

Date of Hearing: April 21, 2015

**ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND  
INTERNET MEDIA**

Ian Charles Calderon, Chair

AB 949 (Gonzalez) – As Amended March 26, 2015

**AS PROPOSED TO BE AMENDED**

**SUBJECT:** Physical education: cheerleading.

**SUMMARY:** Would require the California Interscholastic Federation (CIF), in consultation with the state Department of Education (department), to develop guidelines, procedures, and safety standards for the purpose of classifying competition cheer as an interscholastic sport that is compliant with the Federal Department of Education Office of Civil Rights (OCR) definition of sport, by July 1, 2017.

**EXISTING LAW:**

- 1) Requires, as a condition of graduation, pupils in grades 9 to 12 to complete 2 courses in physical education, unless otherwise exempted.
- 2) Requires pupils, except those exempted, to attend courses of physical education for not less than 400 minutes each 10 schooldays. Authorizes any pupil to be excused from physical education classes during one of grades 10, 11, or 12 for 24 hours in order to participate in automobile driver training, but specifies that pupil shall attend a minimum of 7,000 minutes of physical education instruction during such school year.
- 3) Authorizes the governing board of a school district to exempt any four-year or senior high school pupil from attending courses of physical education, if the pupil is engaged in a regular school-sponsored interscholastic athletic program carried on wholly or partially after regular school hours.
- 4) Establishes the CIF as a voluntary organization responsible for administering high school interscholastic athletics and sunsets this authorization on January 1, 2017.
- 5) Requires the CIF to report to the Legislature and Governor by January 1, 2016, on several specified goals and objectives, such as effectiveness of the governance structure, gender equity, health and safety, and economic viability.
- 6) Authorizes the California Department of Education (CDE) to determine if the policies of school districts and the CIF are in compliance with state and federal laws, as specified.
- 7) Prohibits discrimination based on sex and considers exclusion from the participation in, or denial of opportunity in athletic programs as discrimination.
- 8) Provides the following three ways an educational institution may be found to be providing equivalent athletic opportunities:

- a) If interscholastic level participation opportunities for male and female pupils are provided in numbers substantially proportionate to their respective enrollments;
- b) If the school district can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interest and abilities of the members of the sex that have been and are underrepresented among interscholastic athletes; or
- b) If the school district can demonstrate that the interest and abilities of the members of the sex that have been underrepresented among interscholastic athletes is fully and effectively accommodated by the present program, where, in the past, the school district was unable to show a continuing practice of program expansion.

EXISTING FEDERAL LAW provides that "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance." (Title IX of the Education Amendments of 1972 to the 1964 Civil Rights Act".

Title IX applies to *all* aspects of educational opportunities, not just athletics.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) *Bill is being heard as proposed to be amended in mock-up form. Amendments will be adopted in the Education Committee due to policy hearing deadline time constraints and double referral.*
- 2) *Author's Statement of need for legislation*

According to the author, "AB 949 would create new safety guidelines for training and potentially spark changes in athletic department funding for cheerleading at California high schools. The recognition of cheerleading as an official sport will provide resources to cheerleading coaches and cheerleaders consistent with other California Interscholastic Federation (CIF)-sanctioned sports. The benefits of having the same CIF standards will ensure a certain level of coaching competency and skill once safety guidelines are developed by the Department and CIF.

"Traditional cheerleading was predominantly male in the early days, mainly consisting of tow-touch jumps, splits and clapping. Today, cheerleaders are mostly athletic females. Cheerleading has evolved significantly into a physically demanding competitive sport of its own. Cheerleading is as athletic and potentially dangerous as other sports, as cheer athletes perform gymnastic-style backflips, lifting and throwing team members, jumps, pyramid building and risky dance moves that are often performed on hard surfaces.

