

# State High School Athletic Association's Limited Participation Rules: Transfer

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## I. Introduction

*If athletics have been prostituted to other than educational ends, let us not throw the baby out with the bath. Let us not in the name of liberal education become empty eggheaded. Rather, let us face the fact of our failure to deal decisively with the whole man. Let us confess that the kind of knowledge with which we deal in most colleges and universities does not produce virtue. Let us take seriously the moral perversion of intellectual excellence cut off from universal moral ends defined by even modest demands for fair play in all fascist systems of education. Let us acknowledge we know little about how character is created or sustained and the critical failure of many colleges to do either. Let us face soberly and seriously the stern moral demands for character in leadership as well as for intellectual freedom.*

*When we have done this we will be deeply critical over willful abuse of the playing field for profit, prestige, or power. But we may also be chastened to see the playing fields, since the time of the Greeks, were designed primarily for the perfecting of persons—a perfecting which requires rational discipline as the parent of creative play, sublimation of the self as the setting for cooperation in competition, participation as the mode of integrative understanding and faithfulness to fair play as conditions for excellence.<sup>11</sup>*

The National Federation of State High School Athletic Associations (NFSHSAA or National Federation) is a federation of state groups. Organized in 1920 as the Midwest Federation of State High School Athletic Associations with Illinois, Indiana, Iowa, Michigan, and Wisconsin as members. The organization adopted its present title in 1922 when eleven states were represented. The National Federation cooper-

ates with other athletic organizations in writing rules for all sanctioned sports and in acting on national records. Further, the National Federation is the sanctioning of multi-school interstate meets and tournaments to ensure high standards of conduct and adherence to accepted regulations.

On the state level the control and conduct of the interscholastic athletic program is placed in the hands of the state associations. These

groups have come into being in order to establish uniform procedures and regulations for interscholastic activities, to protect the welfare of the students, and to establish sensible and educationally sound controls.

As early as 1895 a committee was formed in Wisconsin to establish rules for interscholastic sports. By the mid-1920s most states had associations. Today all states have athletic, activity, leagues, or principals associations that have as a key function the control of interscholastic athletics. The activities of these statewide organizations are not necessarily limited to the field of sports, and the names of the different groups vary markedly.<sup>2</sup>

Most of the state associations are voluntary in nature and are open to accredited public secondary schools. Some states allow private and parochial schools that meet membership requirements to join. The state groups in Michigan and New York are closely affiliated with state departments of education. The associations in Texas, Virginia, and South Carolina have close relationships with the state universities.<sup>3</sup>

In addition to establishing rules and regulations, other activities of state associations may include: (1) interpretation of playing rules; (2) operation of athletic insurance plans; (3) registration and classification of officials; (4) preparation and distribution of publications; (5) conduct of multi-school meets and tournaments; and (6) provision of a judicial service for settling controversies and hearing appeals.<sup>4</sup>

One of the more recent trends in amateur sports litigation involve high school athletic coaches challenging rules which prohibit their participation and/or attendance at camps or programs that specialize in teaching the skills of the sport which they coach interscholastically. Regulations have been instituted to control such overzealous coaches and to equalize interscholastic competition.

Enforcement of state association rules and regulations frequently prohibit athletes from competing and coaches from coaching during the off season, including the summer. Athletes and coaches so affected often bring forth complaints to obtain relief in the form of injunctions. The injunction would force the association to

allow participation, and are especially critical to the student-athlete hoping to obtain a college scholarship. Coaches, who rely on summer employment through coaching at camps and recreational areas are limited in some states.

Injunctions are court orders for one of the parties to a law suit to behave in a certain manner. For state associations, this behavior consists of a non-enforcement of their rules and regulations. Injunctive relief is designed to prevent future wrongs, not to punish past acts. A temporary restraining order (usually effective for ten days) is issued to the defendant without notice. A preliminary injunction is granted prior to a full hearing and disposition of a case.

In *Hall v. University of Minnesota*<sup>5</sup> Judge Lord intimates that amateur sports really is not as pure as it used to be. The concept of amateurism began in the 1700's and was a leisure outlet for the upper case. These amateurs desired no income nor had aspirations for a greater level of notoriety at all from their athletic pursuits. In contrast, present day amateurs have visions of grandeur and greatness. The distinction between amateurs and professionals can become extremely hazy and confused as youth athletes hurdle through the steps to become college stars and possible professional athletes. The higher the athlete climbs the greater the confusion between amateurism and professionalism.

More and more high school athletes are striving to earn college athletic scholarships and are beginning to specialize in one sport rather than participating in two or three as was the norm. Intercollegiate athletic programs, in many respects, have become a grooming ground for professional sports. This has further clouded the distinction between amateur and professional sports.

The key to the analysis of amateur sports is the status of the amateur athlete. However, the definitions and categorizations are somewhat confusing and contradictory. Since each governing body of sport can and does subscribe to a somewhat different definition of the term amateur. Due to this unique flexibility in America of defining amateur, there is a possibility that an individual can be viewed as an amateur under the rules of the USOC, but not be an amateur

under the state high school association rules or the NCAA.

Courts are generally very reluctant to overrule the rules of the athletic associations as regards to eligibility, participation, and discipline of their athletic participants. Generally, courts will not interfere with the internal affairs of voluntary associations. In the absence of mistake, fraud, collusion, or arbitrariness, the decisions of the governing body of the association will be accepted by the courts as conclusive. Voluntary associations may adopt reasonable by-laws and rules which will be deemed valid and binding upon their members unless these rules violate some law or public policy. The courts do not have the responsibility to inquire into the expediency, practicability, or wisdom of these regulations. Further, these general principles apply to cases that involve amateur athletics including the governing bodies of state high school athletic associations and college sports. Finally, the courts will not substitute their interpretations of the associations, rules and regulations for the interpretations placed on these rules by the association itself, so long as that interpretation is fair and reasonable.<sup>6</sup>

The key question involved in determining whether or not a student athlete is eligible to participate is who is eligible or not eligible to participate under a particular rule and by-law of the governing association. Eligibility rules cover the whole gamut of interpersonal relationships and characteristics. However, this analysis will target only one aspect of age-eligibility rules.

