

***The History, Rationale and Application  
of the Essential Regulations  
of High School Athletics in Michigan***



***11th Edition  
August 2019***

# THE HISTORY, RATIONALE AND APPLICATION OF THE ESSENTIAL REGULATIONS OF HIGH SCHOOL ATHLETICS IN MICHIGAN

August 2019

## FOREWORD

In 1907 William James put in writing a series of lectures he had given in Boston the year before titled “Pragmatism: A New Name for Some Old Ways of Thinking.” Included in the third lecture is this gem:

*“...the aim of a football team is not merely to get the ball to a certain goal (if that were so, they would simply get up on some dark night and place it there), but to get it there by a fixed machinery of conditions – the game’s rules and the opposing players;”*

This to James was a given, cited to help him make a more profound point.

But the point is profound enough for us. Without rules, and opponents playing by the same rules, there is no validity in moving the ball to the goal. Without rules, there is no value in sinking the putt, making the basket, clearing the bar, crossing the finish line. Without a regulatory scheme adhered to by all competitors, victory is hollow.

Furthermore, “There are no rules without enforcement!” according to Paul Dee, Lecturer in Law and Education at the University of Miami in Florida, and chairman of the Infractions Committee of the National Collegiate Athletic Association. In an address in Indianapolis on April 15, 2010, Dee told the executive officers and legal counsel of state high school associations across the country: “Competitive sports cannot exist without fundamental fairness not only in the rules of play, but also in protecting the integrity of the sport for reasons outside of the game itself and to protect academic integrity.”

In August of 2001, the MHSAA presented the First Installment of "The History, Rationale and Application of the Essential Regulations of High School Athletics in Michigan." It focused on why there are rules and then discussed some of the rules which are most obviously at the core of school sports; for example, those that assure students are enrolled in and attending school, are making regular progress through school, and are amateur athletes of proper age. These are defining characteristics of school-based sports.

The Second Installment revised the first and also focused on some of the rules that are intended to assist schools in their handling of the most frequent problems and pressures of school sports: transfers, undue influence and out-of-season coaching and competition. Revised and updated editions have been published every year since 2008.

This 10th, updated edition of the publication is intended to assist athletic administrators in understanding, describing and defending MHSAA Regulations. Administrators should consult the *Handbook* for the exact wording and all interpretations.

We wish to thank Jason Mellema, then principal and athletic director at Ravenna Middle School and now superintendent for the Ionia County Intermediate School District, for his assistance with Part VIII, and Rob Kaminski, MHSAA Publications Coordinator, for his efforts to prepare copy for publication.

MARK UYL  
Executive Director

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## PART I. INTRODUCTION

### "Why do you have all those stupid rules?"

Administrators of school sports need a good answer to this question that will be posed by some people after they have discovered that a student is ineligible or a contest is forfeited.

We restate here important parts of the answer.

#### 1. First and foremost, **we have rules because we care about kids and the outcomes of our programs.**

Rules contribute to the value of participation. Much of the **value** of school sports results from the **standards** of school sports. Many of the **benefits** of school sports result from the **requirements** of school sports. If we raise the bar – for example, raise the standards of eligibility and conduct – we raise the value. If we lower the bar, we tend to lower the value of participation in interscholastic athletics.

Athletics are much less capable of doing good things for kids and good things for schools and good things for their communities where there are lower standards of eligibility and conduct.

It's the difference between tough and easy, between interscholastic and intramural, between programs with significant requirements and programs without them.

It is because we have raised the bar for interscholastic athletics, because we have rules and standards and consequences for failure to meet them, that interscholastic athletics have value to students, schools and society.

The value is not merely in **participation**; the value is more in the **requirements** for participation.

That's the first reason we have rules, and we should make no apologies for those rules. They're essential to good outcomes in school sports. Without rules followed by all participants, contest results are meaningless and the values of participation are diminished.

#### 2. **We have rules where the stakes are higher and agreement is lower.**

This explains why there are more rules and interpretations for students in secondary school athletics than in speech, debate and drama, or band, orchestra and chorale music. Why there are more rules and more interpretations for high school athletics than for junior high/middle school sports. Why there are more rules and interpretations for some sports than others. Why there are more rules and longer interpretations for some issues than for other issues of school sports.

The higher the stakes and the greater the resulting tendency of some people to try to gain unfair competitive advantage, the greater the need for rules.

#### A. Why There are Rules

**"We choose to regulate those areas in which we compete most strenuously and can agree least readily."**

Those are the words of Jeffrey H. Orleans, Executive Director of the Ivy Group, to the National Collegiate Athletic Association Presidents Commission National Forum in the summer of 1988.

And those words go to the heart of the history, rationale and application of rules which most secondary schools of Michigan have adopted for their administration of interscholastic athletics. Schools choose to have rules for those activities in which they tend to compete most strenuously and agree upon least frequently.

- It is why a certain amount of controversy is unavoidable in state high school association work: if there is no argument, there is little effort to work on the things that need to be addressed.
- It is why there are more and lengthier eligibility rules for students in secondary school athletics than in speech, debate and drama, or band, orchestra and choral music.
- It is why, for a long time, there were more and lengthier rules for out-of-season basketball than other sports, and why that is now changing for volleyball, soccer, golf, tennis, swimming and other sports.
- It is why the sections and interpretations of transfer/residency rules are so much longer and deal with so much more minutiae than is the case with other rules.

**There would be no need for rules if we didn't care about the outcomes of our program; but in educational athletics, that is, in sports sponsored by schools, we care that the program contributes to the mission of schools, which is to help prepare young people for the benefit of society.**

### **1. Earliest Eligibility Minimums**

One hundred years ago, when athletic programs were first becoming organized well enough in secondary schools to cause people to wonder how the students of one school might fare against the students of another school, it took but a very few experiences of interscholastic competition to realize that a common set of understandings was necessary for the competition to occur with fair result and without hard feelings.

**Those who were coordinating these first athletic exchanges quickly discovered that they needed several kinds of rules;** and it wasn't left to a single rule or single kind of rule to promote **competitive equity:** it was one of the objectives of **all** of the rules which **tended to work together toward the desired outcome of a more level playing field.**

The first set of rules needed was to determine **where** and with **what** the competition would be conducted: facility dimensions, ball specifications, net heights, etc.

The second set of rules they found necessary was to determine **how** the competition would proceed: number of balls and strikes and innings, lengths of quarters, halves, etc.

These first and second sets of understandings show there was concern from the very first day of school sports for **fairness**, for **a more level playing field**, for **competitive balance**. The organizers couldn't have these qualities – these values – in their contests without these kinds of rules.

But deciding **where**, **with what** and **how** the competition should be played wasn't enough. Gradually, it became clear to the coordinators of the programs at that time that there had to be some understandings, some agreements, some policies, some **rules** about **who** could play.

Not surprisingly, School A soon objected if School B's participants in an event seemed to be men against School A's boys.

So the schools coordinating the events agreed that all participants in all contests had to be **enrolled** in the schools they represented in competition. These agreements were made long before the Michigan High School Athletic Association was formed, but that's still the first section on student eligibility in the *MHSAA Handbook*: the **enrollment** rule.

They agreed next that all participants had to fall within a certain age range. An **age** rule. That's still the second section on student eligibility in the *MHSAA Handbook*.

**It wasn't fair to have it any other way.** It wasn't healthy for participants to have it any other way. Not in the 1920's. Not now. Rules 1 and 2 historically are still Sections 1 and 2 of the student eligibility regulation in the *MHSAA Handbook*.

It hasn't been easy to keep these rules. In 1999, schools had to defeat initiatives of some legislators to keep Rule 1. More recently, the MHSAA successfully defended Rule 1 in a \$30 million lawsuit which tried to eliminate the enrollment requirement for some young people (Reid v. Kenowa Hills, 261, Mich App 17 [2004]). See Appendix "C," page C-6.

In previous years, schools had to fight in several courts to keep Rule 2, the age rule. The rule has always prevailed, although the MHSAA once had to appeal to the Michigan Supreme Court (see Appendix "C," page C-4) and once to the US Sixth Circuit Court of Appeals (see Appendix "C," page C-5) to defend the age rule successfully.

In Cardinal Mooney High School v. MHSAA, 437 Mich 75, 468 NW2d 21 (1991), the Supreme Court of Michigan held:

". . . the interest of uniformity and predictability justify even-handed application of" [the forfeiture rule] . . ."

And

**"In light of the unique issues of competitive equity in the area of eligibility rules for athletic contests,** [the forfeiture rule] is a valid regulation which neither infringes on the authority of the courts nor improperly restricts access to the judicial system."

It is apparent that schools' interests in having **competitive equity** for interscholastic athletics are **both legitimate and substantial** and were the basis for the Michigan Supreme Court upholding the rule in question.

Over the years, member schools of the MHSAA have addressed a variety of eligibility issues that threatened the **competitive balance** necessary to conduct athletic contests with **fair result** and without hard feelings: maximum semesters, academic progress, transfers and undue influence (recruitment), for example.

## 2. Earliest Competition Maximums

As interscholastic athletic programs became more sophisticated and took on higher profile within the school, community and state, pressures mounted for athletic teams to do better and win more. So some schools would start practice sooner, play more games, and seek more distant and prestigious venues for competition.

Not surprisingly, again, it didn't take very long for some schools to complain that other schools, in pursuit of competitive advantage, were moving toward excesses, were abusing the health and welfare of students, were interfering with the educational objectives of schools and the pursuits of students.

So again, through political process schools agreed among themselves on some limitations, for example, for the lengths of seasons, number of contests and distances of travel.

The first defined season for school sports in Michigan came in 1930 for the sport of football. As the years have passed, school administrators have found it necessary to adopt **starting and ending dates**, as well as **maximums for the number of interscholastic scrimmages and contests**, for each and every sport season in order to assure that . . .

- one sport did not conflict with other sports programs in the school;
- no sport interfered with other extracurricular activities of the school;
- sports did not interfere with the academic mission of the school;

and through their voluntary association, these administrators found it necessary to agree upon statewide maximums in order to **promote the important value of fair competition between schools**.

School administrators have learned from experience that to maintain **competitive equity**, it is not only necessary to define the interscholastic season and limit what can occur during it, but also it is necessary to define and limit what can occur **out of season**. This has become increasingly challenging as school sports have expanded to include sports that were entrenched in community-run programs before they became school programs and as the coaching staffs of schools have had to expand beyond teaching faculty to adults in the community employed outside of schools.

It is a compliment to the schools of Michigan, and a credit to the sound thinking of school administrators who have put the health, welfare and education of students above sports, that the portion of the MHSAA Handbook that has grown the largest and has been challenged the least in jurisprudence are Regulation II, Sections 10 and 11, which provide, respectively, the daily, weekly and season limitations for students as well as the in-season and out-of-season limitations for schools and their personnel.

### 3. Annual Contract

In Michigan, schools make the rules for themselves. The rules cover hundreds of policies and procedures for administration of the local programs.

In addition, schools have the option to adopt rules of qualification into the postseason tournaments conducted by the MHSAA. MHSAA rules – prepared by the elected representatives of member schools (Representative Council) – are not to govern regular season competition, but to determine the qualifying standards for MHSAA sponsored and conducted postseason tournaments.

An ancillary but still important benefit is that by adopting these tournament qualifying rules, schools gain a greater degree of standardization – a more level playing field – for their regular season competition.

For MHSAA member schools, these and other agreements are published in the *MHSAA Handbook*; and each year the local governing boards of member schools sign a **Membership Resolution**, a contract really, that they will enforce those rules locally, while the MHSAA agrees that the rules will not be changed during that year.

Schools do so to keep the program **fair**. They do so to keep the program **healthy** for the people involved. They do so to keep the program consistent with the mission of the sponsors: namely, **education of students** by schools.



Rules do not exist for their own sake, but to **address known problems**, to attempt to **solve those problems**, in order to strive to provide the elusive product of a state high school association's work: **competitive equity**.

#### 4. Current Handbook

The Foreword to the *Handbook* of the Michigan High School Athletic Association has for many years included these two paragraphs:

"The MHSAA's primary purpose in promulgation of rules for eligibility minimums and competition maximums is to establish conditions by which students and schools may qualify for MHSAA postseason tournaments - in other words, **to promote a level playing field** for MHSAA-sponsored tournaments.

"Because entry into the MHSAA's tournaments requires season-long, sometimes school-year-long and even year-round adherence to basic rules, member schools reap an important byproduct: they have some standardized rules for their regular season competition - in other words, **a more level playing field** for the rest of their interscholastic experience."

The *MHSAA Handbook* has for many years stated the four "Purposes of the Michigan High School Athletic Association, Inc." Included is this:

**"3. Promote uniformity, predictability and competitive equity in the application of eligibility rules for athletic contests."**

Similarly, promotion of **competitive equity** is in the stated or implied purpose for or value of the sponsoring organizations of school sports nationwide.


**"OK, I agree with the need for the rule;  
but it doesn't fit the current circumstances. It shouldn't apply here."**

Often, after administrators have outlined a solid case for a need for the rule, the challenge changes. The challenger will agree the rule is necessary but should not be applied to their child, or to their child's team.

In cases where this statement is made, MHSAA member school administrators may request that the MHSAA Executive Committee review the application of the rule. The MHSAA Constitution authorizes the Executive Committee to waive all rules except the maximum age limitation if, in the judgement of the Executive Committee, the rule fails to serve the purpose for which it is intended or works an undue hardship on the party involved.

As school administrators who have devoted their lives to students, Executive Committee members are pre-disposed to favor an exception being made for each student. However, the Executive Committee has the responsibility to not only protect as much as possible the **individual**; the committee must also protect the **program**, its values and standards so it can continue to provide benefits to other students.

It is not merely participation in sports that benefits students. The value is in the standards which students must meet for the privilege of participation. As we raise standards of eligibility and conduct, we tend to raise the value of participation. As we make exceptions to rules, we run the real risk of diminishing the benefits of participation in interscholastic athletics.



Therefore, the Executive Committee will attempt to avoid establishing precedent that will undercut the ability of the rule(s) to be applied in similar circumstances in the future, and devalue the athletic program. Member schools come to depend on consistent application of the rules to provide consistency and competitive equity.

### **"I still don't like it. How do I get that rule changed?"**

Sometimes after our best efforts to explain the rule are not successful and the request to waive the rule is not approved, someone will want to change the rule for the future. Administrators of school sports should then be ready with a description of the process, and cautions for proceeding too quickly.

#### **B. How Rules are Changed**

Whenever we consider why we have a rule, we should also consider carefully: **"What would happen if we did away with the rule?"**

- What problems might emerge or re-emerge?
- What problems were our predecessors trying to solve by this rule and would they return if we were without this rule?

Nevertheless, one thing that is certain from a look at the history of rules for interscholastic athletics in Michigan is this: there will continue to be proposals for change.

Proposals come from the boards of education and/or administration of member schools, from their local leagues, from associations of coaches and administrators. They usually are directed through one of the association's committees (e.g., a proposal regarding football would be referred to the Football Committee, which consists of football coaches, school administrators and contest officials). If the committee recommends adoption of the proposal, that is reported to the 19-member MHSAA Representative Council. If the Council adopts the recommendation, it becomes a part of the Participating Schools Tournament Information (PSTI) for that sport's tournament or a part of the Handbook which each school district receives with the MHSAA Membership Resolution. When the local school board approves the Membership Resolution, it adopts the change and agrees to its application locally.

If the subject matter of the proposal is to make a change in the MHSAA Constitution, then all member schools vote and a 2/3 majority of those voting must affirm the change for it to become effective.

In many cases, MHSAA staff will conduct surveys regarding some of the topics either before or after the idea has been made into a formal proposal. Many proposals will be discussed at MHSAA Update Meetings in October and at a meeting for league and conference leadership in February, and at any meetings where staff is invited to lead discussion of the topic (e.g., meetings of athletic directors, principals, superintendents, boards of education, officials and coaches).

Speaking to the NCAA Presidents Commission National Forum in 1988, Ivy Group Executive Director Jeffrey H. Orleans outlined four evaluative criteria which he believes would help produce fewer rules but rules which focus on fundamental values of the institutions sponsoring athletics.

- The first criterion would be **how well the proposals foster an attitude of self-discipline within the schools**. "Change begins at home," he says. (The immense size of the NCAA Manual and the gradually increasing length of the *MHSAA Handbook* are direct reflections of the absence of this attitude and the resulting lack of "institutional control.")

- The second criterion would be **how well the proposals serve a positive value on behalf of students**, rather than simply a negative one in terms of institutional competition.
- The third criterion would be **how well the proposals are supported by the membership**. "We should try to assure legislation commands substantial allegiance among a broad spectra of the membership, not simply majority votes on behalf of particular viewpoints at particular times." This too helps to foster the level of "institutional control" necessary for a voluntary organization to effectively execute a regulatory function or arbiter's role.
- Fourth, proposals should provide **wide opportunity for membership input and debate**. "Each institution must have a clear voice in formulating legislation and adequate information to use that voice."

Beyond Mr. Orleans' excellent guidance, those advancing proposals for change within the MHSAA should pay particular attention to the **MHSAA's stated mission**:

- "1. Increase and promote the educational value of interscholastic athletic programs throughout the state.
- "2. Assist member institutions in their regulation of interscholastic athletic eligibility and competition.
- "3. Promote uniformity, predictability and competitive equity in the application of eligibility rules for athletic contests.
- "4. Promote the physical welfare of participating students."

Those advancing proposals for change also need to have an understanding of what the MHSAA does and doesn't do.

### 1. How We Choose What We Do

It is not infrequent that suggestions are made that the Michigan High School Athletic Association do something it is not presently doing, the something being a project or problem that conforms to the special interest of the one making the suggestion. That person will usually be incredulous when we respond that the project or problem is beyond the authority of the MHSAA or beyond the capacity of the MHSAA's resources. The criticism is at least implied that if the MHSAA really cared about kids, it would do this thing that is important to the critic.

How does the MHSAA decide what it will do?

That an initiative would be good for kids is the over-arching concern, but that leaves us with a lot more possibilities than can be attempted much less accomplished with any degree of satisfaction and success by any organization, much less one operating with a staff and budget that is smaller than 99 percent of its member schools. Therefore, the MHSAA must reduce the field of worthwhile projects.

- The first criterion is to **determine if the subject matter is a school district-wide concern or is sport-specific**. If the former - like sexual harassment sensitivity training - then it is school districts' responsibility to provide the service for all their faculty, including athletic personnel. If the subject matter is sport-specific - like weight control in wrestling - then the MHSAA should

consider the possibility that it is the organization uniquely positioned to assist by providing leadership and support services to its membership in this narrow area of athletic-related concern.

- The second criterion is to **determine if there are any other agencies, institutions or organizations better positioned or more capable to provide the service.** For example, the American Red Cross is already in place with programs and personnel to provide first aid, CPR and sports safety training to athletic personnel throughout Michigan. So even though it is sports-related, it would create wasteful duplication for the MHSAA to start doing what the American Red Cross is fully capable of, prepared to do and already doing.
- The third criterion for determining what the MHSAA will do is to **ascertain what its member schools want the association to help with.** Schools have asked for assistance in establishing a minimum rule for the eligibility of transfer students; therefore, the MHSAA has promulgated such a standard for local adoption. But school districts have not asked for assistance in establishing rules regarding eligibility after tobacco and alcohol use or after allegation or convictions for crimes or misdemeanors; therefore, no MHSAA minimum standards exist.


The MHSAA provides services in **the sports sub-set of issues** with which schools must deal, and only after the MHSAA **membership identifies** the need and the MHSAA **leadership prioritizes** all of the identified needs and provides the resources necessary to address the needs of highest priority. The result is that the MHSAA registers officials and trains the trainers of their local officials associations; provides six levels of coaches education in its Coaches Advancement Program (CAP); conducts sports rules meetings for both officials and coaches; conducts Athletic Director In-Service programs on athletic policies and procedures; conducts sportsmanship and student-athlete leadership programs; provides publications and programs in sportsmanship; conducts post-season tournaments in the sports most commonly sponsored by member schools; and proposes rules and recommendations where schools indicate they most need assistance outside their local staff and board.

The MHSAA will choose what else to do by the preceding three criteria presented above. The MHSAA is an organization that cares about young people but recognizes its limitations, both legal and practical. **The MHSAA has neither the legal authority nor the resources to be involved in protecting young people at all times and in all places. In the area of sports, and especially within the limits of the season and the boundaries of the field of play, the MHSAA has a role of helping to provide an athletic program that is sportsmanlike, healthy and consistent with the educational mission of schools.**

## **2. What the MHSAA Doesn't Do**

Calls and correspondence often received from conscientious and concerned citizens of our state sometimes attempt to assign responsibility to the MHSAA for matters over which the MHSAA has little or no authority, because they confuse the MHSAA's role with those of the major professional sports leagues or local school districts.

Criticism softens when people understand better how much more vast the interscholastic athletic program is in Michigan than any professional sports league nationwide. On any given Friday, for example, the National Basketball League might have 14 games, while there will be more than 1,400 basketball games at the sub-varsity and varsity levels throughout Michigan. The NBA has a large staff to review a small number of games, while the MHSAA has a small staff which can't possibly be held responsible for reviewing the conduct of players, coaches, management, spectators and officials in all these games.



