely on the variety of public services that cities provide. High on the list of local government programs that can make a difference are youth sports activities. Almost every city throughout the state offers baseball, soccer, basketball and other athletic opportunities to its children. However, until the recent passage of AB 2404 (Chapter 852, Statutes of 2004, Steinberg), California cities had little guidance in identifying criteria to ensure that discriminatory conduct did not occur in their youth sports programming.

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Arnold M. Alvarez-Glasman is the founding partner of the West Covina-based law firm Alvarez-Glasman & Colvin and serves as the city attorney and agency general counsel for the cities of Pomona, West Covina and Bell Gardens. Alvarez-Glasman & Colvin has represented cities faced with suits based upon gender discrimination in youth sports programs.

The societal value of providing quality physical activity and sports programs has been well documented, including the findings of a recent comprehensive study by the Women's Sports Foundation that establishes strong support for the need for and benefit of equal opportunity sports pro-

gramming in our cities. This 2004 report, *Her Life Depends on It: Sport, Physical Activity, and the Health and Well-being of American Girls*, concludes that physical activity and sports are fundamental solutions for many serious health and social problems confronting American girls.



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Understanding the Issue

Recognizing the legal challenge in fulfilling their societal obligation, California cities are now faced with further ensuring equality in their youth sports programs. This article provides an overview of the impacts of AB 2404 and will help cities avoid the potential pitfalls associated with youth sports programming.

Three fundamental laws must be understood in order to identify and evaluate what communities can do to further ensure gender equality for youth sports activities.

Title IX and the Three-Prong Test

The first key law in addressing the area of women's sports equality is Title IX of the Educational Amendment of 1972 to the Civil Rights Act of 1964, which was signed into law by President Richard Nixon. Title IX established that any educational program receiving federal assistance can lose its funding if it discriminates on the basis of sex, and requires equal opportunity for female athletes in government-funded institutions. The implementation of Title IX is currently governed through a series of federal regulations that address procedural requirements for complying with this area of law.

One of the more important Title IX regulations enacted in 1979 by the

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U.S. Department of Education established a test to determine if Title IX requirements are being met by an educational institution. The test comprises the following three prongs.

- 1. Proportionality:** whether interscholastic-level participation opportunities for male and female pupils are provided in numbers substantially proportionate to their respective enrollments;
- 2. History:** when the members of one sex have been and are underrepresented among interscholastic athletes, whether the school district can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interest and abilities of the members of that sex; and

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3. Interest: when the members of one sex are underrepresented among inter-scholastic athletes and the institution cannot show a history and continuing practice of program expansion, whether the school district can demonstrate that interest and abilities of the members of that sex have been fully and effectively accommodated by the present programs.

Over time, schools have used the three-prong test to ensure compliance with Title IX.

Unruh Civil Rights Act

The second key statute is a California law known as the Unruh Civil Rights Act. With this legislation, provisions of the California Civil Code were enacted that provided, in part, that “all persons ... no matter what their sex ... are entitled to the full and equal accommodations, advantages, facilities, privileges or services in all business establishments of every kind whatsoever.” This act has been used to prohibit local governmental agencies from discriminating in a variety of ways.

Assembly Bill 833

The third key legislation, AB 833, is a California law that became effective Jan. 1, 2004, and prohibits discrimination in state secondary and post-secondary educational institutions on the basis of sex. AB 833 set forth standards for determining whether an educational institution has effectively accommodated the interests and abilities of both sexes in athletics. This legislation also adopted the three-prong test and identified 15 different factors in evaluating whether or not an educational institution has provided equivalent opportunities to both sexes. It is the combination of these federal statutes and regulations, along with state law, that set the stage for AB 2404.

What AB 2404 Means for Cities

This recent legislation clearly underscores the rule of existing law but does not create any new liability for cities, as cities

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More in This Issue On Gender Equity

For additional information on gender equity, see the City Forum column, “What Cities Can Do to Improve Gender Equity in Youth Sports,” on page 6.

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are already prohibited from gender discrimination in conducting youth sports programs. During the past several years, cities have faced lawsuits that alleged certain cities discriminated in providing equal opportunities for girls' softball teams when compared to boys' Little League programs. While previous lawsuits were resolved without the need for a trial, the outcome of those cases provided little guidance in evaluating what criteria should be considered to determine the merits of the claims. AB 2404 addresses this dilemma.