"Incidents of cheerleading injuries – including fractures, spinal damage, head injuries, concussions and paralysis – have increased (as cheer has become more popular). According to the Consumer Product Safety Commission, in 2011, there were almost 37,000 emergency room visits for cheerleading injuries. Cheerleading injuries account for approximately 65 percent of all catastrophic injuries in girls' high school athletics, according to a recent report

by the National Center for Catastrophic Sport Injury Research at the University of North Carolina.

"The medical field has recognized the dramatically increase popularity of cheerleading and injuries. The American Academy of Pediatrics issued a policy statement and The American Medical Association adopted the policy to consider cheerleading a sport because of its rigors and risks.

"AB 949's designation of cheerleading as a sport will afford it consistent minimum safety resources and regulations. Equally as important, it means capturing cheerleading injury data. This bill will have the responsible parties – California Department of Education and the California Interscholastic Federation – collaborate and develop higher consistence safety standards for cheerleaders."

3) *Who is the CIF?*

The CIF is an association of public, private and parochial secondary schools which was formally established in 1914. The CIF is authorized by state statute and is responsible for administering all high school athletic programs; including establishing rules for participation.

In 1981, the Legislature delegated state oversight of high school athletics to local school district governing boards. That same legislation recognized the authority of the CIF, and allowed the local districts to join such associations.

According to the CIF website, currently, more than 1,372 public and private high schools in California compete in the wide range of athletic activities administered by the CIF and organized under the direction of local school boards. In total, over 700,000 girls and boys throughout the state compete in more than 30 sports each year.

4) *Title IX concerns: Under existing case law traditional cheerleading is not a sport.*

The CIF Website refers readers to the following article from *High School Today*, entitled *Cheerleading is not a sport: Can cheer and competitive cheer be considered?* Wherein the writer opines,

"There appears to be unanimous agreement across the country that cheerleading is not a sport as it relates to Title IX purposes. Cheerleading's primary purpose from its origin centuries ago has been to support the athletic teams and to lead the crowd. Cheerleading teams can add the elements of gymnastics, dance and stunting, but the main goal of their existence does not change. With that being said, the confusion comes from the terms 'competitive cheer' and 'cheer.' If you enter 'Is cheerleading or cheer a sport?' in an Internet search, literally thousands of articles or opinion papers appear. An association or an outside organization can refer to cheerleading any way it desires, but there is only one organization that can determine if the athletes meet the definition of sport and be considered in the school's proportionality count for equitable opportunities offered.... Unfortunately, too many interscholastic institutions have tried and failed to use cheer/competitive cheer/spirit numbers for proportionality without meeting all the criteria. Don't be confused; the titles are not the problem, and the criteria and standards are not debatable."

According to Title IX case law, cheer is not a sport. The following cases offer guidance and the committee may note that cases regarding college athletics are relevant to the interpretation of Title IX at the primary and secondary school levels. From the *Biediger* case:

Cheerleading does “not qualify as a varsity sport for the purposes of Title IX, therefore, its members may not be counted as athletic participants under the statute... For an athletic opportunity to count under Title IX, it must be genuine, meaning that it must take place in the course of playing an actual ‘sport.... To qualify the activity must allow an athlete to receive the same benefits and experience that she would receive if she played on another established varsity squad.” *Biediger v. Quinnipiac Univ.*, 728 F. Supp. 2d 62, 91 (D. Conn. 2010) aff’d, 691 F.3d 85 (2d Cir. 2012).

They also draw the committee's attention to the *Torres* decision wherein it was held, “Primary purpose of . . . any cheerleading team, is to support athletic teams and the school at various athletic competitions . . . lack of competition against other teams or individuals excludes . . . [cheer] from being classified as a sporting team.” *Torres v. University of Massachusetts*, 2005 WL 5652770 (Mass. Super.)

