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# Legality of restrictions on athletic eligibility of secondary school students

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# LEGALITY OF RESTRICTIONS ON ATHLETIC ELIGIBILITY OF SECONDARY SCHOOL STUDENTS

by

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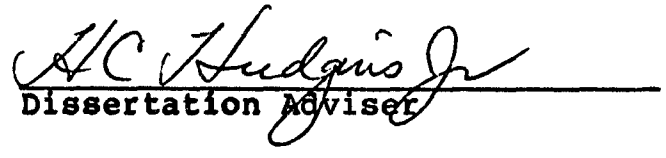

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## APPROVAL PAGE

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This study dealt with the problem of determining the legality of athletic eligibility restrictions at the secondary level. For the purposes of this study the problem was divided into five specific topic areas: gender-based discrimination, discrimination against the handicapped, transfer regulations, age limitations for participation, and academic eligibility.

This research includes a review of the rules and regulations of the fifty state athletic associations and the District of Columbia. Court cases, which challenge the legality of these rules, make up the legal findings of this research.

Female athletes cannot be discriminated against on the basis of their gender. Any sports program offered to males must be open to females or a separate and equal program must be provided for the female athlete. Males can be excluded from participation on female teams.

Any handicapped student, who can meet team requirements in spite of his handicap, must be allowed the right to participate in secondary school athletics. The school has an obligation to inform parents of the possible risk of injury but should not deny eligibility to a student against the wishes of the parents.

Transfer rules have been upheld by the courts when they have been viewed as having accomplished the purpose for which they were written, and when they were administered in a way that was neither arbitrary nor capricious.

All state athletic associations have set age limitations for participation in secondary athletics. The courts have upheld these regulations because of the danger of allowing mature adults to participate against less mature students.

Courts have upheld the right of states to set and enforce academic standards as a requirement for athletic eligibility.

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The writer also wishes to express his thanks to Mrs. Veo Gibbs, who spent many hours serving as a reader for this dissertation.

The writer also wishes to express his gratitude to his wife, Debra, and two sons, Bryan and Barry, who sacrificed many family hours that were used in the preparation of this dissertation. Also, the writer owes a debt of gratitude to his parents for providing help that allowed him time to work on this dissertation. Without their help and support this project would not have been possible.

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# CHAPTER I

## INTRODUCTION

Dreams of being the sports hero in high school, college, and even in the professional leagues occupy a large part of many young children's early fantasies. For many of these dreamers the dream is shattered early in life when they realize that they simply are not good enough to perform at the level necessary to attain stardom. But what of those few who are good enough to be the hero? What happens when something outside their control, something referred to as an eligibility rule, forces them to the sideline? These young persons may lose an opportunity to earn a scholarship to college, and from there an opportunity to play in the professional leagues and make large sums of money. Is there any recourse, can there be legal action, is there such a thing as the "right to participate"? As dreams are shattered and students are denied the right to participate, they are, in increasing numbers, turning to the courts for rulings on the legality of the eligibility requirements which govern their participation.

A review of court cases since 1972 dealing with student eligibility for interscholastic athletics revealed a breakdown into five major subject matter categories: gender-based discrimination, discrimination against the

handicapped, transfer regulations, age limitations, and most recently academic eligibility. In most situations these suits, initiated by parents on behalf of their children are brought against local schools, local school boards, and state athletic associations.

> State and national high school athletic organizations are necessary to protect the activity and athletic interests of the high schools, to promote an ever increasing growth of a type of interscholastic athletics which is educational in both objective and method and which can be justified as an integral part of the high school curriculum, and to protect high school students from exploitation for purposes having no educational implications. (1)

These athletic associations exist for the purpose of establishing rules and regulations and for the purpose of enforcing these rules. When eligibility rules are challenged, the courts have upheld the rights of the athletic associations to make and enforce rules as long as the rules were established for a specific educational purpose, and when the rule does what it was designed to do and nothing else.

Courts have consistently held that participation in any activity, including sports, is not a property right under the fourteenth amendment and is therefore not protected by the Constitution. (2)

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1 North Carolina High School Athletic Association Handbook, Rick Strunk, ed. (Chapel Hill, N.C.: The North Carolina High School Athletic Association, Inc., 1987), 11.

2 The leading court case that established the concept that the student's right to participate did not fall within the protection of the due process clause of the Constitution

## BACKGROUND OF THE STUDY

No one seems to know when athletic competition began nor does anyone know what the sport was that fostered such competition. However, it is possible to reconstruct how such competition began in the area of secondary interscholastic athletics. "Interscholastic athletics started on a local scale with nearby schools participating with each other. As the popularity of these contests grew, and as transportation facilities improved, sectional and state-wide contests were held." (3) The birth and growth of interscholastic athletics was not smooth and problem free. The early years were filled with problems for schools that tried to field athletic teams. "Years ago when high school athletics began, competition was informal and unguided. Abuses were prevalent as adults played with students, rules were vague or non-existent, and an absence of discipline endangered the program." (4) Without any form of regulation, there began to appear large discrepancies in the

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is Mitchell v. Louisiana High School Athletic Association, 430 F.2d 1155 (5th Cir. 1970). Subsequent court cases have cited this case when dealing with due process claims on this subject.

3 George E. Shepard and Richard E. Jamerson, Interscholastic Athletics, (New York, Toronto, London: McGraw-Hill Book Company, Inc. 1953), 20.

4 Letter received from Charlie Adams, Director, North Carolina High School Athletic Association, March 31, 1986.

eligibility regulations of the different schools. (5) "Far sighted school administrators observed the need for an organization larger than the local unit to preserve the educational benefits of interscholastic athletic competition; an organization to control, supervise, and direct these activities; and an organization directed by the school administrators themselves." (6) The first state athletic associations were formed in an attempt to create an organization that would be able to control the eligibility requirements of the entire state. The first states to form such organizations were Illinois, Michigan, and Wisconsin which formed athletic associations between 1895 and 1900. (7) In the years following the early 1900's, all states and the District of Columbia followed the lead of these three states and formed state or district athletic associations. The formation and growth of these athletic associations led to legal battles to determine their right to make and enforce rules of eligibility. A review of the history of eligibility as determined by the courts shows that in the earlier cases, prior to 1972, the topics being considered were; secret societies, married students, and civil rights. Since the early years courts have upheld the right of the

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5 Shepard and Jamerson, 20.

6 Ibid.

7 Ibid.

athletic associations to supervise the interscholastic activities of member schools and to rule athletes ineligible for athletic competition when they violate the rules of the association. (8)

As athletic associations began to increase in number, several of the state associations began to see a need for an organization that could regulate the state associations and give some stability in regulations from state to state. In 1920, representatives from five state associations met in Chicago to discuss the formation of such an organization. (9) "In 1921, four states, Illinois, Iowa, Michigan, and Wisconsin became charter members of this organization." (10) In 1922 this organization became known as the National Federation of State High School Associations. (11) In 1969 Texas joined the National Federation which gave it its current fifty-one United States members, made up of the fifty state associations and the District of Columbia. This addition made it a total national organization. (12)

In its brief history, interscholastic athletics has

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8 Legal Issues in Education, ed. E.C. Bolmeier (Charlottesville, Virginia: The Michie Company, 1968), 255 - 256.

9 Shepard and Jamerson, 65.

10 Ibid.

11 Handbook, 1981 -1982, National Federation Of State High School Associations,(Kansas City, Missouri: National Federation of State High School Associations,1981), 7.

12 Ibid, 110.

evolved from no organization to the complex structure that now exists. In all of its dealings, the purpose is to maintain a universal and fair set of rules and regulations and to preserve the educational component of secondary school athletics.

## PROBLEM STATEMENT

This study dealt with the problem of determining the legality of athletic eligibility restrictions at the secondary school level. The broad problem was broken down into five more specific topics: gender-based discrimination, discrimination against the handicapped, transfer regulations, age limitations for participation, and academic eligibility. This study also examined three federal statutes, the Rehabilitation Act of 1973, (13) Title IX, (14) and Public Law 94-142, (15) and the effect each has had on the eligibility requirements placed on students by state boards of education, state legislatures,state athletic associations, and local boards of education. This study also looked at court cases that have been decided

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13 Statutes at Large, "The Rehabilitation Act of 1973", Public Law 92-318, Sec. 504, March 23, 1972.

14 Statutes at Large, "Education Amendment of 1972", Public Law 92-318, Title IX, Sec. 901, June 23, 1972.

15 Statutes at Large, "Education for all Handicapped Children Act of 1975", Public Law 94-142, Nov. 29, 1975.

since 1972 in each of these areas. It was anticipated that this study would provide secondary school administrators with a guide to use when dealing with difficult eligibility questions by providing specific athletic eligibility regulations and the position of the courts concerning each of these issues.

## PURPOSE AND SIGNIFICANCE

This study was designed to determine the legality of eligibility restrictions governing student participation in secondary school interscholastic athletics. For the secondary school administrator, the problem of ruling on student eligibility in an improper way may result with a court action against the school and the local school board. The purpose of this study was to provide administrators with answers to the questions they might have in dealing with athletic eligibility. As a result administrators would be able to make better decisions when in possession of detailed and valid information.

The successful resolution of this problem would, if thoroughly resolved, result in the elimination of athletic eligibility cases being brought before the courts. However, it is not likely that a total resolution of the problem will ever occur. A more realistic result would be that those administrators who use the information presented in this

study will be able to avoid many court cases based on athletic eligibility.

Athletic eligibility is an area of major importance in secondary schools today. If an athlete is talented enough and willing to work at perfecting his skills, he may be able to pay for his college costs by playing sports. An even smaller percentage of these athletes will be able to advance to the professional leagues and earn large sums of money as professional athletes. When dealing with the future of an athlete it is extremely important that all of the facts are collected and that the administrator responsible for making the decision is well informed concerning the legal ramifications of his decision. A wrong or unwise decision might deprive a student of a bright future and an opportunity to earn considerable money.

## DEFINITIONS

For the purpose of this study, the following definitions should be of value to the reader:

> Discrimination = "In constitutional law, the effect of a statute or established practice which confers particular privileges on a class arbitrarily selected from a large number of persons, all of whom stand in the same relation to the privileges granted and between whom and those not favored no reasonable distinction can be found. Unfair treatment or denial of normal privileges to persons because of their race, age, nationality or religion. A failure to treat all persons equally where no reasonable distinction can

be found between those favored and those not favored." (16)

Eligible = "Fit and proper to be chosen; qualified to be elected. Capable of serving, legally qualified to serve." (17)

Extra = "A Latin preposition, occurring in many legal phrases, and meaning beyond, except, without, out of, outside." (18) The term will be used in this study to denote extra legal organizations.

Handicapped = "Any person who (a) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (b) has a record of such an impairment, or (c) is regarded as having such an impairment." (19)

Program, Institution = If the institution receives funds from the Federal Government then all programs of the institution are subject to Title IX legislation. (20)

Program, Programmatic or program specific = If the program in question, ie. sports program, is not receiving Federal financing, then HEW has no jurisdiction in the matter. (21)

Property right = "A generic term which refers to any type of right to specific property whether it is

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16 Henry Campbell Black, Joseph R. Nolan and M.J. Connolly, Black's Law Dictionary, Fifth Edition,(St. Paul Minnesota: West Publishing Co., 1979), 420.

17 Ibid, 467.

18 Ibid, 528.

19 Statutes at Large, "The Rehabilitation Act of 1973", Public Law 92-318, 29 U.S.C.A. 706, March 23, 1972.

20 Grove City College v. Bell, 687 F.2d 684 (1982). This case is not cited to provide any information other than that of a definition for the two different interpretations of the term program. The findings of the court are not the focus of the information and are therefore not taken into consideration.

21 Ibid.

personal or real property, tangible or intangible." (22)

Secondary School = "A high school or preparatory school intermediate between the elementary school and college. (23)

Writ of certiorari = "An order by the appellate court which is used when the court has discretion on whether or not to hear an appeal. If the writ is denied, the court refuses to hear the appeal and, in effect, the judgment below stands unchanged. If the writ is granted, then it has the effect of ordering the lower court to certify the record and send it up to the higher court which has used its discretion to hear the appeal." (24)

## METHODOLOGY

All of the data for this research project came from materials already in existence. The information was gathered through several different means involving four main categories: [1] statutes, [2] constitutions, by-laws and eligibility requirements of state athletic associations, [3] court opinions, and [4] journal articles, books, studies, and dissertations.

The statutes relevant to this study were found in Jackson Library at the University of North Carolina at

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22 Black, Nolan, and Connolly, 1096.

23 Funk and Wagnalls Standard Desk Dictionary, 1985 edition, s.v. "Secondary School."

24 Ibid, 1443.

Greensboro. The statutes were located by using the index for the Statutes at Large listed by year in which the legislation was passed. Portions of the following statutes were used: "The Rehabilitation Act of 1973" (25), "Title IX" (26), and "The Education for All Handicapped Children Act of 1975". (27) Information gathered from these statutes was used as bench mark against which to test the legality of athletic association regulations.

In order to test the legality of eligibility requirements in the different states, it was necessary to obtain from each state and the District of Columbia a copy of the by-laws, constitutions, and eligibility requirements under which each operated. This was accomplished through written communication with each of the fifty state athletic associations and the District of Columbia Athletic Association. All fifty-one of the athletic associations replied with copies of their association's handbook. These handbooks provided the information necessary to determine the eligibility requirements each association places on its athletes in the secondary schools.

In identifying and locating court cases for the legal section of this research, the researcher used the following: The Yearbook of School Law (published by NOLPE), Corpus

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25 Statutes at Large, PL 93-112.

26 Statutes at Large, PL 92-318.

27 Statutes at Large, PL 94-142.

Juris Secundum, The Deskbook Encyclopedia of American School Law, The Index to Legal Periodicals, and The American Digest System. When court cases were found, the list of cases was added to by pulling out the cases that had been cited by both lawyers as they presented their cases and by the judge in the opinion. Added to this were cases cited in articles taken from law journals. An examination of these sources has given an exhaustive list of cases to support this research. Court cases were secured from the following places: the library at The University of North Carolina at Greensboro, the library at Appalachian State University, the Buncombe County Law Library, and the McDowell County Law Library. Also used in this research were materials belonging to The McDowell County Schools.

In researching the materials for the review of the literature, the writer acquired information through library research and through personal communications with organizations and other researchers. The library research involved a search of the Readers Guide, ERIC, a subject search of the card catalogue, a search of the Index to Legal Periodicals, a review of each edition of The Yearbook of School Law, 1972 - 1986, and Dissertation Abstracts. The topics used to search these different sources were: schools and school districts, eligibility, athletes, athletics, interscholastic athletics, extracurricular activities, extracurricular athletics and academic eligibility.

Personal communications involved correspondence with each of the fifty different state athletic associations and the District of Columbia athletic association. Personal communications also involved correspondence with the National Association of Secondary School Principals for copies of monographs. Personal communications also included letters to and an interview with Representative Wilhelmina Delco of the Texas House of Representatives. Representative Delco is a member of the Committee on Higher Education, and was a speaker at the North Carolina Principal Conference held in Wilmington, North Carolina in June of 1987. Representative Delco provided valuable information pertaining to Texas House Bill 72, better known as the "No pass, No play" legislation. (28)

## DELIMITATIONS

This study dealt with athletic eligibility requirements and court cases resulting from challenges to these requirements which were decided between 1972 and 1987. This time span was chosen to include the passage of the "Education Amendments of 1972" of which Title IX was a large part, the passage of the "Rehabilitation Act of 1973" which guaranteed certain rights to a handicapped student, and the

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28 The Legislature of the State of Texas, House Bill 72, passed June 23, 1984.

passage of the "Education for All Handicapped Children Act of 1975" which is better known as Public Law 94-142. All three of these pieces of legislation had an effect on the eligibility requirements of each state athletic association and also on the decisions of the courts when dealing with cases involving students covered by these laws. Issues that were before the courts prior to this time involved topics that are no longer being challenged. The two major areas dealt with eligibility of married students and the right of athletic associations to exclude students who belonged to secret societies. This research focused on five areas of athletic eligibility: gender based discrimination, discrimination against the handicapped, transfer regulations, age limitations, and academic eligibility. The study has been arranged in a manner that will allow each of these five areas to be examined separately. This study did not cover limitations on participation in summer camp, nor did it involve a study of eligibility of married students.

# CHAPTER II

# REVIEW OF THE LITERATURE

## INTRODUCTION

This chapter will provide the reader with a review of the literature pertinent to this study. The chapter has been organized in such a way as to present the information by subject. The first part of the chapter will serve as an introduction to the chapter with an overview or outline of the information that follows. The topic of athletic eligibility has been divided into two parts. The first part begins with the inception of state athletic associations and continues until 1972. This section will cite only a few court cases that will present the direction of the courts to the reader. This time period has been dealt with in the history of the study. The years of 1972 through 1987 have been divided by topic to provide a more understandable methodology of presenting information. The areas presented from 1972 until 1987 include the following: gender based discrimination, discrimination against the handicapped, transfer regulations, age limitations, and academic eligibility. These topics have been presented individually for the purpose of clarity.

## HISTORICAL PERSPECTIVE

In the late 1800's, athletics in secondary schools had grown large enough for people to notice and important enough to cause schools to go to unusual lengths to win, such as having adults participate with students on school teams. Some school administrators observed the need for some sort of organization in high school athletics that could set rules and enforce them in order to bring some direction to athletics and at the same time do away with some of the discrepancies that were then prevalent. (29) The Wisconsin Interscholastic Athletic Association (WIAA) was one of the first to form. "The WIAA had its earliest beginnings in late 1895 and early 1896, and the first set of rules was adopted in December of 1896". (30) Even though there were other states which formed athletic associations at the same time such as Michigan and Illinois, (31) the first legal challenges were against regulations created by local boards of education rather than against the newly formed athletic associations.

In 1906 such a case came before the Supreme Court of the state of Washington, Wayland v. Board of School

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29 Shepard and Jamerson, 20.

30 Handbook, 1986-1987, Wisconsin Interscholastic Athletic Association,(Stevens Point, Wisconsin: Wisconsin Interscholastic Athletic Association, 1986), 3.

31 Shepard and Jamerson, 20.

Directors of District No. 1 of Seattle. (32) This case involved a challenge to the right of the local school board to make a regulation that prohibited members of a secret society, in this case a fraternity, from participation in any extracurricular activity which included sports. In the opinion of the court, the local board of education had the right to make rules that will protect the population of the school system it represents and also to enforce those rules. Therefore, George Wayland was ruled ineligible to participate in any extracurricular activity provided by the school. (33) In Durham, North Carolina, the board of education made a regulation that required students to sign a pledge that they were not nor would be in the future a member of any fraternity or secret organization that was not approved by the school board.

> Here appears a declaration that the signor is not a member or "pledge" of any fraternity or society not approved by the school board; that he will not join any such society or attend the meetings of same or any function sponsored by it; and that he will not contribute funds to or participate in any of the activities of any such organization. (34)

Those students who refused to sign the pledge would be prohibited from participation in any extracurricular

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32 Wayland v. Board of School Directors of District No. 1 of Seattle, 86 Pac 642 (1906).

33 Ibid.

34 Coggins v. Board of Education of City of Durham, 223 N.C. 763, 756 (1943)

activity. (35) John Coggins, Jr., was a member of a fraternity and also sought to participate on the school football team. His refusal to sign the pledge made him ineligible to participate. In the suit that followed, the court ruled that the school board had the right to make such a requirement of students; further, the board of education did not deny him the right to participate, but rather made it optional. The student was given the option of belonging to the fraternity, or dropping the fraternity and becoming eligible for participation on the school's football team. (36) Courts in Arkansas, Kansas, Ohio, and Texas also agreed with the right of the local school board to place restrictions on students who wish to participate in secondary school athletics. (37)

In 1938, Billy Roberts became the first student to challenge the right of an athletic association to make and enforce rules of eligibility. (38) Billy, along with other teammates had received small football charms as gifts from

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35 Coggins v Board of Education of City of Durham, 28 S.E. 2d 527 (N.C. 1944).

