

  
**COLLEGE SPORTS COUNCIL**

February 8, 2011

**VIA OVERNIGHT MAIL AND FACSIMILE – (508) 799-3119**

Worcester Public Schools  
20 Irving Street  
Worcester, MA 01609

Attention: Dr. Melinda Boone

RE: Administrative Class Complaint dated November 10, 2010 filed by the National Women's Law Center (NWLC) Against the Worcester Public Schools

Ladies and Gentlemen:

The College Sports Council (CSC) is a national coalition of coaches, student-athletes, parents and fans who are devoted to the preservation and promotion of the student-athlete experience. We are writing to you to bring to your attention a letter sent today by the Pacific Legal Foundation to the Office of Civil Rights that challenges legal assertions made in the recent Title IX complaint filed against your school district by the National Women's Law Center (NWLC). The approach to demonstrating Title IX compliance advocated by the NWLC in its complaint raises Constitutional issues, as it likely violates the Equal Protection Clause according to this public interest law firm.

Based on its review of the administrative class complaint filed by the NWLC with the Boston office of the Office of Civil Rights (OCR), the Pacific Legal Foundation asserts that *"The administrative complaint filed by the NWLC is based upon a misunderstanding of Title IX. According to NWLC, the Three-Part Test, developed in 1979 as a Policy Interpretation for intercollegiate sports, should now be applied to high school sports participation. But the NWLC's position is contrary to the express language of the Policy Interpretation and the purpose behind Title IX."*

The Pacific Legal Foundation's letter, a copy of which is enclosed, outlines in some detail the manner in which the NWLC's complaint lacks any legal basis. Pacific Legal Foundation's letter notes that a school following the Three-Part Test would be subjecting boys to disparate treatment without sufficiently probative evidence that such treatment is needed to combat sex discrimination, which likely runs afoul of the Equal Protection Clause. Pacific Legal Foundation urges the OCR to clarify that, pursuant to controlling regulations, the Worcester Public Schools are not required to comply with Title IX's Three-Part Test, but rather remain free to achieve Title IX compliance by any legally valid, nondiscriminatory method you deem appropriate.

Since 1996, colleges and universities have been advised that the only true "safe harbor" for avoiding Title IX litigation and OCR enforcement action is to comply with the so-called "proportionality test" of the Three-Part Test. This gender-based quota, which assumes that men and women have identical interest in participating in intercollegiate athletics, has contributed to colleges and universities electing to cut hundreds of male teams and limiting roster size of men's teams to "get proportional," thereby eliminating tens of thousands of participation opportunities for male athletes at the collegiate level.

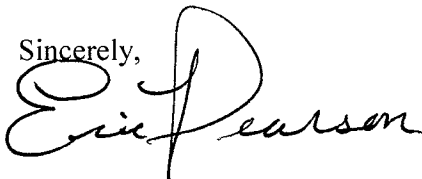
The pressure on high school administrators to eliminate boys' sports programs would be tremendous if the Three-Part Test were extended to high school sports. Given limited budgets, administrators will have little choice but to cut boys' programs if the boys in their school participate in sports at a higher rate than do the girls. We believe the consequences of this elimination of athletic opportunities for hundreds of thousands of boys could be devastating to our society, which is already struggling with declining male achievement at the high school and collegiate level.

Pacific Legal Foundation's litigation experience with respect to race- and sex-based discrimination and preferences, the Civil Rights Act, and the disparate impact theory, demonstrate its expertise on the matters raised by the NWLC's complaint. We encourage you and your legal advisors to carefully review their letter to the OCR and to contact their representative, Mr. Joshua Thompson, if you wish to discuss the inapplicability of the Three-Part Test to your situation and the more flexible legal standard that is applicable at the high school level under applicable regulations.

We believe that the constituents that you serve – students and their families in Worcester County – would be very adversely affected if the Three-Part Test were to become the standard for compliance at the high school level. For example, if you are unable to substantially increase female participation in sports by adding new programs or otherwise, you would need to eliminate up to 660 participation opportunities for the boys of your high schools to achieve the gender proportionality standard that the NWLC is urging.<sup>1</sup> This is not a result that should be imposed upon you without public debate. We believe many students and parents in your schools would like to avoid this drastic elimination of opportunities and, if informed as to this controversy, would actively seek to solicit support from their elected officials to urge OCR to reject the NWLC's effort to make gender quotas a part of high school athletics.

We support Title IX and believe that no one should be discriminated against on the basis of their gender. However, we believe the application of the Three-Part Test to scholastic sports will unnecessarily compel you to reduce participation opportunities for boys in your school district in a manner that could violate Constitutional rights of your students. We urge you to vigorously contest this effort by NWLC in order to avoid what would be devastating consequences for your schools and your student athletes and potential legal consequences for your district.

Sincerely,



Eric Pearson  
Chairman  
College Sports Council  
[eric@collegesportscouncil.org](mailto:eric@collegesportscouncil.org)

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<sup>1</sup> Our calculation is based upon the 2006 data supplied by Worcester Public Schools to the OCR. North High School, for example, would need to either add new girls' programs to attract 107 more girl participants, or eliminate 125 of the existing 230 participation opportunities for boys, or some combination of the two. We suspect that this high school (which already offers many of the state sanctioned girls' sports) does not have the ability to comply with proportionality without eliminating several boys' sports programs.



**CSC**  
**COLLEGE SPORTS COUNCIL**

February 8, 2011

**VIA OVERNIGHT MAIL AND FACSIMILE – (702) 799-5125**

Clark County School District  
5100 West Sahara Ave.  
Las Vegas, NV 89146

Attention: Mr. Dwight D. Jones

RE: Administrative Class Complaint dated November 10, 2010 filed by the National Women's Law Center (NWLC) Against the Clark County School District

Ladies and Gentlemen:

The College Sports Council (CSC) is a national coalition of coaches, student-athletes, parents and fans who are devoted to the preservation and promotion of the student-athlete experience. We are writing to you to bring to your attention a letter sent today by the Pacific Legal Foundation to the Office of Civil Rights that challenges legal assertions made in the recent Title IX complaint filed against your school district by the National Women's Law Center (NWLC). The approach to demonstrating Title IX compliance advocated by the NWLC in its complaint raises Constitutional issues, as it likely violates the Equal Protection Clause according to this public interest law firm.

Based on its review of the administrative class complaint filed by the NWLC with the Seattle office of the Office of Civil Rights (OCR), the Pacific Legal Foundation asserts that "*The administrative complaint filed by the NWLC is based upon a misunderstanding of Title IX. According to NWLC, the Three-Part Test, developed in 1979 as a Policy Interpretation for intercollegiate sports, should now be applied to high school sports participation. But the NWLC's position is contrary to the express language of the Policy Interpretation and the purpose behind Title IX.*"

The Pacific Legal Foundation's letter, a copy of which is enclosed, outlines in some detail the manner in which the NWLC's complaint lacks any legal basis. Pacific Legal Foundation's letter notes that a school following the Three-Part Test would be subjecting boys to disparate treatment without sufficiently probative evidence that such treatment is needed to combat sex discrimination, which likely runs afoul of the Equal Protection Clause. Pacific Legal Foundation urges the OCR to clarify that, pursuant to controlling regulations, the Clark County School District is not required to comply with Title IX's Three-Part Test, but rather remains free to achieve Title IX compliance by any legally valid, nondiscriminatory method you deem appropriate.

Since 1996, colleges and universities have been advised that the only true "safe harbor" for avoiding Title IX litigation and OCR enforcement action is to comply with the so-called "proportionality test" of the Three-Part Test. This gender-based quota, which assumes that men and women have identical interest in participating in intercollegiate athletics, has contributed to colleges and universities electing to cut hundreds of male teams and limiting roster size of men's teams to "get proportional," thereby eliminating tens of thousands of participation opportunities for male athletes at the collegiate level.

