

**SETTLEMENT  
AGREEMENT**

**To Resolve the Issue of**

**Ridgeway et. al.**

**vs.**

**Montana High School Association et. al.**

## SETTLEMENT AGREEMENT

### I. INTRODUCTION

This Settlement Agreement disposes of the pending disputes in that civil suit presently pending before the United States District Court for the District of Montana denominated as *Karyn Ridgeway et al., Plaintiffs, v. Montana High School Association et al., Defendants*, Civil No. 82-59-M, and filed pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq., the Fourteenth Amendment to the United States Constitution, 42 U.S.C.1983, Article, X, 4 and Article X, 1 of the Montana Constitution and 49-2-307 and 49-2-403, MCA.

Hereafter, the following individuals will be denominated as Plaintiffs and unless the text of this Settlement Agreement otherwise indicates that only some or that only an individual Plaintiff is intended to be mentioned, the term Plaintiff shall refer to all such parties in their individual and class capacity. Plaintiffs are: Karyn Ridgeway, Donna Ridgeway, Bernadette Lopez, Jeanine Hunt, Deanna Paulus, Dan M. Merritt, and that class of all other persons similarly situated, consisting of those female students who have been, are now, or hereafter may be enrolled as students of Missoula County High School District, Whitehall High School District No. 2, and Columbia Falls High School District No. 6, as such class has been designated by the United States District Court herein.

Hereafter, the named Defendants, Montana High School Association, and Dan Freund, Executive Director, shall be referred to as MHSA; the named Defendants, Montana Office of Public Instruction and Ed Argenbright, Superintendent, shall be referred to as OPI; the named Defendants, Missoula County High School District and Harold Sharkey, Chairperson, shall be referred to as Missoula High School District; the named Defendants, Whitehall High School District No. 2 and Charles Wiedman, Chairperson, shall be referred to as Whitehall School District; the named Defendants, Columbia Falls High School District No. 6 and Larry Wilson, Chairperson, shall be referred to as Columbia Falls School District; and unless the text of this Settlement Agreement otherwise indicates that only some or that only an individual Defendant is intended to be mentioned, then the term of Defendant otherwise set forth above shall refer to all such parties named as Defendants, and all of those parties' agents and employees.

### II. INTENT OF SETTLEMENT AGREEMENT

The thrust and overall intent of this Settlement Agreement is to advance the opportunities which female high school students have to participate in extracurricular athletic events relative to their male counterparts; to create, implement and enforce minimum requirements for obtaining sex equity in athletics in Montana; and to make available established grievance procedures and forums, to permit students experiencing sex inequities to obtain non-judicial relief, while retaining the availability of alternative redress through remedies extended by state and federal law.

### III. RECITALS

This lawsuit was commenced on May 10, 1982. Plaintiffs alleged they were students who were denied an equal opportunity to participate in extracurricular high school athletics and were subjected to invidious discrimination in athletics and consequently were deprived of an opportunity to develop to their full educational potential in violation of state and federal law. Such discrimination was alleged to exist in the number of sanctioned sports available, the seasons in which sports were available, the length of sport season, the scheduling of practices and games, facilities, equipment, coaching, transportation, school band and pep rallies, uniforms, access to trainers, publicity, and other aspects of extracurricular athletics. The suit was certified as a class action to include Plaintiffs and other similarly situated females in some or all aspects of extracurricular high school athletics.

Defendants denied liability for the claims. Defendants challenged the court jurisdiction over the subject matter of the litigation and over their persons. Furthermore, Defendants denied that federal law covered the subject of extracurricular high school athletics and denied that the state agency defendant had any responsibility over the subject of the litigation.

In an effort to resolve the respective claims of Plaintiffs in this litigation, the terms of this agreement have been negotiated and accepted.

## IV. TERMS

### A. GENERAL TERMS

1. **Future Conduct of Parties.** This agreement recognizes that certain events, which allegedly occurred prior to the date of this agreement, will not occur again, if such events did occur; and further recognizes that certain events which may have occurred by lack of clear identification may have had a sexually discriminatory impact upon Plaintiffs and should not again occur.

2. **Minimum Requirements for Sex Equity in Athletics and Implementation of a Grievance Procedure and Sanctions.** In order to advance sex equity in extracurricular athletic activities in the Defendant school districts and to recognize the availability of non-judicial procedures for future disputes in all Montana high school districts, the parties agree to the adoption, implementation and enforcement of the following Minimum Requirements which shall be enforceable through the non-judicial procedures outlined below. To the extent the minimum requirements are not already in force, the parties agree that Missoula, Columbia Falls, and Whitehall High School Districts shall implement these Minimum Requirements.

