

State High School Athletic Associations' Rules and Regulations Pertaining to Transfers and Recruiting

Robert E. Trichka
Central Connecticut State University

■ INTRODUCTION

The regulation of high school athletics rests with each state's high school athletic associations. These associations are voluntary and consist of both public and private high schools within each state that wish to participate in the association's sponsored events; that wish to abide by the association's rules; and that are accepted by the association as members. The chief purposes of the state high school athletic associations are to oversee and regulate amateur interscholastic athletic relationships among member schools as well as to ensure a spirit of fair play, friendly rivalry, and good sportsmanship.

A key issue in amateur athletics is that of athletic eligibility. The state associations are empowered to rule on athletic eligibility, utilizing regulations which cover, or attempt to cover, all the possibilities which might affect a high school athlete which include, but are not limited to regulations pertaining to age, years of participation, academic standards, transfers, red-shirting, recruitment, number of semesters in school, and out of season play (including summer). Whatever the regulation, they have the same common objectives: the protection of the athlete; the promotion of education; the continuation of amateurism; and the fair competition between member schools.

The issue of high school athletes transferring from one high school to another is multidimensional as well as controversial. The transfer issue poses problems in the area of potential illegal recruitment and program standard maintenance for both the high school and the state athletic associations. For the athlete, the transfer issue poses the problem of participation at a school either to enhance the possibility of obtaining a college athletic scholarship, or just an increased opportunity to participate on a winning team.

■ LITIGATION

Litigation has been brought against state associations which challenges the constitutionality of the regulations or the appealing of sanctions imposed on the athlete or the high school for eligibility violations. Generally, the courts have found that all actions by a state high school athletic association will usually be viewed as

state action for constitutional purposes. Such was the case in *Griffen High School v. Illinois High School Athletic Association* (7th Cir. 1987). In this case, the court ruled that the state athletic association had sufficient public character to confer state action status on the activities of the association.

In terms of equal protection and due process, the courts have usually applied a permissive standard of review, finding that a reasonable relation to the stated purpose of the regulation and therefore the courts have upheld the decisions of state athletic associations relative to eligibility. Specifically, in *Simkins v. South Oak High School Activities Association* (S.D. Sup. Ct. 1989), the court held that the transfer regulation of the activities association was rationally related to the purpose of discouraging recruitment for athletic purposes. In *Griffen*, the court of appeals affirmed a lower court's decision by holding that equal protection and due process were not violated. The state association's transfer rule in *Crandall v. North Oak School Activities Association* (N.D. Sup. Ct. 1978), and *Quimby v. School District of Pinal County, Arizona* (Ariz. 1969) was found to be reasonably related to a legitimate purpose. The Federal Court of Appeals in *Hamilton v. Tennessee Secondary School Athletic Association* (Tenn. 1976) ruled that the association was within its right to make rules and that interscholastic athletics was not derived from the Constitution and is therefore outside the protection of due process.

The right versus privilege controversy has stirred much litigation in the courts. This controversy involves the arguments that a declared ineligible high school athlete has a right to an education and that participation in interscholastic athletics is included in that right. Courts have interpreted educational rights as encompassing only classroom activities and have viewed all other activity as unprotected privileges. This is well documented in *Springbranch Independent School District v. Stamos* (Tex. 1985), in which the court held that fundamental rights are derived from the express and implied protection of personal liberties, however, the right to participate in interscholastic athletics does not rise to the same level as the right to free speech or of religion. Participation in interscholastic athletics was found to be a privilege and not a fundamental right in *Scott v. Kilpatrick* (Ala. Sup. Ct. 1970), *Dallum v. Cumberland Valley School District* (Pa. 1975), *Kulovitz v. Illinois High School Association* (Ill. 1978), *Steffes v. California Interscholastic Federation* (Cal. 1986), *Stratton v. St. Joseph's High School and the Connecticut Interscholastic Athletic Conference* (Conn. 1986), and *Birschback v. Gross Point Public School District* (Mich. App. 1986).