Moreover, basketball is just one of the sports involving MHSAA schools. Unlike the NBA, the MHSAA serves 28 sports. There are more than 140,000 contests involving MHSAA member schools each year in these sports.

Obviously, if there is a problem at a local contest site, in all but the most unusual situations, it will have to be addressed and corrected at the local level. On occasion, a league might get involved. **Rarely should the statewide organization be involved.**

When citizens call or write the MHSAA office about the quality of facilities, the competency of officials, or the conduct of players, coaches or spectators -- and we have heard nothing about these matters from game management, contest officials or the administration of participating schools -- the citizens will be referred to their local school administrators. **They serve as the funnels and filters for their constituents' concerns.**

Usually, school administrators will determine the concerns do not need to be addressed to the MHSAA but should be settled internally or between the two schools which scheduled and played the event. This is consistent with each school's Resolution of Membership in the MHSAA which states **the local school district voluntarily joins and accepts the responsibility for enforcing rules and standards of conduct for their own people.**

**If the concern is for officiating, schools have at least three not mutually exclusive courses of action.** **One** is their rating of each official which will contribute to the official's three-year average which affects MHSAA tournament assignments. **Second**, the school(s) may determine no longer to hire an official for regular season contests. And **third**, the schools may outline their criticisms of an official in a letter to the MHSAA which will be shared with the official in the interest of improving his/her future performance.

Officials are requested (and required under some circumstances) to submit written reports to participating schools and the MHSAA office when they have concerns about facilities or conduct.

The MHSAA registers officials, conducts rules meetings for them, helps to train local assignors and the trainers of local officials associations and gives special privileges to associations with substantial training programs. But, **officials are independent contractors**, ultimately responsible for their own training and their own schedules. Most officials are proud and competitive and want to improve and to become so good that they will be highly respected and hired for the big games and MHSAA tournaments. The vast majority of officials take responsibility for their actions, study the rules and practice their mechanics every bit as conscientiously as the students who play and the faculty who coach.

MHSAA staff cannot review video from schools or individuals. Again, there are dozens of cameras at most of the thousands of events played each week, and it is humanly impossible to observe and analyze video of plays or entire contests which upset people. This is not the Big Ten or NBA with their limited teams and small pools of officials -- this high school sports with 100,000 plus varsity contests and nearly 10,000 officials.

Finally, **the MHSAA Handbook, which is adopted by all MHSAA member schools, does not allow the MHSAA office to entertain protests of contests**, even when the protest is based on judgment decisions of officials or misinterpretation or misapplication of playing rules. The sheer volume of contests requires that concerns be addressed on the spot at the local level. **The contest official's call is final.** This is what MHSAA membership requires, and this is what the MHSAA membership must communicate to its public.



This is not the Big Ten, NBA, NFL, NHL or Major League Baseball, where a small number of contests, participants and officials can be thoroughly scrutinized from a central office every week. **This is high school sports – a massive program that can only be run at the local level, and is only successful when expectations are communicated and enforced locally.**

### 3. Interest or Commitment

**It is likely that what is needed more than proposals for changes in rules is greater commitment to the rules that already exist.**

There is a great difference between interest in and commitment to rules. If we're interested in something, we do it, support it and speak to it when it's convenient for us to do so. If we're **committed** to something, we do it when it's inconvenient, even when it seems **impossible**.

People who are interested in the integrity of interscholastic athletics speak about the need to play by the rules. In a general way, they urge the MHSAA to investigate alleged rule breakers. In a general way, they preach good sportsmanship, citizenship and ethics.

People who are **committed** to the integrity of interscholastic athletics actually **report specific rule breakers**, even when it's a member of their conference, a neighboring school or their own school. Even when the violations are unintentional. Even when they cost a team a game or come between a school and a championship.

People who are **committed** to the integrity of interscholastic athletics not only preach good sportsmanship, they **teach it by education, example and enforcement**, even when it means removing an influential parent from the stands, or a veteran coach from the sidelines, or a star player from the game or the team. Even when it means giving playing time to substitutes before records for superstars. Even when it means subordinating the results of contests to the process of educating students.

If there is one MHSAA regulation that separates the interested from the committed in Michigan, it is **Regulation V, Section 4(A)**, which stipulates that any use of ineligible players results in forfeiture of the contest. **Any use** – a full game or a few minutes, early or late in the contest, whether the score is close or lopsided. **For any reason** – intentional, accidental or the result of deception by student, parent or others.

Some have said that the all-encompassing and inflexible nature of this rule discourages schools from reporting their own or other schools' violations, at least when they are errors of omission rather than commission. On the other hand, the vast majority of forfeits are voluntarily reported from administrators who are confident of universal compliance.

There are other regulations that provide strong tests of schools' interest in versus commitment to integrity in interscholastic athletics. How well do they adhere to the letter and the spirit of Regulation I, Section 10 which defines and prohibits "undue influence?" How well do they adhere to the letter and the spirit of Regulation II, Section 11(H) which describes allowed and prohibited out-of-season activities?

Those preparing proposals for rules revisions can strive to remove duplications, but can do nothing about duplicity in those whom the regulations affect. They can remove contradictory or confusing language from the book, but can do nothing about contradictory motives in a few administrators, boosters or coaches. They can develop new regulations and draft new interpretations to address new situations, but they can't cover every situation that a devious mind can create.

Compliance with rules and commitment to integrity in interscholastic sports have nothing to do with the **writers** of the *Handbook*, but everything to do with the **readers**. So while proposals are sought from any school or league at any time to improve the *MHSAA Handbook*, **the greater need remains that the MHSAA membership be committed to its content at all times.**

## **C. Regulations for Interscholastic Athletics**

### **1. General Introduction**

The member public, private and parochial schools of the Michigan High School Athletic Association have adopted voluntarily, through their elected representatives, three types of regulations to govern interscholastic athletics; and each year the schools which wish to become or remain members of the MHSAA adopt, by local board of education action, a resolution which states that the schools of that district will enforce those regulations. The Michigan Attorney General has ruled that local school districts have the authority to adopt MHSAA regulations and, when they choose to do so, they have the responsibility to enforce those rules as their own. See Appendix “C,” page C-2.

**The regulations apply specifically to the following sports, and any other activities to which a member school wishes to apply the regulations: baseball, basketball, bowling, girls competitive cheer, cross country, football, golf, girls gymnastics, ice hockey, boys and girls lacrosse, alpine skiing, soccer, girls softball, swimming and diving, tennis, track and field, girls volleyball, and wrestling, as well as member schools' involvement in activities so closely related to any of these sports that if left unregulated could lead to competitive inequities in one more of these sports.** Throughout these regulations, these listed sports are sometimes referred to as “MHSAA sports.” It is in these sports that the MHSAA conducts postseason tournaments. In these sports the regulations apply in subvarsity, as well as varsity, interscholastic scrimmages as well as games, and regular season as well as MHSAA tournaments.

One type of regulation provides the **rules of eligibility**: Regulation I for senior high school students and Regulation III for seventh and eighth grade students. A second type of regulation provides the **rules of competition** between schools: Regulation II for senior high schools and Regulation IV for junior high/middle schools. The third type of regulation, found in Regulation V, provides the **penalties for violations**.

Eligibility regulations (I and III) are **minimum requirements**. Member schools may adopt more rigid rules than stated in these regulations. The competition regulations (II and IV) are **maximum limitations**, and schools may adopt more limiting rules than stated in these regulations. In the event of conflict in rules, those of the Michigan High School Athletic Association shall apply if the school is to enter MHSAA tournaments.

**The MHSAA's primary purpose in promulgation of rules for eligibility minimums and competition maximums is to establish conditions by which students and schools may qualify for MHSAA post-season tournaments -- in other words, to promote a level playing field as much as possible for MHSAA-sponsored tournaments.**

**Because entry into MHSAA's tournaments requires season-long, sometimes school year-long and even year-round adherence to some basic rules, MHSAA member schools reap an important byproduct: they have some standardized rules for their regular season competition - in other words, a more level playing field for the rest of their interscholastic experience.**

## **2. Senior High School Rules - Regulations I and II**

The membership of the Michigan High School Athletic Association has developed voluntarily through their elected representatives and adopted by each local board of education/governing body a single eligibility regulation (Regulation I) with 12 interrelated sections which list the essential requirements for high school interscholastic athletic competition. These sections establish the **threshold** (minimum standards) and **boundaries** (maximum limitations) for all qualified participants within the interscholastic athletic program, and they work together to define and preserve the fundamental nature of the program.

**It is a condition for participation in any MHSAA tournaments that high schools adhere to the minimum standards of Regulation I and the maximum limitations of Regulation II in all MHSAA tournament sports.**

Ninth-graders housed in junior high/middle school buildings must comply with Regulation I. Ninth graders housed in junior high/middle school buildings who are considered part of the senior high athletic program under Regulation I, Section 1(C) must comply with Regulation II. Ninth-graders housed in junior high/middle schools who compete with or against seventh and eighth graders must comply with Regulation IV.

## **3. Junior High/Middle School Rules - Regulations III and IV for 6th-, 7th- and 8th-Grade Students**

The membership of the Michigan High School Athletic Association has developed voluntarily through their elected representatives and adopted by each local board of education/governing body a single eligibility regulation (Regulation III) with 12 interrelated sections which list the essential requirements for junior high/middle school interscholastic athletic competition. These sections establish the **threshold** (minimum standards) and **boundaries** (maximum limitations) for all qualified participants within the interscholastic athletic program, and they work together to define and preserve the fundamental nature of the program.

Regulations III and IV apply to junior high/middle schools having 6th and/or 7th and/or 8th grades, both for boys and girls interscholastic athletic competition. Ninth-graders housed in junior high/middle school buildings must comply with Regulations I and II.

## **4. Regulation V - Violations by Senior and Junior High/Middle Schools**

Michigan Attorney General Opinion No. 6352 (1986) states that "while a school district is not bound by decisions rendered by the MHSAA regarding rule violations, the Michigan High School Athletic Association may condition eligibility for and participation in its tournaments on compliance with its rules and its determinations concerning rules violations and the penalties to be imposed upon school districts for violations of its rules." See Appendix "C," page 3.

School districts which desire to participate in MHSAA tournaments must be in "good standing," which means they have applied Regulations I through IV and have enforced the penalties of Regulation V.



## **PART II. ENROLLMENT (ATTENDANCE)**

### **A. History and Rationale**

Here are the first sentences of the first rule of eligibility for high school athletics, more than 100 years ago:

"Section 1. Every student competing must be a bona fide student of the high school which he represents. To compete in the first semester contests he must be enrolled before October first, and to compete in second semester contests must be enrolled before March first."

– Michigan Interscholastic Athletic Association  
Rules and Regulations - 1922-23

Before the Michigan High School Athletic Association was formed, 50 years before it was incorporated, its most basic rule existed. It is a **predicate** of educational athletics which **predates** the earliest policies of the MHSAA.

**The enrollment rule is not merely established in the policies and procedures of an organization and in the pages of its Handbook, the rule is the embodiment of educational athletics and is embedded in the foundation of school sports.**

It is more than organizational policy and procedure. It is the **premise** of school sports.

In 1999, when a Michigan legislator introduced a bill that would permit unenrolled students to participate on the interscholastic athletic teams of schools where they did not attend or receive credit for attending schools, the public's response was so overwhelmingly negative that the proposal was quickly defeated.

Why was the reaction so fast and furious, from both public and nonpublic school personnel, as well as from the general public?

- Even those who did not know the history of school sports felt that something just wasn't right about allowing unenrolled students to drop by the local high school at 2 or 3 p.m. to practice and play for the school's athletic teams.
- Add to that group those who had children or grandchildren enrolled at the school who might lose their position, playing time or place on the team to youth who were neither enrolled at nor in attendance at the school which sponsored the team.
- Add to that growing group the coaches who would face the daunting task of conducting team tryouts for two sets of athletes: those student-athletes who meet all of the school's expectations but have no law to protect their tryout, and those drop-by athletes who may not meet some of the standards but who have a tryout right protected by state law.
- Add to that growing group the school principals and superintendents who object to the lack of accountability for curriculum, grading, attendance and conduct for the drop-by athletes in comparison to their regularly enrolled student-athletes.
- Add to that still growing group the educators who know the history and rationale of the enrollment rule.

The result was that the legislation failed to make even the first-round cut in the legislative process.

The legislation attacked the heart and soul of school sports, the first rule historically, and still today the first rule chronologically in the *MHSAA Handbook*: the rule that says a student must be a student for the school that student represents in competition.

Almost the only argument made by the proponents for allowing unenrolled students to play on school sports teams is that their parents have paid taxes to support the school.

Of course, paying taxes does not purchase the right to participate in school sports. There is no such right. Voluntary, interscholastic competitive athletics is an extracurricular offering of schools for which participation is a privilege, not a legally protected right.

That a person pays taxes to the State of Michigan does not purchase the right for their children to attend a state university: their children have to **qualify** and enroll. Paying taxes does not purchase the right to use State of Michigan vehicles or aircraft: they're only for certain people who **qualify**.

Participation in school sports is a privilege afforded to those students who **qualify**; and **enrollment in the school is the first and foremost of those qualifications**.

## **B. Application**

"SECTION 1 (A)—

1. To be eligible for interscholastic athletics during the first semester or the first and second trimesters of the school year, a student must be enrolled in a high school (except as provided in [D] below) not later than the fourth Friday after Labor Day.
2. To be eligible for interscholastic athletics during the second semester or the second or third trimester of the school year, a student must be enrolled in a high school (except as provided in [D] below) not later than the fourth Friday of February.
3. Unless a specific exemption is stated in this section or Section 8, a student must be enrolled in and receiving active credit (courses awaiting grades for credit) in at least 66 percent of full credit load potential for a full-time student (as explained in Interpretation 46) in the school for which he or she competes."

– Michigan High School Athletic Association  
*Handbook - 2019-20*

In 1922-23, the first sentence of the first rule stated: "Every student competing must be a bona fide student of the high school he represents." Application of the rule was quite simple.

However, it is apparent from the second section of the first rule of 2019-20 that formal education is much more diverse in its options, and that athletic participation opportunities can be available to those students who need or seek non-traditional educational opportunities.

The specific exemptions stated in Section 1 include:

- Arrangements for students who are housed in a different school building than the school where the sport is managed (Sections 1[B], [C] and [D]).
- Cooperative programs, where two or more member schools join together to share in the sponsorship and management of teams (Section 1[E] and [F]).
- Students who are certified by the Individual Education Program Committee and are assigned to another member school may be considered eligible (one-time choice) at their school of residence or the school to which they are assigned (Interpretation No. 5).

The exemptions of Section 8 are more numerous and complicated, and thus have been subject of the brochure "Policies and Opportunities for Non-Traditional Schools and Students." Appendix "A" of this curriculum should be reviewed at that point. The brochure also restates some of the exceptions of Section 1.

## PART III. AGE

### A. History and Rationale

Regulation I, Section 2, which has been adopted by every member school of the Michigan High School Athletic Association, limits high school competition to students who do not become 19 years old before Sept. 1. According to the MHSAA Constitution, **the age limitation cannot be waived**, regardless of how few days or hours a student exceeds the limit or the circumstances which delay the student's start or progress through school.

**The 19-year-old age limitation is as old as the association.** For the first 30 years, the regulation stipulated that students could participate until their 19th birthday but not on or after the day they turned 19. This led to disruption of teams, so in 1953, the schools adopted a regulation that stipulated that students would be eligible for none or all of the school year, not part. Students who turn 19 before Sept. 1 are ineligible for the full school year, while students who turn 19 on or after Sept. 1 are eligible for the full school year.

**The MHSAA age rule corresponds to the recommended eligibility standards of the National Federation of State High School Associations.** Approximately half the nation's other state high school associations have the same rule as the MHSAA; and of the others, approximately half have a more limiting standard than the schools have adopted in Michigan.

**The age limitation has many purposes, among which are that it tends to create equal conditions by limiting competition to participants of approximately the same age, size and maturity. It also encourages students to progress at a normal pace through junior high/middle and senior high school. The rule is consistent with the philosophy of interscholastic athletics in that a student's primary purpose in attending high school is to obtain an education, with participation in athletics being secondary.**

Despite the fact that the age rule has been a part of the standards of athletic eligibility since the inception of the MHSAA and is common to other state high school associations as well as athletic and other programs throughout society, the rule and its application have been reviewed often. In May of 1984, for example, the Representative Council reviewed the age rule as it pertains to regularly enrolled students, students with disabilities and gifted students. It was determined the present rule takes into consideration all students, including opponents and teammates.

On Jan. 21, 2009, the US Department of Education, New York Office for Civil Rights (OCR) issued a letter to the New York State Public High School Athletic Association in response to a complaint that the NYSPHSAA age rule discriminated against a student on the basis of his age, in violation of the Age Discrimination Act of 1975 (the Age Act), 42 U.S.C. S6101 et. seq., and its implementing regulation at 34 C.F.R. Part 110. OCR made the following determinations:

The regulation implementing the Age Act, at 34 C.F.R. § 110.10 provides that persons may not, on the basis of age, be excluded from participation in, denied the benefits of, or subjected to discrimination in, programs operated by recipients of Federal financial assistance; however, the regulation also provides, at 34 C.F.R § 110.12 that:

A recipient is permitted to take an action otherwise prohibited by § 110.10 if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity if –

- (a) Age is used as a measure of approximation of one or more other characteristics;
- (b) The other characteristic or characteristics must be measured in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity;
- (c) The other characteristic or characteristics can be reasonably measured or approximated by the use of age; and
- (d) The other characteristic or characteristics are impractical to measure directly on an individual basis.

Accordingly, OCR has determined that age-based rules in athletics are permissible under certain circumstances. In the instant case, OCR determined that the purpose of the age 19 rule is, among other things, to discourage athletic “red-shirting,” i.e., the practice of holding students back academically while in middle school (or even earlier) in order to give them extra time to develop physiologically and thus gain an advantage in athletic competition by the time they reach the end of their high school careers.<sup>2</sup> OCR has further determined that the discouragement of red-shirting is a valid educational policy and that NYSPHSAA’s use of attaining the age of 19 as a proxy for whether a student has been red-shirted is reasonable, as it would be impractical to measure directly on an individual basis.<sup>3</sup> Therefore, OCR has concluded that the age 19 rule is permissible under 34 C.F.R. § 110.12.

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<sup>2</sup> NYSED also stated that the age 19 rule functions to protect younger students from having to compete with older students – who are generally more skilled, experienced and physically mature – and to preserve competitive fairness.

<sup>3</sup> It would be significantly difficult to assess whether any competitive advantage that an older student may have achieved over his or her peers toward the end of his or her high school career could be attributed to the student’s having been red-shirted years earlier. There may be many reasons for delaying a student’s academic progress, but it would not always be possible to rule out the possibility that such a delay was imposed on a student at least in part with the intention that it could enhance his or her athletic performance in later years. Imposing a specific age limit and cut-off date for eligibility for athletic participation minimizes the incentive to engage in this practice.

## **B. Eligibility Advancement**

During 1986-87, the age rule was studied in light of the increasing frequency of early elementary screening and retention that was occurring with more frequency than before or in recent years. The study group - consisting of a representative of the Michigan Association of Secondary School Principals, the Michigan Association of School Administrators, and the MHSAA - concluded that no change should be made in the 19 year old limitation or its application. The study group focussed instead on Regulation III, Section 2 - the junior high/middle school age standard - and recommended that 8th-graders who become 15 years old before Sept. 1 have the opportunity to participate in the 9-12 grade program under certain circumstances. The recommendation was accepted by the MHSAA Junior High/Middle School Committee and the MHSAA Executive Committee, and adopted by the Representative Council in May of 1987.

The 1987 rule has evolved to this: "If the local school administration and parents can agree and arrange, seventh and eighth grade students who are eligible for junior high/middle school in all respects except that they become 15 years old before Sept. 1 may participate in a 9-12 grade program, even if it is in a

separate building. Those students would be limited to four years of high school eligibility and all other regulations -would apply (including the requirement to be doing passing work in at least four full-credit junior high/middle school courses). Ninth grade students of a 10-12 high school system who are eligible in all respects except that they became 16 years of age before Sept. 1, may participate in the 10-12 program. Application for these options must be made and approved on MHSAA "Eligibility Advancement Applications."

The Eligibility Advancement Application, which can be found at [mhsaa.com](http://mhsaa.com), must be used for processing the students who wish to take advantage of the eligibility advancement provision. It is required that the form be signed by administration at both the junior high/middle school and high school level, as well as the parents and the MHSAA office staff.

### **C. Application**

**The MHSAA's maximum age rule and its predictable application in all cases survived every legal challenge. For example:**

- Twice in 1979, the Michigan Department of Civil Rights issued orders of dismissal that upheld the application of the MHSAA age rule even to handicapped students. Those cases are Stieglitz v. MHSAA (4373-ED/April 6, 1979) and Greider v. MHSAA (44372-EX/April 13, 1979).
- In 1989, the Michigan Department of Civil Rights dismissed a claim that application of the age rule to a handicapped student violated the Elliott-Larsen Civil Rights Act of 1976 or the Michigan Handicappers Civil Rights of 1976. The case is Gallion v. MHSAA (106087 PA34 June 14, 1989).
- State courts are unanimous in upholding the age limitation in all situations. For examples, see Cardinal Mooney HS v. MHSAA, 437 Mich 75 (1991) [See Appendix "C," page 6] and Battani v. MHSAA (No. 89-3487-CZ).
- The US Court of Appeals for the Sixth Circuit determined in Sandison v. MHSAA 64 F.3d 1026 (6th Cir. 1995) that neither the age standard nor its non-waivability violates the federal Americans With Disabilities Act nor Section 504 of the Rehabilitation Act. See Appendix "C," page 5.