3. **Plan of Implementation.** To effectuate the settlement the parties agree that each Defendant shall prepare a Plan for Implementation of this settlement and submit the same within the two months of the execution of this Settlement Agreement to the Facilitator. The Facilitator may assist each Defendant in preparing its plan. Upon receipt of the plans, the Facilitator shall review and comment on them. The Defendants may respond to the comments and make appropriate amendments. The Facilitator, within one month of receipt of all final plans, shall submit the final plans to the Court for approval. The Facilitator may also provide the Court and all parties with his comments.

4. **Reporting Requirements.** Within three months of the Court approval of the final plans, each Defendant shall make a written report to the Court of its progress in implementing this Settlement Agreement and its Plan for Implementation. The Court may refer any report to the Facilitator for review, recommendations, or such other action as directed by the Court.

The Compliance Report shall include details of changes made in the respective programs to show compliance by the Defendants with this Settlement Agreement.

The Defendants shall submit copies of their plans and reports to Plaintiffs at the time the same is submitted to the Facilitator and Court, and the Plaintiffs may make comment to the Facilitator or the Court regarding the same within Fifteen (15) days of the receipt thereof. Plaintiffs shall submit copies of their comments to the Defendants. Defendants may have ten (10) days within the receipt thereof to respond to such comments. The Defendants shall also retain copies of their plans and reports for use by any person.

5. **Facilitator.** To effectuate this Settlement Agreement and to resolve issues pending between the parties, the parties hereby designate as "Facilitator" a neutral representative, Barry Gomberg of the Mountain West Sex Desegregation Assistance Center, Weber State College, Ogden, Utah. In addition to assisting in compliance with this Settlement Agreement, the Facilitator shall collect facts and make recommendations as set forth herein. Should Gomberg cease affiliation with the Center, Gomberg shall continue to be designated as "facilitator" for purposes of this agreement. In addition to assisting in compliance with this Settlement Agreement, the Facilitator shall collect facts and make recommendations as set forth hereafter. Should the Facilitator cease to be able to perform his functions under this Settlement Agreement, the Court, after considering recommendations of the parties, shall appoint a Facilitator to carry out the duties. To the extent that unallocated or uncommitted federal funds are available to the Facilitator, such shall be used to pay the expenses of the Facilitator; if such federal funding is unavailable, then the expense of the Facilitator, if any, shall be borne by the Defendants.

6. **Notice to Class.** To comply with Fed. R. Civ. P. 23(e), and to assure that all students and parents who are affected by this Settlement Agreement receive notice of the same, distribution of the Settlement Agreement upon its execution shall be as follows: the Defendant school districts shall give notice to students and parents in their school district of the existence of this Settlement Agreement. Such notice may be given by publishing a notice of the same in the student handbook distributed to students in their respective schools or through any other effective means designed to give notice to students and parents in their school district of the existence of this Settlement Agreement. The Notice shall contain a summary of the Settlement Agreement and information

regarding where copies of the Settlement Agreement may be obtained. The Defendant school districts shall retain copies of the Settlement Agreement for the use of students and parents within their school district. MHSA shall distribute copies of the Settlement Agreement to its member high schools. OPI shall also distribute copies to any high school over which it has authority under Montana law. Defendants may coordinate their distribution efforts in order not to duplicate them.

#### **B. MINIMUM REQUIREMENTS**

The following Statewide Minimum Requirements and Minimum Requirements for School Districts shall be used by OPI, MHSA, and the three school districts in evaluating grievances and eligibility challenges as set forth in Section VI, Grievance Procedures and Sanctions. In the event the facts establish a particular school or school district in engaging in extracurricular athletic activities which do not achieve such Minimum Requirements, then OPI, MHSA, or the three Defendant school districts applying applicable minimum procedural standards shall conclude the activity engaged in does not achieve sex equity in such extracurricular athletic activity. The parties agree, however, that the OPI Grievance Procedure shall not apply to determine MHSA's compliance with the Statewide Minimum Requirements set forth below, although it shall be available to determine a local school district's compliance with the Statewide Minimum Requirements and to adjudicate grievances arising out of local school district decisions or actions.

Although this Settlement Agreement does not set forth the Minimum Requirements for other non-athletic extracurricular activities which are related to extracurricular athletic events, the Minimum Requirements set forth hereafter may be considered by individuals, school districts, OPI, MHSA, or other interested parties in evaluating whether under the particular circumstances sex equity has been achieved in other non-athletic extracurricular activities which are related to athletic events.

Unless otherwise stated, compliance by the Defendants with the Minimum Requirements shall be for the 1984-85 school year. To the extent possible the Defendants shall implement the Minimum Requirements during the 1983-84 school year.

