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Legal aspects of no-pass/no-play in high school extracurricular activities

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LEGAL ASPECTS OF NO-PASS/NO-PLAY IN HIGH SCHOOL EXTRACURRICULAR ACTIVITIES

by

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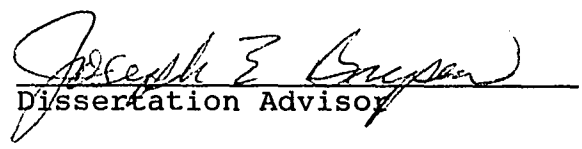

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The popular phrase "no-pass/no-play" describes the rules or statutes being adopted by an increasing number of state legislatures, state boards of education, and local school districts. In the interest of educational reform, school leaders are increasingly limiting participation in extracurricular activities for students that fail courses or do not achieve at least a "C" (2.00 GPA) average. Because of this, there is a need to know and understand recent court decisions relative to no-pass/no-play for student participation in extracurricular activities.

The purpose of this study was to identify the critical legal issues affecting the implementation of no-pass/no-play rules at the state and local level. The second purpose was to review and analyze state statutes and case law relative to extracurricular activities. The final purpose of this study was to form a legal reference for persons at the state and local levels to assist them in the adoption and implementation of more stringent academic requirements for student participation in extracurricular activities.

Based on an analysis of state statutes and judicial decisions, the following conclusions were drawn:

1. No-pass/no-play rules or statutes are constitutional and do not violate the rights of students

with regard to:

a. due process

b. equal protection under the federal constitution and similar state documents

2. The courts have determined that there is a rational basis for believing that a no-pass/no-play rule provides students with both incentive and time to study.

3. The courts have consistently held student participation in extracurricular activities is a privilege and not a right.

ACKNOWLEDGMENTS

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CHAPTER I

INTRODUCTION

Overview and Background

A sudden impact was felt across the nation when recommendations for educational reform was made public in 1983 by the National Commission on Excellence in Education in a report A Nation at Risk. As a result, personnel in many states and school districts began to reexamine their educational programs in relation to their value and effectiveness. Not only have major revisions in academic standards been made, but significant changes in academic requirements for students wishing to participate in extracurricular activities have occurred as well. A number of state legislatures and state/local boards of education have adopted grade point average standards. These rules serve the dual purpose of assuring that student-athletes make sufficient academic progress during high school and that they are eligible for participation in intercollegiate athletics as incoming freshmen.

The phrase "no-pass/no-play" describes the rules being adopted by an increasing number of state legislatures, state boards of education, and local school districts. In the interest of educational reform, these rules raise the

academic standards that students must meet before they may participate in extracurricular activities. Extracurricular activities, though sponsored and supervised by the school, take place outside the regular classroom and are not the basis for academic credit.[1] Studies show that extracurricular activities in high school support the academic mission of schools, are inherently educational, and foster success in later life.[2] These activities may also affect future educational and employment opportunities.[3] High school students themselves believe that participation in high school activities is a very important part of their education and makes school more enjoyable.[4]

Proponents of higher academic standards for high school and college students say that linking extracurricular participation to academic performance will provide an incentive for students to "pull up" their grades. At the same time, others say such a policy is unfair and prevents students who do not have an academic bent from utilizing and developing the athletic, artistic, and other talents they

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[1]Martha Cromartie, "No Pass--No Play: Academic Requirements for Extracurricular Activities," School Law Bulletin, V.17, Fall, 1986, p.13.

[2]National Federation of State High School Associations, The Case for High School Activities, Kansas City, Missouri, 1987.

[3]Anthony R. Strickland, University of North Carolina at Chapel Hill, May 20, 1986.

[4]News and Observer, Raleigh, North Carolina, September 3, 1985, 7A.

bring to extracurricular activities.[5] Maintenance of at least a "C" (2.00 GPA) is the common thread among the new academic standards that state and local school district leaders are requiring for student participation in extracurricular activities.[6] The National Federation of High School Activities Associations (NFHSAA) currently recommends a minimum eligibility standard of four passing grades for the students' previous semester of attendance. Only fifteen states follow these national guidelines; nine states have less restrictive guidelines; and twenty-seven states have more restrictive guidelines.[7]

The Office of Educational Research and Improvement (OERI), Center for Statistics at the United States Department of Education reveals that no-pass/no-play rules have greater impact on some groups of students than for others. Research reveals that:

1. Overall, nearly seven of eight varsity athletes meet or exceed the 2.00 GPA requirement;
2. A larger percentage of female than of male varsity athletes meet the requirement;
3. White students of high and medium socioeconomic status, and academic program students meet the requirements at high rates;
4. The groups hardest hit by the requirement are

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[5]David A. Sweet, "Extracurricular Activity Participants Outperform Other Students," OERI Bulletin, September 1986, p.3.

[6]Ibid., p.4.

[7]Eligibility Comparison Survey, NFHSAA, June 1991.

black and Hispanic males.[8]

Given these data, coupled with the high degree of visibility of certain extracurricular activity programs and the strong emotional support they enjoy, it is understandable that the move toward implementing no-pass/no-play requirements frequently generates intense and spirited debates among students, parents, coaches, teachers, and administrators.

There has been an increase of legal challenges to the more stringent academic standards for student participation in extracurricular activities. Many of the legal challenges to no-pass/no-play rules center around the question of whether student participation in activity programs is a privilege or a right that will be given legal protection if denied. The federal and state constitutions provide that no person shall be deprived of life, liberty, or property without due process of law.[9] "Property" can have a broader meaning than personal items or real estate. Black's law dictionary defines the term to mean an aggregate of rights protected and guaranteed by the government. When facing a due process issue, courts must determine whether the interest asserted rises to the level of a property or liberty interest that is constitutionally protected.[10]

In relation with the due process provision is the equal

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[8]Sweet, "Extracurricular Activity," (1986), p.4.

[9]United States Constitution, Amendment V,IX.

[10]Cromartie, "No Pass--No Play," (1986), p.14.

protection clause of the Fourteenth Amendment and similar state documents, which guarantees that no person or class of persons may be denied the same protection of the laws that other persons or classes in similar circumstances enjoy.[11] When a governmental regulation, such as "no-pass/no-play" is challenged on the basis that it violates the equal protection clause of federal and state constitutions, the courts must determine whether the rule has a negative impact on a particular category of people who are classified on the basis of a constitutionally impermissable criterion such as race.[12] If it does create such a constitutionally suspect classification, the regulation must be supported by a compelling state interest.[13]

Legal issues such as the due process principle and the equal protection clause of federal and state constitutions are most often examined when there are legal challenges to no-pass/no-play rules. The fact that state legislatures and state/local boards of education are adopting more stringent academic standards for student participation in extracurricular activities accounts for the increasing legal challenges to the new requirements.

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[11]Ibid.

[12]Ibid.

[13]Ibid.

Statement of the Problem

It is apparent that students are failing more courses than ever before. In an attempt to reduce failures, state legislators, state and local boards of education, and school administrators are increasingly limiting participation in extracurricular activities for students that fail courses or do not achieve at least a "C" (2.00 GPA) average. Consequently, no-pass/no-play rules are being implemented across the nation to provide students an incentive to successfully complete their classroom work. However, is being barred from participation in extracurricular activities an effective means to encourage students to pass their courses? "No-pass/no-play" is controversial for political reasons. Legislation authorizing it is often inspired more by the pressure for educational reform than by any research supporting the efficacy of stricter sanctions for failing grades.[14] An element of many new eligibility standards is the maintenance of at least a "C" (2.00) grade point average. Past eligibility standards have gone largely unchallenged in the courts. The fact that more students are excluded from participating under the higher academic standard of the no-pass/no-play rules may explain why the requirements are now being challenged.[15] Because of

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[14]Sweet, "Extracurricular Activity Participants," (1986), p.4.

[15]Robert Gough and Charles A. Sloan, "Athletics: Who is in Control?", Planning and Changing, v.18, Winter 1987, p.229.

increasing legal challenges to no-pass/no-play rules, it is important for educators, school board members, and state legislators to know and understand recent court decisions relating to this issue. A primary concern in many legal challenges of setting academic standards to participate in extracurricular activities is the possible denial of constitutional rights.[16] The courts are usually called upon to guarantee that individual constitutional rights are protected.

In addition to the legal issues surrounding no-pass/no-play rules, there is disagreement as to the value of extracurricular activities in regard to recent educational reform. Supporters of no-pass/no-play rules claim that the rules are a motivational tool, providing incentive for students to study harder. They see the rules as setting the right priorities - academics first, extracurricular activities second. Opponents emphasize that school is more than academics, that low-achieving students can gain important self-esteem from participating in extracurricular activities, and that opportunities to participate decrease the possibilities of students dropping out of school.

Purpose and Significance of the Study

The purpose of this study is (1) to identify from the literature the critical legal issues affecting the

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[16]Ibid., p.230.

implementation of no-pass/no-play rules at the state and local level, (2) to review and analyze state statutes relating to requirements for student participation in extracurricular activities, (3) to review and analyze case law relative to extracurricular activities; and (4) to form a legal reference for persons at the state and local levels to assist them in the development of more stringent academic requirements for student participation in extracurricular activities. In order to address the purpose of this study the following research questions will be investigated.

Questions to be Answered

1. What are the critical legal issues related to the development and implementation of no-pass/no-play rules at the state and local levels?

2. What are the important state statutes, administrative regulations, and court decisions relative to the use of academic standards for students who desire to participate in extracurricular activities?

3. Based on the results of court cases (1976-1991), what specific issues related to no-pass/no-play rules currently are being litigated?

4. What is revealed in literature on the issue of no-pass/no-play?

5. What legal guidelines can be set forth as a result of this research to aid educators, legislators, and school board members in the development of no-pass/no-play rules?

Delimitations of the Study

This study is delimited to state laws, administrative

regulations, and court cases affecting no-pass/no-play requirements for student participation in interscholastic athletics and other extracurricular activities.

Methodology

The methodology used for this study is that of legal research as defined by Hudgins and Vacca, which involves an analysis of judicial decisions from which legal principles are derived.[17] The study of case law is supplemented with an analysis of statutory law when applicable. State statutes, administrative regulations, and court decisions are the primary sources. Secondary sources such as legal encyclopedias, law reviews, educational articles, and books offer supplementary information.

Legal research begins with the framing of a problem as a legal issue. For this study, the problem is to determine the legal aspects of no-pass/no-play for student participation in interscholastic athletics and other extracurricular activities. The state statutes and administrative regulations that control this issue will be investigated and collected; then a bibliography of court decisions will be built. Each court decisions will be read and analyzed around three major areas: the facts, the decision, and the rationale or implications.

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[17]H.C. Hudgins and Richard S. Vacca, Law and Education: Contemporary Issues and Court Decisions, 2d ed. (Charlottesville, Va: The Michie Company, 1985), p.24.

In order to determine whether a need existed for this study, the investigator obtained a computer search of recent topics related to the issue of no-pass/no-play from Educational Resource Information Center (ERIC). Journal articles and other literature relevant to the subject were located using additional research tools including the Education Index, Index to Legal Periodicals, and American Law Reports.

Cases will be read and categorized according to the various aspects that determine student eligibility in interscholastic athletics and other extracurricular activities.

Definition of Terms

Administrative Regulation. A law promulgated by governmental agencies other than courts or legislative bodies. These agencies derive their power from legislative enactments and are subject to judicial review.

Appeal. A request from the losing party to have a case reheard in a higher court.

Appellant. The party that appeals from a judicial decision.

Appellee. The party against whom an appeal is taken.

Case law. Law established by judicial decisions in cases.

Complaint. A formal allegation against a party in a

lawsuit.

Constitution. A written instrument that serves as the ultimate source of legal authority by which a government and the courts obtain their power to govern and decide disputes.

Due Process. A course of legal proceedings carried out regularly and in accordance with established rules and principles. It is a term found in the Fifth and Fourteenth Amendments of the United States Constitution and in many state constitutions.

Equal Protection. A guarantee in a constitution that no person shall be unreasonable discriminated against legally.

Extracurricular Activities. Those activities sponsored and supervised by the school, but take place outside the regular classroom and are not the basis for academic credit.

Injunction. An order by a judge to prevent an individual or organization from doing a specified act.

Litigation. To carry on a legal challenge by judicial process.

National Federation of State High School Associations. A National organization consisting of state high school athletic/activity associations. Its main purpose is coordinate activities among its members.

No-pass/No-play. The implementation of minimum academic standards for student participation in interscholastic athletics and other extracurricular activities. No-pass/no-play rules specify that students are required to pass all

classes a given grading period to retain eligibility. A "C" (2.00) grade point average is a common thread to many no-pass/no-play rules.

Petitioner. The party that makes a formal written request.

Plaintiff. The party that brings action or lawsuit to find a solution to a violation of his/her rights.

Rational basis. A standard used by courts that a rule bear a rational relationship to a legitimate state interest.

Redshirting. The practice of extending the playing career of a student-athlete by skipping a year of interscholastic participation while not affecting his/her maximum allowable time for participation.

Right. The privilege to which an individual is justly entitled.

Suspect class. A term used by courts to refer to a rule or law that has a negative affect on a certain group or category of people, such as those based on race or national origin.

Statute. A law enacted by a legislature.

Writ. A formal written document.

Organization of the Study

Chapter I includes an introduction, statement of the problem, purpose and significance of the study, questions to be answered, delimitations of the study, methodology,

definition of terms, and the organization of the study.

Chapter II contains a historical analysis of extracurricular activities and a review of no-pass/no-play. Major legal issues are identified.

Chapter III includes an analysis of state statutes relating to interscholastic athletics and other extracurricular activities.

Chapter IV contains an analysis of case law related to various eligibility requirements for student participation in interscholastic athletics and other extracurricular activities. A listing and discussion of recent litigated court cases are examined as they relate to academic and other related eligibility standards for student participation in extracurricular activity programs.

Chapter V provides answers to the research questions posed in the first chapter as well as a summary of the study, conclusions drawn from the study, and recommendations to educators and legislators.

CHAPTER II

REVIEW OF THE LITERATURE

Overview

This chapter will present information from the literature on the history of extracurricular activities in the United States. Significant historical events in the development of Sports and Games in America are analyzed beginning in 1620. The emergence of extracurricular activities in schools is examined. A historical analysis of no-pass/no-play rules governing extracurricular activity participants in the secondary public schools of America is discussed.

Sport in Colonial America (1620-1700)

The first Americans possessed a great love for play. This natural instinct for recreation endured the long trip to the New World. Upon landing at Jamestown, Sir Thomas Dale found the almost starving colonists playing happily at bowls in 1611.[1] The first Thanksgiving at Plymouth was an event where Pilgrims and Indians feasted and participated in various recreational activities. Followers of Thomas Morton

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[1]Foster R. Dulles, "In Detestation of Idleness," Sport and American Society, (Addison-Wesley Publishing Company, 1970), p.3.

set up a May-pole, brought out wine and strong waters, and invited the Indians to join them.[2] For several days, the Pilgrims and Indians danced and played games.

Sports and Recreation grew from these beginnings to what we know today. Despite the activities at Plymouth between the Pilgrims and Indians, opportunity for play among the early settlers in America was scarce. Due to the harsh conditions facing early Americans, long hours of continual work was the norm. Early settlers faced dangers from an unfamiliar territory. Starvation and disease took its toll in many households. There was very little leisure time.

Individual's in leadership positions, Puritans and Anglicans, found it necessary to adopt strict regulations against idleness, to the end of enforcing work and prohibiting all amusements.[3] Sir Thomas Dale sternly forbade further bowling at Jamestown and decreed that any trademan unfaithful and negligent in daily attendance upon his occupation should be "condemned to the Galley for three years."[4] Governor Endicott of the Massachusetts Bay Colony cut down the May-pole at Merry Mount and prepared to rigorously enforce the General Court's law that "no person, householder or other, shall spend his time idly or unprofitably, under paine of such punishment as the Courte

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[2]Ibid.

[3]Ibid.,p.4.

[4]Ibid.

shall thinke meet to inflict."[5]

Religion provided the strongest moral sanction for every law prohibiting amusements. It was one of the vital forces that prohibited recreation from the lives of the early Americans. In addition, the early settlers believed that to survive all energies must be directed toward work. Virginia originally enacted laws as restrictive as those of New England.[6] The Assembly in 1619 decreed that any person found idle should be bound over to compulsory work; prohibited gaming at dice or cards, strictly regulated drinking, provided penalties for excess in apparel, and strictly enforced Sabbath observance.[7] Once the colony was firmly established and there was less need for work, enforcement of existing laws lessened and Virginians were permitted to participate in whatever recreational activities their time permitted.

In New England, the rule of Calvinism condemned idleness and amusements, and the tradition that life should be devoted to work held its ground more firmly.[8] There was an attempt to suppress every form of recreation. The

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[5]Bradford, loc. cit., 238; Records of the Court of Assistants of the Colony of Massachusetts, II (Boston, 1904), p.37.

[6]Dulles, "In Detestation," (1970), p.5.

[7]Edward Channing, A History of the United States, I (6 vols., New York, 1905-25), p.200.

[8]Dulles, "In Detestation," (1970), p.5.

intolerance of Puritanism confined life in New England in a very narrow way. Massachusetts, Rhode Island, and Connecticut banned dice, cards, quoits, bowls, ninepins, "or any other unlawful game in house, yard, garden, or backside."[9] In 1650, even the game of shuffle board was forbidden by law in many colonies. Local ordinances forbade gaming, singing, and dancing. Dancing was believed to be "of the devil." The theatre was absolutely prohibited. These laws represented a determination to promote diligence to work and reflected the Puritan concept that any frivolous waste of time was evil. Behind the colonies ban against playful idleness always lay their views on the Sabbath, an association of sports and games with pagan or Catholic practices, a hatred of gambling, and a fear of sexual immorality.[10] With "nine-pin bowls" forbidden in Connecticut, some settlers simply added a pin as a way to circumvent the law. Thus was invented an American version of an ancient sport. In addition, there seems to be another reason why Puritans possessed such an intense disapproval of sports and games. There was a class-conscious protest in the condemnation of recreational activities. Only the rich would have time for the pleasures of recreational games. Puritans in early America were generally poor but

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[9]Ibid.

[10]William J. Baker, Sports in the Western World, (Rowman and Littlefield Publishing, 1982), p.82.

hardworking. It was easy to rationalize as sinful amusements they could not themselves enjoy.[11]

During the Great Migration between 1630 and 1640, an overwhelming majority of new settlers in New England were non-church members. More and more immigrants came to the New World with motives having little to do with religion. These new settlers in New England began to seek a release from the many dangers and worries of everyday life. Drinking became a way for the new immigrants in all the colonies to escape the demands of endless hours of work on farms and the constant fear of famine, plague, or Indian attack. The increase in drinking was also largely due to a lack of entertainment available at the time. Sermons of Puritan preachers against idleness, promiscuity, and religious indifference indicate that Puritan beliefs were ineffectively enforced. Puritan limits against sports and games fell dramatically as a result of several civic occasions and work programs arranged by Puritans themselves. Lecture days, military training sessions, election gatherings, house raisings, sheep shearings, log rollings, and husking bees all provided the opportunity for energetic youths to run, jump, wrestle, and play traditional games while their parents performed more serious duties.[12] Women

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[11]Thomas Cuming Hall, The Religious Background of American Culture, (Boston, Massachusetts, 1930), Chp.I.

[12]Baker, (1982),p.84.

and young boys played a form of soccer, while the Indians "play with a little balle lettinge it fall out of ther hand and striketh it with the tope of his foot, and he that strike the ball furthest winns what they play for."[13]

A rich sporting heritage began during the latter seventeenth century. There grew a strong desire to entertain and to be entertained. As the Puritan ethic weakened, participation in leisure activities grew. Indian games, fishing, fowling, turkey shoots, and hunting wild horses were examples of recreational activities in the latter part of the 1600's. Horse racing grew to be the main source of recreation for Virginians and betting on horses was common. The history of early sport is described in records of county courts, who often settled disputes arising from gambling on horseracing.

> The seventeenth-century track was a straight path about a quarter of a mile in length, laid out in an abandoned field near a convenient gathering place-a church, a court house, or an ordinary eating house located at a cross-road. The narrow path, ten or twelve feet wide, had an open space at each end large enough for the horses to maneuver into position and pull up to a quick stop. The finish end of the track was customarily marked by upright stakes or poles, where the judges stood.[14]

Cockfighting, hunting, and shooting matches were extremely

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[13]John A. Lucas and Ronald A. Smith, Saga of American Sport, (Henry Kimpton Publishing, London, 1978), p.7.

[14]Hugh Jones, The Present State of Virginia, (Ed. by Richard L. Morton, Chapel Hill: University of North Carolina, 1956), p.84.

popular among Virginians. Many of the wealthier colonists gambled on games, sports, and cards. Near the end of the seventeenth century, a variety of sports and games had emerged. Foot racing, chasing the greased pig, lotteries, raffles, primitive prize fighting, no-rules wrestling, the theatre, puppet shows, beauty contests, lawn fetes, and fireworks were all new forms of public entertainment.[15]

Alcohol consumption was not the only means in which New Englanders were breaking the bonds of Puritan influence. The staging of plays, dance classes, celebration of Christmas festivities, all became normal occurences in towns throughout early America. Tavern sports, card-playing, and dancing became an emotional outlet to everyday people. On weekend's, young people became more and more freely took "liberty to walk and sport themselves in the streets and fields and too frequently repair to public houses of entertainment and there sit drinking.[16] There was soon an attempt to make laws to forbid, on Sunday, "all shouting, hollowing, screaming, running, riding, singing, dancing, jumping, winding horns or the like."[17] The urge for play among the early Americans was not lessened by Puritanism. It brought on the inevitable revolt against stern regulations forbiding what seemed a natural outlet for the

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[15]Lucas and Smith, (1978), p.19.

[16]Dulles, "In Detestation," (1970), p.15.

[17]Ibid.

everyday person who worked long hours simply to survive.

Expanding Role of Sport in Colonial America (1700-1780)

Literature reveals more of the wealthy man's recreational activities than of the poor or slave. This is understandable since the wealthy had more time to participate in sporting activities. Horse racing, gambling and cards, dances, and music continued to be favorite pasttimes in the colonies, especially in the southern colonies. Hunting, horse racing, and cock-fighting were the three most popular sports in eighteenth century Virginia. Fishing, hunting, small game, shooting wild turkey and deer were other fun activities. Unlike most Puritans and Quakers who felt uneasy at participating in leisure sports, young Southerners began to yearn such activities. Constant visitations among plantations with rounds of dances, fox hunting, skittles, and endless "Diversions for the Entertainment of the Gentlemen and Ladies" were quite common by the mid 1700's.[18]

The poorer New Yorker or Philadelphian found his time occupied with work, church, and family matters, with a small amount of time for recreation. Sleighing parties in the winter, fishing in the summer, private theatre, balls, and concerts were common among well-to-do northerners. Hunting, races, and cockfighting continued to be popular in the

[18]Lucas and Smith, (1978), p.30.

North. An increase in the interest of sporting events was the result of the decline of religious faith and practice. Outdoor games and sports were common in the New York settlement. Shooting matches were held and prizes given to winners. In 1729, Governor Burnet's inventory mentions "nine gouff clubs, one iron ditto, and seven dozen balls."[19] A version of modern day pool was played in taverns and inns. A modification of croquet was popular on outdoor grass.

Quaker leaders in Philadelphia passed a law in 1700 prohibiting plays, games, bullbaiting, cockfighting, cards, dice, lotteries, and other "evil sports." This so enraged Philadelphians that it was repealed in 1705. Although the Quakers voiced disapproval of sporting events publicly, many people continued to participate in activities enjoyed by other Northerners. Horse racing and fishing were the most popular pasttimes in Philadelphia for most of the eighteenth century. The pure Quakerism of William Penn was being weakened by new arrivals of German and Scotch-Irish immigrants who appreciated a good time.

The lack of organized recreation among New Englanders and the presence of laws respecting the Sabbath did no more than slow the development and interest in sports, games, indoor and outdoor amusements. Fun festivities could be found at baptisms, weddings, barn-raisings, cornhuskings,

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[19]Ibid., p.32.

quilting-parties, church and house-raisings, ship launchings, and even ministers' ordinations.[20] A public bowling green and billiard room arose in Boston in the early 1700's. Dice, cards, backgammon, tally bowling, and ninepins were permitted. Children played games such as wood tag, stone tag, squat tag, leapfrog, marbles, and singing games. Singing schools and spelling bees sprang up throughout New England. Running, leaping, wrestling, cudgel, stool-ball, and back-sword were commonly played. The favorite competition during this period of time was shooting at a mark for a prize.[21] New England Puritanism, the traditional inhibitor of sport, was in truth one of the powerful American influences that led eventually to the introduction of voluntary school competitive athletics and compulsory physical education.[22] The work ethic of New Englanders in the seventeenth and eighteenth centuries took root in Colonial America, helped it grow, and made a big contribution to an atmosphere where most people will eventually find time for leisure activities.

The middle of the eighteenth century was important in the history of horse racing. Shortly after 1740, the horse breeding from imported English thoroughbreds resulted in circular track racing, replacing quarter-racing. Jockey

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[20]Ibid., p.36.

[21]Ibid., p.37.

[22]Ibid.

clubs quickly emerged in many areas, giving rise to horse racing becoming an organized sport. Despite its growing popularity in Virginia, organized horse racing actually orginated in the North.[23] The Maryland Jockey Club was founded around 1745.[24] Special breeding emerged and resulted in horses becoming stronger and running faster.

During the mid eighteenth century, taverns were the most thriving of all urban institutions. Men gambled on backgammon, shuffleboard, cards and games of chance. Billiards became intensely popular everywhere. Cricket became the national sport of England and spread to Georgia, Maryland, and New York.[25] In 1751, a cricket match between eleven colonists and eleven from England was surprisingly won by the Americans.[26] This represented the first American international sporting event.

The mid 1700's brought about a period where many Americans began to see a need for physical activity. John Adams spent his youth making and sailing boats, making and flying kites, driving hoops, wrestling, swimming, and skating. Benjamin Franklin urged all youth to "be frequently exercised in running, leaping, wrestling, and

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[23]John Hervey, Racing in America 1665-1865, Vol.I, (The Jockey Club, New York, 1944), p.33.

[24]Lucas and Smith, (1978), p.45.

[25]Ibid.,p.48.

[26]Ibid.

swimming.[27] Benjamin Franklin, a great swimmer, often spoke of the need for a sound mind and a sound body. Other leading colonial Americans supporting a worthy use of leisure time includes William Byrd, II, George Washington, and Thomas Jefferson.[28]

By the latter half of the eighteenth century, many Americans began to enjoy a variety of sports. Water and winter sports were prevalent. Boating, Fishing, and hunting were present in all areas. Outdoor games such as bowls and golf were played in many colonies. Children's games fluorished during the period of 1740-1781. Stool-ball, cricket, fives, tip-cat, baseball, oystering, street games, marbles, hop scotch, leap frog, blind man's bluff, hide and seek, prisoner's base, hoop rolling, kite flying, and others were enjoyed by youngsters everywhere. Yet the most accurate picture of the changing sporting interests was evident in the five major colonial cities of Boston, Philadelphia, New York, Annapolis, and Williamsburg. The influence of overseas commerce resulted in these cities becoming the first to be exposed to foreign sporting events. Boxing became very popular in North Carolina. A good description of no-rules boxing in late eighteenth century is

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[27]Carl Van Doren, Benjamin Franklin, (Viking Press, New York, 1938), p.180.

[28]Thomas R. Davis, Sport and Exercise in The Lives of Selected Colonial Americans: Massachusetts and Virginia 1700-1775, (Unpublished Ph.D. dissertation, University of Maryland, 1970), p.23.

given by Philip Fithian:

> Every diabolical strategem for Mastery is allowed and practised, of bruising, kicking, scratching, pinching, biting, butting, tripping, throtling, gouging, cursing, dismembering, howling, etc. This spectacle (so loathsome and horrible!) generally is attended with a crowd of people.[29]

Sports and Games (1780-1865)

Change, reform, and development characterized the period between 1780 and 1865. Each change in social patterns influenced what sports Americans pursued and the extent of participation both in leisure time and school physical exercise programs.[30] Immigrants brought their love of sports and games to the growing cities of America, religious leaders advocated some useful sports to keep people from more sinful diversions, technological advances broadened social and sport opportunities, and educators and physicians increasingly expressed concern about the poor health of children.[31] In Southern states, selection and participation of sporting activities mirrored the social status of people. Horse racing clubs, hunting clubs, and

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[29]Philip Vickers Fithian, Journal and Letters of Philip Vickers Fithian 1773-1774, (Williamsburg, Virginia, 1943), p.240-241.

[30]Roxanne Albertson, "Sports and Games In Eastern Schools, 1780-1880," Sport In American Education: History & Perspective, (Published by National Association for Sport and Physical Education, Washington D.C., 1979), p.4.

[31]Ibid.

fox hunting became extremely popular in the South from 1780 to 1865. Boating, shooting, fowling, cricket, billiards, and fencing were other leisure activities.

Opposition to recreational activities decreased as the population grew in the Northern states. New Englanders participated in recreational activities, even on Sunday. In 1811 four young men of Addison County, Vermont were each fined $1.50 to $2.11 for "not having the fear of God before their eyes but, being moved and seduced by the instigation of the Devil" on the Sabbath Day, they "feloniously, willfully and maliciously did fish with a Net in Lake Champlain."[32] Laws prohibiting sports on Sundays continued to be frequently violated.

America's economic revolution, the rise of American nationalism, religious liberalism, and extraordinary individual creativeness, and America's euphoric state at the turn of the nineteenth century, all encouraged Americans to play hard, as well as work hard.[33] For leisure activities, men and women attended dances, weddings, cornhuskings, log-rollings, and barn-raisings. Running, jumping, wrestling, shooting, and horsemanship were individual activities enjoyed by many people in their precious leisure time. A strong competitive sporting environment grew at the turn of the nineteenth century. Spectator sports were unimportant.

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[32]Ibid.

[33]Lucas and Smith, (1978), p.55.

Fierce competition between men was the preferred sporting enjoyment. Track and field events, baseball, lacrosse, and weight lifting were examples of athletic events Americans enjoyed to participate in.

Americans participated in some rather "uncommon" sports during the period from 1780 to 1865. Gouging contests, throwing the maul (caber or hammer), pitching quoits (twenty to sixty pound stones), pole jumping for distance, tug-of-war, horseshoe pitching, crack the whip, leap frog, town ball, "chicken", and "I spy" were some activities enjoyed in small towns and rural areas. Grown men played marbles, youngsters threw tomahawks into trees for competition. America produced some outstanding athletes during the early 1800's. Robert McClellan, from Pennsylvania, could jump over a standing horse or a yoke of oxen.[34] McClellan was known as "one of the most athletic and active men that has ever appeared on this globe.[35] He once jumped over a canvas-arched wagon. The Indians could not catch him in a foot race or match him in a broad jump.[36]

As the nineteenth century progressed, a renewed theological conservatism regarding sport emerged. The doctrines of Calvinism attempted a comeback following the

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[34]Ibid., p.58.

[35]Ibid.

[36]Walter Havighurst, Wilderness For Sale, (Hastings House Publishing, New York, 1956), p.8.

American Revolution. Some historians called it the Second Great Awakening.[37] This religious revival lasted only from approximately the 1790's to the 1820's. Violations of existing laws concerning gambling in sports and participation in recreational activities on the Sabbath increased. The Pennsylvania legislature, for example, passed a 1794 statute restraining "disorderly sports and dissipations"; furthermore, cockfighting, cards, dice, billiards, bowls, shuffleboards, bullet-playing, and even horse racing were made illegal.[38] The Massachusetts Missionary Magazine in 1803 warned parents that intemperate recreational habits waste "the golden years of youth."[39] Preachers criticized sports among the people, except in the South.[40]

In the 1820's, Americans began to reject much of the Calvinistic doctrine that resulted in many harsh laws on leisure-time recreational activities. The Puritan teachings were increasingly rejected by the Northern upper class. The rise of sport in America, beginning prior to the Civil War and fully emerging in the 1870's and 1880's, could not have occurred without the religious diversity existing in the early nineteenth century.

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[37]Lucas and Smith, (1978), p.59.

[38]Ibid.

[39]Ibid.

[40]Ibid.

Most sporting events during the 1800's was one of participation, and not one of spectator. Recreational games for farmers and frontiersmen continued to be fishing and hunting, shooting matches, house-raisings, cornhuskings, and an assortment of other athletic contests (foot racing, jumping, etc.). In cities, scholars began to view sports and exercise as an effective means of relieving pressures from their everyday hard work.

The early half of the nineteenth century saw a rise in a variety of sporting or athletic groups. Foot racing, mostly over long distances, increased in popularity in the 1820's. Both amateur and professional races were common occurences in many urban communities. Pedestrian races, both walking and running, were widely reported. Indian runners participated, challenges and betting were common, and races in conjunction with agricultural fairs were frequently arranged. Jackson "Gildersleeve" gained fame in foot racing by the mid 1830's. A foot race often developed into an important local event. When "Gildersleeve" ran against a group of Indians at Buffalo in 1847, the Buffalo Daily Courier described the event:

> The race has been a topic of conversation for a week past...the 'red men' runners were paraded through our streets in carriages, preceeded by a band of music. As the hour of the afternoon drew nigh, when the race was to come off, the two streets, Main and Delaware, were literally crowded with carriages, horses, and pedestrians, wending their way to the course. When we reached it there was a larger throng

than we had seen on any similar occasion.[41]

Foot racing contests continued through the 1850's arousing and increasing interest in track and field events.

Competitive rowing races originated in the early half of the nineteenth century. The first organized race of modern times occurred in 1807 between the boats of Jean Baptiste of New York and the Chambers builders from London.[42] Organizations like the Savannah Boat Club and the Whitehall Aquatic Club formed in the 1820's and an approximately 50,000 people attended a British-American race in 1824.[43] Boat clubs became numerous by the mid 1830's. According to E. Merton Coulter, "boating as a sport extended from Virginia to Texas, and the heyday of its existence was from the 1830's to the Civil War.[44]

Prize fighting grew tremendously in the 1800's. The first fighters were slaves. Owners frequently bet the returns of future crops on their black fighters. Legislation prohibiting prize fighting arose in many cities because of the public's distaste for physical harm that came to many fighters. Legislation condemning prize fighting resulted in the sport being held by moonlight, at dawn, or

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[41]John R. Betts, America's Sporting Heritage: 1850-1950, (Addison-Wesley Publishing Company, 1974), p.36.

[42]Ibid., p.37.

[43]Ibid.

[44]Ibid.

in rural areas. Noted champions of the time were James "Yankee" Sullivan, Tom Hyer, John Morrissey, and John Heanan.[45] These men, along with with visiting fighters from England, sustained the interest in the sport.

Prior to 1850, organization first appeared in American sport. By about 1830 a split-second watch costing $120 was developed; elaborate grandstands were erected; jockey clubs sought to standardize the rules; seasonal schedules were arranged allowing horses to race in the South in the fall and winter and in the North in the summer; and racing times were recorded.[46] Boating, racing, cricket, and other similar clubs became organized in the 1850's. Horse racing soon became part of county and state fairs. Yachting and shooting clubs appeared for social purposes. Intercollegiate athletics appeared on the sporting scene. The first billiard championship in America was played in 1859 between Michael Phelan (the great promoter of billiards in America) and John Seereiter of Detroit.[47] Michael Phelan is given credit of organizing the sport of billiards and specifying the rules of play.