36 Ibid.

37 Court cases in these four states also support the right of the school board to exclude members of secret societies from participation in extracurricular activities. The cases are as follows: Isgrig v. Srygley, 197 S.W.2d 39 (Ark. 1946)., Andeel v. Woods, 258 P.2d 285 (Kan. 1953)., Holroyd v. Eibling, 188 N.E.2d 797 (Ohio 1962)., and Wilson v. Abilene Independent School District, 190 S.W.2d 406 (Tex. 1945).

38 Morris v. Roberts, 82 P.2d 1023 (Ok. 1938).

several fans. As a result they were in violation of the state athletic association's rule governing the acceptance of awards. The state athletic association ruled the students ineligible for a period of one year. In reaching its decision, the court looked at the fact that the Oklahoma High School Athletic Association was a voluntary organization and by joining the association, members had agreed to abide by the rules set forth by the organization. Therefore, the court found nothing unlawful in the rules of the association nor in its right to enforce those rules. (39)

Since the first challenges, courts have upheld the right of athletic associations to both make and enforce rules governing athletic eligibility. This support has not been total but the overwhelming majority of court cases have upheld state athletic associations.

A review of the history of eligibility and the courts showed that in the earlier cases, prior to 1972, the topics being considered were secret societies and married students. (40) The position of the courts, in regard to secret societies, has already been discussed earlier in this chapter.

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39 Ibid.

40 E.C. Bolmeier, Legal Issues In Education, ed. J. David Mohler, "Legal Aspects of Extracurricular Activities In Secondary Schools", (Charlottesville, Virginia: The Michie Company, 1968), 247-256.

In 1959 one of the earliest cases challenging the right of a school board to make and enforce a rule that declared married students ineligible to participate in athletics was brought to the courts in Texas. (41) The decision of the court was one that would be followed for many years. The court upheld the right of the local school board to make and enforce eligibility rules against married students. (42) In making the rules pertaining to eligibility of married students, school boards have cited basically five reasons:

> [1] Married students assume new and serious responsibilities. Participation in extracurricular activities tends to interfere with discharging these responsibilities;
> [2] A basic education program is even more essential for married students. Therefore, full attention should be given to the school program in order that such students may achieve success;
> [3] Teenage marriages are on the increase. Marriage prior to the age set by law should be discouraged. Excluding married students from extracurricular activities may tend to discourage early marriages;
> [4] Married students need to spend time with their families in order that the marriage will have a better chance of being successful;
> [5] Married students are more likely to drop out of school. Hence, marriage should be discouraged among teenage students. (43)

In cases decided before 1972, courts tended to agree with the reasoning of the court in Kissick which recognized that the dropout rate of students could be positively affected by

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41 Kissick v. Garland Independent School District, 330 S.W. 2d. 708 (Tex. 1959).

42 Ibid.

43 Moran v. School District #7, Yellowstone County, 350 F.Supp. 1180, 1182-1183 (D. Mont. 1972)

the creation and enforcement of eligibility rules that prohibited the participation of married students. (44) In 1971 and 1972, two cases came before the courts that gave new direction to the way athletic associations and local boards of education looked at married students. In Moran v. School District #7, Yellowstone County, the court decided in favor of the student, Steve Moran, and enjoined the school district from enforcing its regulation prohibiting the participation of married students in extracurricular activities. (45) In a similar case the court allowed Soni Romans to participate in extracurricular activities stating that the regulation of the school board that had rendered her ineligible was violative of her equal protection rights. (46) No longer would a majority of the courts uphold the right of the athletic associations and local boards of education to make and enforce rules governing the eligibility of married students.

The early "Seventies" saw a decline in the types of litigation that had dominated the courts in regard to athletic eligibility and a new challenge came to the forefront. Female athletes were beginning to demand the right to participate in athletics in the school setting. In order for this to take place there had to be a change in the

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44 Kissick v. Garland Independent School District.

45 Ibid.

46 Romans v. Crenshaw, 354 F.Supp. 808 (S.D. Tex. 1971).

status quo attitude, "When it comes to U.S. athletics, the female has been a loser, relegated by males to the sidelines. But a revolution looms." (47) The revolution brought demands of equality for female athletes that would involve the courts into the late 1980's.

## GENDER-BASED DISCRIMINATION

The early 1970's witnessed the introduction of a new area of litigation pertaining to athletic eligibility, that of gender-based discrimination. Prior to the passage of Title IX, it was common for state athletic associations to have rules much like the one published by the Minnesota State High School League in its handbook for 1971-72. The rule stated: "Girls shall be prohibited from participation in the boys' interscholastic athletic program either as a member of the boys' team or a member of the girls' team playing the boys' team. The girls' team shall not accept male members. (48) This particular rule came under attack in Brenden v. Independent School District. As a result of this court action two girls, Peggy Brenden and Antoinette St. Pierre, were granted permission to participate along with male students on the tennis, cross country running and

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47 Bill Gilbert and Nancy Williamson, "Sport is Unfair to Women," Sports Illustrated 38 (May 28, 1973): 92.

48 Brenden v. Independent School District, 477 F.2d. 1202, 1294 (8th Cir. 1973)

skiing teams. (49) Early court cases such as Brenden usually involved suit against athletic associations charging that the associations' rules violated female students' rights guaranteed to them under the equal protection clause of the fourteenth amendment. On June 23, 1972, Congress passed into law what has come to be known as "Title IX". (50) Title IX is part of the "Education Amendment of 1972" and in part states: "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 education program or activity receiving Federal financial assistance..." (51) However, in court cases charging Title IX violations, a problem has arisen with the definition of the term program. Some groups define this section of Title IX to mean that the sports program must be receiving federal assistance before the sports program is required to abide by the Title IX legislation. However, there are other groups who interpret the section to mean that if a school is receiving federal assistance, then all of the programs including the sports program are subject to Title IX legislation. (52) The Department of Health

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49 Ibid.

50 Statutes at Large, PL 92-318.

51 Ibid. p.373.

52 Herb Appenzeller, "Title IX: After Grove City", Sports and Law: Contemporary Issues, (Charlottesville, Virginia: The Michie Company, 1985), 50-51.

Education and Welfare (HEW) pushed for the definition of program to be wide and to include all areas of a school that received federal money for any part of the school. This was referred to as the institution approach. (53) "In a decision dated 23 February 1981, U.S. District Judge Charles W. Joiner decided squarely for the programmatic approach." (54) The programmatic approach to Title IX interpretation promoted the idea that only the programs receiving federal financing could be held responsible for enforcing the legislation. (55) In 1982 a case began that when completed would answer the question of scope of program. The case did not deal with athletic eligibility in the secondary schools, but the decision can be applied at any level either secondary or post-secondary. In Grove City v. Bell, 687 F.2d 684 (1982), the court agreed with HEW and ruled that program would be defined to mean institution, and that if any part of the institution, or any student of the institution were to receive federal funds then all the programs of the school would be subject to the direction of Title IX. (56) On appeal the Supreme Court agreed to hear the case and in 1984 settled the question. In Grove City v.

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53 Ibid.

54 Thomas J. Flygare, "Schools and the Law", Phi Delta Kappan, 62, no. 10 June 1981, 741.

55 Ibid.

56 Appenzeller, Sports and Law: Contemporary Issues, 49-51.

Bell, 104 S.Ct.1211 (1984), the Supreme Court stated that Title IX enforcement is limited to the specific program receiving the federal funds. (57) On March 22, 1988, congress overrode President Reagan's veto of a major civil rights bill. (58) This bill is designed to clarify legislation already in existence protecting women, minorities, the elderly and the handicapped from discrimination. The bill states in part: "Compliance is required throughout entire colleges, universities and public school systems if any program or activity receives federal aid." (59) This bill invalidates the decision of the court in Grove City v. Bell, and changes the definition from program specific to an institution approach to interpretation of Title IX.

With the definition of program settled, the courts would continue to hear cases that had been brought against schools, boards of education, and athletic associations charging them with sex discrimination. As a result most athletic associations have developed rules and regulations which govern the participation of female athletic competition. These rules have been developed to reflect the direction of the courts. Most states have enacted rules

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57 Ibid.

58 "Reagan Veto of Civil Rights Bill Toppled", The Asheville Citizen, 23 March 1988, sec. A, p. 1.

59 Ibid.

that are similar to the one in North Carolina, (60) which states:

> Women shall not participate on a men's interscholastic athletic team where the school has a women's team in the same sport or where a school sends an entry to the women's state play-offs in that sport. In cases where women are permitted on a men's team, the school forfeits all participation in the women's play-offs in the same sport. Men's rules will be used where women play on men's teams. Under no condition shall men participate on women's teams in any sport. (61)

Since Title IX was passed in 1972, court cases involving sex discrimination have dealt with three basic areas: [1] those in which females have totally been denied the opportunity to participate in athletics, [2] those that distinguish between contact and non-contact sports, and [3] those that have involved the legality of offering separate teams and also what has to be done to achieve equality in programs when they are offered separately. (62) All of these areas were addressed on April 15, 1977, when the United States District Court, for the District of Colorado decided the case of Hoover v. Meiklejohn, 430 F.Supp. 164 (1977). This case dealt with a female student and her desire to participate on the school soccer team. Her state had a rule that prohibited females from participating on a

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60 This statement is made after this researcher reviewed the regulations published by the athletic associations of the fifty states and the District of Columbia.

61 Strunk, 26.

62 Gwendolyn H. Gregory, School Law in Contemporary Society, (Topeka: National Organization on Legal Problems of Education, 1980), 61.

male team in a contact sport. The court gave the school district an alternative. "The school district had the option of discontinuing soccer, fielding separate teams for males and females with substantially equal support and substantially comparable programs, or permitting both sexes to compete on the same team." (63) The decision reached in Hoover has served as a standard for cases that have followed dealing with sex discrimination. But, even this leaves some of the questions unanswered.

In 1896, Plessy v. Ferguson (64) created what has been referred to as the separate but equal doctrine. At the point of its inception, the topic before the courts was one of race discrimination. The decision remained in effect until it was struck down as being unconstitutional by the courts in Brown. (65) The same legal doctrine that had been ruled unconstitutional in dealing with race discrimination was now being used to solve a similar problem of dealing with the female athlete and sex discrimination. "The separate but equal doctrine was rejected in race discrimination cases. Separate was deemed to be inherently

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63 Hoover v. Meiklejohn, 430 F.Supp. 164, 172 (D. Col. 1977)

64 Plessy v. Ferguson, 163 U.S. 537 (1896)

65 Brown v. Board of Education, 347 U.S. 483 (1954).

unequal as it carried the stigma of inferiority." (66) However, in dealing with female athletes, separate and equal teams are the best way to serve the interests of the two different classes. (67) It is because of the two different classes which are created by male and female athletes that some writers believe that the separate but equal approach to athletic teams is the best solution. In each class, the female champion is not inferior to the male champion in the same sport. Like classifications in boxing or wrestling, each winner is the champion of his class. So it is with the female and the male champion, each belongs to different classes. (68) In developing their guidelines, state athletic associations have followed guidelines set by the court in Hoover v. Meilklejohn and have set up athletic competition for females on a separate but equal basis. However, some states have gone a step further and have made an effort to protect exceptional female athletes who could possibly compete with males. In New York separate but equal teams are provided for athletes, but an exceptional female athlete is given the choice of participating on the male team in order to be properly challenged and given equal

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66 Candace J. Fabri and Elaine S. Fox, "The Female High School Athlete and Interscholastic Sports", Journal of Law & Education 4 no. 2 (1975): 299.

67 Ibid. 299-300.

68 Ibid, 299.

opportunity for advancement. (69) In states such as New York, athletic associations have gone past what has been set up by the courts as being acceptable.

Despite attempts to equalize the opportunities of both males and females in secondary school athletics, there always seems to be a small group of individuals who are at a disadvantage. Therefore some writers feel that the ideal solution to the problem would be to field three teams. These three teams would be comprised of one team for males only, one team for females only, and one team, a "prestige factor" team, that would be comprised of both males and females that would be fielded on the basis of talent only. (70) This solution, however fair, is hampered by the cost of running three programs.

In the area of athletic eligibility for female athletes, state athletic associations have changed as the courts and Title IX legislation have made them change. Rules and regulations of the different athletic associations are now written to reflect the position of the court at the present time. That position is clearly separate but equal teams for males and females.

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69 Handbook, 1986-1988, New York State Public High School Athletic Association, (Delmar, New York: New York State Public High School Athletic Association, 1986), 63.

70 Fabri, 300.

## DISCRIMINATION AGAINST THE HANDICAPPED

In dealing with athletic eligibility, the word handicapped can refer to basically two different areas. A student can be handicapped either physically or mentally. In order to be classified as handicapped, a student must meet the requirements outlined in The Rehabilitation Act of 1973. This act defines handicapped as follows:

> Any person who (a) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (b) has a record of such an impairment, or (c) is regarded as having such an impairment. (71)

In 1973 Congress passed The Rehabilitation Act of 1973. In addition to defining the handicapped person, section 504 of this Act states:

> No otherwise qualified handicapped individual in the United States, shall, solely by reason of his handicap, be excluded from the participation in be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (72)

As a result of this legislation, a new group of students are making demands to be included in secondary school athletics. "A new group has emerged: students with handicapping conditions who insist that federal legislation prohibits

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71 Statutes at Large, PL 92-318.

72 Ibid.

discrimination against them." (73) Five years after the bill was passed, the Department of Health Education and Welfare reported that it had received 377 claims pertaining to handicapped persons who charged discrimination. This was more than the total of claims from sex discrimination charges and race discrimination charges combined. (74)

Students with mental handicaps find it difficult to fulfill the four years of eligibility allotted by all fifty-one athletic associations. In the majority of cases, these students have been detained somewhere in their educational process and therefore reach the maximum age limit before they can compete for four years. For this reason handicapped students and their parents have requested relief from the courts and have asked for extensions of the age limit for handicapped students. (75) At present this age limit is set by each state and there are some discrepancies in the rules. A review of the age requirements established by the athletic associations of the fifty states and the District of Columbia reveals that forty of the athletic associations have set the maximum age limit at nineteen, ten of the associations have set the limit at twenty, and one

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73 Herb Appenzeller, The Right to Participate: The law and Individuals With Handicapping Conditions in Physical Education and Sports (Charlottesville: The Michie Company, 1983) 175.

74 Herb Appenzeller and Thomas Appenzeller, Sports and the Courts (Charlottesville: The Michie Company, 1980), 33.

75 Appenzeller, The Right to Participate, 143.

has set the limit at eighteen years and nine months. The National Federation has set the recommended limit at nineteen years. (See Appendix B) In dealing with the question of age, the courts have, by majority, supported athletic associations and their right to establish age regulations. (76) An example of the courts' reasoning can be found in Cavallaro v. Ambach. (77) Due to a neurological impairment Daniel Cavallaro had been retained in the lower grades and had reached the age of nineteen prior to entering his senior year. He was ruled ineligible for participation on his high school wrestling team. In court Judge Telesca stated:

> ...that where high school senior classified as neurologically impaired was prohibited from participating in interscholastic athletics because he had reached age of 19, and was not treated any differently than any other nonphysically handicapped 19-year-old students, student could not prevail in handicap discrimination and equal protection action brought against state education officials....the potential hardship to Daniel if the injunction does not issue fails to outweigh the more substantial probability of hardships created by possible injuries to younger wrestlers caused by their competition with a physically mature 19 year old. (78)

In this type of case the major consideration is the safety of the other athletes. When dealing with handicapped students, athletic associations have refused to show any

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76 Ibid., 144-146.

77 Cavallaro By Cavallaro v. Ambach, 575 F.Supp. 171 (W.D. New York, 1983).

78 Ibid., 172-175.

flexibility pertaining to age limitations. However, a review of the regulations of the fifty state athletic associations and the District of Columbia reveals that a majority of the associations do have hardship rules. The rules follow basically the same format and purpose. "The purpose of the hardship rule is to provide due process." (79)

> ...except for the eligibility rule in regard to age, the Board of directors shall have the authority to set aside the effect of any eligibility rule when in the opinion of the Board the rule fails to accomplish the purpose for which it is intended and when the rule works an undue hardship upon the student. (80)

This regulation from the North Carolina Athletic Association serves as an example of the Association's reluctance to deviate from the age limitation and also its willingness to bend the other regulations to accommodate the handicapped student. State athletic association regulations continue to evolve to reflect the opinions of the courts.

The group of students who have been most active in their appeals to the courts are the students with physical handicaps. The physically handicapped student enjoys the same rights as the mentally handicapped student under the protection of section 504 of the Rehabilitation Act of 1973. (81) Students with physical handicaps encounter their first

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79 Strunk, North Carolina High School Athletic Association Handbook, 74.

80 Ibid.

81 Statutes at Large, PL 92-318.

barriers to athletic competition not from the state athletic associations, but rather from the medical community. All states require that students have physical examinations and receive an approval from a physician in order to participate in an athletic program. A majority of the examining physicians seem to consult the regulations set forth by the American Medical Association (AMA) when making determinations concerning athletic eligibility. In its guide the AMA sets forth a number of disqualifying conditions such as absence of an eye, respiratory problems, cardiovascular problems, liver disorders, and other physical impairments. (82) In making its regulations the AMA divided sports into four categories: collision sports, contact sports, non-contact sports, and others. (83) The AMA then proceeded to make recommendations as to whether or not it felt that it was safe for a handicapped athlete to participate in each category based upon his or her individual handicap. These guidelines were intended to serve as recommendations, but in some situations were interpreted as being specific, controlling guidelines. The AMA stated that the absence of one kidney should cause a student to be ineligible for participation in collision as

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82 Disqualifying Conditions for Sports Participation, Medical Evaluation of the Athlete - A Guide, (Chicago: The American Medical Association, 1977).

83 Ibid.

well as contact sports. (84) However in Poole v. South Plainfield Board of Education, the court ruled that refusing to allow Richard Poole to participate in wrestling, which the AMA classified as a contact sport, because he had only one kidney, was a violation of section 504 of the Rehabilitation Act of 1973. (85) Also, in Grube v. Bethlehem Area School District, the court found that the refusal to allow Richard Grube to participate in football because he had only one kidney was a violation of section 504 of the Rehabilitation Act of 1973, even though football was considered a collision sport and the AMA recommended against his participation. (86)

In 1975 Congress passed the "Education for all Handicapped Children Act of 1975", better known as PL 94-142. (87) The area of this legislation that impacts the hardest on athletic eligibility is the section that requires that an Individualized Educational Program (IEP) be developed for each handicapped student. A review of athletic association guidelines reveals that ten of these associations provide for changes in eligibility rulings based upon the stipulations of a student's IEP. The demand

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84 Ibid.

85 Poole v. South Plainfield Board of Education, 490 F.Supp. 948 (D. N.J. 1980).

86 Grube v. Bethlehem Area School District, 550 F.Supp. 418 (E.D. Penn. 1982)

87 Statutes at Large, PL 94-142.

to provide equal opportunity and due process to a handicapped student has caused athletic associations to make changes in their regulations.

> No longer can individuals be denied opportunities to participate in sports activities at any level because of handicapping conditions. Constitutionally guaranteed rights of individuals with handicapping conditions necessitate organizations sponsoring sports activities to ensure equal opportunities for individuals with handicapping conditions. (88)

In situations such as these, making decisions concerning eligibility for handicapped students can become a no-win situation for a school administrator and for a board of education.