5) *What is a "sport" under Title IX?*

In September 2008, the US Department of Education Office of Civil Rights issued a *Dear Colleague Letter: Athletic Activities Counted for Title IX Compliance* document, "to provide State educational agencies, local educational agencies, and postsecondary institutions with information to ensure that male and female students are provided equal opportunities to participate in intercollegiate and interscholastic athletics programs consistent with Title IX of the Education Amendments of 1972, 20 U.S.C §§ 1681 et seq., and its implementing regulations (34 C.F.R. Part 106)... Specifically, this letter provides clarifying information to help institutions determine which intercollegiate or interscholastic athletic activities can be counted for the purpose of Title IX compliance; it does not represent a change in OCR’s policy under Title IX."

The letter outlined several factors to consider on a case-by-case evaluation of whether an activity can be counted as an intercollegiate or interscholastic sport for the purpose of Title IX compliance, OCR will consider all of the following factors:

- a) **PROGRAM STRUCTURE AND ADMINISTRATION** — Taking into account the unique aspects inherent in the nature and basic operation of specific sports, OCR considers whether the activity is structured and administered in a manner consistent with established intercollegiate or interscholastic varsity sports in the institution’s athletics program...
- b) **TEAM PREPARATION AND COMPETITION** — Taking into account the unique aspects inherent in the nature and basic operation of specific sports, OCR considers whether the team prepares for and engages in competition in a manner consistent with established varsity sports in the institution’s intercollegiate or interscholastic athletics program, including:

- i) Whether the practice opportunities (e.g., number, length and quality) are available in a manner consistent with established varsity sports in the institution's athletics program; and
  - ii) Whether the regular season competitive opportunities differ quantitatively and/or qualitatively from established varsity sports; whether the team competes against intercollegiate or interscholastic varsity opponents in a manner consistent with established varsity sports;
  - iii) When analyzing this factor, the following may be taken into consideration:
  - iv) Whether the number of competitions and length of play are predetermined by a governing athletics organization, an athletic conference, or a consortium of institutions;
  - v) Whether the competitive schedule reflects the abilities of the team; and
  - vi) Whether the activity has a defined season; whether the season is determined by a governing athletics organization, an athletic conference, or a consortium.
  - vii) If pre-season and/or post-season competition exists for the activity, whether the activity provides an opportunity for student athletes to engage in the pre-season and/or post-season competition in a manner consistent with established varsity sports; for example, whether state, national and/or conference championships exist for the activity; and
- c) Whether the primary purpose of the activity is to provide athletic competition at the intercollegiate or interscholastic varsity levels rather than to support or promote other athletic activities.
- i) When analyzing this factor, the following may be taken into consideration:
  - ii) Whether the activity is governed by a specific set of rules of play adopted by a state, national, or conference organization and/or consistent with established varsity sports, which include objective, standardized criteria by which competition must be judged;
  - iii) Whether resources for the activity (e.g., practice and competition schedules, coaching staff) are based on the competitive needs of the team;
  - iv) If post-season competition opportunities are available, whether participation in post-season competition is dependent on or related to regular season results in a manner consistent with established varsity sports; and
  - v) Whether the selection of teams/participants is based on factors related primarily to athletic ability.

"It is OCR's policy to encourage compliance with the Title IX athletics regulations in a flexible manner that expands, rather than limits, student athletic opportunities. By disseminating this list of factors, OCR intends to provide institutions with information to include new sports in their athletics programs, such as those athletic activities not yet recognized by governing athletics organizations and those featured at the Olympic games, if they so choose. Expanding interscholastic and intercollegiate competitive athletic opportunities through new sports can benefit students by creating and stimulating student interest in athletics, taking advantage of athletic opportunities specific to a particular competitive region, and providing the opportunity for access to a wide array of competitive athletic activities."

- 6) *Michigan High School Athletic Association (MHSAA) may provide model of competition cheer to address Title IX concerns.*

According to information provided by the author, the sport of competition cheer has been adopted in other states, and at least one state, Michigan, has received a letter from OCR which declares their sport of competition cheer to meet Title IX standards. On their website, the MHSAA states the following regarding competition cheer:

"In 1994, the MHSAA welcomed the sport of Competitive Cheer to the list of many sports that are offered end-of-season MHSAA tournament competition.