The pressure on high school administrators to eliminate boys' sports programs would be tremendous if the Three-Part Test were extended to high school sports. Given limited budgets, administrators will have little choice but to cut boys' programs if the boys in their school participate in sports at a higher rate than do the girls. We believe the consequences of this elimination of athletic opportunities for hundreds of thousands of boys could be devastating to our society, which is already struggling with declining male achievement at the high school and collegiate level.

Pacific Legal Foundation's litigation experience with respect to race- and sex-based discrimination and preferences, the Civil Rights Act, and the disparate impact theory, demonstrate its expertise on the matters raised by the NWLC's complaint. We encourage you and your legal advisors to carefully review their letter to the OCR and to contact their representative, Mr. Joshua Thompson, if you wish to discuss the inapplicability of the Three-Part Test to your situation and the more flexible legal standard that is applicable at the high school level under applicable regulations.

We believe that the constituents that you serve – students and their families in Clark County – would be very adversely affected if the Three-Part Test were to become the standard for compliance at the high school level. For example, if you are unable to substantially increase female participation in sports by adding new programs or otherwise, you would need to eliminate up to 3790 participation opportunities for the boys of your high schools to achieve the gender proportionality standard that the NWLC is urging.<sup>1</sup> This is not a result that should be imposed upon you without public debate. We believe many students and parents in your schools would like to avoid this drastic elimination of opportunities and, if informed as to this controversy, would actively seek to solicit support from their elected officials to urge OCR to reject the NWLC's effort to make gender quotas a part of high school athletics.

We support Title IX and believe that no one should be discriminated against on the basis of their gender. However, we believe the application of the Three-Part Test to scholastic sports will unnecessarily compel you to reduce participation opportunities for boys in your school district in a manner that could violate Constitutional rights of your students. We urge you to vigorously contest this effort by NWLC in order to avoid what would be devastating consequences for your schools and your student athletes and potential legal consequences for your district.

Sincerely,



Eric Pearson  
Chairman  
College Sports Council  
[eric@collegesportscouncil.org](mailto:eric@collegesportscouncil.org)

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<sup>1</sup> Our calculation is based upon the 2006 data supplied by Clark County School District to the OCR. Coronado High School, for example, would need to either add new girls' programs to attract 227 more girl participants, or eliminate 235 of the existing 545 participation opportunities for boys, or some combination of the two. We suspect that this high school (which already offers many of the state sanctioned girls' sports) does not have the ability to comply with proportionality without eliminating several boys' sports programs.



**COLLEGE SPORTS COUNCIL**

February 8, 2011

***VIA OVERNIGHT MAIL AND FACSIMILE – (623) 445-5086***

Deer Valley Unified School District  
20402 N. 15th Avenue  
Phoenix, AZ 85027

Attention: Dr. John Kriekard

RE: Administrative Class Complaint dated November 10, 2010 filed by the National Women's Law Center (NWLC) Against the Deer Valley Unified School District

Ladies and Gentlemen:

The College Sports Council (CSC) is a national coalition of coaches, student-athletes, parents and fans who are devoted to the preservation and promotion of the student-athlete experience. We are writing to you to bring to your attention a letter sent today by the Pacific Legal Foundation to the Office of Civil Rights that challenges legal assertions made in the recent Title IX complaint filed against your school district by the National Women's Law Center (NWLC). The approach to demonstrating Title IX compliance advocated by the NWLC in its complaint raises Constitutional issues, as it likely violates the Equal Protection Clause according to this public interest law firm.

Based on its review of the administrative class complaint filed by the NWLC with the Denver office of the Office of Civil Rights (OCR), the Pacific Legal Foundation asserts that *"The administrative complaint filed by the NWLC is based upon a misunderstanding of Title IX. According to NWLC, the Three-Part Test, developed in 1979 as a Policy Interpretation for intercollegiate sports, should now be applied to high school sports participation. But the NWLC's position is contrary to the express language of the Policy Interpretation and the purpose behind Title IX."*

The Pacific Legal Foundation's letter, a copy of which is enclosed, outlines in some detail the manner in which the NWLC's complaint lacks any legal basis. Pacific Legal Foundation's letter notes that a school following the Three-Part Test would be subjecting boys to disparate treatment without sufficiently probative evidence that such treatment is needed to combat sex discrimination, which likely runs afoul of the Equal Protection Clause. Pacific Legal Foundation urges the OCR to clarify that, pursuant to controlling regulations, the Deer Valley Unified School District is not required to comply with Title IX's Three-Part Test, but rather remains free to achieve Title IX compliance by any legally valid, nondiscriminatory method you deem appropriate.

Since 1996, colleges and universities have been advised that the only true "safe harbor" for avoiding Title IX litigation and OCR enforcement action is to comply with the so-called "proportionality test" of the Three-Part Test. This gender-based quota, which assumes that men and women have identical interest in participating in intercollegiate athletics, has contributed to colleges and universities electing to cut hundreds of male teams and limiting roster size of men's teams to "get proportional," thereby eliminating tens of thousands of participation opportunities for male athletes at the collegiate level.

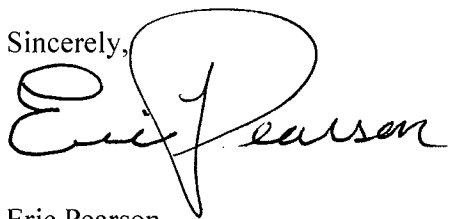
The pressure on high school administrators to eliminate boys' sports programs would be tremendous if the Three-Part Test were extended to high school sports. Given limited budgets, administrators will have little choice but to cut boys' programs if the boys in their school participate in sports at a higher rate than do the girls. We believe the consequences of this elimination of athletic opportunities for hundreds of thousands of boys could be devastating to our society, which is already struggling with declining male achievement at the high school and collegiate level.

Pacific Legal Foundation's litigation experience with respect to race- and sex-based discrimination and preferences, the Civil Rights Act, and the disparate impact theory, demonstrate its expertise on the matters raised by the NWLC's complaint. We encourage you and your legal advisors to carefully review their letter to the OCR and to contact their representative, Mr. Joshua Thompson, if you wish to discuss the inapplicability of the Three-Part Test to your situation and the more flexible legal standard that is applicable at the high school level under applicable regulations.

We believe that the constituents that you serve – students and their families in the Deer Valley School District – would be very adversely affected if the Three-Part Test were to become the standard for compliance at the high school level. For example, if you are unable to substantially increase female participation in sports by adding new programs or otherwise, you would need to eliminate up to 760 participation opportunities for the boys of your high schools to achieve the gender proportionality standard that the NWLC is urging.<sup>1</sup> This is not a result that should be imposed upon you without public debate. We believe many students and parents in your schools would like to avoid this drastic elimination of opportunities and, if informed as to this controversy, would actively seek to solicit support from their elected officials to urge OCR to reject the NWLC's effort to make gender quotas a part of high school athletics.

We support Title IX and believe that no one should be discriminated against on the basis of their gender. However, we believe the application of the Three-Part Test to scholastic sports will unnecessarily compel you to reduce participation opportunities for boys in your school district in a manner that could violate Constitutional rights of your students. We urge you to vigorously contest this effort by NWLC in order to avoid what would be devastating consequences for your schools and your student athletes and potential legal consequences for your district.

Sincerely,



Eric Pearson  
Chairman  
College Sports Council  
[eric@collegesportscouncil.org](mailto:eric@collegesportscouncil.org)

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<sup>1</sup> Our calculation is based upon the 2006 data supplied by Deer Valley Unified School District to the OCR. Deer Valley High School, for example, would need to either add new girls' programs to attract 202 more girl participants, or eliminate 207 of the existing 470 participation opportunities for boys, or some combination of the two. We suspect that this high school (which already offers many of the state sanctioned girls' sports) does not have the ability to comply with proportionality without eliminating several boys' sports programs.