> What if a student in one of your high schools - a student who was a hemophiliac - wanted to play football? Or if a student with a hernia wanted to go out for soccer? Or if an epileptic student wanted to play field hockey? Your first reaction might be to tell these students No. You don't want to risk injury to them or lawsuits against your school system, you reason, so saying No is a prudent decision. (89)

To deny a student the opportunity to participate might be the logical thing to do. However, according to the ruling in Poole, a board of education has no right to deny a handicapped student the right to participate if the parents are aware of the dangers and still encourage the student to

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88 Julian U. Stein, "New vistas in competitive sports for athletes with handicapping conditions," Exceptional Education Quarterly 3, (May 1982): 29.

89 Thomas J. Pepe and Thomas B. Mooney, "Weigh these complex issues about handicapped kids in athletics." The American School Board Journal 169 (February 1982): 31.

participate. (90)

No longer can a school system rely totally on the school physician and the recommendations of the AMA.

> If your school system were to follow the AMA sports exclusion guidelines to prohibit students with specific handicaps from playing contact sports, you might find yourself defending that policy in court. Reason: General rules on disqualifying handicapped students do not take into account individual differences or the willingness of students and their parents to take risks to participate in contact sports. (91)

All dealings with handicapped students must be on an individual basis and at times in line with students' IEP.

The question of eligibility for handicapped students is complex and controversial. A handicapped student has the same desire to excel and be the sports hero that other young people have. The question of eligibility must be answered by the courts. (92)

## TRANSFER REGULATIONS

Transfer rules were originally established to prevent highly talented student athletes from being recruited by high schools who were interested in fielding a superior

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90 Poole v. South Plainfield Board of Education, 948.

91 Pepe and Mooney, 32.

92 Appenzeller and Appenzeller, Sports and the Courts, 54.

team. (93)

In the formative years of state athletic associations, different schools operated under different rules. One of the jobs of the athletic associations was to try to regulate the recruiting of athletes. Young athletes who were extremely talented would be approached by a person or persons representing a school and would be pressured to move from one location to another in order to represent that school in high school athletics. The process worked much the same as the present day college recruiting does. (94) The athletic associations had to develop a method of controlling the recruiting of students.

> The usual method is the transfer rule. While each state words the rule differently, the basic idea is that a student who changes schools is ineligible for a certain period of time after the change, generally one year. The rationale behind the rule is that players will not move from one school to another if they know they will not be allowed to participate. Additionally, the players recruited are generally juniors or seniors. Thus, the loss of a year's playing time would be at the athlete's peak period of performance and would damage any chance of a college scholarship. (95)

These first transfer rules were simply stated and provided that a student was ineligible for a period of time ,usually

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93 John L. Strope, Jr., School Activities and the Law (Reston, Virginia: The National Association of Secondary School Principals, 1984), 12.

94 Charles Everett Mullins, "Family Law Issues in High School Athletic Eligibility: Equal Protection v. The Transfer Rule," Journal of Family Law University of Louisville School of Law 20 (1981-82) : 293.

95 Ibid.

one semester or one year from the time of the transfer from one high school to another. (96) Some state athletic associations continued to apply this blanket ruling to all transfer students well into the 1980's. Court action brought against athletic associations challenging the legality of these transfer rulings were usually greeted with failure. Courts considered the athletic associations to be voluntary organizations and that by volunteering to join the association the school had agreed to abide by the rules and regulations of said association. (97) As society has become more mobile, rules governing the transfer of students have had to change to keep pace. A review of the regulations of athletic associations governing the student's right to transfer and be eligible for participation in athletics reveals that all of the athletic associations have made adjustments in their rules to allow for special situations that might arise. Students who move with their parents are considered to be bonafide transfers and those students are considered eligible with no penalty. Students transferring without the corresponding change of residence are penalized from fourteen calendar days in New York to the more accepted one year in most states. (See appendix E) Even with increasing flexibility of the current transfer rules, there are still problems to be solved. The most pressing problem

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96 Strope, 12.

97 Mullins, 295.

seems to be the charge that transfer rules do not control the problem that they were designed to control.

> Under one view, then, the transfer rules represent a haltering form of regulation. At the same time that the rules fail to except the compelling cases of some persons whose transfers were not athletically motivated, they also leave unregulated transfers for which improved athletic opportunities were the sole motivation. (98)

The feeling by some is that students who are blessed with wealthy parents are protected from the transfer rule. If a student wants to transfer to another school because of better competition or because of better coaching, and his parents have the money to sell their current residence and move to the new location and buy a new residence, then in every state this is considered to be a bonafide move and the student is eligible with no penalty. (99) Therefore those who have the means may have a way around the transfer rule in every state. This method of avoiding the transfer rule is also a real possibility for those who rent apartments and are willing to move to pursue their child's interest in sports. (100) There is yet another group that can circumvent the transfer rules. Some large companies will arrange for transfers of employees whose children are

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98 John C. Weistart, "Rule Making in Interscholastic Sports: The Basis of Judicial Review," Journal of Law & Education 11 (July 1982), 298.

99 Ibid., 297.

100 Ibid.

skilled athletically. (101) Here again the corresponding move of the parent will allow the student to enjoy instant eligibility in all fifty states and the District of Columbia. Therefore, transfer rules have been charged with being "simultaneously over-inclusive and incomplete in their coverage". (102)

Another common means of attacking transfer rules is through charges of violation of the fourteenth amendment. The fourteenth amendment states in part:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (103)

In order for the transfer rules to be challenged using the equal protection clause of the fourteenth amendment, the rule must create more than one classification of people either on its face or in its application. (104) Transfer rules will usually create at least two classifications of students, those who move with their parents and those who do not. In cases where challenges to the transfer rules have been successful it is the creating of the two broad

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101 Ibid., 298.

102 Ibid., 297.

103 Amendments To The Constitution, Article XIV, sec. 1.

104 John C. Weistart and Cym H. Lowell, The Law Of Sports, (Indianapolis: The Bobbs-merrill Company, Inc., 1979), 66.

categories that have allowed the courts to find in favor of the student. (105) In these successful cases one classification of student is one who has moved with his parents and is therefore considered to be a bonafide transfer. All others are grouped in the other category of illegal transfers.

> The bylaws, in essence, create an irrebuttable conclusion of law that all other transferees have been the victims of unscrupulous practices. This is precisely where the rules sweep too broadly, they create an over-inclusive class - those who move from one school to another for reasons wholly unrelated to athletics are grouped together with those who have been recruited or who have "jumped" for athletic reasons. (106)

As courts began to recognize that athletic association rules pertaining to student transfers were over-inclusive and they swept too broadly, athletic associations began to change their rules. The new direction was to try to design a rule that would affect only those students it was intended to regulate.

Even though there were losses for the athletic associations, the majority of the cases in the 1970's and 1980's supported the right of the associations and local boards of education to make and enforce transfer rules. In general the courts will uphold the athletic association rules if they have a rational relationship to legitimate

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105 Sturrup v. Mahan, 305 N.E.2d 877 (Ind. 1974).

106 Ibid., 881.

state interests. (107)

Transfer rules have changed during the '70's and '80's so as to penalize only those who transfer for athletic reasons. However, the rules with their exceptions and hardship clauses are still often over-inclusive and often cause a loss of eligibility to a student who transferred for reasons other than athletics. Even in those cases the courts have upheld the athletic associations most of the time.

## AGE LIMITATIONS

A review of athletic association regulations for the fifty states and the District of Columbia reveals that every state has set an age limit for athletic eligibility. (See Appendix B) In addition to the rules governing age, all of the athletic associations have added what is known as an eight semester rule. (See Appendix C) The justification for both of these rules is somewhat the same. "These rules are intended to ensure fair competition, protect the younger and less mature athletes from older athletes, prevent academic decisions from being made for athletic purposes, and avoid rewarding academic failure." (108)

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107 The Yearbook Of School Law 1983, ed. Philip K. Piele (Topeka: National Organization On Legal Problems Of Education, 1983), 178.

108 Strope, 18.

"Years ago when high school athletics began, competition was informal and unguided. Abuses were prevalent as adults played with students, rules were vague or non-existent, and an absence of discipline endangered the program." (109) One of the first abuses to be addressed was that of adults participating with students. The justification of such rules has always been to protect a younger athlete from physical harm and to ensure that as many young students as possible be able to participate. Even with the age rules and the attention given to protecting young athletes from older students, there can still be damage. Edgar Barrett III was a student in Wilmington, North Carolina. (110) During a football game a collision occurred with a player from an opposing school. As a result of that collision Barrett died. The student who had been involved in the collision with Barrett was twenty years old. It was discovered that by accident a mistake had been made in the preparation of the ineligibility list and that the older student had been overlooked. The dead youth's father brought charges against the school charging neglegence in filing an eligibility list that was incorrect.

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109 Letter received from Charlie Adams, Director of North Carolina High School Athletic Association, 31 March 1986.

110 Barrett v. Phillips, 223 S.E.2d 918 (N.C. App. 1976).

Also, that negligence resulted in the death of his son. (111) In the case the defendants were granted summary judgment. (112) To grant summary judgment means:

> Rule of Civil Procedure 56 permits any party to a civil action to move for a summary judgement on a claim, counterclaim, or cross-claim when he believes that there is no genuine issue of material fact and that he is entitled to prevail as a matter of law. The motion may be directed toward all or part of a claim or defense and it may be made on the basis of the pleadings or other portions of the record in the case or it may be supported by affidavits and a variety of outside material. (113)

Even though the age of the student involved was not proven to be the cause of Barrett's death, this case emphasizes the seriousness of the situation that led state athletic associations to develop rules that govern the age limit of high school participants.

All state athletic associations and the District of Columbia have established age requirements. Those age limits range from eighteen years and nine months in Hawaii to twenty years in ten of the states. The National Federation recommends an age limit of nineteen. (See Appendix B)

In defending their age regulations, athletic associations have had numerous challenges but few successes. "Two Florida cases represent exceptions to the consistent

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111 Ibid.

112 Ibid.

113 Black, 1287.

course of judicial opinions that uphold these rules both as written and as applied." (114) Dennis Lee had been a student in California. He moved to Florida and began his senior year. In the meantime he had been out of school for one year because of the necessity of supporting his family. He was ruled ineligible in the state of Florida. In looking at the nature of the hardship the court of appeals of Florida gave him permission to play. (115)

The Florida courts acted similarly when dealing with the case of Aaron Bryant. Bryant's hardship was of a personal nature and he claimed that his participation in basketball helped his attitude, his grades, and his social maturity and discipline. The Florida court refused to allow the Florida High School Activities Association to invoke its rule. (116)

Even though these two cases have been decided contrary to the rules of the athletic associations, the majority of the cases have supported rules governing age and attendance.

Other persons who have challenged the age rules of state athletic associations have done so on the basis that the rules were in violation of their rights granted by section 504 of the Rehabilitation Act and Public Law 94-142

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114 Strope, 18.

115 Lee v. Florida High School Activities Association, Inc. 291 So.2d 636 (Fla. App. 1974).

116 Florida High School Activities Association v. Bryant, 313 So.2d 57 (Fla. App. 1975).

of the Education for All Handicapped Children Act. In these cases where students were held back for academic rather than athletic purposes the courts have been consistent in upholding the age rules. (117) These courts have recognized the need to set age limits and those limits must be preserved for the protection of younger students.

In making its decisions the courts have looked at the reason for establishing the rules and have found that they are needed. "A maximum age rule of nineteen years of age has been held to be reasonable in light of the objective of fostering safety and fairness in competition." (118)

## ACADEMIC ELIGIBILITY

Some people would agree that academics and athletics are two separate and distinct programmatic areas and that the two would not come in conflict with each other. However, in the last few years there has been considerable attention drawn to the link between athletics and academics. Does one have an effect over the other?

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117 Chambers v. Massachusetts Secondary School Principals Association, Inc., Superior Court, No. 9641, Jan. 1978. , McNulty v. Massachusetts Interscholastic Athletic Association, Superior Court, No. 37053, Jan. 1979. These two cases are representative of how the courts have viewed the challenges against the age rules that have been established by the state athletic associations.

118 Deskbook Encyclopedia Of American School Law, 7th ed. s.v. "Maximum Age Rules."

Over the period of the last twenty-five years secondary education has seen a growing interest in athletics accompanied with some academic abuses. There have been stories of student grades being changed to allow an athlete to compete in athletic competition; there have been stories of transcripts being falsified to allow athletes to gain entrance into a college; and there have been many other stories of abuse of the educational process in order to preserve the athletic program of a school. The origin of this abuse of the grading system in favor of the athlete is not known but the results can be seen, and must be dealt with.

Since 1981 there has been an emphasis on academics and a return to basics in curriculum. With this heightened interest in academic achievement came a closer look at what was happening with athletics. Legislators began to look at the problems facing student athletes and decided to take upon themselves the project of bringing academics and athletics in line.

Increased pressure on academics has resulted in states attempting to exert more control over student eligibility for participation in interscholastic athletics. A review of the rules of athletic associations from the fifty states and the District of Columbia reveal a wide range in eligibility requirements pertaining to academic eligibility. Maryland, New York, and Vermont are representative of the low end of

the scale and have no minimum requirement for academic eligibility. Hawaii does not set a state minimum but rather leaves academic eligibility up to the individual conferences. The other extreme is represented by Texas. In Texas no student can be eligible to participate who has failed any course. A student athlete must pass every course he or she is attempting in order to maintain athletic eligibility. (For a complete listing of state athletic association requirements pertaining to academic eligibility, see appendix D.)

It is not always the athletic association that sets the tough standards for academic eligibility. In some situations the state school board or the state legislature becomes involved in setting academic standards. On August 12, 1983, the West Virginia State Board of Education adopted a new policy governing academic and attendance requirements for participation in extracurricular activities. .....to take effect at the end of the first semester of the 1983-84 school year. (119) In part that regulation states:

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.

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119 Bailey v. Truby, 321 S.E.2d. 302 (W.Va. 1984).

b. In computing a student's "gradepoint average" (GPA) for purpose 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 "gradepoints" 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 should be included when computing the GPA. For handicapped students placed in ungraded programs, consideration should be given to their achievement in those programs." (120)

The action of the West Virginia Board of Education did not require the student to pass all of his or her subjects to remain eligible, but required only that the student maintain a 2.0 GPA. The state required that each local board of education adopt the state guideline. However, the state did not forbid a local unit from adding to the state requirement. In Kanawha, West Virginia, the local board of education did just that and required that the students in Kanawha District pass all of the courses attempted in addition to maintaining a 2.0 GPA. (121)

The most publicized of these academic eligibility rules was passed by the Texas State Legislature. The "no pass, no play" rule became effective in 1985. The "no pass, no play" rule was only a small part of Texas House Bill 72 which was

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120 West Virginia State Board of Education Policy 2436.10.

121 Bailey v. Truby.

aimed at educational reform in all areas of public education. (122) Section 21.920 of House Bill 72 states in part:

> 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.
>
> 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 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. In order to be eligible to participate in an extracurricular activity event for a six weeks period following the initial six weeks period of a school year, a student must not have a recorded grade average lower than 70 on a scale of 0 to 100 in any course for that preceding six weeks period.
>
> d. A student whose recorded six weeks grade average in any course is lower that 70 at the end of a six week period shall be suspended from participation in any extracurricular activity event during succeeding six weeks periods until the end of a six weeks period during hich such student achieves a course grade average for that six weeks of at least 70 in each course.
>
> e. Such suspension shall become effective seven days after the last day of the six weeks period during which the grade lower than 70 was earned.
>
> f. At the end of the first three weeks of a grading period, the school district shall send notices of progress to the parent or guardian of a student whose grade average in any class is lower than 70 or whose grade average is deemed borderline by the district. The district shall make such information available to sponsors of extracurricular activities in which the student participates.

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122 Representative Wilhelmina Delco, interview by author, Wilmington, North Carolina, 15 July 1987.

> g. A student receiving an incomplete in a course is considered ineligible until the incomplete is replaced with a passing grade for the grading period. (123)

Because a student must pass all of his or her attempted courses in order to be eligible for athletic participation, the Texas regulation has been given the name "no pass, no play".

Although many states have had minimum academic standards for athletes for many years, the '80's have seen an upswing in increasing those requirements and creating requirements where none existed previously. In each of these cases the stated purpose for the creation of higher academic standards has been "to prevent extracurricular activities from interfering with academic instruction". (124) Like other issues, the creation of minimum academic standards for athletes has its supporters and its opponents. "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." (125) On the other hand, those who oppose the

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123 Texas Education Code, House Bill No. 72, Section 21.920, also Section 21.921.

124 Shelbey Crawford, Student Participation In Extracurricular Activities, (Legislative Research), Salem, Oregon, 12.

125 Martha Cromartie, "No Pass - No Play: Academic Requirements for Extracurricular Activities," School Law Bulletin 17 (Fall, 1986): 18.

academic rules are saying: "It is not only unfair, it is unjust to require of athletes that which is not required of other high school students." (126) Central to the arguments against having minimum academic standards for athletes is the one argument that athletics does so much for the athlete. (127) One assertation that has some support in research is that athletes and other students involved in extracurricular activities actually score higher on average in their classes than do those students who are not involved in some form of activities. (128) Soltz asserts further that neither do athletes' grades suffer during the time in which they are participating in an extracurricular activity, but rather a student athlete seems to score higher and fail fewer courses during the athletic season in which he or she is participating. (129) The other major objection or fear that is raised by the minimum academic requirements is that students who are on the academic borderline, and who are held in school by athletic participation, might become frustrated and drop out of school. (130) The summation of

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126 Thomas Harper, "Academic Eligibility Requirements for Student Athletes: Two Points of View. Minimum Academic Standards: No," NASSP Bulletin 70 (October 1986): 2.

127 Ibid., 13.

128 Donald F. Soltz, "Athletics and Academic Achievement: What Is the Relationship?," NASSP Journal 70 (October, 1986): 20.

129 Ibid., 23.

130 Harper, 3.

all of these concerns seems to be, will the academic eligibility requirements as imposed by the state athletic associations and governing bodies accomplish the original stated purpose? (131)

It is now possible to look at some of the early results and possibly see if there is an identifiable trend in the data produced. To gain insight into the future of academic requirement legislation, Texas House Bill 72 needs to be examined closely. What have been the results of the program to this point and has it accomplished what it set out to accomplish? "At the end of the first grading period to which the law applied, 15 per cent of all varsity athletes failed at least one course. For sub-varsity teams, the failure rate ran higher - 30 to 50 per cent. Statewide, more than 50 per cent of all students failed at least one course." (132) As a result, at least fifteen percent of student athletes in Texas were ruled ineligible for competition in interscholastic athletics. Will these students try harder and raise their grades, or will they lose interest in school and drop out? Two years after the implementation of House Bill 72 the state of Texas compiled results pertaining to education. According to that report; " results indicate that efforts to improve the educational

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131 Ibid., 1.

132 Cromartie, 17.

system were well under way." (133) By the summer of 1987 there was an even brighter outlook by the Texas Legislature. Percentages of ineligibility had begun to drop and the dropout rate had not increased. (134)

Another result of the "no pass, no play" legislation is that it seems to affect minorities most. "For a six-week period in 1986, 35 per cent of blacks and 38 per cent of Hispanics failed, compared with 26 per cent for whites." (135) This pattern has also started to lessen and the percentages for failure are beginning to align more closely. (136)

It is yet to be seen what effect, if any, the courts will have on the new wave of academic requirements being placed on athletes. However, one might anticipate that the courts will follow the pattern that has been set with the early cases dealing with grades and athletic participation.

> Since amateur athletics are ordinarily conducted as a part of the educational activities of high schools and colleges, it is also common for there to be rules which limit eligibility to those who maintain a required grade average. Such a rule will ordinarily be a proper exercise of institutional authority, because it is

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133 Gibson D. (Gib) Lewis, Speaker, Texas House of Representatives, HB 72 Two years later (Austin: House Department of Reproductions, 1986), 1.