"The introduction of Competitive Cheer as a member school recognized sport has allowed school administrators their first opportunity to participate in the development and review process for safety rules and the competition format. This opportunity provides assurance that Competitive Cheer will meet safety guidelines appropriate for the participants as well as include the elements and characteristics necessary to be a positive sport offering within member school athletic programs.

"The sport format was created by Michigan cheer coaches and athletic administrators with the purpose of providing consistent rules from week to week and from team to team with the sport season. The format allows teams to perform all aspects of cheer techniques and styles and it is designed to encourage athleticism. Competitive Cheer meets the criteria of a sport provided by the Office of Civil Rights in the U.S. Department of Education. Such criteria includes contracting a coach who conducts practices to teach and train athletes for competition, having a schedule of meets, having a win-loss record, following rules of a sport, participating in contest that are officiated, receiving school varsity recognition and potentially league/conference recognition.

"Competitive Cheer does not replace nor is it intended to conflict with game cheerleading squads. Competitive Cheer teams condition, practice and prepare solely for competition while sideline/game cheerleading squads' main objective is to leave cheers for school sports fans and to promote good sportsmanship for all involved. A sideline/game cheerleading squad provides a unique opportunity for its participants as well as the school teams and spectators it benefits."

- 7) *Required training for Interscholastic Athletic Coaches would be mandated for Competition Cheer coaches under proposed amendments.* Interscholastic athletic coaches (coaches of the programs recognized as sports by the CIF) are required to complete a mandatory training program under existing state law either offered by the school district or the California Interscholastic Federation. Interscholastic athletic coaches are required to participate in the California High School Coaching Education and Training Program and the Legislature has expressed its intent that the program emphasize the following components:
- a) Development of coaching philosophies consistent with the goals of the school, school district, and school district governing board.
  - b) Sport psychology.
  - c) Sport pedagogy.

- d) Sport physiology including principles of training and the harmful effects associated with the use of steroids.
- e) Sport management.
- f) Training certification in CPR and first aid.
- g) Knowledge of and adherence to statewide rules and regulations, as well as school regulations including, but not necessarily limited to, eligibility, gender equity, and discrimination.
- h) Sound planning and goal setting. (Education Code Section 35179.1)

Currently CIF offers training programs to high school coaches who receive a certificate upon course completion (typically an eight hour class). To date more than 60,000 coaches have taken the training, which costs approximately \$60 per person. Some school districts pay for the program while others require the coach to pay for it. The completed certificate is transferable between school districts.

California Code of Regulations, Title 5, Section 5593, requires school districts to ensure that temporary athletic team coaches are knowledgeable and competent in the following areas: Care and prevention of athletic injuries; basic first aid and emergency procedure; coaching techniques; rules and regulations in the athletic activity being coached; and, child or adolescent psychology for the appropriate grade level. Temporary athletic team coaches can demonstrate their competency in these areas in a number of ways, including but not limited to, completing a college-level course on the topic, completing an in-service training by the district or county office of education, or demonstration of prior experience in the topic area. The regulations also allow a school district superintendent to waive compliance with any one or more of the competencies provided that the person is enrolled in a program leading to acquisition of a competency. Until the competencies are met, the prospective coach shall serve under the immediate supervision of a fully qualified temporary athletic team coach.

8) *Opposition concerns are addressed with proposed amendments.*

The prior version of this measure contained three elements, each of which engendered some form of opposition; the first was classifying cheerleading as an interscholastic sport without defining which discipline of cheer was included (e.g. mascots, song leaders, sideline cheer or stunt). The issue with this provision is discussed in Comment 2 above, as the courts and community of women's athletics do not consider all aspects of cheer to be sports. By defining "Cheer" to mean competition cheer which is compliant with the federal OCR definition of sport; the author has addressed this concern.