The manufacture and sale of sporting goods was still in the development stage in the early nineteenth century. Saddles, fishing tackle, sleighs, and riding habits

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[45]Ibid., p.38.

[46]Ibid., p.41.

[47]Ibid., p.42.

continued to be imported primarily from Europe. Guns and racing caps were among the first sporting equipment to be made in America.[48] Trapshooting gained in popularity in America as more men began using the rifle for sporting reasons. By 1831, a Sportsman's Club of Cincinnati introduced traps which were soon copied by other clubs.[49] By the 1850's, cricket bats, archery and billiard equipment, sleighs, marbles, and fishing equipment were being produced in America.

Sporting activities, such as ten pin alleys, billiard tables, and saddle horses as well as boat races, hunting, and fishing became increasingly common prior to the Civil War. Yachting races, prize fights, and famous horses were favorite events advertised in American towns. Political cartoonists introduced horse racing, cockfighting, foot racing, and prize fighting themes into campaigns. Andrew Jackson, Quincy Adams, Henry Clay, and others were featured in "A Foot Race", "Great American Sweepstakes", and "Race Over Uncle Sam's Course".[50] The 1860 campaign presented the novelty of a baseball cartoon of Abraham Lincoln and his rivals with ball and bat.[51]

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[48]Betts, (1974), p.44.

[49]Baker, (1982), p.87.

[50]Lucas and Smith, (1978), p.46.

[51]Ibid.

The Rise of Team Sports

From a mere sporting point of view, the most important development in the mid-nineteenth century was the rise of baseball, the first team game. How, when, and where the game began is controversial in itself. The major leagues themselves credit 1839 as the date of origin, Cooperstown as the place, and Abner Doubleday as the founder. About the only sure thing known today is that Cooperstown was not the place, Doubleday was not the founder, and 1839 was not the date. Major league officials chose 1839, Cooperstown, and Doubleday to give fresh publicity to a sport sagging in popularity in the early 1920's.

Several theories abound as to how and when baseball began. One legend is that the American Indians were playing even in prehistoric times, complete with pitchers, catchers, infielders, outfielders, and bases.[52] Some agreement has been reached that baseball had some connection with the English sport of cricket introduced to the Colonies in the mid eighteenth century. Most experts believe it is an outgrowth of the English children's game of rounders. In 1842 a group of men began meeting in a Manhatten lot to play baseball, and in 1845 was formed a club called the Knickerbockers.[53] People in Philadelphia and Boston called

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[52]John L. Pratt and Jim Benagh, "Baseball," The Official Encyclopedia of Sports, (Franklin Watts, Incorporated, 1964), p.16.

[53]Ibid.

it "Town Ball"; New Yorkers named it "One Old Cat" and eventually the "New York Game".[54] Not even baseball historians A.G. Spalding or Henry Chadwick know when the word "baseball" was thrown in. Baseball soon began to spread from city to city. By the 1850's William T. Porter termed it "the national game".[55] Alexander Cartwright, the "father of baseball" devised rules that are basically used today. The first baseball game, under Cartwright's rules, was played in 1846 between the New York Nine team and Cartwright's Knickerbockers, resulting in New York's 23-1 win.[56] The first paid gate was held for a 2 of 3 championship series between New York and Brooklyn.[57] The first professional team was formed in 1869, known as the Cincinnati Red Stockings. World Series play began in 1903.[58]

The game of basketball was invented in America in 1891. Anthropologist and archaelogists report that the Mayan Indians of Yucatan played a game similar to basketball five centuries before Columbus landed. The Mayans had a basket on a wall, the hoop facing vertically, and would throw a

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[54]Ibid.

[55]Ibid.

[56]Ibid., p.17.

[57]Ibid.

[58]Ibid., p.18.

ball through it.[59] The Mayan game seems to be the only predecessor to modern basketball. The real credit for the game belongs to Dr. James Naismith, an instructor at the YMCA in Springfield, Massachusetts. Naismith put up two peach baskets at opposite ends of the YMCA gym and used a soccer ball to play with. Professional teams began to form in 1898, while the National Collegiate Athletic Association established its rules after observing Yale and Penn at play.[60] The first collegiate doubleheader basketball game was played in the Madison Square Garden in 1934 between Notre Dame, New York University, Westminister, and St. Johns.[61] The first National Invitational Tournament began in The Garden in 1938.[62] The National Collegiate Tournament started in 1939 with Oregon the winner over Ohio State.[63]

Modern football originated in 1869.[64] The forerunner of football was a form of soccer. William Ellis, a student at Rugby School in England, gave soccer its most important link with football. While playing soccer, Ellis picked the ball up and ran with it, thus beginning modern football.

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[59]Betts, (1974), p.264.

[60]Pratt and Benagh, (1964), p.53.

[61]Ibid.

[62]Ibid.

[63]Ibid.

[64]Ibid., p.117.

The new version became rugby. Clubs made their appearance in the mid-1800's in America and laid a foundation for football teams. Because the game became so rough, Harvard banned football in 1860. In 1869, American collegiate football began on the campus of Rutgers University.[65] Rutgers defeated Princeton in the initial game. The first football game in 1869 hardly resembled modern football. There was no forward passing, and running with the ball was not permitted. Rutgers and Princeton played again in 1870. Columbia University began participating in 1871, followed by Yale, Stevens Tech, Virginia Military, and the City College of New York in 1872.[66] As a result of its ban on football, Harvard changed the rules to more closely resemble football of today. Eleven players were used with touchdowns and field goals counting in the score. Harvard and Yale played under the new rules in 1875.[67] Yale, Harvard, and Princeton (football's Big Three) dominated the game in the early years of existence. Other powers emerged at the turn of the twentieth century; Swanee in the South, Stanford in the West, and Michigan in the Midwest. Rules for football changed yearly. As a result of a threatened ban by President Teddy Roosevelt, first-down yardage was raised to ten yards, a neutral zone was established, a minimum line

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[65]Ibid., p.118.

[66]Ibid.

[67]Ibid., p.119.

became mandatory, and the forward pass became legal (1910).

The Emergence of Sports in Schools

Sports activities in the school have increasingly became an integral part of the recreational life in communities across America. In most countries of the world there is very little sports in schools. Because of the entertainment and excitement athletics bring to Americans, any attempt to eliminate them has been met with public outcry. The furor over No Pass/No Play in legislation in several states and local school districts across America is an example of Americans intense love of sports.

The importance on school sports originally developed in the first half of the nineteenth century.[68] It began in colleges with large numbers of students living away from home. Sporting activities was a means of preventing boredom as a result of students' long hours of classroom work. As the number of colleges increased, students of one college began to challenge students of another college to a variety of sporting activities. The first officially recorded intercollegiate sports contest was a rowing race between Harvard and Yale in 1852.[69] In the early years, sports in schools were organized by students. Organization came when

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[68]George H. Sage, "Sport and the School," Sport and American Society, (Addison-Wesley Publishing Company, 1970), p.54.

[69]Ibid.

school faculties assumed control over sports. Examples of this administrative control today are the National Collegiate Athletic Association at the college level and the National Federation of State High School Athletic Association on the high school scene.

High schools across America copied colleges in the development of sports. Following essentially the same form as colleges, high schools began interschool programs in sports, and by 1900 several states had established high school athletic associations. In 1922 the National Federation of State High School Athletic Associations was founded, indicating the nationwide emphasis on high school sports.[70]

There has been both supporters and critics of school sports since it began. Supporters cite school sports as a potential developer of better health, self-esteem, a stronger competitive drive necessary for success at work, and the development of positive character. Critics believe sports has nothing to do with a child's education and simply diverts attention away from the main purpose of education.

The place of sports in the school curriculum at the beginning of the twentieth century is illustrated by the report of the famous Physical Training Conference of

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[70]Ibid., p.55.

1889.[71] In this report, sports was valued only as pastimes. Gymnastics was considered by the so-called "experts" to be the best exercise for school children and those in college. This seems to be an accurate picture of sports in the school curriculum at the turn of the twentieth century. Sporting activities among Americans became "serious" at the beginning of the nineteenth century. Americans began to play to win. Still, there was less than a consensus among educators about making sports part of the curriculum of schools.

Soon after the beginning of the twentieth century, educators gradually began to believe that play was a vital educative process. The philosophy of secondary education around the turn of the century was away from the classical course of study, made up chiefly of Latin, Greek, and Mathematics, designed mainly for those who were preparing for college.[72] The education of the "whole child" was gaining much attention among educators. Whitton pointed out the common tendency of the schools to consider their duty done when the student left the classroom, when actually the

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[71]Ashbury C. Moore and Marianna Trekell, "A Short History of American Physical Education," Encyclopedia of Physical Education, Fitness, and Sports, (Brighton Publishing Company, 1981), p.47.

[72]Frederick Cozens and Florence Stumpf, "The Role of the School in the Sports Life of America," Sport and American Society, (Addison-Wesley Publishing Company, 1970), p.57.

function of the school had just begun.[73] This new philosophy of educating the whole child spread across America at the time when there were large increases in student enrollments in secondary schools. A new attitude toward play soon emerged in schools. Widespread changes in the school curriculum soon accompanied the new ideas of play. School playgrounds, less homework, President Teddy Roosevelt's support for the idea of play, and recess periods were examples of changes that occurred as a result of the new philosophy of education in America.

The prevailing thought in the early 1900's was that participation in sporting activities resulted in children becoming better citizens. Competitive athletic contests stressed teamwork and good sportsmanship. Even though gymnastics still was considered the best form of exercise, physical educators began to recognize the value of sports. D.A. Sargeant, a leader in the field of physical education in the early 1900's praised the favorable effects of competitive athletics.[74] George E. Johnson, a school superintendent, pleaded for the use of games in schools instead of gymnastics or at least giving games an equal opportunity with gymnastics.[75]

Much more is written in the early twentieth century

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[73]Ibid., p.58.

[74]Ibid.

[75]Ibid.

about college sports than secondary sports. However, a survey by J.H. McCurdy in 1905 in 555 cities across America reveals that physical education was almost exclusively one of gymnastics, that most school superintendents approved of competitive athletics in high school, and that there was an overall favorable attitude toward accepting interschool sports as a part of the school's over-all responsibility.[76] George Meylan, of Columbia University, characterized three sets of individuals holding general views on the question of sports in schools: (1) the extremists- nothing but good can come from athletics; (2) the dispensers- do away with athletics; and (3) the middle-grounders- athletics have many advantages as well as some bad features.[77] Programs in physical education was one existing of gymnastics in the instructional program. This was primarily due to some educators still holding on to the old philosophy of not accepting play as part of the school program and because most teachers knew very little of the relatively new games being played.

Most criticism directed at secondary and intercollegiate athletic programs is the lack of opportunity for participation among the mass of students. Intramural sports began in schools in the early 1900's as a remedy to this problem. Intramural programs began on the collegiate

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[76]Ibid., p.59.

[77]Ibid.

level initially with a group of college boys not good enough to make the varsity challenging another group at a particular sporting event. Class and fraternity teams soon organized, originally without the assistance from faculty. Because of the popularity of intramural sports, Michigan and Ohio State in 1913 created a staff position in physical education, "Director of Intramural Sports".[78] Following World War I, intramural programs filtered down into the women's program and into the high schools.

The idea of out-of-door play in physical education programs began to catch on prior to World War I. The "playground movement" as it is commonly referred to resulted in the opening of new play facilities, an increase in dollars spent by cities on playgrounds, and a more positive view on the value of playgrounds in cities. Playground programs in the summer held competitive events. "The wider use of the school plant" became a slogan and despite objection from some educators there soon followed a gradual "opening-up" of school facilities for all types of recreational and sporting programs.[79]

A number of athletic organizations sprang up as a result of the increase of sporting opportunities in schools. The New York Public School Athletic League formed in 1903 as a need for organizing athletic competition for the average

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[78]Ibid., p.61.

[79]Ibid., p.62.

boy rather than the highly skilled.[80] A girl's branch was established shortly afterwards. State High School Athletic Associations began originating prior to 1900 and by 1925 was established in every state. Associations were formed in states in an attempt to set policy and rules for play. The National Federation of State High School Athletic Associations officially adopted its name in 1922.[81] The National Collegiate Athletic Association was founded in 1910 for the purpose of regulating and supervising college athletics throughout the United States.[82] The National Amateur Athletic Federation organized in 1922 to bring together all national groups promoting athletics and physical education in our country.[83] These associations mentioned, and others, serve vital roles today in promoting sports in our schools.

Compulsory Physical Education in Schools

Participation in World War I brought about compulsory physical education programs in schools across America. Pressure from three areas culminated in passage of state legislation regarding the teaching of physical education in

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[80]Ibid., p.63.

[81]Glenn M. Wong, Essentials of Amateur Sports Law, (Auburn House Publishing Company, Dover, Massachusetts, 1988), p.125.

[82]Ibid., p.101.

[83]Cozens and Stumpf, "The Role of the School", (1970), p.66-67.

the public schools: (1) the movement toward prepardness which began more than two years before the United States declared war on Germany in 1917; (2) the fear that Congress would pass federal legislation requiring universal military training even in elementary schools; and (3) the poor physical condition of the youth of the nation.[84] As a result of compulsory physical education in states, the need for trained physical education teachers and coaches increased dramatically. Degree programs soon emerged to meet this demand. School systems began to recruit college athletes with four-year degrees. The physical education class program developed to become the seasonal sport program but on a less intense basis. During football season, football fundamentals were taught; next came basketball, then track, and finally baseball, where softball was substituted for hardball.[85] Coaching clinics were organized for men and women so that physical educators and coaches could better develop their skills.

Sports Interest from World War I to World War II

Pressures increased in American culture that resulted in rapid growth in sports participation and interest which began in the 1920's. This sudden interest in sports was a result of the emphasis placed upon sports as a valuable

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[84]Ibid., p.68-69.

[85]Ibid., p.69.

preparation for conditioning and and improving the morale of soldiers. Spectator interest developed overseas as a result of sports competition among the armed forces during and after World War I, and the indignation of the people at home in regard to the physical unfitness of draftees.[86] Intense public interest in sports between the two World Wars resulted in huge stadiums being built on campuses of universities and on a smaller scale on high school campuses. School sport programs changed from one primarily of gymnastics to one of sports. From 1921 to 1929 ten additional state legislatures passed compulsory physical education laws, thus making twenty-seven states having enacted legislation as a result of World War I.[87]

During the 1920's, the game of golf expanded rapidly in America. An estimated two million Americans played the game. The total value of golf real estate was placed at a billion and a half dollars, and the New York Times estimated a half-billion dollars were being spent annually on green fees, new equipment, lawn-mowers, caddies, and lost balls.[88] Golf became more accessible to all Americans regardless of income.

The years during the depression resulted in great

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[86]Ibid., p.70.

[87]Ibid.

[88]Cozens and Stumpf, Sports in American Life, (University of Chicago Press, 1953), p.219.

hardship on schools trying to develop sport programs. Budgets were cut, teacher's salaries were lowered, and teaching loads were heavier due to the increase of student enrollment as a result of unemployment.[89] Physical education and sport programs experienced some difficulty. Interschool competition involving out-of-town trips were largely eliminated. Smaller schools, in order to economize, adopted six-man football.[90] By the mid 1940's football was played in forty-five states.[91] Sporting good sales declined sharply during the depression years. Attendance at intercollegiate football games also decreased.

The depression years brought about some favorable developments in school sports. Athletic fields, swimming pools, tennis courts, and gymnasiums were built using WPA funds. In Michigan alone sixty gymnasiums were under construction in 1937.[92] The inclusion of individual sports in the physical education programs in schools came as a result of cultural pressures in the 1930's. In addition, intramural programs fluorished during this period. A real catalyst to sport programs in schools developed from an American Youth Commission report stressing the close

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[89]Cozens and Stumpf, "The Role of the School," (1970), p.70.

[90]Ibid.

[91]Ibid.

[92]Ibid., p.71.

relationship between education and sports and the major responsibility of the school in establishing a program which would offer every boy and girl "the opportunity to cultivate physical fitness through games, sports, and outdoor activities.[93]

By the early 1940's, physical education programs began to emphasize activities which had possibilities of developing endurance. Football, water polo, ice hockey, basketball, wrestling, lacrosse, boxing, track and field, handball, soccer, speedball, and swimming were all included in school programs. Obstacle courses were built on many high school and college campuses.

The Aftermath of World War II

Immediately following World War II educators debated what should be done with sports in schools and colleges, in physical education programs, and in interschool competition. Two schools of thought emerged. One group of educational leaders believed that boys should be given strenuous exercises so they will be ready when called into the armed forces. The second school of thought believed that the values to be gained in sports participation should not be discarded because of the urgency of physical condition.

Some problems occurred in school sport programs following the end of World War II. The immediate

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[93]Ibid.

eligibility of athletes returning from military service caused a bidding for players ("shopping around"). The basketball gambling scandals of 1950 and 1951, followed by the West Point cheating affair, caused anger among sport lovers.[94] A call to clean up athletics was heard across the country, but not to eliminate it.

The main development in postwar sport has been the increased interest in participant sport. Sporting good sales are at all-time highs. The number of participants continue to grow, primarily due to concern for physical fitness. Increased leisure and income are other significant causes for the development of participant sport.

Extracurricular Activities (1960-1992)

Participant sports has continued to grow in America. More public knowledge concerning health-related issues has been the chief reason for this continuing surge in physical fitness among individual's. Jogging, swimming, tennis, handball, and aerobics are thriving activities today among the average American. A rush to the outdoors in many states has occurred since 1960. In 1962, the Outdoor Recreation Resources Review Commission, established by Congress to evaluate the recreational needs of Americans by the year 2000, reported that 90% of Americans participate in outdoor

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[94]Ibid., p.75-76.

play.[95] Swimming facilities, campgrounds, picnic areas, and winter sports will continue to increase. Boating and swimming are major participant recreational activities.

Schools, since 1960, have seen a rapid expansion in school sports. Prior to the 1960's only a small number of sports were played on a competitive basis. Football, basketball, and track-and- field, were activities with the most public interest. Today, in 1992, school programs are comprised of football, volleyball, girl's tennis, boy's soccer, and cross country in the fall season, boy's and girl's basketball, wrestling, indoor track, and swimming in the winter season, and baseball, softball, boy's tennis, boy's and girl's track, girl's soccer, and golf in the spring season. Most high schools employ an athletic director to supervise the athletic program.

In the 1960's, extracurricular activities (excluding athletics) were practically nonexistence with respect to the total school program. Today, clubs such as the French Club, Spanish Club, Latin Club, Pep Club, Science Club, Anchor Club, Computer Club, International Club, Media Club, Key Club, Future Business Leaders of America Club, Future Homemakers of America Clubs, Fellowship of Christian Athletes Club, Art Club, Students Against Drunk Driving Club, Sports Medicine Club, Student School Board Action

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[95]Robert Boyle, Sport - Mirror of American Life, (Little, Brown and Company, 1963), p.50.

Group, National Honor Society, Interclub Council, and High IQ/Academic Challenge are extracurricular activities enjoyed by school children.

Breaking Racial Barriers in Sports

Since 1945, barriers of racial discrimination began to fall. In the United States, sport has partly led and partly followed social changes that have given greater opportunity to blacks. Although all walls of separation have not fallen, athletic facilities and rewards that were once separate and unequal are now increasingly available to all. Sport has played a key role in breaking these barriers.

In 1945, a black youngster had to look long and hard to find a hero on the sports page. Jesse Owens and Joe Louis were among the few idols of black children. Major league baseball, football, and basketball barred black athletes from competing with white athletes. Baseball exemplified the most rigid segregation of the races. Blacks competed in their own leagues and their own World Series. The best black baseball players were paid only a small fraction of white players. The Los Angeles Dodgers broke the color barrier signing Jackie Robinson to play in the major leagues. Contrary to public opinion, Jackie Robinson was not the first black athlete to cross the color line in professional sports after World War II. Two of his old teammates from UCLA, Kenny Washington and Woody Strode,

broke into the National Football League in 1945, a few months before Jackie Robinson signed with the Dodgers.[96] Larry Doby broke the color line in the American League, followed by Satchel Paige (forty-one year old rookie) who pitched for the Cleveland Indians. In 1950, Earl Lloyd joined the Syracuse Nationals, Nathaniel "Sweetwater" Clifton the New York Knickerbockers, and Chuck Cooper the Boston Celtics.[97] Also in 1950, Alethea Gibson became the first black ever to compete for the United States tennis championship at Forrest Hills.[98]

Racial barriers still existed in the South. A landmark Supreme Court decision of 1954, Brown v. Board of Education of Topeka, prohibited enforced segregation of schools, thereby setting in motion a change in southern athletic activities. Black athletes became part of a militant action through sit-ins, pray-ins, freedom rides, freedom marches for equal opportunity in housing, education, employment, and public facilities. Two black athletes emerged as leaders in this movement. Bill Russell of the Boston Celtics and Cassius Clay (later Muhammad Ali) fought hard for rights and dignity of blacks. There has been an increase in opportunities for blacks from 1954 to 1992. Today, blacks have been recipients of the Heisman Trophy, Major League

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[96]Baker, (1982), p.287.

[97]Ibid., p.289.

[98]Ibid.

Most Valuable Players, and quarterback on football teams. Although various covert forms of discrimination still exists, black athletes no longer are ignored.

Breaking Gender Barriers

The feminist movement of the 1960's gave a revolutionary push to the advancement of women in America. Since the 1960's, women are increasingly participating and becoming highly competitive in sports. Alethea Gibson, the first black to win Wimbledon (1957) and Wilma Rudolph, the track star in the 1960 Olympics challenged but did little to destroy the image of the female athlete. Billie Jean King led the fight for equality in athletics. She led boycotts against tournaments offering women cash prizes less than offered male competitors. She convinced two tobacco companies to invest in the Virginia Slims Tournament. She later became the first female ever to earn $100,000 for one year of work in sports.[99]

Female athletes gained more credibility, respect, and opportunity as the 1970's and 1980's progressed. Female jockey's appeared in the late 1960's. Janet Guthrie broke the male dominated sport of auto racing. Women are now participating in Marathons, golf, basketball, and most other sports men participate. Title IX of the Education Amendment Act of 1972 had a revolutionary effect on girl's athletic

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[99]Ibid., p.296.

programs in schools. Title IX reads:

> "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".[100]

The Association for Intercollegiate Athletics for women (AIAW) was founded shortly after Title IX legislation for the purpose of governing women's competitive sports. Women's swimming, track, field hockey, basketball, and gymnastic programs prospered as a result of Title IX. Despite many barriers being broken with respect to racial and gender for athletes, much still has to be done.

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[100]Ibid., p.299.

Historical Analysis of No-Pass/No-Play in High School Extracurricular Activities

"No-Pass/No-Play" is the popular phrase for Texas House Bill 72, a law enacted in 1984 as part of the public school education reform movement. Texas governor Mark White named Dallas billionaire industrialist H. Ross Perot to head a commission to review the educational deficiencies of Texas school children and to reform its schools. Perot discovered that the average high school senior spent only fifteen minutes on homework every night while devoting twenty hours per week to extracurricular activities.[101]

Overall, all students in Texas schools were spending an average of one hour a night on academic studies and as much as fifteen to twenty hours a week on extracurricular activities.[102] The governor's commission also found that at least six hundred of the states 1,100 school districts allocate all of their local school revenues to extracurricular activities, leaving the state to pay for academic costs.[103] Perot's response to these startling statistics was that "Extracurricular activities are about the only place in the public school system where we demand

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[101]Gary Taylor, "Education Reform - Or Discrimination," National Law Journal, (August 18, 1986), p.10.

[102]"Blowing the Whistle on Johnny," Time, 123 January 30, 1984, 80.

[103]Ibid.

excellence from our children."[104]

The high school football coaches in Texas became very angry when the commission criticized the over-emphasis on extracurricular activities. In Texas, particularly in small towns, football coaches possess enormous power and influence. Football in Texas is revered and a powerful force. The football coaches formed a political action committee to defeat Governor White in his bid for reelection. While other factors were involved, the governor was defeated due to the attack from football coaches concerning his strong support of House Bill 72.

The Texas legislature followed H. Ross Perot and the commission's lead, noting that other school districts in the United States have enacted more stringent rules linking academics to participation in extracurricular activities. While some educational leaders in other states required a "C" average for students to participate in extracurricular activities, the Texas legislature required students to pass all subjects with a minimum mark of 70 to be eligible. More specifically, students who failed any course during one six-week grading period were to be suspended from all their extra activities during the next six-week grading period.[105] In addition, students could only be absent from a class ten times during the 175 day school year due to

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[104]Ibid.

[105]Taylor, "Education Reform," (1986),p.10.

participation in extracurricular activities.[106] Texas governor Mark White noted in 1985 that "We in Texas don't tell our students it's OK to flunk one course...We're going to put winners in the classroom...and it's going to make Texas the big winner."[107] The governor's commission found one incidence where a student in a rural school district spent thirty- five school days in one academic year exhibiting his prize rooster.[108] In an effort to verify the rooster story, the Houston Post discovered another boy who missed forty-four days of school while promoting his prize sheep.[109]

A variety of findings served as a catalyst behind passage of "No-Pass/No-Play" in Texas. Governor White's commission, chaired by H. Ross Perot, found some rather shocking facts. A $6.1 million high school football stadium with Astro Turf was built in Odessa, Texas, seating 19,032 people, with parking for 4,756 cars, complete with press box and a booth for coaches.[110] The stadium was built for two high school football teams. Both head coaches earn approximately $43,000 a year, while the average teacher

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[106]Ibid.

[107]Wong, (1988),p.129.

[108]Taylor, "Education Reform," (1986),p.10.

[109]"Blowing the Whistle," (1984),p.80.

[110]Ibid.

makes $24,500.[111] Charles Broughton, principal of Permian High School is quoted as saying:

> "some communities choose to build a $10 million library or a $20 million civic center. This community chose to build a sports complex for its young people. A winning football team and a strong academic program are not mutually exclusive."[112]

Most of the furor arising from implementation of "no-pass/no-play" rules originated out of Texas because of its high profile football. Across the country, state legislatures and local school boards of education are tightening academic requirements for participation in extracurricular activities. More stringent academic requirements are the result of a call for reform in our schools and through recent action by the National Collegiate Athletic Association with regards to a growing concern of a lack of academic progress among student-athletes. West Virginia in 1984 quickly followed Texas in requiring students to pass all subjects to participate in student activities. Hawaii became the third state to implement statewide minimum academic standards ("no-pass/no-play statutes") in the spring of 1985. The Hawaii regulation requires that any student who wishes to participate in non-educational-related cocurricular activities must have a

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[111]Charles Leerhsen and Daniel Pedersen, "Texas: Benching the Dunces," Newsweek, (November 4, 1985): 58.

[112]"Blowing the Whistle," (1984),p.80.

minimum 2.0 grade point average and pass all courses required for graduation at the end of each grading period.[113] Failure to meet these standards means that the student is ineligible until the next grading period (9-10 weeks).

Impact of NCAA Proposition 48

The passing of Proposition 48 by the National Collegiate Athletic Association in 1983 has prompted state legislatures and local boards of education to have a new look at eligibility standards for high school athletes. Along with the "A Nation at Risk" report, Proposition 48 has resulted in a "trickle-down" effect with regards to more stringent eligibility standards for extracurricular activity participation at the high school level. The proposition basically states:

> "All freshmen athletes entering NCAA Division I schools in the fall of 1987 must have an accumulative minimum grade point average of 2.0 (C-Average) in a core curriculum of three years of English, two years of mathematics, two years of social science, and two years of natural or physical science, as well as a minimum combined score of 700 on the Scholastic Aptitude Test, or a minimum composite score of 15 on the American College Test."[114]

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[113]Lester M. Souza, "A Model Program of Preventive Academic Support," NASSP Bulletin, 74 (December 1990): 24.

[114]"Guide to the College Freshman: Eligibility Requirements for NCAA Division I Institutions," NCAA News, 3 (September 1983): 1.

Failure to satisfy these minimum requirements prior to enrollment in an NCAA Division I institution results in the student being ineligible as a freshman to practice and participate in intercollegiate athletics. Students with an overall 2.0 high school grade point average for all courses, but who fail to attain that average in the core curriculum, will be eligible for athletically related financial aid as a freshman but will be unable to practice or participate. While the core curriculum and grade point standards were widely accepted, the requirements for minimum scores on standardized tests angered Black educators. Black leaders believe that black athletes' opportunities for athletic scholarships would be limited by requiring a minimum score on a standardize test.

Proposition 48 was designed to stimulate students to better academic performance while in high school, and resulted in colleges becoming more involved in the academic progress of the student-athlete. Although the National Federation of State High School Athletic Association does not support no-pass/no-play rules, it does endorse higher academic requirements for athletes at the college level. The National Federation's support for Proposition 48 seems inconsistent with its position on no-pass/no-play. The position of the National Federation has maintained that the students who aspire to participate in college athletics should recognize that the academic demands of higher

education for all students require academic preparation while in high school.[115] The Federation further believes that the fundamental purpose of a guaranteed high school education for all is not to produce college students.[116] A vast number of high school graduates never attend college, let alone participate in college athletics. Denying a student the opportunity to participate in extracurricular activities in high school would deny "the other half of education" and part of what molds productive citizens.[117]

NCAA Proposition 16

The National Collegiate Athletic Association passed yet another piece of controversial legislation at its January 1992 meeting in Anaheim, California. The controversy in Anaheim involved Proposition 48, the nine year-old measure that rules an incoming freshman ineligible for varsity competition unless he has a 2.0 grade point average and either a 700 on the Scholastic Aptitude Test or a 17 on the American College Test. Proposals to strengthen Proposition 48 passed overwhelmingly. Three important changes occurred: increasing the minimum grade point average to 2.5 while instituting a sliding test-score index under which higher-

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[115]Brice B. Durbin, "High School Athletics: A Valuable Educational Experience," NASSP Bulletin, 70 (December 1986): 34.

[116]Ibid.

[117]Ibid.

than-minimum test scores would enable an athlete to play despite a GPA lower than 2.5; increasing the required number of college preparatory courses from 11 to 13; and insisting that college athletes complete at least 25% of their degree requirements by their third year, 50% by the fourth and 75% by the fifth.[118]

Proposition 16 is likely to serve as yet another catalyst for a new wave of more stringent academic standards for athletic participation on the high school level. Opponents of Proposition 16 argue that the new regulations (like no-pass/no-play) disproportionately affect black students. Opponents cite data released by the NCAA's research department that four out of every ten freshman football and basketball players who met the Proposition 48 requirements would have been ineligible in 1988 had the new standards then been in effect.[119] Other NCAA data suggest students will adjust to the new standards. When Proposition 48 took effect in 1986, there was a drop in the number of blacks who received football and basketball scholarships, but by 1988 the number of blacks on scholarships had almost returned to pre-Proposition 48 levels.[120] The graduation rate of black football and basketball players had improved

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[118]Richard Demak, "Reform School," Sports Illustrated, 76 (January 16, 1992): 7.

[119]Ibid.

[120]Ibid.

dramatically.[121]

Proposition 16 is intended to make parents, coaches, and teachers become more involved in the academics of student-athletes prior to college. Coaches and administrators on the college level will insist that athletes be prepared academically while in high school. This is likely to result in more no-pass/no-play rules in high schools across our country.

Opposing Viewpoints of No-Pass/No-Play

Most literature on no-pass/no-play focuses on the opposing points of view with the issue. Opposition to the institution of higher standards for athletics is based partially on the positive affect athletics have on students. A survey conducted by personnel of the Wake County (North Carolina) School System found that participants in sports and other extracurricular activities earned good grades and that such activities helped keep students in school.[122] Brice B. Durbin, former executive director of the National Federation of State High School Association emphatically states that "high school athletic and non-athletic activities are not only supportive of the academic mission of schools but are inherently educational and vital to the

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[121]Ibid.

[122]Thomas Harper, "Academic Eligibility Requirements for Student Athletes," NASSP Bulletin, 70 (October 1986): 3.

total development of students.[123] Many educators argue that athletic participation helps develop basic values such as self-confidence, self-respect, self-esteem, and competitive spirit. They further believe participants learn the value of teamwork and experience how to win and how to lose. Therefore, denying a student the opportunity to participate in extracurricular activities would be denying a valid educational opportunity.

Firth and Clark, and Ostro argue that tougher academic standards, such as no-pass/no-play, may result in some undesirable actions:

1. Some teachers may inflate grades in an effort to keep certain students eligible for activities.
2. Some students will be discouraged from taking courses that are challenging to them for fear of losing eligibility.
3. Cheating will be encouraged, particularly among borderline students and those taking more difficult courses.
4. Teachers who sponsor extracurricular activities may be tempted to offer "watered down" courses to keep grades up.
5. Academic success may receive a disproportionate emphasis at the expense of social, emotional, and physical development.
6. Some students can be expected to drop out of school when their primary source of success - extracurricular activities - is eliminated.[124]

Opponents of no-pass/no-play believe that it is unfair and

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[123]Richard E. Lapchick,"Student Athletes and Academics," National Education Association of the United States, May 1989, 23.

[124]John W. Brown, "Should Eligibility Standards Go Beyond Minimum Requirements," NASSP Bulletin, 72 (April 1988): 48.

unjust to require of athletes that which is not required of other high school students. The Greensboro City School System (N.C.) budgets in excess of $62,000 per year in a tutorial program for extracurricular participants who do not meet local no-pass/no-play rules when in fact these students earn better grades than nonparticipants.

Public opinion supports the concept of no-pass/no-play. Nationally, a Gallup Poll revealed that 90% of adults favored requiring a passing grade for athletic participation. A U.S. News and World Report survey showed that 45 percent of student leaders favored restricting those with less than a "C" average from participation.[125] Supporters of no-pass/no-play cite the academic improvement of athletes in Texas as evidence that the law is good for education. The rate of students becoming ineligible under the law has decreased each year, revealing that academic improvement is taking place. Harry Edwards, Ph.D. at the University of California at Berkeley, Department of Sociology, made the following comments favoring higher high school academic requirements for student-athletes:

> "The problem does not start on the college campus. An exaggerated emphasis upon sports during the early school years, and often the family, leads to a situation wherein by the time many student-athletes finish their junior high school sports eligibility and move on to high school, so little has been demanded of them academically that no one any longer even expects anything of them

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[125]U.S. News and World Report, November 4, 1985, 17.

> intellectually. At the high school level, the already unconscionable emphasis upon athletic development is institutionally abetted by policies which make athletic competition conditional upon minimum standards, or no standards at all. The problem with these minimum standards is that they have a way of becoming maximum goals. Student-athletes typically strive to achieve precisely the standards set - nothing more, nothing less."[126]

Defenders of no-pass/no-play point out that many of the ineligible athletes are not struggling illiterates but ordinary students whose grades are slightly falling short. Dr. Harriet Arvey, director of psychological services for the Houston School District states "Most of the kids are failing not because they lack intelligence but because they are not turning in their homework."[127] An analysis of grade potentials in Kansas showed that a full 95 percent of high school students have the capacity to obtain the "C" average.[128] An argument against increased standards has been that 10 to 20 percent of students do not have the native intelligence to achieve the standard. A Kansas study revealed that 13 percent with IQs over 115; 68 percent with IQs of 85-115; and 13.6 percent with IQs of 70-85 - possible candidates for special education but otherwise capable of

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[126]Wong, (1988),p.130.