This new law identifies 12 different factors for a court to evaluate in determining whether discrimination exists in local sports programming. These factors include:

1. Whether the community youth athletic programs effectively accommodate the athletic interest and abilities of both genders;
2. The provision of monies, equipment and supplies;
3. The scheduling of games and practice times;
4. The opportunity to receive coaching;
5. The assignment and compensation of coaches;
6. Access to lands and areas available to the city;
7. The selection of the season for a sport;
8. Location of games and practices;
9. Availability of locker rooms;

continued



The percentages of boy and girl athletes participating in your city's sports programs should be nearly equal to the proportion of boy and girl residents.

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This recent legislation clearly underscores the rule of existing law but does not create any new liability for cities, as cities are already prohibited from gender discrimination in conducting youth sports programs.

J O B O P P O R T U N I T I E S

Bob Murray
Fremont
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- 10. The provision of practice and competitive facilities;
- 11. The manner of providing publicity; and
- 12. The quality, training and certification standards of umpires, referees or judges.

It is important to note that AB 2404 also provides a more comprehensive definition of park and recreation facilities. This term now includes park facilities, athletic fields, courts, gymnasiums, recreational rooms, restrooms, concession stands and storage spaces. It also includes devices used to promote athletics, including scoreboards, banners, advertising and all monies used in conjunction with youth athletic activities.

If a city faces the unfortunate occurrence of an AB 2404 lawsuit, the court must now apply a similar Title IX three-prong test of proportionality, history and interest to the 12 factors mentioned above. To defeat a claim of discrimination, cities can show:

- The percentages of boy and girl athletes are about the same as the percentages of boy and girl residents; *or*
- The community has a history and continuing practice of expanding opportunities for the underrepresented gender; *or*
- The community is fully and effectively accommodating female athletes’ interests and abilities to participate in sports.

How to Avoid the Gender Equity “Penalty Box”

With these factors and criteria in place, how do cities ensure that a penalty is not called against their youth sports programs? One helpful strategy is to follow the three-step process of “document, dialogue and develop.”

Document

Many gender equity cases analyze the statistical data relating to population versus participation in providing gender-neutral opportunities. A city should evaluate its census information and compare these numbers to the number of participants in its various sports programs. The percentages of boy and girl athletes participating in your city’s sports programs should be

nearly equal to the proportion of boy and girl residents.

Because many cities' sports leagues allow nonresidents to participate, analyze whether the city's sports programs truly reflect the gender percentages within your jurisdiction. It's also important to know whether other organizations or nonprofit groups are providing youth sports opportunities within a city. Youth athletic programs that are run by the YMCA or Boys' and Girls' Clubs may impact the test of "proportionality," but if these programs involve city assistance (either monetary or by use of public facilities), these numbers cannot be overlooked.

Dialogue

It's critical to build relationships between the leaders of community sports programs and the employees or volunteers who oversee a city's athletic activities. By establishing clear communication and ongoing dialogue, the needs of each boys' and girls' sports league can be determined and problems or concerns remedied before any litigation backlash occurs. Working cooperatively with sports league operators and parents involved in local sports programs fosters creative ways to understand and meet the needs of the underrepresented gender.

Develop

In these fiscally challenging times, creating new programs or facilities that provide a level playing field can be difficult at best. However, when resources become available to create programs or facilities for female athletes, action should be taken to direct such resources toward achieving a greater balance of participation in sports programs. Cities should recognize that the days of giving priority to certain programs that traditionally favor boys' participation, such as Pop Warner football and Little League baseball, is no longer legally acceptable. It's essential to identify creative sports programming strategies that promote equal participation of both boys and girls, so the success of a sports league does not rely on participation by a particular gender.

Conclusion

Many cases have targeted the issue of gender equality in youth athletics. Much of what the future holds in applying the rules under AB 2404 will be left to interpretation by the courts. Now that cities

have a clear standard for conducting nondiscriminatory and gender-equitable sports programs, it's important to follow the rules and avoid being a target in the litigation game. ■

J O B O P P O R T U N I T I E S

Richard Perry

TSRA

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Avery

Bev Hills C.P.

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