##### **1. Statewide Minimum Requirements.**

a. **Number of Sanctioned Sports.** MHSA shall sanction at least the same number of sports for females as for males. In deciding which sport should be sanctioned to at least equalize the number of sports for both males and females for the 1984-85 school year, MHSA shall supply any documentation requested by the Facilitator. The Facilitator shall determine which sport should be sanctioned, and MHSA shall implement the Facilitator's determination. The Facilitator shall also determine the appropriate playing season for the sanctioned sport using the national norm for such sport as determined by information derived from the National Federation of State High School Associations (hereafter, "national norm"), or other sources he deems useful.

After implementation of this provision regarding the sanctioning of a new sport for girls for the 1984-85 school year, MHSA shall select all further sports to be sanctioned through the use of a survey taken by MHSA of the interests and abilities of males and females. The playing season for all further sanctioned sports shall be determined by considering the national norm for such sport, but any decision as to season must be based on gender-neutral factors.

In considering whether equity has been achieved in equalizing the number of sports, the sports football and wrestling shall be considered to be male sports, although these sports shall remain open for participation by females. Sanctioned sports shall be considered to be available for females if the sport is sanctioned only for participation by females or if the sport is sanctioned for both males and females but a separate and identical team is sanctioned only for participation by females in that sport. For example, volleyball, sanctioned only for females, shall be considered a female sport. If volleyball were in the future sanctioned for participation by both sexes, a separate volleyball team would have to be sanctioned for females only for the sport to be considered a female sport.

b. **Length of Athletic Season.** MHSA shall authorize, and individual school districts shall extend to both males and females, athletic seasons of approximately the same length for the same sport played by both sexes. This shall be accomplished commencing with the 1985-86 athletic season; however, to the extent possible, MHSA shall implement this requirement during the 1984-85 athletic season and shall provide to the parties and the facilitator an identification of areas where compliance is not possible until 1985-86 and the reasons therefore and the remainder of the

items shall be instituted by 1984-85. As used herein, the term "athletic season" means the practice, regular season and, as well, tournament play. As used herein, the term "approximately equal" means that the length of a sport for one sex may have a variation of seven days or less than the athletic season for the same sport played by the opposite sex, if this variation is necessitated by gender-neutral factors, such as holidays, school breaks, and coaching discretion. However, the difference in the seasons for the same sport participated in by both females and males cannot vary in length more than seven days and the season variation cannot always be less for one sex and still achieve sex equity.

Further, to achieve equal length of seasons in the same sport, if a school district offers the same sport for both female and male participation, such as basketball, soccer or baseball/softball, MHSA shall authorize the school district to, and the school district shall schedule the same number of games for both male and female students and provide an opportunity for the same number of days of practice for both male and female students subject to the variation permitted above.

Where sports are played by only females or males, hereafter single-sex sports such as girls volleyball, football or wrestling, MHSA shall authorize, and the school district shall extend to males and females, athletic seasons equal to the national norm for such sport. MHSA shall authorize the school districts to, and the school districts shall, schedule at least the same number of games as is equal to the national norm for the single-sex sport. The Facilitator shall determine what the national norm is for the length of season and number of games for the single-sex sports.

c. **Continuity of Athletic Seasons and Elimination of Overlapping Seasons.** Commencing with the 1985-86 athletic season, and to the extent possible during the 1984-85 athletic season, MHSA and the school districts shall provide athletic seasons in a manner to assure that the continuity of seasons for females and males shall be approximately equal and shall provide to the parties and the Facilitator an identification of areas where compliance is not possible until 1985-86 and the reasons therefore and the remainder of the items shall be instituted by 1984-85. This requirement will require that the breaks between male and female sport seasons do not vary in length by more than seven days and that the sport seasons do not overlap so as to prevent interested students from participating in consecutive athletic seasons offered by a particular high school. If more than one sport is offered to either or both sexes during one athletic season, such offering does not constitute a prohibited overlap of athletic opportunities.

d. **Tournament Locations.** MHSA shall select tournament and statewide meet sites for both female and male sporting tournaments and events at locations which are comparable considering the actual and reasonable needs of the tournament or statewide meet. If the same sport is participated in by both females and males and is played or participated in during the same season, MHSA shall consider and make reasonable efforts to schedule tournaments or statewide meets at the same location during the same week or appropriate time period. Further MHSA shall schedule the dates for the tournaments or statewide meets and determine their locations based upon gender-neutral factors.

e. **Press Releases.** MHSA shall issue press releases giving equal emphasis to male and female athletic contests and tournaments and shall equalize any other publicity in which it may engage.

f. **MHSA Coaching Requirements.** MHSA shall seek to assure that equal opportunity in the selection of and in the extension of coaching for both female and male students is provided and shall review and revise its rules in accordance with this requirement.

g. **Summer Camp Rules.** MHSA shall review and revise its summer camp rules, to assure that both females and males participating in the same sport have equal opportunities to participate in summer camps offered for that sport. Specialized summer camp rule 2(8) shall be eliminated. This requirement shall not require MHSA to sanction the identical number or types of summer camps for females as males.

h. **Recruiting Efforts by MHSA.** Where the same sport is sanctioned during different seasons for females and males, or where a female or male sport is played during a season different than the season played in majority of other states playing such sport, MHSA shall participate with school districts in improving recruitment opportunities for those athletes playing the sport in the off season.

i. **Officials.** MHSA shall hire equally qualified officials for female and male sports during

the final tournaments and use Montana Officials Association (M.O.A.) ratings to comply with this requirement. For both regular seasons and tournament play MHSAA shall set rates for officials officiating female volleyball at not less than the same rate paid to officials of volleyball consistent with the national norm.