[127]Eric Levin, "A Tough New Texas Law Tosses High School Football For a Late-Season Loss," Education USA, (October 30, 1985): 59.

[128]Capital Journal (Topeka Kansas), February 19, 1986, 23.

maintaining the "C" average.[129] The U.S. Department of Education study on participation in extracurricular activities confirmed the Kansas findings. This report found that 87.5 percent of male varsity athletes in Kansas surveyed would have met eligibility requirements if they had been in place at the time the study was made. The Kansas study offers reassurance to school districts that have moved to require minimum grade point average for students involved in sports.[130]

Effects of No-Pass/No-Play in Selected School Districts

In 1982 the Los Angeles City Schools adopted a no-pass/no-play rule (with "C" average) for extracurricular activity participants. The patterns of ineligibility were the same for all districts in Los Angeles. When standards were proposed without probationary periods, high numbers of athletes became ineligible. By the following year, grades for students declared ineligible rose substantially.[131] El Toro, in the Saddleback Valley district, was a good example. Twelve football players were declared ineligible at the end of the first quarter and the result was an immediate loss in the playoffs. El Toro's coaches began monitoring the player's grades and held study halls for selected players.

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[129]Ibid., p. 24.

[130]Lapchick, National Education Association, 1989, 27.

[131]Lapchick, (1989),p.28.

City-wide in Los Angeles, 21 percent of athletes became ineligible in the fall of the first year under the no-pass/no play rule.[132] Only 16 percent were still ineligible in the spring.[133] Less than 12 percent were ineligible in 1986.[134] In addition, there was no significant rise in dropout rates as many people predicted.

The Savannah-Chatham County School System in Georgia began a "C" average requirement in the 1984-85 school year. In 1984-85, 274 student athletes were ineligible.[135] One year later, only 135 students in all sports were ineligible.[136] School superintendent, Ronald Etheridge so strongly supported the rule that the school board raised its minimum average in 1987.

Prince George County School District in Maryland adopted no-pass/no-play in 1986-87. In the first grading quarter of 1986-87, 20 percent of participants were ineligible for extracurricular activities (sports and clubs).[137] By the second quarter, that figure had dropped to 8 percent for athletes.[138] Former school board chairman

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[132]Ibid.,p.29.

[133]Ibid.

[134]Ibid.

[135]Ibid.

[136]Ibid.

[137]Ibid.,p.30.

[138]Ibid.

Tom Hendershot stated "Coaches, who initially opposed the measure in substantial numbers, now provide academic support services for their athletes. The coaches now support the standard."[139]

A study completed in the Austin Independent School District in Texas reveals some rather surprising results on the effect of no-pass/no-play on student dropouts, failures, and course enrollments. Major findings from the study indicate students failed fewer courses under the influence of the no-pass/no-play rule. The percentage of high school failing grades declined from 15.5 percent to 12.8 percent in 1987-88.[140] The study showed that the dropout rate did not increase after no-pass/no-play was adopted.[141] Furthermore, student enrollments in honor courses remained above 13 percent, actually growing from 13.6 percent to 13.9 percent.[142] Students agreed that no-pass/no-play encouraged them to make better grades.

School officials at Kahuka High School in Hawaii decided to make the best of the no-pass/no-play law. The football teams of 1985 and 1986 were put on a support system by the athletic department. Mandatory study halls,

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[139]Ibid.

[140]Glynn Ligon, No Pass--No Play: Impact on Failures, Dropouts, and Course Enrollments, (Texas Office of Research and Evaluation, 1988),p.i.

[141]Ibid.

[142]Ibid.

tutoring, attendance monitoring, preregistration, and weekly grade checks were implemented.[143] Results of this effort reveal that the end of the first grading period for each of the two years, the team GPAs were 3.23 and 3.19 respectively.[144] Of 52 team members (players, managers, and statisticians), 33 had at least a 3.0 GPA in 1985, and 31 out of 53 had a 3.0 GPA or higher in 1986.[145]

Major legal Issues Relative to No-Pass/No-Play

There has been an increase in the number of lawsuits initiated by student-athletes as a result of higher academic standards for participation in extracurricular activities. Lawsuits normally focus on a possible violation of a students' alleged constitutional rights when being declared ineligible. There are generally three major issues courts must address when faced with an alleged violation of an individual's constitutional rights.

The first issue that must be determined by courts is whether participation in extracurricular activities is a right or a privilege. In cases involving high school students, the right versus privilege argument involves a student-athletes contention that he or she has a right to an education and that participation in extracurricular

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[143]Souza, (1990),p.24.

[144]Ibid.,p.25.

[145]Ibid.

activities is part of that right. While there are some states that declare education to be a right, most do not.

A second issue courts must address is whether the denial of extracurricular activity participation among high school students involves denial of due process rights. Federal and state constitutions provide that no person shall be deprived of life, liberty, or property without due process of law. Student-athletes argue that participation in extracurricular activities involves a property interest. Black's law dictionary defines a property interest to mean an aggregate of rights guaranteed and protected by the government.[146] A student must show that he or she has been deprived of life, liberty, or property to claim a violation of due process guarantees. Procedural due process normally involves whether the decision denying a student participation in extracurricular activities was made in an arbitrary, capricious, or collusive manner. Substantive due process involves whether an eligibility rule has a purpose and is clearly related to the accomplishment of that purpose.

A third legal issue student-athletes argue in court when losing eligibility is a denial of equal protection. The Fourteenth Amendment of the United States Constitution serves as a focal point when students challenge certain eligibility rules they believe to be discriminatory in

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[146]Cromartie, "No Pass/No Play," (1986), p.14.

nature. The Fourteenth Amendment reads: "No state shall deny to any person within its jurisdiction the equal protection of the laws."[147] Courts must decide whether an eligibility rule places an undue burden on a certain category of people, unless there is a constitutionally permissable reason to do so. When an eligibility rule is challenged on the basis it violates equal protection, the court must determine whether the rule affects a certain category of people in a negative way. If the rule is found to create such a constitutionally suspect classification, the eligibility rule must serve a compelling state interest.

Summary

The issue of using extracurricular activities as an incentive for academic achievement has recently been brought to the forefront in the minds of many decision-makers. A recent report of the National Commission on Excellence in Education is currently applying pressure to state legislatures and state and local boards of education to raise the quality of education in the public schools. The result of an increase in academic standards has been to adopt policies excluding athletes and other extracurricular activity participants from participation who have not met acceptable standards. No-pass/no-play has been a key component in plans to raise educational standards in the

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[147]U.S. Constitution, Amendment IX.

public schools.

An increasing number of state legislatures have begun to address the control and regulation of interscholastic athletics and other extracurricular activities because of its high popularity in American society. Challengers of higher standards have turned to the courts in greater numbers. As a result of recent changes in student eligibility, it has become necessary to adopt statutes or policies that withstand legal scrutiny. The purpose of Chapter III is to analyze state statutes in relation to the governing authority of extracurricular activities.

CHAPTER III

ANALYSIS OF STATE STATUTES RELATIVE TO THE CONTROL AND REGULATION OF INTERSCHOLASTIC ATHLETICS AND OTHER EXTRACURRICULAR ACTIVITIES

The majority of the fifty states and the District of Columbia have addressed the control, regulation, and supervision of interscholastic athletics and other extracurricular activities. State statutes and administrative regulations in each of the states were analyzed to determine the governmental entity responsible for governing extracurricular activities in the high schools. Standards required for student participation were also examined. The regulation and control of interscholastic athletics were normally found to be the responsibility of either the state board of education or the local boards of education. In some states, legislation was passed detailing specific standards that must be met to participate in extracurricular activities. In other states, a state-approved athletic/activity association was given the responsibility for regulation and supervision. An analysis of state statutes found a large number of states with no statute or administrative regulation addressing interscholastic athletics or other extracurricular activities. The Executive Directors of the state

athletic/activity associations in each of those states have indicated that their high schools voluntarily join an athletic/activity association (existing independent of state government) and member schools develop and enforce rules and regulations for student participation in interscholastic athletics and other extracurricular activities.

Chapter III is an analysis of state statutes relative to the regulation and control of interscholastic athletics and other extracurricular activities. State statutes are divided into Tables I-V according to the state agency legally responsible for approving standards for student participation in interscholastic athletics and other extracurricular activities.

Table I list the four states---Florida, New Mexico, South Carolina, and Texas---having statutes detailing specific academic eligibility requirements for student participation in extracurricular activities. The State Board of Education in each of these states have the primary responsibility of monitoring student eligibility in extracurricular activities. An approved athletic/activity association may be given authority to manage extracurricular activities in the high schools. South Carolina gives responsibility of monitoring nonathletic activities to local boards of trustees.

Table I

States Having Statutes Detailing Specific Eligibility Requirements To Participate In Extracurricular Activities

States	States
Florida	South Carolina
New Mexico	Texas

Texas and Florida are good examples of states having very detailed and descriptive statutory provisions under this classification. Texas statute reads:

> (a) The State Board of Education by rule shall limit participation in and practice for extracurricular activities during the school day and the school week. The rules shall, to the extent possible, preserve the school day for academic activities without interruption for extracurricular activities. In scheduling those activities and practices, a district must comply with the rules of the board.
>
> (b) A student enrolled in a school district in this state shall be suspended from participation in any extracurricular activity sponsored or sanctioned by the school district during the grade reporting period after a grade reporting period in which the student received a grade lower than the equivalent of 70 on a scale of 100 in any academic class. The campus principal may remove this suspension if the class is an identified honors or advanced class.
>
> (c) Suspension of a handicapped student whose handicap significantly interferes with the student's ability to meet regular academic standards shall be based on the student's failure to meet the requirements of the student's individual education plan. The determination of whether a handicap significantly interferes with the student's ability to meet regular academic standards, shall be made by the student's admission, review, and dismissal committee. For

> purposes of this subsection, "handicapped student" means a student who is eligible for a district's special education program under Section 21. 503 (b) of this code.
>
> (d) Subsection (b) of this section applies beginning with the spring semester, 1985.
>
> (d) A student may not be suspended under this section during the period in which school is recessed for the summer or during the initial grade reporting period of a regular school term on the basis of grades received in the final grade reporting period of the preceding regular school term.[1]

According to Florida statute

> To be eligible to participate in interscholastic extracurricular student activities, a student must maintain a grade point average of 1.5 on a 4.0 scale, or its equivalent, and must pass five subjects for the grading period immediately preceding participation; except that student eligibility for the first grading period of each new school year shall be based on passing five subjects and maintaining the required grade point average the previous school year, including subjects completed during the interim summer school session. Any student who is exempt from attending a full school day under s. 228.041(13) must maintain a 1.5 grade point average and pass each class for which he is enrolled. The student standards for participation in interscholastic extracurricular activities shall be applied beginning with the student's first semester of the 9th grade. Each student must meet such other requirements for participation as may be established by the school district.[2]

Table II presents a listing of sixteen states with statutes giving State Boards of Education authority to regulate, control, and supervise interscholastic athletics. Local school districts have the authority to adopt more

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[1]Vernon's Texas Statutes and Codes Annotated, Section 21.921, (1987).

[2]Florida Statutes Annotated, Section 232.425, (1989).

stringent academic standards for student participation in athletics and other extracurricular activities. In each case, the State Board of Education may delegate to an approved athletic/activity association the responsibility of adopting and enforcing regulations relative to eligibility of pupils in schools for participation in extracurricular activities (particularly athletics). However, all proposed eligibility requirements must be approved by the State Board of Education.

Table II

States With Statutes Giving State Boards Of Education Authority To Govern Interscholastic Athletics

State	State
Alaska	Louisiana
Arizona	Maryland
Delaware	Michigan
Georgia	North Carolina *
Hawaii	Oregon
Iowa	Tennessee
Kansas	Texas
Kentucky	Utah

* North Carolina law gives local school districts the authority to govern nonathletic extracurricular activities, although the state board of education regulates athletic eligibility.

Kentucky and Oregon are two good examples of states

with statutes giving the State Board of Education authority to manage and control interscholastic athletics and other extracurricular activities. Kentucky statute reads:

> (1) The State Board for Elementary and Secondary Education shall have the management and control of the common schools and all programs operated in such schools, including interscholastic athletics, the Kentucky School for the Deaf, the Kentucky School for the Blind, and community education programs and services.
>
> (2) The State Board for Elementary and Secondary Education may designate an organization or agency to manage interscholastic athletics in the common schools, provided that the rules, regulations, and bylaws of any organization or agency so designated shall be approved by the board, and provided further that the board shall adopt administrative regulations providing for the appeal to the board of any regulations made by the designated managing organization or agency. The state board or any agency designated by the state board to manage interscholastic athletics shall not promulgate rules, administrative regulation, or bylaws which prohibit pupils in grades seven (7) to eight (8) from participating in high school sports or from participating on more than one (1) school-sponsored team at the same time in the same sport.[3]

According to Oregon state statute, The State Board of Education shall:

> Adopt rules regarding school and inter-scholastic activities in accordance with standards established pursuant to ORS 326.058(1).
>
> (1) The State Board of Education shall adopt standards applicable to voluntary organizations that administer interscholastic activities.
>
> (2) Voluntary organizations that desire to administer interscholastic activities shall apply to the state board of education for approval. The state board shall review the rules and bylaws of the voluntary organization to determine that

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[3]Kentucky Revised Statutes, Section 156.070, (1990).

> they do not conflict with state law or rules of the state board. If an organization meets the standards established under subsection (1) of this section and its rules and bylaws do not conflict with state law or rules of the state board, the state board shall approve the organization. An approved voluntary organization is qualified to administer interscholastic activities.
>
> (3) The state board may suspend or revoke its approval if an approved organization is found to have violated state law or rules of the state board.
>
> (4) A voluntary organization's decisions concerning interscholastic activities may be appealed to the state board.[4]

Table III shows ten states, and the District of Columbia, with statutory provisions giving local school districts authority to regulate, control, and supervise athletic and other extracurricular activities in schools. Local school districts may elect to become a member of an approved athletic/activity association. The association will be responsible for managing, supervising, and regulating extracurricular activities in the high schools.

Table III

States With Statutes Giving Local School Districts Authority To Control Athletic And Other Extracurricular Activities In High Schools

States	States
California	Pennsylvania
District of Columbia	South Dakota

[4]Oregon Revised Statutes, Section 326.058, (1987).

Nevada	Virginia
New Jersey	Washington
New York	West Virginia *
North Dakota	

* Although West Virginia state statute gives authority to regulate extracurricular activities to local boards of education, the state board of education has primary control under "General Supervision of Schools".

West Virginia and Pennsylvania are good examples of states having statutory provisions giving local school boards of education the responsibility to regulate athletic and other extracurricular activities in the secondary schools. West Virginia statute reads:

> The county boards of education are hereby granted and shall exercise the control, supervision, and regulation of all interscholastic athletic events, and other extracurricular activities of the students in public secondary schools, and of said schools of their respective counties. The county board of education may delegate such control, supervision, and regulation of interscholastic athletic events and band activities to the "West Virginia secondary school activities commission" which is hereby established.
>
> The West Virginia secondary school activities commission shall be composed of the principals, or their representatives, of those secondary schools whose county boards of education have certified in writing to the state superintendent of schools that they have elected to delegate the control, supervision, and regulation of their interscholastic athletic events and band activities of the students in the public secondary schools in their respective counties to said commission. The West Virginia secondary school activities commission is hereby empowered to exercise the control, supervision, and regulation of interscholastic athletic events and band activities of secondary schools, delegated to

it pursuant to this section.[5]

According to Pennsylvania statute:

> The board of school directors in every school district shall prescribe, adopt, and enforce, such reasonable rules and regulations as may deem proper, regarding (1) the management, supervision, control, or prohibition of exercises, athletics, or games of any kind, school publications, debating, forensic, dramatic, musical, and other activities relating to the school program, including raising and disbursing funds for any or all of such purposes and for scholarships, and (2) the organization, management, supervision, control, financing, or prohibition or organizations, clubs, societies, and groups of the members of any class or school...[6]

Table IV shows two states with statutory provisions giving control of athletic and other extracurricular activities in secondary schools directly to an approved state athletic/activity association.

Table IV

States With Statutes Giving Control Of

Athletic And Other Extracurricular Activities

Directly To An Approved State Athletic/Activity Association

States
Colorado
Minnesota

[5]West Virginia Code Annotated, Section 18-2-25, (1988).

[6]Purdon's Pennsylvania Statutes Annotated, Section 5-511, (1962).

Minnesota is an good example of a state with a descriptive statutory provision delegating the control of interscholastic athletic and other extracurricular activities to an approved state athletic/activity association. The association, made up of representatives of member schools, develops and enforces eligibility rules for student participation in extracurricular activities. Minnesota statute declares:

> The governing board of any high school may delegate the control, supervision, and regulation of interscholastic athletics and other extracurricular activities referred to it in sections 123.17 and 123.38 to the Minnesota state high school league, a nonprofit incorporated voluntary association. Membership in said Minnesota state high school league shall be composed of such Minnesota high schools whose governing boards have certified in writing to the state commissioner of education that they have elected to delegate the control, supervision, and regulation of their interscholastic athletic events and other extracurricular activities to said league. The Minnesota state high school league is hereby empowered to exercise the control, supervision, and regulation of interscholastic athletics, musical, dramatic and other contests by and between pupils of the Minnesota high schools,...[7]

Table V shows nineteen states having no statutory provisions relating to the control and regulation of interscholastic athletics and other extracurricular activities. Historically, high schools in each of these states have joined together to form an athletic/activity association for the purpose of managing and regulating

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[7]Minnesota Statutes Annotated, Section 129.121, (1987).

extracurricular activities. Activity associations in each of these states exists and function independently of the state government. Member schools determine eligibility standards.

Table V

States Having No Statute Relative To The Control And Regulation Of Interscholastic Athletics And Other Extracurricular Activities In Secondary Schools

States	States	States
Alabama	Massachusetts	Ohio
Arkansas	Mississippi	Oklahoma
Connecticut	Missouri	Rhode Isl.
Idaho	Montana	Vermont
Illinois	Nebraska	Wisconsin
Indiana	New Hampshire	Wyoming
Maine		

Summary

An analysis of state statutes and administrative regulations governing interscholastic athletics and other extracurricular activities in the fifty states and District of Columbia reveals that, in most states, state and local boards of education are the governmental entities given legal responsibility for the regulation and control of student activities. Sixteen states have statutory provisions giving state boards of education the authority to

regulate extracurricular activities. However, should a local school district in one of these states adopt stricter eligibility standards than those of the state board of education or state athletic/activity association, the local board would then assume the primary responsibility for managing the eligibility of its student-athletes. Ten states and the District of Columbia allow local boards of education the legal responsibility of controlling such activities. Legislatures in four states have taken the responsibility of determining the eligibility requirements for student participation in extracurricular activities, although the state boards of education in each of these states have the responsibility of monitoring student eligibility.

Nineteen states have no statutory provisions for the regulation and control of extracurricular activities in its high schools. State legislatures, state boards of education, and local boards of education recognize and allow in each of the states one or more state athletic/activity associations to exist and to manage interscholastic extracurricular student activities in its high schools.

CHAPTER IV

REVIEW OF COURT DECISIONS

The cases selected for review in this chapter are those which have legal implications for school administrators, athletic coaches, and state high school athletic associations in developing rules and regulations for student eligibility to participate in interscholastic athletics and other extracurricular activities.

Interscholastic athletics are governed in the United States by four groups: state high school athletic associations, educational institutions, athletic directors, and coaches. State high school athletic associations have usually been given the primary responsibility in governing interscholastic athletics. These groups operate in a pyramidlike structure: athletic/activity associations set minimum standards and requirements for participation, educational institutions and conferences may impose stricter requirements on their student-athletes, and athletic directors and coaches may further demand stringent rules that they judge to be necessary for successful performance in their individual sport or for proper functioning of the education department as a whole.[1]

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[1]Glenn M. Wong, Essentials of Amateur Sports, (Auburn House Publishing Company, 1988), p.84

Higher standards for participation in interscholastic athletics and other extracurricular activities have produced more legal challenges to those requirements. The greater influence of state high school athletic/activity associations have led to greater legal scrutiny. Some argue that this has led to better protection of individual rights from unfair or arbitrary actions on the part of state athletic/activity associations and state or local boards of education. Others argue that this increased judicial presence is an unwarranted intrusion into amateur athletics and into the internal affairs of state or local boards of education.[2]

Certain legal precedents have been established from various court cases and have evolved to become what is known as "case law". Case law is often cited to give a coach, school principal, or athletic administrator a better understanding of a legal point in amateur sports law by providing an actual set of circumstances tried before a court. Case law is used to allow an athletic administrator to learn more about a sports law subject, such as specific eligibility issues. Although the legal issues may be similar to questions already decided by the courts, individual aspects of a particular case may produce a different ruling. An individual has the right to pursue a grievance in court. Often in judicial rulings, judges will

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[2]Ibid.,p.84-85.

depend heavily upon decisions rendered in similar situations and the opinions of other judges.

Organization of Cases Selected for Review

Each of the cases selected for review in this chapter meets one or more of the following criteria:

1. The case is considered to have been important in the area of student eligibility to participate in interscholastic athletics and other extracurricular activities.
2. The case helped to establish precedent on "case law" in a particular extracurricular activity eligibility issue having legal implication to state high school athletic/activity associations and state or local boards of education.
3. The issues in the case relate to one of the following subtopics:

a. Student's right to participate in extracurricular activities

b. Student's right to due process

c. Student's right to equal protection and equal educational opportunity

d. Liability for state athletic/activity associations and state or local boards of education

e. State/local governmental interest in providing quality public education

The first series of court cases selected for review are those State Court of Appeals, State Supreme Court, United States District Court, and United States Court of Appeals cases that have contributed to the establishment of "case law" or legal precedent in the area of State High School Athletic/Activity Associations' "authority to govern" interscholastic athletics. Included in this category are the following cases:

1. Quimby v. School District No. 21 of Pinal County (1970)
2. Walsh v. Louisiana High School Athletic Association (1977)
3. Denis J. O'Connell High School v. The Virginia High School League (1978)
4. Guelker v. Evans (1980)
5. Ademek v. Pennsylvania Interscholastic Athletic Association, Inc. (1981)
6. Christian Brothers Institute v. New Jersey Interscholastic League (1981)

The second category of cases reviewed in this chapter consists of those State Court of Appeals, State Supreme Court, and United States Court of Appeals cases related to the eligibility issue of student-athlete "transfer" rules as adopted by State High School Athletic/Activity Associations. Included in this category are the following cases:

1. Whipple v. Oregon School Activities Association (1981)
2. Niles v. The University Interscholastic League (1983)
3. Hebert v. Ventetuolo (1984)
4. Steffes v. California Interscholastic Federation (1986)
5. Berschback v. Grosse Pointe Public School District (1986)
6. Simkins v. South Dakota High School Activities Association (1989)
7. Alabama High School Athletic Association v. Scaffidi (1990)

The third category of cases reviewed in this chapter consists of those State Court of Appeals and State Supreme Court cases related to the student-athlete eligibility issue of "maximum participation" rules as adopted by State High School Athletic/Activity Associations. Included in this category are the following cases:

1. Murtaugh v. Nyquist (1974)
2. Burtt v. Nassau County Athletic Association (1979)
3. Alabama High School Athletic Association v. Medders (1984)
4. Pratt v. New York State Public High School Athletic Association, Inc. (1986)

5. Clay v. Arizona Interscholastic Association, Inc. (1988)
6. California Interscholastic Federation v. Jones (1988)

The fourth category of cases reviewed include are those State Court of Appeals, State Supreme Court, and United States District Court cases related to the eligibility issue of "age or longevity" rules as adopted by State High School Athletic Associations. Included in this category are the following cases:

1. Blue v. University Interscholastic League (1980)
2. Mahan v. Agee (1982)
3. Nichols v. Farmington Public Schools and Michigan State High School Athletic Association (1986)
4. Tiffany v. The Arizona Interscholastic Association, Inc. (1986)
5. Arkansas Activities Association v. Meyer (1991)
6. Cardinal Mooney High School v. Michigan State High School Athletic Association (1991)

The fifth category of cases reviewed include those State Court of Appeals, State Supreme Court, and United States Court of Appeals cases related to the eligibility issue of "nonschool participation" rules as adopted by State High School Athletic Associations. Included in this category are the following cases:

1. Caso v. New York State Public High School Athletic Association (1980)
2. University Interscholastic League v. North Dallas Chamber of Commerce Soccer Association (1985)
3. Eastern New York Youth Soccer v. New York State Public High School Athletic Association (1985)
4. Zuments v. Colorado High School Activities Association (1987)
5. Burrows v. Ohio High School Athletic Association (1989)

The sixth category of cases reviewed consists of cases from both the State Court of Appeals and State Supreme Court related to "No pass/No play" rules as adopted by State legislatures and State/Local boards of education. Included in this category are the following cases:

1. Myles v. Board of Education of the County of Kanawha (1984)
2. Spring Branch Independent School District v. Stamos (1985)
3. Texas Education Agency v. Anthony (1985)
4. Andrews v. Independent School District No. 29 of Cleveland County (1987)
5. Spring Branch v. Reynolds (1988)
6. Stone v. Kansas State High School Athletic

Association, Inc. (1988)

7. Texas Education Agency v. Dallas Independent School District (1990)
8. Texas Education Agency v. Stamos (1991)

The final category of cases reviewed include cases from the State Court of Appeals and the State Supreme Court related to "C-average" requirements as adopted by State and Local Boards of Education. A "C-average" requirement is generally associated with "No-pass/No-play" rules and is a common thread to many such stringent academic requirements for extracurricular activity participation. Included in this category are the following cases:

1. Bailey v. Truby (1984)
2. Truby v. Broadwater (1985)
3. Bartmess v. Board of Trustees of School District No. 1 (1986)
4. Rouselle v. Plaquemines Parish School District (1988)
5. Thompson v. Fayette County Public Schools (1990)

The cases are presented in a chronological sequence to illustrate how court decisions might reflect trends in litigation.

Governing Authority of State High School Athletic/Activity Associations

State high school athletic/activity associations have increasingly been subjected to greater legal scrutiny in recent years. The courts have begun to question these supposedly "private" athletic/activity associations for two reasons: (1) the large numbers of public institutions that form its membership, and (2) these organizations are performing a traditional government or public function.[3] Most high school athletic/activity associations are voluntary associations consisting of high schools within a state wishing to participate in athletic activities. As members, most high schools are involved in the adoption of its eligibility rules. State athletic associations are granted authority to organize by approval from state legislatures or state/local boards of education. Although the composition of state athletic associations vary from state to state, it possess enormous power in such areas as the creation and interpretation of eligibility rules and handling of alleged violations.[4]

The courts have consistently held that states are justified in developing rules to prevent the abuse of its student-athletes. The courts have upheld the governing authority of state athletic associations whenever its rules are rationally related to a legitimate state interest and

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[3]Ibid.,p.101.

[4]Ibid.,p.128.

are not arbitrary or capricious.[5] As a general rule, the courts will review a state high school athletic association's rules only if one of the following conditions is present:

1. The rules violate public policy because they are fraudulent or unreasonable.
2. The rules exceed the scope of the association's authority.
3. The organization violates one of its own rules.
4. The rules are applied unreasonably or arbitrarily.
5. The rules violate an individual's constitutional rights.[6]

In such cases as Bunger v. Iowa High School Athletic Association, 197 N.W.2d 555 (1972), Pennsylvania Interscholastic Athletic Association v. Geisinger, 474 A.2d 62 (1984), Anderson v. Indiana High School Athletic Association, 699 F.Supp. 719 (1988), and Hamilton v. West Virginia Secondary School Activities Commission, 386 S.E.2d 656 (1989), the courts have ruled against state high school athletic associations because an eligibility rule in question was shown to be arbitrary, capricious, and/or not essential to any compelling state interest.

Quimby v. School District No. 21 of Pinal County
455 P.2d 1019 (1970)

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[5]Ibid.,p.140.

[6]Ibid.,p.92.

Facts. The guardians of Mike Quimby brought suit against School District No. 21 of Pinal County of Arizona and the Arizona Interscholastic Association, Inc., a nonprofit corporation, to enjoin the defendants from enforcing regulations regarding the plaintiffs eligibility for participation in interscholastic activities at Coolidge High School.

Mike Quimby, age 17, resided with his parents in Randolph, Arizona, and attended Coolidge schools through the eighth grade. His parents then moved to Apache County where he attended the first two years of high school in Snowflake, Arizona. In the summer of 1968, a judge from Navajo County, Arizona, directed that Mike either be committed to the Industrial School for Boys at Fort Grant, Arizona, or as an alternative, that he return to Coolidge. Consequently, Mike returned to Coolidge to live with friends of his parents and who became his guardians. He enrolled at Coolidge High School and tried out for the football team. After two weeks of practice, Mike's coach informed him that he could not participate in athletics until he had been enrolled at Coolidge High School for two semesters.

Both parties conceded that, under the Arizona Interscholastic Association by-laws, the plaintiffs are ineligible to participate for one school year because he was not living with his natural parents and the guardianship established for him did not meet certain Association

requirements.

The plaintiffs argued that because the school district joined the Arizona Interscholastic Association and observed its rule, the defendant school district delegated its power and duty to make rules and regulations concerning eligibility requirements for interscholastic activities to the association. The legislature of Arizona clearly delegates to the local boards of education the control of the affairs of the school district. The plaintiffs further contended that the eligibility rule is in violation of his individual rights. Superior Court of Pinal County dismissed the complaint and the student appealed.

Decision. The Court of Appeals ruled that School District No.21 had not delegated any governmental power to the Arizona Interscholastic Association since the school district could withdraw any or all of its schools from the association at any time. Chief Judge Molloy stated:

> If a particular school district disapproves of the rules of eligibility set, it need not participate in the program. By participating, it in effect makes the eligibility rules its own.[7]

The court further held that the eligibility rule in question has a reasonable relation to a legitimate purpose, that is, to prohibit coaches from recruiting and players from "choosing" schools merely for athletic purposes. The

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[7]455 P.2d 1022 (1970)

individual rights of the plaintiff was not violated. The court also affirmed the right of the Arizona Interscholastic Association to regulate interscholastic activities within the state.

Discussion. Once courts determine a "reasonable" basis for legislation, judicial inquiry ends. The by-laws of the Arizona Interscholastic Association was clearly reasonable and having a legitimate state purpose.

Legal principles established by this decision are:

1. The rule making a high school student ineligible to participate in interscholastic athletics for one year because he was not living with his parents and because guardianship established for him did not meet the Arizona Interscholastic Association's requirements did not violate the student's right to equal protection, although the student was judicially required to attend the school.

2. Membership by a high school in an interscholastic athletic/activities association does not constitute illegal delegation of its "governing authority".

Walsh v. Louisiana High School Athletic Association
428 F.Supp. 1261 (1977)

Facts. This case involved the parents of children who attended Lutheran parochial elementary school and who wished to attend the only Lutheran high school available to them. The school was not in their home district. The parents brought suit challenging the constitutionality of the state

high school athletic association's "transfer rule". The rule restricts the eligibility of a student to compete in interscholastic high school athletic contests if the student, upon completion of the seventh or eighth grade, enrolls in any high school other than the one in the student's home school district. The attendance zone imposed on Lutheran High School by the Louisiana High School Athletic Association did not include any of the Lutheran elementary schools. Therefore, a child completing any of the Lutheran elementary schools and desiring to attend Lutheran High School would automatically lose one year of eligibility to compete in interscholastic athletics. Every child at Lutheran High since its opening has been declared ineligible by the LHSAA to compete in athletics for one year. The plaintiffs, Catherine Walsh et al., claimed the application of the "transfer rule" to them and their children violated their right to free exercise of religion guaranteed by the First and Fourteenth Amendments to the Constitution of the United States because it discouraged children athletically talented from attending religious schools. They also claimed that they were denied due process and equal protection as guaranteed by the constitution.

Decision. The United States District Court upheld the constitutional validity of the Louisiana High School Athletic Association transfer rule governing high school

athletics. The transfer rule was found to be rationally related to the state's valid and legitimate interest in deterring or eliminating the recruitment of promising young student-athletes (14 to 15 years old) by overzealous coaches, faculty members, and fans. District Judge Alvin B. Rubin stated that:

> The testimony offered by the LHSAA is persuasive and no plan of regulating student-athlete recruiting is effective other than that of limiting the alternatives available to students.[8]

The court ruled that the plaintiffs' right to free exercise of religion was not denied. In addition, there was no substantial due process in this case. Judge Rubin stated:

> The transfer rule is rational and bears a direct relationship to the result sought to be achieved, that is, it effectively eliminates the incentive to recruit and to be recruited by a short-lived disqualification.[9]

Discussion. The court in this case clearly supports a state high school athletic association's adoption of transfer rules as necessary for the elimination in the recruitment of promising young athletes. Above all, it upholds the authority of state athletic associations to govern and regulate interscholastic athletics.

Three legal principles were cited by Judge Rubin in the

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[8]428 F.Supp. 1264 (1977)

[9]Ibid.,p.1269.

United States District Court's decision:

1. The privilege of participating in athletic competition per se is not protected by the due process clause of the United States Constitution.

2. In the area of First Amendment rights to free exercise of religion, balanced scales weigh against government regulation; the state must have a compelling interest in the regulation, and there must be no equally effective alternative means to achieve the state's objective.

3. The criteria to be considered in evaluating a claim that difference in treatment violates the equal protection clause of the constitution include the character of the classification, the individual interests affected by it, and the governmental interests asserted in support of it.[10]

Denis J. O'Connell v. The Virginia High School League
581 F.2d 81 (1978)

Facts. Denis J. O'Connell is a state-accredited private nonprofit Catholic high school located in Arlington County, Virginia. In February of 1977, O'Connell applied for admission to the Virginia High School League, Northern Region. The application was denied because the League's Constitution limits membership to public high schools.

The League is unincorporated association of public high

[10]Ibid.,p.1262.

schools in Virginia under the sponsorship of the School of Continuing Education of the University of Virginia. With only one exception, every public high school in Virginia belongs to the League. The League's Constitution originally included both public and private high schools without distinction. The constitution was later changed to include only public high schools for membership. The League regulates, controls, and governs all athletic, literary, and debating contests between its member schools. Private schools are invited by the League to participate as a distinct class in certain statewide tournaments, such as tennis, debating, and speaking. However, private schools are excluded from tournaments involving "major" sports, such as basketball, football, and baseball.

O'Connell brought suit against the League alleging in its complaint that the League's refusal to admit the school on the sole basis that it is a private school was an arbitrary classification in violation of the Equal Protection Clause of the Fourteenth Amendment. In addition, the complaint charged that, as a result of this exclusion, the students' choice of a private education at O'Connell denied them the right to compete on a tournament level in the major sports, thus placing them in a less favorable competitive position than public high school students to receive scholarships, professional bonuses, and other benefits awarded to the best athletes.

The League presented three basic arguments in defense of its policy of exclusion. First, the League asserted that because O'Connell had not been deprived of any federally protected right, there was no federal question presented so as to support federal question. Second, the League maintained that limiting membership to public schools is rationally related to the League's interest in enforcing its eligibility rules regarding transfer students. Finally, the League argued that O'Connell's admission into the League would violate the Establishment Clause of the First Amendment.