  
**COLLEGE SPORTS COUNCIL**

February 8, 2011

**VIA OVERNIGHT MAIL AND FACSIMILE – (614) 365-5689**

Columbus City Schools  
270 E. State Street  
Columbus, OH 43215

Attention: Dr. Gene T. Harris

RE: Administrative Class Complaint dated November 10, 2010 filed by the National Women's Law Center (NWLC) Against the Columbus City Schools

Ladies and Gentlemen:

The College Sports Council (CSC) is a national coalition of coaches, student-athletes, parents and fans who are devoted to the preservation and promotion of the student-athlete experience. We are writing to you to bring to your attention a letter sent today by the Pacific Legal Foundation to the Office of Civil Rights that challenges legal assertions made in the recent Title IX complaint filed against your school district by the National Women's Law Center (NWLC). The approach to demonstrating Title IX compliance advocated by the NWLC in its complaint raises Constitutional issues, as it likely violates the Equal Protection Clause according to this public interest law firm.

Based on its review of the administrative class complaint filed by the NWLC with the Cleveland office of the Office of Civil Rights (OCR), the Pacific Legal Foundation asserts that *"The administrative complaint filed by the NWLC is based upon a misunderstanding of Title IX. According to NWLC, the Three-Part Test, developed in 1979 as a Policy Interpretation for intercollegiate sports, should now be applied to high school sports participation. But the NWLC's position is contrary to the express language of the Policy Interpretation and the purpose behind Title IX."*

The Pacific Legal Foundation's letter, a copy of which is enclosed, outlines in some detail the manner in which the NWLC's complaint lacks any legal basis. Pacific Legal Foundation's letter notes that a school following the Three-Part Test would be subjecting boys to disparate treatment without sufficiently probative evidence that such treatment is needed to combat sex discrimination, which likely runs afoul of the Equal Protection Clause. Pacific Legal Foundation urges the OCR to clarify that, pursuant to controlling regulations, the Columbus City Schools are not required to comply with Title IX's Three-Part Test, but rather remain free to achieve Title IX compliance by any legally valid, nondiscriminatory method you deem appropriate.

Since 1996, colleges and universities have been advised that the only true "safe harbor" for avoiding Title IX litigation and OCR enforcement action is to comply with the so-called "proportionality test" of the Three-Part Test. This gender-based quota, which assumes that men and women have identical interest in participating in intercollegiate athletics, has contributed to colleges and universities electing to cut hundreds of male teams and limiting roster size of men's teams to "get proportional," thereby eliminating tens of thousands of participation opportunities for male athletes at the collegiate level.

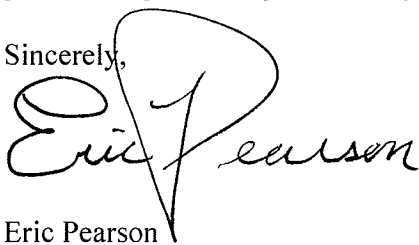
The pressure on high school administrators to eliminate boys' sports programs would be tremendous if the Three-Part Test were extended to high school sports. Given limited budgets, administrators will have little choice but to cut boys' programs if the boys in their school participate in sports at a higher rate than do the girls. We believe the consequences of this elimination of athletic opportunities for hundreds of thousands of boys could be devastating to our society, which is already struggling with declining male achievement at the high school and collegiate level.

Pacific Legal Foundation's litigation experience with respect to race- and sex-based discrimination and preferences, the Civil Rights Act, and the disparate impact theory, demonstrate its expertise on the matters raised by the NWLC's complaint. We encourage you and your legal advisors to carefully review their letter to the OCR and to contact their representative, Mr. Joshua Thompson, if you wish to discuss the inapplicability of the Three-Part Test to your situation and the more flexible legal standard that is applicable at the high school level under applicable regulations.

We believe that the constituents that you serve – students and their families in Columbus – would be very adversely affected if the Three-Part Test were to become the standard for compliance at the high school level. For example, if you are unable to substantially increase female participation in sports by adding new programs or otherwise, you would need to eliminate up to 1070 participation opportunities for the boys of your high schools to achieve the gender proportionality standard that the NWLC is urging.<sup>1</sup> This is not a result that should be imposed upon you without public debate. We believe many students and parents in your schools would like to avoid this drastic elimination of opportunities and, if informed as to this controversy, would actively seek to solicit support from their elected officials to urge OCR to reject the NWLC's effort to make gender quotas a part of high school athletics.

We support Title IX and believe that no one should be discriminated against on the basis of their gender. However, we believe the application of the Three-Part Test to scholastic sports will unnecessarily compel you to reduce participation opportunities for boys in your school district in a manner that could violate Constitutional rights of your students. We urge you to vigorously contest this effort by NWLC in order to avoid what would be devastating consequences for your schools and your student athletes and potential legal consequences for your district.

Sincerely,



Eric Pearson  
Chairman  
College Sports Council  
[eric@collegesportscouncil.org](mailto:eric@collegesportscouncil.org)

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<sup>1</sup> Our calculation is based upon the 2006 data supplied by Columbus City Schools to the OCR. Brookhaven High School, for example, would need to either add new girls' programs to attract 110 more girl participants, or eliminate 139 of the existing 260 participation opportunities for boys, or some combination of the two. We suspect that this high school (which already offers many of the state sanctioned girls' sports) does not have the ability to comply with proportionality without eliminating several boys' sports programs.





**CSC**  
**COLLEGE SPORTS COUNCIL**

February 8, 2011

**VIA OVERNIGHT MAIL AND FACSIMILE – (949) 936-5259**

Irvine Unified School District  
5050 Barranca Parkway  
Irvine CA 92604

Attention: Dr. Gwen Gross

RE: Administrative Class Complaint dated November 10, 2010 filed by the National Women's Law Center (NWLC) Against the Irvine Unified School District

Ladies and Gentlemen:

The College Sports Council (CSC) is a national coalition of coaches, student-athletes, parents and fans who are devoted to the preservation and promotion of the student-athlete experience. We are writing to you to bring to your attention a letter sent today by the Pacific Legal Foundation to the Office of Civil Rights that challenges legal assertions made in the recent Title IX complaint filed against your school district by the National Women's Law Center (NWLC). The approach to demonstrating Title IX compliance advocated by the NWLC in its complaint raises Constitutional issues, as it likely violates the Equal Protection Clause according to this public interest law firm.

Based on its review of the administrative class complaint filed by the NWLC with the San Francisco office of the Office of Civil Rights (OCR), the Pacific Legal Foundation asserts that "*The administrative complaint filed by the NWLC is based upon a misunderstanding of Title IX. According to NWLC, the Three-Part Test, developed in 1979 as a Policy Interpretation for intercollegiate sports, should now be applied to high school sports participation. But the NWLC's position is contrary to the express language of the Policy Interpretation and the purpose behind Title IX.*"

The Pacific Legal Foundation's letter, a copy of which is enclosed, outlines in some detail the manner in which the NWLC's complaint lacks any legal basis. Pacific Legal Foundation's letter notes that a school following the Three-Part Test would be subjecting boys to disparate treatment without sufficiently probative evidence that such treatment is needed to combat sex discrimination, which likely runs afoul of the Equal Protection Clause. Pacific Legal Foundation urges the OCR to clarify that, pursuant to controlling regulations, the Irvine Unified School District is not required to comply with Title IX's Three-Part Test, but rather remains free to achieve Title IX compliance by any legally valid, nondiscriminatory method you deem appropriate.

Since 1996, colleges and universities have been advised that the only true "safe harbor" for avoiding Title IX litigation and OCR enforcement action is to comply with the so-called "proportionality test" of the Three-Part Test. This gender-based quota, which assumes that men and women have identical interest in participating in intercollegiate athletics, has contributed to colleges and universities electing to cut hundreds of male teams and limiting roster size of men's teams to "get proportional," thereby eliminating tens of thousands of participation opportunities for male athletes at the collegiate level.