In spite of the uninterrupted legal precedent favoring the non-waivable maximum age rule and a membership strongly supporting that rule, the MHSAA in 2012 became the target of an unflattering social media campaign when a student with Down syndrome became overage prior to his 12th grade year at an MHSAA member school. National media took up the cause, and then local media, which invited the Michigan Legislature to threaten MHSAA schools with a reduction in state funding if they did not allow at least a narrow waiver provision for overage but disabled students to remain eligible. As a result, the MHSAA Representative Council distributed to the membership a proposal to amend the MHSAA Constitution and change the maximum age rule that it believed was limited and specific, as well as consistent with Michigan laws and the MHSAA's proven system of handling eligibility waiver requests. The Council's proposal was adopted, effective Aug. 1, 2012.

In summary, the rule has these two overarching criteria:

#### **1. Prior to the waiver request:**

The student's educational progress must have been delayed prior to initial enrollment in the 9th grade solely because of a medically documented disability under ADA or PDCRA. For junior high/middle school the delay must have occurred prior to the initial enrollment in the grade for which waiver is sought.

2. At the time of the waiver request:

The student must have a defined disability documented to diminish both physical and either intellectual or emotional capabilities; and

- a. does not create a health or safety risk, and
- b. does not create competitive advantage.

The intent is to reserve waiver for the most disabled students, but at the same time not create an unreasonable burden on schools and the MHSAA to have to make “near impossible determinations” as described by the US Court of Appeals for the Sixth Circuit in Sandison v. MHSAA. For the most disabled students, following the specific approval of the Executive Committee, the maximum age rule would be extended one year. The four-year (eight-semester or twelve-trimester) maximum enrollment limit would still apply at the high school level.

The Americans With Disabilities Act and Persons With Disabilities Civil Rights Act are referenced solely as a means to gauge disabilities and not to acquiesce that the MHSAA is covered by those Acts.

## **PART IV. MAXIMUM ACADEMIC TERMS OF ENROLLMENT & COMPETITION**

Read again the first sentence of the first paragraph of the Introduction to the Senior High School Rules:

"The membership of the Michigan High School Athletic Association has developed voluntarily through their elected representatives and adopted by each local board of education/governing board a **single regulation** (Regulation I) with **12 inter-related sections** which list the essential eligibility requirements for high school athletic competition."

None of the sections (none of the rules) stands entirely alone. None can do all the work to keep school sports a fair and healthy activity for students. The sections (the rules) are inter-related. They are connected to one another and depend on one another.

Nowhere is this more obvious than in the discussion of Maximum Semesters of Enrollment and Competition, Sections 4 and 5 of Regulation I.

### **A. History and Rationale**

The schools of the MHSAA have adopted two rules which work together to discourage students from repeating grades and gaining training, experience and maturity that would enhance their athletic achievement at the expense of other students (teammates and opponents) who progress at a normal pace through high school.

- ◆ One section allows a student to compete during no more than eight semesters or 12 trimesters while enrolled in grades nine to twelve, inclusive, adding that the seventh and eighth semesters must be consecutive.
- ◆ The other section limits a student, once enrolled in the ninth grade, to compete in only four first and four second semesters or four first, four second and four third trimesters.



The MHSAA Executive Committee has authority under the MHSAA Constitution adopted by the member schools to waive these regulations when they fail to serve the purpose for which they are intended or work an undue hardship on a student. The regulations are intended to limit a student to four years of high school athletic eligibility after enrolling in ninth grade.

Waiver should **never** be requested by a school when a student has had four years of eligibility and has competed in athletics in each year. When a student has had four years of high school eligibility and competition, waiver of the regulations would be contrary to the clear intent of the regulations. When a student has had four years of high school eligibility and competition, the regulations work no undue hardship on that student for that student has had the maximum experience any student is to have.

Waiver might be requested when, for some reason that seems irrelevant to the purpose of the rule, a student failed to compete in each semester he or she was eligible. However, schools which request the waiver and the Executive Committee which would have to grant it must each be concerned with the unfavorable binding precedent that a waiver in one case might create for consideration of other cases.

**If we remember that these regulations and their uniform enforcement are consistent with the philosophy of interscholastic athletics - that a student's primary purpose in attending school is to obtain an education, with participation in athletics being secondary - and if the regulation treats all students equally regardless of race, creed, origin or gender, we must rest in the knowledge that we have reasonable rules fairly applied; and we must accept that the schools which have formulated, adopted and enforced these regulations have done so with the best interests of the program and the vast majority of students in mind.**

## **B. Application**

Three times during the 1994-95 school year, the Michigan High School Athletic Association appealed to the Sixth Circuit of the U.S. Court of Appeals a decision of the U.S. District Court for the Eastern District of Michigan in cases involving the Americans With Disabilities Act and the essential eligibility requirements of interscholastic athletic competition.

Two of the cases appealed the granting of a preliminary injunction which allowed a fifth-year high school student to participate in basketball. In one of the semester cases, the MHSAA Executive Committee had denied the school's request to waive the maximum semesters limitation because, prior to the 1994-95 school year, the student had been in attendance part of eight semesters, had received grades and credits in seven semesters, was ineligible under the previous semester academic requirement, and may also have been ineligible under the transfer regulation.

The Executive Committee accepted the school's representations that the student would not pose a significantly higher safety risk but determined (largely from the coach's written statements) that he would have an unfair competitive advantage over teammates and opponents and, as a result, provide his team an unfair competitive advantage.

The Executive Committee's assessment was supported by the results, as the student's team went undefeated in the regular season when this student played. Five of the team's eight regular season wins occurred when this student played under the court's temporary restraining order.

The district court accepted the necessity of MHSAA Requirements: "The court does not contest that the policy of Regulation I, Section 4 is sound. The court also concurs that eligibility requirements such as the eight semester rule are crucial to preserving equity in interscholastic competition."

However, the court was not reluctant to substitute its judgment for that of the experienced school administrators serving on the MHSAA Executive Committee. The court stated, "A waiver in the present case will not constitute a per se rule of waiver in all circumstances."

The other case involved another fifth-year student who obtained a private diagnosis of ADHD after he had completed four years of high school. The student had not participated in basketball during his first three years because of the school district's 2.0 grade point average eligibility requirements. He played basketball his fourth year and was a starter during the second half of the season.

The MHSAA Executive Committee would not waive the maximum semester limitation because, among other reasons, the committee was not convinced this student would not have an unfair competitive advantage. Again, subsequent events confirmed the Executive Committee's assessment, as the student averaged over ten points during the last six games of the regular season.

The Sixth Circuit Court of Appeals concluded as follows:

1. The eight semester rule is a neutral rule as is the age rule.
2. There is no principled distinction between the nature and purpose of the age limit rule and the eight-semester rule that could lead to the conclusion that the former is necessary while the latter is not. The purpose served by the two rules is largely the same.
3. The MHSAA's determination that a rule may sometimes be waived under some circumstances does not mean that the rule is not necessary to the successful functioning of the sports program.
4. Requiring a waiver of the eight semester rule under the circumstances presented would work a fundamental alteration in Michigan high school sports programs.
5. Requiring a waiver would impose an immense financial and administrative burden on the MHSAA by forcing it to make near impossible determinations about a particular student's physical and athletic maturity.
6. It is unclear how the MHSAA could ever be expected to sort out the legitimate requests for waiver from those based on a desire to gain an unfair advantage. In short, requiring the MHSAA to grant waivers under these circumstances would be to require it to take on an immense administrative burden. This necessarily means that the plaintiff's requested accommodations are not reasonable.
7. Graduation from high school does not render a case moot in view of Regulation V, Section 4(C). Regulation V, Section 4(C) is the linchpin of appellate practice in reviewing injunctions in athletic settings.
8. Results would be no different if the student, instead of graduating, simply did not return to school to finish high school.

See McPherson v. MHSAA, 119 F. 3rd 453 (1997), Appendix "C," page C-6.



## **PART V. ACADEMIC PROGRESS**

### **A. History and Rationale**

#### **1. Too Low**

At almost every moment there is a state legislature somewhere in America with a bill before it to require a minimum grade point average for athletic eligibility for all students of all that state's public schools; and at almost every moment there is a school board somewhere in Michigan with a motion before it to require a minimum grade point average for athletic eligibility for all students of that school district.

The inclusion of some kind of academic standard within athletic eligibility codes is expected. The privilege of extracurricular participation comes after meeting minimum performance standards in the curricular offerings of the school. The criticism is rarely for the existence of academic standards; more often it is that the standards are too low.

There are few issues that create more controversy within a school district than when the idea is floated to establish a minimum grade point average for athletic eligibility.

Some people passionately and persuasively argue that it is necessary for accomplishing the purpose of educational athletics that students achieve average or better than average classroom performance to gain the privilege of participation in school-sponsored sports.

Others argue with equal zeal and wisdom that these high standards discriminate against those who may need the program most and who, in earning C or D grades, may have given superior academic effort than students who obtained A grades with little or no effort.

That school districts passionately debate this topic also is a comfort, for it is proof of the foundation and continuing mission of interscholastic athletics: school sports exist to help schools reach, motivate and prepare students for positive participation in our democratic society.

The difference between school sports and sports programs for the same age group sponsored by non-school organizations is that we raise such issues and have this debate.

#### **2. Too High**

While the debate in state legislatures and in local school districts regarding academic standards for athletic eligibility is most often about the need for higher standards, the most controversial moments for state high school associations come from claims that the standards are too high - at least too high for some students.

State and federal laws intending to protect the educational opportunities for students with special needs have often been used to attempt to gain access to extracurricular programs such as interscholastic athletics.

The law on these matters in Michigan is controlled by the rulings of the Sixth Circuit Court of Appeals in Sandison, McPherson and Frye (see Appendix "C," pages C-5, C-6) which establish that there is no federally protected right for any student, even those with disabilities, to participate in extracurricular athletics. Schools are not required to perform an individual inquiry regarding the application of each rule to every individual student.

## **B. Application**

### **1. Minimum Standard**

After several years of discussions that examined how MHSAA minimum standards might be adjusted to be as fair as possible to students and as easy to apply for administrators regardless of the school's academic schedule (e.g., semester or trimester), the MHSAA Representative Council adopted changes for 2009-10 that, in brief, did the following:

- a. The Council changed the minimum standard from passing 20 credit hours of course work (normally four courses) to **66 percent of full credit load potential for a full-time student**. This meant that students would no longer be eligible if they passed just four of seven classes.
- b. The Council changed the period of ineligibility for a student who failed to meet this standard during the previous semester from one semester (or 90 school days for students in other systems) **to one trimester or 60 school days for students in other systems**.

The result was a slight increasing of the standard, but a shortening of the period of ineligibility following a deficiency.

### **2. Minimum Frequency**

Ideally and historically, schools have required very frequent checks – weekly – to assure that students are making the progress necessary in the classroom to earn the privilege of participation outside the classroom.

The inability of some schools to comply with weekly eligibility checks, because of union contracts or sheer size, and widespread confusion over when to enforce the penalty and restore eligibility, caused the Representative Council of the Michigan High School Athletic Association to modify the current semester record regulation (Regulation I, Section 8) in two significant ways at its May 7-9, 1989 sessions.

First, the period between academic checks may become as long as ten weeks. Districts that have the means and desire to check more frequently - even weekly, as required before - may do so. Local school boards may continue more frequent evaluations, just as they have adopted more stringent standards of eligibility, such as minimum grade point averages or the requirement that students be passing all their courses or some higher percentage of courses, than the MHSAA requirement that students be passing 66 percent of full credit load potential for a full-time student.

Secondly, students who are found lacking when their current semester academic records are checked become ineligible for not less than the following Monday through Sunday. Previous to the 1989-90 school year, there was a seven-day wait between the discovery of a deficient performance and the start of ineligibility. Beginning in 1989-90, those students have become ineligible the next Monday, and restoration of eligibility is advanced as well.

At its March 27, 2009 meeting, the MHSAA Representative Council requested that the minimum frequency of academic checks be a topic of membership discussion during 2009-10 to help determine if the standard can be changed to better serve educational athletics in all settings across the MHSAA's diverse membership.

It was learned there was consensus (but not unanimity) that the frequency of academic checks should be more frequent to reinforce schools' efforts to improve academic achievement, but there was reluctance to establish new mandates that would demand more administrative attention at a time when school districts were being forced to reduce staff in response to state budget reductions.

### **3. Variations**

Once again, reference should be made to Appendix "A" of this curriculum: "Policies and Opportunities for Non-Traditional Schools and Students."

## **PART VI. TRANSFER**

### **A. History and Rationale**


Throughout the years, schools of this and every other state have identified problems relating to school transfers. There is recruitment of athletes and undue influence. There is school shopping by families for athletic reasons. There is jumping by students from one school to another for athletic reasons because they couldn't get along with a coach or saw a greater opportunity to play at another school or to win a championship there. There is the bumping of students off a team or out of a starting lineup by incoming transfers, which often outrages local residents. There is the concentration of talent on one team by athletic-motivated transfers. There is friction between schools as one becomes the traditional choice for students who specialize in a particular sport. There is imbalance in competition as a result. And there is always the concern that the athletic-motivated transfer simply puts athletics above academics, which is inappropriate in educational athletics.

All states have developed rules to address the problems related to school transfers. In some states it is called a transfer rule and in other states a residency rule, because linking school attendance to residence is one of the most effective tools for controlling eligibility of transfers. None of the state high school association rules is identical, but all have the intention of preventing recruiting, school shopping and jumping, student bumping, friction, imbalance and overemphasis, as well as the intention of promoting fairness in athletic competition and the perspective that students must go to school first for an education and only secondarily to participate in interscholastic athletics.

The transfer/residency rule is a legally and historically tested but still imperfect tool to control athletic-motivated transfers and other abuses. It is a net which catches some students it should not, and misses some students that should not be eligible. This is why all state high school associations have procedures to review individual cases and grant exceptions; and why all state high school associations have procedures to investigate allegations and to penalize violations where they are confirmed.

Over the years, state high school associations have considered four options to handle transfers. The first two options are the easiest courses: either (1) let schools decide themselves about transfers, as Michigan once did, but this leads to inconsistent applications and few states now subscribe to such an approach; or (2) make no exceptions at all, rendering all transfer students ineligible for a period of time, but this becomes patently unfair for some students and no state high school association subscribes to that extreme, although it would be easy to administer.

The third option – the ideal approach perhaps – would be to investigate the motivation of **every** transfer and allow quicker eligibility or subvarsity eligibility to those which are not motivated by athletics, but this is very time consuming if not impossible to administer. No state high school association has sufficient staff and money to consider every detail of every transfer.



This is why a fourth option has been most popular with most state high school associations. This is a middle ground which stipulates a basic rule, some exceptions (we have 15 exceptions in Michigan), and procedures to consider and grant waivers (a primary role of the MHSAA Executive Committee).

It is certain that the MHSAA transfer rule is imperfect. However, whatever few imperfections exist are remedied through a process by which member school administrators may make application to the MHSAA Executive Committee to waive the rule if, in the committee's opinion, the rule fails to serve any purpose for which it is intended or in its application creates an undue hardship on the student. In a typical year, the Executive Committee will receive approximately 250 requests to waive the transfer regulation, approving approximately 60 percent of those requests.

The committee brings to its considerations the following rationale, most recently reviewed and reaffirmed on Aug. 1, 2019:

1. The rule tends to insure equality of competition in that each school plays students who have been in that school and established their eligibility in that school.
2. The rule tends to prevent students from "jumping" from one school to another.
3. The rule prevents the "bumping" of students who have previously gained eligibility in a school system by persons coming from outside the school system.
4. The rule tends to prevent interscholastic athletic recruiting.
5. The rule tends to prevent or discourage dominance of one sport at one school with a successful program, i.e., the concentration of excellent baseball players at one school to the detriment of surrounding schools through transfers and to the detriment of the natural school population and ability mix.
6. The rule tends to create and maintain stability in that age group, i.e., it promotes team stability and teamwork expectation fulfillment.
7. The rule is designed to discourage parents from "school shopping" for athletic purposes.
8. The rule is consistent with educational philosophy of going to school for academics first and athletics second.
9. It eliminates family financial status from becoming a factor on eligibility, thus making a uniform rule for all students across the state of Michigan (i.e., tuition and millage considerations).
10. It tends to encourage competition between nonpublic and public schools, rather than discourage that competition.
11. It tends to reduce friction or threat of students changing schools because of problems they may have created or because of their misconduct, etc.

Following the adoption of a more standardized statewide transfer rule in 1982, there were multiple legal challenges. However, in 1986, the Michigan Court of Appeals determined that a rational basis exists for the transfer regulation and that the rule, with its exceptions, is not overbroad and is neither arbitrary nor capricious, noting that neither a fundamental right nor suspect classification is involved. Berschback v. Grosse Pointe Schools 154 Mich App 102 (1986). That decision is also noteworthy for this statement

which has halted or decided subsequent legal challenges: "This Court is not the proper forum for making or reviewing decisions concerning the eligibility of transferring students in interscholastic athletics." See Appendix "C," page C-4.

There were two major changes in the MHSAA transfer during the 1980s. The first, discussed in Section D of this Part (see page 27), led to the busiest period of litigation in the MHSAA's history. The other major change, arguably of equal impact, was implemented without any controversy.

This second subtle but substantial change occurred in 1987 when language was adopted to limit eligibility after a transfer to the non-public school closest to the student's residence, as opposed to any non-public school in whose service area the student lived. "Service area" did not have a consistent definition and created unnecessary concern that non-public schools had the advantage of huge, undefined attendance areas, compared to public school districts at that time.

Some high school associations prescribe geographic boundaries or mileage limitations for students transferring to non-public schools. Michigan simply says it's only the non-public school **closest to the student's residence**, where eligibility may be immediate. See 2019-20 *Handbook* Interpretation 61 for the subtleties of applying the rule.

## B. "Choice"

Two currents have converged during the past 20 years to bring high school association transfer rules under increasing review.

Beginning in the 1960s and gradually picking up steam during the decades since has been the trend of liberal courts to give less deference to the policies and procedures of voluntary associations of schools which reach to the behavior of individual students of those schools; and in the 1980s and since, this has met up with initiatives of conservative state and federal legislatures to provide parents wider choices for educating their children.


Parents will explain that one school's educational programs are broader or better than another, one school is safer than another, one's makeup is more (or less) diverse than another, one school has the religious instruction that another lacks, the advanced placement courses that another lacks, the technical programs that another lacks, a particular sport that another doesn't offer.

And when it's a transfer from a nonpublic school to a public school, parents will argue: "We live in that community and pay taxes to support that school."

The payment of taxes does not purchase the opportunity to participate in any program of a chosen school that is outside the curriculum of that school. The competitive, interscholastic athletic program of a school is completely voluntary and extracurricular, and entirely outside one's rights or ability to purchase.

In the face of these forces, several state high school associations eliminated transfer or residency rules; but most of those encountered the same types of problems - but more of them - that the rules had intended to solve. Stories of students playing the same sport at four different high schools in four years, and summer league teammates transferring as a group to one school in the fall, were not uncommon; and educators called for a return to regulation in most of these states.

Here's the story of one of those states, which borders Michigan, in its own words:



Prior to 1980, the Ohio High School Athletic Association had a restrictive transfer rule, which required that a student who changed schools without a concomitant change in the parent or legal guardian's residence must forfeit one year of eligibility. This rule reflected the desire of the members to restrict movement for athletic purposes, decrease the likelihood of recruiting and was also consistent with the educational landscape of the times during which changing schools was not as common as today.

During the 1980s, by referendum vote, Ohio's school administrators adopted a procedure whereby a board of education, or other governing body in a nonpublic school, could provide a one-time release for athletic purposes, thus affording a student the opportunity to transfer schools and protect his or her eligibility.

By the end of the decade, issues involving school choice were being considered in many states, and Ohio's General Assembly adopted open enrollment provisions for the public school districts in Ohio. The OHSAA, in response to this initiative, passed a sweeping change to the transfer bylaws in 1991 that permitted students to be eligible at any school that would accept them, public or nonpublic, provided the student was enrolled in the new school no later than 15 days from the beginning of the new school year. Participating in a contest for the school also solidified the transfer for any student making such a change. In addition, the OHSAA retained the one-time board of education release which could be used to facilitate a transfer at any time other than the first 15 days of the school year.

In essence, this very liberal transfer provision permitted a student to attend five different high schools and retain eligibility. Throughout the 90s, Ohio's transfers soared; and with that, complaints of recruiting and general discontent with the wide-scale movement of student-athletes were registered with the OHSAA.

In 2000, the membership voted to rescind the current transfer rule and substitute a series of regulations that were much more restrictive. The general concept was to remove any transfer regulations from grades 7 and 8 and permit a one-time transfer to any school as the student rises to grade 9. After establishing eligibility in grade 9 by either attending one day of school or playing in a contest prior to day one, a student who wished to change schools would be ineligible for one year from the date of enrollment in the new school unless one of the exceptions to the bylaw was met.