134 Delco, interview.

135 Cromartie, 17.

136 Delco, interview.

normally both authorized and reasonable. (137)

Early cases revealed that courts upheld the right of athletic associations to make and enforce rules dealing with academic eligibility. (138) Given this support by the courts and the encouragements of state legislators, states continue to increase academic requirements placed upon athletic eligibility. Effective at the beginning of the 1988-89 school year, North Carolina will raise the number of required subjects passed from four to five per semester. (139) It could be expected that other states will follow.

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137 Weistart, Law of Sports, 68.

138 Bailey v. Truby, 321 S.E.2d 302 (W.Va. 1984), and Spring Branch I.S.D. v. Stamos, 695 S.W.2d 556 (Tex. 1985). In both of these cases the courts refused to recognize the right to participate as a property right that would be protected by the Constitution at either the state of Federal level.

139 Letter received from Charlie Adams, Director of the North Carolina High School Athletic Association, (February, 1988).

# CHAPTER III

# REVIEW OF CASES

## INTRODUCTION

This chapter will provide the reader with a review of court cases pertinent to this study. The chapter has been organized by topic for clarification. Each topic has been divided into sub-topics that will present points of law which cases have in common. The material is further arranged chronologically to present and define any trends that have developed as these points of litigation evolved through the legal system for the time period covering 1972 until 1988.

This research involved a study of court cases in five specific areas: gender-based discrimination, discrimination against the handicapped, transfer regulations, age limitations, and academic eligibility. Each of these areas has been treated separately as topics to provide a clear review of court action pertaining to each subject.

Court cases from state and federal courts were reviewed to give the reader a clear picture of the court action that has taken place regarding each topic.

## GENDER BASED DISCRIMINATION

A review of the court cases pertaining to gender based discrimination in secondary school athletics for the period 1972 through 1988 indicates that these cases can be broken down into two major topic areas: [1] challenges to athletic association rules which are brought on behalf of individuals, and [2] challenges to regulations that charge unequal treatment of teams. Discrimination against individuals can then be further divided into discrimination against females and discrimination against males.

Early in 1972, female athletes began to petition the courts seeking the opportunity to participate in sports programs that had been denied to them. (140) In Reed v. Nebraska School Activities Association, Debbie Reed sought an injunction that would allow her to participate on the Norfolk High School golf team. She had requested permission from her school to participate on the boy's golf team and had been denied on the basis that her participation on the team along with male members was a violation of the rules and regulations of the Nebraska School Activities Association. In this case, the school provided a golf team for males but did not provide a female student the opportunity to participate in competitive golf at the high school level. In evaluating the plaintiff's probability of

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140 Reed v. Nebraska School Activities Association, 341 F.Supp. 258 (D. Neb. 1972)

success, Judge Urbom stated:

> The Fourteenth Amendment of the Constitution of the United States provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." ..... Is denial of an opportunity to try out for a place on a school golf team solely on the basis of sex a denial of equal protection of the laws? (141)

Judge Urbom went further in his evaluation of the constitutional right of the female athlete to participate on male athletic teams. Court cases prior to this time had classified athletic participation as a privilege and not a right. (142) In addressing the issue of right and privilege, Judge Urbom stated:

> The issue is not whether Debbie Reed has a "right" to play golf; the issue is whether she can be treated differently from boys in an activity provided by the state. Her right is not the right to play golf. Her right is the right to be treated the same as boys unless there is a rational basis for her being treated differently. (143)

Given the reasoning as stated, an injunction was issued that would allow Debbie Reed to participate on the Norfolk High School golf team. In reaching his decision, Judge Urbom had established two important points pertaining to female claims for equality in athletic opportunity. First, that failure to treat females equally was in violation of the fourteenth amendment, and secondly, that even though there was no right

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141 Ibid, at 261.

142 Tennessee Secondary School Athletic Association v. Cox, 425 S.W.2d 597 (Tenn. 1978)

143 Reed v. Nebraska, 341 F.Supp. 258, 262 (D. Neb. 1972)

to participate, there was a right to equal treatment.

In November of the same year, Judge Hunter cited the reasoning of the court in Reed v. Nebraska when he found in favor of Johnell Haas in her petition seeking permission to participate on the male golf team of her school. (144)

In January of 1973, the courts upheld the right of the female athlete to have equal opportunity to participate when Judge Edwards upheld an injunction allowing Cynthia Morris to participate on the boys' tennis team. (145) Judge Edwards did, however, say that the injunction allowing females to participate with males on athletic teams should be limited to that of non-contact sports. (146)

In April 1973, Judge Heaney, writing for the United States Court of Appeals, Eighth Circuit, upheld the right of the female athlete to participate on male teams when non-contact sports were involved. (147) Two girls, Peggy Brenden and Antoinette St. Pierre, sought relief from the Minnesota State High School League rule which stated:

> Girls shall be prohibited from participation in the boys' interscholastic athletic program either as member of the boys' team or a member of the girls' team playing the boys' team. The girls' team shall not

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144 Haas v. South Bend Community School Corporation, 289 N.E.2d 495 (Ind. 1972)

145 Morris v. Michigan State Board of Education, 472 F.2d 1207 (6th Cir. 1973)

146 Ibid, at 1209.

147 Brenden v. Independent School District 742, 342 F.Supp. 1224 (D. Minn. 1972), 477 F.2d 1292 (8th Cir. 1973)

accept male members. (148)

In Brenden, as in former cases, the point of litigation was that this rule of the Minnesota athletic association was in violation of the equal protection rights of the fourteenth amendment. In the opinion of the court, there was one question that had to be answered.

> The question in this case is not whether the plaintiffs have an absolute right to participate in interscholastic athletics, but whether the plaintiffs can be denied the benefits of activities provided by the state for male students. (149)

The decision of the court in Brenden was nothing new, nor was the reasoning new. However, the decision did serve to reinforce the direction of the courts in Reed, Haas, and Morris. From this point on, Brenden became the case to be cited when dealing with the rights of female athletes to participate on male teams.

In 1974, Gilpin v. Kansas State High School Activities Association, saw the rights of the female athlete upheld again but with one specific addition. (150) In Gilpin, the court awarded Tammie Gilpin not only the right to participate but also lawyer fees. The athletic association was also required to pay the cost of court. (151)

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148 Brenden v. Independent School District 742, 477 F.2d 1202, 1294 (8th Cir. 1973)

149 Ibid, at 1297.

150 Gilpin v. Kansas State High School Activities Association, 377 F.Supp. 1233 (D. Kan. 1974)

151 Ibid, at 1253.

Until 1975, the question facing the courts had been boys and girls participating in non-contact sports and was consistently decided in favor of the female athlete. In September of 1975, the courts were faced with yet another variable. Delores and Carol Darrin were high school students who wanted to participate on the school's football team. (152) The high school coach gave them the right to try out for the team. The girls met all of the requirements, passed all of the physical examinations, and met the required number of practices of the Washington Interscholastic Activities Association. However, there was a rule of the association that prohibited girls from participating with boys on contact athletic teams. The court ruled in favor of the girls and granted them the right to participate on the previously all male athletic team involving contact sports. With this decision the courts had opened the area of contact sports to female participation. (153)

Darrin and Carnes had breached the subject and opened up contact sports to female athletes. In 1977, a case out of Colorado would be decided and become the standard for female participation in athletics at the secondary level.

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152 Darrin v. Gould, 540 P.2d 882 (Wash. 1975)

153 See also, Carnes v. Tennessee Secondary School Athletic Association, 415 F.Supp. 569 (E.D. Tenn. 1976)

(154) In Hoover v. Meiklejohn, the court was faced with an old problem but came up with a new solution. In the past, athletic association rules had been voided and females had been given the right to participate in contact sports. In Hoover, the court decision presented the school with three acceptable options, any of which would satisfy the court and fulfill the schools' obligation to the female athlete.

> They may decide to discontinue soccer as an interscholastic athletic activity; they may decide to field separate teams for males and females, with substantial equality in funding, coaching, officiating and opportunity to play; or they may decide to permit both sexes to compete on the same team. (155)

The position of the court in Hoover solidified the position of the female athlete in secondary school athletics and became the case of reference when dealing with female eligibility. (156)

In some noncontact sports, state athletic associations had established separate teams prior to Hoover. The first challenge to the separate team concept surfaced in Ritacco

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154 Hoover v. Meiklejohn, 430 F.Supp. 164 (D. Colo. 1977)

155 Ibid, at 172.

156 See also, Leffel v. Wisconsin Interscholastic Athletic Association, 444 F.Supp. 1117 (E.D. Wis. 1978), Clinton v. Nagy, 411 F.Supp 1396 (N.D. Ohio 1974), Lantz by Lantz v. Ambach, 620 F.Supp. 663 (D.C.N.Y. 1985), and Force by Force v. Pierce City R-VI School District, 570 F.Supp. 1020 (W.D. Mo. 1983). All of these cases addressed the issue of female discrimination based on the fourteenth amendment and found in favor of the female athlete.

v. Norwin School District. (157) Elizabeth Ritacco was a member of the girls' tennis team. She wanted to try out for the boys' team also but was prohibited from doing so by a rule of the Pennsylvania Interscholastic Athletic Association which prohibited the mixing of males and females on sports teams. Judge Gourley, in writing the opinion of the court, upheld the right of the athletic association to establish separate teams where there is a rational basis for the rule. (158) The establishment of the "separate but equal" concept of fielding female sports teams was created by the courts in Hoover, but did not end the challenges directed at the concept. (159) However, the court in O'Connor v. Board of Education of School District 23 continued to uphold the concept of "separate but equal" to be constitutional when applied to female athletic programs.

To this point the cases reviewed have dealt with a charge of sex discrimination based on the assumption that any form of discrimination was in violation of the fourteenth amendment. Those cases were very successful for female litigants. In 1981, the first cases began to surface charging sexual discrimination based on the ground that failure to allow a female the opportunity to participate on

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157 Ritacco v. Norwin School District, 361 F.Supp. 930 (W.D. Penn. 1973)

158 Ibid, at 930.

159 O'Connor v. Board of Education of School District 23, 545 F.Supp. 376 (N.D. Ill. 1982)

a male athletic team was a violation of the rights guaranteed to the female by Title IX of the Education Amendments of 1972. (160) In Othen v. Ann Arbor School Board, Pamela Othen was "cut" from the golf team of Pioneer High School. Pamela charged that she had been removed from the golf team solely on the basis of her sex, and that the removal constituted a violation of the Title IX legislation because the school system was receiving some federal impact aid money. (161) The interpretation of program became the central factor in this case.

> The heart of the defendant's theory is that the requirements of Title IX are programmatic in nature and impose statutory obligations as to only those specific programs or activities which receive direct federal financial assistance.
>
> The plaintiff's theory is predicated on the contention that Title IX applies to any program or activity of any institution which receives federal financial assistance, regardless of whether or not the particular program under attack receives direct federal funding. (162)

The court reached its decision that Title IX was to be defined as program specific and that it would extend only to those programs which were receiving federal assistance. The court further held that Pioneer High School was not required to allow Pamela to participate on the golf team for males nor were they required to create a separate golf team for

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160 Othen v. Ann Arbor School Board, 507 F.Supp. 1376 (E.D. Mich. 1981)

161 Ibid, at 1377.

162 Ibid, at 1380.

females. (163) It is interesting to note that Pioneer High School had already established a female team prior to the court rendering its decision. However, the court continued with the legal process and defined the scope of Title IX as it pertained to secondary school athletics.

Litigants have found it hard to prevail when basing their charges of discrimination upon the violation of Title IX legislation. (164) There have been cases where Title IX was a part of the plaintiff's claim and the court found in favor of the plaintiff. (165) However, in Force v. Pierce City and in Lantz v. Ambach, the case was decided because of the inclusion of the charge that the athletic association regulations were in violation of the fourteenth amendment. In addressing the Title IX claim, each court found that in order to come under the control of Title IX the athletic program would have to be receiving federal funds and that at best Title IX, as it applied to each case was neutral. (166) Because of the precedent set by the court in Othen v. Ann Arbor, no female has prevailed when using Title IX as the

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163 Ibid, at 1390.

164 See also, Yellow Springs Exempted Village School District Board of Education v. Ohio High School Athletic Association, 647 F.2d 651 (6th Cir. 1981)

165 Force by Force v. Pierce City R-VI School District, 570 F.Supp. 1020 (W.D. Mo. 1983), and Lantz by Lantz v. Ambach, 620 F.Supp. 663 (D.C.N.Y. 1985)

166 Lantz by Lantz v. Ambach, 620 F.Supp. 663, 665 (D.C.N.Y. 1985)

basis for litigation. Based upon the contents of the Civil Rights Restoration Act, which was passed over President Reagan's veto, on the 22nd of March, 1988, these court decisions seem in jeopardy. (167) This bill in part provides: "compliance is required throughout entire colleges, universities and public school systems if any program or activity receives federal aid." (168) The provisions of this legislation will invalidate the decisions of the courts in the cases dealing with Title IX legislation.

With the success of females seeking the opportunity to participate on male athletic teams came the charges of reverse discrimination and litigation instituted by males seeking the opportunity to participate on previously all female teams. In 1979 the first of such cases came to the courts for a ruling. (169) In Gomes v. Rhode Island Interscholastic League, the courts were faced with the issue of a male charging sex discrimination because he had been denied the opportunity to participate on the all-female volleyball team sponsored by Rogers High School where he was a student. Gomes had tried out for the team and had been selected by the coach as one of the team's members. He had

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167 "Reagan Veto of Civil Rights Bill Toppled," The Asheville Citizen, 23 March 1988, sec. A, p. 1.

168 Ibid.

169 Gomes v. Rhode Island Interscholastic League, 469 F.Supp. 659 (D. Rhode Island 1979)

continued to practice even though he had not been allowed to participate solely because of his sex. He went to the courts seeking an injunction which would allow him to participate on the volleyball team. The case was argued around one specific point of Title IX. Part of the Title IX legislation states:

> ...where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. (170)

Within this statement came the point of contention. The two sides disagreed with the interpretation of "and athletic opportunities for members of that sex have previously been limited." The position of the plaintiff was that the interpretation of the phrase must be in regard to the particular sport and team in question. Given that interpretation, males had been limited in their opportunities to participate in volleyball at Rogers High and would, therefore, be covered by the Title IX legislation. The defendants argued that it was necessary to interpret the phrase in a general sense and apply it to all athletic participation rather than one sport. Since Rogers High school continued to sponsor male teams in other sports, this would mean that Gomes had not been discriminated against when he was denied the opportunity to participate on

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170 Ibid, at 663.

the girls' volleyball team. (171) In the opinion of the court, Judge Pettine wrote that, Donald Gomes had been discriminated against and the court issued an injunction which would allow Gomes to participate on the female volleyball team. In his closing statements Judge Pettine wrote:

> Separate but equal volleyball teams do appear the most advantageous athletic approach. But whether such teams are created at Rogers High School can only be decided by the school administrators, the coaches, and, ultimately the political process. (172)

This ruling meant that Title IX protected against sex discrimination in either form, whether it be directed at females or males. The case was appealed and subsequently declared moot by the Court of Appeals for the First Circuit. (173)

The next case to come before the court dealing with discrimination against males went counter to the decision reached in Gomes. (174) In Petrie v. Illinois High School Association, the facts presented to the court were almost identical to the information presented in Gomes. However, the court failed to grant the injunction requested. In relating the court's opinion, Judge Green stated:

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171 Ibid, at 664.

172 Ibid, at 666.

173 Gomes v. Rhode Island Interscholastic League, 604 F.2d 733 (1st Cir. 1979)

174 Petrie v Illinois High School Association, 394 N.E.2d 855 (Ill. 1979)

> We have no trouble in concluding that having a separate volleyball team and separate tournaments in that sport for girls is substantially related to and serves the achievement of the important governmental objective of maintaining, fostering and promoting athletic opportunities for girls. It, therefore, satisfies the due process requirement of the fourteenth amendment. (175)

The decision in Petrie was based on the fact that the creation of athletic teams for females and disallowing males to participate on those teams was a permissible means of attempting to promote, equality of opportunity for female athletes. (176)

Claims charging discrimination against individuals is not the only type of litigation to face the courts. There have also been charges of unequal treatment for teams. (177) In Bucha v. Illinois High School Association, the plaintiffs were two female students at Hinsdale Center Township High School. Part of the original challenge came as a result of a rule of the Illinois High School Association (IHSA) which prohibited female participation in interscholastic swimming competition. Before the case came to court, this rule was amended and allowed for the creation of female swim teams complete with scheduled swim meets sanctioned by IHSA. The

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175 Ibid, at 862.

176 See also, Clark, Etc. v. Arizona Interscholastic Association, 695 F.2d 1126 (9th Cir. 1982), and Forte v. Board of Education, North Babylon Etc., 431 N.Y.S.2d 321 (1980).

177 Bucha v. Illinois High School Association, 351 F.Supp. 69 (N.D. Ill. 1972)

second part of the challenge remained for the courts to decide. The complaint was that there were limitations and restrictions placed on the female teams that were not placed on the male teams. (178) Clearly this was not a challenge that dealt with the total absence of a girls' athletic program.

> What is questioned is a matter of degree and professional judgment, that is, given the uncontroverted existence of a statewide athletics program open to all girls, plaintiffs assert that the decision of Illinois' physical education to conduct separate athletic contests for the sexes and to provide a different program for each sex is not rationally related to the overall educational objectives in sponsoring sporting events. (179)

The plaintiffs failed in their attempts to convince the court and the finding was in favor of the Illinois High School Association. The court further held that, in its opinion, the reasons provided by the athletic association for having separate rules for girls and boys were sufficient. (180) The judgment upheld the right of athletic associations to create and enforce rules for females that

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178 The restrictions applicable only to girls include a prohibition on organized cheering, a one dollar limitation on the value of awards, and a prohibition on overnight trips in conjunction with girls' contests. Bucha v. Illinois, at 71.

179 Bucha v. Illinois, at 74.

180 Testimony presented to the court by women coaches and other female athletes expressed fear that unrestricted athletic competition between the sexes would result in a male dominated athletic program state wide. And that this could decrease female participation and possibly even do away with it entirely.

were not consistent with the rules for boys in the same sport.

In 1976 a case came before the courts that challenged the legality of separate rules for girls' and boys' basketball. (181) In Cape v. Tennessee Secondary School Athletic Association, the plaintiff, Victoria Ann Cape, a junior female student at Oak Ridge High School, claimed that the State of Tennessee had denied her the right of equal protection guaranteed to her by the fourteenth amendment.

> The basis of plaintiff's claim is that the rules for girls' basketball, promulgated and enforced by the defendants, are different from those applied to boys' basketball and that the application of different rules to girls' basketball is a deprivation of her right to equal protection of the law, i.e., it is an arbitrary, capricious, and unreasonable distinction. (182)

Cape's argument centered around her belief that because of the fact that she was a guard on the school team, and that according to the rules for girls' basketball in Tennessee, she was limited to the defensive end of the floor, that she would not be able to develop her offensive skills and would therefore not be likely to earn a scholarship to play basketball in college. Because the rules for the state of Tennessee were different for girls' and boys' basketball, she felt that she was being denied equal opportunity and that those rules were violative of the Constitution,

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181 Cape v. Tennessee Secondary School Athletic Association, 424 F.Supp. 732 (E.D. Tenn. 1976)

182 Ibid, at 735.

specifically the fourteenth amendment. In deciding in favor of the plaintiff, Judge Taylor wrote:

> It is ordered that the rules applicable to girls' basketball which impose half-court, six-player restrictions and which permit only forwards to shoot, be, and the same hereby are, declared to be in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. (183)

The Tennessee Secondary School Athletic Association appealed the decision and the case was decided in October of 1977. (184) After review, the appeals court reversed the decision and remanded it for entry of judgment for defendants. The appeals court did not agree with the lower court that the separate set of rules for girls' basketball was a violation of the fourteenth amendment. In reaching its decision, the court saw no evidence of any intent on the part of the athletic association to discriminate against the female athletes of the state. The rules of the athletic association had been upheld.