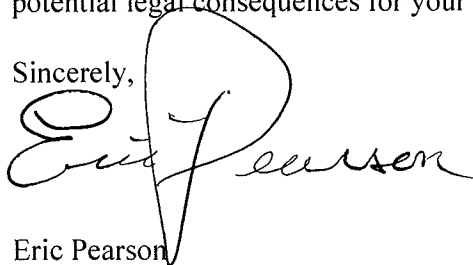
The pressure on high school administrators to eliminate boys' sports programs would be tremendous if the Three-Part Test were extended to high school sports. Given limited budgets, administrators will have little choice but to cut boys' programs if the boys in their school participate in sports at a higher rate than do the girls. We believe the consequences of this elimination of athletic opportunities for hundreds of thousands of boys could be devastating to our society, which is already struggling with declining male achievement at the high school and collegiate level.

Pacific Legal Foundation's litigation experience with respect to race- and sex-based discrimination and preferences, the Civil Rights Act, and the disparate impact theory, demonstrate its expertise on the matters raised by the NWLC's complaint. We encourage you and your legal advisors to carefully review their letter to the OCR and to contact their representative, Mr. Joshua Thompson, if you wish to discuss the inapplicability of the Three-Part Test to your situation and the more flexible legal standard that is applicable at the high school level under applicable regulations.

We believe that the constituents that you serve – students and their families in Irvine – would be very adversely affected if the Three-Part Test were to become the standard for compliance at the high school level. For example, if you are unable to substantially increase female participation in sports by adding new programs or otherwise, you would need to eliminate up to 800 participation opportunities for the boys of your high schools to achieve the gender proportionality standard that the NWLC is urging.<sup>1</sup> This is not a result that should be imposed upon you without public debate. We believe many students and parents in your schools would like to avoid this drastic elimination of opportunities and, if informed as to this controversy, would actively seek to solicit support from their elected officials to urge OCR to reject the NWLC's effort to make gender quotas a part of high school athletics.

We support Title IX and believe that no one should be discriminated against on the basis of their gender. However, we believe the application of the Three-Part Test to scholastic sports will unnecessarily compel you to reduce participation opportunities for boys in your school district in a manner that could violate Constitutional rights of your students. We urge you to vigorously contest this effort by NWLC in order to avoid what would be devastating consequences for your schools and your student athletes and potential legal consequences for your district.

Sincerely,



Eric Pearson  
Chairman  
College Sports Council  
[eric@collegesportscouncil.org](mailto:eric@collegesportscouncil.org)

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<sup>1</sup> Our calculation is based upon the 2006 data supplied by Irvine Unified School District to the OCR. Woodbridge High School, for example, would need to either add new girls' programs to attract 188 more girl participants, or eliminate 211 of the existing 610 participation opportunities for boys, or some combination of the two. We suspect that this high school (which already offers many of the state sanctioned girls' sports) does not have the ability to comply with proportionality without eliminating several boys' sports programs.

  
**COLLEGE SPORTS COUNCIL**

February 8, 2011

***VIA OVERNIGHT MAIL AND FACSIMILE – (919) 850-1819***

Wake County Public School System  
3600 Wake Forest Road  
Raleigh, NC 27609

Attention: Mr. Anthony J. Tata

RE: Administrative Class Complaint dated November 10, 2010 filed by the National Women's Law Center (NWLC) Against the Wake County Public School System

Ladies and Gentlemen:

The College Sports Council (CSC) is a national coalition of coaches, student-athletes, parents and fans who are devoted to the preservation and promotion of the student-athlete experience. We are writing to you to bring to your attention a letter sent today by the Pacific Legal Foundation to the Office of Civil Rights that challenges legal assertions made in the recent Title IX complaint filed against your school district by the National Women's Law Center (NWLC). The approach to demonstrating Title IX compliance advocated by the NWLC in its complaint raises Constitutional issues, as it likely violates the Equal Protection Clause according to this public interest law firm.

Based on its review of the administrative class complaint filed by the NWLC with the Washington, DC office of the Office of Civil Rights (OCR), the Pacific Legal Foundation asserts that *"The administrative complaint filed by the NWLC is based upon a misunderstanding of Title IX. According to NWLC, the Three-Part Test, developed in 1979 as a Policy Interpretation for intercollegiate sports, should now be applied to high school sports participation. But the NWLC's position is contrary to the express language of the Policy Interpretation and the purpose behind Title IX."*

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Since 1996, colleges and universities have been advised that the only true "safe harbor" for avoiding Title IX litigation and OCR enforcement action is to comply with the so-called "proportionality test" of the Three-Part Test. This gender-based quota, which assumes that men and women have identical interest in participating in intercollegiate athletics, has contributed to colleges and universities electing to cut hundreds of male teams and limiting roster size of men's teams to "get proportional," thereby eliminating tens of thousands of participation opportunities for male athletes at the collegiate level.

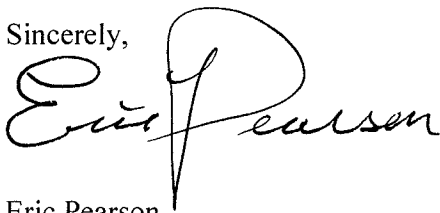
The pressure on high school administrators to eliminate boys' sports programs would be tremendous if the Three-Part Test were extended to high school sports. Given limited budgets, administrators will have little choice but to cut boys' programs if the boys in their school participate in sports at a higher rate than do the girls. We believe the consequences of this elimination of athletic opportunities for hundreds of thousands of boys could be devastating to our society, which is already struggling with declining male achievement at the high school and collegiate level.

Pacific Legal Foundation's litigation experience with respect to race- and sex-based discrimination and preferences, the Civil Rights Act, and the disparate impact theory, demonstrate its expertise on the matters raised by the NWLC's complaint. We encourage you and your legal advisors to carefully review their letter to the OCR and to contact their representative, Mr. Joshua Thompson, if you wish to discuss the inapplicability of the Three-Part Test to your situation and the more flexible legal standard that is applicable at the high school level under applicable regulations.

We believe that the constituents that you serve – students and their families in Wake County – would be very adversely affected if the Three-Part Test were to become the standard for compliance at the high school level. For example, if you are unable to substantially increase female participation in sports by adding new programs or otherwise, you would need to eliminate up to 2,650 participation opportunities for the boys of your high schools to achieve the gender proportionality standard that the NWLC is urging.<sup>1</sup> This is not a result that should be imposed upon you without public debate. We believe many students and parents in your schools would like to avoid this drastic elimination of opportunities and, if informed as to this controversy, would actively seek to solicit support from their elected officials to urge OCR to reject the NWLC's effort to make gender quotas a part of high school athletics.

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Sincerely,



Eric Pearson  
Chairman  
College Sports Council  
eric@collegesportscouncil.org

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<sup>1</sup> Our calculation is based upon the 2006 data supplied by Wake County Public School System to the OCR. Middle Creek High School, for example, would need to either add new girls' programs to attract 154 more girl participants, or eliminate 157 of the existing 280 participation opportunities for boys, or some combination of the two. We suspect that this high school (which already offers many of the state sanctioned girls' sports) does not have the ability to comply with proportionality without eliminating several boys' sports programs.

  
**COLLEGE SPORTS COUNCIL**

February 8, 2011

***VIA OVERNIGHT MAIL AND FACSIMILE – (713) 556-6323***

Houston Independent School District  
4400 West 18th St.  
Houston, TX 77092-8501

Attention: Dr. Terry B. Grier

RE: Administrative Class Complaint dated November 10, 2010 filed by the National Women's Law Center (NWLC) Against the Houston Independent School District

Ladies and Gentlemen:

The College Sports Council (CSC) is a national coalition of coaches, student-athletes, parents and fans who are devoted to the preservation and promotion of the student-athlete experience. We are writing to you to bring to your attention a letter sent today by the Pacific Legal Foundation to the Office of Civil Rights that challenges legal assertions made in the recent Title IX complaint filed against your school district by the National Women's Law Center (NWLC). The approach to demonstrating Title IX compliance advocated by the NWLC in its complaint raises Constitutional issues, as it likely violates the Equal Protection Clause according to this public interest law firm.

