## MEMORANDUM

DATE: May 6, 2004

TO: Superintendents

FROM: Barbara Case

Acting Director

Division of Compliance and Assistance

SUBJECT: Dance Team

Recently, the United States Department of Education, Office for Civil Rights (OCR), issued a letter to Dr. Edward C. Anderson, dated March 18, 2004 (Letter to Anderson). This letter responded to a request to have an individual school district's dance team be considered a part of the school district's athletic program within the meaning of the implementing regulation of Title IX of the Education Amendments of 1972, 34 C.F.R. § 106.41(c). Letter to Anderson reiterates OCR's position that historically OCR has considered "dance teams to be in the same extracurricular category as cheerleaders" rather than as part of an athletic program, yet acknowledges that "some of these activities are changing and may display characteristics of athletic activities traditionally included in an institution's athletic program."

Over the years, OCR has developed technical assistance that identifies a number of factors to assist in the process of making the determination, on a case by case basis, of whether the specific circumstances of an activity, such as dance team, justify characterizing the activity as part of an athletic program within the meaning of the Title IX regulation at 34 C.F.R. § 106.41(c). A list of these factors is included as an enclosure to this memorandum. In Letter to Anderson, OCR advises school districts "to conduct their own assessments and make their own determinations" of whether dance team falls within the school district's athletic program within the meaning of the Title IX regulation. OCR cautions, however:

These fact-specific determinations may differ from [school district] to [school district] and differ depending on the nature of the activity and OCR does not make blanket statements as to whether all participants in activities such as drill teams, cheerleading, baton twirling, dance, and color guard are participants in 'sports' under 34 C.F.R. § 106.41(c).

Given OCR's recent guidance on dance team, the Minnesota Department of Education (MDE) advises Minnesota school districts to conduct their own assessments and make their own determinations of whether dance team, or similar activity as conducted by the school district, falls within its athletic program using the factors previously outlined by OCR and included with this memorandum. Minnesota school districts are also hereby notified that MDE may review school district assessments and determinations concluding dance team, or similar activity, falls within its

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athletic program. MDE may conduct such reviews when a school district is monitored for civil rights compliance in accordance with the submission of Minnesota's Biennial Civil Rights Compliance Report to OCR. MDE may also conduct these reviews at other times.

Similar to the Title IX regulation at 34 C.F.R. § 106.41(c), Minnesota Statute § 121A.04, Subd. 2 provides:

Each educational institution or public service shall provide equal opportunity for members of both sexes to participate in its athletic program.

Annually, Minnesota school districts are required to submit to MDE an elementary and secondary "athletic program report" containing information about intramural and interscholastic athletics provided within the school district. Minn. R. 3535.3600.

Consistent with OCR's direction allowing school districts to conduct their own assessments and make their own determinations of whether dance team, or other similar activity, falls within the school district's athletic program for Title IX purposes, MDE advises Minnesota school districts to conduct their own assessments and make their own determinations of whether dance team, or similar activity as conducted by the school district, falls within the school districts interscholastic athletic programs as defined by Minn. R. 3535.3000, subp. 3, enclosed with this memorandum.

If a school district assesses and determines dance team, or similar activity, falls within its interscholastic athletic program, the school district may submit this information on the athletic program report, Interscholastic and Intramural Athletic Activities Worksheet, required to be submitted to MDE the 15<sup>th</sup> of October every year. Included with this memorandum is a revised Interscholastic and Intramural Activities Worksheet indicating this change.

Minnesota school districts are reminded that MDE is required to evaluate the data contained in the athletic program reports and take appropriate action with any report requiring additional attention. Minn. R. 3535.3700. This evaluation will include a review of any assessments and determinations concluding dance team, or similar activity, falls within its interscholastic athletic program.

This information is intended to assist Minnesota school districts in assessing equal athletic opportunity for members of both sexes and the information contained in this memorandum serves to inform school districts of the policy information provided by OCR, however final determinations pertaining to Title IX implementation are often made by the courts or other tribunals. MDE thanks the school districts for their continued efforts to promote and ensure equal educational opportunities.

If vo	u have anv	questions.	please co	ontact Sara	Winter	directly	z at 65	1.582.	.8237.
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Enclosure