**2. Minimum Requirements for School Districts.** The Minimum Requirements for School Districts shall apply to all schools within that school district and the term "school district" as used herein shall refer to both the school district and school within that district.

j. **Number of Offered Sports.** The school districts shall offer the same number of sports for both males and females during the individual school year except as provided below. School districts shall make the choice of which individual sports shall be offered for males and females based upon their students' interests and abilities.

If during a school year a school district does not offer the same number of sports for both male and female students, the school district is not in violation of this provision if it makes an explicit and deliberate effort to increase interest in an additional sport for the sex of the students having fewer sports, conducts a survey, and establishes that there is insufficient interest in an additional sport or that the interest would be insufficient to field a team in any sport in which an interest has been expressed. If a school district or school does not offer an equal number of sports for females and males because it has established there is insufficient interest during the school year, the school district shall make an explicit and deliberate effort to equalize sports for females and males during the subsequent school year and shall continue to make such efforts until the sports are equalized.

If the explicit and deliberate efforts of a school district to equalize sports for females and males result in a survey of interest demonstrating that a particular sport would receive sufficient support to field a team, the school district shall offer that sport to the extent of the financial ability of the school district. The school district must consider all alternatives to equitably distribute finances among the extracurricular athletic program including elimination or substitution of one sport for another participated in by the other sex. However, a limitation of funds shall not be a justification for offering an unequal number of sports for males and females.

k. **Coaches.**

i. A school district shall seek, endeavor to hire, and where there are qualified persons available, hire comparable qualified persons as coaches for male and female extracurricular athletic teams and shall also hire comparable numbers of coaches based upon the number of participants for both female and male extracurricular athletic teams. A school district shall develop written, objective and gender-neutral criteria to evaluate applicants for coaching positions, and consider, as one of these criteria, the applicants' experience in interscholastic, intercollegiate or other sporting activities.

ii. A school district, if it has not already done so, shall develop written gender-neutral, objective criteria to evaluate the performance of all coaches hired by the district, including the following criteria: ability to communicate skills; ability to motivate and inspire team members; efforts made to improve the coach's own coaching abilities and techniques; the interest and motivation demonstrated by the coach; and the coach's relative knowledge of the sport as compared with coaches of other sports.

iii. Each year the district shall evaluate each head coach by (a) utilizing the foregoing criteria, (b) considering the head coaches' regular and tournament success record, and (c) considering whether participants or parents of participants have lodged written complaints concerning coaching abilities, the number of complaints lodged, and the contents of such complaints. A head coach's evaluation shows the coach is inadequate if it demonstrates the performance of the coach or staff is overall unsatisfactory. The term "head coach" shall mean the coach in charge of a team regardless of how such coach is designated in the organizational structure of the particular school district.

iv. Once an evaluation has been made, then in the event the head coach or staff of any female sport is considered inadequate but the head coach or staff of an identical or comparable male sport is not, the school district may replace the inadequate head coach or staff. If the inadequate head coach or staff is not replaced, the school district shall require the head coach or staff of the female sport to attend a coaching clinic. If such remediation does not correct the inadequacy such that in the following year a similar comparative overall inadequacy is demonstrated, the school district shall adopt one or more of the following remedies:

(a) Hire another coach to assist the inadequate head coach or staff in performing coaching functions.

(b) Pay the inadequate coach but hire a substitute coach to perform the coaching functions.

(c) Exchange the head coach or staff of the female and male sport activities.

(d) Terminate the employment of the head coach or staff; or,

(e) Take any other remedy which must resolve any inequity experienced by female athletes due to inadequate coaching of the female sport.