Based on its review of the administrative class complaint filed by the NWLC with the Dallas office of the Office of Civil Rights (OCR), the Pacific Legal Foundation asserts that *"The administrative complaint filed by the NWLC is based upon a misunderstanding of Title IX. According to NWLC, the Three-Part Test, developed in 1979 as a Policy Interpretation for intercollegiate sports, should now be applied to high school sports participation. But the NWLC's position is contrary to the express language of the Policy Interpretation and the purpose behind Title IX."*

The Pacific Legal Foundation's letter, a copy of which is enclosed, outlines in some detail the manner in which the NWLC's complaint lacks any legal basis. Pacific Legal Foundation's letter notes that a school following the Three-Part Test would be subjecting boys to disparate treatment without sufficiently probative evidence that such treatment is needed to combat sex discrimination, which likely runs afoul of the Equal Protection Clause. Pacific Legal Foundation urges the OCR to clarify that, pursuant to controlling regulations, the Houston Independent School District is not required to comply with Title IX's Three-Part Test, but rather remains free to achieve Title IX compliance by any legally valid, nondiscriminatory method you deem appropriate.

Since 1996, colleges and universities have been advised that the only true "safe harbor" for avoiding Title IX litigation and OCR enforcement action is to comply with the so-called "proportionality test" of the Three-Part Test. This gender-based quota, which assumes that men and women have identical interest in participating in intercollegiate athletics, has contributed to colleges and universities electing to cut hundreds of male teams and limiting roster size of men's teams to "get proportional," thereby eliminating tens of thousands of participation opportunities for male athletes at the collegiate level.

**College Sports Council, P.O. Box 53356, Washington, DC 20009-9356**

The pressure on high school administrators to eliminate boys' sports programs would be tremendous if the Three-Part Test were extended to high school sports. Given limited budgets, administrators will have little choice but to cut boys' programs if the boys in their school participate in sports at a higher rate than do the girls. We believe the consequences of this elimination of athletic opportunities for hundreds of thousands of boys could be devastating to our society, which is already struggling with declining male achievement at the high school and collegiate level.

Pacific Legal Foundation's litigation experience with respect to race- and sex-based discrimination and preferences, the Civil Rights Act, and the disparate impact theory, demonstrate its expertise on the matters raised by the NWLC's complaint. We encourage you and your legal advisors to carefully review their letter to the OCR and to contact their representative, Mr. Joshua Thompson, if you wish to discuss the inapplicability of the Three-Part Test to your situation and the more flexible legal standard that is applicable at the high school level under applicable regulations.

We believe that the constituents that you serve – students and their families in Houston – would be very adversely affected if the Three-Part Test were to become the standard for compliance at the high school level. For example, if you are unable to substantially increase female participation in sports by adding new programs or otherwise, you would need to eliminate up to 2,500 participation opportunities for the boys of your high schools to achieve the gender proportionality standard that the NWLC is urging.<sup>1</sup> This is not a result that should be imposed upon you without public debate. We believe many students and parents in your schools would like to avoid this drastic elimination of opportunities and, if informed as to this controversy, would actively seek to solicit support from their elected officials to urge OCR to reject the NWLC's effort to make gender quotas a part of high school athletics.

We support Title IX and believe that no one should be discriminated against on the basis of their gender. However, we believe the application of the Three-Part Test to scholastic sports will unnecessarily compel you to reduce participation opportunities for boys in your school district in a manner that could violate Constitutional rights of your students. We urge you to vigorously contest this effort by NWLC in order to avoid what would be devastating consequences for your schools and your student athletes and potential legal consequences for your district.

Sincerely,



Eric Pearson  
Chairman  
College Sports Council  
eric@collegesportscouncil.org

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<sup>1</sup> Our calculation is based upon the 2006 data supplied by Houston Independent School District to the OCR. Sterling High School, for example, would need to either add new girls' programs to attract 136 more girl participants, or eliminate 139 of the existing 245 participation opportunities for boys, or some combination of the two. We suspect that this high school (which already offers many of the state sanctioned girls' sports) does not have the ability to comply with proportionality without eliminating several boys' sports programs.



**CSC**  
**COLLEGE SPORTS COUNCIL**

February 8, 2011

**VIA OVERNIGHT MAIL AND FACSIMILE – (502) 241-3209**

Oldham County Schools  
6165 W. Highway 1  
Buckner, KY 40010

Attention: Mr. Paul Upchurch

RE: Administrative Class Complaint dated November 10, 2010 filed by the National Women's Law Center (NWLC) Against the Oldham County Schools

Ladies and Gentlemen:

The College Sports Council (CSC) is a national coalition of coaches, student-athletes, parents and fans who are devoted to the preservation and promotion of the student-athlete experience. We are writing to you to bring to your attention a letter sent today by the Pacific Legal Foundation to the Office of Civil Rights that challenges legal assertions made in the recent Title IX complaint filed against your school district by the National Women's Law Center (NWLC). The approach to demonstrating Title IX compliance advocated by the NWLC in its complaint raises Constitutional issues, as it likely violates the Equal Protection Clause according to this public interest law firm.

Based on its review of the administrative class complaint filed by the NWLC with the Philadelphia office of the Office of Civil Rights (OCR), the Pacific Legal Foundation asserts that "*The administrative complaint filed by the NWLC is based upon a misunderstanding of Title IX. According to NWLC, the Three-Part Test, developed in 1979 as a Policy Interpretation for intercollegiate sports, should now be applied to high school sports participation. But the NWLC's position is contrary to the express language of the Policy Interpretation and the purpose behind Title IX.*"

The Pacific Legal Foundation's letter, a copy of which is enclosed, outlines in some detail the manner in which the NWLC's complaint lacks any legal basis. Pacific Legal Foundation's letter notes that a school following the Three-Part Test would be subjecting boys to disparate treatment without sufficiently probative evidence that such treatment is needed to combat sex discrimination, which likely runs afoul of the Equal Protection Clause. Pacific Legal Foundation urges the OCR to clarify that, pursuant to controlling regulations, the Oldham County Schools are not required to comply with Title IX's Three-Part Test, but rather remain free to achieve Title IX compliance by any legally valid, nondiscriminatory method you deem appropriate.

Since 1996, colleges and universities have been advised that the only true "safe harbor" for avoiding Title IX litigation and OCR enforcement action is to comply with the so-called "proportionality test" of the Three-Part Test. This gender-based quota, which assumes that men and women have identical interest in participating in intercollegiate athletics, has contributed to colleges and universities electing to cut hundreds of male teams and limiting roster size of men's teams to "get proportional," thereby eliminating tens of thousands of participation opportunities for male athletes at the collegiate level.

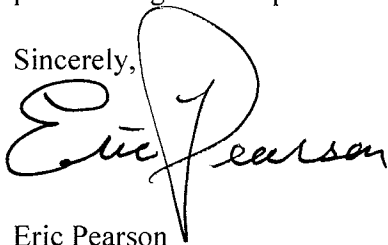
The pressure on high school administrators to eliminate boys' sports programs would be tremendous if the Three-Part Test were extended to high school sports. Given limited budgets, administrators will have little choice but to cut boys' programs if the boys in their school participate in sports at a higher rate than do the girls. We believe the consequences of this elimination of athletic opportunities for hundreds of thousands of boys could be devastating to our society, which is already struggling with declining male achievement at the high school and collegiate level.