#### **a. Basic Rationale for age-eligibility rules**

The fundamental goal of the student-athlete must always be success in the academic area. Unlimited participation in athletic activities subverts this goal and places undue demands on the student-athlete's time.

Experience has taught that rules are needed to keep excessive athletic competition from imposing upon a student's academic levels to the extent that scholastic development and achievement suffer. Schools must help students maintain a balance between academics, athletics, and other school programs.

Promoters of non-school programs are generally concerned with specialization, not with a

philosophy that fits their program into the perspective of a scheme for total educational development. Many seek to exploit the highly skilled athlete in the name of individual development and recognition under the guise of developing an athlete's potential to secure college scholarships.

Historically, state high school athletic associations have held that continual focus on a single sport may cause high school athletes to miss opportunities to be what they really are: inexperienced persons discovering the world and their abilities and interests through a variety of experiences. Schools also hold the view that commitment to a team teaches lessons about priorities in life and helps students learn to fit into a system that is more important than only their personal, perhaps selfish, frame of reference. Non-school participation rules are designed, therefore, to reinforce these philosophical views, as they:

- (1) minimize conflicts of loyalty between school and non-school teams in the same sport during the same season;
- (2) reinforce the basis for fairness and equity among student competitors by protecting common opportunities to engage in athletic competition;
- (3) protect school teams from outside influence by ensuring that student participants during the school season for a sport do not have such other athletic commitments so that their school teams cannot rely on them;
- (4) protect an athlete from exposure to coaching philosophies, strategies, and techniques which are in opposition to those which their school coach is teaching;
- (5) protect against potential injury to athletes and the resultant loss of the athlete to the school team; and
- (6) protect opportunities for students not involved on a high school team to participate in non-school programs and receive the benefits of athletic competition.

The basic rationale underlying the state high school athletic association's out of season rule is concern over specialization. Opportunities to voluntarily engage in non-school sponsored sports should be provided to the high

school student-athlete, provided such activities do not interfere with the student's educational development and the activities do not conflict with the principles of wholesome amateur athletics. The rules and regulations governing out of season participation discourage the exploitation of student-athletes by individuals and organizations which attempt to impose an obligation on the student to participate in these programs at any cost.

There has been growing evidence of commercialism of high school athletes. In far too many instances, non-school sponsored sporting events have been the "marketplace" where student-athletes have been lured to display their "athletic wares". Experience has revealed that such events tend to divide the allegiance of the student-athletes, undermine their respect for their high school coaches, and encourage the type of adulation which gives the students an exaggerated notion of the importance of their own athletic prowess rather than reinforcing the idea that athletic ability is an endowed talent which students should use for the pleasure and satisfaction that they may derive from athletic competition. By promulgating and enforcing out of season regulations, state high school athletic associations strive to eliminate these abuses.

## II. Right to Participate

One of the fundamental questions that must be analyzed relating to eligibility of a student athlete, whether it be interscholastic or intercollegiate, is whether that individual has the right or privilege to participate. If there is a right, then the relationship between the athlete and the controlling organization which administers the competition will be on a much different legal plane than if it were viewed as a privilege. The question generally before the bar is, whether a student athlete in a public institution has a sufficiently important interest in participation in his/her sport so as to require that he/she receive procedural safeguards as required by due process. The threshold question in any inquiry into a claim that an individual has been denied procedural due process is whether the interest asserted by the individual rises to the level of a

property' or liberty' interest protected by the U.S. Constitution and all state constitutions.

When confronted with this precise issue, the overwhelming majority of courts have held that participation in interscholastic or intercollegiate athletics or other extracurricular activities is not a constitutionally protected liberty or property interest.<sup>7</sup>

In *Hall v. University of Minnesota*,<sup>8</sup> the court found that there was a limited property interest in participation in intercollegiate sports. However, in *Colorado Seminary v. NCAA*<sup>9</sup> the Tenth Circuit Court of Appeals held that the interests of student athletes, including those on scholarship, to participate in intercollegiate hockey did not rise to the level of a constitutionally protected right.<sup>10</sup>

Similarly, the majority of state courts rarely find that a right to participate in school athletics is a constitutionally protected interest. ~ As stated in the Supreme Court nonacademic extracurricular activities does not rise to the level of a constitutionally protected 'property' or 'liberty' interest.<sup>12</sup>

Furthermore, in interscholastic sports, the courts rarely find that a right to participate exists. Thus, the opportunity to participate in extracurricular activities is not, by itself a property interest, although it appears that under certain circumstances, a high school student can properly establish an entitlement to due process protection in connection with his suspension and exclusion from high school athletics.<sup>13</sup> Finally, on the whole, participation in sports is not a fundamental interest, and therefore, eligibility to participate is not entitled to a strict standard of review by the court.

## III. Due Process and Equal Protection

Under certain circumstances, a student athlete may properly establish an entitlement to due process protection in connection with his suspension and exclusion from high school athletics.<sup>14</sup> Similarly, some students have been able to successfully argue equal protection right in high school athletics.<sup>15</sup> Thus, in reviewing the constitutionality of eligibility regulations two other

basic rights need to be considered due process and equal protection.

### **A. Due Process**

Due process has been used to eliminate regulations that are overbroad in restricting a student athlete's protected rights as well as regulations that overlook more feasible alternatives which would be less restrictive of a student athlete's protected liberties.<sup>16</sup> For example, procedural due process is required before a student can be dismissed for misconduct.<sup>17</sup> Students will be granted both notice and an opportunity to be heard prior to disciplinary expulsion because of potential interference with a protected liberty interest.<sup>18</sup>

### **B. Equal Protection**

Equal protection, unlike due process, requires only a rational relation to a legitimate state of interest if the regulation neither infringes upon fundamental rights nor burdens an inherently suspect/protected class.<sup>19</sup> In *Bell v. Lone Oak Independent School District* ~ the Texas Supreme Court held that a regulation prohibiting married high school students from participating in interscholastic activities was a violation of the equal protection clause. The court found no logical basis for the so-called married student rule. The right to marry is a basic and fundamental right. The no-marriage rule established a classification of individuals to be treated differently from the remainder of the students without being designed to promote a compelling interest.