In 1979 the same question came before the courts again. (185) However, in Dodson v. Arkansas Activities Association, the results were different. Like the federal district court in Cape v. Tennessee, the district court here found in favor of the female student and required the

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183 Ibid, at 744.

184 Cape v. Tennessee Secondary School Athletic Association, 563 F.2d 793 (6th Cir. 1977)

185 Dodson v. Arkansas Activities Association, 468 F.Supp. 394 (E.D. Ark. 1979)

Arkansas Activities Association to make the rules for girls' basketball the same as the rules for boys' basketball. In Cape and Dodson, the facts were the same and the requests for relief were based on the same claim that the rules were violative of the equal protection rights of the fourteenth amendment. However, the court here looked at whether there was legitimate justification for having two sets of rules and found that there was little or no justification. The case was decided in favor of the plaintiff and the defendant athletic association was required to change its rules.

In 1982, the practice of having separate seasons for such sports as tennis and swimming came under attack. (186) In Striebel v. Minnesota State High School League, the point in question was whether it was legal for the state athletic association to establish and operate two separate seasons for sports like tennis and swimming when the determining factor for the division was sex. The court held that it was an acceptable scheduling decision for the state athletic association when the reasons were as presented, lack of facilities, and the seasons were neither substantially better than the other. In dealing with separate seasons, the court upheld the right of the athletic associations to make and enforce the rules governing seasons of participation.

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186 Striebel v. Minnesota State High School League, 321 N.W.2d 400 (Minn. 1982)

## DISCRIMINATION AGAINST THE HANDICAPPED

A review of the court cases pertaining to handicapped discrimination in secondary school athletics for the period 1972 through 1988 reveals that the topic can be divided into two major classifications: [1] students with physical handicaps and [2] students with emotional or mental handicaps. This division is in keeping with the definition of a handicapped person outlined in The Rehabilitation Act of 1973. The act defines a handicapped person as follows:

> Any person who (a) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (b) has a record of such an impairment, or (c) is regarded as having such an impairment. (187)

Court cases in this section will be treated according to this two-part division.

In 1972, Joseph Spitaleri was medically disqualified from participating in football at Levittown Memorial High School. (188) Spitaleri's appeal to the Commissioner of Education was refused and he initiated court action seeking permission to participate in football. Spitaleri's medical condition, which had rendered him ineligible, stemmed from an injury that he had sustained to his left eye when he was six years old. The accident, for all practical purposes, had left him blind in his left eye. Using the criteria of

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187 Statutes at Large, PL 92-318.

188 Spitaleri v Nyquist, 345 N.Y.S.2d 878 (N.Y. 1973)

the American Medical Association reported in a pamphlet entitled "A Guide for Medical Evaluation for Candidates for School Sports", the examining physician in the school district ruled Spitaleri ineligible for competition in football. The AMA guidelines listed the absence of one of the paired organs as a reason for declaring a student ineligible. In Spitaleri's case, the loss of vision in the left eye was sufficient to have him declared ineligible. The parents offered to assume any risk of injury that might be incurred through their son's involvement on the football team. They offered to enter into an agreement to protect the school board from any suit that might result from injury to their son. (189)

According to New York State law, the decision of the Commissioner of Education could not be overturned by the courts unless the decision was proven to be "purely arbitrary". (190)

In the mind of the court, the decision of the Commissioner of Education was neither arbitrary nor capricious, and the decision to prevent Spitaleri from participating in football was in the best interest of the student himself.

As a result of the Spitaleri case, the New York Legislature made an attempt to change what it considered to

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189 Ibid.

190 Ibid., at 879.

be an injustice. The result of the legislature's effort was Senate Bill 1440 which was to become known as the "Spitaleri Bill". (191) This bill made it possible for the courts to look at petitions from the parents and affidavits from two licensed physicians, and to make a decision as to which would be in the best interest of the student. (192) This bill gave the courts some flexibility in making future decisions.

In the case of John Colombo, Jr., a student with a loss of hearing in one ear and a partial loss in the other ear, the New York courts continued the course that had been set in the Spitaleri case. (193) Colombo was ruled to be medically ineligible to participate in football.

In September, the first case to invoke section 4409 of the Education Law came to the courts of New York. (194) Kim Swiderski had a partial loss of sight in her right eye caused by a congenital cataract and an underdeveloped optic nerve. She had been denied participation in athletics at her school and sought an order from the court allowing her to participate under the guidelines of section 4409. Kim's parents had provided for the court the necessary material

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191 Appenzeller, The Right to Participate, 156.

192 Ibid., at 157.

193 Colombo v Sewanhaka Central High School, Etc., 383 N.Y.S.2d 518 (N.Y. 1976)

194 Swiderski v. Board of Education-City School District of Albany, 408 N.Y.S.2d 744 (N.Y. 1978)

called for in section 4409, that being two affidavits from licensed physicians and a signed statement from the parents. The affidavits included a statement that Kim could participate safely if she were to wear protective goggles during practice and athletic events. Judge Conway, after reviewing all evidence presented to the court, ruled that it would be safe for Kim to participate and that it would be in the best interest of the student. Also, in accordance with section 4409, the order relieved the school and school district from any responsibility if Kim were to be injured while taking part in the athletic program. (195) The next case brought to the courts seeking an order under section 4409 was not greeted with the same results. (196) In Kampmeier v. Harris, the information before the court was much the same as that in Swiderski. Margaret Kampmeier had a visual handicap. She presented to the court a statement from her parents, and two affidavits from licensed physicians which stated that she could participate safely with protective goggles. Section 4409 of the Education Law provided that not only must the student be reasonably safe, but the court must decide if it were in the best interest of the student to participate. It is with this last part that the court had problems. Margaret Kampmeier had not been identified by the school as a handicapped student.

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195 Ibid., at 745.

196 Kampmeier v. Harris, 403 N.Y.S.2d 638 (N.Y. 1978)

Therefore, not being identified as handicapped, she was not entitled to treatment as a handicapped student.

> ...the court finds that judgment under Education Law section 4409 would not be in the best interest of the student under these circumstances. (197)

Given that information, the relief sought by the plaintiff was denied. On appeal, the Supreme Court, Appellate Division, ruled that the lower court had used information in making its decision that should not have been considered in determining what would be in the best interest of the student. (198) The order of the lower court was reversed and the petition was granted which allowed Margaret Kampmeier to participate in athletics.

It was not until 1980 that handicapped students came to the courts charging violations of their rights guaranteed to them under section 504 of the Rehabilitation Act of 1973. Poole v. South Plainfield Board of Education was one of the first cases to consider litigation based upon this legislation. (199) Richard Poole was born with one kidney. Because of this congenital handicap and the AMA guidelines that recommended against the participation in athletics of students with a missing paired organ, he was denied the right to participate on the school's wrestling team. Poole

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197 Ibid., at 641.

198 Kampmeier v. Harris, 411 N.Y.S.2d 744 (N.Y. Sup. Ct. App. Div. 1978)

199 Poole v. South Plainfield Board of Education, 490 F.Supp. 948 (D. N.J. 1980)

brought action against the board of education seeking the right to participate in athletics. By the time the case came to court, Poole had graduated from South Plainfield High School. The court agreed to hear the case and made the determination that if Poole could prove that he was a victim that he should be entitled to some type of relief. (200) The South Plainfield School System was a recipient of federal funding and as such was subject to the regulation of section 504 of the Rehabilitation Act of 1973. In hearing the case, the court recognized that its decision hinged on one factor, whether or not a handicapped person was otherwise qualified. According to the language of section 504, "an otherwise qualified person is one who is able to meet all of a program's requirements in spite of his handicap". (201)

> The question to be decided in this case, then, is whether Richard Poole Jr., was able to meet all of South Plainfield's interscholastic wrestling program's requirements in spite of the fact that he was born with one kidney. (202)

In the opinion of the court, the board of education had overstepped its bounds and had acted in place of the parents when it should have provided the parents with all pertinent information to see that the parents did not act in a foolish manner. In its decision, the court gave a vivid definition

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200 Ibid., at 949.

201 Ibid., at 953.

202 Ibid.

of the purpose of section 504.

> Life has risks. The purpose of section 504, however, is to permit handicapped individuals to live life as fully as they are able, without paternalistic authorities deciding that certain activities are too risky for them. (203)

The case was decided in favor of the plaintiff. The court in Poole had established a precedent that would be followed by another court in dealing with the right of a handicapped person to participate in athletics. (204) The combined effect of these two cases tended to minimize the influence of the guidelines the AMA had issued pertaining to eligibility of the handicapped.

Another area the courts were forced to deal with regarding the handicapped student's right to participate involved the mentally or emotionally handicapped athlete. In 1978, an emotionally handicapped student challenged a transfer regulation in the state of Texas. (205) As early as 1976 John Doe had begun showing signs of emotional illness. In 1977, Doe's father was diagnosed as having terminal cancer. This seemed to set off a series of violent outbursts which culminated with John's being hospitalized after the Christmas holidays of 1977. In March of 1978, John became violent during an argument with his parents and

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203 Ibid., at 953-954.

204 Grube v. Bethlehem Area School District, 550 F.Supp. 418 (E.D. Penn. 1982)

205 Doe v. Marshall, 459 F.Supp. 1190 (S.D. Tex 1978)

threatened them with a loaded shotgun. He was again hospitalized and given treatment for what was diagnosed to be an adolescent adjustment reaction. Upon the recommendation of his therapist, the court removed him from the home and placed him with his maternal grandmother. This necessitated a transfer from the Friendswood School District to the Alvin High School District. The Texas University Interscholastic League (UIL) declared John Doe ineligible to participate on the Alvin football team based upon the following rule:

> a. A student changing schools whose parents or guardians do not reside in the school district is ineligible for varsity contests; b. a student living with a guardian is eligible only if the guardianship is of one year's standing; and c. where both parents are still alive, the University Interscholastic League will not acknowledge the existence of a legal guardianship. (206)

Jane Doe, on behalf of her son, John Doe, brought action seeking an injunction which would allow her son to participate in football on the Alvin High School team during his senior year. The court found a major flaw in the UIL regulation.

> There is apparently no structure within the organizational scheme of the UIL which provides a mechanism by which special and individual cases, such as John Doe's, may be given special and individual handling. (207)

The court also considered the harm that would come to the

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206 Ibid., at 1194.

207 Ibid., at 1191.

plaintiff if the injunction were not granted and the harm that would come to UIL if the injunction were granted. The court found that the amount of harm that might be inflicted on John Doe if the injunction were not granted far outweighed the amount of harm that UIL would incur by granting the injunction. For these reasons, the injunction was granted and John Doe was given the right to participate on the Alvin High School football team in his senior year.

Another case dealing with a neurologically handicapped child seeking to participate on the high school wrestling team ended with negative rather than positive results. (208) In Cavallaro v. Ambach, the plaintiff had been detained in the ninth grade. By the time he was a senior in high school, he was nineteen years of age and too old to participate in athletics. He had also used up the four years of eligibility that is granted to each student by the New York State Public High School Athletic Association. An appeal was made to the state association by the local school superintendent seeking permission to extend the eligibility of Cavallaro. The appeal was denied and injunctive action was sought through the courts. In looking at the potential damage to the plaintiff and the defendant association, the court found that:

> ...the potential hardship to Daniel if the injunction does not issue fails to outweigh the more substantial

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208 Cavallaro by Cavallaro v. Ambach, 575 F.Supp. 171 (W.D. N.Y. 1983)

> probability of hardships created by possible injuries to younger wrestlers caused by their competition with a physically mature 19 year old. (209)

As a result of the plaintiff's failing to prove the substantial burden necessary, the injunction was denied and Daniel Cavallaro was declared ineligible to participate during his senior year.

## TRANSFER REGULATIONS

A review of the court cases involving students who had been declared ineligible to participate in secondary school athletics because of state athletic association transfer rules reveals a division into four specific categories: [1] schools that were punished for violation of transfer regulations, [2] students claiming that state regulation restricts freedom of travel, [3] nonresident students wishing to participate in a state where they did not reside, and [4] students seeking constitutional protection from athletic association regulations. Cases in each of these areas will be reviewed by topic and in a chronological order.

On October 20, 1972, the varsity football teams from Medford High School and Grant Pass High School played each

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209 Ibid., at 175.

other. (210) Grant Pass High School won the game. As a result of the victory, Grant Pass was declared the conference champion. On October 24, 1972, Medford High School filed a protest stating that one of the students on the Grant Pass team was ineligible to participate due to an infraction of the transfer regulation of the Oregon School Activity Association (OSAA). The OSAA reviewed the charge and concluded that in fact Jack Peters was ineligible to participate. As a result of Jack's being ineligible, Grant Pass was ordered to forfeit all of the games in which Jack Peters had participated. As a result of this action, Medford High School became the conference champion. The Multnomah County Circuit Court restored the winning school as the conference champion twenty-four hours before the first round state playoff game. Grant Pass participated in the game as the conference champion and lost. On appeal, the court of appeals first decided that the issue was not moot simply because the playoff game had already taken place; second, that the lower court had erred in reversing the decision of the athletic association; third, the rule of the association was overbroad and the association did not act arbitrarily in hearing the losing school's protest. (211) The decision of the lower court was reversed. Jack

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210 Josephine City School District No. 7 v. Orgon School Activities Association, 515 P.2d 431 (Or. App. 1973)

211 Ibid., at 432.

Peters was declared ineligible, and Grant Pass High School forfeited its claim to the conference championship. The use of a student who was in violation of the transfer rules of the state association had cost the school its conference championship. His ineligibility had resulted in the school being ruled ineligible.

Two students have brought charges against athletic associations' transfer rules claiming that said rules placed an unconstitutional burden on their right to travel. (212) In Sturrup v. Mahan, Warren B. Sturrup had lived in Miami, Florida and had attended school there during the 1971-72 school year. During the summer of 1971, Warren had moved to Bloomington, Indiana, and had taken up residence with his brother. Warren had left Miami because of conditions in the home that were described as being "demoralizing and detrimental" in nature. Warren, along with other students, was involved in drugs. Warren enrolled in University Junior-Senior High School that fall and sought the right to participate on the school's football team. After corresponding with the Indiana High School Athletic Association (IHSAA), Robert M. Mahan, principal of University High School, informed Warren that he was ineligible to participate in football because of the

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212 Sturrup v. Mahan, 290 N.E.2d 64 (App. Ct. Ind. 1972), 305 N.E.2d 877 (Sup. Ct. Ind. 1974), and Sullivan v. University Interscholastic League, 599 S.W.2d 860 (Tex. Civ. App. 1980), 616 S.W.2d 170 (Sup. Ct. Tex. 1981).

transfer rule of the IHSAA. Warren Sturrup sought a preliminary injunction to allow him to participate. The trial court denied the injunction. Sturrup appealed and the court of appeals reversed the decision. (213) The basis of the appeal court's decision was two-fold. First, the court found that the IHSAA transfer rule violated Warren's right to travel, and second, that the rule, as applied, was violative of his rights guaranteed under the fourteenth amendment. The Supreme Court of Indiana heard the case in order to correct an error in the opinion of the court of appeals. (214) Here the court upheld the decision of the court of appeals but for reasons other than stated in the lower court decision. The supreme court in reversing part of the decision stated:

> ...plaintiff was not denied equal protection on theory that the bylaws unconstitutionally burdened his right to travel among the states; but that such bylaws violated equal protection by reason of being unreasonably broad, in excluding from eligibility many students who move for reasons unrelated to athletics: and that denial of eligibility to plaintiff, who moved to avoid demoralizing and detrimental conditions of his home and school environment in Florida and whose adult brother in Indiana was appointed his legal guardian, was arbitrary and capricious. (215)

The plaintiff had won his appeal but not because his right

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213 Sturrup v. Mahan, 290 N.E.2d 64 (App. Ct. Ind. 1972)

214 Sturrup v. Mahan, 305 N.E.2d 877 (Sup. Ct. Ind. 1974)

215 Ibid., at 877.

to travel between states had been denied. (216)

In 1980, a similar case came to the courts in Texas. (217) In Sullivan v. University Interscholastic League, John Sullivan had moved with his father from Vermont to Austin, Texas. The Court of Civil Appeals of Texas upheld the ruling of the trial court when it decided that the rule did not violate the equal protection clause by infringing on the rights of the student to interstate travel. The supreme court in hearing the case on appeal ruled that the UIL rule did, in fact, violate the equal protection clause and reversed the decision and granted injunction sought. (218)

In each case, the student had eventually won the right to participate but for different reasons and with contradicting conclusions. One court said that such transfer rules did violate the equal protection clause of the Constitution which guarantees the right to travel between the states, and the other court said that they did not.

The largest body of legal action comes from the area of students petitioning the courts for injunctive relief charging that they have a right to participate in athletics

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216 See also, Niles v. University Interscholastic League, 715 F.2d 1027 (5th Cir. 1983)

217 Sullivan v. University Interscholastic League, 599 S.W.2d 860 (Tex. Civ. App. 1980)

218 Sullivan v. University Interscholastic League, 616 S.W.2d 170 (Sup. Ct. Tex. 1981)

and violations of due process. In 1975, a fifteen year old student by the name of George Dallam transferred from Camp Hill School District to the Cumberland Valley School District. (219) Dallam was deemed ineligible to participate in interscholastic athletics for the period of one year in accordance with the transfer rule of the Pennsylvania Interscholastic Athletic Association (PIAA). Dallam sought a permanent injunction which would allow him to participate. In presenting his case the plaintiff argued:

> ...that the automatic ineligibility rule acts as an irrebuttable presumption in violation of his equal protection and due process rights guaranteed under the United States Constitution. (220)

In its decision, the court stated that there was no constitutionally protected property interest in competing for a position on the school athletic team. The plaintiff has access to all physical exercise and can participate in athletic competition with members of his own school. He is simply prohibited from competing against teams from other schools as a member of the school team.

In cases similar to this one the courts continued to uphold the right of the athletic association to make and enforce rules and continued to reject the idea that participation in athletics was a property right granted by

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219 Dallam v. Cumberland Valley School District, 391 F.Supp. 358 (M.D. Penn. 1975)

220 Ibid., at 359.

the constitution. (221)

Not all transfer cases were decided in favor of athletic associations and against students. In those cases where the student won the injunction sought, there were always unusual circumstances. In Kentucky High School Athletic Association v. Jackson, the appeals court of Kentucky upheld the lower court's decision to grant Kevin Jackson an injunction that would allow him to participate in basketball. (222) Kevin's parents were divorced in September of 1976. Upon agreement of both parents, Kevin's mother was to have custody of both Kevin and his younger sister. At the time of separation the mother moved into the city limits of Williamsburg. Instead of changing the two

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221 See also, Bruce v. South Carolina High School League, 189 S.E.2d 817 (Supp. Ct. S.C. 1972),Albach v. Odle, 531 F.2d 983 (10th Cir. 1976), Hamilton v. Tennessee Secondary School Athletic Association, 552 F.2d 681 (6th Cir. 1976), Kentucky High School Athletic Association v. Hopkins County Board of Education, 552 S.W.2d 685 (Ky. App. 1977), Crandall v. North Dakota High School Activities Association, 261 N.W.2d 921 (Sup. Ct. N.D. 1978),Monzingo v. Oklahoma Secondary School Activities Association, 575 P.2d 1379 (App. Ct. Okl. 1978),Kulovitz v. Illinois High School Association, 462 F.Supp. 875 (N.D. Ill. 1978), Kriss v. Brown, 390 N.E.2d 193 (App. Ct. Ind. 1979), Walsh v. Louisiana High School Athletic Association, 616 F.2d 152 (5th Cir. 1980), Herbert v. Ventetuolo, 638 F.2d 5 (1st Cir. 1981), IN RE U.S. EX REL. Missouri State High School, Etc. 682 F.2d 147 (8th Cir. 1982), and Kent S. v. California Interscholastic Federation, 222 Ca.Rptr. 355 (Cal.App.2Dist. 1986). In each of these cases the information presented to the court was much the same. The results were also similar in that each time the athletic association was upheld in its right to make and enforce transfer regulations.