If, in the following year, a similar comparative overall inadequacy is demonstrated, the school district shall either terminate the employment of the head coach or pay the head coach and hire a substitute head coach to perform the coaching functions.

l. **Coaching Salaries.** A school district shall pay equal salaries for equal work by coaches of female and male teams, except that differences in pay for coaches of female and male teams may result from a seniority system, a merit system, or a system that measures earnings by quantity and quality of performance. A school district shall develop and utilize written objective criteria in recommending the amount of compensation to be assigned to a particular coaching position.

m. **Publicity.** A school district shall issue press releases and arrange for advertising giving equal emphasis to male and female sport activities. The school district shall make a good faith effort to encourage comparable coverage of female and male extracurricular sports in school-sponsored publications such as yearbooks and school newspapers. In determining whether a good faith effort has been made the following factors, among others, shall be considered:

i. The amount of coverage devoted to female and male extracurricular athletic activities.

ii. The number and content of communications between school administrators and publication advisors or students associated with publications.

iii. The number of students assigned to provide coverage of male and female extracurricular athletic activities.

iv. The number and content of communications between publication advisors and students associated with publications.

v. The guidelines and policy in effect regarding school publications.

n. **Team Support.** Within a school year and during the regular and tournament athletic season, a school district shall provide on an equal basis to male and female athletes any of the following types of support which it offers to either male or female extracurricular athletes during the school year: pep assemblies, school announcements, rosters, programs, pep band, cheerleaders and drill team. The school district or the band director may determine at which athletic events for males and females the band shall appear in satisfying the equal appearance requirement, providing that, at the end of the school year, the band has played at the same number of regular season extracurricular athletic events of females as males. In satisfying this requirement and determining which performances are appropriate for band appearances, consideration shall be given to functions and goals of the music program as an independent co-curricular activity.

o. **Scheduling and Facilities.** A school district shall schedule the times and places for practices and athletic events or games for male and female teams of the same and comparable sports on an equal basis, but not necessarily together at the same time. This requirement means that male and female teams shall have equal access to prime time practice and play during the times of the day and days of the week in facilities or on fields which are equally desirable and advantageous to female and male teams. The term "prime time" as used herein means the hours immediately after school and before the evening meal for practice purposes and the weekend evenings for regular games. The term "same sport" as used herein means a sport which is sanctioned for both males and females, such as basketball. The term "comparable sport" as used herein means a sport similar in terms of indoor/outdoor status and numbers of participants to another sport, such as volleyball and wrestling.

A school district shall also consider and make reasonable efforts to schedule male and female games together for sports in which both males and females participate in during the same season.

A school district shall also provide the same or comparable support facilities and the

same or comparable access to support facilities to females and males participating in the same or comparable sports. Support facilities shall include training rooms, weight rooms, locker rooms and storage facilities.

p. **Laundry facilities.** If a school district provides laundry service to student athletes, it shall provide the service to females and males on an equal basis.

q. **Recognition Boards, Halls of Fame, and Trophy Cases.** If a school district provides recognition to students in the form of a recognition board, hall of fame or other display, it shall afford comparable recognition to female and male sports.

r. **Meals.** If a school district provides a per diem monetary allowance for student athletes, the allowance will be the same for females and males, and it shall be spent within the season only for meals.

s. **Overnight Accommodations and Out-of-State Trips.** If a school district provides overnight accommodations for student athletes, the accommodations and their utilization shall be comparable for females and males, and the same opportunity for overnight trips shall be available to male and female teams.

To the extent comparable out-of-state athletic activities are practically available each school district shall provide them equally to both males and females. Where comparable out-of-state athletic activities are practically available for athletes of one sex but not the other, a school district shall make reasonable efforts to make them practically available for the other sex.

t. **Uniforms, Accessories, Equipment and Supplies.** If a school district provides uniforms, accessories, equipment and supplies to athletes participating in extracurricular sports, it shall provide uniforms, accessories, equipment and supplies of comparable quality and at comparable replacement rates to females and males on an equal basis. The character of sporting activity may be taken into consideration in determining replacement rates.

u. **Booster Clubs.** A school district shall affirmatively encourage booster clubs and similar groups of fans to devote comparable attention to the promotion and encouragement of female and male sports. The district shall not give significant assistance to any private organization which aids, benefits, or services athletes in the district on a sex discriminatory manner, unless for each organization which supports the athletes of only one sex, and to which the school district gives assistance, there is a comparable organization which supports the athletes of the other sex to which the school district gives comparable assistance.

v. **Transportation.** If a school district provides transportation to athletic events, transportation shall be provided for female and male teams on an equal basis, with allowances made for gender-neutral factors including mileage to be traveled, the duration of the trip, the time of year and condition of the roads, and the number of athletes and amount of equipment to be transported.

w. **Trainer.** If a school district provides an athletic trainer, the services of the trainer shall be available to members of female and male teams on an equal basis with allowances made for the character of the athletic activity and the health needs of the athletes.

x. **Officials.** A school district shall hire the best available, qualified officials for male and female extracurricular sports during regular season games and shall utilize M.O.A. ratings to comply with this requirement.

y. **Recruiting Efforts by School Districts.** Where the same sport is sanctioned during different seasons for females and males or where female sports are played during seasons different than the season played in a majority of other states playing such sport, a school district shall participate with MHS A in improving recruitment opportunities for those athletes playing the sport in the off-season.

z. **Sex Equity Policy, Grievance Procedure and Coordinator.** A school district shall prepare, if it has not already done so, a sex equity in athletics policy, establish a grievance procedure and designate a coordinator for such policy and grievance procedure pursuant to the requirements of applicable federal law. The policy and information regarding the coordinator and grievance procedure shall be disseminated to its student body, faculty and parents.