The second provision of the prior version which drew opposition was the requirement that the department grant school districts discretion to allow participants in cheerleading to satisfy their physical education course study by participation in cheer (broadly defined). The concerns about this provision are discussed in Comments 2 above, and -- below and center on allowing school related "activities" to be treated equally as "sports". The proposed amendment addresses this issue by expressly defining the scope of cheer under the bill to be "Competition" cheer, which would be recognized as an interscholastic competitive sport. As noted under Existing Law, school districts may allow student participants in recognized

sports an exemption from physical education. The scope of the district's discretion under the existing law would be limited to students competing in competition cheer as now amended.

The final concern was raised by the former version of the bill requiring the CIF to develop guidelines, procedures and safety standards for cheerleading, which was too broadly defined under the prior version. As discussed in Comment 2 above, cheer is a broad descriptor for many activities which are not currently defined as sports. The concern with this provision is that the CIF is expert in the regulation and establishment of fair play standards for existing sports; however they are not adept at creating a new sport from whole cloth, which the prior version of this measure would have them do. For instance, there is no competitive model currently for team mascots, who most often perform skits. By amending the scope of the bill to the emerging sport of Competition cheer, the CIF has an existing sport and set of regulations to model and adapt to California's unique needs.

9) *Outstanding concerns, safety of unregulated cheer activities.*

The author remains concerned about the health and safety standards for those disciplines of cheer which are not to be regulated as CIF recognized sports. Pointing to studies which demonstrate that even sideline cheer can be dangerous when performed under unsafe condition (such as tumbling and pyramid practice on asphalt concrete surfaces), the author wishes to continue exploring ways to make the entire spectrum of cheer as safe and well regulated as the proposed new sport of Competition Cheer will be.

10) *Prior related legislation.*

- a) AB 351 (Salas), of 2009, would have authorized the governing board of a school district that provides the following courses or programs to exempt any pupil participating in such a course or program from attending courses of physical education (PE) and from the physical education high school graduation requirement: California Cadet Corps; Cheer team or Dance Team; Color guard or Drill team; Junior Reserve Officer Training Corps; Marching band.

The Assembly Education Committee contained the following in their analysis of that measure, "Physical Education Content Standards & Framework. State regulation specifies that school districts shall judge the quality of a high school physical education program based upon whether or not the course of study provides for instruction in each of the following areas: effects of physical activity upon dynamic health, mechanics of body movement, aquatics, gymnastics and tumbling, individual and dual sports, rhythms and dance, team sports, and combative for boys.

According to the *Physical Education Framework for California Public Schools, Pre-Publication Version*, September 15, 2008, 'Marching band, cheerleading, and ROTC also offer students opportunities to be physically active. These elective courses do not prepare students to meet grade- or course-level standards in physical education and do not follow the high school course of study established by California Code of Regulation, Title 5, Section 10060. Although these courses are appropriate for elective course credit, they are not appropriate for physical education course credit.'"

AB 351 failed passage in Assembly.

- b) AB 1646 (Hayashi), of 2010, would have amended the existing California High School Coaching Education and Training (CHSCET) program to require coaches be trained in a basic understanding of the signs and symptoms of specified injuries, including those related to the head and neck. Held in Assembly Appropriations Committee.
- c) AB 1647 (Hayashi), of 2010, would have established certification and training requirements for athletic trainers, and prohibited individuals from calling themselves athletic trainers unless they met specified requirements. Vetoed.
- d) AB 1893 (Hayashi), of 2010, which have require beginning July 1, 2011, all high school spirit activities (HSSA) coaches to have a valid certification in CPR and first aid and, establishes several requirements for HSSA coaches and pupils including, but not limited to requiring pupils participating in HSSA to have an annual medical examination and receive proper training, and requiring HSSA coaches to develop an emergency plan. Held in Assembly Education Committee.

11) *Double-referral*: Should this bill pass out of this committee, it will be re-referred to the Assembly Committee on Education.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

(Prior version)  
California Interscholastic Federation  
California Medical Association

None on file for this version

**Opposition**

None on file for this version

**Analysis Prepared by:** Dana Mitchell / A.,E.,S.,T., & I.M. / (916) 319-3450