222 Kentucky High School Athletic Association v. Jackson, 569 S.W.2d 185 (Ky. App. 1978)

children from one school to another in the middle of the year, the parents decided that the children would remain with their father and continue to attend school in the county school system. At the end of the school year, the children went to live with their mother. Both enrolled in the Williamsburg City School System in the fall of 1977. Kevin, because he had played basketball in the county the year before, was ruled ineligible to participate in the city system for a period of thirty-six school weeks. Kevin sought and was granted an injunction through the Whitley Circuit Court. The Kentucky High School Athletic Association appealed the decision to the court of appeals. The court of appeals held:

> [1] it was unfair and unreasonable for association to require that student's change of school have been simultaneous with custodial parent's change of residence in order to waive rule providing for ineligibility of student following school transfer; [2] absence of word "arbitrary" in complaint did not mean that complaint failed to alleged arbitrary action on part of association, and [3] judgment enjoining association from declaring student athlete ineligible did not constitute an unreasonable interference with the internal affairs of the association. (223)

The appeal court had upheld the decision of the circuit court because the athletic association had not used good judgment in reviewing the case of Kevin Jackson. Students who had been moved from parent to parent by forces outside

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223 Ibid., at 186.

their control have fared well with the courts. (224) In other action where a student moved with both parents, the court upheld the right of the student to move. (225) Yet another situation that led to the transfer regulation of an athletic association being overridden involved a student with a handicap. (226) In Doe v. Marshall, a student was moved by the courts because of an emotional handicap. In this case the student was allowed to participate.

Another area of litigation that falls within the guidelines of transfers deals with nonresident students who want to participate in high school sports in the state where they are attending school. In September of 1981, the case of Menke v Ohio High School Athletic Association came before the courts of Ohio. (227) In 1979, the athletic association had amended its transfer rule to make nonresident students ineligible to participate in athletics throughout their attendance at any member school. One plaintiff was in the ninth grade and the other was in the eleventh. They, along with their parents, were residents of Kentucky and had been accepted to attend St. Xavier High

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224 See also, Laurenzo by Laurenzo v. Mississippi High School Activities Association, 662 F.2d 1117 (5th Cir. 1981), 708 F.2d 1038 (5th Cir. 1983)

225 University Interscholastic League v. Jones, 715 S.W.2d 759 (Tex. App. 1986)

226 Doe v. Marshall, 459 F.Supp. 1190 (S.D. Tex. 1978)

227 Menke v Ohio High School Athletic Association, 441 N.E.2d 620 (Ohio App. 1981)

School, a private Roman Catholic school in Ohio. Both students wanted to participate in athletics at the school but were forbidden by the regulation of the state athletic association. They sought a preliminary injunction through the trial court and were unsuccessful. They appealed to the court of appeals. The court of appeals found that nonresident students do not comprise a suspect class, further, the rule did not violate their right to due process nor did participation in athletics rise to the level of separate property or liberty interest. The court of appeals upheld the decision of the lower court and both students were ruled ineligible. In 1985, Dennis Alerding, a student at St. Xavier High School, again challenged the Ohio rule which prohibited nonresident students from participating in athletic competition for the school. (228) The court in Alerding followed the decision of the court in Menke and ruled that the rule was not violative of the student's rights guaranteed by the Constitution of the United States.

## AGE LIMITATIONS

A review of the athletic association handbooks reveals that all state associations have enacted rules that place age limits upon students for the purpose of athletic eligibility. To strengthen those rules, the associations

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228 Alerding v. Ohio High School Athletic Association, 591 F.Supp. 1538 (S.D. Ohio 1985) 779 F.2d 315 (6th Cir. 1985)

have added limits on the number of years or semesters a student can retain his eligibility. In each case, the limit is four years or eight semesters to be counted from the time the student enters the ninth grade. Because of the closeness of purpose of the two rules, they have been treated as one in this section.

Cases where students have been granted relief in regard to age limitations either by fact of age or the eight semester rule, are few in number and are from the same court. (229) In Lee v. Florida, the eight semester rule came under attack because of its lack of flexibility. (230) Dennis Lee had entered the ninth grade in September of 1969 while he was living in California. In November of 1971, he and his family moved to Florida. At that time it became necessary for Dennis to stay out of school for a year and work to help support his family. He entered school at Hialeah Miami Lakes High School in September of 1972. He participated in sports during that year in Florida and came back for his senior year in 1973. At that point he was informed that he would be ineligible to participate in athletics because he had exceeded the eight semesters allowed for athletic competition. He brought action in the

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229 Lee v. Florida High School Activities Association Inc., 291 So.2d 636 (Fla. App. 1974), and Florida High School Activities Association Inc. v. Bryant, 313 So.2d 57 (Fla. App. 1975).

230 Lee v. Florida High School Activities Association Inc., 291 So.2d 636 (Fla. App. 1974)

Circuit Court of Dade County to enjoin the state athletic association from enforcing its eight semester rule. The circuit court dismissed the case and the plaintiff appealed. On appeal the court found that the Florida High School Activities Association had denied due process to the plaintiff because it had failed to give him the opportunity to present evidence of hardship, and that the rule was applied arbitrarily in this case. The decision of the lower court was reversed and the case was remanded with directions for the lower court. (231) The judges deciding the case were Barkdull, Hendry, and Haverfield. (232) In 1975, a case that was similar came before the court of appeals of Florida and the decision again was made in favor of the athlete. (233) In this case the judges were Barkdull, Hendry, and Carroll. (234) Both of these cases were decided on the basis of hardship of the student in question and are the only two that have overturned the age requirement or the eight semester rule.

In 1977, a case dealing with the eight semester rule came before the courts of Georgia. (235) Leonard Smith

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231 Ibid.

232 Ibid., at 637.

233 Florida High School Activities Association Inc. v. Bryant, 313 So.2d 57 (Fla. App. 1975)

234 Ibid., at 57.

235 Smith v. Crim, 240 S.E.2d 884 (Sup. Ct. Ga. 1977)

entered Hoke Smith High School in the fall of 1973 as a ninth grader. In the spring of 1974, his mother became emotionally ill and he was forced to leave school in order to care for her. He reentered Hoke Smith High School in the fall of 1975 as a tenth grader and worked to make up the ninth grade work. He successfully completed grades ten and eleven and participated in football each year. At the beginning of his senior year, he was ruled ineligible to participate because of Georgia's eight semester rule. He contested the authority of the Georgia High School Association to enforce the eight semester rule. The Superior Court of Fulton County upheld the validity of the rule and Smith appealed. The Supreme Court of Georgia reviewed the case and affirmed the lower court decision. (236) Other cases have upheld the right of athletic associations to make and enforce eight semester rules. (237)

In 1980, two companion cases came before the U.S. District Court in Texas. (238) In Blue v. University Interscholastic League, John Byrd and Phil Blue were members of the Greenville High School football team. Byrd had turned nineteen on his birthday in July and had participated

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236 Ibid.

237 See also, DeKalb City School System v. White, 260 S.E.2d 853 (Sup. Ga. 1979), and Burtt v. Nassau County Athletic Association, 421 N.Y.S.2d 172 (Sup. Ct. N.Y. 1979).

238 Blue v. University Interscholastic League, 503 F.Supp. 1030 (N.D. Tex. 1980)

on the Greenville team until it was discovered that he was ineligible under an athletic association rule that prohibited nineteen year old students from participating. During that time the Greenville team had played five games and Byrd had participated in each of them. Because of his participation the entire team was ordered to forfeit those games. Byrd sought to enjoin the athletic association from enforcing its age rule. Blue represented the entire Greenville team as a class and sought to enjoin the athletic association from allowing anyone other than the Greenville team from representing the league in the state playoffs. In presenting the decision of the court, Judge Sanders wrote:

> [1] the rule providing that students 19 years and older were ineligible to participate in league contest, and which established penalties for violation of the age eligibility requirement, did not violate due process and equal protection, and [2] since the rule did not violate due process and equal protection and it had not been demonstrated that the scheme of enforcement used by the governing body resulted in a deprivation of constitutional rights, and it was not established that plaintiffs would prevail on the merits, plaintiffs were not entitled to a preliminary injunction seeking to enjoin enforcement of the rule. (239)

The court also found that the interests of Phil Blue and other members of the team to participate in the state playoffs amounted to mere expectation rather than a constitutionally protected claim of entitlement. (240) In both cases the application for preliminary injunction was

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239 Ibid., at 1031.

240 Ibid., at 1034.

denied. The courts have been consistent in their support of the age limit regulations established by the state athletic associations. (241) Courts have also upheld the age requirement in a case where the student was handicapped. (242) Here, as in the other cases, the court recognized the danger of mature individuals participating with younger students.

## ACADEMIC ELIGIBILITY

The first case to come to the courts which challenged the right of the state to set academic regulations for athletic participation originated in the state of West Virginia. (243) In 1984, two cases were consolidated and heard by the court of appeals of West Virginia. Both cases dealt with the validity of academic eligibility requirements for participation in nonacademic extracurricular activities. In the first case, the Wood County Board of Education petitioned for a writ of mandamus to compel the withdrawal of a rule of the State Board of Education requiring students to maintain a 2.0 or "C" average in order to participate in extracurricular activities. On August 12, 1983, the State

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241 See also, State Ex. Rel. Missouri State High School Athletic Association v. Schoenlaub, 507 S.W.2d 354 (Sup. Ct. Mo. 1974), Mahan v. Agee, 652 P.2d 765 (Sup. Ct. Okl. 1982), and Cavallaro by Cavallaro v. Ambach, 575 F.Supp. 171 (W.D.N.Y. 1983).

242 Cavallaro by Cavallaro v. Ambach, 575 F.Supp. 171 (W.D.N.Y. 1983)

243 Bailey v. Truby, 321 S.E.2d 302 (W.Va. 1984)

Board had adopted the new academic eligibility policy as part of a total educational program for the state. The rule was to take effect at the end of the first semester of the 1983-84 school year. (244) On January 31, 1984, the Wood County Board of Education voted unanimously to refuse to implement the new regulation. On February 6, 1984, the board voted to seek a ruling from the court as to whether or not the State Board of Education had the right to pass such regulations. (245) In its petition, the Wood County Board of Education stated that it did not feel that the State Board of Education had the authority to make rules that governed the operations of extracurricular activities. It stated as its reason for this belief a section of the West Virginia Code, which in part states:

> The county boards of education are hereby granted and shall exercise the control, supervision and regulation of all interscholastic events, and other extracurricular activities of the students in public secondary schools, and of said schools of their respective counties. (246)

It was upon this section of the West Virginia Codes that the court made the decision as to whether or not extracurricular activities were a part of the function of the State Board of Education. In its decision the court stated:

> We therefore hold that the state Board of Education's promulgation of a rule requiring students to maintain a

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244 Ibid., at 305.

245 Ibid., at 306.

246 Ibid., at 308.

> 2.0 grade point average in order to participate in nonacademic extracurricular activities is a legitimate exercise of its power of "general supervision" over the state's educational system. (247)

In this portion of the case, the right of the State Board of Education to make and enforce rules pertaining to extracurricular activities was established.

The second part of the case involved a student by the name of Rodney Myles. Rodney was a student at St. Albans High School and had participated as a member of the school basketball team. On October 24, 1983, the Kanawha County Board of Education adopted a new policy pertaining to academic requirements for athletic participation. (248) The policy of the local board was a copy of the state regulation with one exception, it added that a student, in addition to maintaining a 2.0 grade point average, must also pass all of the subjects being attempted. This addition to the state regulation was the cause of Rodney's becoming ineligible to participate in basketball that year. He had maintained a 2.0 grade point average as required by the state but had failed English and was, therefore, ineligible by local standards. Rodney, through his mother, filed a petition for injunctive relief with the Circuit Court of Kanawha County. The relief was denied and he filed a petition with the court of appeals. In the petition he charged that the rule of the

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247 Ibid., at 313.

248 Ibid., at 313.

Kanawha Board of Education constituted a denial of equal protection guaranteed to him under the fourteenth amendment, and that it violated his procedural and substantive due process rights. (249) After hearing the evidence and argument the court found:

> We therefore hold that the Kanawha County Board of Education's promulgation of a rule requiring students to receive passing grades in all of their classes, in addition to the State Board of Education's 2.0 grade point average rule, in order to participate in nonacademic extracurricular activities, is a legitimate exercise of its power of "control, supervision and regulation" of extracurricular activities; that it does not violate students' rights to procedural due process, substantive due process, and equal protection. (250)

This case had set the stage with the decision that state organizations and boards could make and enforce academic regulations, and local boards could add to those regulations if they saw fit.

In 1985 another case would challenge the right of a state to establish and enforce academic rules for athletic competition. (251) Chris Stamos, father of Nicky Stamos, brought suit seeking a permanent injunction against the enforcement of the Texas "no pass, no play" legislation. "No pass, no play" was a part of House Bill 72 which was an educational reform bill. The bill provided in part that a student was ineligible for participation in interscholastic

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249 Ibid.

250 Ibid., at 319.

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

athletics if he or she failed to maintain at least a "70" average in every class. The district court of Harris County declared the legislation to be unconstitutional and issued an order enjoining its enforcement. The Attorney General appealed the decision. In reviewing the case, the supreme court found that the issue before the court was a single one, whether or not the "no pass, no play" rule was constitutional. (252) Stamos charged that the legislation violated his equal protection rights of the Texas Constitution, and that it violated his procedural and substantive due process rights. In considering the equal protection rights of the student, the court could not identify a suspect class that was created by the legislation and therefore dismissed the equal protection charge. (253) In considering the due process question, the court was in agreement with other courts in declaring that the right to participate in athletics failed to rise to the level of a right that would be guaranteed by the Constitution. Therefore the due process claims were dismissed and the decision of the lower court was reversed and the temporary injunction was dissolved.

The courts in two different states had agreed on two similar cases. The states had established in court that they had the right to make and enforce academic regulations

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252 Ibid., at 558.

253 Ibid., at 559.

pertaining to athletic competition. Local boards of education had also established the right to add to state minimum requirements pertaining to eligibility regulations.

# CHAPTER IV

# SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

## INTRODUCTION

Athletic eligibility is an area of major importance in our schools today. Its importance has come about as a result of pressure brought by the local community to perform well and to "win". If an athlete is talented enough and willing to work perfecting his skills, he may be able to pay his college costs by participating in sports. An even smaller percentage of these athletes will be able to advance to professional leagues and earn large sums of money as professionals. For the sake of this small percentage, it is extremely important that all of the facts be collected and the administrator responsible for making the decisions involving athletic eligibility be well informed about the legal ramifications of his decision. A wrong or unwise decision might deprive a student of a bright future and the opportunity to earn considerable money. Eligibility regulations have been placed on athletes by state and local boards of education, state legislatures, state athletic associations and in some instances by local school administrators. Oftentimes students turn to the court system to determine the legality of eligibility requirements and their application to them.

This study dealt with determining the legality of athletic eligibility restrictions at the secondary school level. It was necessary to review the athletic eligibility requirements of each of the fifty states and the District of Columbia in order to establish what the rules were pertaining to athletic eligibility nationwide. Based on a review of the court cases from 1972 until 1988, the list of eligibility rules was narrowed into five separate and specific areas: gender-based discrimination, discrimination against the handicapped, transfer regulations, age limitations for participation, and academic eligibility. These five areas represent the predominant body of litigation pertaining to athletic eligibility for secondary schools. Pieces of legislation at the state and national level were reviewed to reveal their influence on state athletic associations and the making of their rules. The research also included a review and reporting of state and federal court cases pertaining to the five stated areas of athletic eligibility. These cases were reported by area and in chronological order. Cases were also grouped according to outcome to aid in the understanding of the results.

## SUMMARY OF FINDINGS

### GENDER-BASED DISCRIMINATION

For clarity of presentation, the area of gender-based discrimination was divided into two main categories,

challenges to athletic association rules which are brought on behalf of individuals, and challenges to regulations that charge unequal treatment of teams. In dealing with challenges brought by individuals, there are three specific areas of case law. The first deals with females who have petitioned the courts charging discrimination. Of the twelve cases to come before the courts treating this issue, all twelve have been decided in favor of the female athlete. Each of these cases dealt with the rights of the female to equal treatment guaranteed by the fourteenth amendment. The second is the area of litigation dealing with alleged violations of Title IX of the Education Amendments of 1972. Of the four cases to come before the courts treating this issue, two have upheld the athletic association or school, and two have found in favor of the student. In the two cases where students won, the case was decided on the basis of the fourteenth amendment, not on the basis of the Title IX claim. However, with the override of President Reagan's veto on the Civil Rights Restoration Act, dated March 22, 1988, this trend in the courts is over. This legislation defined "program" as having an institutional approach, thus making all athletic programs answerable to Title IX legislation if any part of the school or school system receives any federal assistance. The third area of litigation involving individuals deals with males seeking the right to participate on female teams. Of the four cases

to come before the courts treating this issue, one has found in favor of the student and three have upheld the rules of the athletic associations.

In court cases where the focus was on the team and charges of unequal treatment of female teams, litigants have been less successful. Of the four court cases to come before the courts treating this issue, three have upheld the rules of the athletic association. The combination of all court cases dealing with gender-based discrimination reveals that of the twenty cases treating this matter, fifteen have been decided in favor of the student. The Civil Rights Restoration Act of 1988 has provisions contrary to the decision reached in two of the cases lost.

## DISCRIMINATION AGAINST THE HANDICAPPED

According to federal regulations, there are two distinct classifications for handicapped students, physically handicapped students and mentally or emotionally handicapped students. The two major pieces of federal regulations dealing with handicapped students are The Rehabilitation Act of 1973, and the Education for All Handicapped Children Act of 1975, better known as PL 94-142. Cases dealing with physically handicapped students are limited in number and varied in response. Of the six court cases to come before the courts treating this issue, students have won four of the cases and lost only two.

Since students began bringing court actions charging handicapped discrimination based on section 504 of the Rehabilitation Act of 1973, student athletes have not lost in court. When dealing with the mentally or emotionally handicapped student, the courts are divided. Of the two court cases treating this issue, the students have won one case and lost one case; therefore no precedent has been set by the courts. The combination of all court cases dealing with handicapped students reveals that of the eight court cases treating the subject of handicapped students, five have been decided in favor of the student.

## TRANSFER REGULATIONS

One of the most often contested areas of athletic eligibility is that of transfer regulations. A review of court cases dealing with transfer regulations reveals that the topic can be divided into four specific subtopics: penalties to schools, students' right to travel, nonresidents seeking opportunity to participate, and students seeking constitutional protection.

The first area of transfer regulations deals with the right of athletic associations to penalize schools for violations of transfer regulations. In the only court case treating this subject, the athletic association was upheld in its decision to declare a team ineligible because of its violation of the transfer regulation. The second area of

litigation dealt with students charging that transfer regulations violated their right to free travel guaranteed by the constitution. Of the two court cases dealing with this matter, the courts upheld the student in both cases. However, the reason for upholding the student was different in each case and only one of the two courts held that transfer regulations were in violation of the student's right to travel. The third area of litigation, dealing with transfer regulations, dealt with nonresident students seeking the opportunity to participate in a state where they were not residents. Of the two court cases treating this matter, the courts upheld the right of the athletic association to declare nonresident students ineligible for athletic participation for their entire high school career. The fourth area of litigation dealing with transfer regulations dealt with students seeking constitutional protection from athletic association transfer rules. Of the eighteen court cases treating this matter, fourteen have found in favor of the athletic associations right to make and enforce transfer regulations. Of the four cases that found in favor of students, each involved an extenuating circumstance which led to the reverse decision. The combination of all court cases dealing with transfer regulations reveals that of the twenty-three court cases treating this matter, seventeen were decided in favor of the athletic associations' rules.