This bylaw seemed to satisfy the growing number of member school administrators who were very dissatisfied with the number of transfers that appeared to be for athletic purposes only.

Here's the February 2017 update from Ohio, again in its own words:

In 2012-13 our transfer bylaw said that *“If a student transfers (changes) high schools at any time after establishing eligibility as a ninth grader (either by attending a school for five days or playing in a fall sport prior to the beginning of school), the student is **INELIGIBLE** at the new high school for **ONE YEAR** from the date of enrollment.”* There were 11 “exceptions” to this rule. However, even with those 11 exceptions we were still hearing appeals for those students who had never played a sport before, transferred to a new school and wanted to try out for soccer for the first time (to try and make some new friends), but were ineligible because they did not meet one of the transfer exceptions.

Therefore, for the 2013-14 school year we modified our transfer bylaw and only made it applicable to those sports in which a respective student had participated in during the twelve (12) months immediately preceding his/her transfer. If the student did not participate in a respective sport within this



outlined timeframe, then the student did not have any transfer consequence and became immediately eligible at the new school, in regards to this bylaw. This transfer consequence is still in place for the 2016-17 school year and reads:

If a student transfers at any time after the fifth day of the student's ninth grade year or after having established eligibility by playing in a contest (scrimmage, preview/jamboree, Foundation game or regular season/tournament contests) until the one year anniversary of the date of enrollment in the school to which the student transferred, **the student shall be ineligible for all contests (including all scrimmages, preview/jamboree/Foundation game) until after the first 50% of the maximum allowable\* regular season contests in those sports in which the student participated (participation being defined as playing in a contest) during the 12 months immediately preceding this transfer have been competed.**

As you can see, this consequence is now based on past participation. For the 2013-14 school year we had 6 exceptions which would waive this 50% transfer consequence, and we have slowly added exceptions back and are now up to 10 for the 2016-17 school year.

The Ohio Association's experience over the past 40 years is not unusual. State associations across the U.S. are told their rules are too restrictive, and the rules get relaxed, after which schools complain that the rules are too lenient, which leads them to add restrictions. Eventually, the "new" rules look very much like the old. And, when memories dim, the cycle repeats.

The MHSAA transfer rule provided for choice in athletics well before it was available in Michigan education. Long before "school of choice" was popularized, the MHSAA transfer rule allowed first-time ninth graders the choice of attending any school in Michigan which would allow them to enroll. Subsequent changes in enrollment would result in at least one semester of ineligibility for interscholastic athletics unless the student's circumstances complied with one of the 15 stated exceptions. As school of choice options were expanded for students' enrollment, it has had no effect on the rules governing athletic eligibility. Those introducing and passing the bills did not want the legislation to provide a free pass for more students to change schools for sports, and effectively undermine the intended positive educational purposes of expanded parental choice in public education.

**The MHSAA transfer rule provides for an initial choice as a first-time ninth grader, and then it frustrates subsequent choices that may be disruptive to a student's education or the sports programs of the schools involved.**

### **C. 2003 - 2007 Modifications**

Because it is the rule most frequently at issue, the transfer regulation received the most scrutiny and is most frequently "tweaked" to expedite student eligibility without eliminating important checks and balances. In recent years this has included:

- Immediate eligibility with Executive Committee approval for 9th- and 10th-grade students at the **subvarsity level** if they have not previously participated on a high school sponsored team;
- Immediate eligibility with Executive Committee approval for a student transferring between schools involved in a cooperative program, provided they have participated in that cooperative program during the previous season; and
- Eligibility after 90 school days when the wait could be much longer than that, provided the Executive Committee approves.

More recently, so that the period of eligibility would not vary so much from student to student because of the academic system used (eg. trimesters or semesters), the MHSAA has adopted the same for the change in eligibility status for transfer students: Martin Luther King Day (observed) and August 1.

Subvarsity Eligibility Expanded – As a result of changes made for 2015-16, a transferring 9th- or 10th-grade student, who has never played in a high school scrimmage or game and is granted an Executive Committee waiver in advance of participation, may now be eligible in individual varsity heats, matches or races on a non-scoring basis. Previously, subvarsity eligibility was only for team sports with 9th-grade or JV teams. This expansion, with an approved waiver for a student who meets the above criteria, would permit some non-scoring involvement in cross country, golf, swimming & diving or track & field on a **non-scoring** basis where there is no separate JV team. This would not apply to relay teams in swim or track if they will be scored within the varsity race. This is also applicable to international students (F-1 or J-1 visa) who are not from an approved program and permitted subvarsity participation without requesting a waiver (See Interpretation 86).

### **Substantive Modifications 2018 – Sport Specific Transfer Regulation**

Perhaps the most significant change to an MHSAA Regulation in the last 40 years was the shift to a Sport Specific Transfer Regulation. What a student participated in during the previous school year or season determines eligibility, not when a student transferred. “Participated” means entering a contest or scrimmage against another school. Unless a student meets one of the 15 stated exceptions – which did not change - he or she is NOT eligible in a sport played the previous school year or season. Mid-season transfers sit the current season and next season in that same sport. A transfer student would have eligibility in a sport not played in the previous school year. Previous ineligibility was in all sports; now it’s in some sports, so more students are eligible under the **Sport Specific Transfer Rule**.

Several years of frustration and several transfer students, especially in football who were “game changers,” caused the Representative Council to authorize full study and review during the 2017-18 school year. After a year of state-wide discussion and several task force meetings of over a dozen MHSAA staff and Representative Council members, the Representative Council enacted the **Sport Specific Transfer** rule at its May 6, 2017 meeting. It was published widely and placed in the *MHSAA Handbook* effective August 1, 2018 and impacting eligibility of students a year later on August 1, 2019.

No longer relevant to the transfer rule was the date of enrollment except for late arrivals who would not be eligible for MHSAA tournaments. What matters most is what a student played in the previous school year or season.

The transfer rule used from 1982 to 2018 underwent many modifications over the years and was pretty good, but not perfect. The same is expected with the current Sport Specific Transfer Regulation which will be tweaked with input from schools over the years.

One modification that connects the Athletic Related Transfer Rule – the “Links Rule” (Section 9 E) and residential changes was enacted in 2018-19 after several students in football and boys basketball followed their newly hired school coach to his new place of employment and were eligible immediately under Exception 1 – a full residential change. This is a clear link under Section 9 (E) – but they met an exception and ineligibility did not apply. On Aug. 1, 2019, the regulation was changed to say that even if a student had a residential change, the student would not be eligible in that sport at the new school if he followed his newly hired school coach. In other words – this one link – following the school coach – trumps the residential change and the student is not eligible in that sport for one school year.



#### **D. Athletic Motivation (Regulation I, Section 9[E])**

In a perfect world, the Michigan High School Athletic Association would have one overarching statement in the transfer regulation. It would be "A student can't change schools for athletic reasons." Any other reasons would be okay, and nothing more would need to be said.

That's really what educators have been trying to stop for almost a hundred years that interscholastic athletics have been regulated: transfers that were more for athletic than academic or family reasons.

But it's not a perfect world. So we have a transfer regulation that says every student is ineligible for one semester . . . ineligible for one semester unless something else happened.

Prior to the second semester of 1982, the "something else" was if the two school principals granted waiver, then eligibility was immediate. But that didn't work well: virtually all students were declared eligible. Principals generally, and the Michigan Association of Secondary School Principals particularly, requested change.

That change came in the form of an expanded transfer regulation in 1982 that said every student was ineligible for one semester unless their circumstances met one of 12 exceptions. The next year a 13th exception was made for students enrolling for the first time in a boarding school. In 1996, 14th and 15th exceptions were adopted for certain previously expelled students who had met certain requirements and for students enrolling the first day of the first grading period of a school being opened and operated for the first time.

But even with 15 exceptions, it is still possible for a student to transfer for athletic reasons. Everybody knows it. And many students do it.

Some of these students are immediately eligible: this occurs if their circumstances fit one of the 15 stated exceptions. Other students are eligible after approximately one semester if their circumstances don't fit one of the 15 exceptions. There's no deterrent for these students if they are involved only in a fall sport and transfer at the end of the first semester, or if theirs is a spring sport and they transfer at the end of the second semester.

After three years of discussion and favorable sentiment from 75 percent of respondents of the 1996 MHSAA Update Meeting Survey, the Representative Council took action that addresses half of the problem: those students who have transferred for athletic reasons and are ineligible for one semester will be ruled ineligible for two semesters if their transfer is deemed more for athletic reasons than for any other reason.

Examples of athletic-motivated transfers would include the following:

1. The student, or a parent or guardian, or an adult with whom the student resides, is dissatisfied with the student's position or the amount of playing time which he/she receives;
2. The student, or a parent or guardian, or an adult with whom the student resides, has a problem with a coach at either a personal or professional level;
3. The student, or a parent or guardian, or an adult with whom the student resides, seeks relief from conflict with the philosophy or action of an administrator, teacher or coach relating to sports;

4. The student, or a parent or guardian, or an adult with whom the student resides, seeks to nullify punitive action by the previous school relating to sports eligibility;
5. The student, or a parent or guardian, or an adult with whom the student resides, desires that the student play on a less successful or lower profile team in order to be ranked higher among the players on that team;
6. The student, or a parent or guardian, or an adult with whom the student resides, desires that the student play on a more successful or higher profile team to gain a higher level of competition and/or more exposure to college scouts.
7. The student seeks to participate with teammates or coaches with whom he/she participated in non-school competition during the preceding 12 months.

A challenge that a transfer is athletically motivated must be received by the MHSAA executive director in writing with the initial proofs within 40 consecutive calendar days of the student's new enrollment. Notification of the challenge will be made to the school that the student is currently attending so the receiving school will have an opportunity to respond and to have input into the determination by the executive director.

The challenge must come from a member school: when the administration of the school from which an ineligible transfer student has transferred alleges that the motivation for the transfer is primarily for athletic reasons, the granting of eligibility after one semester is not automatic. The burden of proof will be on the administration of the accusing school to demonstrate to the MHSAA executive director or designee that the transfer has more to do with interscholastic athletics than with other compelling factors.

As part of the overhaul of the transfer rule approved by the Representative Council in May of 2018, the athletic-motivated transfer rule became **sport-specific**. An ineligible transfer student who is confirmed to have transferred for athletic reasons is ineligible to participate in an interscholastic contest for the school to which the student transfers for the next complete season in that sport (including the MHSAA tournament). This shall apply in any sport in which the student participated in an interscholastic scrimmage or contest during the previous season for a sport at any high school. In addition, if the transfer occurs during a season, the student is not eligible in that sport at any level for the remainder of that season.

Even if the student's circumstances subsequently satisfy one of the exceptions of Section 9(A) that would normally allow a transfer student immediate eligibility, the school from which the student has transferred may make an allegation of an athletic-motivated transfer and, if confirmed, the student shall remain ineligible pursuant to Section 9(B) 1.

#### **E. Athletic Related (Regulation I, Section 9[E])**

There is an increased sense among the MHSAA's constituents that it's nearly impossible to advance deeply into the MHSAA's postseason tournaments with "home grown" talent; that unless a team receives an influx of 9th graders from other school districts or transfers of 10th, 11th and 12th graders from other schools, success in MHSAA tournaments is rare.

This is the predictable result of several factors, including (1) expanding schools of choice; (2) starving school districts of essential resources; (3) encircling schools with educational options; and (4) the increasing dependence on nonfaculty coaches and the related increased profile of non-school youth sports programs.

In light of this, Michigan's high school wrestling coaches and, more recently, Michigan's high school basketball coaches, pled with MHSAA leadership to toughen the transfer rules for school-based programs.

On May 5, 2013, the MHSAA adopted a rule to take effect starting Aug. 1, 2014 (expanded in 2015), that advocates believed is more straightforward than the athletic motivated section of the transfer regulation and was a needed next step to address increasing mobility of students between schools. It links certain described activities to a longer period of ineligibility after a transfer. It intended to catch some of the most overt and egregious of transfers for athletic reasons.

Specifically, after a student had played on a team at one high school and transfers to another where he or she is ineligible, the period of ineligibility was extended to 180 scheduled school days if, during the previous 12 months, this student . . .

- Participated at an open gym at the high school to which the student has transferred.
- Participated as an individual or on a non-school team or activity coached, coordinated or directed by any of that high school's parents, administrators or coaches in the sport involved for either gender. This includes out-of-season summer basketball teams with school coaches if a student participated prior to registering to attend that school.
- Has a personal sport trainer, conditioner or instructor who is a coach at the high school to which the student has transferred.
- Transfers to a school where his or her previous high school coach is now employed.

Unlike the "athletic-motivated" transfer section, this new section did not require one school to allege athletic motivation. If the MHSAA learns from any source that any one of the four athletic related links existed the MHSAA would impose ineligibility in a sport.

This "athletic-motivated" transfer section was also affected by the overhaul of the transfer rule by the Representative Council in May of 2018, making it sport-specific. This section applies only to students who have participated in an interscholastic scrimmage or contest on any interscholastic team of the previous high school of enrollment and only in the sport or sports involved in Items 1 through 5 above.

Even if the student's circumstances subsequently satisfy one of the 15 exceptions of the transfer rule that would normally allow a transfer student immediate eligibility, the student shall remain ineligible at this MHSAA member school in the sport(s) involved.

There may be a large percentage of the MHSAA's constituents who do not believe this new Section 9(F) goes far enough; that this should be applied to all students, not merely those whose transfer does not fit one of the 15 stated exceptions which allows for immediate eligibility. That could become the MHSAA's next step in fighting one of the most aggravating problems of school-based sports today.

#### **F. Undue Influence (Regulation I, Section 10)**

It is bad enough when students transfer schools for athletic reasons. It's worse when one school's representatives attempt to entice the student or his/her family to make that transfer or to influence the student's first enrollment in ninth grade.

That's why the penalty for undue influence addresses not only the student who is made ineligible for a maximum of four years, but also the offending school, which is placed on probation for up to four years. And if it was a coach who violated the rule, then that coach may not be permitted to coach for up to four years.

Examples of undue influence include, but are not limited to:

- Offers of financial aid to parents, guardian or student.
- Reduced or eliminated tuition and/or fees.
- Special privileges not accorded to other students.
- Transportation allowances.
- Preference in job assignments.
- Free or discounted room, board or clothing.
- Promotional efforts and admission policies for athletes which are in excess of efforts for other students.

The *MHSAA Handbook* includes several interpretations. However, that a policy, procedure or practice of a school or any of its representatives (including parents) is not expressly prohibited in the language of the regulations and interpretations does not prohibit a school from alleging or the MHSAA staff from determining that undue influence has occurred.

General allegations that a certain school recruits athletes or that certain students received a "full ride" will not be investigated by MHSAA staff. However, specific allegations that can be substantiated by written documents or by the testimony of a third party will be investigated so long as the sources will identify themselves and not vanish when the investigation heats up.

In 2007, the US Supreme Court provided a solid legal basis for rules that prohibit recruiting in high school athletics in Brentwood Academy v. Tennessee Secondary School Athletic Association 127 S. Ct. 2489 (2007). The court held that: "The anti-recruiting rule strikes nowhere near the heart of the first amendment." It noted, "Brentwood made a voluntary decision to join the TSSAA and to abide by its anti-recruiting rule." It went on:

"We need no empirical data to credit TSSAA's common-sense conclusion that hard-sell tactics directed to middle school students could lead to exploitation, distort competition between high school teams, and foster an environment in which athletics are prized more highly than academics . . . TSSAA's rule discouraged precisely the sort of conduct that might lead to those harms, any one of which would detract from a high school sports league's ability to operate 'efficiently and effectively'."

During 2002, the MHSAA executive director was an expert witness in this litigation involving the anti-recruiting rule of the Tennessee Secondary School Athletic Association. See Appendix "D" for excerpts of this Expert Witness Report prepared in advance of testimony.

For many years, the prohibitions against undue influence were addressed as they are here, as a portion of the transfer regulation. In 1992, these prohibitions were placed in a separate section of the eligibility regulation, now Section 10.

As a result of an unusual number of athletic-related or motivated transfers in recent years, both domestic and international (See Section G - p. 31), the MHSAA Representative Council increased the maximum penalty for undue influence from up to one year to up to **four** years, effective Aug. 1, 2014.

In addition, the following written Interpretation (#115) was added to the *Handbook* to make explicit that "It is an undue influence violation for a person directly or indirectly associated with a school or for a person whose activities are related to athletics to arrange, secure or encourage the arrival or residency of

a student into a school district or the enrollment of a student into a school based on athletic ability or potential.

## **G. International Students**

During most of the history of school sports in Michigan athletic transfer issues involved Michigan residents and rarely a student from another state.

By the 1960s, a few schools had begun enrolling an occasional foreign exchange student. By the 1980s, the number of student exchange students – and the number of problems relating to those students or their host families or local representatives of student exchange organizations – had grown to the point that controls became necessary.

Exchange organizations and educational groups like the National Association of Secondary School Principals joined forces to create the Council on Standards for International Educational Travel (CSIET) which established a list of criteria that foreign exchange student organizations must meet, and CSIET listed the organizations that met those standards.

When school sports began to see unusual numbers or unscrupulous placements of foreign exchange students adversely affect competitive equity in school sports, most state high school associations revised their transfer rules to allow immediate eligibility **only** for those foreign exchange students who were placed in school districts by CSIET-approved student exchange programs, and most state associations limited eligibility to the one year of attendance permissible under a J-1 student visa.

As a result of these developments, there were very few problems associated with international students in Michigan for more than two decades.

During the most recent decade, however, increasing numbers of students from foreign countries have been enrolling in U.S. schools on F-1 visas and without being placed by a CSIET-approved program; and once again questions related to unscrupulous placements and competitive balance emerged. For several years, the MHSAA appealed to CSIET to broaden its work to serve F-1 visa programs while the MHSAA staff and board considered a variety of new policies and procedures. The tipping point for taking action was the 2013-14 school year when several high-profile situations occurred involving F-1 visa students, some of whom received the maximum penalty for a violation of undue influence – a calendar year of ineligibility.

The Representative Council adopted new rules for 2014-15 intended to treat J-1 and F-1 visa students similarly and to minimize the disparate impact of Federal Law on public schools in comparison to non-public schools. Key changes (applicable to international students not enrolled [attending classes] in an MHSAA member school during the 2013-14 school year) include:

- The automatic exception which allows immediate eligibility for first-time-ever 9th-graders (Exception 10) does not apply to international students.
- Only those international students (J-1 or F-1) enrolled under Transfer Rule Exception 1, 2, 3, 5, 8, 12 or 13, or placed through an MHSAA “Approved International Student Program,” can have varsity eligibility.
- Those international students who are placed through an MHSAA Approved International Student Program are immediately eligible for one academic year and then ineligible for one academic year (“Play One, Wait One”).
- Other international students have no varsity eligibility. After the normal (approximately one semester) waiting period for transfer students, local schools may provide those students subvarsity eligibility, regardless of grade level and previous sports experience and without MHSAA Executive Committee approval.

## PART VII. AMATEUR STATUS/AWARDS

### A. History and Rationale

Research into the history of many school sports rules leads to the discovery that the desire to restrict school sports to amateur athletes is one of the primary reasons such rules were established (e.g., see Limited Team Membership [Part VIII] and Out-of-Season Coaching [Part IX]).

Over the long history of interscholastic athletics in Michigan, those responsible for the programs on the local and state levels have been diligent to preserve the amateur aspect of junior high/middle school and high school sports. "Creeping professionalism" has been a real fear and, historically, legitimate concern.

The response was to develop two regulations, and a series of interpretations for guidance. They were called the "Awards rule" and the "Amateur Status rule" (Regulation I, Sections 11 and 12).

For the 2010-11 school year, these two rules were combined into one section to allow for a single statement of the common principles, and separate headings identify the subject of related interpretations.

The core concept remains unchanged: **Athletes are not to receive benefits that are not available to all students; and one athlete is not to receive benefits that are not available to all athletes.** Remember that, and you will usually come to the right decision, the one that preserves the educational and amateur integrity that so many people have worked so long to establish.

### B. General Applications

The Amateur Status rule applies to a student from the date that person first represents any **MHSAA member school** in an interscholastic scrimmage or contest in **any MHSAA tournament sport**. At this point, the student may not plead ignorance, but is expected to know the rules and is subject to them.

If a student accepts something that violates the rule and then plays in an interscholastic event, that contest is forfeited pursuant to Regulation V. If it is possible for the student to return the item that violated these rules, without benefiting from that item, then the status of that student's eligibility and forfeitures may be reviewed by the MHSAA executive director. If not, the student is ineligible for **not less than the next 90 school days** from the date of the last violation.

The student is ineligible for **one full school year of enrollment** if, after once representing any MHSAA member school in competition in any MHSAA tournament sport, that student signs a professional athletic contract which involves any monetary payment, valuable consideration or any other compensation in exchange for participation or endorsement.

### C. Specific Applications

Question: Can an outstanding athlete receive more than one trophy if the value of each is approximately \$32?

Answer: Yes, the athlete may receive any number of symbolic awards as long as each award does not exceed \$40 in value. Such award cannot be cash, merchandise certificates or any other type of negotiable certificate.



Question: Can members of a championship team be given a ring, plaque or jacket to commemorate a memorable season?