■ TRANSFER AND RECRUITMENT REGULATIONS

The rules and regulations governing or restricting eligibility of high school students who transfer from one high school to another varies from state to state. Some state associations will apply a blanket restriction on all students who transfer from one high school to another. The intent is to limit abuse of the transfer rule. The application of blanket transfer rules can be harsh in that no consideration is given to the reason the transfer had occurred. In other instances, this type of rule can be over-restrictive as the court in *Sturup v. Mahon* (Ind. 1974) held that the transfer rule violated equal protection because it was over-inclusive. In *Sullivan v. Univer-*

sity Interscholastic League (*Tex. Sup. Ct. 1981*), the court found the transfer rule to be overbroad, over-restrictive, harsh, and not rationally related to the purpose of determining recruitment.

In other states, the high school athletic associations allow exceptions to the transfer rule specifically for reasons unrelated to athletics. Transfer students would have immediate athletic eligibility upon enrollment at the new school. However, as Wong (1994) suggested, this has the potential for misinterpretation and/or abuse of the exception. Moving in with surrogate parents or guardians to attend a high school where there was a greater chance for scholarship, or a winning season would be examples of this type of abuse. It would be easier to apply the blanket restriction and to require all new students to meet a residency requirement prior to participation in athletics.

There are inherent problems with both blanket restrictions and exceptions on a case by case basis so that a third approach is being utilized in some states to determine eligibility of a transfer student athlete. This approach allows a transfer student athlete to be eligible immediately upon transfer if certain objective criteria are met.

The intent of the transfer rule is to discourage schools and/or adults from exploiting the student athlete, and allowing or enabling that student to benefit improperly from his/her own act or the acts of others. A transfer rule is standard in the majority of state high school athletic associations and when applied fairly, has withstood legal tests. In Connecticut, as with most states, the transfer rule is based upon the fundamental principle that, if at all possible, a student should live with his/her parent(s) and attend the public, or private school in the school district in which their parent(s) reside. Without the regulation of the eligibility of transfer students, high school athletes and their families, with or without outside influence, could permit athletic interest to become the dominant factor in educational decisions. In either of these two instances athletics would assume an improper and abusive perspective. High school athletic associations believe that transfer and recruitment rules which deter such activities are warranted.

Interscholastic transfer rules have come under scrutiny when the transfer is due to the movement of school boundaries or for religious reasons. An interesting case which points out the complexity of the associations transfer rules was *Alabama High School Athletic Association v. Scaffidi* (*Ala. Sup. Ct. 1990*) where a ninth grade student at a private school was declared ineligible due to transfer. During the school year, a Federal Court order in a school desegregation case, redrew school boundaries. Under the new re-districting, the parents of the student decided that the student should attend the public school in their district. The athletic association decided that under the redistricting, students transferring from one public school to another would not lose eligibility because the transfer was the result of the re-districting. However, Scaffidi was declared ineligible because he had voluntarily transferred from a private school to a public school. The circuit court's decision of injunctive relief was reversed by the state Supreme Court. The higher court held that the federal court order applied exclusively to public school students and not to voluntary transfers from a private school.

In *Walsh v. Louisiana High School Athletic Association* (5th Cir. 1980), The parents of student athletes brought action on behalf of their children alleging that the association's transfer rule unduly hindered their constitutional right to free exercise of religion and deprived them of equal protection. Several students wished to attend a parochial school outside their home district. Their enrollment in any public school other than the high school in their home district would have resulted in their ineligibility. The appeals court of Louisiana held that the association's transfer rule was rationally related to the state's valid interest in eliminating recruitment of interscholastic athletes.

A high school athlete sought a permanent injunction to stop the Kentucky High School Athletic Association from enforcing the eligibility regulation based on transfer (*Kentucky High School Athletic Association v. Hopkins County Board of Education, Ky. App. 1977*). The student's parents were divorced, with legal custody awarded to the mother. After living with the mother and participating in interscholastic athletics, the student decided to move in with the father and enrolled in another school. The district court issued the injunction, however on appeal, the appellate court found that since the athlete was not compelled to change his address and did so voluntarily, reversed the lower court's issuance of the injunction.

In *Stratton v. St. Joseph's High School and the Connecticut Interscholastic Athletic Conference* (Conn. 1986), injunctive relief was sought by the parents of a baseball player who had transferred from one public school to a parochial school in another town. The transfer was allegedly for academic reasons and the state association denied eligibility. The association rule stated that there must be a corresponding change of residence, or meet one of a number of conditions for eligibility to be maintained. The Superior Court held that the student had not established irreparable harm in that his speculation that he might not be able to get a collegiate scholarship if he were not allowed to play was not enough. The court further held that the right to participate in interscholastic sports is not a property right protected by due process clauses of the Constitution or the Constitution of the State of Connecticut, and that the fundamental right to an education, protected by the Connecticut Constitution did not encompass interscholastic sports.