Each school district shall keep on file for use by students and parents within their school district at least one copy of documents reflecting the MHS A and OPI grievance procedure as set forth hereafter, and as supplemented by other documents prepared by MHS A and OPI, as well as copies of ARM 10.6.101 et seq. and the Montana Administrative Procedures Act, 2-4-101 et seq.,

MCA.

#### **V. CHANGE OF SEASONS - FACILITATOR**

Plaintiffs and MHSA agree that they will utilize the Facilitator to determine whether a seasonal change of any sporting activity sanctioned by MHSA, and in particular, girls' volleyball and basketball, is appropriate. To determine this issue, both Plaintiffs and MHSA shall submit to the facilitator a list of reasons for adopting new sport seasons for athletic activities, and reasons which justify continuance of the current athletic seasons for these athletic activities. Additionally, both Plaintiffs and MHSA shall submit to the facilitator a list of documents, in the form of a bibliography, which documents the Facilitator can examine and consider in evaluating and making recommendations. Finally, the Plaintiffs and MHSA shall submit to the Facilitator a list of witnesses who the Facilitator can contact in evaluating this issue and preparing recommendations. All submissions of the parties shall be made within 30 days of the date of the execution of this Settlement Agreement. Comments and documents responsive to the other parties' submissions shall be submitted within 10 days thereafter.

Having accomplished the foregoing, the athletic season issue shall be submitted to the Facilitator, who shall, in a timely fashion make detailed recommendations concerning seasonal change and implementation. The Facilitator shall present to the United States District Court for approval the recommendations regarding seasonal change and implementation, without further submission of evidence or argument by the parties unless directed by the Court. In the event the United States District Court does not approve and order such recommendations, then the matter shall be resolved as further directed by the United States District Court but such further action shall not affect in any way any other provisions of this Settlement Agreement.

In addition to the foregoing recommendations the Facilitator may advance nonbinding suggestions as to how extracurricular sporting activities should be scheduled, assuming both females and males participate in the same sport during the same season.

#### **VI. GRIEVANCE PROCEDURES AND SANCTIONS.**

##### **A. OPI GRIEVANCE PROCEDURES**

In addition to the foregoing Minimum Requirements, in the event that an interested person believes that an individual is not receiving an equal opportunity to participate in sporting activities because of that individual's sex, that interested person may submit the controversy to a local school district for evaluation and consideration consistent with established grievance procedures. Upon exhaustion of remedies available within the school district, the party aggrieved by a final decision of the governing authority may commence an action before the county superintendent pursuant to the grievance procedure established in ARM 10.6.101 et seq. The grievance procedure, commenced at the local level and pursued through the county superintendent, may be further appealed to the State Superintendent of Public Instruction as established by ARM 10.6.101 et seq. The matter may be further appealed pursuant to the Montana Administrative Procedure Act, 2-4-101 et seq., MCA. This grievance procedure shall not apply to those Minimum Requirements which MHSA has exclusive responsibility to implement, as set forth in this agreement.

A final order at the county superintendent level or beyond shall establish a Minimum Requirement on sex equity issues. OPI shall have all final decisions of the county superintendent reduced to writing and transmitted to OPI, and OPI shall promptly distribute a copy of such final written decision to MHSA and retain a copy within OPI. The Minimum Requirements set forth within this Settlement Agreement shall be recognized by all parties as the equivalent of a final decision established by the county superintendent, or other successive appellate steps within the grievance procedure set forth above, and applied by the parties in a manner equivalent to those final decisions established through the grievance procedure.

In the event the grievance procedure established in ARM 10.6.101 et seq. results in a final decision, not modified or reversed through administrative or judicial review, that an action or omission of a particular school district is in violation of the Minimum Requirements, and that a particular school district is engaging in sex discrimination against students, OPI shall report such conclusion to MHSA, which thereafter shall take all steps reasonably necessary to insure compliance.

##### **B. MHSA GRIEVANCE PROCEDURES AND SANCTIONS**

In addition to any interested person having access to grievance procedure as otherwise described above, any person may bring a complaint to the attention of MHSA, which complaint can also be brought by any member of MHSA or by the board of MHSA upon its own initiative. Once a complaint is brought to the attention of MHSA, MHSA shall thereafter commence to investigate and

determine, applying the Minimum Requirements established from the grievance procedure or by this Settlement Agreement, whether the Minimum Requirements to achieve sex equity have been satisfied. If following its investigation, MHSA concludes that the Minimum Requirements have not been satisfied, then MHSA, following hearing and utilizing its due process procedure, shall take all steps reasonably necessary to assure compliance with said Minimum Requirements. MHSA may, among other things, declare the school ineligible for participation in any or all MHSA-sanctioned activities. In the event the person bringing the complaint remains dissatisfied with the result, that person shall retain the option of seeking relief in any available forum.