Answer: Special offerings to purchase such items are permitted so long as the opportunity is made available to all students, not just athletes. Giving of such items would be a violation if the value exceeds \$40.

Question: Can an exceptional player endorse a camp, allow his or her name and picture to be used and give lessons a part of the teaching staff?

Answer: A student-athlete may be compensated for giving lessons as part of a camp or recreation program, but the student's name or photograph may not be used to promote the camp or program.

Question: Can a student-athlete receive a cash award or trophy for winning a hole-in-one contest, or a free-throw contest?

Answer: A student may receive the benefits of participation in any carnival-type activity that is open to the general public.

Question: Can a high school basketball player be paid for officiating basketball games in a church league?

Answer: A student may be compensated for officiating at the subvarsity levels of interscholastic competition, as well as in CYO, YMCA, YWCA, church and youth programs without violating the amateur practices rule.

Question: Can a football player in his school's uniform be in a picture advertising tuxedos for a local concern? Can he receive free use of a tuxedo for the Senior Prom?

Answer: A student-athlete may never be paid or given merchandise or privilege in exchange for a commercial endorsement; and a student may not pose in the school's athletic uniform to promote a commercial enterprise, even if the student is not paid for the endorsement.

Question: May a student ever receive free or discounted athletic equipment, athletic apparel or court time?

Answer: No, except for these circumstances:

1. It occurred before the student represented any MHSAA member school in any sport; or
2. It occurred during the high school season and . . .
  - a. the equipment or apparel was provided to all team members and either retained by the school or purchased by the students at fair (current) market value at the end of the season; or
  - b. the free or discounted court time was accepted as part of a school team session when the entire team received the same benefit; or
3. It occurred during the student's employment at a store or tennis facility and was part of the compensation package provided all employees.

Never may a student receive free or discounted athletic equipment, apparel or court time based on ability or performance ranking.

**That something is not explicitly prohibited does not mean it is permitted.** That is true under all rules but is especially important to remember with respect to the Awards and Amateur Status sections of the eligibility rule.

## **PART VIII. LIMITED TEAM MEMBERSHIP**

### **A. History and Rationale**

In some state high school associations, it's called the "loyalty" rule, derived from the opinion that a student should put his/her school team above self-interest and the intention to convey through school sports lessons important to society about teamwork.

- ◆ It isn't fair to teammates and team goals if a member of the team misses practice or competition to travel to, practice for or compete in non-school events during the school season.
- ◆ It isn't fair to teammates and team goals if a member risks fatigue or injury in non-school competition during the school season.

Sometimes coaches add another concern: It's difficult for the school coach to teach skills and strategies to a player who is simultaneously receiving coaching from other personnel.

These are not insignificant concerns; but for the membership and leadership of the MHSAA over the years, there have been additional reasons for the rule that we call "Limited Team Membership." We just think it's possible to get too much of a good thing: too much of one sport, and too much of sports in general.

Not only does it tend to promote competitive balance between teams, the Limited Team Membership rule tends to promote well-rounded, well-balanced students. It promotes the fact that the young people are to be **students first**, then athletes. It encourages students to participate in more than one sport and to have time for non-athletic activities as well as athletics and non-school activities as well as school activities: church and civic, jobs and volunteerism. **It helps equip students for life, not just sports.**

The regulation for limited team membership has been in existence for more than 85 years. While not one of the original five rules established by the school principals at the High School Section of the State Teachers Association in 1896, it follows the logical progression of regulations that were established on that day for the betterment of interscholastic athletics in Michigan. In his book *Athletics in Michigan High Schools: The First Hundred Years*, published in 1950, Lewis Forsythe notes that, "earlier limitations as to team membership were designated to protect students from the taint of professionalism, and restricted them, as in the code of 1909, from competing on a college team, from playing with or against professional teams, from contesting with professional athletes, and from competing under an assumed name."

The regulation was specifically adopted in March of 1921. At that time, the Michigan Interscholastic Athletic Association (the precursor to the MHSAA) enacted this legislation with the best interests of students in mind. It read, "any member of a high school athletic team who participates in an athletic contest as a member of any other similar team in the same season shall be ineligible to compete under these rules for the remainder of the season." Forsythe notes that many principals were noticing the "tendency



of many high school athletes to overdo it, both from the standpoint of health and to the detriment of their school work” by being involved on more than one team during the same season.

Since its entry in 1921, the limited team membership rule has evolved from the original 39 words to have four sections, and 19 interpretations. It has been expanded in the original spirit and with the same rationale, which is that schools need to provide guidance to protect the physical health and academic progress of the student body. Forsythe writes, “the attitude of students and of promoters of community athletic programs was that this rule constituted an unwarranted interference with their personal rights. However, the soundness of it, from many points of view, has strengthened the determination of schoolmen to develop it even beyond the scope of the first regulation.”

### **1. What Other Organizations Say**

The "Recommended Minimum Eligibility Standards" of the National Federation of State High School Associations include a "non-school participation" rule that calls for a period of interscholastic ineligibility should a student who is a member of a school team participate during the school season in the same sport in non-school competition. Most state associations have such a rule.

The Wisconsin Interscholastic Athletic Association rule is prefaced as follows:

It is the philosophy of this association that a student owes loyalty and allegiance to the school and team of which he/she is a member during the season of a given sport. A student becomes ineligible in a sport for the remainder of the season for competing in a non-school game, meet or contest in the same sport during the season of practice and competition established by the school. The penalty may be reduced upon request of a school on the basis of merits presented.

The Illinois High School Association lists this "Essential Rationale" for what it calls its "Independent Team Participation Rule:"

1. To maintain the importance of a solid education.
2. To help students maintain a balance between academic, athletic and other school programs.
3. To minimize conflicts of loyalty between school and non-school teams in the same sport during the same season.
4. To reinforce the basis for fairness and equity among student competitors by protecting common opportunities to engage in athletic competition.
5. To 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 that their school teams cannot rely on them.
6. To protect an athlete from exposure to coaching philosophies, strategies and techniques which are in opposition to those their school coach is teaching.
7. To protect against potential injury to athletes and the resultant loss of the athlete to the school team.
8. To 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 Kansas State High School Activities Association publishes the following "Historical Rationale for Limiting Participation on Non-School Teams:"

1. Schools have wanted to avoid perpetuation of a single sport, year-round. This avoids pressure for one community to keep up with another which might provide year-round opportunities.
2. Overly aggressive coaches might dominate student-athletes' time in the off season and summer months. This increases specialization in a single sport and reduces the number of students enjoying the benefits of a diverse student activities program. Pressure or perceived pressure by coaches to participate in the summer intrudes on vacations, summer jobs and family time. Students would feel obligated to play in order to make the school squad the following season.
3. Economically disadvantaged students aren't able to afford participation on non-school traveling teams and subsequently feel their opportunity to make the school squad is negatively affected.
4. School team coaches feel obligated to remain in their communities during the summer in lieu of taking jobs, attending summer school, in order to ensure a successful interscholastic season the following year.
5. Transfer students and athletes who are physical "late bloomers" are accommodated by a rule limiting outside team membership. This reduces the likelihood of entire school teams staying intact over the summer which would reduce the opportunity for transfers and younger players to develop skills and make their school squad next season.
6. Allows students to participate with students from other teams and communities.

The rule is not designed to prevent student-athletes from playing on teams and improving their skills. Its purpose is to encourage maximum participation in a setting that promotes equal opportunities for success by the greatest number of schools.

## 2. What the Research Suggests

There are numerous studies that link participation in interscholastic athletics to many positive benefits, but almost none of them can demonstrate cause and effect. The most that can be said with certainty is that there is a statistical link between participation and these benefits; it is usually a reach to assert that any specific benefit is the **direct** result of the participation itself. "Good kids" tend toward participation, so comparisons between those who participate versus those who do not tend to demonstrate that participants are generally physically healthier and perform and behave better, both in school and in later life, than non-participants.

In contrast to the limited conclusions that can be made of statistics about the value of participation, the link between cause and effect is more convincing about the detrimental side effects of **excessive** participation and from year-round participation in a single sport, referred to as "**specialization.**"

In its most benign form, specialization in a single sport occurs as the choice of a young person because he or she enjoys the sport and has allowed sufficient time in his or her life for academic requirements and to pursue enriching non-athletic activities of family, friends, church, school and community. However, the motivation is often external (parents) for the purpose of improving prospects of making or starting on a school or community sports team for the goal of achieving a college athletic scholarship.<sup>1</sup>

Such thinking ignores these hard facts:

- Less than two percent of high school athletes will play college sports on any level (Division 1 down to local community college), even briefly (including those who participate in a single season and then quit); and most of this two percent will do so **without any** financial aid based on athletics.
- There are 70 times more dollars available for college tuition assistance based on academics than athletics.

Arguments opposing single-sports specialization include the following:

- a. Researchers have consistently examined this subject, and found the same conclusion: by specializing in a sport, students have a **greater chance of sustaining overuse injury**.
  - “The American Academy of Pediatrics recommends that children avoid early sports specialization, citing a number of potentially damaging physical, emotional and psychological consequences . . . When a young athlete specializes in one sport, the same particular areas are vulnerable. The tendons, the ligaments that are the rubber bands . . . get overused and they can get sprained, strained, fatigued and can let go.”<sup>2</sup>
  - “overuse injuries (tendonitis, apophysitis, stress fractures) can be consequences of excessive sports training in child and adult athletes.”<sup>3</sup>
  - “overuse injuries are more common than acute injuries” in youth sport participation, and have a direct correlation to the amount of time a child spends participating in one sport.”<sup>4</sup>
  - “Overuse injuries account for almost half of athletic injuries at the middle/high school level . . . Unlike acute injuries such as broken bones and cuts, overuse take longer to heal because of micro-trauma to still-growing bones and tendons.”<sup>5</sup>
- b. Another problem with sport specialization is the **emotional and psychological toll that it can take on young minds**. Not only has specialization caused an increase in the competition level of community youth sports, it is also being attributed to the decrease of participation by young athletes.
  - “twenty to thirty million 6- to 18-year-olds participate in youth sports programs, but around 80 percent opt out by the age of 12”<sup>6</sup>
  - Dr. Dan Gould of the Institute for the Study of Youth Sports at Michigan State University has done extensive research on the issue of burnout and overtraining in specialized athletes. In his writing, he is quick to point out that not all of student dropout from athletics is due to burnout, but that “many experts feel the number is on the rise.” Dr. Gould lists the negative causes of burnout and overtraining as, “excessive physical and psychological ‘chronic’ stress, little time for recovery, poor distribution of overloads and overtraining, and the many social-psychological issues these athletes face in the future.”<sup>7</sup>
- c. A third issue facing sport specialization is the **extreme burden that families must undertake**. To begin with, there is the financial cost. In 2000, *Muskegon Chronicle* Sports Editor Cindy Fairfield estimated the financial burden for joining an elite team at a minimum of \$1,000. This

number has significantly changed during the following years, as Steve Vedder of the Grand Rapids Press listed the cost for joining a specialized team at up to \$10,000 in 2006.

Beyond finances are the time commitment for games/travel, and the social opportunities that these athletes must sacrifice. Steven Gray writes in 2000 that, “these young athletes specializing in sport are often denied social contacts and experiences. Their world is very narrow, becoming focused on their sport to the exclusion of other sports and influences. Their family life is also typically disrupted in their quest for one-sport perfection.”<sup>8</sup>

During 2016 the MHSAA created a Task Force on Multi-Sport Participation that continues to meet and discuss problems associated with sport specialization by youth that is too early or too intense, and to develop initiatives that will assist schools and leagues and allied organizations to promote sportsmanship, physical literacy and balanced participation leading to a healthier adult life.

### **Sources**

- <sup>1</sup> Hensch, Lynn. “Specialization or Diversification in Youth Sport?” *Strategies*. Vol. 19; No. 5. May/June 2006
- <sup>2</sup> Thornton, Carolyn. “Specialization for Young Athletes Can Have Not-So-Special Effect.” *The Province Journal*. June 20, 2006.
- <sup>3</sup> Anderson, Steven, Greisemer, Bernard, Johnson, Miriam, et. al. “American Academy of Pediatrics: Intensive Training and Sports Specialization in Young Athletes.” *Pediatrics*. Volume 106:No. 1. July 2000.
- <sup>4</sup> Hedstrom, Ryan and Gould, Daniel. “Research in Youth Sports: Critical Issues Status.” *Michigan State University – Institute for the Study of Youth Sports*. November 4, 2004.
- <sup>5</sup> Harris, Sally. “Youth At Risk.” *Dartmouth Alumni Magazine*. July/August 2004.
- <sup>6</sup> Indiana University Office of Media Relations. “Why Kids Ditch Sports.” August 15, 2006.
- <sup>7</sup> Gould, Daniel. “Overtraining and Burnout in Young Athletes.” *Michigan State University – Institute for the Study of Youth Sports*.
- <sup>8</sup> Gray, Steven. “Sport Specialization by Children.” <http://aabs.org>. Accessed: January 14, 2007.

Also see MHSAA.com and stopspportsinjuries.org and:

Shomper, Matthew R., “Benefits of Multiple-Sport Participation Outweigh Sport Specialization,” *High School Sports Today*, May 11, 2011.

## **BENEFITS OF MULTI-SPORT PARTICIPATION**

The MHSAA Website has a page dedicated to the benefits of Multi-Sport Participation here:  
<https://www.mhsaa.com/schools/health-safety-resources/multi-sport-benefits>

Among the resources are:

- MHSAA Multi-Sport Video - Mach 2018
- Inherent Risk of Sports Specialization - Bob Gardner, NFHS, 2018
- 29 of 32 NFL 1st-Round Picks were HS Multi-Sport Athletes - USA Today 2018
- What Drives Winning: Online Resource for Coaches and Character Development
- Specialization vs Multiple Sports - from Muskegon Mona Shores 2018
- Multi-Sport Participation Can Prevent Burnout (Cronkite News, 12/22/15)
- The Stephen Curry Approach to Youth Sports (The Wall Street Journal, 5/17/16)
- 5 Reasons You Want Your Kid to be a Multi-Sport Athlete (ESPN, Oct. 19, 2016)



## **B. Application**

The elected representatives of MHSAA member schools have adopted exceptions to the basic requirement that once a student becomes a member of a school team, he or she participates on no other teams in that sport during the high school season.

1. The regulations allow a student to participate in a maximum of **two individual sports meets or contests during the school season while not representing his or her school.**

Different sports have different problems and needs. For example, in ice hockey, with rare exceptions, schools which cannot afford the high cost of ice time for both varsity and junior varsity squads found the rule to work against the average player and place stress on relationships with non-school programs. Schools which sponsor skiing cited the very short competitive season that was causing the outstanding competitors to avoid practice with their schools until just before the MHSAA meets so they could compete in non-school events for the most highly skilled skiers.

Therefore, for ice hockey and most individual sports, the regulation applies from a student's first participation in a school contest or preseason scrimmage in that sport. In alpine skiing and tennis, the regulation applies from the school team's first contest. For all other sports, the regulation applies from a student's first practice with the school team in that sport.

With respect to the two non-school events in which an individual athlete is allowed to compete after competing with his or her school team in that sport, the MHSAA Representative Council stated specifically that school personnel may have no part in planning or supervision. School people may open their facilities to a non-school event and manage the facility; but school personnel may have no part in planning or managing the meet itself.

See the charts on page 42 for a summary of applications.

**For HIGH SCHOOL students (rules differ at the junior high/middle school level)**

<b>LIMITED TEAM MEMBERSHP: Chart 1</b>	
<i><b>SPORT</b></i>	<i><b>RESTRICTION</b></i>
BA, BB, CC, FB, LAX, SO, SB, VB	1st day of practice by individual
BW, XC, GO, GY, IH, SW, T&F, WR	1st school representation by individual
SKI	1st <b>actual</b> contest or scrimmage by team
TN	1st allowed day of contests for teams

**LIMITED TEAM MEMBERSHP: Chart 2**

<i><b>SPORT</b></i>	<i><b>RESTRICTION</b></i>
Baseball	1st day of practice by individual
Basketball	1st day of practice by individual
Bowling	1st school representation by individual
Competitive Cheer	1st day of practice by individual
Cross Country	1st school representation by individual
Football	1st day of practice by individual
Golf	1st school representation by individual
Gymnastics	1st school representation by individual
Ice Hockey	1st school representation by individual
Lacrosse	1st day of practice by individual
Skiing	1st <b>actual</b> contest or scrimmage by team
Soccer	1st day of practice by individual
Softball	1st day of practice by individual
Swimming	1st school representation by individual
Tennis	1st allowed contest date for teams
Track & Field	1st school representation by individual
Volleyball	1st day of practice by individual
Wrestling	1st school representation by individual



2. The regulations also allow a student to participate as a member of a "**National Team**" or in an "**Olympic Development Program.**"

A National Team is one which is selected by the national governing body of the sport on a national qualification basis either through a defined selective process or actual tryouts for the purpose of international competition, which requires the entries to officially represent their respective nations.

**An Olympic Development Program** is one which is funded by the United States Olympic Committee and conducted or authorized by the national governing body of the sport involved.

Many organizations with very tenuous connections to the USOC claim to be Olympic Development Programs. **Unless the programs are funded in major part by the USOC and conducted or authorized by the national governing body of the sport involved, they are not Olympic Development Programs under MHSAA regulations.**

Rarely, if ever, would more than two members of the same high school team be part of a National Team or Olympic Development Program. The traditional AAU programs in basketball and volleyball are neither National Teams nor Olympic Development Programs.

**The purpose of this regulation is to focus a student's athletic competition on his or her high school team during the season of the sport concerned. The purpose of the exceptions to this regulation is to allow individual athletes reasonable opportunities to participate in non-school competition important to their continued development in the sport. The regulation is violated in its purpose when coaches arrange these outside opportunities to allow athletes to exceed the maximum days of competition permitted under Regulation II, Section 11. School personnel cannot plan or supervise these events.**

### **C. National Team/Olympic Development Exception**

What is now Regulation I, Section 12(D) came to the Michigan High School Athletic Association in essentially the same wording as it appears today as a result of controversies and compromises of the 1960s and 1970s.

At that time, the National Collegiate Athletic Association (NCAA) was challenging the stranglehold of the Amateur Athletic Union (AAU) on international competition in general and the United States Olympic Committee (USOC) in particular. The NCAA - along with the National Association of Intercollegiate Athletics (NAIA), National Junior College Athletic Association (NJCAA) and National Federation of State High School Associations (NF) - created the single sports federation movement to challenge AAU dominance and membership in the USOC. The United States Wrestling Federation (USSF, now USA Wrestling) and the Amateur Basketball Association of the USA (ABA USA) were two of the better known sports federations created.

In the mid-1970s, individual athletes were challenging authorities over international competition, seeking an "Athletes' Bill of Rights."

In response, President Ford appointed in 1976 a blue-ribbon "Commission on Olympic Sports." After several months of testimony and deliberations, the Commission recommendations included that parents should make all international competition decisions and that teachers, coaches and principals participate in an advisory capacity only, recommending that a high school deny students the opportunity to participate in international competition or qualifying domestic competition only if such denial were designed...

"1. To promote the educational welfare of amateur athletes at the school, or

"2. To maintain and protect established sports programs during the regular season for each particular sport at the high school."

State high school associations would have only an advisory role.

Then followed the introduction of a bill in the United States Senate (S. 2036) by Senator Ted Stevens (R-Alaska) which contained a so-called "Amateur Athletes' Bill of Rights Act" which would have prohibited any educational institution or sports organization from denying the athlete the opportunity to compete in international competition and qualifying events sanctioned by the national governing body (NGB) recognized by the USOC, which was to enforce the bill of rights.

As a result of vigorous efforts by the NCAA and National Federation, the proposed legislation was greatly modified prior to passage as the Amateur Sports Act of 1978. Among the changes important to high schools were these:

1. The USOC's authority to resolve disputes was limited to its members. Because neither state high school associations nor individual schools are or can be USOC members, the USOC has no authority to resolve disputes within high school athletics.
2. If that were not clear enough, the Act also includes these two sections (emphasis added):

"Sec. 206. **Any amateur sports organization which conducts amateur athletic competition, participation in which is restricted to a specific class of amateur athletes (such as high school students**, college students, members of the Armed Forces, or similar groups or categories), shall have exclusive jurisdiction over such competition . . ."

"Sec. 202. (a) For the sport which it governs, **a national governing body is under duty to - (2) minimize, through coordination with other amateur sports organizations, conflicts in the scheduling of all practices and competitions;**"

The door to these protections was opened by the offer of a compromise presented at Olympic House in New York City by NCAA attorney Michael Scott and National Federation Assistant Director Jack Roberts. The essence of the compromise is the essence of MHSAA Regulation I, Section 13(C). Roberts agreed on behalf of the National Federation to place such wording in the National Federation Handbook as a part of the Federation's recommendations for policies for its 51 member associations. This was done, and the MHSAA was among many state high school associations that adopted the recommendation, including the following wording in its Handbook for the first time in 1979-80:

A student may participate as an individual at any time without loss of interscholastic eligibility:

"(1) as a member of a National Team, which is defined as one selected by the National Governing Body of the sport on a national qualification basis either through a defined selective process or actual tryouts for the purpose of international competition which requires the entries to officially represent their respective nations, although it is not necessary there be team scoring by nation; or

"(2) in an Olympic Development Program, which is defined as one funded by the United States Olympic Committee and conducted or authorized by the National Governing Body of the sport involved."