Pacific Legal Foundation's litigation experience with respect to race- and sex-based discrimination and preferences, the Civil Rights Act, and the disparate impact theory, demonstrate its expertise on the matters raised by the NWLC's complaint. We encourage you and your legal advisors to carefully review their letter to the OCR and to contact their representative, Mr. Joshua Thompson, if you wish to discuss the inapplicability of the Three-Part Test to your situation and the more flexible legal standard that is applicable at the high school level under applicable regulations.

We believe that the constituents that you serve – students and their families in Oldham County – would be very adversely affected if the Three-Part Test were to become the standard for compliance at the high school level. For example, if you are unable to substantially increase female participation in sports by adding new programs or otherwise, you would need to eliminate up to 195 participation opportunities for the boys of your high schools to achieve the gender proportionality standard that the NWLC is urging.<sup>1</sup> This is not a result that should be imposed upon you without public debate. We believe many students and parents in your schools would like to avoid this drastic elimination of opportunities and, if informed as to this controversy, would actively seek to solicit support from their elected officials to urge OCR to reject the NWLC's effort to make gender quotas a part of high school athletics.

We support Title IX and believe that no one should be discriminated against on the basis of their gender. However, we believe the application of the Three-Part Test to scholastic sports will unnecessarily compel you to reduce participation opportunities for boys in your school district in a manner that could violate Constitutional rights of your students. We urge you to vigorously contest this effort by NWLC in order to avoid what would be devastating consequences for your schools and your student athletes and potential legal consequences for your district.

Sincerely,



Eric Pearson  
Chairman  
College Sports Council  
eric@collegesportsCouncil.org

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<sup>1</sup> Our calculation is based upon the 2006 data supplied by Oldham County Schools to the OCR. Oldham County High School, for example, would need to either add new girls' programs to attract 73 more girl participants, or eliminate 74 of the existing 135 participation opportunities for boys, or some combination of the two. We suspect that this high school (which already offers many of the state sanctioned girls' sports) does not have the ability to comply with proportionality without eliminating several boys' sports programs.





**CSC**  
**COLLEGE SPORTS COUNCIL**

February 8, 2011

**VIA OVERNIGHT MAIL AND FACSIMILE – (605) 367-4637**

Sioux Falls School District  
201 East 38th Street  
Sioux Falls, SD 57105-5815

Attention: Dr. Pamela J. Homan

RE: Administrative Class Complaint dated November 10, 2010 filed by the National Women's Law Center (NWLC) Against the Sioux Falls School District

Ladies and Gentlemen:

The College Sports Council (CSC) is a national coalition of coaches, student-athletes, parents and fans who are devoted to the preservation and promotion of the student-athlete experience. We are writing to you to bring to your attention a letter sent today by the Pacific Legal Foundation to the Office of Civil Rights that challenges legal assertions made in the recent Title IX complaint filed against your school district by the National Women's Law Center (NWLC). The approach to demonstrating Title IX compliance advocated by the NWLC in its complaint raises Constitutional issues, as it likely violates the Equal Protection Clause according to this public interest law firm.

Based on its review of the administrative class complaint filed by the NWLC with the Kansas City office of the Office of Civil Rights (OCR), the Pacific Legal Foundation asserts that "*The administrative complaint filed by the NWLC is based upon a misunderstanding of Title IX. According to NWLC, the Three-Part Test, developed in 1979 as a Policy Interpretation for intercollegiate sports, should now be applied to high school sports participation. But the NWLC's position is contrary to the express language of the Policy Interpretation and the purpose behind Title IX.*"

The Pacific Legal Foundation's letter, a copy of which is enclosed, outlines in some detail the manner in which the NWLC's complaint lacks any legal basis. Pacific Legal Foundation's letter notes that a school following the Three-Part Test would be subjecting boys to disparate treatment without sufficiently probative evidence that such treatment is needed to combat sex discrimination, which likely runs afoul of the Equal Protection Clause. Pacific Legal Foundation urges the OCR to clarify that, pursuant to controlling regulations, the Sioux Falls School District is not required to comply with Title IX's Three-Part Test, but rather remains free to achieve Title IX compliance by any legally valid, nondiscriminatory method you deem appropriate.

Since 1996, colleges and universities have been advised that the only true "safe harbor" for avoiding Title IX litigation and OCR enforcement action is to comply with the so-called "proportionality test" of the Three-Part Test. This gender-based quota, which assumes that men and women have identical interest in participating in intercollegiate athletics, has contributed to colleges and universities electing to cut hundreds of male teams and limiting roster size of men's teams to "get proportional," thereby eliminating tens of thousands of participation opportunities for male athletes at the collegiate level.

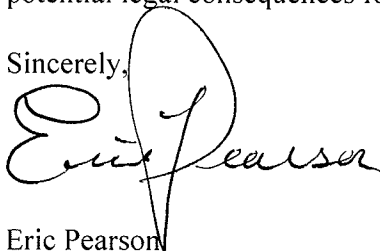
The pressure on high school administrators to eliminate boys' sports programs would be tremendous if the Three-Part Test were extended to high school sports. Given limited budgets, administrators will have little choice but to cut boys' programs if the boys in their school participate in sports at a higher rate than do the girls. We believe the consequences of this elimination of athletic opportunities for hundreds of thousands of boys could be devastating to our society, which is already struggling with declining male achievement at the high school and collegiate level.

Pacific Legal Foundation's litigation experience with respect to race- and sex-based discrimination and preferences, the Civil Rights Act, and the disparate impact theory, demonstrate its expertise on the matters raised by the NWLC's complaint. We encourage you and your legal advisors to carefully review their letter to the OCR and to contact their representative, Mr. Joshua Thompson, if you wish to discuss the inapplicability of the Three-Part Test to your situation and the more flexible legal standard that is applicable at the high school level under applicable regulations.

We believe that the constituents that you serve – students and their families in Sioux Falls – would be very adversely affected if the Three-Part Test were to become the standard for compliance at the high school level. For example, if you are unable to substantially increase female participation in sports by adding new programs or otherwise, you would need to eliminate up to 550 participation opportunities for the boys of your high schools to achieve the gender proportionality standard that the NWLC is urging.<sup>1</sup> This is not a result that should be imposed upon you without public debate. We believe many students and parents in your schools would like to avoid this drastic elimination of opportunities and, if informed as to this controversy, would actively seek to solicit support from their elected officials to urge OCR to reject the NWLC's effort to make gender quotas a part of high school athletics.

We support Title IX and believe that no one should be discriminated against on the basis of their gender. However, we believe the application of the Three-Part Test to scholastic sports will unnecessarily compel you to reduce participation opportunities for boys in your school district in a manner that could violate Constitutional rights of your students. We urge you to vigorously contest this effort by NWLC in order to avoid what would be devastating consequences for your schools and your student athletes and potential legal consequences for your district.

Sincerely,



Eric Pearson  
Chairman  
College Sports Council  
[eric@collegesportsCouncil.org](mailto:eric@collegesportsCouncil.org)

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<sup>1</sup> Our calculation is based upon the 2006 data supplied by Sioux Falls School District to the OCR. Washington High School, for example, would need to either add new girls' programs to attract 240 more girl participants, or eliminate 228 of the existing 405 participation opportunities for boys, or some combination of the two. We suspect that this high school (which already offers many of the state sanctioned girls' sports) does not have the ability to comply with proportionality without eliminating several boys' sports programs.