### **Transfer and Recruitment Regulations and the Impact of Sheff v. O'Neill**

The issue of high school athletes transferring from one high school to another high school outside their school district is as controversial as ever. For state high school athletic associations and for the high schools themselves, this issue poses problems in the area of potential illegal recruitment as well as the maintenance of program standards. For the athlete, the transfer issue poses the problem of eligibility for participation. Voluntary transferring student-athletes do so to either enhance the possibility of obtaining a college athletic scholarship, or just for an increased opportunity to participate on a

winning team.

The power to regulate high school sports rests with each state's athletic associations' rules which are designed to promote, develop, direct, protect, and regulate amateur athletic relationships with member schools and to stimulate fair play, friendly rivalry, and good sportsmanship. The question of athletic eligibility and/or the declaration thereof is the decision of each state's athletic association or governing board. In these instances, the eligibility rules cover, or at least attempt to cover, all the possibilities which might affect a student-athlete and pertain to age, years of participation, academic standards, transfers, red-shirting, and the number of semesters the student-athlete is enrolled in school. Albeit, whatever the rules, they have the same common objectives of the promotion of education the continuation of amateurism, and the fair competition between member schools.

The intent of transfer rules enacted by state athletic associations is to discourage schools and/or adults from exploiting student-athletes, and allowing the student-athlete to benefit improperly from the transfer. Without regulation of the eligibility of transfer students, these students with or without outside influence, could permit athletic interests to become dominant factors in educational decisions. In addition, state high school associations also regulate the recruitment of student-athletes, through their transfer rules.

Of recent note, an appeals court in Connecticut overturned a Superior Court decision (*Sheff v. O'Neill*) and forced the State of Connecticut into the consideration of a statewide desegregation plan, which in effect, would afford high school students or student-athletes the availability of school choice. This legal decision has the potential to drastically change interscholastic athletics as is presently known in Connecticut. The impact has the potential to be enormous with recruiting and levels of competition discrepancies varying from school to school. Foreseen is the possibility that student-athletes would either flock to traditionally "great" athletic programs as a way to obtain college scholarships, or be illegally recruited by a school desiring more exposure through its athletic programs. The choice of schools has become a

popular cause among educational reformers throughout the United States, and at present, the idea is the "hot issue" in Connecticut and raises complicated questions and/or concerns.

Litigation has been pursued against state high school athletic governing boards or associations, which include allegations that the governing board's by-laws were unconstitutional, or the application of the regulations sanctioned the student-athlete or the school. However, generally speaking, the courts have refused to intervene in the internal affairs of the state governing board, and in effect, defer to the judgment of those who had created the regulation and therefore best equipped to decide any controversy. Unless there is evidence of fraud, collusion, or unreasonable, arbitrary or capricious action, the courts are unlikely to intervene in an action concerning the interpretation of a rule which was promulgated by an athletic association or governing board. In *Sullivan v. University Interscholastic League (1981)*, the association's transfer rule was held to be unconstitutional on equal protection grounds. The court in this case, held that the regulation was not relatively related to its intended purpose; that the regulation's purpose was to discourage the recruitment of student-athletes, however it was over-inclusive.

Regulations restricting eligibility for student-athletes who transfer at the high school level vary from state to state. Some associations will apply blanket restrictions on all student-athletes who change schools in an effort to limit abuses. Other associations provide exceptions which allow student-athletes who transfer for athletically unrelated reasons to have immediate eligibility upon enrollment at the new school (such is the case in Connecticut). Yet still other associations have allowed transferring student-athletes to be eligible immediately if certain objective criteria are met (such is the case in Massachusetts). The criteria for eligibility include non-participation in a sport at the varsity level at the previous school, and the transfer must occur prior to the start of practice in the sport.

For example, in *Alabama High School Athletic Association v. Scaffidi (1990)*, a ninth grade student at a private school was declared ineli-

gible due to transfer. The court concluded that the transfer from a private school to a public school was a not a legitimate reason to declare ineligibility. However, on appeal, the circuit court's opinion was reversed. In another case (*Walsh v. Louisiana High School Athletic Association, 1980*), the parents of student-athletes brought action against the Louisiana High School Athletic Association, alleging that the association's transfer rule hindered their First Amendment right to the free exercise of their religion and deprived them of their 14th Amendment right of equal protection. The student-athletes wanted to attend a Lutheran school outside their home district. The court held that the association's transfer rule was rationally related to the state's valid interest in eliminating recruitment of interscholastic athletes and found for the defendants.

A baseball player transferred from one public high school to a parochial school outside the school district and was denied eligibility by the Connecticut Interscholastic Athletic Conference (*Stratton v. St. Joseph's High School and the CIA C, 1986*). The athlete filed suit with the Superior Court holding that the student had not established irreparable injury, and that speculation that he might not be able to get a college scholarship was not enough reason to stay the application of the transfer regulation. The Indiana High School Athletic Association was involved in two recent cases in which the issue was transfer from private or public school to a parochial school. In *Indiana High School Athletic Association v. Avant (1995)*, eligibility was denied to an athlete following his transfer from a private school to a public high school. The Court of Appeals held that the eligibility decision was not arbitrary or capricious, and that the regulation did not violate state constitutional privileges. In *Robbins v. Indiana High School Athletic Association (1996)*, again an athlete was denied eligibility upon his transferring from a public high school to a parochial school. The District Court held that the association's transfer rule did not burden the free exercise of religion, that the rule was not irrational or enacted for the sole purpose of interfering with religiously motivated transfers, and that irreparable harm was not

shown.