The Amateur Sports Act was reviewed by Congress in 1998, but none of the modifications changed the sections quoted above. **The fact remains, Federal law protects high school athletics from interference by the USOC or the NGB for any sport, which have the duty under law to minimize conflicts with high school athletics.**

The current minimum regulation of MHSAA member schools stipulates that to be approved, the request for the ODP/National Team exception . . .

- ◆ Must be for athletes with legitimate possibilities of representing the United States in the Olympic Games or highest level of international championships by the highest level national team;
- ◆ Must be for events that are underwritten in their entirety by the USOC or the national governing body for the sport;
- ◆ Must come with sufficient notice to the administration of the student's school and its statewide high school association that it can be approved in writing (at least 30 days prior to the event) by the local school principal, who attests to the MHSAA that there is a plan to make up all academic requirements; and
- ◆ Must not cause the student to miss his/her school's participation in any part of the MHSAA post-season tournament in that sport.

In May of 2007, the MHSAA Representative Council acted in response to the proliferating and unauthorized use of the phrases "Olympic Development Program" and "national teams" by approval of this statement (*Handbook* Interpretation 172):

"Olympic Development Programs" or "national teams" do not gain the exclusive and exceptional treatment of Section 12(D) because of what they are called. They are evaluated on the basis of what they are. Regardless of what they are called, the following situations (not all-inclusive) do not qualify for the exception of Section 12(D):


- a. state, regional or national championships for non-school club/community teams; and/or
- b. any team whose makeup is less than statewide; and/or
- c. any competition that involves residents of Michigan only.

"A program containing any one of the above (but not limited to these situations) is NOT an Olympic Development Program for the purposes of this Section."

#### **D. "All-Star" Games/"National Championships"**

The membership of the Michigan High School Athletic Association is opposed to all-star events and national championships and urges school personnel and booster clubs to have no involvement with such events at any time.

This is consistent with the philosophy that school competition beyond Michigan's borders and the defined school season is usually unnecessary and, if uncontrolled, leads to excessive travel, excessive absences from school, specialization in a single sport, and overemphasis by individuals and entire institutions toward one athlete over others, or the overemphasis of sports in comparison to the other academic and non-academic activities of a school.



The rule tends to keep students in class and in other sports and activities of the school. It tends to keep students from engaging in the spring tours of all-star events that more often exploit athletes than enrich them academically, athletically or culturally.

All-star teams are usually picked by ballot or by an organization, league, newspaper, radio/television station, or by a similar method and are composed of outstanding competitors from two or more high school teams. A national high school championship includes any athletic event, regardless of title, which attempts to draw to it or its qualifying rounds only the top place winner or winners from more than one state high school association championship meet.

Participation in such contests by high school students causes them to become ineligible for all interscholastic athletics for a maximum period of one year of school enrollment from the date of the athlete's last violation of the regulation.

Limitations for adult school personnel and officials are in effect during the school year. Such personnel should not assist either directly or indirectly with the coaching, management, direction, selection or transportation of players, promotion, or officiating of any all-star contest or national championship event in any MHSAA-sponsored sport. Any high school which uses an individual as a coach or manager of an interscholastic athletic team who violates this rule shall be subject to probation or suspension. Officials violating the regulation shall be denied MHSAA registration for at least one year.

School officials should be wary of all invitations received by student-athletes to participate in "all-star" events. There are any number of promoters offering "attractive" packages to athletes and coaches to participate in such events. Review the entirety of Handbook language or call the MHSAA if you have specific questions and remind all athletes of the limitations of the amateur and awards rules.

The scope and perspective which the all-star prohibition provided was sometimes lost on the **penalty** that a student who participated in an all-star event would become eligible for all sports. This was a problem for spring sport athletes who in their 12th grade participated in an all-star event for a fall or winter sport and then could not play a spring sport. To remedy this and not create dozens of new all-star events, some conditions were created for participation and the penalty was set to the sport in which the all-star participation occurred. Effective with 2014-15, a 12th-grade student could be involved in one proper all-star event after their season and continue eligibility in other sports.

## **1. National Federation Opposition**

### **ALL-STAR AND POSTSEASON CONTESTS**

The National Federation of State High School Associations (NFHS) has long had concerns that potential abuses could arise from high school students' participation in all-star and postseason contests. The National Council of the NFHS has encouraged strict regulations to prevent the abuses which could grow if the bowl, all-star or charity games were to be permitted without limitation. A resolution passed at the 1947 Summer Meeting took a strong position in opposition to such contests. That position was reaffirmed at the 1948 National Council meeting.

In 1978, a joint statement addressing the proliferation of all-star events during the school year was issued by the NFHS, National Collegiate Athletic Association, National Association of Intercollegiate Athletics and National Junior College Athletic Association. The text is as follows:

"THE NATIONAL FEDERATION OF STATE HIGH SCHOOL ASSOCIATIONS, the National Junior College Athletic Association, the National Association of Intercollegiate Athletics and the National Collegiate Athletic Association have prepared this statement to express the concern of each organization in regard to recent proliferation of high school all-star games scheduled during the academic year.

"PARTICIPATION in these all-star contests has resulted in significant loss of class time for the student-athletes involved, creating situations in which the student-athlete may not meet reasonable attendance standards during his senior year in high school. As a result, these all-star games may interfere with the academic pursuits of the student-athletes, and could affect their academic eligibility to participate as college freshmen in intercollegiate athletics. Further, in some instances, these all-star games serve primarily to benefit the promoters of the contests.

"THEREFORE, this statement has been adopted to encourage high school administrators to uphold reasonable academic and attendance standards for all students, regardless of their athletic interests.

"THE INORDINATE loss of class time due to participation in high school all-star games is a problem which high school administrators can help to solve by enforcing attendance requirements. Such action is consistent with the objective of maintaining athletics as an integral part of the high school educational program.

"ACCORDINGLY, the NFHS, the NJCAA, the NAIA and the NCAA urge the support of high school administrators in discouraging participation in high school all-star games scheduled during the academic year. With this support, the exploitation of high school students by promoters of such competition can be curtailed."

— 2016-17 Handbook,  
National Federation of State  
High School Associations

## **2. MASB Position Statement**

Every year since 2003, the Delegate Assembly of the Michigan Association of School Boards has adopted the following statement:

“The Michigan Association of School Boards opposes the formation of national tournaments for high school athletics. The MASB urges local districts to resist efforts to enlist their support for, and participation in, these tournaments.”

## **3. MASSP Position Statement**

### **Regarding the Promotion of National High School Championships**

*Approved by Board of Directors*

*September 30, 2003*

“The Board of Directors of the Michigan Association of Secondary School Principals (MASSP) **believes** interscholastic athletics are secondary to the academic program of schools and are partners with schools non-athletic activities in providing students opportunities to develop loyalty and school spirit, to practice teamwork, hard work, discipline, sacrifice, leadership and sportsmanship and to gain lifetime appreciation for the arts, sports, and a healthy lifestyle.

The Board of Directors of the Michigan Association of Secondary School Principals (MASSP) **believes** that the proper philosophy of interscholastic athletics emphasizes participation by many, not for a few, and academic scholarship in high school, not athletic scholarships to college.

The Board of Directors of the Michigan Association of Secondary School Principals (MASSP) **believes** that to promote competitive equity and a program that is educational in both its means and its ends, the policies and procedures of interscholastic athletics must be determined by school representation, not by courts, legislators, or commercial interests.

The Board of Directors of the Michigan Association of Secondary School Principals (MASSP) **believes** all Michigan secondary school principals should oppose the formation of national tournaments for high school athletics. The MASSP Board of Directors urges all school districts to resist efforts to enlist their support for, and participation in, these tournaments.

The Board of Directors of the Michigan Association of Secondary School Principals (MASSP) believes the National Federation of State High School Associations should continue to oppose the development of such national championships.”

#### **4. National Association of State Boards of Education**

During 2004, the National Association of State Boards of Education (NASBE) convened a commission "to assess the state of high school athletics and recommend policies for adoption by states, districts and schools advocating that athletic programs support, rather than undermine, student academic achievement.

**The Report of the NASBE Commission, "High School Athletics in an Era of Reform," was released in November and states the following: "There is an urgent need to address this issue as professional sports increasingly encroach upon academics. Indeed, the problems that have plagued college athletics - such as unscrupulous agents, mercenary coaches, questionable recruiting practices, and extravagant benefits bestowed upon players - are now becoming more frequent at the high school level and, in some instances, the middle school level, all which are associated more with all-star events and national tournaments than regular season play and state high school tournaments.**

#### **5. Key 2018-19 MHSAA Handbook Provisions**

**Regulation I, Section 12(B)** - After once participating for MHSAA member school in a contest in any MHSAA tournament sport, a student shall not compete at any time in any MHSAA Tournament Sport in any of the following events: (1) Any event which is or purports to be an "All-Star" contest, regardless of the method of selection, or one in which there is participation by one or more all-star teams; (2) "All-Star" fundraising events or similar exhibitions if they involve participants other than the students and faculty of that student's school; (3) any event which is or purports to be a national high school championship, or the qualification thereto. Except as permitted under Section 12(C), participation in (1), (2), or (3) above by a high school student shall cause that student to become ineligible for all interscholastic athletics for a maximum period of one year of school enrollment from the date of the student's last violation of this Section.

**Regulation I, Section 12(C)** - A student who has completed his or her 12th-grade season in a sport may participate without loss of eligibility for other sports in one high school all-star event in that sport if held after the MHSAA Final in that sport, providing the following are complied with:



- a. The student is eligible under all MHSAA regulations, including but not limited to MHSAA minimum standards for academic eligibility and amateur status.
- b. The event requires or receives no financial support from an MHSAA member school or organization that exists because of the school.
- c. Participation is approved by the student's high school principal, and the MHSAA is notified **in writing** by the principal at least 30 calendar days prior to the event.
- d. The student makes prior arrangement to complete missed academic lessons, assignments and tests before the last day of classes of the credit grading period in which that student's absence occurs.
- e. The student misses no MHSAA-sponsored tournament event involving that student's school team in the subsequent sport in which the student intends to be eligible.
- f. The student does not violate the MHSAA amateur status/awards rule as a result of any activity directly or indirectly associated with the event.

**Interpretation No. 162 - An "all-star" team** is one which is called "all-star" or whose membership is elected by ballot, or by any organization, league, newspaper, radio/television station, or by any similar method or agency, and which is composed of outstanding competitors from two or more high school teams. Alumni games are not considered "all-star" games but must be counted as a scrimmage or contest.

**Interpretation No. 163 - An "all-star" contest** is one which is called "all-star" and/or in which there is participation by one or more "all-star" teams.

**Interpretation No. 164** - If there is no limit to the number of people invited to a tryout, or if the tryout is performed throughout a non-school season (such as summer American Legion baseball), athletes may be selected for and compete on teams on the basis of those tryouts without violating the "all-star" regulation. To meet the requirement of an open tryout, notice must be provided in at least two different public media, or at least twice in the same public medium, at least seven days prior to the tryouts.

**Interpretation No. 165** - If based on performance during a camp open to all students and not on their performance during the interscholastic season, then students may be selected for and compete in feature contests at the end of that camp. However, it is a violation of the all-star regulation to invite a limited number of students to a camp on the basis of their demonstrated interscholastic ability, place them on teams and play games between those teams.

**Interpretation No. 166** - If a non-school tournament host posts times, heights, distances or scores that qualifiers must achieve to enter a competition which is not counted as one of the allowable contests or days of competition for the school or individuals involved, all who meet the standards must be allowed to compete; and if they compete as **individuals** and are not placed on teams (such as North vs. South; Class A vs. Classes B, C, D; Michigan vs. Ohio, German Nationals, etc.), they will not violate the "all-star" regulation. However, if only the top several qualifiers are allowed to compete, they will violate the "all-star" regulation even if they compete as individuals.

**NOTE:** The above does not apply **during the school season in meets sponsored and conducted by schools and counted as one of the allowable contests or days of competition** by all schools and individuals.

**Interpretation No. 167** - When the basis of selection to participate is limited to athletic performances in non-school events, and the event is not called an all star event, an individual may participate in that event without violating the all star prohibition of this section.

**Interpretation No. 168** - Except as permitted in Section 12(C), students in grades 7-12 shall not compete in "all-star" contests in any MHSAA Tournament sport under the jurisdiction of the Michigan High School Athletic Association. Students may be named to an all-star team and practice with that team. A

violation occurs when students **compete** with or against an all-star team or in an event or program termed "all-star" or meeting the criteria of Interpretations 146-150.

**Interpretation No. 169 - A national high school championship** includes any athletic event, regardless of title, which attempts to draw to it or its qualifying rounds only the top place winner or winners from more than one state high school association championship meet or is based upon high school regular-season or postseason tournament performances. A student may participate without loss of eligibility if all of the following conditions are met:

- a. The event is not called or promoted as a national high school championship;
- b. Qualification is not based on performances in the high school season or MHSAA tournament results;
- c. The event is open to all non-school teams or individuals who qualify directly through one or more non-school events, or the event is without qualifying standards and is open to any individual who pays the entry fee;
- d. If a team event, teams are not to be made up of students from a single MHSAA member school;
- e. Teams and individuals do not represent an MHSAA member school; and
- f. No MHSAA member school uniforms, transportation, funds or coaches are involved.

**Interpretation No. 197** - No member school or individuals representing a member school may participate in any athletic event which is or purports to be a national high school championship, or the qualification thereto, in a sport under MHSAA jurisdiction if any of the participants is enrolled in a MHSAA member school at the time of the event.

**Regulation II, Section 13(A)** - No athletic director, coach, teacher or administrator of a MHSAA member school, and no athletic official registered with the Michigan High School Athletic Association shall, at any time during the school year for his or her school, assist either directly or indirectly with the coaching, management, direction, selection or transportation of players, promotion, or officiating of any "All-Star" exhibition or similar contest, or of any contest this is or purports to be a national high school championship event (or national junior high/middle school championship event) or the qualification thereto, in any MHSAA tournament sport if any of the participants is enrolled in an MHSAA member high school at the time of the event.

**Interpretation No. 248** - The membership of the Michigan High School Athletic Association is opposed to all-star events and national championships and urges its member schools and their personnel and booster clubs to have no involvement with such events at any time. The meaning of Section 13 is to prohibit any involvement.

## **6. Application of Provisions**

If a student qualifies for an event on the basis of criteria **unrelated** to the school season and competes **without any support from or connection to** his/her school, there is no violation of the all-star or national championship rule unless the event is called "all-star" or a "national high school championship."

- a. If a student who is a member of a school's team participates in local, state, regional, national or international events in the same sport, there is no violation if the events or the qualifiers to the events are open to competitors without regard to any performance in school events and the student competes without support from or connection to his/her school. This may occur twice during that student's school season in that sport.
- b. During the cross country season, a student may participate twice without any support from or connection to his/her school in cross country or road race-like events. During the school's track and field season, a student may participate twice without any support from or connection to his/her school in events of 3,200 meters or less. In each case, the qualifying must be unconnected

to the interscholastic season and the event may not be titled "all-star" or a "national high school championship."

- c. There is no limit on the number of times a student-athlete may compete on his or her own **outside** his/her school's cross country and track and field seasons; and if the events exceed 5,000 meters in length, there is no limit on the number of times the student may do this **during** his/her school's cross country season, and if the events exceed 3,200 meters in length, there is no limit on the number of times the student may do this **during** his/her school's track and field season.

## **PART IX. OUT-OF-SEASON COACHING AND COMPETITION**

### **A. History and Rationale**

The first rules regarding out-of-season activity in Michigan appear in the 1920s and address summer baseball and the concern that boys not be paid or play on summer baseball teams where others are paid. In other words, like so many of our earliest rules, the concern was for amateurism and for getting the paid players out of school-sponsored sports.

In 1930-31, we find the first limits on out-of-season practice: no football practice could occur between January 1 and Labor Day. Here is the definition of football practice under this section of the rules (this is where we find for the first time the rudiments of language we now refer to as the "3-player" rule; it was applied only to football and applied whether or not the coach was present):

"By football practice is meant any organized or supervised practice on the part of players or on the part of players and coaches or coaches' representatives during the summer. For instance, a group of three boys following a definitely laid out plan of offensive and defensive line play given them by the coach would be considered as organized for practice. Mapping out by the coach of a definite course of practice to be followed by small groups during the summer would be considered as organized and supervised practice."

For 1936-37, the prohibited period for football practice was changed **from** Jan. 1 to Labor Day **to** the day after Thanksgiving to Sept. 1. Clearly it was football that was the dominant school sport and the one requiring restrictions so that other school programs could operate without interference from football. In fact, protecting so-called "minor sports" from the more dominating sports is still a solid reason for out-of-season coaching limitations in educational athletics.

In the 1920s and 30s, except for baseball, there weren't organized sports for high school age students outside of school sponsorship and the school season; and, apparently except for football, there weren't pressures within school sports to focus on one sport at the expense of others. One can assume that because schools were smaller and sports offerings were fewer, and because students were **playing** multiple sports and faculty members were **coaching** multiple sports, programs cooperated well with one another.

The mostly cooperative, collaborative environment within schools and the almost "only game in town" monopoly status school sports enjoyed in the lives of youth lasted beyond the second World War, beyond the Korean Conflict and into the Vietnam War era. In Michigan, more and more words were being used to control **football** coaches out of season, and other sports received almost **no** attention.

For additional out-of-season coaching restrictions we have to jump all the way to the 1975-76 school year to find significant new **non-football** related *Handbook* language, specifically the application of a 3-player rule to **all** sports. It reads as follows: "During the school year, a coach may coach a maximum of three individuals at a time except from the beginning day of practice to the end of the season . . ."

Then in 1981-82, the following language appears for the first time (the first special treatment for basketball):

"SECTION 11(H) - School sponsored summer basketball programs are not permitted. Under the term 'school sponsored summer basketball' is included, but is not limited to, any of the following items or procedures:

"Use of school transportation or wearing apparel, liability insurance provided by the school, entry forms provided by the school, school payment of any entry fees (personal or team), payment of any coach's salary or fees, purchase of insurance coverage for a school sponsored program, school approved entry forms, mandatory practices, payment of any fees by the Board of Education."

This is evidence that while football continued to have its own, ever-expanding section outlining dos and don'ts of the off season, out-of-season basketball conflicts were on the rise in the early 80s.

In 1984-85, more new language appears, and it applies to **all** sports:

"SECTION 11(H) - A school sponsored athletic program as it relates to out-of-season competition includes, but is not limited to, any of the following items or procedures:


"Use of school transportation or wearing apparel, liability insurance provided by the school, entry forms provided by the school, school payment of any entry fees (personal or team), payment of any coach's salary or fees, purchase of insurance coverage for a school-sponsored program, school approved entry forms, mandatory practices, payment of any fees by the board of education."

During the 1986-87 school year, there were three topics that dominated the concerns of our school administrators: (1) officiating; (2) cheerleading; and (3) summer basketball . . . there was the widely held opinion that there was far too much school and school coach involvement in summer basketball.

Those feelings have not moderated over the past 28 years, but we are aware that there are now concerns for many sports . . . sports that, unlike football and basketball, started outside schools and came later to schools . . . sports like soccer and ice hockey where it could be argued schools have interfered with non-school programs, rather than the other way around.

Nevertheless, reasons remain for applying out-of-season restrictions to all sports sponsored by schools. Limitations on out-of-season support by schools and involvement by school coaches tend to . . .

- Reduce sports specialization by students, repetitive stress injuries and burnout.
- Reduce pressures on coaches, and burnout.
- Reduce expenses for schools related to athletics.
- Reduce liability exposure for schools relative to athletics.
- Reduce disparity between "haves" and "have-nots," and increase competitive equity without having to "keep up with the Joneses."
- Increase legitimacy of defined school seasons.
- More fairly distribute school resources (facilities, funds, personnel) across more sports and levels of teams.
- Avoid or deescalate an "arms race" in school sports.
- Make school sports more family friendly for participants.
- Encourage more family time for coaches and enable more females to prolong coaching careers.
- Facilitate students' academic pursuits, their interests in multiple sports and varied non-athletic activities of schools, and their desires to be involved in community activities and/or hold part-time jobs.



Older coaches may see the need for common sense that younger, more zealous coaches will call laziness. There are no more parents that beg us to give the children more family time than there are parents who berate us for interfering with their child's pursuit of a college scholarship, Olympic medal or professional career.

**It may be fashionable and appear "progressive" to relax or eliminate out-of-season coaching rules; but before doing so, we who are the stewards of educational athletics should consider the consequences . . . should try to picture interscholastic athletics with year-around programs for each and every sport, each and every coach, and each and every athlete. That's not a pretty picture, but a view of a fractured program where programs and participants are isolated from others and the educational mission of schools. In Michigan there have been efforts both to toughen and "modernize" rules and yet to resist the "anything goes" trend.**

In the late 1980s, much effort was made to clarify terms and tighten interpretations related to schools' support and interscholastic coaches' involvement with students out of season. At the time, it seemed for every step in the direction of limiting contact, there was also a step in the opposite direction, and little net gain for either those who sought increased restrictions or those who sought more out-of-season activity.