Decision. The United States Court of Appeals reversed an United States District Court decision and ruled that (1) the League was correct in its assertion that O'Connell High School had not been deprived of any federally protected right, and (2) classification, amounting to state action, by the League in refusing to admit a parochial school to membership was justified because of a lack of specifically designed drawing areas with respect to many private schools. Admission of private schools into the League would create difficulties with enforcing the transfer rule. Finally, the Court of Appeals held that there was no denial of equal protection.

Discussion. This case reaffirms the governing authority of a state high school athletic association. A state is justified in taking any reasonable step to prevent actual or

potential abuse of its student-athletes by persons who would recruit such students for their athletic ability. Therefore, reasonable measures taken to reduce or remove possible temptations to make a choice of schools merely on the basis of their respective athletic programs is in the states' interest.

Legal principles cited by Judge Russell in the Court's decision include:

1. Education is not a fundamental right under the constitution, nor is participation in extracurricular activities.

2. The speculative possibility of obtaining an athletic scholarship or professional bonus is not a federally protected property right.

3. Where there is no fundamental right or suspect classification involved, the test to determine the validity of state legislation is whether statutory classification bears some rational relationship to a legitimate state purpose.

4. The task of courts in passing on validity of classification under standard equal protection test is to determine whether the classification makes sense in light of the purpose sought to be achieved.[11]

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[11]581 F.2d 82 (1978)

Guelker v. Evans
602 S.W. 2d 756 (1980)

Facts. In a class action for injunctive and declaratory relief, Tim Guelker sued the members of the Board of Control of the Missouri State High School Activities Association claiming that a ruling by the Board declaring him ineligible to compete in soccer with his high school team was wrongful and arbitrary. He further claimed the decision deprived him of due process and equal protection of the law.

Tim Guelker, a member of St. Louis University High School was invited to participate in soccer tryouts for a tournament in Puerto Rico sponsored by the United States Soccer Federation. Tim Guelker was told that, if selected for the team, he would be away from school for six weeks. At the time, Tim was practicing with his school team and had registered for classes earlier that day. The principal and soccer coach told Tim there would be a question of his eligibility to play on the school team if he accepts the invitation.

The Executive Director of MSHAA discussed possible rule violations with Tim's father. Later, Tim received and accepted an invitation to play in a soccer tournament in Puerto Rico. The MSHAA ruled that Tim Guelker violated its requirements concerning nonschool competition, the 11-day rule, and an international competition rule when he missed 29 days of school and a major portion of the school soccer season while participating in a tournament sponsored by the

United States Soccer Federation in Puerto Rico.

Tim Guelker brought suit by his father on behalf of himself and all other athletes attending high schools which are members of the MSHAA. He asked the court to prohibit the state association from enforcing its eligibility ruling and also to render a declaratory judgement that the appellant was entitled to be a member of his high school soccer team.

Decision. The Missouri Court of Appeals affirmed the decision of the Circuit Court of St. Louis County. The court ruled that Tim Guelker failed to meet the requirements for a class action, and thus, ruled in favor of the Missouri High School Activities Association. Since the plaintiff had graduated from high school and had entered college on a soccer scholarship, his appeal claiming that the decision by the Board of Control of the MSHAA was wrongful, arbitrary, and deprived him of due process and equal protection was declared moot and dismissed. There was no present interest which could be enforced by the suit, or any existing dispute upon which a decision would have any practical effect.

Discussion. The requirements for class action was not present. This was the result of the plaintiff's claim that the decision of the Board of Control on the facts of his case was arbitrary, instead of the rules themselves being arbitrary or unreasonable. The MSHAA's rule on nonschool

athletic participation was developed to protect the personal and academic interests of the student-athlete and not to interfere with the interscholastic program of a high school. The court ruled such a rule served a legitimate purpose. Above all, the court reaffirmed the governing authority of the Missouri High School Activities Association in this case.

Ademek v. Pennsylvania Interscholastic Athletic Association
School District of Penn Hills v. PIAA
426 A.2d 1206 (1981)

Facts. The Pennsylvania Interscholastic Athletic Association appealed that portion of a lower court order enjoining PIAA from declaring the School District of Penn Hills varsity football team to forfeit three football victories. Penn Hills School District reported to PIAA that it had used a football player who was academically ineligible under PIAA rules. The ineligible player had participated in three football games but did not contribute in any significant way to any of the three wins. After a hearing, the PIAA ordered Penn Hills to forfeit the three games, thereby eliminating the football team from playoff competition. Several members of the team sued, seeking to enjoin PIAA from enforcing its order. The Court of Common Pleas in Allegheny County reversed the action of PIAA and allowed Penn Hills to participate in the playoffs. It also ordered Penn Hills to forfeit its right to net proceeds

earned in postseason play. PIAA appealed this decision to the Commonwealth Court of Pennsylvania. The primary issue in this case is whether participation in an athletic program is a property right which each student enjoys, and whether the PIAA restriction deprived students those property rights in violation of procedural due process.

Decision. The Commonwealth Court of Pennsylvania reversed a portion of a lower court order and upheld another. The court held that students have no constitutionally protected property interest in participation in interscholastic high school athletics, despite the possibility of an athletic scholarship. The high school football team's forfeit of three wins by a PIAA ruling may not deprive students due process rights. Therefore, the court reaffirmed the right of high school athletic associations to make and enforce eligibility rules for participation in extracurricular activities.

Discussion. The students argued in court that property rights exist because of possible athletic scholarships. The Commonwealth Court rejected the point that participation in extracurricular activities is a property right. Judge Mencer noted in a related case that:

> The myriad activities which combine to form the educational process cannot be dissected to create hundreds of separate property rights, each cognizable under the constitution.[12]

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[12]Goss v. Lopez, 419 U.S. 565 (1975)

Furthermore, it is noted in Goss v. Lopez that lost media exposure and lost opportunities for athletic scholarships are too speculative to establish a property interest.

Christian Brothers Inst. v. New Jersey Interscholastic League
86 N.J. 409 (1981)

Facts. Christian Brothers Institute of New Jersey filed suit on the behalf of Bergen Catholic High School against New Jersey Interscholastic League after several applications for League membership was denied. Bergen Catholic is a private, sectarian, boys high school. It had experienced difficulty in scheduling athletic contests with high schools in its area for years. Membership applications were submitted and denied in 1965, 1972, and 1974 because League rules limit membership to public schools only. Bergen Catholic filed a complaint in 1974 charging a violation of the law against discrimination. After several discussions, an agreement was reached to settle the matter. The League agreed to drop the word "public" from its constitution. The League further agreed that if a vacancy occurred in the future, Bergen's application would be evaluated objectively and nondiscriminatory.

Soon after the agreement was reached, a vacancy occurred in League membership. Eight high schools applied for the one position available, including Bergen and one other nonpublic high school. Bergen Catholic was not chosen

for membership, partly for the lack of a girls' athletic program. Bergen filed suit charging that it had been unlawfully discriminated against in violation of its rights under the United States and New Jersey Constitutions and under the federal civil rights statute. It did not attempt to challenge the League action as a violation of the Conciliation Agreement. Superior Court ruled in favor of the plaintiff, Bergen Catholic High School. The New Jersey Interscholastic League appealed.

Decision. The State Supreme Court reversed the Superior Court decision and held that Bergen High School, having agreed that the conciliation agreement it entered into with the Interscholastic League before the Division of Civil Rights was to operate as a complete and final disposition of the matter respecting membership in the League, was barred by the terms of the conciliation agreement from further bringing suit against the interscholastic league for alleged unlawful membership unless further violations of constitutional and statutory law independent of the Law Against Discrimination were alleged.

Discussion. The court noted that a rational basis can exist for an interscholastic league to limit its membership to public schools and such a limitation does not result per se in a denial of equal protection. While state action, necessary to invoke the Fourteenth Amendment of the Federal Constitution was present in this case, the classification of

public high schools was not a suspect classification and only a rational basis need be shown to avoid conflict with the Fourteenth Amendment.

Transfer Eligibility Rules

There has been an increase in litigation concerning the eligibility issue relating to "transfer" rules as adopted by state high school athletic associations. Transfer rules are adopted to prevent the recruiting of student-athletes by high schools and to deter the shopping around by student-athletes for high schools that appear to offer the best opportunities for career advancement. When a transfer rule is shown to be rationally related to one of these two state interests, courts have upheld the rule. Additional cases to those provided in this section include Kulovitz v. Illinois High School Association, 462 F.Supp. 875 (1978), Albach v. Odle, 531 F.2d 983 (1976), Oregon School Activities Association v. Stout, 692 P.2d 633 (1984), Chabert v. Louisiana High School Athletic Association, 323 So.2d 774 (1975), Zander v. Missouri State High School Activities Association, 682 F.2d 147 (1982), Crandall v. North Dakota High School Activities Association, 261 N.W. 2d 921 (1978), Tennessee Secondary School Athletic Association v. Cox, 425 S.W.2d 597 (1968), Kriss v. Brown, 390 N.E.2d 193 (1979), Dallam v. Cumberland Valley School District, 391 F.Supp 358 (1975), and Kentucky High School Athletic Association v.

Hopkins City Board of Education, 552 S.W.2d 685 (1977).

Courts have occasionally not upheld transfer rules adopted by state high school athletic associations primarily when a student-athlete established the rule to be arbitrary or collusive. Examples of such cases include Anderson v. Indiana High School Athletic Association, 699 F.Supp. 719 (1988), Sullivan v. University Interscholastic League, 616 S.W.2d 170 (1981), and Stirrup v. Mahan, 305 N.E.2d 877 (1974).

Whipple v. Oregon School Activities Association
629 P.2d 384 (1981)

Facts. Colby Whipple attended Catlin Gabel, a private school, during the 1977-78 school year and participated in interscholastic athletics. In 1978, plaintiff Colby Whipple attended Lakeridge High School and participated in interscholastic athletics. In 1979, Colby re-enrolled at the Catlin Gabel school. She was declared ineligible to participate in interscholastic athletics for violation of the transfer rules of the Oregon School Activities Association. On behalf of Colby Whipple, Catlin Gabel High School requested a hardship exception to its transfer rule. The OSAA denied the request for hardship exception after a hearing, but without separate notice to the plaintiff. There was no evidence that Colby transferred for athletic reasons. Colby argued she transferred solely for academic reasons.

The plaintiff, Colby Whipple, brought suit for declaratory judgement arguing she was entitled to participate in interscholastic athletics at Catlin Gabel High School and for an injunction enjoining OSAA from declaring her ineligible. The Circuit Court of Washington County held that the OSAA transfer rules were unconstitutional and granted the plaintiff the relief requested. The OSAA appealed its decision to the Oregon Court of Appeals.

Decision. The Court of Appeals reversed the Circuit Court decision and held that (1) the fact that rules prohibiting students from participating in athletics after transferring to another high school was very broad, it was not a basis on which the transfer rules denied students in Oregon equal protection; (2) the transfer rules do not violate a students' substantive due process rights; and (3) a failure to give the student a notice or to afford her some kind of a hearing was not a denial of procedural due process.

Discussion. The basis of the trial court's ruling was that the transfer eligibility rules of OSAA denied Colby Whipple equal protection because the rules were drafted too broadly to be reasonably related to the goal of the OSAA in preventing actual proselytizing or the appearance of proselytizing.[13] Although this court acknowledged the

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[13]629 P.2d 385 (1981)

transfer rules sweep broadly, it holds that application of the rules may produce inequitable results and need not apply to all parties with precision. Judge Gillette further noted that while the court believes participation in interscholastic athletics is an important part of the education process, it does not rise to a liberty or property interest of constitutional proportions.

Niles v. The University Interscholastic League
715 F.2d 1027 (1983)

Facts. The plaintiff Mark Niles, in 1981, was a student at Stratford Senior High School in the Sprinbranch Independent School District of Texas. Niles participated in various activities, such as football and track. In the fall of 1981, Nile's mother remarried and moved to California. Niles remained in Texas for the remainder of the fall semester and played varsity football. In December of 1981, Niles moved to California and lived with his mother during the spring semester term. In early August of 1982, Niles returned to Stratford Senior High School and played on the football team. At that time, Niles resided with Mr. Les Mattinson, who had been given legal guardianship by Nile's mother.

In November of 1982, the University Interscholastic League declared Niles ineligible under the requirement that a student be a resident of the school district for at least one year before participating in interscholastic activities.

In addition, the UIL required Stratford High to forfeit all the games in which Mark participated in. Niles initially obtained a restraining order from the District Court of Harris County, Texas that allowed him to play the final regular season football game and overruled the forfeiture of previous games in which he played. Niles then filed a non-suit in the state court proceeding and sought a temporary restraining order from the United States District Court in Texas. Niles claimed the transfer rule violated the due process clause of the Fourteenth Amendment and the Texas state constitution by not affording him reasonable notice, hearing, and an opportunity for a trial and appeal when his freedom to travel and right to earn a living were involved. He further alleged that the UIL's transfer rules denied him his rights under the Equal Protection Clause of the Fourteenth Amendment by creating an enviable classification between students residing with their parents and those residing apart from their parents. Additionally, Niles claimed UIL transfer rules infringed upon his right of family practice, his right to have a guardian appointed, his right to visit his mother, and his right to travel.

Decision. The United States Court of Appeals affirmed an United States District Court decision and held that (1) the transfer rule requiring a student be a resident of a school district for at least one year to participate in interscholastic athletics does not constitute an

impermissible burden upon the student's right to travel or freedom of family association, (2) the rule does not create an enviable distinction between children residing with their parents and those that do not, and (3) a student's interest in participating in interscholastic athletics is outside protection of due process.

Discussion. The United States District Court dismissed this case on grounds that it lacked subject matter jurisdiction. This court found that subject matter jurisdictions did exist, according to well established court precedence. Claims were properly dismissed for failing to state a claim upon which relief could be granted. The essential claim in this case was the denial of the right to participate in interscholastic athletics, not the right to travel, earn a living, or to live with or apart from one's family.

Hebert v. Ventetuolo
480 A.2d 403 (1984)

Facts. The plaintiffs, Annette Hebert and Jade Cicerchia, were guardians for two high school students, Mark Hebert and Robert Finelli at the time of this suit. The students were suspended from playing hockey on their high school teams. Their suspensions resulted when school officials became suspicious that the two students had obtained guardianships for the sole reason of changing their legal address, thus making them eligible to play on the

Cranston East High School hockey team. Joseph Ventetuolo, principal of Cranston High informed the students that they were suspended from playing hockey.

The students were not given a hearing or told of the reasons for their suspensions. Soon after, the Rhode Island Interscholastic League held a hearing on the student's eligibility. The League ruled that the students were ineligible to play but that another suspended student was ineligible for a 20-week period. The League ruled that the student was ineligible based on league rules. The suspended students filed suit in United States District Court alleging a violation of their rights under the United States Constitution. The U.S. District Court ruled that the League's suspension of the student's was based on the rules governing the eligibility of transfer students to participate in interscholastic athletics. The District Court further held that the rules were rationally related to the goals of the school system. The plaintiffs, Mark Hebert and Robert Finelli, appealed to the United States Court of Appeals for the First Circuit. The First Circuit dismissed the appeal and affirmed the lower court's decision.

After the League amended its rules, the plaintiffs filed a complaint in Superior Court alleging that the defendants (Rhode Island Interscholastic League) actions together with its amended rules were in violation of their constitutional rights of due process and equal protection

under the Rhode Island Constitution. The defendant filed a motion for summary judgement on the grounds that the record was void of any factual dispute. The trial justice granted partial summary judgement, holding there was no genuine issue of fact and that the issues raised were the same issues that had been litigated in the U.S. District Court. The trial justice held that the League could enact rules governing the eligibility of transfer students to compete in interscholastic athletics, finding these rules were neither arbitrary nor capricious. In addition, the trial justice found the schools could implement these rules because they were constitutionally supported on a rational basis.

The issues on appeal are (1) whether the League, a voluntary nonprofit organization, may promulgate and enact rules governing the eligibility of transfer students to participate in interscholastic sports; (2) whether the schools may agree to implement these rules; and (3) whether the granting of summary judgement in the U.S. District Court was proper.

Decision. The Rhode Island Supreme Court held that (1) League rules were not arbitrary or capricious on its face and the League could bind its members to the transfer rule; (2) the transfer rule does not violate the equal protection clause of the state constitution; (3) the guardians and students had no rights protected under the due process clause of the state constitution; (4) public schools could

agree to comply with the rules promulgated by the Interscholastic League; and (5) the action brought in state court alleging a violation of students' rights by the suspension of the two students from playing on the high school hockey team was barred by previous action granting summary judgement in favor of the defendants to the extent that the issues raised in Supreme Court had been considered and resolved in lower court.

Discussion. The internal affairs, rules, and by-laws of a voluntary association is not subject to judicial interference unless their enforcement is arbitrary, capricious, or constitute an abuse of discretion.[14] If association rules are reasonable and in keeping with public policy, courts will not interfere with them.

Eligibility rules, such as transfer rules, serve a rational basis when responding to problems associated with the recruitment of high school athletes by coaches, school-shopping, and school-jumping by student-athletes. This court noted that while participation in extracurricular activities is an integral part of one's educational process, it is not deserving of a higher form of scrutiny than the right to education itself. According to the U.S. Constitution and Rhode Island Constitution, the transfer rule must rationally relate to its intended purpose. In this case, the court held that it does.

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[14]480 A.2d 404 (1984)

Steffes v. California Interscholastic Federation
222 Cal. Rptr.355 (1986)

Facts. Kent Steffes attended Brentwood High School for his freshman and sophomore years. During his sophomore year (1983), Steffes participated in junior varsity cross-country and varsity basketball and volleyball. At the end of his sophomore year, Steffes' parents decided to transfer him to Pali High, the public high school for the area in which the Steffes family home was located. Kent was not encouraged nor recruited for athletics by any staff member at Pali High.

Since Steffes transferred from Brentwood School to Pali High without a change in residence, the California Interscholastic Federation transfer rule rendered him ineligible for one year. Steffes applied for a "hardship" waiver. He asserted financial, academic, and transportation hardship. Steffes quickly began the appeal process which took him through various stages of administrative review with the CIF. All appeals were unsuccessful. Finally, in December of 1984, Steffes filed suit seeking injunctive relief, declaratory relief, and emotional distress. On the same day, Steffes filed an ex parte application for a temporary restraining order and an order to show cause re preliminary injunction, seeking to enjoin the enforcement of the CIF transfer rule to him. The Superior Court of Los Angeles denied Steffes' request for a temporary restraining order but scheduled a hearing on his request for a

preliminary injunction. The court ruled there existed a rational basis for the rule. It further held that the CIF adopted and administered the hardship provision of the transfer rule in a fair, impartial, and reasonable way. Steffes appealed.

Decision. The Court of Appeal affirmed the decision of Superior Court of Los Angeles and held that (1) the right to participate in interscholastic athletics was not a fundamental right requiring a strict scrutiny standard of review; (2) the Interscholastic Federation rule was rationally related to a legitimate state purpose of preventing school-shopping by high school athletes and preventing their recruitment by coaches and fans. Thus, the rule does not violate equal protection guarantees of the California Constitution; (3) the Interscholastic Federation was authorized by state law to adopt rules governing interscholastic athletics in secondary schools; and (4) the city section of the Interscholastic Federation promulgated rules and regulations regarding hardship waivers of ineligible athletes under Interscholastic Federation rule.

Discussion. The major issue in this case was whether, under the California Constitution, the right to participate in interscholastic athletics is a fundamental right. The right to a free public education is a fundamental right

under the California Constitution.[15] In the Hartzell case, the court recognized that extracurricular activities constitute "an integral component of public education" and are generally recognized as a "fundamental ingredient of the educational process." Other federal and state courts have addressed this issue and noted that participation in extracurricular activities is not a fundamental right. Under the federal constitution, the right to education itself is not a "fundamental right."[16] The fact that public education is a fundamental right under the California Constitution does not compel a finding that in California the right to participate in interscholastic athletics is also a fundamental right. Therefore, a constitutional challenge to a transfer rule on equal protection grounds is tested on a rational basis standard, rather than by a strict scrutiny standard.

Berschback v. Grosse Pointe Public School District
Ternan v. Michigan High School Athletic Association, Inc.
397 N.W.2d 234 (1986)

Facts. Each of the plaintiffs, Don Berschback and Lawrence Ternan, filed suit in a consolidated case alleging that the transfer eligibility rule adopted by the Michigan

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[15]Serrano v. Priest, 18 Cal.3d 766 (1971) and Hartzell v. Connell, 35 Cal.3d 899 (1984)

[16]See e.g. San Antonio Independent School District v. Rodriquez, 411 U.S.1,29; Cooper v. Oregon School Activities Association, 629 P.2d 306; and Menke v. Ohio High School Athletic Association,441 N.E. 2d 628.

High School Athletic Association denied them equal protection of the laws. The plaintiffs also claimed that the specific application of the transfer rule of the MHSAA by the Grosse Pointe Public School District and Rochester Community School District denied them a right to due process. Both Don and Lawrence sought declaratory relief and a temporary restraining order to enjoin enforcement of the rule to allow them the opportunity to participate in interscholastic sports for the fall semester of 1985. The MHSAA brought a motion for summary disposition in each case, claiming there was no genuine issues of material fact, and that it was entitled to judgement as a matter of law. The Circuit Court in each case granted the MHSAA's motion for summary disposition and denied both plaintiffs' request for a temporary restraining order.

The factual situations in both cases are similar. Amy Ternan transferred from a parochial high school (Rochester Adams High, grades 10-12) in 1985 to begin the tenth grade. This is the high school for the area where Amy resides with her parents. Amy became aware of the transfer rule during the summer prior to her transfer. Since sh wished to participate on the Rochester Adams High School basketball team during the fall semester of the tenth grade, she requested a waiver of the transfer rule from the superintendent of the Rochester School District. The MHSAA considered the superintendent's request for Amy, but denied

the waiver. Ternan then filed suit in Circuit Court.

Also in 1985, Don Berschback transferred from a parochial high school, Warren DeLaSalle, to a public high school, Grosse Pointe South High School, to begin the eleventh grade. Grosse Point is a four-year public high school for the area where Don resides with his parents. Don also became aware of the MSHAA transfer rule prior to his actual transfer. Since he desired to play of the football team in the fall of the eleventh grade, he requested a waiver of the transfer rule. The deputy superintendent declined to request a waiver from the MHSAA for Berschback. Berschback then filed suit in Circuit Court.

Decision. Following the consolidation of the two cases, the Court of Appeals held that the MSHAA transfer rule was rationally related to a legitimate regulatory purpose of discouraging athletic recruitment of high school students. Thus, the rule does not deny equal protection. The court also ruled that the refusal of the MHSAA to conduct a hearing on the students' application to waive the transfer rule as to them, or to provide an opportunity for effective review of the refusal to waive the rule, does not deprive the students of procedural due process. Therefore, the Court of Appeals affirmed the Circuit Court decision.

Discussion. Both courts note that the adoption and application of eligibility rules by the MHSAA constitute "state action" and that the MHSAA serves as a governmental

entity.

The plaintiffs argued that the MHSAA transfer rule "broadly" bars students who have transferred from participating in interscholastic sports. They cited two cases, Sullivan v University Interscholastic League, 616 S.W. 2d 170,(1981) and Sturrup v. Mahan 305 N.E. 2d 877,(1974) in arguing their claim of denial of equal protection. The Court of Appeals in this case, however, noted that the MHSAA transfer rule is narrower than rules involved in the Sullivan and Sturrup cases.

The plaintiffs argue that Michigan law creates a protected, legitimate claim of entitlement to a public education, and that this protected interest includes a legitimate claim of entitlement to participating in interscholastic athletics. The court held that although it believes Michigan law, through its compulsory education statute, creates a protected interest in public education, no protected interest extends to participation in extracurricular activities.

Simkins v. South Dakota High School Activities Assoc.
434 N.W. 2d 367 (1989)

Facts. Scott Simkins lived with his parents in the Winner School District. In the fall of 1986, he began his freshman year at Winner High School and participated in Interscholastic athletics during the school year. In the spring of 1987, Simkins expressed a desire to attend

Sunshine Bible Academy, a private high school in Miller, South Dakota. He intended to live in the dormitory at the Academy, as his parents remain in the Winner School District. After being informed that he would become ineligible to participate in interscholastic athletics for one year under the association's transfer rule, he transferred to the Academy because of his interest in its Bible curriculum.

The Academy requested a waiver of the transfer rule because of Simkins' interest in Bible studies and not of athletic interest. After a hearing, the association declared Scott ineligible for one year. The association based its decision on the transfer rule and the applicability of the hardship exception. Simkins appealed claiming the transfer rule infringed upon his rights to due process and equal protection of laws. Based on Simkins' claims, the Circuit Court reversed the association ruling and allowed Scott to compete his sophomore year. The association appealed to the Supreme Court of South Dakota.

Decision. Justice Sabers of the Supreme Court reversed the Circuit Court decision and held that a high school students' interest in interscholastic athletic participation was not a property interest with due process protection. The court further held that the rule was rationally related to the goal of discouraging school-switching by athletes and the recruitment of athletes by member schools. Justice

Sabers noted that even if Simkins had protected property interest in interscholastic athletic participation, any procedural due process requirements were satisfied when Scott was given a hearing concerning the transfer rule and its applicability of hardship exception to him. The transfer rule did not violate Scott's equal protection rights.

Discussion. An individual must assert a life, liberty, or property interest for due process protection to apply. Courts have repeatedly held that to have a property interest, a person must have a legitimate claim of entitlement to it. The court held in Walsh v. Louisiana High School Athletic Association that a student interest in interscholastic athletic participation was a mere expectancy, rather than a protected entitlement.[17]

The purpose of the transfer rule was to discourage school-switching or recruiting among athletes. The rule creates two classifications. A student, otherwise eligible, transferring to another school without a change of residence by his parents is athletically ineligible for one year, while other students not transferring are eligible. This classification is not suspect nor is there a fundamental right. Therefore, the test used in this court was whether the classification bears some rational relationship to a legitimate purpose. This court holds that it does serve

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[17]616 F.2d 152 (5th Cir.,1980)

such a purpose.

Alabama High School Athletic Association v. Scaffidi
564 So.2d 910 (1990)

Facts. During the 1987-88 school year, John Scaffidi was a student in the ninth grade at McGill-Tollen School, a private/parochial school in Mobile, Alabama. At that time, his family home was located in the Baker School District. During that year, a federal court redrew school lines as a result of a desegregation case. Under the new order, John's house was in the Davidson's School District. After learning of this change, John and his parents decided he should attend Davidson High School. He transferred from McGill-Toolen to Davidson High. His transfer was voluntary and not the result of athletic recruiting.

As the result of the federal court order moving some students from the Baker School District to the Davidson School District, the AHSAA determined that those students who had attended the Baker schools in the 1987-88 school year and were rezoned to the Davidson schools would not lose their eligibility upon transfer to Davidson.

At the beginning of the 1988-89 school year, the principal of Davidson High School requested an eligibility ruling on John's status from the AHSAA. The AHSAA denied his eligibility for one year after his transfer because he had voluntarily transferred from a private school serving the entire city of Mobile to a public school in the city of

Mobile and had not transferred as a result of the rezoning.

In December of 1988, John, acting through his father, sued the Alabama High School Athletic Association requesting injunction relief. He sought an order enjoining the AHSAA from enforcing the ineligibility ruling. He argued that the AHSAA had arbitrarily failed to consider the applicability to a by-law in the AHSAA handbook on exceptions to the transfer rule in this case. Scaffidi further argued that the enforcement of the rule as to them, and not to those students who changed schools under court order, was discriminatory and denied them equal protection of the laws. After a hearing, a trial court issued an order enjoining the defendants from denying John's eligibility. The AHSAA appealed to the Alabama Supreme Court.

Decision. The Supreme Court reversed the trial court decision and ruled that the action of the AHSAA in declaring John Scaffidi ineligible for athletics was not arbitrary. The action was taken in strict accord to the adopted rules of the AHSAA. The Supreme Court further held that because the transfer rule had not been applied to students who were forced to transfer, it does not establish discrimination. Therefore, the Supreme Court held that the order of the Circuit Court granting injunctive relief was in error.

Discussion. The Supreme Court of Alabama set forth in Scott v. Kilpatrick a standard of review regarding a courts' jurisdiction in a high school athletic association

determination of the eligibility of amateur athletes:

> If officials of a school desire to associate with other schools and prescribe conditions of eligibility for students who are to become members of the school's athletic teams, and the member schools vest final enforcement of the association's rules in boards of control, then a court should not interfere in such internal operation of the association...Of course, if the acts of an association are the result of fraud, lack of jurisdiction, collusion, or arbitrariness, the courts will intervene to protect the injured party's rights.[18]

The Supreme Court reaffirmed the Kilpatrick test, noting no evidence of fraud, collusion, or arbitrariness in this case.

Maximum Participation Eligibility Rules

Maximum participation rules are adopted by state high school athletic associations as a means of preventing the extension of a student-athletes playing career and to avoid head-to-head competition between older, more-developed athletes with younger, less-developed ones. Most high school athletic associations permit a student-athlete to participate in interscholastic athletics for "eight consecutive semesters" upon their initial entry into the ninth grade. Several states allow a student five years to compete upon entry into the eighth grade.

Regulations governing the number of semesters for athletic participation have consistently been upheld by

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[18]237 So.2d 652 (1970)

courts as being rationally related to the state purpose of promoting fair competition and player safety. Some state athletic associations allow a student-athlete to compete a fifth year (but not more than four seasons) whenever it can be shown that a student academically failed a grade and the retention was not related to athletics. Courts, on occasion, have ruled against state athletic associations whenever a student can show undue hardship or the rule to be arbitrary, capricious, or in violation of equal protection. Such cases include Hamilton v. West Virginia Secondary School Activities Commission, 386 S.E.2d 656 (1989), Duffley v. New Hampshire Interscholastic Athletic Association, 446 A.2d 462 (1982), Pennsylvania Interscholastic Athletic Association v. Geisinger, 474 A.2d 62 (1984), ABC League v. Missouri State High School Activities Association, 530 F.Supp. 1033 (1981), and Florida High School Activities Association v. Bryant, 313 So.2d 57 (1975).

Murtaugh v. Nyquist
358 N.Y.S.2d 595 (1974)

Facts. The petitioners, Patrick and Joseph Murtaugh, were prohibited from participation in high school athletics because of the rules as set forth by the Commissioner of Education. One sub-section rule reads:

> (i) Duration of competition. (a) A boy shall be eligible for inter-high school athletic competition only during eight consecutive semesters after his entry in the ninth grade, and prior to graduation,

> unless sufficient evidence is presented by the chief school officer to the league or section to show that the pupil's failure to enter competition during one or more semesters was caused by illness, accident, or such other circumstances deemed acceptable to the league or section.[19]

The petitioners do not contend they fall within one of the above exception. Therefore, they sought not an order directing the school chief to present to the league evidence that their failure to compete during one or more semesters was caused by illness, accident, or other such circumstances. Instead, they claimed the "eight consecutive semester" participation rule was arbitrary. The petitioners sought declaratory judgement.

Decision. The Supreme Court, Albany County, held that the "eight consecutive semester" rule adopted by the Commissioner of Education (Ewald Nyquist) was not arbitrary when a reasonable and obvious basis for regulation existed to avoid delays in completing a high school education. The rule was also reasonable in avoiding injuries to younger children when competing with older high school students returning for academic reasons.

Discussion. The purpose of the "eight consecutive semesters" rule is to prevent "red shirting". "Red shirting" is undesirable in high school because it encourages students interested in athletics to delay

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[19]Rules and Regulations of the Commissioner of Education, Subsection 135.4(e)(3)(i)(a).

completion of their high school education and because it allows an older, more developed "red shirted" student to compete and possibly injure a younger, less developed, student. The courts cite these reasons as being sufficient and rational reasons to support such a rule.

Burrtt v. Nassau County Athletic Association
421 N.Y.S.2d 172 (1979)

Facts. The petitioners, Scott Burtt and Kent Hellmers, were former members of the class which graduated from Levittown Memorial High School in June 1979. They were required to repeat certain courses by reason of their having failed grades. Their expected graduation date was January, 1980.

During the 1978-79 school year, while each were members of the senior class, the petitioners were unable to participate in interscholastic football because of a teachers' strike in the Levittown Schools. This resulted in the closing of their school in September and October of 1978. A Nassau County Athletic Association rule allows students to participate in interscholastic athletics only for "eight consecutive semesters" upon their initial entrance into the ninth grade. The petitioners brought suit seeking judgement requiring the Nassau County Athletic Association to permit them to participate in varsity interscholastic football competition during the 1979 season as members of the Levittown Memorial High School team.

The petitioners' participation in the fall 1979 football season would be a violation of the "eight semester" rule.

Decision. The Supreme Court of Nassau County held that the athletic association had the primary responsibility of interpreting regulation from the Commissioner of Education relating to athletic competition. Unless the court was able to characterize their determination as "arbitrary or capricious", the court would not overturn their ruling. The court further ruled that the refusal of the association to permit the petitioners to continue in football competition was rational, notwithstanding the fact that they had been denied one year's participation in football due to a teachers' strike. The petition was therefore dismissed.

Discussion. The athletic association was justified in its concern that there would be adverse impact on athletics in general if an exception to the "eight semester" rule were to be made for the benefit of Scott Burtt and Kent Hellmers. In refusing to grant the petitioners the right for further participation in varsity football beyond the "eight consecutive semesters", officials from the Nassau County Athletic Association stated:

> If these students were approved for participation beyond their original graduation date and beyond the eight consecutive semesters of participation, there would be no rationale for denying a similar request to the perhaps hundreds of other boy and girl athletes in the Levittown School District who were in grades 9-12 during the fall of 1978 and who

might not have met graduation requirements.[20]

The Supreme Court, Nassau County, agreed with the respondents' concerns and noted that granting an exception to the "eight semester" rule may be rewarding academic failure.

Alabama High School Athletic Association v. Medders
456 So. 2d 284 (1984)

Facts. The plaintiff, William Medders, entered the ninth grade in August of 1981. He was voluntarily held back and repeated the eight grade in 1980-81, although he successfully completed and passed all subjects and was eligible to be promoted to the ninth grade. William played junior high interscholastic athletics during the 1979-80 school year, his first year in the eighth grade. He did not participate in the 1980-81 school year. This was the result of his being declared ineligible under the AHSAA rules, since he voluntarily elected to repeat the eighth grade.

William Medders participated in varsity athletics at Bible High School during the 1981-82, 1982-83, 1983-84 school years, and not before. He was declared ineligible to participate his senior year (1984-85) by the AHSAA under the "eight semester" limitation requirement which states:

> a pupil becomes ineligible when he has attended any junior or senior high school eight semesters

[20]421 N.Y.S. 2d 173 (1979)

after completing the eighth grade or entering the ninth grade.[21]

William Medders brought suit seeking judicial review of a declaration by the AHSAA that he was ineligible to play on the high school football team during his senior year. The Circuit Court declared William eligible to play. The athletic association appealed and petitioned for a writ of mandamus.

Decision. The Supreme Court of Alabama reversed the Circuit Court decision and held that the allegation that William Medders had been improperly declared ineligible did not warrant judicial intervention, where the "eight semester" rule, although susceptible of two interpretations, had been interpreted by the AHSAA (in William's case) the same way for 35 years. The petition for writ of mandamus was dismissed as moot.

Discussion. The court in this case affirmed that the AHSAA is the proper authority for resolving disputes regarding athletic eligibility under the rules of the AHSAA. Scott v. Kilpatrick was again cited by this court in its reluctance to interfere or assume jurisdiction in this case. The "eight semester" rule has a legitimate purpose. William Medders' claims fall short of fraud, collusion, or arbitrariness, the prerequisites for court intervention is such a case.