In addition, a case involving divorced parents proved to be somewhat controversial. In *Kentucky High School Athletics Association v. Hopkins County Board of Education (1977)*, the district court granted an injunction to stop the Kentucky Association from denying eligibility to a student who moved from the custodial parent's home after participating in sports, to the father's home, subsequently changing school districts. The Court of Appeals reversed the issuance of the injunction, finding that the student-athlete transferred because of his own volition, therefore was in violation of the Kentucky transfer rule.

Finally, states may legislatively adopt a statute or rule which would prevent the implementation of a transfer rule as the State of Oregon did in response to legal action taken in *Faherty v. Oregon School Activities Association (1981)*. According to such a statute, the student-athlete who moved with his or her parents may not be declared ineligible to participate as the result of the transfer. On the other hand, a student-athlete who moved just to live with friends of the family could be declared ineligible as a result of the transfer.

**Sheff v. O'Neill, 238 CT 1, 678 A2d 1267 (1996)**

Eighteen schoolchildren residing in the City of Hartford and two neighboring suburban towns, sought declaratory and injunctive relief from the defendants (the Governor, the State Board of Education, and other state officials) alleging, inter alia, that the defendants had an obligation under Article Eighth §1, and Article First §§1 and 20, of the Connecticut Constitution, to remedy alleged educational inequities in the Hartford Public Schools resulting from racial and ethnic isolation. The complaint consisted of four counts and alleged that students in the Hartford public schools are burdened by severe educational disadvantages arising out of their racial and ethnic isolation and their socio-economic deprivation. Specifically, the counts allege:

- That the defendants bear responsibility for the de facto racial and ethnic segregation between Hartford and the surrounding

suburban public school districts,

- That the defendants have perpetuated this racial and ethnic segregation, and thus have discriminated against the plaintiffs,
- That the defendants have failed to provide the plaintiffs with an equal opportunity to a free public education because the defendants have maintained in Hartford, a public school district which is educationally disadvantaged, which fails to provide equal educational opportunities, and which fails to provide a minimally adequate education for Hartford schoolchildren.
- That the defendants have failed to provide a free public education as required by Connecticut law, in violation of the plaintiff's rights to due process under Article First §§8 and 10.

The trial court determined that the plaintiffs had failed to prove that state action was the "direct and sufficient" cause of the conditions alleged in their complaint and rendered judgment for the defendants. Nonetheless, the court found that poverty, and not race or ethnicity, is the principal causal factor in the lower educational achievement of Hartford students. The court also found that the Hartford public school system provides its students with a minimally adequate education regardless of the comparative levels of achievement between Hartford students and students from the neighboring, suburban schools and that the education provided to Hartford students gives them a chance to lead successful lives.

The plaintiffs, challenging the validity of the trial court's findings of fact and conclusions of law, appealed on the following bases:

- The plaintiff's complaint was justiciable since Article Eight §1 assigns to the legislature, the affirmative obligation of enacting appropriate legislation to ensure that there shall always be free public elementary and secondary education in the State of Connecticut.
- The state action doctrine was not a defense to the plaintiff's claim of constitutional deprivation. If the legislature fails to remedy inequalities in educational opportunities, its actions and omissions constitute state action.

- The school districting and attendant statutes (§§10-240 and 10-184) are unconstitutional as enforced with respect to the plaintiff. The existence of severe racial and ethnic isolation in the public school system, regardless of whether it has occurred de jure or de facto, deprives schoolchildren of a substantially equal educational opportunity and requires the state to take further remedial action.

The State Supreme Court reversed judgment, and remanded to Superior Court with direction to render a declaratory judgment for the plaintiffs. The case was originally filed on April 26, 1989, with final litigation occurring in July of 1996. It was determined that the state had played a significant role in the concentration of racial and ethnic minorities in the Hartford public school system. The school districting statute (§10-240), enacted in 1909, was the single most important factor contributing to the concentration of racial and ethnic minorities in the Hartford public schools. The statute as well as the school district boundaries have virtually remained unchanged since 1909. By a vote of four to three (Justices Borden, Callahan and Palmer dissenting), the State Supreme Court found that the state must remedy the racial and ethnic segregation and thus directed the state legislature to design a plan to ensure equal educational opportunities. Justice Borden, wrote the dissenting opinion and stated:

..... in reaching a result that is unprecedented in American jurisprudence the majority has created a constitutional theory of equal educational opportunity that (1) in the long history of this case, has never been presented to the trial court or to this court, and is, therefore, a theory to which the defendants have never had the opportunity to respond, (2) misapplies our precedent on the meaning of an equal educational opportunity, and is contrary to the voluminous factual findings of this court; (3) distorts the meaning of the term "segregation" in our state constitution, and (4) misrepresents the record regarding the question of a remedy for the constitutional violation that the majority has found.

In addition, the majority sends to the

legislature and the executive branch a mandate to fashion remedy for de facto racial and ethnic concentration in our public schools, a task that those branches of government will inevitably find to be extraordinarily difficult or perhaps even impossible, because the majority articulates no principle upon which to structure such a remedy. The necessary implication of the majority's reasoning is that virtually every school district in the state is now either unconstitutional or constitutionally suspect. Without explicitly saying so, the majority has effectively struck down, not just for the greater Hartford area but for the entire state, the municipality based school system that has been in effect in this state since 1909." (*Sheff v. O'Neill*, Dissenting Opinion).

#### The "School Choice Plan"

The Connecticut Supreme Court ruled that Hartford's public schools, with 95% minority enrollment, are unconstitutionally segregated. The court ordered the state legislature to find a remedy. The Governor (John Rowland) subsequently created the Educational Improvement Panel to recommend possible solutions to the segregation problem in Hartford. The panel recommended an array of actions to reduce racial segregation and improve schools in Connecticut, including allowing parents to choose what public school their children attend. The "school choice" option is the centerpiece of the package adopted by the panel, which would result in more children going to public school outside the town they live in. Clearly, the "school choice" plan is controversial, as opponents of the plan favor more effort in the improvement of the city schools, not figuring out how to send the students elsewhere for an education, and that the plan does absolutely nothing to change the underlying issues of the urban schools.