However, looking back, it is clear now that a number of changes of the late 1980s provided tools to at least slow down the increasing scope of out-of-season activities by the most aggressive coaches, including clarifying for the first time in 1988-89 that "three players" of the three-player rule meant not just three players off last year's team but three students in grades 7 through 12 of the same school district of the coach involved.

Beginning with the 1994-95 school year, a limitation was placed on the number of days during the summer that a school coach could be involved in competition when the number of students from that school district are involved.


- It's 15 days with more than 3 such students in the sport of basketball, ice hockey and volleyball.
- It's 15 days with more than 7 such students in the sports of lacrosse and soccer.
- It's 7 days with more than 7 such students in football (no more than 7 players may engage in competition at any one time).

While this had the effect of scaling back some coaches, the specified maximum number of days actually may have increased what a lot of other coaches were doing.

In May of 2005, the MHSAA Representative Council took three actions:

1. It approved a waiver procedure for the "three player" rule in bowling, golf, gymnastics, swimming & diving and tennis which the Executive Committee has approved in more than 80 percent of cases brought before it. See *Handbook* Interpretation 233.
2. In response to requests from several sport committees for more specific and stern penalties for out-of-season coaching, the Council approved a three-step progression. See Regulation II, Section 11(H) 7.
3. The Council directed the staff to keep working on the out-of-season issues - including open gyms, conditioning programs and curriculum classes - and adopted the following principles to guide the discussions and development of proposals.



- 
- a. Rules restricting practice and competition outside the school season should focus on the coach more than the student-athlete.
    - Students should be free to pursue their goals; they should also be free of adult pressures to pursue one particular goal.
  - b. The purpose of limitations on out-of-season school coach and athlete contact is to allow individual students reasonable opportunities to pursue training that is important to their continued development in a sport.
    - Such opportunities must not interfere with students' development in other sports, non-athletic activities, academics and community service.
  - c. School coaches can be an important, positive influence in the lives of students.
    - Interaction between school coaches and athletes out of season can be a healthy experience for both.
  - d. Reasonable limitations on school coach and athlete interaction out of season are necessary for the health and welfare of students, as well as to assure competitive equity (fairness) in season.
    - Without reasonable limitations, all school coaches and athletes would be compelled to match the most extreme and endlessly increasing efforts of some coaches and athletes out of season in order to have a reasonable opportunity for success in season.

In May of 2006, the Council adopted three kinds of changes which have the common theme of deescalating out-of-season activities and lowering the pressure on students to be "unofficially" involved with their school coach and teammates out of season.

- A 7-day summer dead period when open gyms and conditioning programs shall not occur on school premises or at other places sponsored by a member school, and coaches of MHSAA sports other than baseball and softball shall not be involved with more than 3 students in competition settings.
- A preseason down time for every sport just prior to each season (fall, winter and spring) when open gyms shall not occur. Even coaches of fall sports would be limited to working with no more than 3 students in instructional settings.
- A requirement that curriculum courses provide instruction during each trimester or semester in at least three MHSAA sports, if they provide instruction in any MHSAA sport at all. The courses must be open to all students regardless of their past or future participation on interscholastic teams.

In May of 2009, building on the work that began in 2005 and the special focus of two task force meetings and many discussions at Athletic Director In-Service Meetings and meetings with leagues and coaches associations leadership, the Representative Council made four modifications to our-of-season coaching rules:

1. The requirement was eliminated that open gyms have a diversity of activity, and it is now emphasized that there not be any organized drills, no practice structure and no instruction regarding offensive or defensive teams by any person, including team captains and parents.
2. Use of non-competition practice jerseys of schools at out-of-season camps and competitions is now allowed.
3. The "three-player" rule was increased to a four-player rule for all sports out of season during the school year during coach/athlete interaction that does not include practice or competition with students or others not enrolled in that school district.



4. The limited player rule (three or four) now ends on the same date for all schools regardless of when their school year ends in the spring (summer rules begin Monday after Memorial Day observed - June 1, 2015).

During the 2014-15 school year, the MHSAA staff led a statewide discussion of new ways to monitor and manage out-of-season coaching during the school year. The new approach would have moved from rules that regulate the number of players to rules that regulate the number of days when coaches could work with any number of players, and to defining “contact periods” with any number of players and “non-contact periods” when coaches could coach no players at all outside the school season during the school year. This alternative approach lost support the more its actual administration was discussed, even though there was general agreement on the principle of allowing school coaches more out-of-season time with school athletes so long as neither coaches nor athletes would feel more pressure to specialize in a single sport year-round.

While the new paradigm was not popular with MHSAA constituents, support gathered around several modifications of the existing rules, and these changes were made:

1. The rule that permits coaches to work with either three or four players out of season, depending on the circumstances, was changed to a **four**-player maximum in all of those circumstances.
2. The phrase “under one roof” was removed from Regulation II, Section 11 (H) 2a. Coaches of non-school teams are now allowed to provide coaching in non-school competition to four students of that coach’s school district while, in another part of the facility or on the same court, other students from that same school district are receiving coaching from another coach, even one of the same school, provided the competition is a result of a tournament draw or progression (See Interpretation 235).
3. The portion of 2019-20 *Handbook* Interpretation 235 that prohibits rotations was removed, provided only one station of the four-player rotations provides sport-specific training.
4. Clarifications to that which is allowed under the four player rule rotations were approved by the Representative Council taking effect Aug 1, 2016.

Rotations that permit sport specific activity without actual coaching instruction must follow the elements of an “open gym:” Student-conducted; students choose from offered activities. Coaches may not coach, instruct, evaluate or participate. Recreational emphasis; not an organized program of instruction and/or competition.

No organized drills, practice structure and no instruction by any person, including team captains and parents. (Interpretation 235)

It was also clarified that during if the same person is a school’s coach for both the boys and girls teams in a sport during the school year, then four students of each gender may receive coaching at the same time and place, but the four-player groups may not interact in any activity. This applies when the off season is at the same time for both sports, such as October in boys and girls basketball, or January for boys and girls tennis.

A clarification was also established for out of season practices with four players at **non-school facilities with multiple playing surfaces**. In instances where the school coach is working with four students as permitted and in another part of the facility are other students from the same school of district resulting in more than four players receiving coaching at the same facility. An allowance was permitted at Interpretation 236 for the **incidental presence of more than four players**, regardless of the coach’s employment by the facility, provided the coach had no advance involvement (arranging or promoting) in the participation of more than four students from the school district.

**Michigan's approach is to focus on member schools and their personnel, not the kids. A voluntary association of schools can agree on what its member institutions can and can't do and then that the association can demand that these schools tell their coaches what they can and can't do. This**

approach can provide adequate regulation and restraint without interfering with the decisions parents and kids want to make and the dreams (or fantasies) they wish to pursue.

## **B. Application**

See Appendix “B.”

# **PART X. TRAVEL & TV**

## **A. History and Rationale**

Statewide high school associations across the country share many philosophies and hold to many common rules. When their personnel gather at national meetings, they discuss common issues; and when they disperse to their respective states, they confront many of the same problems.

This pattern is broken, however, when it comes to Michigan and two rules that, in combination, are almost unique to the MHSAA: (1) no long-distance travel for interstate events, and (2) live video broadcasts of regular-season events.

It is a direct result of these rare rules that Michigan has avoided problems that are frequent in many other states. By MHSAA member schools agreeing not to travel nationwide and not to participate in national-scope events and by agreeing not to televise their events live, those schools have been able to help local administration maintain certain programs, teams, coaches, and athletes within a school-based philosophy.

Where states allow live video and allow students to participate in national tournaments, coaches often outgrow administrators in prominence and then outrank them in community clout. Those programs then tend to create transfer and recruiting “advantages” in comparison to other schools. And even if they don’t like it, other schools have to copy the renegade schools in order to keep pace in competition for students as well as on the scoreboard.

In Michigan, such problems are largely avoided; and the rules most responsible for this are the limitations on travel and television.

States which allow regular-season live high school video and national tournaments tend more quickly to lose the perspective of educational athletics. Some think that what schools must already do to win a statewide championship adversely impacts a school’s educational mission – imagine if we sought national prominence and the spotlight of live video. Athletes in our school buildings need less celebrity status, not more. The spotlight does not help student-athletes battle unpopular stereotypes.

Michigan schools have championed the concept that high school sports is local and in-person – not live on television except for the rare state final. Gate receipts as a revenue stream for a school are more important than a live stream of video, and the television rule tends to protect this.

Restricting travel and video to reasonable limits as technology expands and bridges our world closer together fits with the philosophy that school sports is about the many, not the few; and about the entire team, not just the best player.

## **B. Travel** (Also see pp. 42-47)

For 2012-13, Sections 5 and 6 of Regulation II were reorganized so that Section 5 deals with contests involving in-state schools only and Section 6 addresses requirements for contests with out-of-state schools; and these sections have been expanded to more completely state the sanctioning requirements of the National Federation of State High School Associations of which the MHSAA is a founding member.

The revisions for 2012-13 reflect the growing concerns of the NFHS for competitions organized by non-school entities.

It is in Section 6, Interpretation 193, that the interstate travel limit is presented:

- a. No member school shall compete in any interstate meet, contest or scrimmage which involves travel of more than 600 highway miles round-trip for any participating team.
- b. Schools are prohibited from participating in two-team competition at multi-school interstate events where any team involved in any contest of the event must travel more than 600 highway miles round-trip.
- c. For competition involving schools exclusively from and occurring only within Michigan, Illinois, Indiana, Ohio, Wisconsin and Ontario, MHSAA member schools may compete regardless of the travel distance for any participating team.

Except for the addition of Illinois for 2014-15, this is essentially unchanged since the 1983-84 *Handbook*.

## **C. Television**

Regulations dealing with video broadcasting moved from a document for broadcasters and tournament managers to the *MHSAA Handbook* for 1988-89. In almost every year since, there have been some modifications in language, reflecting how fast-changing the field of video broadcasting has become. The prohibition of live video broadcasts first appeared in the 1989-90 *Handbook*.


Today, Regulation II, Section 14 states (in part):

### SECTION 14(B)—

1. No school may distribute live video – or grant on a complimentary or fee basis to either a profit or nonprofit entity – the rights to distribute live video of any interscholastic event in which any MHSAA member school is a participant in any MHSAA tournament sport.
2. A member school may not participate in a regular-season contest in which the video is distributed live by any entity (participating school, media outlet or event sponsor) in any such sport.
3. Delayed video distribution of events involving any MHSAA member school in any MHSAA tournament sport may begin immediately after the completion of the live event.
4. Video of MHSAA postseason tournament contests may be distributed according to policies and procedures established by the MHSAA for its tournaments, including restrictions on live video streaming through social media.

An exception to Section 14(B) is found in Interpretation 251, addressing student productions:

251. Approval for video distribution of interscholastic contests in sports under MHSAA jurisdiction on a live basis may be granted to a school by the MHSAA Executive Director when the following conditions are met:

- 
- a. MHSAA member schools participating in the School Broadcast Program are automatically approved for this waiver. MHSAA member schools playing at out-of-state schools which participate in the NFHS Network's School Broadcast Program are also approved to play in contests with live streaming video.
  - b. For schools not participating in the School Broadcast Program, waiver is available for a school-produced broadcast on a platform under its control and choosing; including, but not limited to – district dedicated cable television channel, school website, closed social media group, private or password/paywall-protected URL. School affiliated groups only may produce the content – student class/club, booster club. No production fees may be paid to outside groups. MHSAA member schools playing at out-of-state schools which stream live video on a password protected or subscription basis are approved for participation in such events.
  - c. Non-School Broadcast Program member schools may be granted waiver for regular-season events only.
  - d. Non-School Broadcast Program member schools must provide access to the live stream to be simultaneously distributed on the NFHS Network in order to be granted waiver.
  - e. Non-School Broadcast Program member schools must commit to a schedule of events in order to be granted waiver. No one-off events are permitted, nor is distribution of games not involving the school granted waiver.
  - f. Live originations are permitted of regular-season events and MHSAA tournaments by the MHSAA's year-round contracted video associates – NFHS Network and FOX Sports Detroit.
  - g. Additional details can be found in the MHSAA Multi-Media Regulations.
- Approval shall not be granted to schools not participating in the School Broadcast Program for MHSAA Tournament contests.

## PART XI. RESTITUTION

### A. History and Rationale

**The most essential regulation of most state high school associations for preserving fairness in school sports is the rule which preserves the right of the association to appeal an adverse court judgment after the game has been played, the season has ended or the student has graduated. In Michigan, the rule is Regulation V, Section 4(C).**

In 1991, the Michigan Supreme Court upheld this regulation in Cardinal Mooney High School v. The Michigan High School Athletic Association. See Appendix "C," page C- 4.

The Michigan Supreme Court described the restitution rule as "a valid regulation which neither infringes the authority of the courts nor improperly restricts access to the judicial system."

In 1995, the Sixth Circuit of the US Court of Appeals determined this regulation prevented dismissal of an appeal based on mootness in Sandison v. The Michigan High School Athletic Association. See Appendix "C," page C-5.

In 1997, in McPherson v. The Michigan High School Athletic Association, the Sixth Circuit of the US Court of Appeals determined that graduation from high school does not render a case moot because of the existence of this regulation. See Appendix "C," page C-6.

In two cases, the Supreme Court of Indiana has upheld the almost identically-worded restitution rule of the Indiana High School Athletic Association with two particularly lucid opinions which depended in part on the opinion in Cardinal Mooney:

1. In Reyes v. Indiana High School Athletic Association 1998 WL 7094 (Ind), the Indiana Supreme Court held:

"We presume the judgments of our trial courts are correct and valid - but sometimes they are wrong. If a school wants to enjoy the benefits of membership in the IHSAA, the school agrees to be subject to rule that permits the IHSAA to require the school to forfeit victories, trophies, titles and earnings if a trial court improperly grants an injunction or restraining order prohibiting enforcement of IHSAA eligibility rules. Such an agreement shows no disrespect to the institution of the judiciary.

"Member schools voluntarily contract to abide by the rules of the organization in exchange for membership in the association. One of those rules is the Restitution Rule. Undeniably, the Restitution Rule imposes hardship on a school that, in compliance with an order of a court which is later vacated, fields an ineligible player. On the other hand, use of an ineligible player imposes a hardship on other teams that must compete against the teams fielding ineligible players. While schools will contend that it is unfair when they have to forfeit victories earned with an ineligible player on the field because they complied with a court order, competing schools will reply that it is unfair when they have to compete against a team with an ineligible student athlete because a local trial judge prohibited the school or the IHSAA from following the eligibility rules. The Restitution Rule represents the agreement of IHSAA members on how to balance those two competing interests. The Restitution Rule may not be the best method to deal with such situations. However, it is the method which the member schools have adopted. And in any event, its enforcement by the IHSAA does not impinge upon the judiciary's function."

2. In Indiana High School Athletic Association v. Carlberg 1997 WL 781628 (Ind), the Indiana Supreme Court included this passage:

". . . we agree with the IHSAA that there is an interest in 'restitution and fairness' to schools which and athletes who compete against ineligible students. While the IHSAA might take a different approach to further this interest, we find the approach taken here not arbitrary or capricious for the same reason as did our counterparts in Michigan:

" 'It (the restitution rule) is reasonably designed to rectify the competitive inequities that would inevitably occur if schools were permitted without penalty to field ineligible athletes under the protection of a temporary restraining order, pending the outcome of an ultimately unsuccessful legal challenge to one or more eligibility rules. We find relevant to our decision the fact that (the Michigan version of the restitution rule) does not purport to authorize interference with any court order during the time it remains in effect, but only authorizes restitutive penalties when a temporary restraining order is ultimately dissolved and the challenged eligibility rule remains undisturbed in force . . . Furthermore, compliance with MHSAA rules on the part of student athletes is an appropriate and justifiable condition of the privilege of participating in interscholastic athletics under the auspices of the MHSAA.'

"Cardinal Mooney High School v. Michigan High School Athletic Association 467 N.W.2d 21, 24 (Mich. 1991). See also Reyes 659 N.E.2d at 170."

## **B. Application**

Here are some issues and answers regarding the restitution rule:

1. **ISSUE:** The rule is unnecessary.

**ANSWER:** Repeatedly during the 1980s, lawsuits would be filed just hours before the start of a season challenging an eligibility rule. It was plaintiff's objective to gain temporary injunction that would not get overturned until the student's season or school year ended; and then they would argue that the case was moot. Opposing schools had no recourse against the participation by the student who was ineligible under the rule.

The Michigan Supreme Court's decision to consider the restitution rule in Cardinal Mooney was a result of the Michigan Court of Appeals refusing to do so in that case and four previous cases – O'Rourke (1986), Berschback (1987), Kennedy (1988), and Lash (1988) – and the repetitious petitions by the MHSAA to the Supreme Court. In determining the validity of the rule in Cardinal Mooney, the Supreme Court found for the validity of the rule **generally**, if consistently applied.

2. **ISSUE:** The restitution rule is an affront to the integrity of the school which complies with a valid court order.

**ANSWER:** The restitution rule has nothing to do with the integrity of schools: rather, it attempts to restore integrity to the **contest** by insisting that the result of using ineligible athletes in this contest is the same as in all other contests.

3. **ISSUE:** Regulation V, Section 4(C) penalizes people who go to court and/or penalizes schools that comply with court orders.



**ANSWER:** A school which utilizes an ineligible student under a court order receives no penalty except that which applies to any other school which uses an ineligible student for any other reason. The penalty is the same in all cases: forfeiture.

**Ineligible Athlete Participates      Result**

Accidentally	→	Forfeit
Intentionally	→	Forfeit
Other use (e.g. deceit by student; Under court order which is vacated, stayed, reversed, etc.)	→	Forfeit

To quote the Supreme Court of Michigan on this subject:

"The MHSAA does not single out for sanctions only those violations of MHSAA rules that occur incidental to a court order." The regulation "is merely one feature of a broader framework imposing sanctions for any accidental, intentional, or other use of ineligible players." The "sanctions are, in actuality, triggered simply by violations of the MHSAA eligibility rules and do not, properly understood, penalize resort to the courts." Section 4(C) "simply provides that resort to the courts may not, depending on the outcome, permanently immunize violations of eligibility rules."


4. **ISSUE:** It is unreasonable to expect that a school not play in a contest involving a student who has been deemed eligible under a temporary restraining order or preliminary or permanent injunction.

**ANSWER:** The dissent by Judge Gillis of the Michigan Court of Appeals in O'Rourke v. Malloy and the MHSAA states:

"The Troy School District notwithstanding the original September 4, 1986 Order of the Oakland County Circuit Court had the keys in their pocket to decide if Plaintiff would or wouldn't play. They elected to suit up the Plaintiff and enter him in this contest. They therefore violated the rule which they had adopted and must suffer the consequences imposed by Defendant Michigan High School Athletic Association, Inc."

A school does **not** have to **play** a student whom a court rules is **eligible** to play under a temporary restraining order or preliminary injunction. The case of Robinson v. MHSAA and the Detroit Public Schools makes this point:

On January 5, 1998 Plaintiffs commenced action in Wayne County Circuit Court acknowledging that he had transferred to Mackenzie High School from Bishop Borgess and was ineligible for the first semester of competition pursuant to Regulation I, Section 9. Because of an illegal Detroit teacher's strike the second semester of the school year fell at a different time than normal and the plaintiff sought court injunction allowing him to participate in competition prior to the start of the actual semester date.



After hearing and on January 21 and 22, 1998 Circuit Judge John A. Murphy entered an order declaring Cordell Robinson eligible to compete in varsity basketball from Mackenzie High School stage commencing January 25, 1988. The Michigan High School Athletic Association and the Detroit Board of Education filed simultaneous appeals in the Court of Appeals.

Pursuant to an order to show cause on January 29, 1988 the Michigan High School Athletic Association and the Detroit Public Schools appeared in court to face contempt citations because despite the Court's order of eligibility, the school chose not to play the Plaintiff.

Here are excerpt from the Court's Opinion and Decision of January 29, 1988:

“What we have now is a situation where the principal, for whatever reason, of the school has made the decision that the Petitioner should not be played in light of the ramifications of the regulations which might result in this Court's Order being reversed, resulting in the forfeiture of those games in which the Petitioner would participate in, and the principal has made the decision not to risk that.

"That only alternative this Court would have faced with this situation would be to require that Petitioner play, and this Court would not have the authority to do that. This Court would not have the authority to require any particular athlete in any particular sporting event to be played. That is a situation within the jurisdiction of the school. That would be something that would be within the discretion of the coach, within the discretion of the athletic department, and obviously, the administration of the school where the athlete would be played.

“This court would not have the authority or jurisdiction to interfere with that discretion within the Board of Education. This Court can only do what it did last week, indicating that he would be eligible to play, but the actual playing of the athlete would be something that the school would have to make a determination on. . . . That is strictly something that the school would have to make a determination on, and, if in fact the coach makes a determination that the risk of playing this individual would be outweighed by the possibility a decision would be overturned and the games forfeited, then that is something they would have the right to make, that is their decision to make. . . . That is discretion of the school principal would have the right to exercise and it is not the kind of thing that the Court should interfere with. I guess the sum and substance of the Court's ruling would be that I don't believe that there has been a violation of the Court's Order. He is eligible, it is within the school's discretion to play him. The Court cannot act as a coach, cannot act as a principal, and order that this individual play versus another student. That is something that is left with the discretion of the school. That is it.”