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[21]AHSAA By-Laws, Rule 1, Section 4.

Pratt v. New York State Public High School Athletic Assoc.
507 N.Y.S. 2d (1986)

Facts. Daniel Pratt entered the Senior High School of Manhasset Union Free School District, N.Y., as a ninth grader in September of 1982. During the 1982-83 school year, he was eligible for participation in football, basketball, and lacrosse. Due to maturity problems and poor academic performance (although he did not fail any course), Daniel repeated the ninth grade at St. Paul and once again played football, basketball, and lacrosse.

Upon completion of the ninth grade at St. Paul, Daniel re-enrolled in the Manhasset High School for the tenth grade (1984-85 school year). Based upon recommendations from various medical experts and educators, Daniel did not play sports for the 1984-85 school year in an effort to improve both his maturity and academic skills. After a marked improvement in both areas, Daniel and his parents petitioned for an extension of his athletic eligibility beyond the "eight semester" limitation after initial entry into the ninth grade. The Appeals Committee declined to act on this request until such time that the eight semester had been completed. He then played football, basketball, and lacrosse during his eleventh and twelfth grade years. Academic progress and overall personal development continued to rise.

In April, 1986, Daniel and his parents again requested extension of athletic eligibility with the New York State

Public High School Athletic Association. The association denied all appeals. The petitioners filed suit contending that prior determination was arbitrary, capricious, and irrational in that they rejected nonphysical reasons for their son's nonparticipation in sports during his tenth grade year. They further claim that they were misled into believing their original request would be granted. Additionally, they argued that the association's denial of athletic eligibility was an illegal abuse of discretion, contrary to the intent of the rules and regulations governing athletic participation, and contrary to the fundamental precepts of public education.

Decision. The Supreme Court held that the previous voluntary decision of Daniel's parents to withdraw him from athletics for one year to help him mature and focus on academics was not a proper basis for extending athletic eligibility beyond the "eight semesters" limitation set by the state association.

Discussion. The rule in question was one which limits athletic participation beyond eight consecutive semesters after a child initially enrolls in the ninth grade. An exception to this rule could occur if sufficient evidence could be presented to show that a child's failure to participate in athletics was the result of "illness, accident, or similar circumstances beyond the control of the

student."[22] The purpose of the rule is to prevent "redshirting", the practice of holding a student back for one grade for academic reasons in which he does not participate in athletics for that year. The student then competes during his fifth year when he is more mature and developed. This practice is not allowed in high school because it would allow older and more developed students to compete with younger, less developed students which could cause injuries.

Clay v. Arizona Interscholastic Association, Inc.
757 P.2d 1059 (1988)

Facts. Matthew Clay began high school in the fall of 1983. He started using cocaine in the summer following his freshman year and it escalated. He dropped out of Rincon High School before the completion of his sophomore year (1985). At that time, his cocaine and alcohol use was daily. By the fall of 1985, Matthew was lying and stealing. He was involved in a burglary in November of 1985 to support his drug habit. Upon his arrest and conviction, Matthew was given the option of being placed on supervised probation or being placed incarcerated in the Catalina Mountain School. He chose to attend the Calalina Mountain School to adequately deal with his drug and alcohol addiction. While undergoing extensive rehabilitation, Matthew did not attend

[22] 8 NYCRR, 135.4(c)(7)(ii)(6)(1).

Rincon High School and did not play basketball from September 1985 through August 1986. Upon re-enrolling at Rincon High, Matthew began receiving good grades and was not in trouble with the law. He "kicked" the drug habit and played basketball during the 1986-87 season. Before the start of the 1987-88 season, he petitioned the AIA to grant him an exception to the "eight semester" rule. His request was denied. If an exception had been granted, Matthew would have participated in basketball for only eight semesters, although not in consecutive years. He asked the court to issue a preliminary injunction enjoining the AIA from enforcing its "eight semester" rule.

The Superior Court of Pinal County found the AIA action to be arbitrary and capricious. The AIA appealed.

Decision. The Court of Appeals reversed the Superior Court decision and held that Matthew, who was incarcerated in a juvenile institution for burglary to obtain drug money, was not entitled to an additional year of eligibility due to illness. The court further added that the "attending physician" who was required to submit a statement in support of Matthew's petition had to be a physician who treated him during his stay at Catalina.

Discussion. The Arizona Court of Appeals noted that the standard of review of an action by the AIA is whether or not it was arbitrary or capricious. The court held that the AIA did not act arbitrarily or capriciously in concluding that

there existed a distinction between absence from school because of a disease and absence as a result of conduct that may be in part caused by the disease. This distinction is made often in criminal law. Substantial discretion is normally afforded an athletic association when determining the meaning of its rules.

California Interscholastic Federation v. Jones
243 Cal. Rptr. 271 (1988)

Facts. In October, 1986, Demetrius Jones filed an ex parte application and complaint seeking a temporary restraining order and preliminary and permanent injunction against Calabasas High School and the California Interscholastic Federation.

Jones was a sixteen-year old minor attending Calabasas High School. He expected to graduate in June of 1987. Until 1983, when Jones completed the ninth grade, he lived in Chicago with his mother. Jones then moved to California to live with his father. He completed the tenth and eleventh grades in 1983-84 and 1984-85 respectively, in California. Due to academic problems, Jones decided to repeat the eleventh grade during the 1985-86 school year. In 1986-87, his senior year, Jones attempted to play on the varsity football team, but was declared ineligible by Calabasas' enforcement of the CIF "eight semester" rule.

Jones claimed the "eight semester" rule was arbitrary and capricious both on its face and in its application to

him. He maintained the rule was invalid because it provides for a possible waiver of the "eight semester" rule where a student is required to return to grade eight from grade nine, without such a provision for similar situations for students in the higher grades. Jones further claimed the rule should not be applicable to him since his delayed graduation was due to academic reasons and not the result of "redshirting". The trial court granted the preliminary injunction and enjoined the CIF from enforcing the "eight semester" rule. The court noted that Jones was not a student in a CIF school the first year of his eligibility and the rule was only applicable to CIF schools. The CIF appealed.

Decision. The Court of Appeals reversed the Los Angeles Superior Court decision and held that the California Interscholastic Federation "eight semester" rule on athletic eligibility was valid under equal protection clause both on its face and as applied to Demetrius Jones. It further held that the CIF "eight semester" rule limitation on athletic eligibility for athletic participation was applicable to any school, wherever situated, whether or not the school was a member of the CIF.

Discussion. The enforcement of CIF rules, recognized by the state legislature as a voluntary organization having the responsibility of regulating interscholastic athletics in California High Schools, constitute "state action" for the

purpose of constitutional analysis.[23] While the right to a public education exist as a fundamental right under the California Constitution, interscholastic athletics is not a fundamental right invoking standards of strict scrutiny.[24] Equal Protection challenges involving a right to participation in interscholastic athletics is tested by a rational-basis standard. The "eight semester" rule bears a rational relationship to a legitimate state purpose of discouraging delayed graduations for athletic reasons.

Age Limitation (Longevity) Eligibility Rules

All state high school athletic associations has adopted rules limiting a student-athletes participation by age. Most state athletic associations limit an athletes' participation at his/her nineteenth birthday. These rules are adopted primarily as a means to prevent older, more-developed athletes from competing against younger, less-developed ones. Such competition, if allowed, could result in severe injuries to the younger athletes. Age limitation eligibility rules were also enacted to support a legitimate state interest in its student graduating high school on time. Courts have generally upheld "age limitation" rules as serving a compelling state interest or goal. Challenges based on constitutional claims have been countered by court

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[23]243 Cal.Rptr. 272 (1988)

[24]Ibid.

rulings that athletic participation is not a property right, only a privilege; that regulations do not create a suspect class; and that age restrictions are rationally related to assuring the legitimate state interests of fair competition and student-athlete safety.[25]

Blue v. University Interscholastic League
Byrd v. University Interscholastic League
503 F. Supp. 1030 (1980)

Facts. These two consolidated cases involve the legitimacy, in concept, and application of the "age" limitation rule of the University Interscholastic League which limits athletic participation to students upon their nineteenth birthday.

In the Blue case, the plaintiff, (1) sought to enjoin the UIL from enforcing the age eligibility rule, and (2) sought to enjoin the UIL from allowing any team from District 13AAAAA other than Greenville from participating in the League playoffs. Phil Blue was a member of the Greenville varsity football team and sought to represent the class of all football players on the 1980-81 team. In the other case, Byrd, whose ineligibility because of age caused this litigation, sought the same relief as Blue, together with injunctive relief which would permit him to participate in the football playoffs. despite his being nineteen years of age. Byrd reached his nineteenth birthday before

[25]Wong, "Essentials," (1988), p.208.

September 1, 1980. He played in five UIL football contests after September 1, thus resulting in the team's forfeiture of those games. As a result of those forfeitures, the Greenville team was ineligible for the playoffs. Neither Blue nor Byrd knew it was a violation of UIL rules for John Byrd to play football with the team after reaching his nineteenth birthday prior to September 1. UIL regulations do not provide for a hearing on the violation of the "age" rule or prior to imposing of a penalty against the player and team for its violation. Both plaintiffs claimed the "age" rule violated their due process rights under the Fourteenth Amendment and equal protection of the law.

Decision. The United States District Court held that the rule providing that students nineteen years of age and older were ineligible to participate in league contests, and which established penalties for violation of the "age" rule, does not violate due process and equal protection. The court also ruled that since the rule does not violate due process and equal protection, and UIL enforcement of the rule had not deprived the students their constitutional rights, the plaintiffs were not entitled to a preliminary injunction to enjoin the enforcement of the rule. Judge Sanders finally noted that members of the football team had no property interest in the alleged injury to their hoped-for careers in college football or for football scholarships. Therefore, the privilege of playing football

falls outside protection of due process.

Discussion. The due process clause of the Fourteenth Amendment extends constitutional protection to those fundamental aspects of life, liberty, and property that rise to a level of legitimate claim of entitlement but does not protect lesser interests for mere expectancy.[26] For purposes of determining whether due process clause of the Fourteenth Amendment extended constitutional protection to the interests of a nineteen-year-old high school student and football player in participating in football playoffs managed by a voluntary association of member schools, the interests of the student-athlete and team amounted to mere expectancy rather than a constitutionally protected claim of entitlement.

An equal protection analysis requires only that classification be rationally related to a legitimate state interest. "Age" rules established by voluntary interscholastic associations are subject to strong presumption in favor of its constitutionality.

Mahan v. Agee
652 P.2d 765 (1982)

Facts. The Oklahoma Secondary Schools Activities Association appealed an Oklahoma District Court decision to enjoin the association from declaring Peter Mahan ineligible

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[26]503 F.Supp. 1031 (1980)

because of its rule barring students from participation in athletics when reaching nineteen year of age prior to September 1. Peter Mahan was declared ineligible to participate in interscholastic track during the spring of 1980. At that time, Peter was a nineteen year old senior at Muskogee High School. The association notified Muskogee High School in October, 1979, that Peter was ineligible for track participation under the "age" rule. Peter and his parents sought a waiver from the Board. The rules of the OSSAA does not provide for any exceptions to the "age" rule or for waivers under any circumstances. Thus, the Board denied their request.

The Mahans instituted a request for injunctive relief against the OSSAA in District Court of Oklahoma County. The essence of their position was that Peter was a nineteen year old senior through no fault of his own. They asserted that he was a handicapped student, suffering from dyslexia. They claimed the Muskogee Schools had failed to provide him with an "appropriate" education, which would have allowed him to progress through school at a normal rate. Peter was in the fourth grade when the Mahans moved to Muskogee. Peter was forced to repeat the fourth grade as a result of the Muskogee Schools not providing him with special education and training. They maintained it was the fault of the school system that Peter ended his school career as a nineteen year old senior. After a hearing, a temporary

injunction was granted. The OSSAA appealed.

Decision. The Supreme Court of Oklahoma reversed the District Court decision and held that the 19-year-old eligibility rule was reasonable, fair, and related to the purposes it was intended. It further held that there was nothing presented the trial court to show evidence of fraud, collusion or action by the association that was unreasonable, arbitrary or capricious.

Discussion. As noted in various other cases, so long as members of a voluntary association adopt rules which are reasonable, lawful, and in keeping with public policy, courts will not interfere with its internal affairs. In addition, the governing board of the association must interpret the rules fairly, reasonably, and enforce them uniformly and not arbitrary. Clearly the 19 year old eligibility rule is reasonable, fair, and related to its intended purpose. In Missouri State High School Activities Association v. Schoenlaub, 507 S.W.2d 354 (1974), the absence of a hardship exception was challenged as unreasonable. That court rejected the argument and pointed out that permitting an athlete of more than 19 years of age to participate in contests because of a possible hardship case, would in no way diminish the dangers resulting from his participation.

Nichols v. Farmington Public Schools and Michigan High School Athletic Association

389 N.W. 2d 480 (1986)

Facts. Tim Nichols had been a student in the Farmington Public Schools during his entire formal education. As a result of a severe hearing impairment, Tim was considered to be a handicapped student. Tim was placed in special education classes until 1976, when he was "mainstreamed" into regular education classes as required by the civil rights act. When the mainstreaming took place, Tim was placed in a grade one level below that which his age would normally suggest. The plaintiff claimed that this placement was never discussed with his parents and the later ramifications was not made clear. Consequently, Tim was declared ineligible for participation in basketball his senior year in high school due to the Michigan State High School Athletic Association rule excluding students from participation after having reached their 19th birthday before September 1.

Tim and his parents filed a complaint alleging that the enforcement of the "age" rule in this case would violate Tim's constitutional rights. They further sought to enjoin the Farmington Public Schools from enforcing the MHSAA "age" rule. The defendants filed a motion for summary judgement, contending that the plaintiffs had failed to argue a constitutionally protected right and failed to plead facts supporting a claim that the "age" rule violated due process and equal protection.

Decision. The Michigan Court of Appeals affirmed the Oakland Circuit Court decision granting summary judgement for the Farmington School District and the MHSAA. On appeal, the Court of Appeals held that neither the school's failure to provide a hearing for placement of Tim one grade below that suggested for his age level at the time of mainstreaming nor the MHSAA failure to provide an exception to its "age" rule violated due process.

Discussion. On appeal, the Michigan Court of Appeals noted ten reasons why the "age" rule was reasonable:

> 1. It treats all students equally regardless of race, creed, origin, sex, gifted, or handicapped.
> 2. It encourages athletes to complete four years of high school between the ages of 15 and 18.
> 3. It reduces the opportunity to hold students back (red shirt) for athletic purposes.
> 4. The rule is consistent with the philosophy of inter-scholastic athletics in that a student's main reason in attending high school is to obtain an education, with participation in athletics secondary.
> 5. It tends to create equal competition with established age limitations.
> 6. There tends to be great maturity differences between students age 15 or 16 and those age 20.
> 7. It tends to reduce the opportunity for mismatches in competition.
> 8. It reduces the chances for litigation due to mismatches in competition.
> 9. It reduces the opportunity for a student who would normally be out of school to take the position of a younger student who is progressing through high school at a normal rate.
> 10. A September 1 deadline could be considered arbitrary. However, if the date was changed to to August 1, it would also be arbitrary and there would be students turning 19 years of age July 30, who would want the age limit changed to July 1.[27]

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[27]389 N.W.2d 482 (1986)

Tiffany v. Arizona Interscholastic Association, Inc.
726 P.2d 231 (1986)

Facts. Tiffany began his senior year at St. Mary's High School in Phoenix in 1983-84. He was held back in kindergarten and first grade because of a learning disability. Consequently, he turned nineteen years of age prior to the September 1 deadline for athletic participation, as set by the Arizona Interscholastic Association. Tiffany participated in athletics throughout his formal education years. He wanted to participate during his senior year. All parties acknowledged that the decision to hold Tiffany back in the early grades was made by his teachers and school administrators with his parents' approval. Tiffany indicated during a hearing that he derived great academic and personal benefits from athletic participation. The AIA board denied his request for a waiver as a result of its policy of not making any exceptions to the "age" rule. Tiffany filed suit requesting that AIA be enjoined from declaring him ineligible from athletic participation. He asked that AIA actions be declared unconstitutional on a basis of due process. The trial court granted a preliminary injunction allowing Tiffany to participate during the 1983-84 school year. Because Tiffany requested attorney's fees, the trial court determined that the controversy was not moot. The AIA appealed.

Decision. The Arizona Court of Appeals affirmed in part

and reversed in part the Superior Court decision. It held that (1) Tiffany did not have constitutional rights which was violated when he was not granted a hardship waiver from the 19-year-old eligibility rule; (2) the Executive Board of the AIA acted unreasonably, capriciously, and arbitrarily when it failed to consider Tiffany's request for a hardship waiver; and (3) Tiffany was not entitled to an award of attorney fees.

Discussion. The court noted in this case that because a Tiffany suffered no injury to his reputation by virtue of his ineligibility ruling, no constitutionally protected liberty interest was violated. Tiffany did not assert any interest beyond his claim to mere participation in one year of interscholastic sports. Courts have continuously rejected constitutional claims arising out of an exclusion from participation in high school athletics during a single school year.

Arkansas Activities Association v. Meyer
805 S.W.2d 58 (1991)

Facts. Shane Meyer was born on July 10, 1971, and reached his nineteenth birthday at the beginning of his senior year. An Arkansas Activities Association rule prohibits athletic participation once a student reaches his 19th birthday on or before October 1. A Grandfather Clause further added that the rule may be waived for a student who is ineligible by the "19-year-old" rule due to events that

occurred before its adoption. A student may participate until the day he is 20 years old, if normal progression has occurred since 1980 and upon approval of the AAA Executive Director.

Meyer was declared ineligible for participation in interscholastic events under the "age" rule. Although he entered public schools before September of 1980, he repeated the fifth grade for the 1983-84 school term. This repetition was not the decision of school administrators but instead at his mothers request. Meyer's mother was not aware of the AAA rule in 1983, and AAA made no effort to inform parents of elementary students of the rule. Meyer was notified of the age rule during his junior year in high school. At that time, he petitioned the AAA Executive Director for a hardship exception to the rule. The petition was denied. He then filed a petition for injunctive relief against the AAA. After a hearing, the Chancery Court permanently enjoined the AAA from stopping Meyer's participation in interscholastic activities for the 1990-91 school year. It further permanently enjoined the AAA from requiring the school to forfeit any AAA activities which Meyer participated. The Arkansas Activities Association appealed.

Decision. The Arkansas Supreme Court reversed the Chancery Court decision and held that (1) the grandfather clause of the age rule does not violate the equal protection

clause of the State and Federal Constitutions on the theory that it unfairly discriminated against Meyer who did not normally progress through school after September, 1980; (2) Shane Meyer, who repeated the fifth grade at the request of his mother, did not "normally progress" through school within the meaning of the grandfather clause; and (3) allegations that Meyer was deprived constitutional rights involved "state action" due to the close relationship between the AAA and the public school system.

Discussion. Shane Meyer contested the grandfather clause of the AAA "age" rule on a variety of constitutional grounds including arbitrariness and capriciousness, denial of due process, deprivation of pursuit of happiness and enjoyment of life, and violation of equal protection of the laws. The constitutional issues raised appropriately placed the controversy within the narrow criteria of judicial review.[28]

The primary focus of the case was whether a rational basis existed for the grandfather clause under the age rule. Justice Brown noted that the grandfather clause was grounded in legitimate public policy. Courts have upheld the legitimacy of grandfather clauses and the policy behind them. Legislators have the right to make distinctions in their enactments between existing rights and those that may come into existence in the future, when there is a rational

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[28]805 S.W.2d 60 (1991)

basis for that distinction.

Cardinal Mooney High School v. Michigan High School Athletic Association
467 N.W.2d 21 (1991)

Facts. John McClellan, a senior at Cardinal Mooney High School during the 1987-88 school year, was declared ineligible by the MHSAA to participate in interscholastic athletics because he turned nineteen years of age prior to September 1, 1987. McClellan played interscholastic basketball as a nonstarter during the 1986-87 school term. He desired to be on the team during 1987-88. In the fall of 1987, McClellan, who had previously been enrolled in a school for emotionally handicapped students, was evaluated by school personnel and determined John would greatly benefit from playing again on the basketball team. McClellan, his parents, and Cardinal Mooney High School challenged the MHSAA "age" eligibility rule as applied to John McClellan.

In November, 1987, the Circuit Court issued a temporary restraining order, extended by a second temporary restraining order, enjoining the MHSAA from enforcing the "age" eligibility rule against McClellan and for penalizing McClellan or Cardinal Mooney for his participation. During the time the orders were in effect, John participated as a nonstarter on the high school team and contributed very little to team victories. The Circuit Court ultimately

ruled in favor of MHSAA on its merits, finding the "age" eligibility rule to be valid as applied to McClellan. That ruling was not appealed.

The Circuit Court also ruled that the MHSAA could not penalize McClellan or Cardinal Mooney High School for McClellan's participation while the restraining orders were in effect. The Court of Appeals affirmed, holding the rule to be "arbitrary, unreasonable, and unlawful." The Court of Appeals also assessed $1,500 in damages jointly against the MHSAA and its legal counsel for bringing a vexation appeal. The MHSAA appealed to the Michigan Supreme Court.

Decision. The Supreme Court of Michigan reversed the lower court's decision and held that the Court of Appeals was in error in assessing damages jointly against the MHSAA and its legal counsel for bringing a vexation appeal. The court also ruled that the regulation of the athletic association authorizing penalties against schools and athletes for participating in interscholastic competition where a student is ineligible to participate but does so as a result of a restraining order, is a valid regulation that neither infringes authority of the courts nor improperly restricts access to the judicial system.

Discussion. This court affirmed that the MHSAA had a reasonable basis for believing that there was a meritorious issue to be determined on appeal. The Supreme Court of Michigan had never ruled on this issue. Little relevant

case law existed from any jurisdiction. Chief Justice Cavanagh noted that the closest federal case appeared to assume validity of a similar regulation of the National Collegiate Athletic Association. The Chief Justice further noted that the MHSAA rule assessing penalties to schools and players when a student participates while ineligible under a restraining order was reasonably designed to rectify the competitive inequities that would occur if schools were permitted without penalty to field ineligible athletes under the protection of a restraining order.[29]

Nonschool Participation Eligibility Rules

Most state high school athletic associations have adopted rules relating to "nonschool participation" among its student-athletes. The purpose for such rules are to protect the safety and well-being of athletes. These rules are designed to prevent student-athletes from participation in organized nonschool sports competition while they are members of a school team. A student may participate as an individual, without loss of eligibility, as a member of a National Team or in an Olympic Development Program. The courts have consistently upheld "nonschool participation" eligibility rules as being rationally related to a legitimate purpose of the health, safety, and well-being of its student-athletes.

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[29]467 N.W.2d 23 (Michigan, 1991)

Caso v. New York State Public
High School Athletic Association, Inc.
434 N.Y.S.2d 60 (1980

Facts. In November, 1979, an international gymnastic contest featuring a South African team and individual American gymnasts was held in Reading, Pennsylvania. In mid-October of 1979, Christopher Caso was invited to participate. Initial competition would determine which gymnasts would participate in the state finals in December, 1979 in Oneonta, New York.

On November 15, 1979, Christopher was told by the Chairman of Gymnastics that participation in this "nonschool" competition would render him ineligible for interscholastic competition for the remainder of the year. The Executive Secretary of the Athletic Association also advised Christopher of the possible ineligibility. Christopher participated in the "nonschool" competition instead.

Christopher and his parents filed suit arguing that the New York State Public High School Athletic Association lacked jurisdiction to prohibit his participation as an individual in an "outside competition" event. He also claimed that the athletic associations' actions in penalizing Christopher harmed his good and reputation, and thus jeopardized his "liberty interest" under the due process clause of the Federal and State Constitution. The further argued that the athletic association imposed a

sanction without notice or an opportunity for a due process hearing, and violated the equal protection clause of the State Constitution since no rational basis existed for distinctions made by a "nonschool" competition rule among various classes of sports.

The state athletic association argued that its "outside competition" rule had existed for unchanged for over 55 years. The Onandaga Supreme Court denied relief and an appeal was taken to the Supreme Court of the Appellate Division.

Decision. The Supreme Court, Appellate Division, held that (1) the due process clause of the Federal Constitution did not protect Christopher's claimed denial of eligibility under an athletic association rule prohibiting participation in "nonschool" contests during the season, since the question was frivolous and not substantial: (2) participation in interscholastic high school athletics is not a substantial right for state due process purposes unless denial is based on abuse of a student's fundamental rights predicated on a suspect basis; (3) a denial of eligibility did not deny Christopher his state constitutional right of equal protection despite an exemption of some sports from the rule (where there is a rational basis for such an exemption); and (4) no hearing was required either to find violation or to correct a sanction where the rule was unambiguous and mandated

ineligibility for its violation.

Discussion. Justice Schnepp of the Supreme Court noted the "nonschool" competition rule served a rational basis. The New York State Public High School Athletic Association stated the purposes of the rule was:

> (1) to insure that high school athletes participate under safe and healthy conditions;
> (2) promote school and team loyalty by limiting participation to the athlete's team during season;
> (3) avoid overtraining a high school athlete by not permitting participation in more extensive programs than those offered by the school;
> (4) assure that the high school athlete has only one coaching style.[30]

University Interscholastic League v. North Dallas Chamber of Commerce Soccer Association
693 S.W.2d 513 (1985)

Facts. The two minor plaintiffs were high school varsity soccer players who elected to participate in "nonschool" soccer league play in violation of an University Interscholastic League rule prohibiting outside competition. The plaintiffs were declared ineligible to play high school soccer during the 1984-85 season after participation in a nonschool soccer game between the time school started and November 12. Under the Interscholastic League's interpretation of its fall season soccer restriction, any varsity high school player who participates in nonschool soccer, including the leagues operated by the plaintiffs, at any time from the first day of school until November 12 of

[30]App.Div., 434 N.Y.S. 2d 63 (1980)

the same year violates the restriction and loses varsity eligibility for that school year. The restriction places no prohibition upon participation in nonschool soccer competition during the Interscholastic League Soccer Season, or during the summer when school is not in session. The North Dallas Chamber of Commerce Soccer Association, on behalf of two minor students, filed suit in District Court of Dallas County requesting a permanent injunction against the UIL from enforcement of its "nonschool" competition rule. The District Court granted the permanent injunction and UIL appealed to Texas Court of Appeals.

Decision. The Court of Appeals reversed the District Court decision and held that (1) the rule was reasonably related for equal protection purposes to objectives of the rule, which were prevention of competitive advantage and coaching pressure, and encouragement of student athletes to take part in activities other than competitive soccer; (2) the objectives were legitimate state objectives for purposes of equal protection; (3) classification drawn by the rule (students who played varsity soccer the previous year and who also played nonschool soccer as contrasted with students who played nonschool soccer but who did not play varsity soccer the previous year), was reasonable for equal protection purposes in light of the rule's objective; (4) minor athletes had not been denied equal protection; and (5) no fundamental right protected by the due process clause was

presented.

Discussion. The fall season soccer "nonschool" participation rule creates a rather narrow classification which restricts only those students that the evidence shows are most likely to make the varsity squad. These are also the students who are most likely to be subjected to coaching pressure, one of the evils that the rule is trying to prevent. Students on the school soccer team the previous year are almost certain to be the ones selected for the squad the next year. The court pointed out that these are the students in particular need of a rule which would promote a better, more well-rounded, and more academically oriented education. Enforcement of the "nonschool" participation rule would give students more time for other activities during the two-month period prior to the beginning of the soccer season.

The rule also is reasonably related to the objective of preventing a competitive advantage to the school teams whose members also play club soccer.

Eastern New York Youth Soccer Association v. New York State Public High School Athletic Association
488 N.Y.S.2d 293 (1985)

Facts. This controversy arose out of the New York State Public High School Athletic Association "nonschool" competition rule, whose amended version was the subject of this dispute. It prohibited, under threat of loss of

eligibility, a student's participation in several nonschool athletic contests once the student had participated in the first interschool contest of any of the association's sports (including soccer). Challenge of the rule comes from Eastern New York Youth Soccer Association, a corporation comprised of soccer clubs which provide training and competition to children from 5 to 18 years of age, the Board of Education of the Half Hollow Hills Central School District, and soccer students and their parents. The petitioners urge that the "nonschool" competition rule, either as originally written or amended, unconstitutionally interferes with parental rights to control the upbringing of their children, including the right to determine whether the children can physically and academically contend with participation in school and nonschool athletic competition. The Supreme Court of Albany County ruled that the outside competition rule was arbitrary and capricious as applied to outside soccer competition in violation of the First, Ninth, and Fourteenth Amendments of the United States Constitution. The state athletic association appealed.

Decision. The Supreme Court, Appellate Division, reversed the lower court decision and held that (1) the outside competition rule did not interfere with parental privacy rights; (2) the outside competition rule was rationally related to a legitimate concern that students not overtax themselves; and (3) the outside competition rule was

not a violation of equal protection.

Discussion. The court noted that it could find no merit in the petitioners' contention that the rule was in violation of equal protection because it does not cover all sports. No suspect class was involved in this case. The school district (a challenger to the rule) which was a member of the state athletic association could have withdrew from the association, thus freeing itself from conformity with the "nonschool" competition rule.

Zuments v. Colorado High School Activities Association
737 P.2d 1113 (1987)

Facts. This case involved five student-athletes enrolled in various Colorado public high schools who participated in interscholastic swimming at their respective high schools. Each of the five student-athletes participated in "nonschool" swimming contests, thereby making them ineligible to compete on the school team. Upon notification of their ineligibility, the plaintiffs, filed suit claiming the outside competition rule violated their rights to freedom of association, due process of law, and equal protection of the laws under the United States and Colorado Constitutions. They sought a preliminary injunction prohibiting its enforcement. The rule reads:

> Players certified to participate as members of any high school sport may not compete on any other team, nor in any non-school activity or event in that sport during that sports season.....

> Any player who does so participate in violation of this rule shall not be eligible to participate in a specific or all interscholastic athletic activities for a period of time to be determined by the CHSAA Commissioner.[31]

The District Court of Arapahoe County granted preliminary injunction to the students. The association appealed.

Decision. The Court of Appeals reversed the District Court decision and held that (1) enforcement of the "nonschool" competition rule by the association was not arbitrary, capricious or haphazard, and did not violate the students' equal protection; (2) the "nonschool" competition rule, which generally prohibited students who practiced with nonschool teams from competing in interscholastic athletics, did not impermissibly burden students' constitutional right of free association; and (3) the rule rationally furthered legitimate state purposes, so as not to violate students' right to equal protection.

Discussion. A provision in the CHSAA by-laws allowed for waivers of this rule should the student-athlete wish to compete in international competition, or if an athlete had qualified and received invitations to try out for national teams recognized by the Olympic Committee as a means of qualifying for membership on Olympic teams. To avoid repeated mistakes, the CHSAA consulted the Olympic Committee to make sure which meets qualified under the rule. Evidence

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[31]CHSAA Athletic By-Law, Section 6.

showed that waivers were granted during the season for one meet only. All other requests were denied. Waivers were uniformly granted to all applicants. As a result of this evidence, the court held that there was nothing arbitrary or capricious about the way the waiver provision was applied.

Burrows v. Ohio High School Athletic Association
712 F.Supp. 620 (1988)

Facts. The plaintiffs, Burrows, Hetman, and Mahoney attended high schools in Montgomery County, Ohio. The high schools are members of OHSAA. Each of the plaintiffs participated in interscholastic soccer for his respective school in the fall, 1987 soccer season. OHSAA regulations state that a member of the soccer squad may not participate in independent soccer during the school year following participation as a member of the school squad. Prior to November 1, 1987, OHSAA rule on "nonschool" competition provided an exception and held that squad members would be permitted, without loss of eligibility, to participate through training or competition, in an Olympic Development Program of a sport if the program was conducted or sponsored by the United States Olympic Committee. The plaintiffs played on Ohio South Youth Soccer Association teams, which were recognized Olympic Development Programs, in the spring season. In October, 1987, OHSAA amended the rule and provided that the Commissioner of OHSAA could grant exceptions to the rule. The plaintiff organizations

interpreted the "nonschool" participation rule as providing an exception to the eligibility requirements for all interscholastic student soccer players participating in independent soccer programs.

The plaintiffs were declared ineligible for interscholastic competition and requested that the OHSAA be enjoined from enforcement of the "nonschool" competition rule. Each plaintiff claimed the rule violated their right to associate as guaranteed by the First and Fourteenth Amendments to the United States Constitution, and that the rule was overly broad and vague. They further claimed enforcement of the rule violated their right to due process and equal protection. The United States District Court ruled on behalf of the OHSAA. The plaintiffs appealed.

Decision. The United States Court of Appeals affirmed the United States District Court decision and held that (1) the action of OHSAA in amending the "nonschool" competition by-law does not violate federal civil rights; (2) the by-law does not violate the plaintiffs First Amendment rights of association; (3) the by-law change does not violate the plaintiffs equal protection rights; and (4) the by-law change does not violate supremacy clause, by coming into conflict with the Amateur Sports Act.

Discussion. OHSAA notes that all students are free to elect independent soccer if they so desire at the expense of forfeiting their eligibility to play interscholastic soccer

and that the limitation does not discourage full development of Olympic caliber athletes. The court agreed with this position. This change in OHSAA by-law regarding "nonschool" participation balances the well-being of the student-athlete with support of the Olympic Development Program.

Academic Eligibility Rules (No Pass/No Play)

To assure that a student-athlete will maintain adequate academic performance, many states have adopted academic standards governing eligibility for participation in interscholastic athletics and other extracurricular activities. The reasons for a recent increase in minimum academic standards has been to ensure that student-athletes are making sufficient progress through high school and that they are prepared to meet college entrance requirements.

In 1985, the Texas legislature passed a "No pass/No play" eligibility rule that required students involved in extracurricular activities to maintain at least a 70 average in all courses to retain eligibility. Many school systems across the United States have adopted similar requirements. The courts have upheld "No pass/No play" rules primarily because students have no right or property interest in participating in extracurricular activities. Courts have held that participation is a privilege that may be granted or withdrawn at anytime by school authorities.

The courts have also upheld a requirement that students

participating in extracurricular activities must maintain a 2.00, or "C" average, that is, something more than just pass. A "C" average is a common thread to many "No pass/No play" rules. For example, the Greensboro City Schools require a student to pass all courses taken, achieve a 2.00 grade point average calculated from all courses, and have a "C" or better in at least two core courses to be eligible for participation in extracurricular activities.

The courts have refused to distinguish between various minimum academic requirements. Schools may also flank a "No pass/No play" rule with a rule which prevents a student from making up work after the end of a semester for the purpose of regaining eligibility. Such a rule encourages a student to study so that he or she can pass courses when first taken.

Myles v. Board of Education of the County of Kanawha
321 S.E.2d 302 (1984)

Facts. On October 24, 1983, the Kanawha County Board of Education adopted a new policy governing academic and attendance requirements for participation in extracurricular activities. The effective date of this new policy was the end of the first semester of the 1983-84 school year. This new policy is similar to the new State Board policy with one important exception. The Kanawha County Board of Education rule prohibits a student from participation in extracurricular activities when obtaining a failing grade in

any course.