MHSA shall utilize as Minimum Requirements the final unappealed decisions developed through the OPI grievance procedure set forth above. In the event there are conflicting decisions on the same issue, MHSA shall apply that Minimum Requirement established at the highest level of the OPI grievance procedure. In the event there are conflicting decisions at the same level of the OPI grievance procedure, then MHSA shall request an opinion from OPI as to which of the two conflicting opinions MHSA should follow and enforce, and MHSA shall apply the recommendation and decision of OPI as though there were but a single decision on the subject matter. If there is no established Minimum Requirement on a particular issue, then MHSA shall have no authority to proceed with respect to the complaint. However, MHSA shall promptly in writing advise the complaining person of the local school board and OPI grievance procedure set forth above as a means to address the issue of sex inequity.

**C. EXHAUSTION OF MHSA AND OPI GRIEVANCE PROCEDURE IS NOT REQUIRED**

This Settlement Agreement and the procedures adopted herein neither preclude nor impede any person from pursuing all legal and equitable remedies, whether state or federal, in any forum available by law nor do they require the exhaustion of the OPI or MHSA grievance procedures prior to pursuing said remedies.

**VII. OPI TECHNICAL ASSISTANCE**

**A. INTRODUCTION**

OPI shall provide to the school districts in Montana technical assistance in self-evaluation and self-improvement in providing sex equity in athletics. The technical assistance to be provided by OPI is subject to the limitations of state and federal funding resources. Technical assistance is of a variety nature and will not concentrate exclusively on a particular activity.

**B. LOCAL SCHOOL DISTRICT ACTIVITIES**

1. OPI shall continue to respond to questions on issues of equity and shall continue to provide interpretations of state and federal law pertinent to school districts, school personnel offices and trustees throughout the state of Montana. Individuals will be assigned to provide this service from the Special Services Department and the Legal Service Unit in the Office of Public Instruction.

2. OPI shall continue to distribute sex equity materials such as handbooks, policies, news articles, and other vital information which is important for a school district in maintaining compliance.

3. OPI shall continue to distribute materials such as sex equity handbooks, examples of school board policies, grievance procedures, etc. to any requesting school district and/or will inform school districts of developments regarding equity laws.

4. OPI shall continue to provide the following workshops to school districts, county superintendents and administrators on an "as needed" basis, pending federal funding.

- (1) The Cost of Sex Bias in the Classroom
- (2) Teacher-Student Interaction
- (3) Evaluating Textbooks for Bias
- (4) Women in History
- (5) Career Awareness
- (6) Myth and Reality of Women Workers
- (7) Math Anxiety

These workshops are intended primarily to develop awareness of sex equity issues.

5. OPI shall continue to provide the following statewide workshops, pending federal funding:

- (1) Women Interested in School Administration
- (2) Sex Equity in Athletics
- (3) Technology's Implications for Education

**C. STATE LEVEL ACTIVITIES**

1. OPI has applied for and received a Title IV Sex Desegregation grant, which has been partially subgranted to the Striving for Educational Equity (SEE) Institute, Rocky Mountain College, Billings, Montana, in order to provide more assistance directly to school districts.
2. OPI shall continue its in-house committee on equity to assure that all publications are free from sex bias and are in compliance with the law.
3. OPI shall provide districts with handbooks on equity and self-evaluation. The self-evaluation handbook is the alternative to the statewide survey which would have been funded through the federal WEEA grant.
4. OPI shall continue to provide in-house workshops and inservice for all Office of Public Instruction specialists on sex equity and how to provide technical assistance to schools.
5. OPI shall continue to maintain a Human Potential Specialist (sex equity) in the Department of Vocational Education, pending availability of federal funding.
6. OPI's legal counsel shall continue to train county superintendents as hearing officers pursuant to the Rules of Controversy, concentrating immediate attention on sex equity issues.

#### **D. NATIONAL LEVEL ACTIVITIES**

1. OPI will host the third annual National Conference on Equity (June 1984). During the conference Office of Public Instruction staff will offer to conduct a presentation on sex equity and its implication for school districts.
2. OPI's Assistant Superintendent for Special Services is the chairperson of the National Conference on Equity.
3. OPI is working with Mountain West Desegregation Center to provide technical assistance to all school districts on equity issues. These requests are filtered back to the Office of Public Instruction.
4. OPI is a part of a coalition of states joining with the Department of Education in its attempts to free Title IV monies from a federal lawsuit in Chicago for utilization within the state education agency.
5. OPI is in contact on a regular basis with other state education agencies for information and materials with regard to sex equity and will relay the same to school districts.
6. OPI shall continue to work with the Council of Chief State School Officers' Office on Equity, on a regular basis, for technical assistance and materials on all equity issues.
7. OPI is coordinating with the Office for Civil Rights, Denver, Colorado in an attempt to resolve disputes and complaints which have been filed with the Office for Civil Rights and is assisting school districts to maintain compliance in all equity issues.