The choice plan raises some severe concerns. Can the suburban school districts, already near or at maximum enrollment, handle an influx of out of district students~. Would the suburban school districts need to add classrooms to accommodate the transfers~. Who will be



paying the bill for the additions~ How many families would leave the cities~~ What will be the impact on the Hartford public schools, already in trouble with New England Association of Schools and Colleges accreditation; already with the Board of Education dissolved and being run by a panel appointed by the Governor~. What will be the impact of school choice on the athletic programs of not only the Hartford public schools, but high schools in other cities in the State of Connecticut~ Will school choice lead to illegal recruiting of athletes at the high school level?

The Connecticut legislature has reacted by passing Public Act 97-290, An Act Enhancing Educational Choices and Opportunities. The intent of this act is to reduce racial, ethnic and economic isolation by each school district providing educational opportunities for its students to interact with students and teachers from other racial, ethnic, and economic backgrounds and school districts could provide such opportunities for students from other communities.

Included in PA 97-290 is the stipulation that the State Department of Education is to provide grants in the amount of fifty thousand dollars to each regional educational service centers for the Hartford, New Haven and Bridgeport regions to assist in the implementation of the school choice program in the 1998 school year. In effect, students who reside in Hartford, New Haven or Bridgeport may attend school in other school districts in the region and students who reside in such other school districts may attend school in Hartford, New Haven, or Bridgeport (Hartford, New Haven, and Bridgeport are school districts which have over 45% minority school children). For the school year commencing in 1999, and for each school year thereafter, the school choice program shall be in operation in every school district in the state and students may attend school in any school district.

Mentioned in PA 97-290 is also the stipulation that if there are more students who seek to attend school in a receiving district than there are spaces available, the regional educational service center shall assist the school district in determining attendance by the use of a lottery designed to preserve or increase racial, ethnic

and economic diversity, PA 97-290 also specifically states:

“No receiving district shall recruit students under the program for athletic or extracurricular purposes. Each receiving district shall allow an out-of-district student **it** accepts to complete the highest grade in the school he is attending under the established program.” (PA 97-290, p.4).

### **Impact of Sheff on Connecticut Interscholastic Athletics**

The outcome of Sheff v. O’Neill will have definite impact on the educational system in Connecticut, and it could produce dramatic changes in high school sports. Important questions to be raised are; what will happen when student-athletes pick a school because of the quality and exposure of the athletic program instead of the academic program~ What will happen when overzealous coaches begin wholesale recruitment of student athletes from the large, urban areas~~ What will happen to the athletics programs in the urban areas when their best athletes are being recruited by the suburban schools interested in becoming state champions?

The City of Hartford can boast of State Champions in Football (Hartford Weaver High School), and perennial powerhouses is track and field (Hartford Public High School), as well as extremely strong basketball programs (Hartford Public High School and Hartford Bulkeley High School). The City of Bridgeport is home to State Champions in Basketball (Warren Harding High School and Kolbe Cathedral High School) as well as strong state programs in football. The City of New Haven has an athletic reputation in basketball with State Champions (Hillhouse and Wilbur Cross High Schools), as well as strong programs in football. The school choice issue leaves open the possibility of the surrounding suburban towns and cities, wishing to gain athletic exposure, to recruit athletes from the state championship schools even though PA 97-290 forbids such. It will be left to the Connecticut Interscholastic Athletic Conference to police these possibilities.

The one thing, which is evident is that the

Connecticut Interscholastic Athletic Conference (CIAC) would still very much control high school athletics in Connecticut, including eligibility. The CIAC has already modified its transfer rule, in anticipation of school choice becoming a reality. According to Section II.C.§15:

“Athletes will be permitted to transfer, once they enter Grade 10, only on the initial year of legislation (1998) which enacts a public school choice plan. Following the one year “window”, the transfer rule will revert back to the current regulation (loss of one year of eligibility). During the year in which the exception applies, transfers may only take place once per year.” (CIAC Eligibility Rules)

Connecticut has had a history of illegal transfer of student athletes, as well as a history of illegal recruiting of student-athletes. There are no indications that this practice will cease or even slow down, in fact, illegal recruiting may well be exacerbated with the school choice plan.

The recruitment rule in Connecticut is the same for all member schools and makes no distinction between public and non-public high schools, and contains no exceptions. Recruitment is considered to be anywhere in the range of casual conversation between a school representative and a prospective athlete to a repeated, pressurized sales pitch on the behalf of the school. The CIAC regulation pertaining to recruitment is as follows:

Rule IV.C§1. A member school or any affiliated person or organization of that school may not recruit a student for athletic purposes.

Rule IV.C§2. recruiting is the use of undue influence and/or special inducement by anyone associated with a school in an attempt to attend or remain at that school for the purpose of participating in interscholastic athletics. (CIAC By-laws, 1997).

In 1985, back to back complaints were filed between St. Bernard’s High School in New London, CT and New London High School. It had been alleged that three starters on the New London Junior High School basketball team were illegally recruited by an assistant high school basketball coach at St. Bernard’s High School on at least two occasions. As a result, St.

Bernard’s athletic program was placed in probation for the 1985-86 academic year and the basketball team was barred from the state basketball championships. Later during the summer of 1995, St. Bernard’s High School filed a complaint with the CIAC against New London High School alleging that a basketball coach at New London had illegally recruited an eighth grade athlete. The CIAC found New London guilty of recruiting and, like St. Bernard’s, New London High School’s athletic program was placed on probation and its basketball team barred from competition in the state championship tournament.

In 1990, complaints were filed against the basketball coach at Westhill High School in Stamford, CT., for illegally recruiting a junior high school athlete. In addition, the allegations were compounded by the fact that the basketball coach had coerced a generous financial supporter to loan money to the athlete’s mother so they could find an apartment within the school district. The CIAC placed the entire Westhill athletic program on probation and fined the school \$3,000. In addition, the Stamford school administration fined the coach \$500 and placed him on a two year probation.

