

# Sports Litigation Alert

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## **Gender Equity Proponents Hail Settlement Agreement in *COOK V. FHSAA***

The Florida High School Athletic Association Board of Directors (FHSAA) voted to approve the settlement terms as negotiated in *Cook v. FHSAA*, litigation that was initiated after the association created a policy last spring that would have reduced the schedules of all sports, except football.

When news of Policy 6 emerged, gender equity proponents mobilized, with the support of a strong legal team to challenge the policy, which the plaintiffs suggested would have exempted over 29 percent of boys' competitions from the cuts, but just 5 percent of girls'.

The FHSAA countered that the cuts were not discriminatory because football was a coed sport.

The plaintiffs suggested that the settlement agreement "precludes the FHSAA from making the same type of flawed calculations again." The FHSAA has agreed to comply with all state and federal nondiscrimination laws and policies, including the Florida Educational Equity Act, the Equal Protection Clause of the U.S. Constitution, and Title IX of the Education Amendments of 1972, including its interpreting regulations and the 1979 Policy Clarification.

As it relates to Policy 6, the FHSAA rule establishing maximum numbers of athletic contests in a season, the FHSAA agreed that it will not make any changes to Policy 6 unless the changes are made equally for all sports (based upon the same percentage of competitions) or unless such changes are made so that they affect male and female athletes equally. The FHSAA is not prevented from returning Policy 6 to its pre-2002 maximum contest levels. The Settlement Agreement states:

Section 3 (A): The Association will not make changes to Policy 6 in a manner that treats one gender differently from the other. For purposes of this section, any change that causes an adverse impact on proportionately more of one gender than on the other shall constitute a violation of this section. Sports participation opportunities and benefits are to be measured by the girls and boys actually playing sports, not by including illusory opportunities they could potentially play.

The plaintiffs pointed out that the settlement "is a model for schools in Florida and around the country to use to ensure that they are providing equal opportunities and benefits to their male and female students.

"In times of budget-tightening, girls cannot bear a disproportionate share of the cuts. All school sports are important educational opportunities for all our children and no sport should receive preferential treatment" said David Baron, one of the attorneys representing the plaintiffs.

Key provisions of the agreement include:

- **Gender Equity Evaluation:** Prior to making changes to competitive seasons, the FHSAA will conduct a full evaluation on the gender impact. The reasons for any changes will be provided to Professor Hogshead-Makar at least two weeks prior to enacting the changes.
- **Notice:** The FHSAA will provide to Plaintiffs' counsel a list of member schools known to the Association to have made changes to their schedules following adoption of the amended Policy 6 in April 2009 and did not return to the pre-April schedules following rescission of the amended Policy 6 in July 2009 within ten (10) business days after executing the Settlement Agreement.
- **Legal Education:** In January 2010, 2011 and 2012, one hour of annual training on the gender equity obligations under state and federal laws will be conducted at the FHSAA's annual Representative Assembly. The training shall be presented to all participants in one session and as a single group, without competing seminars or events. In the years thereafter, FHSAA will hold the training in 50 minute segments as part of its usual concurrent sessions.
- All training required by this Section shall be conducted by a qualified trainer selected by Professor Hogshead-Makar, with agreement of the Association. The FHSAA shall be responsible only for paying reasonable travel expenses for the trainer, including reasonable charges for air fare (coach), meals, and transportation.
- The training will be recorded by video and audio, and shall be posted on the FHSAA's website for available viewing by any interested person.
- **Non-Retaliation:** Retaliation for participating in the lawsuit, either directly or indirectly, is specifically prohibited in the agreement. Any person experiencing retaliation may bring his or her charge directly to the FHSAA's Infractions Appeals Committee for consideration and response. The Infractions Appeals Committee is chaired by attorneys who cannot be connected with any member school, public school district or private school accrediting organization, or represent student-athletes, coaches or athletic directors in any manner. Any person charging retaliation is also entitled to pursue other remedies at law, such as procedures within their school or in a separate lawsuit.

"One of our key goals was to make it clear to Florida School Districts and individual schools that any cut-backs to competitive seasons must be done equitably on a proportionate basis in order to be legal," said Leslie Goller, attorney at Terrell Hogan, who with Wayne Hogan represented the plaintiffs on a pro bono basis.

The Settlement Agreement is available [online here](#).

## What They Said

"This decision helped keep the integrity of high school athletics in the great State of Florida for years to come. When policy 6 was first brought to the forefront, it was going to slowly disable many opportunities for young women across the state. Thanks to Nancy, the team, and the players and parents who came forward for helping to not set high school sports back 20 years."

Rob Moramarco  
Girl's Basketball Event Director/College Basketball Scout

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**"This is a critically important victory for the student-athletes, everyone who cares about gender equity, and the rule of law. Schools and school districts cannot discriminate against women to save or make money. They may be facing economic pressures. But they still need to comply with Title IX and the Constitution. Congratulations to Nancy Hogshead-Makar and the entire legal team for making that point so clearly. "**

**Arthur Bryant  
Executive Director  
Public Justice**