#### **VIII. RELEASE**

This agreement is a settlement and release of all claims and damages asserted by Plaintiffs in their individual and class representative capacities against the Missoula County High School District, the Whitehall High School District, and the Columbia Falls School District, OPI, and MHSA. Although Plaintiffs have asserted a claim for monetary damages, this settlement agreement offers in exchange for a dismissal as set forth hereafter, no payment of compensation, or any promise to make any payment for any damages, claimed or allegedly suffered by any of the Plaintiffs. The consideration for the release hereafter set forth in this agreement is the actions and decisions of the parties set forth herein, which all parties recognize must be carried forward in good faith; that the present agreement will become a part of a judgment or dismissal of this action and enforceable through the exercise of appropriate legal and equity powers of the United States District Court in the event of its breach; and that future sex equity issues may be referred to either or both the grievance procedure of OPI and the eligibility determination of MHSA, and, thereafter, court review as appropriate, or may be resolved through exercise of other available legal or equitable remedies.

Plaintiffs, in their individual and class representative capacities, do hereby release, acquit, and discharge, and by these presents do release, acquit, and forever discharge, Missoula County High School District, Whitehall High School District, Columbia Falls High School District, MHSA, and OPI, of and from any and all liability, causes of action, costs, charges, claims or demands, of whatever name or nature, in any manner arising out of or growing out of the above-described litigation, except as otherwise more fully set forth in the terms and context of this release. Plaintiffs have executed this agreement for themselves, in their individual and representative capacities, upon advice of counsel, releasing any and all claims they have or may have; and the execution of this instrument is made in reliance upon the advice of their counsel and not upon the advice of any representative, attorney, or other agent acting for or on behalf of any of the other parties hereby released.

In making this release and agreement, it is understood that Plaintiffs, in their individual and representative capacities, do rely upon their own judgement, belief, and knowledge of the nature,

extent, and duration of the injuries and damages claimed to have been suffered. Plaintiffs further acknowledge that this is a complete release of all claims, either in tort, in contract, or at all, which may have existed in the past and which do not continue after the date of this agreement except as hereinafter provided; and that no promise, representation, or other assurance has been made by any person with respect to any further or future payment for costs or damages except as hereinafter referred to; and that the agreements hereinafter made by the parties hereby released shall not be construed as an admission of liability on the part of any such parties because said persons and corporations expressly deny such liability. Finally, Plaintiffs acknowledge, on advice of counsel, that this agreement is the entire, sole, and only agreement pertaining to the subject and things referred to herein and there are no other independent, collateral, or additional agreements or obligations to be performed or things to be done except as set forth and described by the terms of this agreement.

This agreement is not to be construed as any confession by any of the litigation Defendants or admission by OPI that OPI has direct and specific jurisdiction over extracurricular athletic activities except as otherwise provided herein; that the acceptance of federal monies by a school district subjects the school district to federal or state regulation or control over any aspects of the educational program offered by the school district which does not receive direct federal funds; that the State of Montana or OPI has any control, directly or indirectly, over MHSA; that MHSA is a state agency or subject to any portion of the Montana Administrative Procedure Act, 2-4-1-1 et seq., MCA; or that any Plaintiff has ever experienced an act or omission which constituted sex discrimination of any form or nature while such Plaintiffs were enrolled students of the individual school districts names as parties herein, regardless of whether the discrimination is alleged to have resulted as a consequence of acts or omissions of the school district, OPI, MHSA, jointly, individually, or at all.

The parties agree that the litigation filed shall contemporaneously be dismissed without prejudice pursuant to a stipulation between the parties and an order of the United States District Court incorporating this agreement as an exhibit to the underlying stipulation for dismissal, which agreement the parties stipulate may be enforced, in the event of breach, as though the agreement were a final judgment of the United States District Court, so that in the event one or more of the parties hereafter concludes that other parties to this agreement are not performing acts required by this agreement or are performing acts prohibited by this agreement, that the equity powers of the United States District Court can be utilized, in conjunction with or in addition to any and all other remedies created or existing either pursuant to this agreement or pursuant to applicable state or federal law. The parties further agree that the court shall retain continuing jurisdiction to enforce this settlement agreement even though the Complaint is being dismissed.

#### **IX. ATTORNEY'S FEES**

Nothing in this Settlement Agreement shall affect the right of any party to seek costs and attorneys' fees as permitted by law.