The CIAC placed Lyman Hall High School of Wallingford, CT on probation in 1994, for the second time stemming from two violations of the recruitment regulation. The CIAC also barred the girl’s basketball team from participation in the state tournament and the team additionally forfeited seventeen victories in 1994.

#### **Other States**

The additional problem of recruitment of student-athletes by high school coaches or their representatives is at issue today. Presently, eight states (Colorado, Idaho, Indiana, Louisiana, Missouri, New Mexico, South Carolina, and Virginia) have extensive regulations to curtail recruiting at the high school level. These states list specific descriptions of recruitment or “undue influence” as:

- Providing transportation to the student-athlete to visit; and to offer a monetary allowance for transportation.
- Initiating or arranging telephone, telegraph, or written contact with a prospective

student-athlete.

- Visiting or entertaining a prospective student-athlete or a family member for the purpose of solicitation.
- Allowing a student-athlete or member of the family to stay at the home of any athletic staff member for the purpose of solicitation.
- Offering or awarding of scholarship, free tuition, room and board, clothing or books and supplies to the student-athlete.
- Offering promotional awards to elementary or junior high school students.
- Offering or awarding priority in assignment of jobs to the student-athlete or the family of the student-athlete.
- Offering or awarding of free rent or reduced rent to the family of a student-athlete.
- Offering or awarding of moving expenses for the student-athlete or family members.
- Offering or awarding priority privileges or considerations not offered to other students or their families.

### Summary

The issue of transfer and recruiting seems to be a problem in many states. Every state association but Hawaii has some sort of regulation pertaining to transfer and recruitment of high school student-athletes. In most cases that have been litigated, the appellate court has either affirmed a lower court's decision in favor of the state athletic associations regulation, or have reversed the decision of the lower court, again in favor of the state associations. Only if the regulation is found to be arbitrary or capricious, will the courts rule against the state athletic associations.

The regulation of transfer and recruitment by the Connecticut Interscholastic Athletic Conference will come under severe scrutiny in the near future with the passage of PA 97-290, which will allow school choice in three urban areas in 1998, and statewide in 1999. It will be interesting to note if, by allowing school choice, the primary concern will be on the student to make the choice for academic and moral reasons, or will it be a choice based solely on athletics and if the student could attain a better college scholarship by transferring to a school with a better

athletic program.

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- Indiana High School Athletic Association v. Avant*, 650 NE. 2d 1164 (Ind App. ydDist 1995).
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- Beck v. Missouri State High School Activities Assoc.*, 18 F

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726 P 2d 231 (Ariz. App. 1986).  
 Walsh v. Louisiana High School Athletic Assoc., 616 F 2d 152, 428 F Supp. 1261 (La. 1980)

## Footnotes

- <sup>1</sup> Glenn A. Olds, "In Defense of Sports," *Journal of Health, Physical Education, and Recreation*, January, 1961, pp. 18.
- <sup>2</sup> George, Jack F., and Lehman, Harry A. *School Athletic Administration*, 12 (1966).
- <sup>3</sup> *Id.*
- <sup>4</sup> *Id.*
- <sup>5</sup> 530 F.Supp. 104 (D.Minn. 1982).
- <sup>6</sup> *Kentucky High School Athletic Association v. Hopkins County Board of Education*, 552 S.W.2d 685, 687 (Ky.App.1977). Also See generally W. Champion, Jr., *Fundamentals of sport laws* 293-295 (1990).
- <sup>7</sup> See *Niles v. University Interscholastic League*, 715 F.2d 1027, 1031 (5th Cir.1983); *Hebert v. Ventetuolo*, 638 F.2d 5,6 (1st Cir.1981); *Walsh v. Louisiana High School Athletic Association*, 616 F.2d 152, 159 (5th Cir.1980); *Dennis I O'Connell High School v Virginia High School League*, 581 F.2d 81, 84(4th Cir.1979); *Moreland v. Western Pennsylvania Interscholastic Athletic League*, 572 F.2d 121, 123-24 (3rd Cir.1978); *Colorado Seminary (University of Denver) v. NCCA*, 570 F.2d 320,321 (10th Cir.1978); *Hamilton v. Tennessee Secondary School Athletic Association*, 552 F.2d 681, 682 (6th Cir.1976); *Albach v. Olde*, 531 F.2d 983, 984-85 (10th Cir. 1976); *Parish v. NCAA*, 506 F.2d 1028, 1034 (5th Cir. 1975); *Mitchell v. Louisiana High School Athletic Association*, 430 F.2d 1155, 1158 (5th Cir.1970); *Oklahoma High School Athletic Association v. Bray*, 321 F.2d 269,273 (10th Cir.1963); *Justice v. NCAA*, 577 F.Supp. 356, 366 (D.Ariz.1983); *ParkHills Music Club, Inc. v. Board of Education*, 512 F.Supp. 1040,1043 (S.D.Ohio 1981); *Blue v. University Interscholastic League*, 503 F.Supp. 1030, 1034-35 (N.D.Tex.1980); *Williams v. Hamilton*, 497 F.Supp. 641, 645 (D.IN.H.1980); *Ward v. Robinson*, 496 F.Supp. 1, 1-2 (E.D.Tenn.1978); *Kite v. Marshall*, 494 F.Supp. 227, 232 (S.D.Tex.1980), *revd on the grounds*, 661 F.2d 1027 (5th Cir.1981); *Fluitt v. University of Nebraska*, 489 F.Supp. 1194, 1202-03 (D.Neb. 1980); *Kulovitz v. Illinois High School Association*, 462 F.Supp. 875, 877-78 (N.D.Ill. 1978); *Yellow Springs Exempted Village School District v. Ohio High School Athletic Association*, 443 F.Supp. 753, 758 n.37 (S.D.Ohio 1978), *revd on other grounds*, 647 F.2d 651 (6th Cir.1981); *Dallam v. Cumberland Valley School District*, 391 F.Supp. 358, 361-62 (M.D.Pa.1975); *Stocky. Texas Catholic Interscholastic League*, 364 F.Supp. 362, 364-365 (N.D.Tex.1973); *Taylor v. Alabama High School Athletic Association*, 336 F.Supp. 54, 57 (M.D.Ala.1972); *Paschal v. Perdue*, 320 F.Supp. 1274, 1276 (S.D.Fla.1970); *Scott v. Kilpatrick*, 286 Ala. 129, 133, 237 So.2d 652, 656 (1970); *Florida High School Activities Association v. Bradshaw*, 369 So.2d 398, 403 ((Fla.App.1979); *Smith v. Crim*, 240 Ga. 390, 393, 240 S.E.2d 884, 886 (1977); *Haas v. South Bend Community School Corporation*, 259 *lad.* 114, 124, 162 N.E.2d 250, 255 (1959), *overruled on other grounds*, *Haas v. South*