**COLLEGE SPORTS COUNCIL**

***VIA OVERNIGHT MAIL AND FACSIMILE – (773) 553-1501***

Chicago Public Schools  
125 South Clark St.  
Chicago, IL 60603

Attention: Mr. Terry Mazany

RE: Administrative Class Complaint dated November 10, 2010 filed by the National Women's Law Center (NWLC) Against the Chicago Public Schools

Ladies and Gentlemen:

The College Sports Council (CSC) is a national coalition of coaches, student-athletes, parents and fans who are devoted to the preservation and promotion of the student-athlete experience. We are writing to you to bring to your attention a letter sent today by the Pacific Legal Foundation to the Office of Civil Rights that challenges legal assertions made in the recent Title IX complaint filed against your school district by the National Women's Law Center (NWLC). The approach to demonstrating Title IX compliance advocated by the NWLC in its complaint raises Constitutional issues, as it likely violates the Equal Protection Clause according to this public interest law firm.

Based on its review of the administrative class complaint filed by the NWLC with the Chicago office of the Office of Civil Rights (OCR), the Pacific Legal Foundation asserts that *"The administrative complaint filed by the NWLC is based upon a misunderstanding of Title IX. According to NWLC, the Three-Part Test, developed in 1979 as a Policy Interpretation for intercollegiate sports, should now be applied to high school sports participation. But the NWLC's position is contrary to the express language of the Policy Interpretation and the purpose behind Title IX."*

The Pacific Legal Foundation's letter, a copy of which is enclosed, outlines in some detail the manner in which the NWLC's complaint lacks any legal basis. Pacific Legal Foundation's letter notes that a school following the Three-Part Test would be subjecting boys to disparate treatment without sufficiently probative evidence that such treatment is needed to combat sex discrimination, which likely runs afoul of the Equal Protection Clause. Pacific Legal Foundation urges the OCR to clarify that, pursuant to controlling regulations, the Chicago Public Schools are not required to comply with Title IX's Three-Part Test, but rather remain free to achieve Title IX compliance by any legally valid, nondiscriminatory method you deem appropriate.

Since 1996, colleges and universities have been advised that the only true "safe harbor" for avoiding Title IX litigation and OCR enforcement action is to comply with the so-called "proportionality test" of the Three-Part Test. This gender-based quota, which assumes that men and women have identical interest in participating in intercollegiate athletics, has contributed to colleges and universities electing to cut hundreds of male teams and limiting roster size of men's teams to "get proportional," thereby eliminating tens of thousands of participation opportunities for male athletes at the collegiate level.

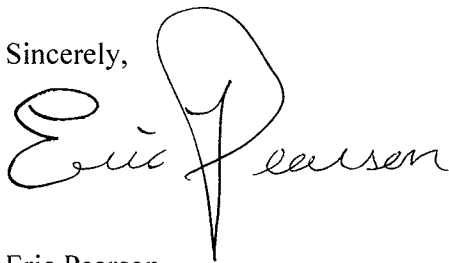
The pressure on high school administrators to eliminate boys' sports programs would be tremendous if the Three-Part Test were extended to high school sports. Given limited budgets, administrators will have little choice but to cut boys' programs if the boys in their school participate in sports at a higher rate than do the girls. We believe the consequences of this elimination of athletic opportunities for hundreds of thousands of boys could be devastating to our society, which is already struggling with declining male achievement at the high school and collegiate level.

Pacific Legal Foundation's litigation experience with respect to race- and sex-based discrimination and preferences, the Civil Rights Act, and the disparate impact theory, demonstrate its expertise on the matters raised by the NWLC's complaint. We encourage you and your legal advisors to carefully review their letter to the OCR and to contact their representative, Mr. Joshua Thompson, if you wish to discuss the inapplicability of the Three-Part Test to your situation and the more flexible legal standard that is applicable at the high school level under applicable regulations.

We believe that the constituents that you serve – students and their families in Chicago – would be very adversely affected if the Three-Part Test were to become the standard for compliance at the high school level. For example, if you are unable to substantially increase female participation in sports by adding new programs or otherwise, you would need to eliminate up to 6,445 participation opportunities for the boys of your high schools to achieve the gender proportionality standard that the NWLC is urging.<sup>1</sup> This is not a result that should be imposed upon you without public debate. We believe many students and parents in your schools would like to avoid this drastic elimination of opportunities and, if informed as to this controversy, would actively seek to solicit support from their elected officials to urge OCR to reject the NWLC's effort to make gender quotas a part of high school athletics.

We support Title IX and believe that no one should be discriminated against on the basis of their gender. However, we believe the application of the Three-Part Test to scholastic sports will unnecessarily compel you to reduce participation opportunities for boys in your school district in a manner that could violate Constitutional rights of your students. We urge you to vigorously contest this effort by NWLC in order to avoid what would be devastating consequences for your schools and your student athletes and potential legal consequences for your district.

Sincerely,



Eric Pearson  
Chairman  
College Sports Council  
[eric@collegesportsCouncil.org](mailto:eric@collegesportsCouncil.org)

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<sup>1</sup> Our calculation is based upon the 2006 data supplied by Chicago Public Schools to the OCR. Hyde Park Academy High School, for example, would need to either add new girls' programs to attract 126 more girl participants, or eliminate 110 of the existing 150 participation opportunities for boys, or some combination of the two. We suspect that this high school (which already offers many of the state sanctioned girls' sports) does not have the ability to comply with proportionality without eliminating several boys' sports programs.



**CSC**  
**COLLEGE SPORTS COUNCIL**

February 8, 2011

**VIA OVERNIGHT MAIL AND FACSIMILE – (770) 898-8587**

Henry County Schools  
33 North Zack Hinton Parkway  
McDonough, GA 30253

Attention: Dr. Ethan Hildreth

RE: Administrative Class Complaint dated November 10, 2010 filed by the National Women's Law Center (NWLC) Against the Henry County Schools

Ladies and Gentlemen:

The College Sports Council (CSC) is a national coalition of coaches, student-athletes, parents and fans who are devoted to the preservation and promotion of the student-athlete experience. We are writing to you to bring to your attention a letter sent today by the Pacific Legal Foundation to the Office of Civil Rights that challenges legal assertions made in the recent Title IX complaint filed against your school district by the National Women's Law Center (NWLC). The approach to demonstrating Title IX compliance advocated by the NWLC in its complaint raises Constitutional issues, as it likely violates the Equal Protection Clause according to this public interest law firm.

Based on its review of the administrative class complaint filed by the NWLC with the Atlanta office of the Office of Civil Rights (OCR), the Pacific Legal Foundation asserts that *"The administrative complaint filed by the NWLC is based upon a misunderstanding of Title IX. According to NWLC, the Three-Part Test, developed in 1979 as a Policy Interpretation for intercollegiate sports, should now be applied to high school sports participation. But the NWLC's position is contrary to the express language of the Policy Interpretation and the purpose behind Title IX."*

The Pacific Legal Foundation's letter, a copy of which is enclosed, outlines in some detail the manner in which the NWLC's complaint lacks any legal basis. Pacific Legal Foundation's letter notes that a school following the Three-Part Test would be subjecting boys to disparate treatment without sufficiently probative evidence that such treatment is needed to combat sex discrimination, which likely runs afoul of the Equal Protection Clause. Pacific Legal Foundation urges the OCR to clarify that, pursuant to controlling regulations, the Henry County Schools are not required to comply with Title IX's Three-Part Test, but rather remain free to achieve Title IX compliance by any legally valid, nondiscriminatory method you deem appropriate.

Since 1996, colleges and universities have been advised that the only true "safe harbor" for avoiding Title IX litigation and OCR enforcement action is to comply with the so-called "proportionality test" of the Three-Part Test. This gender-based quota, which assumes that men and women have identical interest in participating in intercollegiate athletics, has contributed to colleges and universities electing to cut hundreds of male teams and limiting roster size of men's teams to "get proportional," thereby eliminating tens of thousands of participation opportunities for male athletes at the collegiate level.