Some state associations have specific regulations governing recruitment of interscholastic athletes with their aim of keeping athletics from being the primary consideration of a student's decision regarding his/her choice of schools. The overriding concern of the student and those adults who influence his/her school choice must be what is right for the total student, not just athletically. The potential won/loss record of the selected school should not be a consideration. Recruitment, as defined by the Connecticut Interscholastic Athletic Conference rule IV.C is "...any and all conduct the natural and or probable effect of which is to influence or induce a student to attend a particular high school for athletic purposes." In many states, the recruitment rule is intertwined into the language of transfer rules and regulations. The recruitment rule has not been challenged in court as yet in Connecticut, with the end result being the denial of eligibility or sanctions placed on the individual school or coach. Athletic motives for transferring from one school to another is suspect of recruitment violations.

■ SUMMARY

Eligibility rules for state high school athletic associations are multidimensional and inter-related. Generally, the courts have refused to intervene in the internal affairs of the state associations. The courts have shown great deference to the judgment of the specialists who created the regulations and are therefore, best equipped to decide controversies concerning the regulations. Unless there is evidence of fraud, collusion or unreasonable, arbitrary or capricious action, the courts are unwilling to intervene.

Therefore, state high school athletic association action has been viewed as state action for constitutional purposes; athletics is considered to be a privilege and not a property right; and speculation of a collegiate scholarship is not a strong enough reason to issue injunctions or restraining orders.

Transferring from one school district to another school district without corresponding change of residence seems to be problematic in most states, with the courts upholding or reversing lower courts' decisions in favor of the state associations.

References

- Alabama High School Athletic Association*, 564 S. 2d 910 (Ala. Sup. Ct. 1990).
- Birschback v. Gross Point Public School District*, 397 N.W. 2d 234 (Mich. 1986).
- Champion, W. (1993). *Sport Law in a Nutshell*. St. Paul: West Publishing Co.
- Connecticut Interscholastic Athletic Conference. (1994). *C.I.A.C. Handbook 1994-95*. Cheshire: Connecticut Interscholastic Athletic Conference.
- Crandall v. North Oak School Activities Association*, 261 N.W. 2d 921 (N.D. Sup. Ct. 1987).
- Dallum v. Cumberland Valley School District*, 391 F. Supp. 358 (Pa. 1975).
- Dougherty, N., D. Auxter, A. Goldberger, & G. Heinzmann (1994). *Sport, Physical Activity and the Law*. Champaign: Human Kinetics Publishers.
- Griffen High School v. Illinois High School Athletic Association*, 822 F. 2d 671 (Ill. 1987).
- Hamilton v. Tennessee Secondary School Athletic Association*, 552 F. 2d 681 (Tenn. 1976).
- Kentucky High School Athletic Association v. Hopkins County Board of Education*, 552 S.W. 2d 685 (Ky. Ct. App. 1977).
- Kulovitz v. Illinois High School Association*, 462 F. Supp. 875 (Ill. 1978).
- Quimby v. School District of Pinal County, Arizona*, 455 P. 2d 1019 (Ariz. 1969).
- Scott v. Kilpatrick*, 286 Ala. 129, 237 So. 2d 652 (Ala. Sup. Ct. 1970).

- Shubert, G., R. Smith, & J. Trantadue (1986). *Sport Law*. St. Paul: West Publishing Co.
- Springbranch Independent School District v. Stamos*, 695 S.W. 2d 556 (Tex. 1985).
- Steffes v. California Interscholastic Federation*, 176 Cal. App. 3d 739, 272 Cal. Rptr. 355 (Cal. 1986).
- Stratton v. St. Joseph's High School and C.I.A.C.*, 12 Conn. Law Trib. 26 (Conn. 1986).
- Sullivan v. University Interscholastic League*, 616 S.W. 2d 170 (Tex. Sup. Ct. 1981).
- Walsh v. Louisiana High School Athletic Association*, 616 F. 2d 152, 428 F. Supp. 1261 (La. 1980).
- Wong, G. (1994). *Essentials of Amateur Sports Law*. Westport, Ct.; Praeger Publishing Co.