*Bend Community School corporation*, supra; *Kriss v. Brown*, 180 Ind.App. 594, 604, 390 N.E.2d 193, 199-201 (1979); *Kentucky High School Athletic Association v. Hopkins County Board of Education*, 552 S.W.2d 685, 689 (Ky.App. 1977); *Chabert v. Louisiana High School Athletic Association*, 312 So.2d 343, 345 (La.App.1975); *Sanders v. Louisiana High School Athletic Association*, 242 So.2d 19,28 (La.App.1970); *Marino v. Waters*, 220 So.2d 802, 806 (La.App.1969); *NCAA v. Gillard*, 352 So.2d 1072, 1081 (Miss.1977); *State ex rel. Missouri State High School Activities Association v. Schoenlaub*, 507 S.W.2d 543, 359 (Mo.1974); *Menke v. Ohio High School Athletic Association*, 2 Ohio App.3d 244, 245, 441 N.E.2d 620, 624 (1981); *Morrison v. Roberts*, 183 Okl. 359, 361, 82 P.2d 1023, 1024-25 (1938); *Whipple v. Oregon School Activities Association*, 52 Or.App. 419, 423, 629 P.2d 384, 386 (1981); *Caso v. New York State Public High School Athletic Association*, 78 A.D.2d 41, 46, 434 N.Y.S.2d 60, 64 (1980); *Pennsylvania Interscholastic Athletic Association v. Greater Johnstown School District*, 76 Pa.Comm.w. 65, 71, 463 A.2d 1198, 1201 (1983); *A damek v. Pennsylvania Interscholastic Athletic Association Inc.*, 57 Pa.Comm.w. 261, 262, 426 A.2d 1206, 1207 (1981); *Bruce v. South Carolina High School League*, 258 S.C. 546, 551-52, 189 S.E.2d 817, 819 (1972); *Tennessee Secondary School Athletic Association v. Cox*, 221 Tenn. 164, 176, 425 S.W.2d 597, 602 (1968); *Sullivan v. University Interscholastic League*, 599 S.W.2d 860, 863 (Tex.Civ.App. 1980). *affd in part and revd in part on other grounds*, 616 S.W.2d 170 (Tex.1981); *Starkey v. Board of Education*, 14 Utah 2d 227, 231, 381 P.2d 718,721 (1963); but see *Breden v. Independent School District 742*, 477 F.2d 1292, 1299 (8th Cir. 1973) ('substantial and cognizable' interest justifying application of equal protection principles); *Hall v. University of Minnesota*, 530 F. Supp. 104, 110 (D.Minn.1982) (interest in admission to degree program and potential professional basketball player career sufficient to implicate due process protection); *Barnhorst v. Missouri State High School Activities Association*, 504 F.Supp. 449, 458 (W.D.Mo.1980) (sufficient interest in participation in extracurricular activities to justify application of equal protection principles) and cases cited therein, *rev'd on other grounds*, 682 F.2d 147 (8th Cir.1982); *Pegram v. Nelson*, 469 F. Supp. 1134, 1140 (M.D.N.C.1979) (Total exclusion from extracurricular activities for a lengthy period of time 'could' under certain circumstances be a sufficient deprivation to implicate due process); *Moran v. School District 117*, Yellowstone County, 350 F.Supp. 1180, 1184 (D.Mont. 1972) ("right to attend school includes the right to participate in extracurricular activities" justifying application of equal protection principles); *Behagen v. Intercollegiate Conference of Faculty Representatives*, 346 F.Supp. 602, 604 (D.Minn.1972) (economic and educational interest in intercollegiate athletics requires compliance with minimum due process standards); *Kelly v. Metropolitan County Board of Education*, 293 F. Supp. 485, 492 (M.D.Tenn.1980)(equal protection), *rev'd on other grounds*, 436 F.2d 856 (6th Cir.1970), *on remand*, 492 F.Supp. 167 (M.D.Tenn. 1980); *Lee v. Florida High School*

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<sup>8</sup> See Supra note 3 at 107.

<sup>9</sup> *Colorado Seminary (University of Denver) v. NCCA*, 570 F.2d 320, (10th Cir.1978)(a case arising in connection with the NCCA's imposition of sanctions against the university for failure to declare several of its players ineligible).