## AGE LIMITATIONS

A review of state athletic association regulations reveals that age regulations can be divided into two distinct areas: student age limitations and eight semester rules. Eight semester rules limit the amount of time a student is eligible to participate after he has entered the ninth grade. Of the five court cases treating this matter, three have found in favor of the state athletic associations' rules. The two cases that found in favor of the student were from the same court and decided by the same judge. Each state athletic association has set a maximum limit for student age when seeking athletic eligibility. These rules have also been challenged. Of the three court cases treating this matter, all have found in favor of the athletic associations rule's. The age limitation was also upheld when dealing with one handicapped student. The combination of all court cases dealing with age limitations reveals that of the nine court cases treating this matter, six were decided in favor of the athletic associations' rules.

## ACADEMIC ELIGIBILITY

In increasing numbers, athletic associations are adding academic regulations to their rules for eligibility. These regulations have been added by state boards of education,

state legislatures, state athletic associations, and local boards of education. In each instance, minimum requirements are set for athletic participation. There are some states, however, which do not place academic requirements on students for athletic participation. Of the three cases treating this matter, all have been decided in favor of the state organization which made the rule.

## CONCLUSIONS

Athletic eligibility is an area of great importance in school systems across the United States. Each year much time is spent by coaches and administrators trying to determine which students will be eligible to participate and which will not. Students seeking the opportunity to participate must be measured according to the guidelines established by their state athletic association and by any additional rules set forth by the local school or school board. When a student is deemed to be in violation of any of these regulations, he is considered ineligible to participate. Any and all ineligible students have the right to appeal the decision of the local school and be heard by the state association. When the problem cannot be solved at that level, the student will often involve the courts to determine the legality of eligibility regulations.

Based upon the research contained in this project, the following conclusions can be drawn:

[1] The courts have upheld the rights of the female athlete when the charge of discrimination is based upon violations of the fourteenth amendment.

[2] Females do not have a right to participate; however, they do have the right to equal treatment. Whatever is provided for males using educational money must be open to females as well.

[3] The courts have established three acceptable options for dealing with female athletes seeking to participate on an established all-male team. First, the school can drop the sport for males, second, the school can offer separate but equal teams for females, or third, the school can allow the female to compete with the males for a position on the previously all-male team.

[4] Courts have upheld different treatment for female teams when the difference has been based upon a specific purpose and when such treatment helps to accomplish that purpose.

[5] Courts have been reluctant to deal with female discrimination charges based on Title IX violations, but have dealt with whether or not secondary school athletic programs were subject to Title IX legislation. Early losses by females charging discrimination under Title IX cannot continue. Based on the language of the Civil Rights Restoration Act of 1988, all areas of a school receiving federal aid will be subject to Title IX legislation. No

more will cases be dismissed because they fail to fall under the jurisdiction of Title IX.

[6] Handicapped students have been successful in court when the basis of the charge is the violation of section 504 of the Rehabilitation Act of 1973, and they can prove that they are otherwise eligible.

[7] When dealing with handicapped students, the courts have begun to look at the right of the parents and the student to make decisions and have moved away from the enforcement of the AMA recommendations. Schools have an obligation to inform the student and parents of possible dangers and then let the parents and child make the decision. If the decision of the parent and child is to participate in athletics, then the school should not stand in the way.

[8] Teams which allow ineligible students to participate have been penalized and forced to forfeit the games in which the ineligible student participated. These forfeitures of wins have been upheld by the courts.

[9] Transfer rules have been upheld by the courts when they were constructed to fulfill the purpose for which they were written, and when they were applied in a fair, equitable manner. They have been overturned only when it has been proven that they were applied in an arbitrary and capricious manner.

[10] The eight semester rule has, in most cases, been

upheld by the courts. In those situations where the rule was not upheld, there have been extenuating circumstances that placed a burden of hardship on the student.

[11] The age limits set by each athletic association have always been upheld by the courts. The courts have recognized the danger of having adults participate against younger and less mature students.

[12] Athletic associations, state boards of education, state legislatures, and local boards of education have the right to establish academic regulations for athletic participation. These rules do not create a suspect class and do not deny to the student any right guaranteed under state or federal law. However, based on the limited number of court cases treating this matter, conclusions cannot be stated in an absolute manner.

[13] A student's claim to participate in athletics does not rise to the level of a property right and is, therefore, not protected by the Constitution of the United States or any state constitution. Furthermore, since there is no right to participate, there can be no claim to due process. Therefore, the student's only right is to fair and equitable treatment.

## IMPLICATIONS FOR PRACTICE

Dreams of being the sports hero in high school, college, and even in the professional leagues occupy a large

part of many young children's early fantasies. For those students who have the potential to make their dreams a reality, the area of athletic eligibility will become a major interest in their early lives. In order to deal fairly and consistently with these students, the school administrator must be familiar with the rules of eligibility that his school is governed by and also with the legality of each of these regulations. Most eligibility cases that are taken to court involve some type of extenuating circumstance which makes that case just a little different from the rest of the cases. Therefore, each case must be treated separately and must allow the student to present any and all information that might justify his hardship claim. The information presented in this study can be of help to the school administrator by providing for him a history of each of the five areas of student eligibility covered herein. It also provides him with court cases that have been decided which will reflect the position of the courts when hearing suits against local schools and state athletic associations. It is hoped that this information will be utilized in a positive way which will help not only administrators but, most importantly, student athletes as well. When cases go to court, oftentimes they are decided too late to be of benefit to the student even when he has won. Research from this project, it is hoped, will allow persons in authority to make right and fair decisions before the matter gets to

the courts, thus avoiding the lengthy, costly process of going through the legal system.

## RECOMMENDATIONS FOR FURTHER RESEARCH

Athletics have become an important part of most secondary schools across the United States. This increased level of attention and importance has led to an intensified look at athletic eligibility. It is likely that court action will continue and that athletic associations will continue to modify their rules to maintain conformity with state and federal court decisions. Therefore, these recommendations are made for further study:

[1] It is recommended that a study be conducted to examine the effect of civil rights legislation on athletic eligibility regulations. Civil rights legislation should be defined as any legislation aimed at protecting groups of people from discrimination, whether it be handicapped, female, race, or minorities.

[2] It is recommended that a study be conducted to examine the legality of the separate but equal doctrine that has been applied to female athletic eligibility regulations in some state and federal courts.

[3] It is recommended that a study be conducted comparing states with strict eligibility requirements with states that have minimal requirements. Included in this study would be a look at the philosophies behind the decision of each athletic association.

# BIBLIOGRAPHY

## HANDBOOKS

Alabama High School Athletic Association Handbook. Montgomery, Alabama: P.O. Box 5014, 1987-1988.

Alaska School Activities Association Constitution and Bylaws. Anchorage, Alaska: 650 International Airport Rd., 1987-1988.

Arizona Interscholastic Association Constitution and Bylaws. Phoenix, Arizona: 2606 West Osborn Rd., 1987-1988.

Arkansas Activities Association Constitution and Bylaws. Little Rock, Arkansas: 29th and Willow Streets, 1987-1988.

California Interscholastic Federation Constitution and Bylaws. Fullerton, California: 2282 Rosecrans Ave., 1987-1988.

Colorado High School Activities Association Handbook. Aurora, Colorado: 11351 Montview Boulevard, 1987-1988.

Connecticut Interscholastic Athletic Conference Handbook. Hamden, Connecticut: 84 Linden Ave., 1987-1988.

Delaware Secondary School Athletic Association Handbook. Dover, Delaware: Townsend Building, 1987-1988.

District of Columbia Interscholastic Athletic Handbook. Washington, D.C.: 12th and D Streets, 1987-1988.

Florida High School Activities Association Handbook. Gainesville, Florida: P.O. Box 1173, 1987-1988.

Georgia High School Association Constitution and By-laws. Thomaston, Georgia: 151 South Bethel Street, 1987-1988.

Hawaii High School Athletic Association Constitution and Bylaws. Honolulu, Hawaii: 941 Hind luka Drive, 1987-1988.

Idaho High School Activities Association Handbook. Boise, Idaho: 620 North 6th Street, 1987-1988.

Illinois High School Association Handbook. Bloomington, Illinois: 2715 McGraw Drive, 1987-1988.

Indiana High School Athletic Association By-laws and Articles of Incorporation. Indianapolis, Indiana: 9150 North Meridian Street, 1987-1988.

Iowa High School Athletic Association Record Book. Boone, Iowa: 1605 South Story, 1987-1988.

Kansas State High School Activities Association Handbook. Topeka, Kansas: 529 West 27th Street, 1987-1988.

Kentucky High School Athletic Association Handbook. Lexington, Kentucky: 560 East Cooper Drive, 1987-1988.

Louisiana High School Athletic Association Handbook. Baton Rouge, Louisiana: 1681 Wooddale Boulevard, 1987-1988.

Maine Secondary School Principals' Association Handbook. Augusta, Maine: 16 Winthrop Street, 1987-1988.

Maryland Public Secondary Schools Athletic Association Constitution and By-laws. Baltimore, Maryland: 200 West Baltimore Street, 1987-1988.

Massachusetts Interscholastic Athletic Association Rules and Regulations. Milford, Massachusetts: 83 Cedar Street, 1987-1988.

Michigan High School Athletic Association Handbook. East Lansing, Michigan: 1019 Trowbridge Road, 1987-1988.

Minnesota State High School League Handbook. Anoka, Minnesota: 2621 Fairoak Avenue, 1987-1988.

Mississippi High School Activities Association, Inc. Handbook. Jackson, Mississippi: 152 Millsap Avenue, 1987-1988.

Missouri State High School Activities Association Handbook. Columbia, Missouri: 1808 I-70 Drive, S.W., 1987-1988.

Montana High School Association Handbook. Helena, Montana: 1 South Dakota Avenue, 1987-1988.

National Federation of State High School Associations Handbook. Kansas City, Missouri: 11724 Plaza Circle, Box 20626, 1987-1988.

Nebraska School Activities Association Yearbook. Lincoln, Nebraska: 8230 Beechwood Drive, 1987-1988.

Nevada Interscholastic Activities Association Handbook. Carson City, Nevada: 400 W. King Street, 1987-1988.

New Hampshire Interscholastic Athletic Association. Concord, New Hampshire: 101 North State Street, 1987-1988.

New Jersey State Interscholastic Athletic Association. Robbinsville, New Jersey: P.O. Box 487, 1987-1988.

New Mexico Activities Association Handbook. Albuquerque, New Mexico: 1721 University, S.E., 1987-1988.

New York State Public High School Athletic Association Handbook. Delmar, New York: 88 Delaware Avenue, 1987-1988.

North Carolina High School Athletic Association Handbook. Chapel Hill, North Carolina: Finley Golf Course Road, 1987-1988.

North Dakota High School Activities Association Constitution and By-laws. Valley City, North Dakota: 134 N.E. Third Street, 1987-1988.

Ohio High School Athletic Association Handbook. Columbus, Ohio: 4080 Roselea Place, 1987-1988.

Oklahoma Secondary School Activities Association Yearbook. Oklahoma City, Oklahoma: 222 N.E. 27th Street, 1987-1988.

Oregon School Activities Association Handbook. Tigard, Oregon: 6900 S.W. Haines Road, 1987-1988.

Pennsylvania Interscholastic Athletic Association Constitution and By-laws. Mechanicsburg, Pennsylvania: 550 Gettysburg Road, 1987-1988.

Rhode Island Interscholastic League Rules and Regulations. Warwick, Rhode Island: 2212 Post Road, 1987-1988.

South Carolina High School League Handbook. Columbia, South Carolina: University of South Carolina, 1987-1988.

South Dakota High School Activities Association All Sports Bulletin. Pierre, South Dakota: P.O. Box 1217, 1987-1988.

Tennessee Secondary School Athletic Association Handbook. Hermitage, Tennessee: 3333 Lebanon Road, 1987-1988.

Texas Interscholastic League Constitution and Contest Rules. Austin, Texas: 2622 Wichita Street, 1987-1988.

Utah High School Activities Association Handbook. Midvale, Utah: 199 East 7200 South, 1987-1988.

Vermont Headmasters' Association, Inc. Bylaws and Policies. Montpelier, Vermont: 137 Barre Street, 1987-1988.

Virginia High School League, Inc. Handbook. Charlottesville, Virginia: University Station, 1987-1988.

Washington Interscholastic Activities Association Handbook. Bellevue, Washington: 4211 W. Lake Sammamish Blvd., 1987-1988.

West Virginia Secondary School Activities Commission Handbook. Parkersburg, West Virginia: Rt. 9 Box 76, 1987-1988.

Wisconsin Interscholastic Athletic Association Handbook. Stevens Point, Wisconsin: 41 Park Ridge Drive, 1987-1988.

Wyoming High School Activities Association Handbook. Casper, Wyoming: 218 West 9th, 1987-1988.

**TABLE OF CASES**

Albach v. Odle, 531 F.2d 983 (10th Cir. 1976)

Andeel v. Woods, 258 P.2d 285 (Kan. 1953)

Alerding v. Ohio High School Athletic Association, 591 F.Supp. 1538 (S.D. Ohio 1985), 779 F.2d 315 (6th Cir. 1985)

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

Barrett v. Phillips, 223 S.E.2d 918 (N.C. App. 1976)

Blue v. University Interscholastic League, 503 F.Supp. 1030 (N.D. Tex. 1980)

Brenden v. Independent School District 742, 342 F.Supp. 1224 (D. Minn. 1972), 477 F.2d 1292 (8th Cir. 1973)

Bruce v. South Carolina High School League, 189 S.E.2d 817 (Sup. Ct. S.C. 1972)

Brown v. Board of Education, 347 U.S. 483 (1954)

Bucha v. Illinois High School Associaiton, 351 F.Supp. 69 (N.D. Ill. 1972)

Burtt v. Nassau County Athletic Association, 421 N.Y.S.2d 172 (Sup. Ct. N.Y. 1979)

Cape v. Tennessee Secondary School Athletic Association, 424 F.Supp. 732 (E.D. Tenn. 1976), 563 F.2d 793 (6th Cir. 1977)

Carnes v. Tennessee Secondary School Athletic Association, 415 F.Supp. 569 (E.D. Tenn. 1976)

Cavallaro by Cavallaro, v. Ambach, 575 F.Supp. 171 (W.D. N.Y., 1983)

Chambers v. Massachusetts Secondary School Principals Association, Inc., Superior Court, No. 9641, Jan. 1978.

Clark, Etc. v. Arizona Interscholastic Association, 695 F.2d 1126 (9th Cir. 1982)

Clinton v. Nagy, 411 F.Supp. 1396 (N.D. Ohio 1974)

Coggins v. Board of Education of City of Durham, 223 N.C. 763 (1943), 28 S.E.2d 527 (N.C. 1944)

Colombo v. Sewanhaka Central High School, Etc., 383 N.Y.S.2d 518 (N.Y. 1976)

Crandall v. North Dakota High School Activities Association, 261 N.W.2d 921 (Sup. Ct. N.D. 1978)

Dallam v. Cumberland Valley School District, 391 F.Supp. 358 (M.D. Penn. 1975)

Darrin v. Gould, 540 P.2d 882 (Wash. 1975)

DeKalb City School System v. White, 260 S.E.2d 853 (Sup. Ct. Ga. 1979)

Dodson v. Arkansas Activities Association, 468 F.Supp. 394 (E.D. Ark. 1979)

Doe v. Marshall, 459 F.Supp. 1190 (S.D. Tex. 1978)

Florida High School Activities Association Inc. v. Bryant, 313 So.ed 57 (Fla. App. 1975)

Force by Force v. Pierce City R-VI School District, 570 F.Supp.. 1020 (W.D. Mo. 1983)

Forte v. Board of Education, North Babylon Etc., 431 N.Y.S.2d 321 (N.Y. 1980)

Gilpin v. Kansas State High School Activities Association, 377 F.Supp. 1233 (D. Kan. 1974)

Gomes v. Rhode Island Interscholastic League, 469 F.Supp. 659 (D. R.I. 1979), 604 F.2d 733 (1st Cir. 1979)

Grube v. Bethlehem Area School District, 550 F.Supp. 418 (E.D. Penn. 1982)

Hass v. South Bend Community School corporation, 289 N.E.2d 495 (Ind. 1972)

Hamilton v. Tennessee Secondary School Athleltic Association, 552 F.2d 681 (6th Cir. 1976)

Herbert v. Ventetuoloi, 638 F.2d 5 (1st Cir. 1981)

Holroyd v. Eibling, 188 N.E.2d 797 (Ohio 1962)

Hoover v. Meiklejohn, 430 F.Supp. 164 (D. Col. 1977)

Isgrig v. Srygley, 197 S.W.2d 39 (Ark. 1946)

Josephine City School District No. 7 v. Oregon School Activities Association, 515 P.2d 431 (Or. App. 1973)

In Re U.S. Ex Rel. Missouri State High School, Etc. 682 F.2d 147 (8th Cir. 1982)

Kampmeier v. Harris, 403 N.Y.S.2d 638 (N.Y. 1978), 411 N.Y.S.2d 744 (N.Y. Sup. Ct. App. Div. 1978)

Kent S. v. California Interscholastic Federation, 222 Ca. Rptr. 355 (Cal. App. 2 Dist. 1986)

Kentucky High School Athletic Association v. Hopkins County Board of Education, 552 S.W.2d 685 (Ky. App. 1977)

Kentucky High School Athletic Association v. Jackson, 569 S.W.2d 185 (Ky. App. 1978)

Kissick v. Garland Independent School District, 330 s.W.2d 708 (Tex. 1959)

Kriss v. Brown, 390 N.E.2d 193 (App. Ct. Ind. 1979)

Kulovitz v. Illinois High School Association, 462 F.Supp. 875 (N.E. Ill. 1978)

Lantz by Lantz v. Ambach, 620 F.Supp. 663 (D.C.N.Y. 1985)

Laurenzo by Laurenzo v. Mississippi High School Activities Association, 662 F.2d 1117 (5th Cir. 1981), 708 F.2d 1038 (5th Cir. 1983)

Lee v. Florida High School Activities Association Inc., 291 So.2d 636 (Fla. App. 1974)

Leffel v. Wisconsin Interscholastic Athletic Association, 444 F.Supp. 1117 (E.D. Wis. 1978)

Mahan v. Agee, 652 P.2d 765 (Sup. Ct. Okl. 1982)

McNulty v. Massachusetts Interscholastic Athletic Association, Superior Court, No. 37053, Jan. 1979

Menke v. Ohio High School Athletic Asscoiation, 441 N.E.2d 620 (Ohio App. 1981)

Moran v. School District #7, Yellowstone County, 350 F.Supp. 1180 (D. Mont. 1972)

Monzingo v. Oklahoma Secondary School Activities Association, 575 P.2d 1379 (App. Ct. Okl. 1978)

Morris v. Michigan State Board of Education, 472 F.2d 1207 (6th Cir. 1973)

Morris v. Roberts, 82 P2d 1023 (Okl. 1938)

Niles v. University Interscholastic League, 715 F.2d 1027 (5th Cir. 1983)

O'Connor v. Board of Education of School District 23, 545 F.Supp. 376 (N.D. Ill. 1982)

Othen v. Ann Arbor School Board, 507 F.Supp. 1376 (E.D. Mich. 1981)

Petrie v. Illinois High School Association, 394 N.E.2d 855 (Ill. 1979)

Plessy v. Ferguson, 163 U.S. 537 (1896)

Poole v. South Plainfield Board of Education, 490 F.Supp. 948 (D. N.J. 1980)

Reed v. Nebraska, 341 F.Supp. 258 (D. Neb. 1972)

Ritacco v. Norwin School District, 361 F.Supp. 930 (W.D. Penn. 1973)

Romans v. Crenshaw, 354 F.Supp. 808 (S.D. Tex. 1971)

Smith v. Crim, 240 S.E.2d 884 (Sup. Ct. Ga. 1977)

Spitaleri v. Nyquist, 345 N.Y.S.2d 878 (N.Y. 1973)

State Ex. Rel. Missouri State High School Athletic Association v. Schoenlaub, 507 S.W.2d 354 (Sup. Ct. Mo. 1974)

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

Striebel v. Minnesota State High School league, 321 N.W.2d 400 (Minn. 1982)

Sturrup v. Mahan, 290 N.E.2d 64 (App. Ct. Ind. 1972), 305 N.E.2d 877 (Sup. Ct. Ind. 1974)

Sullivan v. University Interscholastic League, 616 S.W.2d 860 (Tex. Civ. App. 1980), 616 S.W.2d 170 (Sup. Ct. Tex. 1981)

Swiderski v. Board of Education-City School District of Albany, 408 N.Y.S.2d 744 (N.Y. 1978)

Tennessee Secondary School Athletic Association v. Cox, 425 S.W.2d 597 (Tenn. 1978)

University Interscholastic League v. Jones, 715 S.W.2d 759 (Tex. App. 1986)

Walsh v. Louisiana High School Athletic Association, 616 F.2d 152 (5th Cir. 1980)

Wayland v. Board of School Directors of District No. 1 of Seattle, 86 P.2d 642 (Wash. 1906)

Wilson v. Abilene Independent School Ditrict, 190 S.W.2d 406 (Tex. 1945)

Yellow Springs Exempted Village School District Board of Education v. Ohio High School Athletic Association, 647 F.2d 651 (6th Cir. 1981)

**BOOKS**

Appenzeller, Herb. Athletics and the Law. Charlottesville: The Michie Company, 1975.