The appellant, Rodney Myles, a student at St. Albans High School participated in interscholastic athletics as a member of the school's basketball team. Although he maintained a 2.0 grade point average as required by the State Board, he received a failing grade in English. This one failure made him ineligible for participation in extracurricular activities under the "No pass/No play" requirement.

In January of 1984, the appellant, through his mother, filed a petition for injunctive relief in the Circuit Court of Kanawha County. He claimed the action by the Kanawha County Board of Education in declaring Rodney ineligible under the "No pass/No play" rule constituted a denial of equal protection under the Fourteenth Amendment to the United States Constitution and that the rule violated his procedural and substantive due process rights under the Fourteenth Amendment and Article III of the West Virginia Constitution. He further argued that even if he was entitled to an administrative review of the board's hearing, such review could not be completed in time to prevent the irreparable harm that would occur if he was unable to play basketball.

A hearing was held in Circuit Court of Kanawha County. After the hearing, the court denied the request for a temporary injunction because it felt the "No pass/No play"

rule was a reasonable exercise of authority by the Kanawha Board under West Virginia Code 18-2-25. The court dismissed this petition. Rodney Myles filed a second petition in the County Circuit Court. Several key issues were raised by Myles. First, he contended that the "No pass/No play" rule violated his procedural and substantive due process rights under the federal and state constitutions. Second, he claimed that West Virginia Code 18-2-25 violated his rights to equal protection and to a thorough and efficient education under federal and state constitutions. Third, he argued that West Virginia Code 18-2-25 violated the state constitutional provision against special legislation. Finally, he claimed that exclusive authority to adopt and enforce academic eligibility requirements for extracurricular activity participation vests with the State Board of Education, not the county boards of education.

Decision. The West Virginia Supreme Court of Appeals affirmed the Circuit Court decision and held that (1) the Kanawha County Board of Education "No pass/No play" rule was a legitimate exercise of its statutory power; (2) the rule does not violate Myles' rights to procedural and substantive due process; (3) the rule does not violate Myles' rights to equal protection; and (4) the rule does not violate constitutional prohibition against special laws or interfere with the West Virginia State Board of Education in establishing educational policy.

Discussion. The encouragement of academic excellence is a legitimate goal of the Kanawha County Board of Education. The regulation of extracurricular activities is a common method of achieving this goal. Local and State Boards of Education have academic achievement standards as a prerequisite to participation in extracurricular activities, particularly in interscholastic athletics.

Since the NCAA has adopted a 2.000 grade point average for athletic participation, many school systems across the United States have raised its academic requirements for competition also. The County Board's purpose for a "No pass/No play" rule was to promote academic excellence within the school system. Because the Kanawha County Board of Education's "No pass/No play" rule bears a rational relationship to a legitimate purpose and is not arbitrary or discriminatory, it meets the due process standards under the West Virginia Constitution.

Spring Branch I.S.D. v. Stamos
695 S.W.2d 556 (1985)

Facts. A suit was brought on behalf of several students seeking a permanent injunction against the enforcement of Texas "No pass/No play" rule by the Spring Branch and Alief Independent School Districts. The Texas Education Code requires students to maintain at least a "70" average in all courses to be eligible for participation in extracurricular activities.

Chris Stamos and others alleged that the "No pass/No play" rule was unconstitutional because it deprived students of the right to participate in extracurricular activities. They further argued that the rule was applied inequitably because it did not affect students who did not take part in extracurricular activities but who failed one or more courses.

A Houston, Texas district judge decided that the rule was unconstitutional and enjoined its enforcement against two high school baseball players. As a result of the injunction, the two players participated in a state playoff game and their team won. Parents of the students on the losing team filed a lawsuit claiming the game was unfair because the other team was allowed to use players with failing grades. Another district judge held the rule to be constitutional. As a result of the controversy arising from the conflicting decisions, the Attorney General asked the Texas Supreme Court to intervene and make a ruling.

Decision. The court began by asking two questions. First, Does the "No pass/No play" rule infringe on any fundamental right or interest of the students? Second, Are students who fail the "No pass/No play" standard an inherently "suspect" class? A yes on either question would result in the rule failing under the "strict scrutiny" test of constitutionality.

The Texas Supreme Court ruled that the right to

participate in extracurricular activities was not a fundamental right and does not rise to the same level as the right to free speech and free exercise of religion. The court also held that students who failed to maintain the "70" minimum score in all classes did not constitute a "suspect class," even though the rule classifies students based on their academic achievement.

Although the rule was not subject to strict scrutiny under the state's equal protection clause, the court held the rule was rationally related to a legitimate state interest in providing quality education to Texas students. Justice Ray stated:

> The rule provides a strong incentive for students wishing to participate in extracurricular activities to maintain minimum levels of performance in all their classes. In view of the rule's objective to promote improved classroom performance, we find the rule to be rationally related to a legitimate state interest in providing a quality education.[32]

The court held that procedural due process rights of Texas students were not violated by the "No pass/No play" rule. Neither state nor federal due process guarantees protected students' interest in participating in extracurricular activities. Also, since students lacked any constitutionally protected interest in extracurricular activity participation, the rule did not violate substantive

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[32]695 S.W.2d 559 (1985)

due process by giving principals discretion to determine whether students who failed honors courses can be allowed to participate in extracurricular activities.

Discussion. The reaction to the decision varied among the citizens of Texas. Some people believe that adoption of eligibility standards should be a matter of local control. Others think the decision represents the establishment of academics as a priority in schools.[33] The sole issue before the court was the constitutionality of the "No pass/No play" rule. The burden is on the party attacking the constitutionality of a legislative act. There is a presumption in favor of the constitutionality of a legislative act. The court affirmed in this case that students do not possess constitutionally protected interest in their participation in extracurricular activities.

Texas Education Agency v. Anthony
700 S.W. 192 (1985)

Facts. This case arose from the discovery phase of the litigation over the "No pass/No play" rule. In 1985, Judge Anthony signed an order directing more than one thousand public school districts in Texas to provide detailed statistical information to the Texas Education Agency concerning the racial backgrounds of students declared ineligible for extracurricular activities under Texas "No

[33]Thomas J. Flygare, "Texas Supreme Court Upholds 'No Pass/No Play' Rule," September 1985, p.71.

pass/No play" rule based upon academic performance of the initial grading period for the 1985-86 school year.

Decision. The Supreme Court of Texas ruled that Judge Anthony's order was unenforceable where it was issued without any prior notice to nonparty school districts.

Discussion. Texas law permits a trial court to order a nonparty to produce documents and tangible things for inspection in the course of a pretrial discovery.[34] The rule, however, requires such an order be made only after a notice and hearing. The purpose of a hearing is to allow all parties an opportunity to give any objections. The nonparty school districts were not provided with a notice and hearing.

Andrews v. Independent School District
No. 29 of Cleveland County
737 P.2d 929 (1987)

Facts. The Norman Public School Board of Education published a notice that, as part of their agenda for the regularly scheduled meeting, the superintendent would make his report and recommendations concerning an increase in academic requirements. Among the recommendations was that requirements for graduation be increased, along with the academic requirements for participation in extracurricular activities. The new requirements for extracurricular activity participation would mandate that students receive

[34]700 S.W.2d (Texas Circ.App., 1985)

passing grades in all courses, have a 2.00 grade point average, and have no more than one D, the previous nine-week grading period. The new standards would give students a chance to overcome a low second nine-week grade. Students could already improve fourth nine-week grades by attending summer school.

This appeal arose from an action filed by the parents of Norman Oklahoma Public School District seeking a permanent injunction enjoining the enforcement of a "No pass/No play" policy, which would increase the academic standards for participation in extracurricular activities. The District Court entered summary judgement for the school district and the parents appealed. In an attempt to prohibit the enforcement of the "No-F" and "2.00 GPA" policy, the appellants argued that the school board had violated the Open Meeting Act by its failure to give notice that the issue of increasing academic requirements for participation in extracurricular activities would be discussed at the board meeting. They also claimed the committee which prepared the new requirements had decision-making authority.

Decision. Chief Justice Doolin of the Oklahoma Supreme Court ruled that the agenda published for the school board meeting informing the public that the superintendent would present his report and recommendations concerning an increase in academic requirements did not violate the Open

Meeting Act, even though the issue of increased academic requirements for extracurricular activity participation was not specified. The agenda satisfied the notice requirements of the Open Meeting Act, particularly where the agenda of four subsequent meetings clearly gave notice in plain language sufficient to be comprehended by a person of ordinary intelligence that the proposed increase in the academic requirements for participation in extracurricular activities would be presented and discussed.

The court further held that a school board of education committee which prepared the new guidelines had no decision-making authority, and therefore was not required to hold open meetings.

Discussion. The committee which prepared the new increased academic standards presented to the school board in a June meeting the proposed eligibility requirements for extracurricular activity participation. Thereafter, public meetings were held in June and July to discuss the new guidelines. The July agenda specified that the board would hear discussion from patrons of the district on the recommended guidelines for eligibility. Two changes in the guidelines were incorporated at a July meeting. A final hearing was held in August of 1983, at which time the full board approved the new standards.

Spring Branch I.S.D. v. Reynolds
764 S.W.2d 16 (1988)

Facts. Jordan Reynolds was declared ineligible for participation in interscholastic high school track and field competition under Texas Education Code 21.920., the "No pass/No play" statute, because he failed a course during the six week period ending March 6, 1987. A temporary injunction was ordered immediately to enjoin the appellants (Spring Branch I.S.D. and University Interscholastic League) from preventing appellee Jordan Reynolds from participating in track and field competition. The injunction was ordered on the grounds that (1) Jordan Reynolds did not receive a notice of his failing grade halfway through the grading period, which violated 19 Texas Administrative Code Section 97.113(1); and (2) under the facts of this particularly case, track and field was a "cocurricular", not an "extracurricular" activity, as defined in 19 Texas Administrative Code Section 97.113(m), and therefore was not covered by the "No pass/No play" provisions of Section 21.920.[35]

District Court Judge Frank White allowed Reynolds to compete in the University Interscholastic League state track championship, winning a second-place medal. He graduated and entered college on a track scholarship. Reynolds argued that the case was moot because he had graduated and the temporary injunction had expired. The appellants claimed that the case should not be dismissed because (1) the issues

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[35]764 S.W.2d 17 (Texas App.-Houston, 1st Dist., 1988)

involved were "capable of repetition, yet evading review"; (2) the "collateral consequences" exception to the mootness doctrine was applicable in this case; (3) a real controversy still existed in relation to Reynolds second-place medal, and those given to lower ranking competitors, would be reallocated to other contestants if the temporary injunction is set aside.[36]

Decision. Justice Cohen of the Texas Court of Appeals held that Jordan Reynold's graduation and participation in the track and field competition rendered the case moot. The court further disagreed with the appellants claim that this case meets the test for application of the "capable of repetition, yet evading review" exception. Justice Cohen held that the appellee did not attack section 21.920. ("No pass/No play"), but actually challenged the Spring Branch Independent School District's interpretation of TEA's Administrative procedure for implementation of the "No pass/No play" statute.

Discussion. Courts generally avoid rendering advisory opinions in cases where no actual controversy exists at the time of the hearing. Although the appellants (Spring Branch I.S.D./University Interscholastic League argued vehemently that a controversy did still exist, Justice Cohen disagreed. The Texas Court of Appeals have no authority to render advisory opinions. Thus, a decision in this case would have

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[36]Ibid.

been merely advisory, since Jordan Reynolds had already participated and was no longer a student. According to the court, prohibiting him from participation after already graduating is absurd.

Justice Cohen noted that this case was unique because the governmental agency that sought relief on appeal had the power to avoid both repetition and a need for review by changing the rules that it claimed had been misinterpreted.

Stone v. Kansas State High School Activities Association
761 P.2d 1255 (1988)

Facts. The Kansas State High School Activities Association (KSHSAA) appealed from a preliminary injunction enjoining the enforcement of its eligibility rules. Following the spring semester of 1987, Lance Stone, a student at Tonagonoxie High School, was declared ineligible to play football during the fall 1987 semester. Although he later made up his academic deficiency, a KSHSAA rule prevented him from regaining his eligibility. The "no-makeup" rule is closely tied to most "No pass/No play" rules across the United States. Stone challenged the "no-makeup" rule on grounds that it violated the due process and equal protection clause. Stone also argued that another student at Eudora High School had been declared eligible, even though that student had made up failed work in summer school before transferring to Kansas from Iowa. Unlike Kansas, Iowa permitted make-up work. The transferring student would

have been eligible in Iowa. He was declared eligible under a KSHSAA rule providing that a transfer student may become eligible if he would have been eligible under similar rules in the state from which he transferred.

Stone sought a preliminary injunction enjoining the Kansas State High School Activities Associations' enforcement of the "no make-up" rule. The District Court granted the injunction, holding that the "no make-up" rule was unreasonable and denied Stone due process and equal protection as guaranteed by the United States Constitution. The KSHSAA appealed claiming that the District Court abused its discretion in granting the injunction.

Decision. The Kansas Court of Appeals reversed the decision of the District Court and held that the rule prohibiting high school students from making up failed classes to regain academic eligibility was constitutional. The court ruled that the case would not be dismissed as moot, since similar actions were likely and the challenge was important to students and school systems across the state.

The Court of Appeals further held that an interscholastic athletic association rule prohibiting academically ineligible high school students from making up required classes does not violate a students' due process rights, since the rule was rationally related to the objective of encouraging students to pass classes when first

taken. The court noted that a rule treating different classes of people differently does not violate equal protection when the classification has a rational basis and is not based on suspect category. In response to Stone's assertion that he was treated unequally in light of another student's eligibility under transfer rules, the court held that the "no make-up" rule does not deny equal protection to nontransfer students because the rule has a rational basis.

Discussion. The court noted in this case that a student may challenge KSHSAA rules on due process and equal protection grounds since KSHSAA acts as a governmental entity. When a private association (i.e. KSHSAA) exercises substantial control over the public schools of a state as a result of its exclusive recognition by the legislature, it acts, in effect, as a government body. Its rules are subject to the same constitutional scrutiny that would apply had these rules been adopted by the legislature or school districts of the state. The "no make-up" rule is reasonable and in the interest of the community. Therefore, no due process and equal protection rights are involved.

Participation in extracurricular activities is not a fundamental right. Since a fundamental right is not involved in this case, a test of due process is whether the legislative means selected has a relation to the object sought or whether the rule is reasonable and a legitimate interest of a community. The KSHSAA provided adequate

justification for its "no make-up" rule.

Texas Education Agency v. Dallas Independent School District
797 S.W.2d 367 (1990)

Facts. Controversy arose during the 1988 University Interscholastic League 5-A State Football Championship. An anonymous tip was given the Texas Education Agency that David Carter High School, within the Dallas Independent School District, was using two football players who were ineligible under the "No pass/No play" Texas law. The Texas Education Agency investigated the claim and found the two football players were indeed ineligible because of receiving failing grades. The superintendent and principal of the Dallas Independent School District then conducted his own investigation. They concluded that the grades in question were incorrect and the two students were in fact eligible. The deputy commissioner of education reviewed the dispute at the request of school officials and agreed with its findings.

The Plano Independent School District, whose football team lost to David Carter High School, appealed the decision of the deputy commissioner of education to the state commissioner of education, Dr. William Kirby. Dr. Kirby investigated and concluded that at least one football player had failed a course. He declared the entire David Carter High School team ineligible. The Dallas Independent School District filed suit against the Texas Education Agency

seeking an order enjoining the appellants from interfering with David Carter High School's participation in the 1988 championship football game. The District Court, Travis County, granted a permanent injunction, eleven months after the championship game. The injunction prohibited the disqualification of David Carter High School from "the rights and privileges associated with participation in the 1988 University Interscholastic League Class 5-A State Football Championship."[37] David Carter High School won the championship.

The Texas Education Agency appealed the permanent injunction, claiming the trial court should have reviewed the commissioner of education's decision under the substantial evidence standard. It further argued that the state commissioner of education does not have the authority to decide whether a student is eligible to participate in extracurricular activities.

Decision. The Austin,Texas Court of Appeals ruled that the Texas Education Agency's appeal from the injunction prohibiting it from disqualifying David Carter High School from the "rights and privileges associated with their participation in the state football championship" was moot since the championship had long since passed.

Discussion. There are two exceptions that confer jurisdictions regardless of mootness: (1) the capable of

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[37]797 S.W.2d 369 (Texas App.-Austin, 1990)

repetition, yet evading review exception; and (2) the collateral consequences doctrine.[38] Neither of these exceptions applied in this case. The Court of Appeals refused to consider the issues raised in their brief because it would constitute an impermissible advisory opinion on an abstract question of law. As a result of this case, the Texas State Legislature amended Section 21.920. of the Education Code to eliminate review of the state commissioner of education's determination of a student's eligibility to participate in extracurricular activities.

Texas Education Agency v. Stamos
817 S.W.2d 378 (1991)

Facts. Several key events occurred relative to the Texas "No pass/No play" rule between the time that the Texas Supreme Court stayed the temporary injunction in Spring Branch I.S.D. v. Stamos and the time it issued its opinion. Nolan A., a third grade learning disabled (dyslexic) student, entered the suit as a party plaintiff. He complained about the Houston Independent School District's enforcement of the "No pass/No play" statute in the spring of 1985 which excluded him from receiving a trip to Astroworld for perfect attendance. At the same time, the Texas State Legislature amended the statute (Education Code 21.920) to include a new section relating to handicapped

[38]Ibid.

students' ability to meet regular academic standards. Nolan A. had failed one special education course and one regular education course. The plaintiffs amended their petition before the Supreme Court alleging that the rule violated federal law applicable to handicapped persons. The plaintiffs argued that the statute, as amended, discriminated against Nolan A. and the handicapped students he represented.

The plaintiffs sought to have Texas Education Agency enjoined from enforcing Texas Education Code 21.920 ("No pass/No play" statute). They requested that Nolan A. be free to compete in the future for the perfect attendance prize and that a trip to Astroworld be given for every handicapped child that had a perfect attendance record but was denied the trip as a result of enforcement of Texas "No pass/No play" statute.

District Court, Harris County, issued an order holding the "No pass/No play" statute unconstitutional and enjoining its enforcement. The Attorney General appealed to the Supreme Court. The Supreme Court reversed the decision. The plaintiffs then amended their petition to claim the "No pass/No play" statute violated federal law as applied to handicapped persons and discriminated against minority persons. The District Court denied relief and the plaintiffs appealed.

Decision. The Texas Court of Appeals affirmed the

District Court decision and held that the parents of the handicapped child (Nolan A.), denied an opportunity to participate in extracurricular activities as a result of not passing a special education class, were required to exhaust administrative solutions under the Education of the Handicapped Act before they could bring action challenging the "No pass/No play" statute. The court further held that the provision of "No pass/No play" statute prohibiting handicapped students from participating in extracurricular activities upon failing to meet the requirements of their individual education program does not violate due process or equal protection clauses of the Texas Constitution. In addition, the district court held that the statute does not burden a suspect class and that classification was rationally related to the state's legitimate interest in providing a quality education for its children.

Discussion. A central issue in this case was the extent that the "No pass/No play" statute impacted minority groups. Several experts argued that any Texas law or rule using solely academic criteria for continued participation in extracurricular activities have a disproportionate impact on black and Mexican American students and increase their drop-out rate. Experts further asserted that the "No pass/No play" rule was counter productive to its intended purpose. Numerous governmental reports were read indicating a link between participation in extracurricular activities with

improved grade performance and lower dropout rate among active participants. Supporters viewed the ruling as reaffirming the state legislature's intent of placing academics in proper place in Texas schools, yet still having provisions addressing the needs of handicapped students.

Minimum Grade Point Average Eligibility Rules

Bailey v. Truby
321 S.E.2d 302 (1984)

Facts. This case involved a writ of mandamus by the Wood County Board of Education, and its individual members, to compel the withdrawal of a rule made by the State Board of Education requiring students to maintain a 2.00, or "C", grade point average to participate in extracurricular activities. The Wood County Board of Education voted unanimously not to implement the new State Board of Education "C" average policy for extracurricular activity participation because of its concerns about the merits of the new policy and whether the state board has authority to supersede local authority in regulating extracurricular activities. Roy Truby, State Superintendent of Schools, sent a memorandum to all school systems reminding them of the new academic eligibility standards. The Wood County Board of Education claimed that the State Board of Education lacked statutory authority to adopt the 2.00 GPA policy.

West Virginia state statute specifically gives authority to local boards of education to regulate athletics and other extracurricular activities in its schools. Secondary school principals were directed by the local school board not to implement the new standard. The Wood County Board of Education petitioned seeking a ruling from the court as to who has legal authority to adopt and enforce the new academic eligibility policy.

Decision. The West Virginia Supreme Court of Appeals affirmed the Kanawha District Court decision and held that the State Board of Education rule requiring students to maintain a 2.00 grade point average to participate in nonacademic extracurricular activities was a legitimate exercise of its "general supervision" power over the educational system pursuant to the state constitution. The court further held that the rule was rationally related to the state goal of furthering academic excellence of its students. The writ of mandamus was denied.

Discussion. West Virginia County Boards of Education cannot exclude students, on basis of grade point average, from such activities as vocational, theatrical, musical, journalistic, linguistic, or other related activities because they so closely relate and complement academic courses of study. Only nonacademic, or extracurricular, activities are affected by the State Board of Education 2.00 grade point average requirement. The Wood County Board of

Education argued the legal authority to control extracurricular activities belonged to them and not the State Board of Education. The State Board has the responsibility for the "general supervision" of the state's educational system and to make sure that constitutionally mandated educational goals of quality are achieved. The 2.00 grade point average requirement for extracurricular activity participation was one method developed to further educational quality in the West Virginia schools. Many state and local boards of education have found that the regulation of nonacademic activities is one method of achieving excellence in the classroom.

Truby v. Broadwater
332 S.E.2d 284 (1985)

Facts. Chance Taylor was a tenth grade student at Wheeling Park High School and a member of the school's wrestling team. His grade point average fell below the 2.00 level required for participation in nonacademic extracurricular activities under the West Virginia State Board of Education "C" average policy. Taylor petitioned the Circuit Court of Ohio County in February, 1985 for an injunction prohibiting the enforcement of the "C" average rule against him and others similarly situated. Following the petitioners'(Dr. Roy Truby, State Superintendent of Schools, and West Virginia State Board of Education) motion for dismissal, the Circuit Court partially dissolved the

injunctions as to "all other similarly situated individuals." The preliminary injunction was allowed, however, to remain in effect for Chance Taylor.

The State Superintendent of Schools and the State Board of Education appealed to the West Virginia Supreme Court of Appeals. They sought a writ of prohibition prohibiting the enforcement of an injunction issued by the Circuit Court.

Decision. Justice McGraw of the Supreme Court of Appeals held that Chance Taylor challenging grades, which were the basis for declaration that he was ineligible for participation in nonacademic extracurricular activities under the State Board of Education's "C-average policy," had procedure available permitting a challenge at the county school board level with subsequent appeals before the State Board of Education and the Circuit Court. Therefore, the trial court abused its discretion in issuing an injunction restraining the enforcement of the "C-average policy" against Chance Taylor. The petition for writ of prohibition was granted with directions to the Circuit Court to dissolve completely the preliminary injunction.

Discussion. Since participation in interscholastic athletics, or other nonacademic extracurricular activities, do not rise to the level of a constitutionally protected property or liberty interest, there is no entitlement to any procedural due process protection. A student who wishes to challenge determination of ineligibility for extracurricular

activities based upon a failure to maintain a 2.00 grade point average may do so only by challenging either the grades upon which such an average was calculated or the calculation itself.

State of Montana, ex rel., Bartmess v. Board of Trustees of School District No. 1
726 P.2d 801 (1986)

Facts. This case is an appeal of a summary judgement of the District Court for Lewis and Clark County, which upheld the requirement that Helena High School students participating in extracurricular activities must maintain a 2.00 grade point average. The main issue before the Montana Supreme Court was whether the District Court erred as a matter of law in holding that participation in existing extracurricular activities is not a fundamental right under the United States and Montana Constitutions. Relators in this case was the citizens and tax payers of Lewis and Clark County and parents of students enrolled in the two Helena High Schools. They object to the "C-average policy," adopted by the Board of Trustees of School District No. 1. The policy required students to maintain a 2.00, or "C", grade point average for the preceding nine-weeks to participate in extracurricular activities the following nine-week grading period. The "2.00 rule" does not apply to special education students or students with learning

disabilities.

The Helena High Schools are members of the Montana High School Association. The MHSA requires a 1.0, or "D", grade point average for extracurricular activity participation. Its regulation, as in most other state athletic/activity associations, allow local school districts to adopt more stringent standards for athletic/activity participation. The Board of Trustees of School District No. 1 adopted a 2.00 grade point average as an incentive for students who desire to participate in extracurricular activities.

The Relators brought an action in District Court requesting injunctive relief and a declaratory judgement that the "2.00 rule" was unconstitutional. The complaint alleged violation of the equal protection and equal educational opportunity clauses of the Montana Constitution. The District Court found the rule to be reasonable, fair, and constitutional. The Relators appealed to the Montana Supreme Court.

Decision. Justice Weber of the Montana Supreme Court affirmed the District Court decision and held that participation in extracurricular activities is not a fundamental right under the State or Federal Constitution. The court further ruled that the "2.00 grade point average" rule operates as an incentive for students desiring to participate in extracurricular activities and is not violative of equal protection and equal educational

opportunity concepts. The court found that the "C-average" requirement provides an appropriate incentive for improved student academic performance. The rule also serves the government interests in developing the full educational potential of each person, which outweighs the students' interest in participating in existing extracurricular activities.[39]

Discussion. A middle-tier constitutional analysis must be applied in determining whether a grade point average requirement is violative of a students' right to participation in existing extracurricular activities.[40] This analysis requires a balance of the rights infringed and the governmental interest to be served by such infringement. The "2.00" rule for extracurricular activity participation is a higher standard than the "1.0" grade point average required for graduation from Helena High Schools.

Although school board officials admit that the "2.00" policy was not based on any research showing academic improvement as a result of the rule, the Supreme Court noted that there can be no denial that the rule provides an incentive for students, and thus, is reasonable.

Rousselle v. Plaquemines Parish School District
527 So.2d 377 (1988)

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[39]James A. Rapp, Educational Law, Vol.2 (Matthew Bender and Company, 1991).

[40]U.S.C.A. Constitution Amendment, 14.

Facts. Dani Leigh Rousselle was prohibited from cheerleader tryouts at Belle Chasse High School for not maintaining a 1.6 grade point average. The student brought suit challenging the constitutionality of the school's minimum grade point average for cheerleader tryouts. The plaintiff, Rousselle, argued that the minimum grade point average violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Louisiana Constitution. The defendants, Plaquemines Parish School District, claimed the minimum grade point average was designed to promote academic excellence.

The Twenty-Fifth Judicial District Court issued a permanent injunction allowing Dani Rousselle to participate in cheerleading tryouts. The Plaquemines Parish School Board appealed to the Louisiana Fourth Circuit Court of Appeal.

Decision. The Louisiana Circuit of Appeal reversed the District Court decision and held that requiring a minimum grade point average of 1.6 to participate in cheerleading tryouts was rationally related to the promotion of academic excellence and does not violate equal protection, even though the school required a lower minimum grade point average of 1.5 for participation in team sports.

Discussion. The Court of Appeals noted that the establishment of a minimum grade point average requirement constituted a proper exercise of a school's right to

supervise the extracurricular activities it sponsors. Courts do not distinguish between various academic requirements (1.6 GPA, 2.0 GPA, "No pass/No play" etc.) present in school districts across the United States when examining legal questions.

The equal protection clause guarantees equal treatment only to those individual's similarly situated. When no fundamental rights are involved, classifications which are not suspect (such as classification between cheerleaders and team sport participants) are allowed if they are rationally related to a legitimate purpose and uniformly applied. A minimum grade point average serves to promote academic excellence (a legitimate purpose).

Thompson v. Fayette County Public Schools
786 S.W.2d 879 (1990)

Facts. This appeal arose from a suit in Fayette Circuit Court alleging that Dwayne Thompson, a student at Tate Creek High School, was wrongfully prohibited from participating in the interscholastic sport of wrestling because of his failure to maintain a satisfactory grade point average. The Fayette County Board of Education policy requires a high school student to maintain a 2.00 grade point average to remain eligible to participate in extracurricular activities. Dwayne Thompson received one B, two C's, and 3 D's for his previous grading period prior to being excluded from wrestling participation. As a result of those grades,

Thompson's grade point average was calculated to be below the 2.00 required by the Fayette County Board of Education. Thompson was declared ineligible until his grade point average improved.

The appellants (Dwayne Thompson and father) claimed that Dwayne's exclusion from the wrestling team constituted a civil rights violation of constitutional dimensions. They sought to establish the existence of a property right with the interscholastic athletic activity. The appellants further argued that the "C-average" policy is unreasonable and arbitrary. The Fayette Circuit Court dismissed the complaint and Thompson's father appealed.

Decision. The Kentucky Court of Appeals held that Dwayne Thompsons's interest in interscholastic wrestling was not a property right and was not among the small set of rights fundamental enough to warrant separate protection under the equal protection clause. Therefore, no constitutionally protected civil rights of Dwayne Thompson were violated by the Fayette County School Board policy which restricts a student's eligibility to participate in interscholastic athletics based on grade point average, where there was no allegation that school officials could or did waive eligibility rules on an ad hoc basis for selected students.

Discussion. The Court of Appeals noted in its decision that the school board was not required to make a hearing

available to a student who was denied participation in interscholastic wrestling because of his grade point average. In this case, the absence of a hearing is supported since Thompson's grade point average was based on his uncontroverted failure to make the 2.00 requirement and not mere allegation. A school board policy to make students ineligible for extracurricular activity participation when their grade point average falls below 2.00 was viewed by this court as reasonable and in the legitimate interest of the school district. A "C-average" rule does not violate the state constitution. Judge Reynolds of the Court of Appeals noted that a specific reference to state law is required to determine the existence of a property right and a legitimate claim of entitlement. According to Brands v. Sheldon Community School, 671 F.Supp. 627 (N.D.Iowa, W.D. 1987), interscholastic activities are only a mere expectation and do not amount to an entitlement.[41]

The appellants tried to distinguish Kentucky High School Athletic Association v. Hopkins County Board of Education, 552 S.W.2d 685 (1972). However, Judge Reynolds noted in this case that there is little distinction, if any, between ineligibility arising from a transfer policy to one for failure to meet academic standards. It was further affirmed by this court that a "2.00" grade point average requirement should be viewed as an impetus for a student to

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[41]786 S.W.2d 881 (Ky. App., 1990)

maintain an acceptable average, just as sports provides a juvenile delinquent with a reason to stay out of trouble.

Summary

It is very difficult to draw specific conclusions from legal research. However, based on an analysis of the cases in recent years, the following general conclusions can be made concerning the legal aspects of "No pass/No play" in high school extracurricular activities:

1. Participation in high school extracurricular activities is a privilege and not a right, even in states with statutes specifying education itself as a right.
2. Students do not possess constitutionally protected interests in their participation in extracurricular activities.
3. Rules requiring students to meet minimum academic requirements for participation in extracurricular activities are rationally related to a legitimate state interest in providing quality education to high school students.
4. Participation in high school extracurricular activities does not rise to the level of a fundamental or constitutional right under federal or state constitutions.
5. Participation in high school extracurricular

activities does not rise to the level of a constitutionally protected "property" or "liberty" interest.

6. Eligibility rules requiring students to receive passing grades in all courses in order to participate in extracurricular activities does not violate the equal protection clause of federal or state constitutions, where classification neither infringes upon individual rights or interests nor burdens an inherently suspect class.

7. Students who fail to meet minimum academic standards for participation in extracurricular activities do not constitute a suspect class for equal protection analysis.

8. An eligibility rule that treats different classes of people differently does not violate equal protection when the classification has a rational basis and is not based on a suspect category.

As noted in the analysis of cases in recent years, no significant changes in the direction of court precedents have occurred. Courts have consistently supported the authority of the states, their agencies, and local boards of education to establish reasonable regulations in the area of extracurricular eligibility.

CHAPTER V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

SUMMARY

There has been a growing concern in recent years over the quality of public education. No-pass/no-play rules or statutes have emerged as one component of educational reform. Greater academic requirements for student participation in extracurricular activities have originated primarily in local school districts, although state legislatures, state boards of education, and state high school athletic/activity associations have also been aggressive at adopting higher eligibility standards. While no-pass/no-play rules vary from state to state, the basic thrust of these rules provides that if a student does not maintain a certain level of academic achievement, he or she will be prohibited from participating in any extracurricular activities for a specified period of time.

Individual's have turned to courts to settle a growing controversy arising from the adoption of no-pass/no-play rules or statutes. Challengers in the courts have attacked no-pass/no-play rules by asserting that the rules violate their constitutional rights. Opponents argue that no-pass/no-play violates the equal protection clause of federal and state constitutions and due process provisions. Courts

have determined that such rules violate neither equal protection nor due process. Courts have further ruled that no-pass/no-play requirements provide an appropriate incentive for students wishing to participate in extracurricular activities and "serves the government interests in developing the full educational potential of each person."

This study was designed to (1) identify the critical legal issues regarding no-pass/no-play rules in high school extracurricular activities that are being adopted by an increasing number of states and school districts across the United States, (2) compile the state statutes and administrative regulations to identify the governmental entity that is legally responsible for the control and regulation of interscholastic athletics and other extracurricular activities, and (3) compile case law on court decisions relative to the adoption of no-pass/no-play rules and other similar major eligibility issues for students wishing to participate in extracurricular activities. The identification and compilation of case law was intended to serve as a resource for state/local school leaders and coaches confronted with legal questions when adopting greater eligibility requirements for student participation in high school extracurricular activities. Provided with a source of information pertaining to the legal aspects of no-pass/no-play, state and local boards of

education would acquire a knowledge of pertinent laws and key legal issues when adopting increased standards for student participation. This knowledge would allow school administrators to adopt no-pass/no-play rules that would withstand legal scrutiny.

Several questions were formulated and listed as a guide for educational and legal research. While the review of the literature considered both educational and judicial issues associated with the legal aspects of no-pass/no-play in high school extracurricular activities, the questions could be answered by reviewing state statutes/administrative regulations and the judicial decisions of key cases. Chapter III and IV provide answers to most of the questions legislators, state or local boards of education, and other educators would need when raising minimum standards for student participation in extracurricular activities.

The first question in the introductory chapter asked what are the critical legal issues related to the development and implementation of no-pass/no-play rules at the state and local levels. A review of the literature and key court cases identified the following legal issues: (1) Is participation in extracurricular activities a right or a privilege? It is clear that extracurricular activity participation does not rise to the level of a fundamental right under the federal constitution. Challengers, however, argue that participation is a right under state

constitutions. While the courts have yet to side with the challengers on this point, controversy still exist primarily because some courts have held education to be a right under their state constitutions and others have not. Challengers argue that extracurricular activities serve an educational purpose and thus should be included under "the right to an education," particularly in states where the courts have held education to be a right under their state constitutions.

(2) Does no-pass/no-play violate due process provisions? The constitutional guarantees of due process is found in the Fifth and Fourteenth Amendments to the United States Constitution. The Fifth Amendment states that "no person shall be deprived of life, liberty, or property without due process of law." The Fourteenth Amendment states "nor shall any state deprive any person of life, liberty, or property without due process of law." Challengers to no-pass/no-play rules maintain that their due process rights are violated primarily through a deprivation of liberty and property.