<sup>10</sup> *Id*

<sup>11</sup> See *Scott v. Kilpatrick*, 237 So. 2d 652, 656 (Ala. 1970); *Florida High Sch. Activities Assn v. Bradshaw*, 369 So. 2d 398, 420-03 (Fla. Dist. Ct. App. 1979); *Smith v. Crim*, 240 S.E.2d 884, 886 (Ga. 1977); *Kriss v. Brown* 390 N.E.2d 193, 199-201 (Ind. Ct. App. 1979); *Kentucky High Sch. Athletic Ass'n v. Hopkins County Bd. of Educ.*, 552 S.W.2d 685, 689 (Ky.Ct.App. 1977); *Chabert v. Louisiana High Sch. Athletic Ass'n*, 312 So. 2d 343, 345 (La. Ct. App. 1975); *Sanders v. Louisiana High Sch. Athletic Ass'n*, 242 So. 2d 19, 28 (La. Ct. App. 1970); *Marino v. Waters*, 220 So. 2d 802, 806 (La. Ct. App. 1969); *NCAA v. Gillard*, 352 So. 2d 1072, 1081 (Miss. 1977); *State ex rel. Missouri State High School Activities Association v. Schoenlaub*, 507 S.W.2d 543, 359 (Mo. 1974); *Caso v. New York State Pub. High Sch. Athletic Ass'n*, 78 A.D.2d 41, 46 (N.Y. App. Div. 1980); *Menke V. Ohio High Sch. Athletic Ass'n*, 441 N.E.2d 620, 624 (Ohio Ct. App. 1981); *Morrison v. Roberts*, 82 P.2d 1023, 1025 (Okla. 1938); *Whipple v. Oregon Sch. Activities Ass'n*, 629 P.2d 384, 386 (Or.Ct. App. 1981); *Pennsylvania Intersch. Athletic Ass'n v. Greater Johnstown Sch. Dist.*, 463 A.2d 1198,1201-02 (Pa. Commw. Ct. 1983); *Adamek v. Pennsylvania Intersch. Athletic Ass'n*, 426 A.2d 1206, 1208 (Pa. Commw. Ct. 1981); *Bruce v. South Carolina High Sch. League*, 189 S.E.2d 817, 819 (S.C. 1972); *Tennessee Secondary Sch. Athletic Ass'n v. Cox*, 425 S.W.2d 597, 602 (Tenn. 1968); *Sullivan v. University Intersch. League*, 599 SW. 2d 860, 863 (Tex. Civ. App. 1980), *rev'd in part on the other grounds*, 616 S.W.2d 170 (Tex. 1981); *Starkey v. Board of Educ.*, 381 P.2d 718, 721 (Utah 1963); *Bailey v. Truby*, 321 S.E.2d 302, 315-16 (W. Va. 1984).

<sup>12</sup> *Bailey v. Truby*, 321 S.E.2d 302, 316 (W.Va. 1984).

<sup>13</sup> See *Spring Branch [S.D. v Stamos*, 695 S.W.2d 556, 560, *reh overr*, app *dism'd*, 475 US 1001, 89 L.Ed.2d 290,

106 S.Ct. 1170; *Boyd v. Board of Directors of McGhee School District*, 612 F.Supp. 8689 (E.D.Ark.1985); *Tiffany v. Arizona Interscholastic Association*, 151 Ariz. 134, 138, 726 P.2d 231, 235, (App.1986).

<sup>14</sup> See *Boyd v. Board of Directors of McGhee Sch. Dist.*, 612 F. Supp. 86,43 (ED. Ark. 1985); *Tiffany v. Arizona Intersch. Ass'n*, 726 P.2d 231, 235 (Ariz. Ct. App. 1986); *Spring Branch I.S.D. v. Stamos*, 695 S.W.2d 556, 560 (Tex. 1985), *appeal dismissed*, 475 U.S. 1001 (1986). See also *Behagan v. Intercollegiate Conf. of Faculty Representatives*, 346 F. Supp. 602, 604 (D. Minn. 1972) (economic and educational interest in intercollegiate athletics require compliance with minimum due process standards); *Hall v. University of Minn.*, 530 F. Supp. 104, 110 (D. Minn. 1982); *Pegram v. Nelson*, 469 F. Supp. 1134, 1140 (M.D.N.C. 1979) (total exclusion from extracurricular activities for a lengthy period of time could under certain circumstances be a sufficient deprivation to implicate due process); *Kelley v. Metropolitan County Bd. of Educ.*, 293 F. Supp. 485, 492 (M.D. Tenn. 1968), *rev'd on other grounds*, 436 F.2d 856 (6th Cir. 1970), *on remand*, 492 F. Supp. 167 (M.D. Tenn. 1980); *French v. Coruwell*, 276 N.W.2d 216, 218 (Neb. 1979), (Citing *Braesch v. DePasquale*, 265 N.W.2d 842, 845 (Neb. 1978)); *Duffley v. New Hampshire Intersch. Athletic Ass'n*, 446 A.2d 462, 467 (N.H. 1982) (holding that the right

to participate in interscholastic athletics merits procedural due process under the New Hampshire Constitution).

<sup>15</sup> *Brenden v. Independent Sch. Dist.*, 447 F.2d 1292, 1299 (8th Cir. 1973) (a 'substantial and cognizable' interest justifies application of equal protection principles); *Barnhorst v. Missouri State High Sch. Activities Assn*, 504 F. Supp. 449, 458 (W.D. Mo. 1980) (holding that student may not have a right to participate in athletic competition, but review of request requires equal protection), *rev'd on other grounds*, 682 F.2d 147 (8th Cir. 1982); *Moran v. School Dist. #7, Yellowstone County*, 350 F. Supp. 1180, 1184 (D. Mont. 1972).

<sup>16</sup> *W. Champion, Jr., Fundamentals of Sport Law*, 307 (1990); See also *J. Weistart and C. Lowell, The Law of Sports* § 1.15 (1979).

<sup>17</sup> Note, *Board of Curators of the University of Missouri v. Horowitz: Student Due Process and Judicial Deference to Academic Dismissals*, 15 Willamette L.Rev. 577 (1979).

<sup>18</sup> *Id.* A "liberty interest" now includes an individual's interest in his or her good name and reputation.

<sup>19</sup> *Champion*. Supra note 3 at 307.

<sup>20</sup> *Bell v. Lone Oak Independent School District*, 507 S.W.2d 636 (Tex.Civ.App. 1974), set aside and caused dismd on other grounds, 515 S.W.2d 252.

# SSLASPA AWARDS

## 1999

### Leadership Award

**Criteria:** Presented to a person who is recognized for leadership and vision in the study of legal aspects of sport law and physical activity.

The individual ~ have to be a member of SSLASPA.

**Nomination Forms** No specific form is required. A 1-5 page description of individuals leadership and vision is required.

Nominations must be postmarked on or before Friday, **December 4, 1998.**

**Send to:** Dr. Carolyn Lehr

Physical Education and Sport Studies Department

University of Georgia • Ramsey Center

Athens, GA 30602