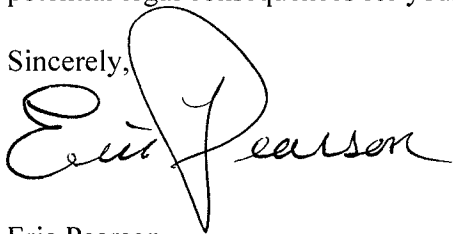
The pressure on high school administrators to eliminate boys' sports programs would be tremendous if the Three-Part Test were extended to high school sports. Given limited budgets, administrators will have little choice but to cut boys' programs if the boys in their school participate in sports at a higher rate than do the girls. We believe the consequences of this elimination of athletic opportunities for hundreds of thousands of boys could be devastating to our society, which is already struggling with declining male achievement at the high school and collegiate level.

Pacific Legal Foundation's litigation experience with respect to race- and sex-based discrimination and preferences, the Civil Rights Act, and the disparate impact theory, demonstrate its expertise on the matters raised by the NWLC's complaint. We encourage you and your legal advisors to carefully review their letter to the OCR and to contact their representative, Mr. Joshua Thompson, if you wish to discuss the inapplicability of the Three-Part Test to your situation and the more flexible legal standard that is applicable at the high school level under applicable regulations.

We believe that the constituents that you serve – students and their families in Henry County – would be very adversely affected if the Three-Part Test were to become the standard for compliance at the high school level. For example, if you are unable to substantially increase female participation in sports by adding new programs or otherwise, you would need to eliminate up to 400 participation opportunities for the boys of your high schools to achieve the gender proportionality standard that the NWLC is urging.<sup>1</sup> This is not a result that should be imposed upon you without public debate. We believe many students and parents in your schools would like to avoid this drastic elimination of opportunities and, if informed as to this controversy, would actively seek to solicit support from their elected officials to urge OCR to reject the NWLC's effort to make gender quotas a part of high school athletics.

We support Title IX and believe that no one should be discriminated against on the basis of their gender. However, we believe the application of the Three-Part Test to scholastic sports will unnecessarily compel you to reduce participation opportunities for boys in your school district in a manner that could violate Constitutional rights of your students. We urge you to vigorously contest this effort by NWLC in order to avoid what would be devastating consequences for your schools and your student athletes and potential legal consequences for your district.

Sincerely,



Eric Pearson  
Chairman  
College Sports Council  
eric@collegesportsCouncil.org

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<sup>1</sup> Our calculation is based upon the 2006 data supplied by Henry County Schools to the OCR. Stockbridge High School, for example, would need to either add new girls' programs to attract 124 more girl participants, or eliminate 124 of the existing 170 participation opportunities for boys, or some combination of the two. We suspect that this high school (which already offers many of the state sanctioned girls' sports) does not have the ability to comply with proportionality without eliminating several boys' sports programs.



**CSC**  
**COLLEGE SPORTS COUNCIL**

February 8, 2011

**VIA OVERNIGHT AND FACSIMILE – (212) 374-5588**

New York City Department of Education  
Tweed Courthouse  
52 Chambers Street  
New York, NY 10007

Attention: Chancellor Cathleen P. Black

RE: Administrative Class Complaint dated November 10, 2010 filed by the National Women's Law Center (NWLC) Against the New York City Department of Education

Ladies and Gentlemen:

The College Sports Council (CSC) is a national coalition of coaches, student-athletes, parents and fans who are devoted to the preservation and promotion of the student-athlete experience. We are writing to you to bring to your attention a letter sent today by the Pacific Legal Foundation to the Office of Civil Rights that challenges legal assertions made in the recent Title IX complaint filed against your school district by the National Women's Law Center (NWLC). The approach to demonstrating Title IX compliance advocated by the NWLC in its complaint raises Constitutional issues, as it likely violates the Equal Protection Clause according to this public interest law firm.

Based on its review of the administrative class complaint filed by the NWLC with the New York office of the Office of Civil Rights (OCR), the Pacific Legal Foundation asserts that *"The administrative complaint filed by the NWLC is based upon a misunderstanding of Title IX. According to NWLC, the Three-Part Test, developed in 1979 as a Policy Interpretation for intercollegiate sports, should now be applied to high school sports participation. But the NWLC's position is contrary to the express language of the Policy Interpretation and the purpose behind Title IX."*

The Pacific Legal Foundation's letter, a copy of which is enclosed, outlines in some detail the manner in which the NWLC's complaint lacks any legal basis. Pacific Legal Foundation's letter notes that a school following the Three-Part Test would be subjecting boys to disparate treatment without sufficiently probative evidence that such treatment is needed to combat sex discrimination, which likely runs afoul of the Equal Protection Clause. Pacific Legal Foundation urges the OCR to clarify that, pursuant to controlling regulations, the New York City Department of Education is not required to comply with Title IX's Three-Part Test, but rather remains free to achieve Title IX compliance by any legally valid, nondiscriminatory method you deem appropriate.

Since 1996, colleges and universities have been advised that the only true "safe harbor" for avoiding Title IX litigation and OCR enforcement action is to comply with the so-called "proportionality test" of the Three-Part Test. This gender-based quota, which assumes that men and women have identical interest in participating in intercollegiate athletics, has contributed to colleges and universities electing to cut hundreds of male teams and limiting roster size of men's teams to "get proportional," thereby eliminating tens of thousands of participation opportunities for male athletes at the collegiate level.

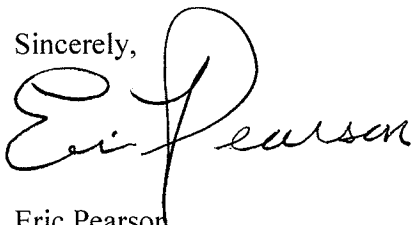
The pressure on high school administrators to eliminate boys' sports programs would be tremendous if the Three-Part Test were extended to high school sports. Given limited budgets, administrators will have little choice but to cut boys' programs if the boys in their school participate in sports at a higher rate than do the girls. We believe the consequences of this elimination of athletic opportunities for hundreds of thousands of boys could be devastating to our society, which is already struggling with declining male achievement at the high school and collegiate level.

Pacific Legal Foundation's litigation experience with respect to race- and sex-based discrimination and preferences, the Civil Rights Act, and the disparate impact theory, demonstrate its expertise on the matters raised by the NWLC's complaint. We encourage you and your legal advisors to carefully review their letter to the OCR and to contact their representative, Mr. Joshua Thompson, if you wish to discuss the inapplicability of the Three-Part Test to your situation and the more flexible legal standard that is applicable at the high school level under applicable regulations.

We believe that the constituents that you serve – students and their families in New York City – would be very adversely affected if the Three-Part Test were to become the standard for compliance at the high school level. For example, if you are unable to substantially increase female participation in sports by adding new programs or otherwise, you would need to eliminate up to 17,690 participation opportunities for the boys of your high schools to achieve the gender proportionality standard that the NWLC is urging.<sup>1</sup> This is not a result that should be imposed upon you without public debate. We believe many students and parents in your schools would like to avoid this drastic elimination of opportunities and, if informed as to this controversy, would actively seek to solicit support from their elected officials to urge OCR to reject the NWLC's effort to make gender quotas a part of high school athletics.

We support Title IX and believe that no one should be discriminated against on the basis of their gender. However, we believe the application of the Three-Part Test to scholastic sports will unnecessarily compel you to reduce participation opportunities for boys in your school district in a manner that could violate Constitutional rights of your students. We urge you to vigorously contest this effort by NWLC in order to avoid what would be devastating consequences for your schools and your student athletes and potential legal consequences for your district.

Sincerely,



Eric Pearson  
Chairman  
College Sports Council  
eric@collegesportsCouncil.org

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<sup>1</sup> Our calculation is based upon the 2006 data supplied by New York City Department of Education to the OCR. Washington Irving High School, for example, would need to either add new girls' programs to attract 291 more girl participants, or eliminate 234 of the existing 650 participation opportunities for boys, or some combination of the two. We suspect that this high school (which already offers many of the state sanctioned girls' sports) does not have the ability to comply with proportionality without eliminating several boys' sports programs.