(3) Do no-pass/no-play rules violate the equal protection clause of federal and state constitutions? Equal protection requires that no person be singled out from similarly situated people, or to have different burdens bestowed, unless a constitutionally permissable reason exists for doing so. Challengers to no-pass/no-play argue that such rules create a "suspect" class and unfairly discriminate

against certain classes of people.

(4) What are the legal boundaries in the governance authority of state athletic/activity associations? There exists some confusion as to whether local and state boards of education can legally give control of interscholastic athletics and other extracurricular activities to a state athletic/activity association.

The second question in the introductory chapter asked what are the state statutes and court decisions relative to the use of academic standards for student participation in interscholastic athletics and other extracurricular activities. The answer to this question is found in Chapter III and IV of this study. A review of the state statutes/administrative regulations and case law provided the following conclusions:

(1) The responsibility of regulating interscholastic athletics and other extracurricular activities belong primarily with state and local boards of education.

(2) Any action taken directly or indirectly by a state or local government entity is considered "state action" for constitutional purposes. Action by a private, voluntary state athletic/activity association can also be construed as state action.

(3) Local school boards of education that allow a state athletic/activity association to determine the eligibility standards for student participation in extracurricular

activities are not legally delegating away its responsibilities to that association since the board can withdraw from membership at any time.

(4) Local boards of education may impose more stringent academic requirements than those adopted by state legislatures or state boards of education.

(5) The courts have consistently recognized student participation in extracurricular activities is a privilege and not a right.

(6) The courts have consistently held that no-pass/no-play rules do not violate a students' procedural due process rights as long as the decision to suspend a student from participation was not made in an arbitrary, capricious, or collusive manner. No-pass/no-play rules do not violate a students' substantive due process rights since such rules serve the purpose of promoting academic excellence.

(7) The courts have held that participation in high school extracurricular activities do not involve a property interest.

(8) The courts have consistently held that academic achievement is a constitutionally permissable basis for classifying students. Therefore, no-pass/no-play rules do not violate the equal protection clause of the Fourteenth Amendment and similar state documents.

(9) The goal of no-pass/no-play rules serves a compelling state interest.

The third question posed in the introductory chapter considered the kinds of issues relative to no-pass/no-play that are currently being litigated. Chapter IV listed court cases and the decisions relative to the legal aspects of no-pass/no-play. Based on the cases cited, the following issues are currently being litigated:

(1) Issues involving constitutional guarantees, or rights, of students,

(2) Issues related to the impact of no-pass/no-play on handicapped children and their academic performance,

(3) Issues involving the governance authority of state high school athletic/activity associations,

(4) Issues involving the identification of the governmental entity with ultimate authority to determine eligibility standards,

The fourth question asked what is revealed in the literature on the issue of no-pass/no-play. The answer to this question is given in Chapter II, Review of Literature, which gave a historical analysis of no-pass/no-play in high school extracurricular activities.

The final question in the introductory chapter asked what legal guidelines could be set forth as a result of this study to aid educators, legislators, and school board members in the development of no-pass/no-play rules. The answer to this question is evident from an analysis of case

law discussed in Chapter IV. Legal guidelines developed from this study include:

(1) No-pass/no-play rules are constitutional since there is a rational connection between classification based on academic performance and a legitimate state interest.

(2) The basic authority to regulate extracurricular activities, especially high school athletics, can be legally delegated to nonprofit, private associations.

(3) Local boards of education can adopt greater eligibility standards than those set by state governmental entities.

(4) Specific eligibility rules may be challenged on constitutional grounds since the actions of state-endorsed athletic/activity associations are considered action by government authorities.

(5) The courts are reluctant to interfere with the regulation of extracurricular activities unless the rules governing student participation are determined to be arbitrary, unreasonable, or discriminatory.

(6) Students are not entitled to any procedural due process provisions since their right to participate in extracurricular activities is not constitutionally protected.

(7) No-pass/no-play rules meet the substantive due process standard since it bears a rational relationship to a legitimate purpose.

(8) Any change in academic eligibility standards must be

clearly stated and publicized to parents and students.

(9) Decisions relating to the actual application of any "waivers" of the academic eligibility standard must be reasonable and not arbitrary.

Conclusions

Even when legal issues appear to be similar to or the same as those in cases already decided by the courts, a different set of circumstances may produce an entirely different decision. Thus, drawing specific conclusions from legal research is difficult. Based on an analysis of judicial decisions, the following general conclusions can be made concerning the legal aspects of no-pass/no-play in high school extracurricular activities.

(1) No-pass/no-play rules or statutes are constitutional and do not violate the rights of students with regard to:

a. due process

b. equal protection under the federal constitution and similar state documents

(2) The courts have determined that the rational-basis standard is the appropriate standard of review when faced with an equal protection challenge relating to no-pass/no-play.

(3) The courts have held that there is a rational basis for believing that a "no-pass/no-play" rule provides students with both incentive and time to study.

(4) Classification based on academic achievement does not constitute a "suspect classification" or infringe upon a "fundamental right". The Supreme Court has been hesitant to expand the list of "suspect classes."

(5) Most state courts have chosen to follow the framework developed by the United States Supreme Court when deciding the merits of a state equal protection challenge to a no-pass/no-play rule.

(6) The courts have consistently held student participation in extracurricular activities is a privilege and not a right.

(7) The courts have held that the authority to regulate extracurricular activities, particularly athletics, may be delegated to nonprofit, private associations.

Recommendations

Based upon the results of this study, the following recommendations are presented:

(1) Every state should adopt clear statutory or administrative provisions addressing the control and regulation of extracurricular activities in its public high schools. At present, nineteen states have no such provisions. The Executive Directors for most of the nineteen state athletic/activity associations have encountered some problems because there exist no such statute or administrative regulation.

(2) Major studies should be conducted to determine the impact of no-pass/no-play rules on student academic achievement. At present, minimal studies have been conducted. This would enable state legislators, board members, and school administrators to have a more clearer understanding as to whether implementation of such requirements would serve a useful purpose.

(3) When no-pass/no-play rules are adopted, procedures should be written that addresses a handicapped students' condition that might impact on his/her academic performance. A no-pass/no-play rule or statute must be written to provide that suspension of a handicapped student whose handicap significantly interferes with his/her ability to meet regular academic standards be based on the student's failure to meet the requirements of his individual education plan.

Recommendations for Further Study

This study was an analysis of state statutes and case law relative to the adoption and implementation of no-pass/no-play rules in high school extracurricular activities. Upon completion of the review of literature and the review of statutes and court cases, four related topics were identified that were not addressed in this study which would provide areas of further study.

The first recommendation for further study would be to determine if a no-pass/no-play requirement would lead to a

greater dropout rate among extracurricular activity participants in a selected school district. This study would be particularly interesting since there is little evidence available to suggest no-pass/no-play has a positive or a negative effect of lowering the dropout rate of activity participants.

The second recommendation for further study would be to determine the impact of no-pass/no-play on class failures and course enrollments. Most discussion of no-pass/no-play has centered around two anticipated outcomes, one positive and one negative. Positively, students were expected to pass more courses to maintain their eligibility. Negatively, students were expected to enroll in fewer high level or honors courses. This study would address two key questions: (1) Did students fail fewer courses under the influence of no-pass/no-play? and (2) Did enrollment decline in honors courses under the influence of no-pass/no-play? Student failures and course selection would be compared among high school activity participants in a chosen school district for a two year period prior to implementation of no-pass/no-play and for two years following its implementation in an effort to determine the impact of no-pass/no-play on student failures and course enrollments.

The third recommendation for further study would be to conduct a qualitative study to determine the relationship between extracurricular activity participation in high

school and career success. A survey of people in management positions would be conducted. Based on their experience, top executives would be asked to give their views on the relationship between participation in extracurricular activities in school with job success later in life. They would also cite common work habits among their workers who participated in school activities and workers that did not participate. This survey would show if there exist any relationship between activity participation and job success.

The fourth topic for further study would be to examine the effects of no-pass/no-play rules on the academic performance of students. Grade point averages of randomly selected students would be compared before and after the adoption of no-pass/no-play to determine the impact of the higher academic requirements on student achievement.

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APPENDIX A

STATE STATUTES RELATIVE TO THE CONTROL AND REGULATION OF INTERSCHOLATIC ATHLETICS AND OTHER EXTRACURRICULAR ACTIVITIES

ALASKA

Section 14.07.058. Alaska School Activities Association.

(a) There is created within the Department of Education the Alaska School Activities Association.

(b) The purposes of the association are to provide for the efficient governing of interscholastic activities through the promotion of those activities and other interschool contests or programs sanctioned by the association and to assist in the promotion of those other activities and interests as it may from time to time elect.

(c) A public or private school or school district in the state may become a member of the association if it applies for membership. The Department of Education shall make applications available to all public or private schools or school districts in the state.

(d) The governing body of the association shall be the board of control with at least one member from each judicial

district on the board of control. A member of the board shall be elected from each regional activities association by the members of that region. The term of office for each member is two years, except that one-half of the members elected to the first elected board shall be elected for one-year terms under regulations prescribed by the commissioner of education.

(e) The board of control in consultation with the department shall appoint an executive secretary and prescribe the duties and fix the salary of that executive secretary. The executive secretary shall serve at the pleasure of the board of control.

(f) Repealed

(g) The Department of Education shall approve the association's constitution and bylaws to ensure that all regions of the state are treated on an equitable basis and in the best interests of the state.

ARIZONA

Section 305-203 Powers and Duties

A. The State Board Shall:

33. Adopt rules governing interscholastic athletic competition including one or more methods to address issues relating to decisions involving forfeiture of interscholastic athletic contests or disqualification from

interscholastic athletic competition.

A. The State Board Shall:

1. Exercise general supervision over and regulate the conduct of the school system.

CALIFORNIA

Section 33354. Authority over Interscholastic Athletics

(a) The State Department of Education shall have the following authority over interscholastic athletics:

(1) The State Department of Education may state that the policies of school districts, of associations or consortia of school districts, and of the California Interscholastic Federation, concerning interscholastic athletics, are in compliance with both state and federal law.

(2) If the State Department of Education states that a school district, an association or consortium of school districts, or the California Interscholastic Federation is not in compliance with state or federal law, the State Department of Education may require the school district, association or consortium, or the federation to adjust its policy so that it is in compliance. However, the State Department of Education shall not have authority to determine the specific policy which a school district, association or consortium, or the federation must adopt in

order to comply with state and federal laws.

Section 35160.5. District policies; rules and regulations; participation in extracurricular and cocurricular activities

(b) The governing board of each school district that maintains one or more schools containing any of grades 7 to 12, inclusive, shall, as a condition for the receipt of an inflation adjustment pursuant to Section 42238.1, establish a school district policy regarding participation in extracurricular and cocurricular activities by pupils in grades 7 to 12, inclusive. The criteria, which shall be applied to extracurricular and cocurricular activities, shall ensure that pupil participation is conditioned upon satisfactory educational progress in the previous grading period. Pupils who are eligible for differential standards of proficiency pursuant to subdivision (d) of Section 51215 are covered by this section consistent with that subdivision. No person shall classify a pupil as eligible for differential standards of proficiency pursuant to subdivision (d) of Section 51215 for the purpose of circumventing the intent of this subdivision.

(1) For purposes of this subdivision, "extracurricular activity" means a program that has all of the following characteristics:

(A) The program is supervised and financed by the school district.

(B) Pupils participating in the program represent the school district.

(C) Pupils exercise some degree of freedom in either the selection, planning, or control of the program.

(D) The program includes both preparation for performance and performance before an audience or spectators.

(2) For purposes of this subdivision, an "extracurricular activity" is not part of the regular school curriculum, is not graded, does not offer credit, and does not take place during classroom time.

(5) For purposes of this subdivision, "satisfactory educational progress" shall include, but not be limited to, the following:

(A) Maintenance of minimum passing grades, which is defined as at least a 2.0 grade point average in all enrolled courses on a 4.0 scale.

(B) Maintenance of minimum progress toward meeting the high school graduation requirements prescribed by the governing board.

(8) The governing board of each school district may adopt, as part of its policy established pursuant to this subdivision, provisions that would allow a pupil who does not achieve satisfactory educational progress in the previous grading period to remain eligible to participate in extracurricular and cocurricular activities during a probationary period. The probationary period shall not

exceed one semester in length, but may be a shorter period of time, as determined by the governing board of the school district. A pupil who does not achieve satisfactory educational progress during the probationary period shall not be allowed to participate in extracurricular and cocurricular activities in the subsequent grading period.

(9) Nothing in this subdivision shall preclude the governing board of a school district from imposing a more stringent academic standard than that imposed by this subdivision. If the governing board of a school district imposes a more stringent academic standard, the governing board shall establish the criteria for participation in extracurricular and cocurricular activities at a meeting open the public.

Section 35179. Interscholastic athletics; control and responsibility associations or consortia of schools; discrimination; prohibition

(a) Each school district governing board shall have general control of, and be responsible for, all aspects of the interscholastic athletic policies, programs, and activities in its districts, including, but not limited to, eligibility, season of sport, number of sports, personnel, and sports facilities. In addition, the board shall assure that all interscholastic policies, programs, and activities in its district are in compliance with state and federal

law.

(b) Governing boards may enter into associations or consortia with other boards for the purpose of governing regional or statewide interscholastic athletic programs by permitting the public schools under their jurisdictions to enter into a voluntary association with other schools for the purpose of enacting and enforcing rules relating to eligibility for, and participation in, interscholastic athletic programs among and between schools.

(c) Each governing board, or its designee, shall represent the individual schools located within its jurisdiction in any voluntary association of schools formed or maintained pursuant to this section.

COLORADO

Section 88-4-1 Associations formed--purpose

Two or more of the political subdivisions of the state may, in their discretion, and in addition to powers heretofore granted, form and maintain associations for the purposes of promoting, through investigation, discussion and cooperative effort, interests, and welfare of the several political subdivisions of the state of Colorado, and to promote a closer relation between the several political subdivisions of the state.

Section 88-4-2. Instrumentality of subdivision

Any such association so formed shall be an instrumentality of the political subdivisions which are members thereof.

FLORIDA

Section 232.425. Student standards for participation in interscholastic extracurricular student activities.

To be eligible to participate in interscholastic extracurricular student activities, a student must maintain a grade point average of 1.5 on a 4.0 scale, or its equivalent, and must pass five subjects for the grading period immediately preceding participation; except that student eligibility for the first grading period of each new school year shall be based on passing five subjects and maintaining the required grade point average the previous school year, including subjects completed during the interim summer school session. Any student who is exempt from attending a full school day under section 228.041(13) must maintain a 1.5 grade point average and pass each class for which he is enrolled. The student standards for participation in interscholastic extracurricular activities shall be applied beginning with the student's first semester of the 9th grade. Each student must meet such other requirements for participation as may be established by the

school district.

IOWA

Section 280.13. Requirements for interscholastic contests and competitions

A public school shall not participate in or allow students representing a public school to participate in any extracurricular interscholastic contest or competition which is sponsored or administered by an organization as defined in this section, unless the organization is registered with the department of education, files financial statements with the department in the form and at intervals prescribed by the director of the department of education, and is in compliance with rules which the state board of education adopts for the proper administration, supervision, operation, adoption of eligibility requirements, and scheduling of extracurricular interscholastic contests and competitions and the organizations. For the purposes of this section "organization" means a corporation, association, or organization which has as one of its primary purposes the sponsoring or administration of extracurricular interscholastic contests or competitions, but does not include an agency of this state, a public or private school or school board, or an athletic conference or other association whose interscholastic contests or competitions do not include more than twenty schools.

KANSAS

Section 72-130. High school activities association; board of directors, executive board, appeal board; articles and bylaws; reports; classification system; application of open meetings law.

An association with a majority of the high schools of the state as members and the purpose of which association is the statewide regulation, supervision, promotion or development of any of the activities referred to in this act and in which any public high school of this state may participate directly or indirectly shall:

(a) On or before September 1 of each year make a full report to the state board of education of its operation for the preceding calendar year, which shall contain a complete and detailed financial report under the certificate of a certified public accountant, and shall also file with the state board a copy of all reports and publications issued from time to time by such association.

(b) Be governed by a board of directors which shall exercise the legislative authority of the association and shall establish policy for the association. The board of directors shall consist of not less than 30 members. At least six of such directors shall be members of boards of education, five of whom shall be elected by the local boards of education in each of the five congressional districts of

the state and one of whom shall be elected by all of the local boards of education in the state, and at least two of such directors shall be representatives of the state board of education appointed by the state board of education for terms of not to exceed three years. The state shall be divided into six districts of substantially equal student enrollments in grades 10 through 12, and each district shall be given equal representation on the board of directors. An executive board shall be responsible for the administration, enforcement, and interpretation of policy established by the board of directors shall be selected by the board of directors from its membership.....

(c) Submit to the state board of education, for its approval or disapproval prior to adoption, any amendments, additions, alterations, or modifications of its articles of incorporation or bylaws. If any articles of incorporation, bylaws, or any amendment, addition or alteration thereto is disapproved by the state board of education, the same shall not be adopted.

KENTUCKY

Section 156.070 General powers and duties of state board

(1) The State Board for Elementary and Secondary Education shall have the management and control of the common schools and all programs operated in such schools,

including interscholastic athletics, the Kentucky School for the Deaf, the Kentucky School for the Blind, and community education programs and services.

(2) The State Board for Elementary and Secondary Education may designate an organization or agency to manage interscholastic athletics in the common schools, provided that the rules, regulations, and bylaws of any organization or agency so designated shall be approved by the board, and provided further that the board shall adopt administrative regulations providing for the appeal to the board of any decisions made by the designated managing organization or agency. The state board or any agency designated by the board to manage interscholastic athletics shall not promulgate rules, administrative regulations, or bylaws which prohibit pupils in grades seven (7) to eight (8) from participating in high school sports or from participating on more than one (1) school-sponsored team at the same time in the same sport.

MARYLAND

Section 2-303. Powers and duties

(a) In general. -- In addition to the other powers granted and duties imposed under this article, the State Superintendent has the powers and duties set forth in this section.

(b) Enforcement of Education Article. --(1) The State Superintendent shall enforce the provisions of:

(i) This article that are within his jurisdiction; and

(ii)The bylaws, rules, and regulations of the State Board.

(2c) Carrying out educational policies; conferences; pamphlets.-- The State Superintendent shall:

(1) Carry out the educational policies of the State Board;

(j) Other duties. -- The State Superintendent shall perform any other duties assigned to him:

(1) Under this article; or

(2) By the State Board.

MICHIGAN

Section 15.41289 Joining of organizations; requirements of constitution and bylaws.

(1) A board of a school district may join an organization, association, or league which has as its object the promotion and regulation of sport and athletic, oratorical, musical, dramatic, creative arts, or other contests by or between pupils if the organization, association, or league provides in its constitution or bylaws that a representative of the state board shall be an ex officio member of its governing body with the same rights

and privileges as other members of its governing body.

(2) An association established for the purpose of organizing and conducting athletic events, contests, or tournaments among schools shall be the official association of the state. The association shall be responsible for the adoption and enforcement of regulations relative to eligibility of pupils in schools for participation in interscholastic athletic events, contests, or tournaments.

MINNESOTA

Section 129.121 State high school league

Subdivision 1. The governing board of any high school may delegate the control, supervision, and regulation of interscholastic athletics and other extracurricular activities referred to in sections 123.17 and 123.38 to the Minnesota state high school league, a nonprofit incorporated voluntary association. Membership in said Minnesota state high school league shall be composed of such Minnesota high schools whose governing boards have certified in writing to the state commissioner of education that they have elected to delegate the control, supervision, and regulation of their interscholastic athletic events and other extracurricular activities to said league. The Minnesota state high school league is hereby empowered to exercise the control, supervision, and regulation of interscholastic

athletics, musical, dramatic, and other contests by and between pupils of the Minnesota high schools, delegated to it pursuant to this section. The Minnesota high school league may establish a policy or guidelines for the guidance of member high schools in the voluntary formation or alteration of athletic or other extracurricular conferences. The commissioner of education, or his representative, shall be an ex officio member of the governing body of such league, with the same rights and privileges as other members of its governing body. The rules and regulations of said league shall be exempt from the provisions of sections 15.0411 to 15.0422.

Subdivision 2. Any school board is hereby authorized to expend moneys for and pay dues to the Minnesota state high school league and all moneys paid to such league, as well as moneys derived from any contest or other event sponsored by said league, shall be subject to an annual examination and audit by a certified public accountant or the state auditor.

Subdivision 3. The commissioner of education shall make a report to the legislature on or before each regular session thereof, as to the activities of the league, and shall recommend to the legislature whether any legislation is made necessary by its activities.

Subdivision 4. Membership in the Minnesota state high school league shall be open to any high school in Minnesota which satisfies compulsory attendance pursuant to section 120.10.

NEVADA

Section 386.420. Formation; composition; purposes.

The county school district trustees may form a nonprofit association composed of all of the school districts of the state for the purposes of controlling, supervising, and regulating all interscholastic athletic events and other interscholastic events in the public schools. This section does not prohibit a public school, which is authorized by the association to do so, from joining an association formed for similar purposes in another state.

Section 386.430. Adoption of regulations.

The association shall adopt rules and regulations in the manner provided for state agencies by chapter 233B of NRS, as may be necessary to carry out the provisions of NRS 386.420 to
386.470, inclusive.

Section 386.440. Regulations: Procedures for review of

disputes.

The rules and regulations of the association adopted pursuant to NRS 386.430 shall provide for adequate review procedures to determine and review disputes arising in regard to the association's decisions and activities.

Section 386.450. Regulations: Membership by private and parochial schools.

The rules and regulations adopted by the association shall provide for the membership of private and parochial schools which may elect to join the association.

NEW JERSEY

Section 18A:11-3. Voluntary associations regulating conduct of student activities; membership; rules and regulations; appeals

A board of education may join one or more voluntary associations which regulate the conduct of student activities between and among their members, whose membership may include private and public schools. Any such membership shall be by resolution of the board of education, adopted annually. No such voluntary association shall be operative without approval of its charter, constitution, bylaws, and rules and regulations by the Commissioner of Education. Upon the adoption of said resolution the board, its faculty,

and students shall be governed by the rules and regulations of that association. The said rules and regulations shall be deemed to be the policy of the board of education and enforced first by the internal procedures of the association. In matters involving only public school districts and students, faculty, administrators and boards thereof, appeals shall be to the commissioner and thereafter the Superior Court. In all other matters, appeals shall be made directly to the Superior Court. The commissioner shall have authority to direct the association to conduct an inquiry by hearing or otherwise on a particular matter or alternatively, direct that particular matter be heard directly by him. The association shall be a party to any proceeding before the commissioner or in any court.

Section 18A:11-4. Minutes of meetings of associations overseeing interscholastic sports program; report

The minutes of every meeting of any association functioning under this act which shall oversee activities associated with statewide interscholastic sports programs in this State shall be transmitted by and under certification thereof to the commissioner or his designee who shall acknowledge the receipt of the minutes by his signature. The commissioner or his designee shall prepare a report detailing all programs and fiscal activities of the Statewide associations and such other associations

functioning under this act as he feels may be necessary. This report shall be based upon annual reports submitted to him by the associations operating under this act and shall indicate whether or not the intent of the Legislature in its grant of statutory authority to boards of education to join such associations is faithfully being executed.

NEW MEXICO

Section 22-12-2.1. Extracurricular activities; student participation.

A. Effective with the 1986-87 school year, a student shall have a 2.0 grade point average on a 4.0 scale, or its equivalent, either cumulatively or for the grading period immediately preceding participation, in order to be eligible to participate in any extracurricular activity. For purposes of this section, "grading period" is a period of time not less than six weeks. The provisions of this subsection shall not apply to special education students placed in class C and class D programs.

B. Effective with the 1987-88 school year, no student shall be absent from school for school-sponsored extracurricular activities in excess of ten days per semester, and no class may be missed in excess of ten times per semester.

C. The provisions of Subsections A and B of this section

apply to all extracurricular activities.

D. The state superintendent may issue a waiver relating to the number of absences for participation in any state or national competition. The state superintendent shall develop a procedure for petitioning cumulative provision eligibility cases, similar to other eligibility situations.

E. Student standards for participation in extracurricular activities shall be applied beginning with a student's second semester of grade eight.

NORTH DAKOTA

Section 15-29-08 General powers and duties of School Board

20. Recognizing the necessity for an organization of schools to administer a program of interscholastic activities, any public school, so classified by the state department of public instructin, is authorized to become a member of the North Dakota high school activities association, presently located in the city of Valley City, North Dakota, upon written application of its school board and said school board shall pay the cost of such membership out of the funds of such school in the same manner as any valid school expense is paid.

NORTH CAROLINA

Section 115C-47. Powers and duties generally

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

(4) To Regulate Extracurricular Activities. -- Local boards of education shall make all rules and regulations necessary for the conducting of extracurricular activities in the schools under their supervision, including a program of athletics, where desired, without assuming liability therefor; provided, that all interscholastic athletic activities shall be conducted in accordance with rules and regulations prescribed by the State Board of Education.

OREGON

Section 326.051

1. The State Board of Education shall:

(d) Adopt rules regarding school and interscholastic activities in accordance with standards established pursuant to ORS 326.058(1).

Section 326.058 Administration of interscholastic activities; voluntary organizations; standards; appeals

(1) The State Board of Education shall adopt standards applicable to voluntary organizations that administer interscholastic activities.

(2) Voluntary organizations that desire to administer interscholastic activities shall apply to the state board for approval. The state board shall review the rules and bylaws of the voluntary organization to determine that they do not conflict with state law or rules of the state board. If an organization meets the standards established under subsection (1) of this section and its rules and bylaws do not conflict with state law or rules of the state board, the state board shall approve the organization. An approved voluntary organization is qualified to administer interscholastic activities.

(3) The state board may suspend or revoke its approval if an approved organization is found to have violated state law or rules of the state board. If an organization is not approved or its approval is suspended or revoked, it may appeal the denial, suspension or revocation as a contested case under ORS 183.310 to 183.550.

(4) A voluntary organization's decisions concerning interscholastic activities may be appealed to the state board, which may hear the matter or by rule may delegate authority to a hearings officer to hear the matter and enter a final order pursuant to ORS 183.464(1). Such decisions may be appealed to the Court of Appeals.

PENNSYLVANIA

Section 5-511. Rules and regulations governing athletics, publications, and organizations

(a) The board of school directors in every school district shall prescribe, adopt, and enforce such reasonable rules and regulations as it may deem proper, regarding (1) the management, supervision, control, or prohibition of exercises, athletics, or games of any kind, school publications, debating, forensic, dramatic, musical, and other activities related to the school program, including raising and disbursing funds for any or all of such purposes and for scholarships, and (2) the organization, management, supervision, control, financing, or prohibition of organizations, clubs, societies, and groups of the members of any class or school, and may provide for the suspension, dismissal, or other reasonable penalty in the case of any appointee, professional or other employee or pupil who violates any of such rules or regulations.

(b) Any school or any class activity or organization thereof, with the approval of the board, may affiliate with any local, district, regional, State, or national organization whose purposes and activities are appropriate to and related to the school program.....

SOUTH CAROLINA

Section 59-39-160. Interscholastic activities; requirements

for participation; responsibility for monitoring; participation by handicapped.

To participate in interscholastic activities, students in grades nine through twelve must achieve an overall passing average and either:

(1) pass at least four academic courses, including each unit the student takes that is required for graduation; or

(2) pass a total of five academic courses. Students must satisfy these conditions in the semester preceding participation in the interscholastic activity, if the interscholastic activity occurs completely within one semester or in the semester preceding the first semester of participation in an interscholastic activity if the interscholastic activity occurs over two consecutive semesters and is under the jurisdiction of the South Carolina High School League.

Academic courses are those courses of instruction for which credit toward high school graduation is given. These may be required or approved electives. All activities currently under the jurisdiction of the South Carolina High School League remain in effect. The monitoring of all other interscholastic activities is the responsibility of the local boards of trustees. Those students diagnosed as

handicapped in accordance with the criteria established by the State Board of Education and satisfying the requirements of their Individual Education Plan (IEP) as required by Public Law 94-142 are permitted to participate in interscholastic activities. A local school board of trustees may impose more stringent standards than those contained in this section for participation in interscholastic activities by students in grades nine through twelve.

SOUTH DAKOTA

Section 13-36-4. High school interscholastic activities association -- Qualifications -- Power and authority.

The school board of a public or the governing body of a nonpublic school, approved and accredited by the secretary of the department of education and cultural affairs, may delegate, on a year to year basis, the control, supervision and regulation of any and all high school interscholastic activities to any association which is voluntary and nonprofit; provided that membership in such association is open to all high schools approved and accredited by the secretary of the department of education and cultural affairs pursuant to the provisions of this title, and that the constitution, bylaws, and rules of the association are subject to ratification by the school boards of the member

public school districts and the governing boards of the member nonpublic schools and include a provision for a proper review procedure and review board.

Any association which complies with this section is hereby authorized and empowered to exercise the control, supervision, and regulation of interscholastic activities, including interscholastic athletic events of member schools. Such association is hereby further authorized and empowered to promulgate reasonable uniform rules, to make decisions and to provide and enforce reasonable penalties for the violation of such rules.

TENNESSEE

Section 49-1-302. Powers and duties

(a) It shall be the duty of and the board has the power to:

(7) Set policies for the review, approval or disapproval, and classification of all public schools, grades kindergarten (K) through twelve (12), or any combination of these grades;

(8) Set policies governing all curricula and courses of study in the public schools;

TEXAS

Section 21.920. Extracurricular Activities

(a) The State Board of Education by rule shall limit participation in and practice for extracurricular activities during the school day and the school week. The rules shall, to the extent possible, preserve the school day for academic activities without interruption for extracurricular activities. In scheduling those activities and practices, a district must comply with the rules of the board.

(b) A student enrolled in a school district in this state shall be suspended from participation in any extracurricular activity sponsored or sanctioned by the school district during the grade reporting period after a grade reporting period in which the student received a grade lower than the equivalent of 70 on a scale of 100 in any academic class. The campus principal may remove this suspension if the class is an identified honors or advanced class.

(c) Suspension of a handicapped student whose handicap significantly interferes with the student's ability to meet regular academic standards shall be based on the student's failure to meet the requirements of the student's individual education plan. The determination of whether a handicap significantly interferes with a student's ability to meet regular academic standards shall be made by the student's admission, review, and dismissal committee. For purposes of this subsection, "handicapped student" means a student who is eligible for a district's special education program under

Section 21.503(b) of this code.

(d) Subsection (b) of this section applies beginning with the spring semester, 1985.

(d) A student may not be suspended under this section during the period in which school is recessed for the summer or during the initial grade reporting period of a regular school term on the basis of grades received in the final grade reporting period of the preceding regular school term.

UTAH

Section 53-2-12. General powers and duties -- Adoption of policies, rules, and regulations

(1) The general control and supervision of the public school system is vested in the state board of education. "General control and supervision" as used in Article X, Section 8, of the Constitution of Utah is construed to mean comprehending or directed to the whole, as distinguished from authority or power to govern or manage a specific division, category, branch, school, or institution in the public school system, except as otherwise specifically directed by statute.

(2) The state board of education shall have authority to adopt policies which have broad application and give to the board the general overseeing of the public school system, as opposed to authority for the direct government, management,

and operation of school districts, institutions, and programs, except where the board by statute is granted authority for the direct government, management, and operation of specific institutions and programs. The board shall adopt rules and regulations to eliminate and prevent all unnecessary duplication of work or instruction in the school districts and elsewhere as provided by law, and require the governing boards thereof to put the same into operation. The authority to adopt policies relating to general control and supervision by the state board of education shall not include authority to adopt policies for or interfere in the direct government, management, and operations of school districts, institutions, and programs among the various branches of the public school system for which authority to boards for the direct government, management, and operation of school districts, institutions, and programs has been granted by the Constitution or by statutes, except where the state board of education has been granted authority for the direct management and operation of specific institutions and programs by statute.

WASHINGTON

Section 28A.600.200. Interschool athletic and other extracurricular activities for students, regulation of -- Delegation, conditions

Each school district board of directors is hereby granted and shall exercise the authority to control, supervise and regulate the conduct of interschool athletic activities and other interschool extracurricular activities of an athletic, cultural, social, or recreational nature for students of the district. A board of directors may delegate control, supervision and regulation of any such activity to the Washington Interscholastic Activities Association or any other voluntary nonprofit entity and compensate such entity for services provided, subject to the following conditions:

(1) The voluntary nonprofit entity shall submit an annual report to the state board of education of student appeal determinations, assets, and financial receipts and disbursements at such time and in such detail as the state board shall establish by rule;

(2) The voluntary nonprofit entity shall not discriminate in connection with employment or membership upon its governing board, or otherwise in connection with any function it performs, on the basis of race, creed, national origin, sex or marital status;

(3) Any rules and policies applied by the voluntary nonprofit entity which govern student participation in any interschool activity shall be written and subject to the annual review and approval of the state board of education at such time as it shall establish;

(4) All amendments and repeals of such rules and policies

shall be subject to the review and approval of the state board; and

(5) Such rules and policies shall provide for notice of the reasons and a fair opportunity to contest such reasons prior to a final determination to reject a student's request to participate in or to continue in an interschool activity. Any such decision shall be considered a decision of the school district conducting the activity in which the student seeks to participate or was participating and may be appealed pursuant to RCW 28A.645.010 through 28A.645.030.

WEST VIRGINIA

Section 18-2-25. Authority of county boards to regulate athletic and other extracurricular activities of secondary schools; delegation of authority to West Virginia secondary school activities commission; approval of rules and regulations by state board; incorporation; funds; participation by private and parochial schools.

The county boards of education are hereby granted and shall exercise the control, supervision and regulation of all interscholastic athletic events, and other extracurricular activities of the students in public secondary schools, and of said schools of their respective counties. The county board of education may delegate such control, supervision, and regulation of interscholastic athletic events and band activities to the "West Virginia

secondary school activities commission," which is hereby established.

The West Virginia secondary school activities commission shall be composed of the principals, or their representatives, of those secondary schools whose county boards of education have certified in writing to the state superintendent of schools that they have elected to delegate the control, supervision and regulation of their interscholastic athletic events and band activities of the students in the public secondary schools in their respective counties to said commission. The West Virginia secondary school activities commission is hereby empowered to exercise the control, supervision and regulation of interscholastic athletic events and band activities of secondary schools, delegated to it pursuant to this section. The rules and regulations of the West Virginia secondary school activities commission shall contain a provision for a proper review procedure and review board and be promulgated in accordance with the provisions of chapter twenty-nine-a of this Code, but shall, in all instances be subject to the prior approval of the state board. The West Virginia secondary school activities commission, may, with the consent of the state board of education, incorporate under the name of "West Virginia Secondary School Activities Commission, Inc.," as a nonprofit, nonstock corporation under the provisions of chapter thirty-one of this Code. County boards of education

are hereby authorized to expend moneys.....

The West Virginia secondary school activities commission shall promulgate reasonable rules and regulations providing for the control, supervision and regulation of the interscholastic athletic events and other extracurricular activities of such private and parochial secondary schools as elect to delegate to such commission such control, supervision and regulation, upon the same terms and conditions, subject to the same regulations and requirements and upon the payment of the same fees and charges as those provided for public secondary schools.