Appenzeller, Herb. From the Gym to the Jury. Charlottesville: The Michie Company, 1970.

Appenzeller, Herb. The Right To Participate. Charlottesville: The Michie Company, 1983.

Appenzeller, Herb. Sports and Law: Contemporary Issues. Charlottesville: The Michie Company, 1985.

Appenzeller, Herb, and Thomas Appenzeller. Sports and the Courts. Charlottesville: The Michie Company, 1980.

Black, Henry Campbell, Joseph R. Nolan and M.J. Connolly. Black's Law Dictionary. St. Paul: West Publishing Company, 1979.

Bolmeier, E.C., ed. Legal Issues In Education. Charlottesville: The Michie Company, 1968.

Bolmeier, Edward. The School in the Legal Structure,2d.. Cincinnati: The W.H. Anderson Company, 1973.

Delon, Floyd G., ed. The Yearbook of School Law. Topeka, Kansas: National Organization on Legal Problems of Education, 1974.

Deskbook Encyclopedia of American School Law, 1984 ed. s.v. "Athletic Eligibility Rules."

Deskbook Encyclopedia of American School Law, 1985 ed. s.v. "Athletic Eligibility Rules."

Deskbook Encyclopedia of American School Law, 1987 ed. s.v. "Athletic Eligibility Rules."

Funk and Wagnals Standard Desk Dictionary, 1985 ed. s.v. "Secondary School."

Gregory, Gwendolyn H. School Law in Contemporary Society. Topeka: National Organization on Legal Problems of Education, 1980.

Peterson, Leroy J., ed. The Yearbook of School Law. Topeka, Kansas: National Organization on Legal Problems of Education, 1972.

Phay, Robert E., ed. The Yearbook of School Law. Topeka, Kansas: National Organization on Legal Problems of Education, 1973.

Piele, Philip K., ed. The Yearbook of School Law. Topeka, Kansas: National Organization on Legal Problems of Education, 1975.

_____. The Yearbook of School Law. Topeka, Kansas: National Organization on Legal Problems of Education, 1976.

_____. The Yearbook of School Law. Topeka, Kansas: National Organization on Legal Problems of Education, 1977.

_____. The Yearbook of School Law. Topeka, Kansas: National Organization on Legal Problems of Education, 1978.

_____. The Yearbook of School Law. Topeka, Kansas: National Organization on Legal Problems of Education, 1979.

_____. The Yearbook of School Law. Topeka, Kansas: National Organization on Legal Problems of Education, 1980.

_____. The Yearbook of School Law. Topeka, Kansas: National Organization on Legal Problems of Education, 1981.

_____. The Yearbook of School Law. Topeka, Kansas: National Organization on Legal Problems of Education, 1982.

_____. The Yearbook of School Law. Topeka, Kansas: National Organization on Legal Problems of Education, 1983.

_____. The Yearbook of School Law. Topeka, Kansas: National Organization on Legal Problems of Education, 1984.

Shepard, George E. and Richard E. Jamerson. Interscholastic Athletics. New York: McGraw-Hill Book Company, 1953.

Strope, John L. School Activities and the Law. Reston, Virginia: The National Association of Secondary School Principals, 1984.

Thomas, Stephen B., ed. The Yearbook of School Law. Topeka, Kansas: National Organization on Legal Problems of Education, 1985.

Thomas, Stephen B., ed. The Yearbook of School Law. Topeka, Kansas: National Organization on Legal Problems of Education, 1986.

Weistart, John C. and Cym H. Lowell. The Law of Sports. Indianapolis: The Bobbs-Merrill Company, Inc., 1979.

**PERIODICALS**

Aust, Katherine. "Constitutional Law - Equal Protection-Sex Discrimination in Secondary School Athletics." Tennessee Law Review 46 (Fall 1978): 222-37.

Crase, Darrell. "The Continuing Crisis in Athletics." Phi Delta Kappan LVI (Oct. 1974): 99-101.

Cromartie, Martha. "No Pass - No Play: Academic Requirements for Extracurricular Activities." School Law Bulletin 17 (Fall 1986): 13-17.

"Disqualifying Conditions for Sports Participation." Medical Evaluation of the Athlete - A Guide (Chicago: The American Medical Association, 1977).

Durbin, Brice. "High School Athletics: A Valuable Educational Experience." NASSP Bulletin 70 (Oct. 1976): 32-34.

Engle, Kathleen. "The Greening of Girls' Sports." Nation's Schools 92 (Sept. 1973) 27-34.

Fabri, Candace J. and Elaine S. Fox. "The Female High School Athlete and Interscholastic Sports." Journal of Law & Education 4 (April 1975): 285-300.

Flygare, Thomas J. "Schools and the Law." Phi Delta Kappan 62 (June 1981): 741-742.

Gilbert, Bill and Nancy Williamson. "Sport is Unfair to Women." Sports Illustrated 38 (May 28, 1973): 88-98.

Groves, Richard and John T. Daly. "Athlete Eligibility." Journal of Health, Physical Education, Recreation 45 (Oct. 1974): 26-27.

Harper, Thomas. "Academic Eligibility Requirements for Student Athletes: Two Points of View. Minimum Academic Standards: No." NASSP Bulletin 70 (Oct. 1986): 1-4.

Hogan, John. "Sports in the Courts." Phi Delta Kappan LVI (Oct. 1974): 132-135.

Joekel, Ron. "Activities and Academics: The Big Debate." The Practitioner, February 1986, Pg. 1-11.

Johnson, T. Page. "The Courts and Eligibility Rules: Is a New Attitude Emerging?" Journal of Health, Physical Education, Recreation 44 (Feb. 1973): 34-36.

Knowles, Laurence. "Clourts debunk common school sports myths." Nation's Schools 92 (Sept. 1973): 60.

Ley, Katherine. "Women in Sports: Where Do We Go From Here, Boys?" Phi Delta Kappan LVI (Oct. 1974): 129-131.

Lister, Harry. "High school boy wins right to play on girls soccer team." USA Today, 1 October 1987, Sec. C Pg. 10.

Mullins, Charles Everett. "Family Law Issues in High School Athletic Eligibility: Equal Protection v. The Transfer Rule." Journal of Family Law 20 (1981-82): 293-322.

Pepe, Thomas and Thomas Mooney. "Weigh these complex issues about handicapped kids in athletics." The American School Board Journal 169 (Feb. 1982): 31-32.

Ruffin, Jr., Santee. "Academic Eligibility Requirements for student Athletes: Two Points of View. Minimum Academic Standards: Yes." NASSP Bulletin 70 (Oct. 1986): 6-8.

Sandler, Bernice. "Sex Discrimination, Educational Institutions, and the Law: A New Issue on Campus." Journal of Law & Education 2 (Oct. 1973): 613-636.

Soltz, Donald F. "Athletics and Academic Achievement: What Is the Relationship?" NASSP Bulletin 70 (Oct. 1986): 20-24.

Stein, Julian. "New vistas in competitive sports for athletes with handicapping conditions." Exceptional Education Quarterly 3 (May 1982): 28-34.

Weistart, John. "Rule-Making in Interscholastic Sports: The Bases of Judicial Review." Journal of Law & Education 11 (July 1982): 291-336.

**LEGISLATION**

Amendments To The Constitution, Article XIV, sec. 1.

Statutes at Large. "Education Amendment of 1972." Public Law 92-318, Title IX, Sec. 901, June 23, 1972.

Statutes at Large. "The Rehabilitation Act of 1973." Public Law 93-112, Sec.. 504, September 26, 1973.

Statutes at Large. "Education for all Handicapped Children Act of 1975." Public Law 94-142, November 29, 1975.

Texas Education Code, House Bill No. 72, Section 21.920, also section 21.921.

West Virginia State Board of Education Policy No. 2436.10.

**OTHER SOURCES**

Adams, Charlie, letter to this researcher, March 31, 1986.

Crawford, Shelby. Student Participation in Extracurricular Activities. Salem, Oregon: Legislative Research, S420 State Capital, 1986.

Delco, Wilhelmina. member of Texas House of Representatives, interview by author, 15 July 1987, Wilmington.

Gibson, D. (Gib) Lewis, Speaker, Texas House of Representatives, HB 72 Two Years Later (Austin: House Department of Reproductions, 1986).

Mohler, J. David. "Legal Aspects of Extracurricular Activities in Secondary Schools." Ed.D. diss., Duke University, 1965.

Russell, William L. "The Legal Aspects of Girls' Interscholastic Athletics: A summary of Litigation Involving the Participation, Rules, and Regulations of the Interscholastic High School Athletic Association in Each State From 1971-1977." Ed.D. diss., The University of North Carolina at Greensboro, 1978.

# APPENDIX A

## GENDER-BASED DISCRIMINATION
## STATE ATHLETIC ASSOICITION POSITIONS

I. States with disclaimers, example: ...no person, on the basis of sex, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity offered by the association.

| | | |
|---|---|---|
| Alabama | Alaska | Dist. of Columbia |
| Maine | Maryland | Massachusetts |

II. States which give the states three choices; 1. Not allow sports teams for boys or girls. 2. Provide seperate and equal teams for boys and girls. 3. Allow girls to participate on boys teams.

| | | |
|---|---|---|
| Colorado | Conneticut | Georgia |
| Hawaii | Idaho | Indiana |
| Kansas | Kentucky | Nevada |
| North Carolina | North Dakota | South Carolina |
| Wyoming | | |

III. States which allow female participation on male teams even when a female team is provided in a particular sport.

| | |
|---|---|
| California | New York |

IV. States which provide female programs but do not allow female participation on male teams in contact or collision sports.

| | |
|---|---|
| Rhode Island | Utah |

V. States which do not have a stated policy pertaining to female participation, but have taken female prohabition out of theie rules.

| | | |
|---|---|---|
| Arizona | Arkansas | Delaware |
| Florida | Illinois | Iowa |
| Louisiana | Michigan | Minnesota |
| Mississippi | Missouri | Montana |
| Nebraska | New Hampshire | New Jersey |
| New Mexico | Ohio | Oklahoma |

## APPENDIX A (CONTINUED)

| | | | |
|---|---|---|---|
| Oregon | Pennsylvania | South | Dakota |
| Tennessee | Texas | Vermont | |
| Virginia | Washington | West | Virginia |
| Wisconsin | | | |

This information is based on a review of the handbooks of the fifty state athletic associations and the District of Columbia as of February 1988.

# APPENDIX B

## AGE LIMIIT REQUIREMENTS BY STATE

I. States with maximum age limit of eighteen years and six months.

Hawaii

II. States with maximum age limit of nineteen years.

| | | |
|---|---|---|
| Alabama | Arizona | Arkansas |
| California | Colorado | Connecticut |
| Delaware | Dist. of Col. | Florida |
| Georgia | Idaho | Illinois |
| Indiana | Kansas | Kentucky |
| Louisiana | Maryland | Massachusetts |
| Michigan | Mississippi | Missouri |
| Montana | Nebraska | Nevada |
| New Jersey | New Mexico | New York |
| North Carolina | Ohio | Oklahoma |
| Oregon | Pennsylvania | Rhode Island |
| South Carolina | Tennessee | Texas |
| Utah | Virginia | West Virginia |
| Wisconsin | | |

III. States with maximum age limit of twenty years.

| | | |
|---|---|---|
| Alaska | Iowa | Maine |
| Minnesota | New Hampshire | North Dakota |
| South Dakota | Vermont | Washington |
| Wyoming | | |

The National Federation of State High School Associations recommends that the maximum age limit for athletic participation be set at nineteen years.

The information contained in this chart is based upon a review of the handbooks of the fifty state athletic associations and the District of Columbia. Also the recommendation of the National Fedration came from the National Handbook. Data are as of February 1988.

## APPENDIX C

### STATES WITH AN EIGHT SEMESTER RULE

State athletic associations have found it necessary to have an eight semester rule that governs athletic participation. The eight semester rule gives students eight semesters to complete their four years of high school eligibility. The eight semesters begins when a student enrolls in the ninth grade.

States which have enacted an eight semester rule pertaining to athletic participation.

| | | |
|---|---|---|
| Alabama | Alaska | Arizona |
| Arkansas | California | Colorado |
| Connecticut | Delaware | Dist. of Col. |
| Florida | Georgia | Hawaii |
| Idaho | Illinois | Indiana |
| Iowa | Kansas | Kentucky |
| Louisiana | Maine | Maryland |
| Massachusetts | Michigan | Minnesota |
| Mississippi | Missouri | Montana |
| Nebraska | Nevada | New Hampshire |
| New Jersey | New Mexico | New York |
| North Carolina | North Dakota | Ohio |
| Oklahoma | Oregon | Pennsylvania |
| Rhode Island | South Carolina | South Dakota |
| Tennessee | Texas | Utah |
| Vermont | Virginia | Washington |
| West Virginia | Wisconsin | Wyoming |

The National Federation of State High School Associations recomends that each state adopt an eight semester rule.

The information contained in this chart is based upon a review of the handbooks of the fifty state athletic associations and the District of Columbia as is current as of February 1988.

## APPENDIX D

### ACADEMIC REQUIREMENTS FOR ATHLETIC PARTICIPATION

I. States which do not establish a minimum academic requirement.

| | | |
|---|---|---|
| Maryland | Hawaii * | New York |
| Vermont | Maine ** | |

* Hawaii leaves the setting of minimum academic standards to each conference or district.

** Maine leaves the setting of minimum academic standards up to each school.

II. States which require an athlete to pass a minimum of two units of credit in order to be eligible to participate.

| | |
|---|---|
| Missouri | Nevada * |

* Nevada has a two course requirement except during the athletic season in which the student is participating. During this period of time a student cannot fail any of his or her subjects and remain eligible.

III. States which require an athlete to pass a minimum of three units of credit in order to be eligible to participate.

| | | |
|---|---|---|
| Arkansas | Iowa | Mississippi |
| Nebraska | North Dakota | Rhode Island |

IV. States which require an athlete to pass a minimum of four units of credit in order to be eligible to participate.

| | | |
|---|---|---|
| Alabama | Alaska | Colorado |
| Connecticut | Delaware | Dist. of Col. |
| Illinois | Indiana | Kentucky |
| Massachusetts | Michigan | Montana |
| New Hampshire | New Mexico * | North Carolina |
| Ohio | Oklahoma | Oregon |
| Pennsylvania | South Carolina | South Dakota |
| Virginia | Washington | West Virginia** |
| Wisconsin | Wyoming | |

## APPENDIX D (CONTINUED)

*New Mexico requires students to pass at least four units of credit, but not fail more that one course and to maintain at least a 2.0 GPA.

**In addition to passing four units of credit the state of West Virginia also requires that students maintain a 2.0 GPA.

V. States which require an athlete to pass a minimum of four units of credit in order to be eligible to participate.

| | | |
|---|---|---|
| Arizona | Florida | Georgia |
| Idaho | Kansas | Louiusiana * |
| Tennessee | ** | |

*Louisiana requires that students pass five units of credit plus maintain a 1.5 GPA.
**In 1988 North Carolina will require five units.

VI. States with special requirements for academic achievement.

California students must pass at least four units as set by the state athletic association and in addition meet the minimum GPA requirements set by each local unit.

Minnesota students, according to the state requirements, must be making satisfactory progress toward graduation.

New Jersey students cannot fail more that two units of credit and must maintain at least a 2.0 GPA.

Utah students cannot fail more than one unit of credit.

Texas students must pass every course they are attempting in order to maintain their eligibility. "No pass, no play"

The National Federation of State High School Associations recomends that states set a limit of four units passed in order to maintain athletic eligibility.

The information contained in this chart is based upon a review of the handbooks of the fifty state athletic associations and the District of Columbia.

# APPENDIX E

## STATE TRANSFER RULES

I. All states have rules that allow a transfer student to be elligible immediatly if the students move coincides with the move of the parents or the parent that has custody. This is known as a bonafide transfer and no penalty is placed upon the student.

II. States which require a waiting period of one semester before a student is eligible when the transfer is ruled to be other than bonafide.

| | | |
|---|---|---|
| Alaska | Colorado | Delaware |
| Florida | Iowa | Kansas |
| Michigan | Minnesota | Montana |
| Nebraska | New Mexico | North Dakota |
| Virginia | Wyoming | |

III. States which require a waiting period of one year before a student is eligible when the transfer is ruled to be other than bonafide.

| | | |
|---|---|---|
| Alabama | Arizona | Arkansas |
| California | Connecticut | Dist. of Col. |
| Georgia | Idaho | Illinois |
| Indiana | Kentucky | Louisiana |
| Maine | Maryland | Massechusetts |
| Mississippi | Missouri | Nevada |
| New Hampshire | North Carolina | Ohio |
| Oklahoma | Oregon | Pennsylvania |
| South Carolina | South Dakota | Tennessee |
| Texas | Utah | Vermont |
| Washington | Wisconsin | |

IV. States which have unusual transfer requirements.

Transfers in the state of New York are required to sit out a total of fourteen days before they gain eligibility to participate when the transfer is considered to be other than bonafide.

Transfers in Rhode Island are considered ineligible for a period of twenty weeks when the transfer is considered to be other than bonafide.

## APPENDIX E (CONTINUED)

Transfers in West Virginia are considered ineligible for a period of one-hundred and twenty days when the transfer is considered to be other than bonafide.

Transfer students in New Jersey are considered ineligible for a period of thirty days when the transfer is considered to be other than bonafide.

Hawaii does not have a transfer rule in it's handbook.

This information is based on a review of the handbooks of the fifty state athletic associations and the District of Columbia as of February 1988.