APPENDIX B

STATE ADMINISTRATIVE REGULATIONS RELATIVE TO THE CONTROL AND REGULATION OF INTERSCHOLASTIC ATHLETICS AND OTHER EXTRACURRICULAR ACTIVITIES

ALASKA

4 AAC 06.111. Alaska School Activities Association

The constitution and bylaws of the Alaska School Activities Association as approved by the state Board of Education on January 29, 1977, and as amended as of September 14, 1979, are adopted by reference as the applicable rules for the administration, management, and control of interscholastic activities and for eligibility for participation in those activities. (Eff. 10/28/76, Reg.60; am 3/24/77, Reg. 61; am 3/1/78, Reg. 65; am 9/23/78, Reg. 67; am (11/23/80. Reg. 76; am 11/26/80, Reg. 76)

Authority: AS 14.07.020(1) and (2)

AS 14.07.053

AS 14.07.060

DELAWARE

6. INTERSCHOLASTIC ATHLETICS

A. Responsibility

The principal of the middle level and the high school is responsible for the conduct of the interscholastic athletic program in which representative teams participate. The extent of the athletic program for the secondary school necessitates leadership consideration and coordination on part of the principal and staff members responsible for the part of the principal and staff members responsible for the organization and scheduling of individual and team sports.

B. Jurisdiction

Interscholastic athletics are under the jurisdiction of the Delaware Secondary School Athletic Association composed of member schools. The Athletic Association is under the general management of a Board of Directors with the State Supervisor of Interscholastic Athletics in the Department of Public Instruction serving as the Executive Secretary. All policies and recommendations for modifying the rules and bylaws of the Athletic Association must be approved by the State Board of Education.

C. Rules

All interscholastic athletic activities in the middle level and high schools must be conducted in accordance with

the rules and regulations established in the Official Handbook of the Delaware Secondary School Athletic Association and subscribed to by all member schools.

DISTRICT OF COLUMBIA

2700 General Provisions

2700.1 Participation by students in grades four (4) through twelve (12) in interscholastic athletic programs provided by the D.C. Public Schools shall be governed by the rules and procedures set forth in this chapter.

2700.7 Summer athletic league participation by school teams shall not be sanctioned, and the name of a school, school equipment, supplies and facilities shall not be used for such participation.

2700.8 Schools, or any representative thereof, shall not seek to influence studentss to transfer from one school to another for the purpose of participating in interscholastic athletics.

2700.9 Varsity teams in senior high schools shall be limited to eligible students enrolled in grades 10, 11, and 12 except that a 9th grader who desires to participate in a

non-contact sport which is not offered on the junior varsity level at the student's school may participate in that sport at the varsity level.

2700.10 Junior varsity teams in senior high schools shall be limited to eligible students enrolled in grades 9, 10 and 11.

2700.12 The Superintendent shall establish an Advisory Committee on Interscholastic Athletics which shall include in its membership central, regional, and local school officers, coaches, parents, students and community representatives. The primary function of this Committee shall be to advise the Supervising Director of Athletics on matters pertaining to the organization, management, and improvement of the interscholastic athletic programs in the D.C. Public Schools.

2701 Eligibility of Participation

2701.1(a) Principals shall be responsible for determining and certifying the eligibility of students to participate in interscholastic athletics by submitting lists of eligible students to the Supervising Director of Athletics two weeks prior to the first scheduled game, whether league or nonleague;

2701.2 The Supervising Director of Athletics shall have the authority to challenge and to investigate the eligibility of any students certified by principals as being eligible to participate in interscholastic athletics whenever there is reason to believe that a student may not have fulfilled the eligibility requirements set forth in Section 2701.3 of this chapter.

2701.3 In order to be certified as eligible to participate in interscholastic athletic programs and contests conducted by the D.C. Public Schools, and to maintain such eligibility, students shall fulfill the following requirements:

(a) Students shall be residents of the District of Columbia, as defined by statute, and rules set forth in Section 2000.2 and 2000.3

(c) Students shall be enrolled within the first 20 calendar days of a semester at the school the student wishes to represent in interscholastic athletics, except as provided for in Section 2701.3(d);

(d) Students who transfer enrollment after the first 20 calendar days of a semester on the basis of a change of address, may only become eligible to participate when the change of address with the District of Columbia has been verified by both the sending and receiving principals in accordance with the rules and procedures set forth in

Section 2105, 2002.10, and 2002.11.

(i) Students shall maintain regular school attendance having been present at least two-thirds of the school days during the semester preceding the sport season, and have no unexcused absences during the season of participation.

Completion of summer school shall not be counted as a semester of attendance for the purposes of establishing eligibility under provisions of this subsection;

(j) Students in grades 9 through 12, in regular education and career development programs or in Level I and Level II programs of the continuum of services available to special education students, shall have a grade point average of 2.0 ("C") as required by chapter 22.;

(k) Students in grades 4 through 8 shall not fail more than 1 subject at the end of the advisory period immediately preceding the sport season in which the student wishes to participate;

(l) Students shall be undergraduates; provided, that an eligible student whose graduation exercises are held before the end of the school year may continue to participate in interscholastic athletics until the end of that school year;

(m) Students who have attained the following ages on or before July 1 preceding the following school year shall not be eligible to participate in interscholastic athletics offered for the grade levels indicated:

(1) Grades 4 through 6: 13 years;

(2) Grades 7 through 9: 16 years; and

(3) Grades 10 through 12: 19 years;

(n) Students shall maintain amateur standing by engaging in sports only for the physical, educational and social benefits derived therefrom and by not accepting remuneration, gifts or donations other than approved school awards, directly or indirectly;

(o) Students may represent only 1 school in the same sport during a school year;

(p) Students shall not participate as a member of a team in interscholastic athletic contests during more than 3 seasons in any one sport while enrolled in each of the following grade levels:

(1) Grades 4 through 6;

(2) Grades 7 through 9;

(3) Grades 10 through 12;

(q) Students shall not participate in the same individual or team sport outside of school, or with a team, an organized league, tournament, meet, match or game between the first and last scheduled contest of the school squad during the season of that sport; Provided, that students who are selected to represent the United States in international amateur competition shall not become ineligible in school competitions for participating in qualifying trials.

2701.4 Students who are ineligible for any reason to participate in interscholastic athletics at the time of transfer from one school to another, for any reason other than failure to meet the requirements of chapter 22, shall not be considered for eligibility to the receiving school until the student has been enrolled for a full semester.

2701.5 Students who are ineligible due solely to their failure to meet the requirements of chapter 22 shall become eligible at the end of the advisory in which they meet the requirements of that chapter.

2701.6 Students who are ineligible to participate in interscholastic athletics for any reason may not play, practice, or otherwise participate with a D.C. Public School team during the period of such ineligibility.

2701.7 School officers and coaches who knowingly allow ineligible students to participate in an interscholastic athletic program or contest shall be subject to disciplinary action.

2701.8 Schools shall forfeit all contests during which an ineligible student participates.

GEORGIA

Chapter 160-3-2 Implementation for Standards of Legal Adherence for Local School Systems. Amended

7. School/Special Entity Level: Curriculum--Extracurricular Activities. Requirements and restrictions placed on the operation of and participation in extracurricular activities are met.

(i) If a student has been retained, retention is not for athletic purposes.

(ii) In schools housing any grade 6 through 12 which sponsor extracurricular activities, the following requirements are contained in the school's rules, regulations and procedures for operating extracurricular activities:

(I) The grading period for determining student eligibility is either a quarter or a semester;

(II) The grading period is also the minimum length of the ineligibility period;

(III)Ineligible students are prohibited from practicing, traveling or trying out for a team or program.

(iii)Students in grades 6 through 12 meet the following criteria in order to participate in extracurricular activities:

(I) Pass at least 5 subjects that carry credit toward graduation or grade promotion in the quarter or

semester immediately preceding participation, including summer school;

(II) Take at least 5 subjects that carry credit toward graduation or grade promotion during the quarter or semester of participation;

(III)Be "on track" for graduation in the high school grades according to the following years in attendance.

I. Students beginning their second year have earned 3 Carnegie units toward graduation.

II. Students beginning their third year have earned 9 Carnegie units toward graduation.

III. Students beginning their fourth year have earned 15 Carnegie units toward graduation.....

HAWAII

Administrative Code 4520. Students participating in co-curricular activities must have at least an overall 2.0 grade point average (GPA) and be passing courses required for graduation. The activities which are essential and significant parts of any particular course are not affected by the policy. "Co-curricular" is synonymous with extracurricular activities.

Participation Guidelines

1. In the quarter immediately preceding the activity, a

student must have passed all "core" courses required for graduation.

2. A student must have a 2.0 GPA for courses taken in the quarter immediately preceding the activity. The pertinent GPA is not the cumulative, year or semester GPA.

3. The relevant GPA is computed or based on all courses in which a student is enrolled, not just those required for graduation.

4. Eligibility shall be determined on a quarterly basis, ten (10) days after the end of a quarter.

5. Satisfactory/Unsatisfactory ratings are reserved for IPP (Individually Prescribed Program) students in modified courses. For all other students, schools will use their own judgement in converting ratings such as pass/fail, satisfactory or unsatisfactory to the five letter grade scale (A, B, C, D, F).

6. A student must receive quarter grades for each quarter in all courses in which he/she is enrolled. This does not preclude semester grades for semester courses and year grades for year courses.

7. For purposes of eligibility, successful completion of a summer course may be used to replace a fourth quarter "F" and improve a student's grade point average (GPA) in the quarter. A student may voluntarily attend summer school to replace an "F" in a course. To regain eligibility, the student may take a related course agreed to by

parent/student and school. For eligibility purposes, the grade will be used to substitute for the quarter F.

IOWA

281--36.2(280) Registered organizations Organizations registered with the department include the following:

36.2(1) Iowa high school athletic association

36.2(2) Iowa girl's high school athletic union

36.2(3) Iowa high school music association

36.2(4) Iowa high school speech association

36.2(5) Unified Iowa high school activities federation

281--36.3(280) Filings by organizations. Each organization shall maintain a current file with the state department of education of the following items:

36.3(1) Constitution and bylaws which must have the approval of the state board of education.

36.3(2) Current membership and associate membership lists.

36.3(3) Organization policies.

36.3(4) Minutes of all meetings of organization boards.

36.3(5) Proposed constitution and bylaw amendments or revisions.

36.3(6) Audit reports.

36.3(7) General bulletins

36.3(8) Other information pertinent to clarifying organization administration.

281--36.4(280) Executive board. Each organization shall have some representation from school administrators, teachers, and elective school officers on its executive board.....

281--36.14(280) Eligibility requirements. The organizations shall prescribe and implement eligibility requirements for students participating in contests or competitions as described below:

36.14(1) All contestants must be enrolled and in good standing in a school that is a member or associate member in good standing of the organization sponsoring the event.

36.14(2) All contestants must be under 20 years of age.

36.14(3) All contestants shall be regular students of the school in good standing; they shall have earned 15 semester hours credit toward graduation in the preceding semester of the school, and shall be making passing grades in subjects for which 15 semester hours credit is given for the current semester as determined by the local school administrator.

KENTUCKY

704 KAR 4:015. Management of interscholastic athletics.

Necessity and Function: KRS 156.070(2) allows the State Board of Education to designate an organization to manage interscholastic athletics in the common schools, and requires the state board to hear all appeals from the Kentucky High School Athletic Association.

Section 1. The State Board of Education designates the Kentucky High School Athletic Association as the sole organization to manage interscholastic athletics in schools which are members in good standing of the Kentucky High School Athletics Association. Each local board of education is responsible to the State Board of Education for interscholastic athletics in grades K-8.

Section 2. The Kentucky High School Athletic Association will submit annually the rules, regulations and bylaws to the State Board of Education together with any proposed changes thereto.

Section 3. Appeals from the Kentucky High School Athletic Association Board of Control to the State Board of Education shall follow the procedures as provided by 701 KAR 5:020, Sections 2 through 5.

LOUISIANA

Louisiana Board of Elementary and Secondary Education

Rule 1: Scholastic Requirements for Participation in High School Athletics. To be eligible under the scholastic rule all students, other than special education (excluding gifted and talented), enrolled in high schools (grades 9-12) must meet the requirements as indicated: (On a 4-point scale, the student must exhibit a grade point average of 1.5 (D+) in order to be eligible and pass 5 subjects (5 units).)

Rule 2: A student must meet the scholastic requirements at the end of the first semester in order to be eligible for the entire second semester. Prior to the first day of the semester of a new school year or prior to the jamboree contest or first interschool game (whichever comes first), a student must meet the scholastic requirements in order to be eligible for the entire first semester.

MARYLAND

Chapter 03 Interscholastic Athletics in the State

Authority: Education Article, Section 2-205 and 2-303(j), Annotated Code of Maryland

.01 Authorization.

A. The following regulations have been established by the State Superintendent of Schools to govern the athletic program for all high school students in

Maryland public secondary schools which are members of the Maryland Public Secondary Schools Athletic Association (MPSSAA).

B. Local school systems may adopt rules governing their athletic programs that are more restrictive than those of the MPSSAA. Less restrictive rules may not be adopted.

.01 Eligibility.

Student eligibility for participation in interscholastic athletics at the high school level shall be based on the following criteria:

A. Students shall be officially registered and attending a member MPSSAA school. They may represent only the school in which they are registered and at which it is anticipated they will complete their graduation requirements. Ninth grade public school students who reside in the attendance area of a high school organized grades 10-12 may participate in the interscholastic athletic program of that high school.

B. Each local school system shall establish standards of participation which assure that students involved in interscholastic athletics are making satisfactory progress toward graduation.

C. Students who are 19 years old or older as of August 31st are ineligible to participate in interscholastic athletics.

D. Students may participate in interscholastic athletic contests for a maximum of three seasons in any one sport in grades 10, 11, and 12. Students who participate on an interscholastic team in grade 9 will have a maximum athletic eligibility of four seasons in any one sport.

E. Middle, intermediate, or junior high school students are not eligible to compete or practice with high school teams. However, ninth grade public school students who reside in the attendance area of a high school organized grades 10-12 may participate in the interscholastic athletic program of that high school.

MICHIGAN

380.1521. Athletic association; promotion of sport, regulations, eligibility of athletes

A board may join an organization created pursuant to section 1289 which has as its object the promotion of sport and the adoption of rules for the conduct of athletic contests between students. The association is the official

association of the state for the purpose of organizing and conducting athletic events, contests, and tournaments among schools. The association shall be responsible for the adoption and enforcement of regulations relative to eligibility of athletes in schools for participation in interscholastic athletic events, contests, and tournaments.

Eligibility For Senior High School Students

R 340.81 Enrollment.

Rule 1. (1) A student must be enrolled in a high school, except as provided in subrule (4), not later than Monday of the fourth week of the semester in which he competes.

(2) Members of senior high schools who are housed or enrolled in buildings other than the senior high school may be eligible for membership on senior high school athletic teams provided the local board of education has formally approved the arrangement and that notification of such action has been made to the state director of athletics.

(3) Senior high schools are not permitted to use junior high school students, except that senior high schools in classes B,C,D, and E may draw on the ninth grade of junior high schools for athletes when the junior high school is in the same building or in an adjacent building on the same campus. This also may be done by class B,C,D, or E high schools in case there is but 1 senior high school and 1 junior high school in the same city school system regardless

of their locations. If the local administration of a class B,C,D, or E high school system includes the ninth grade of a junior high school with the senior high school for athletic purposes, no ninth graders may compete as members of junior high school interscholastic athletic teams (for 1 exception, see rules of eligibility for junior high school students, R 340.92(2)). In such cases the entire ninth grade enrollment must be included with the high school enrollment for classification purposes.

(4) High schools having a total enrollment of less than 75 in grades 9-12, inclusive, may use in baseball only, students from the eighth grade of that school.

(5) Schools having not to exceed 10 grades, with enrollment in the high school grades of less than 75 may use, in baseball only, seventh and eighth grade students when they are competing against like schools.

R 340.82 Age.

Rule 2. A student who competes in any interscholastic athletic contest must be under 19 years of age, except that a student whose nineteenth birthday occurs on or after September 1 of a current school year is eligible for the balance of that school year.

R 340.83 Physical examinations.

Rule 3. No student shall be eligible to represent his

high school for whom there is not on file with the superintendent or principal, a physician's statement for the current school year certifying that the student has passed an adequate physical examination and that, in the opinion of the examining physician, he is fully able to compete in athletic contests.

R 340.84 Seasons of competition.

Rule 4. No student, while enrolled in a 4-year high school, shall be eligible to compete for more than 4 seasons in either first or second semester athletics; or for more than 3 seasons in either semester while enrolled in a 3-year high school.

R 340.85 Semesters of enrollment.

Rule 5. No student shall compete in any branch of athletics who has been enrolled in grades 9 to 12, inclusive, for more than 8 semesters. The seventh and eighth semesters must be consecutive. Enrollment in a school for a period of 3 weeks or more, or competing in 1 or more interscholastic athletic contests, shall be considered as enrollment for a semester under this rule.

R 340.86 Undergraduate standing.

Rule 6. No student shall compete in any branch of athletics who is a graduate of a regular 4-year high school

or who is a graduate of a secondary school which has the same requirements for graduation as a regula 4-year high school. However, a student who finishes the required number of hours for graduation in less than 8 semesters shall not be barred from interscholastic athletic competition while doing undergraduate work, until the end of the eighth semester as far as the provisions of this section are concerned.

R 340.87 Previous semester record.

Rule 7. (1) No student shall compete in any athletic contest during any semester who does not have to his credit on the books of the school he represents at least 15 credit hours of work for the last semester during which he shall have been enrolled in grades 9 to 12, inclusive, for a period of 3 weeks or more, or during which he shall have taken part in any interscholastic contests.

(2) In determining the number of hours of credit received during a semester under this rule, the usual credit allowed by the school shall be given. However, reviews and extra-curricular work, and work for which credit previously has been received, shall not be counted. Deficiencies, including incompletes, conditions, and failures from a previous semester may not be made up during a subsequent semester, summer session, night school, or by tutoring, for qualification purposes that semester.

(3) The record at the end of the semester shall be final for athletic purposes, except that conditions or incompletes, resulting from inability to finish the work of the semester on account of disabling illness.....

R 340.88 Current semester record.

Rule 8. No student shall compete in any athletic contest who does not have a passing grade, from the beginning of the semester to the date 7 calendar days prior to the contest, in studies aggregating at least 15 credit hours per week. In determining the number of hours.....

R 340.89 Transfer between schools.

Rule 9. (1) A student who transfers from 1 high school or junior high school to another high school is ineligible to participate in an interscholastic athletic contest for 1 full semester in the school to which he transfers, except that the following students may be declared eligible:

(a) A student who moves into a new district or school service areas with the persons with whom he was living during his last school enrollment.

(b) A student who moves into a district or school service area and resides with his parents in that district or area.

.....

R 340.90 Awards.

Rule 10. (1) A student shall be ineligible for interscholastic athletic competition if he accepts from any source anything for participation in athletics other than a trophy as defined in this rule.

(2) "Trophy" means a medal, ribbon, badge, plaque, cup, banner, picture, or ring. No trophy shall exceed $5.00 in value.

(3) Banquets, luncheons, dinners, trips, and admissions to athletic events, if accepted in kind, shall not be prohibited.

(4) A student will render himself ineligible if he accepts awards in violation of its provisions only in the following activities: Baseball, basketball, boxing, cross country, football(11-man, 8-man, 6-man), golf, gymnastics, ice hockey, skiing, soccer, softball, swimming, tennis, track, or wrestling.

(5) A student violating subrule (1), (2), (3), or (4) of this rule shall be ineligible for interscholastic athletic competition for a period of not less than 1 full semester from the date of his last violation.

.....

R 340.91 Amateur practices.

Rule 11. (1) No student shall be eligible to represent his high school who: (a) Has received money for participating in athletics, sports, or games listed in subrule (2); (b) has

received money or other valuable consideration for officiating in interscholastic athletic contests; or (c) has signed a contract with a professional baseball team.

.....

R 340.92 Limited team membership.

Rule 12. (1) A student who, after participating in an athletic contest as a member of a high school athletic team, participates in any athletic competition not sponsored by his high school in the same sport during the same season, shall be ineligible for the remainder of that season in that sport.

NEW YORK

Section 135.4

(ii) Provisions for interschool athletic activities for pupils in grades 7 through 12. It shall be the duty of the trustees and boards of education to conduct interschool athletic competition for grades 7 through 12 in accordance with the following:

(a) Interschool athletic competition for pupils in junior high school grades 7, 8, and 9.....

(b) Interschool athletic competition for pupils in senior high school grades 9 through 12. Inter-high school athletic

competition shall be limited to competition between high school teams, composed of pupils in grades 9 to 12 inclusive, except as otherwise provided in subclause (a)(4). Such activities shall be conducted in accordance with the following:

(1) Duration of competition. A pupil shall be eligible for senior high school athletic competition in a sport during which each of four consecutive seasons of such sport commencing with the pupil's entry into the ninth grade and prior to graduation, except as otherwise provided in this subclause. If a board of education has adopted a policy, pursuant to subclause (a)(4) of this subparagraph, to permit pupils in the seventh and eighth grades to compete in senior high school athletic competition, such pupils shall be eligible for competition during five consecutive seasons of a sport commencing with the pupil's entry into the eighth grade, or six consecutive seasons of a sport commencing with the pupil's entry into the seventh grade. A pupil enters competition in a given year when the pupil is a member of the team in the sport involved, and that team has completed at least one contest. A pupil shall be eligible for interschool competition in grades 9 through 12 until his/her 19th birthday, except as otherwise provided in subclause (a)(4) of this subparagraph. A pupil who attains the age of 19 year on or after September first may continue to participate during that school year in all sports.

.....

(2) Registration. A pupil shall be eligible for interschool competition in a sport during a semester, provided that he is a bona fide student, enrolled during the first 15 school days of such semester, is registered in the equivalent of 3 regular courses, is meeting the physical education requirement, and has been in regular attendance 80 percent of the school time, bona fide absences caused by personal illness excepted.

(3) Sports standards. Interschool athletic programs shall be planned so as to provide opportunities for pupils to participate in a sufficient variety of types of sports. Sports standards, such as number of contests, length of seasons, time between contests, required practice days, etc. for all interschool sports shall conform to guidelines established by the Commissioner of Education.

NORTH CAROLINA

Section .0200 - School Athletics and Sports Medicine

Authority G.S. 115C-12(12); N.C. Constitution, Article IX, Section 5; Eff. July 1, 1986.

.0200 Interscholastic Athletics

(a) Only students in grades 7-12 may participate in

interscholastic athletic competition. In order to qualify for public school participation, a student must meet the following requirements:

(1)The student must meet the residence criteria of G.S. 115C-366(a). The student may participate only at the school to which the student is assigned by the LEA.

(2)The principal must have evidence of the legal birth date of the student. The age limits for students as of October 16 of each year are:

(A) no older than age 18 for high school;

(B) no older than age 16 for ninth grad/junior high; and

(C) no older than age 15 for seventh or eighth grade.

(3)In grades 9-12, the student must pass at least five courses each semester and meet promotion standards established by the LEA. In grades 7 and 8, the student must meet state and local promotion standards and maintain passing grades each semester. Regardless of the school organization pattern, a student who is promoted from the eighth grade to the ninth grade automatically meets the courses passed requirement for the first semester of the ninth grade.

(4)The student must receive a medical examination by a licensed medical doctor each year (365 days).

(5)The student may not participate after any of the following:

(A) graduation;

(B) becoming eligible to graduate;

(C) signing a professional athletic contract;

(D) receiving remuneration as a participant in an athletic contest; or

(E) participating on an all-star team or in an all-star game that is not sanctioned by the association of which the student's school is a member. The student is ineligible only for the specific sport involved.

(6)A high school student may participate only during the eight consecutive semesters beginning with the student's first entry into grade nine.

(b)The State Board of Education recognizes that the North Carolina High School Athletic Association has been organized and operates to enforce the SBE interscholastic athletic rules. The SBE supports the exercise of this function by the NCHSAA within the framework of SBE rules.

(c)The NCHSAA may waive any eligibility requirement contained in this Rule, except the age requirement, if it finds that the rule fails to accomplish its purpose or it works an undue hardship when applied to a particular student.

(d)Each principal of a school which participates in interscholastic athletics must certify a list of eligible students for each sport.

(e)The NCHSAA may adopt and impose penalties appropriate

for the violation of this Rule at the high school level. The LEA which has jurisdiction over the school may impose additional penalties. LEAs or conferences may adopt and impose penalties at the middle and junior high school levels.

(f)The NCHSAA must receive approval from the SBE or its designee for any new, additional or revised rule which it proposes for the governance of athletics.

SOUTH CAROLINA

Regulation 43-244.1. Interscholastic Activities: Academic Requirement for Participation.

I. To participate in interscholasic activities, students in grades 9-12 must have passed at least four academic courses, including each unit the student takes that is required for graduation, with an overall passing average in the preceding semester. Academic courses must be defined as those courses of instruction for which credit toward high school graduation is given. These may be required or approved electives.

A. An ineligible student shall not be allowed to participate in any interscholastic activity.

B. Interscholastic activities shall be defined as all school-sponsored activities for which preparation occurs outside of the regular school day. Individuals or members

of groups involved in activities which include out-of-school practice on more than one occasion weekly shall meet eligibility requirements.

C. Academic courses shall be defined as any approved course of instruction in the secondary curriculum, required or elective, for which one unit of credit or its equivalent is awarded on a yearly basis, or one-half unit of credit or its equivalent is awarded on a semester basis. If more than one unit of credit is awarded on a yearly basis in a particular subject, this subject shall count as more than one academic course.

D. To be eligible in the first semester, each student must have passed four academic courses that were completed during the second semester of the previous school year.

E. To be eligible in the second semester, each student in grades 9 through 12 must pass at least four academic courses during the first semester.

F. Those courses specifically mandated for a high school diploma shall be considered required courses. A course may not be considered as an elective until all requirements in that subject area have been met. When a student is enrolled in more than four required courses, he must pass four required courses to be eligible for interscholastic activities. When a student is enrolled in four or less required courses, he must pass each required course.

.....

K. Each student must maintain an overall passing average during the preceding semester in order to be eligible for participation in interscholastic activities.....

L. If interscholastic activities are connected with curriculum experiences in a regular classroom situation (e.g. band, chorus,vocational), a student determined to be ineligible will be allowed to continue as part of the class and earn the grade and credit(s) for that course. Ineligible students will not be allowed to participate in Interscholastic activities and shall not be penalized or have the course grade lowered because of their ineligibility to participate in those activities.

II.All activities currently under the jurisdiction of the South Carolina High School League shall remain in effect.

III.The monitoring of all other interscholastic activities is the responsibility of the local board of trustees.

A. Local boards of trustees shall develop and implement a system of monitoring the eligibility of students in grades 9-12 within the individual school districts who are involved in interscholastic activities not under the jurisdiction of the South Carolina High School League.

B. The State Department of Education shall provide schools and school districts with a monitoring format for reporting to the local boards of trustees. This format.....

C. Eligibility for any interscholastic activity shall be

determined and reported prior to participation in that activity.

D. Compliance with this portion of the regulation shall be reported to the State Department of Education through the assurances portion of the Basic Educational Data System accreditation process for district superintendents and boards of trustees.....

TENNESSEE

0520-1-2-.26 Interscholastic Athletics.

1. The Tennessee State Board of Education recognizes and designates the Tennessee Secondary School Athletic Association as the organization to supervise and regulate the athletic activities in which the public junior and senior high schools of Tennessee participate on an interscholastic basis. (Junior high schools must include Grade Nine in order to qualify for membership). The authority granted herein shall remain in effect until revoked.

The State Board of Education approves the current rules and regulations as stated in the Official Handbook of the Tennessee Secondary School Athletic Association and reserves the right to review the appropriateness of any future changes.

TEXAS

Section 169.1. Review and Implementation of Rules Relating to Extracurricular Activities

(a)The State Board of Education shall review all rules and procedures submitted by the University Interscholastic League. It shall either approve, disapprove, or modify any rule or procedure submitted.

(c)UIL rules and procedures may be submitted for review and approval by the State Board of Education at least twice a year.....

Section 97.113. Student Absences for Extracurricular or Other Activities

(a)School districts shall not schedule, nor permit students to participate in, any school related or sanctioned activities on or off campus that would require, permit, or allow a student to be absent from class in any course more than ten times during the 175-day school year (full-year course). Noninstructional school activities must be held outside of minimum 55-minute scheduled academic class periods in grades 9-12, 45-minute scheduled academic class periods in grade seven and eight, and six hours of academic class periods in grades four-six, or be included in one of the six allowable shortened schedules referred to in s105.71.

(b)A school district shall inform the commissioner of

education of specific exceptions to the 10 absences limitation.....

.....

(c)A student in grades 7-12 may participate in extracurricular activities on or off campus at the beginning of the school year only if the student has earned the cumulative number of credits in state-approved courses indicated in this subsection:

(1)beginning at the seventh grade year-have been promoted from the sixth grade to the seventh;

(2)beginning at the eighth grade-have been promoted from the seventh to the eighth;

(3)beginning at the ninth grade year-have been promoted from the eighth to the ninth;

(4)beginning of the 10th grade year-at least five credits toward graduation;

(5)beginning of the 11th grade year-at least nine credits toward graduation for the 1985-1986 school year and 10 credits each year thereafter; and

(6)beginning of the 12th grade year-at least 13 credits toward graduation for the 1985-1986 school year, at least 14 credits for the 1986-1987 school year and 15 credits each year thereafter.

(d)In order to be eligible to participate in an extracurricular activity event for a six-weeks period

following the initial six week period of a school year, a student must not have a recorded grade average lower than a 70 on a scale of 0-100 in any course for that preceding six-weeks period.

(e)A student whose recorded six weeks grade average in any course is lower than 70 at the end of a six-weeks period shall be suspended from participation in any extracurricular activity event during succeeding six-weeks period during which such student achieves a course grade average for that six weeks of at least 70 in each course, except the campus principal may remove this suspension if the class is idenified as an honors class under the criteria state in s75.152(d) of this title, or advanced class as follows:

.....

(f)For the 1984-1985 school year, suspensions shall begin with the second six-weeks period of the spring semester based on a student's earning a grade lower than 70 in any course taken during the first six weeks of the spring semester. Such suspensions shall become effective seven days after the last day of the six-weeks period during which the grade lower than 70 was earned.

(g)A student who has been suspended from extracurricular activity events pursuant to subsection (e) and (f) of this section shall also be suspended from out-of-school practice

in such extracurricular activities until such suspension from participation has been lifted.

(h)At the end of any six-weeks period in which a student has attained a course grade average for that six weeks of 70 or more in each course taken, any suspensions from participating in extracurricular activities and/or suspension of out-of-school practice shall be removed.

(i)All UIL-sponsored activities are sanctioned as school-related activities and therefore come under the provisions of this section. The governing boards at the highest state level of any other organizations requiring student participation which cause a student to miss a class during the school day must request approval, in writing, from the commissioner of education.....

.....

(j)School districts shall develop a policy which implements this section, including a provision regulating the number of times a student may be absent pursuant to subsection (a) of this section during any one semester course.

(k)Limitations on practice and performance shall be as follows:

(1)School districts shall adopt policies limiting extracurricular activities from the beginning of the school week through the end of the school week (excluding holidays)

by scheduling no more than one contest or performance per activity per student and by limiting practice outside the school day to a maximum of eight hours per school week per activity except as specified in paragraph (2) of this subsection.....

(2)Tournaments and postseason competition, as well as contests postponed by weather or public disaster, may also be scheduled during the school week.....

(l)At the end of the first three weeks of a grading period, the school district shall send notice of progress to the parent/guardian of a student whose grade average in any class is lower than 70 or whose grade average is deemed borderline.....

(m)Definitions of "curricular","cocurricular","and extracurricular" activities shall be as follows:.....

.....

UTAH

R300-605. Standards for Extracurricular Student Activities

R300-605-1. Authority and Purpose

A. This rule is authorized by Section 53-2-12(2), U.C.A. 1953, which allows the Utah State Board of Education to adopt rules in accordance with its responsibilities, and Section 53-2-12(1), U.C.A. 1953, which allows the Utah State

Board of Education to adopt rules regarding access to programs.

B. The purpose of this rule is to specify standards associated with extracurricular activities.

R300-606. Standards for Interschool Competitive Sports in High School

R300-606-1. Authority and Purpose

A. This rule is authorized by Section 53-2-12(2), U.C.A. 1953, which allows the Board to adopt rules in accordance with its responsibilities, and Section 53-2-12.1(1), U.C.A. 1953, which allows the Board to adopt rules regarding access to programs.

B. The purpose of this rule is to specify rules governing high school intercompetitive sports so as to ensure that competitive sports are a positive aspect of school activities.

R300-606-2. Standards

A. The Utah High School Association by-laws, policies, regulations, and interpretations dealing with high school sports programs shall be strictly adhered to with every effort to live both by the letter and the spirit of the by-laws, policies, regulations, and interpretations.

B(1)Coaches and other designated school leaders must

diligently supervise their players at all times while on school-sponsored activities. This includes supervision on the field, court, or other playing sites, in locker rooms, in seating areas, in eating establishments, in lodging facilities, and while traveling.

(2)A coach or other designated school leader shall not exemplify negative role modeling by participating in the use of alcoholic beverages, tobacco, controlled substances, or promiscuous sexual relationships while on school-sponsored activities.

C(1)Required or voluntary participation in summer or other off-season sports clinics, workshops, and leagues may not be used as criteria for team membership or for the opportunity to try out for team membership.

(2)A summer workshop or clinic conducted by a school for any sport or activity must be limited to 10 days within a 2-week period. A clinic or workshop session conducted for less than a full day is considered a full day session.

(3)Athletic classes conducted for specific school teams may not be scheduled throughout the regular school day. First and last period athletic assignments may not preclude a coach from teaching a full load of classes during the school day.

VIRGINIA

Instructional Program, Standard B, Section 22.

School-sponsored activities shall be under the direct supervision of the staff and should contribute to the educational objectives of the school.....They should not interfere with the individual's required instructional activities. Extra-curricular activities and eligibility requirements shall be established and approved by the superintendent and the school board.

WEST VIRGINIA

Eligibility Standards for Extracurricular Activities: Grades 7-12

In order to participate in the extracurricular activities to which this policy applies, a student must:

(1) maintain a 2.0 average

a. A 2.0 average is defined as a grade-point average (GPA) of 2.0 or better on a scale where an "A" mark earns 4 points, a "B" is awarded 3 points, a "C" is worth 2 points, a "D" is given a value of 1 point, and an "F" is worth 0 points.

b. In computing a student's "grade-point average" (GPA) for purposes of this policy, all subjects undertaken by the student and for which a final grade is recorded are to be considered. The total number of classes taken is divided into the total number of "grade points" earned to determine the GPA. Classes for which a pass/fail is awarded will be

included in computing the GPA only if the student failed the class.

c. The student's eligibility will be determined for each semester by his or her GPA the previous semester.

d. In the case of handicapped students, grades received from placements in regular classrooms and special education classrooms should be included when computing the GPA. For handicapped students placed in ungraded programs, consideration should be given to their achievement in those programs.

2. meet state and local attendance requirements

a. Students must meet the attendance requirement in Graduation Requirements for West Virginia Public Schools: Adolescent Education (Grades 9-12) of a full day for students in the first three years of grades 9-12 and at least four class periods in the fourth year of grades 9-12.

b. Students must meet the attendance requirements of local boards of education.