## **APPENDIX A: NON-TRADITIONAL SCHOOLS & STUDENTS**

MHSAA rules are minimum standards. Schools may adopt higher standards or may deny eligibility where MHSAA rules permit. Local rules which exceed MHSAA minimum standards prevail. Local schools determine for themselves the existence of these options and, if applicable, how to share state funding.

### ***In General . . .***

- A. A student of a non-traditional school may be eligible at the school where he or she is receiving active credit (courses awaiting grades for credit) in at least 66 percent of full credit load potential for a full-time student provided (1) local policy allows, (2) these credits count toward graduation requirements at the school where he/she is enrolled and intends to graduate or receive a certificate of completion, (3) that school does not have any interscholastic athletics, and (4) that the high school counts the students and lists the program/school on its Enrollment Declaration Form submitted the previous February.
- B. Courses taken in a school other than the one in which a student is enrolled may be counted toward athletic eligibility in the school of actual enrollment provided arrangements for current eligibility reports are made between the schools. This may apply to:
  1. **Adult Education**, including night school
  2. **Alternative/Gifted Education**
  3. **Colleges and Universities, Middle Colleges and Early Colleges**
  4. **Distance Learning/Virtual High Schools**
  4. **Home Education**
  5. **Nonpublic Schools**
  6. **Public School Academies** (charter schools)
  7. **Special Education**
  8. **Vocational Education**, including skills centers and tech centers

**Adult Education/Night School** – If a student is enrolled in the adult education or night school program of his/her community for at least some courses and receives credit toward graduation at the high school in the district of his/her residence, that student may be eligible for interscholastic athletics at his/her base (original) high school only, provided local policy allows and the student is passing the equivalent of 66 percent of full credit load potential for a full-time student overall which count toward the graduation requirements of the high school to be represented.

**Alternative/Gifted Education** – If a student is placed in a non-traditional program, including an alternative school or school for highly motivated or unusually gifted students that is administered directly or through a consortium by that student's school district, and the non-traditional school does not have an interscholastic program, that student may be eligible at his/her base (original) high school only, provided local policy allows and that student is passing the equivalent of 66 percent of full credit load potential for a full-time student overall which count toward the graduation requirements of the high school to be represented and that school counts its resident students in that alternative/gifted program for MHSAA tournament classification purposes.

**Colleges, Universities** – If a regularly enrolled undergraduate high school student takes courses in advance of the high school level, these courses may be included for high school graduation credit and for athletic eligibility purposes; and that student may be continue to be eligible at his/her base (original) high school only, provided local policy allows and that student is passing the equivalent of 66 percent of full credit load potential for a full-time student overall which count toward graduation requirements of the high school to be represented. A school may reduce the required course load to not less than 50% of normal full credit load potential for a full-time student to allow flexibility for students' travel to, enrollment in, or attendance at a school-approved off-campus college program.

**Distance Learning/Virtual High Schools** – If a regularly enrolled undergraduate student takes courses via correspondence, television, or the internet, these courses may be included for high school graduation credit and for athletic eligibility purposes, provided local policy allows and that student is receiving active credit (courses awaiting grades for credit) in the equivalent of 66 percent of full credit load potential for a full-time student overall which count toward graduation requirements of the high school to be represented.

**Home Education** – If a student is unable to attend school but remains enrolled in it and instructed by its teachers through a "**homebound**" program, that student may be eligible for interscholastic athletics at the school where he/she is enrolled, provided local policy allows and the student is passing the equivalent of 66 percent of full credit load potential for a full-time student overall which count toward the graduation requirements of the high school to be represented.

**Nonpublic Schools** – See Part II for five options

**Public School Academies (Charter Schools)** – See Part II for five options.

**Note:** If local policy allows, a middle or early college or a virtual school may be considered a non-traditional school of the district by designating this the previous February and counting all such students on its Enrollment Declaration Form.

### **Special Education**

If a student is placed by an Individual Education Program Committee in a special education program at another MHSAA member high school, that student may be eligible at his/her high school of residence or the high school to which he/she is assigned, provided local policy allows and the student is passing the equivalent of 66 percent of full credit load potential for a full-time student overall which count toward the graduation requirements of the school from which he/she expects to graduate. The choice is available one time in grades 9-12.

### **Vocational Education, Skills Center, Tech Center**

If a student is enrolled in a vocational education program, skills center or technical center administered directly or through a consortium by that student's school district, that student may be eligible at his/her base (original) high school only, provided local policy allows and that student is passing the equivalent of 66 percent of full credit load potential for a full-time student overall which count toward the graduation requirements of the high school to be represented. A school may reduce the required course load to not less than 50% of normal full credit load potential for a full-time student to allow flexibility for students' travel to, enrollment in, or attendance at a school-approved off-campus vocational education program.

#### **I.**

### **Existing Athletic Opportunities for Home-Based Students**

**Outside of Schools** – Students of home schools may participate in sports through youth leagues, church leagues, YMCA/YWCA, boys/girls clubs, health/fitness clubs, etc.

**Within Schools (If local school policy allows) –**

#### **THREE OPTIONS:**

#### **Option 1 - Home School Sponsors and Conducts an Athletic Program:**

Home school groups are encouraged to sponsor and conduct self-sufficient athletic programs for their students and may compete against any other schools (except in football) against MHSAA member high schools.

#### **Option 2 - Enrolled in a Home School, Taking Courses at Another School:**

A student who is enrolled in a home school that sponsors no teams in any sports may participate on sports teams of a high school immediately upon enrollment at that school if that student is taking and passing at least 66 percent of full credit load potential for a full-time student of course work (usually four or five full subjects) at the high school to be represented.

The two schools may set up the academic reporting procedures that suit them, so long as they meet the minimum requirement of providing academic progress reports at least every ten weeks.

### **Option 3 - Enrolled at a High School, Taking Courses at Home:**

Provided local high school policy allows, a student who is enrolled in a high school may take as many courses as he/she wishes at home and still remain eligible for athletics at that high school as long as the student is doing passing work in at least 66 percent of full credit load potential for a full-time student (usually four or five full subjects) for which the traditional public or private high school will post credit on that student's transcript.

The two schools may set up the academic reporting procedures that suit them, so long as they meet the minimum requirement of providing academic progress reports at least every ten weeks.

## **II.**

### **Existing Athletic Opportunities for Students of Public School Academies & Nonpublic Schools**

**Outside of Schools** – Students of public school academies and nonpublic schools may participate in sports through youth leagues, church leagues, YMCA/YWCA, boys/girls clubs, health/fitness clubs, etc.

**Within Schools** – (If local school policy allows)

#### **FIVE OPTIONS:**

#### **Option 1 - Public School Academy or Nonpublic School Sponsors and Conducts an Athletic Program:**

Public school academies and nonpublic schools are encouraged to sponsor and conduct self-sufficient athletic programs for their students and compete against any other schools.

#### **Option 2 - Cooperative Programs:**

If a public school academy or nonpublic school joins the MHSAA, it may combine with one or more other member schools to jointly sponsor teams in one or more sports.

Cooperative program application forms are available on MHSAA.com and require the approval of the board of education and administration of each school, as well as the league/conference in which the program will participate.

**Deadline for fall season sports is April 15.**

**Deadline for winter season sports is Aug. 15.**

**Deadline for spring season sports is Oct. 15.**

**Deadlines DO NOT apply to:**

- **Junior High / Middle School Applications**
- **High School Applications for the Subvarsity Level**

Cooperative programs are permitted in all sports when the combined 9-12 enrollment of the cooperating schools does not exceed 1,000 students.

Even if the combined enrollment of the schools exceeds 1,000 students but does not exceed 3,500 students, cooperative programs are permitted in eight of 28 sports which are sponsored by fewer than 250 MHSAA member schools: girls gymnastics, boys and girls lacrosse, boys and girls swimming and diving, boys and girls skiing and ice hockey. The 3,500 student limit may be exceeded for up to three years if none of the schools in the cooperative agreement has sponsored the sport previously.

In a cooperative program, all cooperating schools must be MHSAA members. There is no cost for MHSAA membership, but each member school's governing board must adopt each year a resolution which obligates the school to enforce all MHSAA rules and regulations as to its own students and faculty in all MHSAA tournament sports. MHSAA Membership Resolutions are available from the MHSAA office.



In cooperative programs, all cooperating schools contribute students, resources and oversight to the effort.

A school may sponsor its own teams in some sports and enter a cooperative program with another school in other sports.

**Option 3 - Enrolled in a Public School Academy or Nonpublic School, Taking Courses at Another School:**

A student who is enrolled in a public school academy or nonpublic school that sponsors no teams in any sports may participate on sports teams of a high school if that student is taking and passing at least 66 percent of full credit load potential for a full-time student (usually four or five full subjects) at the high school to be represented.

The two schools determine for themselves how to share state funding for the student and what, if any, athletic participation fee is appropriate.

**Option 4 - Enrolled at a High School, Taking Courses at a Public School Academy or Nonpublic School:**

A student who is enrolled in a high school may take as many courses as he/she wishes at a public school academy or nonpublic school and still remain eligible for athletics at that high school as long as the student is doing passing work in at least 66 percent of full credit load potential for a full-time student (usually four or five full subjects) for which the traditional public or private high school will provide credit on that student's transcript.

The two schools may set up the academic reporting procedures that suit them, so long as they meet the minimum requirement of providing academic progress reports at least every ten weeks.

The two schools determine for themselves how to share state funding for the student and what, if any, athletic participation fee is appropriate.

**Option 5 - Continuing Eligibility:**

A student who has been attending one high school for at least two semesters may enroll in another MHSAA member school that offers a specialized curriculum which is not available at the first school and continue to be eligible at the first school in sports not sponsored by the specialized school.

The student must be taking and passing at least 66 percent of full credit load potential for a full-time student overall, there must be regular academic reports between the schools, and there must be compliance with all other eligibility requirements of the MHSAA and both schools.

The determination of whether the specialized curriculum of one school without a sport is not available in the curriculum of a school with that sport shall be made by the school providing the sport. The majority of courses provided by the school without the sport must be different in type (not degree of difficulty) from those available at the school with the sport.

The two schools determine for themselves how to share state funding for the student and what, if any, athletic participation fee is appropriate.

***NOTE: This Appendix is a summary of policy, not a complete description. Consult the MHSAA Handbook for further detail.***

## **APPENDIX B: OUT-OF-SEASON COACHING**

**FOUR YEAR-ROUND PRINCIPLES** apply to schools and coaches out of season **ALL** the time; both summer and off season during the school year at workouts, clinics, camps or competitions.

- 1. No activity may be mandatory or part of selection to the school team.**
- 2. No school transportation or school or booster club funds for transportation.**
- 3. No school general funds; a limit of \$200 per student and sport from school-approved fundraised money is allowed.**
- 4. No school competition uniforms or warmups may be used (practice jerseys are permitted).**

**DURING THE SCHOOL YEAR**, there are limitations on coaches and some permitted activities:

**Four-Player Period:** Coaches are limited to providing coaching in their sport to four students in grades 7-12 of the school district in which they coach. Even though MHSAA membership now extends to 6th-graders, the out-of-season coaching limitation applies to grades 7-12; so existing programs to 6th-graders with school coaches may continue. The four-player period runs from the Monday when Aug. 15 occurs through the Sunday after Memorial Day (Aug. 12, 2019 through June 1, 2020). Coaches can coach out of season up to four “players” (students in grades 7-12 are called players for this rule). This applies to any setting including a camp, clinic, AAU game, travel softball team or indoor soccer league. As has always been the case, two coaches present does not increase the limit to eight players.

**••INCIDENTAL PRESENCE OF MORE THAN FOUR PLAYERS:** Bowling and golf coaches may be present coaching within the four-player rule at a non-school facility even if more than four students of their school district in grades 7-12 are present, provided they are only coaching four players and other students’ presence is **coincidental and not prearranged by the coach**. This same allowance is permitted to any coach at **non-school facilities with multiple playing surfaces** such as is likely to occur at a large soccer or tennis complex.

**••CALLING SOMETHING A CLINIC,** charging a fee or holding the event at a non-school facility (batting cage, indoor soccer or lacrosse) does not waive the four-player rule. Booster clubs may not fund or support activities during the school year which the school or coach are prohibited from doing such as batting cages, indoor courts or fields, hire trainers, etc. High school administrators (including athletic directors) acting on their own in programs involving students in grades 9-12 may not sponsor or support out-of-season programs or perform out-of-season functions which the school or coach is prohibited from doing. This allows administrators to be involved with middle school age students out of season.

**••ROTATIONS** (also known as circuit training or stations) are permitted provided there is no more than one four-player group with sport-specific instructions. Rotations from open gyms, weightlifting or conditioning to four-player sport-specific skill workouts are intended to be a more efficient approach to off-season workouts. Sport-specific equipment is permitted at an open gym but there may not be any coaching instruction. **Any number of rotations can have sport equipment for students to select from, but only one group may have coaching instruction and this group may not exceed four students. These rotations must adhere to the elements of an open gym and are not permitted during the preseason down time. See the next page on open gyms.** Two gyms on the same campus does not permit two four-player skill groups. The four Year-Round Principles continue to apply – especially that all sessions are voluntary and not part of team selection.

**••COORDINATING OR ASSISTING:** During or in preparation for the four player period coaches may not make arrangements for activities they themselves are prohibited from doing. Groups that exist because of the school (e.g. booster clubs) may not do that which the school or coach is prohibited from doing. Coaches may not provide transportation, create a schedule for more than four of their players, or arrange for someone else to coach to get around the four-player rule. Coaches may be spectators at events but not coach when more than four of their players are present; and they may distribute information produced by someone else regarding out-of-season camps or clinics. Involvement must be voluntary and clearly not part of selection to the school team. In hockey, a school may commit to rent ice for off-season, non-school activity so as to secure in-season ice rentals and pricing. If necessary, consult the exact Handbook language on what is generally prohibited and permitted during or in preparation for the four-player period.

**••CONDITIONING AND WEIGHTLIFTING:** Provided they are not mandatory or part of team selection, conditioning and weightlifting are permitted year-round except during the summer dead period. Conditioning must be non-sport-specific and not use any equipment such as balls, nets, dummies, sleds or helmets. Jump ropes, cones, fitness apparatus are permitted.

**••OPEN GYMS (& ROTATIONS):** May be conducted in one or more sports but must follow the four Year-Round Principles and especially not be part of team selection. Coaches may not coach, critique, evaluate or participate in the sport they coach. Open gyms are student conducted and recreational. There shall be no organized instruction or competition, drills or practice structure and no instruction by captains, parents or others. Open gyms must be open to all students of the school, but not necessarily open to the general public or students from other schools.

**••PRESEASON DOWN TIME:** Just prior to each season, to establish an official start to practice, this period prohibits open gyms, rotations, competitions, or sport-specific camps or clinics from occurring at the school or sponsored elsewhere by the school regardless of whether that school sponsors the sport. No competition, intrasquad or intersquad may occur with groups that resemble school teams. Voluntary conditioning, weightlifting and four-player coaching may continue in the preseason down time – but no open gyms, practices or rotations. The fall sports down time is Aug. 1 to the start of practice, winter sports is 14 calendar days before practice begins, and the spring sports down time runs from March 1 to the start of practice. Middle schools observe this period 14 days before practice begins. Because conditioning is so similar to actual practices in swimming, cross country and track, coaches in these sports may not provide instruction in any sport-specific technique or conduct sessions which involve both time AND distance during the preseason down time.

**••CHEER RESTRICTIONS:** Because of the similarity between Competitive & Sideline Cheerleading, a school which sponsors MHSAA Competitive Cheer may not hold any cheer activities from the end of winter sports (the last Monday of March – 3/30/20) through the 3rd Friday in May (5/22/20). This restriction prohibits coaches or cheerleading advisers from working with more than four students from the school district grades 7-12 in cheer-related activities including but not limited to tumbling, gymnastics, instruction, routine development, tryouts, etc. This rule prevents competitive cheer teams or individuals from holding out-of-season activities under the premise of sideline cheer practices or tryouts. (Note: Interpretation 236 prohibits a coach from “coordinating or assisting” during or in preparation for the four-player period. A coach may not arrange for a parent or non-staff person to coach out of season or to do that which the coach is prohibited from doing). Ending the cheer restriction time by the third Friday of May allows a school, if it so chooses, to have fall sideline cheerleading tryouts before school is out in June. Competitive cheer coaches remain subject to the four-player rule through the Sunday after Memorial Day.

**••CURRICULUM COURSES:** Classes with content specific to an MHSAA tournament sport (e.g., football class) must be open to any student and must provide nearly equal attention to three different topics in an academic term such as other sports, weight training, fitness, etc. In football, except during the season, plays and schemes of the school team may not be taught and regular or improvised football equipment may not be used. Out of season, school coaches cannot be involved in these classes unless they are the full-time teacher of the course.

**DURING THE SUMMER** During the summer, some limitations continue. Except for football, fewer restrictions are in place. There are no school teams in the summer; however, school coaches and students may assemble from the same school over the summer in various settings beginning on the Monday after Memorial Day. Football has a practice limit of no more than seven players in the summer prior to Aug. 1 in informal football activities in helmets and shoes with a coach.

**••SUMMER COMPETITION LIMITS:** Five sports are limited to 15 dates of competition when more than four or seven students from that school and a school coach are present in competition against others not enrolled in that school. Basketball, volleyball and ice hockey (four players and coach); soccer, lacrosse and football (seven players and a coach). Football may only have seven summer dates of competition (passing league games). Summer competition must be prior to Aug. 1 and must follow the travel rule if held outside of Michigan: ALL teams at an event must be within 300 miles or from bordering states (not just those you play against). Sports not on this list are not limited in summer competition, but the four Year-Round Principles continue to apply.

**••INCOMING 9TH GRADERS** become “high school students” when the four-player rule ends on the Monday after Memorial Day. Provided these former 8th-graders are not still involved in middle school sports, they may begin working out with high schools in the summer. This does not change the rule that prohibits recruiting for athletic purposes (undue influence).

**••THE FOUR-PLAYER PERIOD ENDS** on the Monday after Memorial Day which is also the Monday after Baseball and Softball District Tournaments and the Track Finals. Except for the dead period (below), any number of players may have contact with their coach in the summer provided the four Year-Round Principles apply (there is a seven-player limit in football). Schools must regulate the frequency and intensity of any summer voluntary workouts so students may participate in more than one sport and so that families may have time away from school sports.

**••SUMMER DEAD PERIOD:** A seven-day zero player/coach and zero school facility period of time from the end of school or participation in the MHSAA spring tournaments to Aug 1. No coach contact whatsoever is allowed including at fundraisers, functions or places of employment. Each school sets its own seven-day dead period and it applies to ALL sports, except that non-school summer baseball or softball games and practices (American Legion) may continue in the summer dead period. Most schools select a seven-day period which includes July 4.

**••FOOTBALL:** Only football helmets and football shoes are permitted out of season in ANY setting, including camps or clinics, whether held in-state or out-of-state. No pads except during the season. In the summer, a school football coach has a limited allowance to conduct or coach at a bona fide football camp with any number of players from the school. If a school is conducting a football camp, be sure and consult the Handbook for the actual rule. In the summer, besides the seven dates of competition (passing leagues), school coaches and up to seven players may assemble at one time for informal football activities or workouts which must also follow the **four Year-Round Principles**.

## **OUT-OF-SEASON & SUMMER COACHING REGULATIONS & INTERPRETATIONS**

### *Selections Paraphrased from the 2019-20 MHSAA Handbook, Regulation II, Section 11*

SECTION 11 (H) - There is no such thing as a school team outside the interscholastic season of practice and competition. Schools shall not require or sponsor activities in the name of the school team outside the school season for the sport involved.

#### **2. These limitations out of season apply to COACHES:**

- a. Outside the school season during the school year (from Monday the week of Aug. 15 through the Sunday after Memorial Day observed), school coaches are prohibited from providing coaching at any one time under one roof, facility or campus to more than three or four students in grades 7-12 of the district or cooperative program for which they coach.

#### **3. These limitations apply to member SCHOOLS year-round:**

- a. **At no time** out of season may **school transportation** be used. There may be no use of school owned and issued **competition warm-ups and/or uniforms (non-competition practice jerseys may be worn whether or not school-owned or issued)**. Neither the school nor its coaches shall allow the out-of-season activity to be **mandatory or to be any part of the basis for selection of the school team**.
- b. School operating funds may not be used in any way to support out-of-season activities; only funds from school-approved activities of booster clubs, school teams, student groups and community, civic or service groups may be used to pay fees for individuals on some basis other than athletic ability or potential (qualification for federal school lunch program is a suggested criterion). The limit is \$200 per sport per student per year (August through July). Booster Clubs may not sponsor or fund those out-of-season activities during the school year which the school or coach would be prohibited from doing, including but not limited to rentals for fall or spring ice time, fall or winter batting cages, or indoor lacrosse, soccer or tennis facilities.
- c. Because students and coaches may assemble from the same school, there is a tendency at summer camps and in summer leagues to call teams by their school names, **but it must be understood they are not school-sponsored teams**. They can't be. To help assure there are not misunderstandings about the school's authority and responsibility (including liability for injuries), school administration must not allow camp and league organizers to use the school designations. "Lansing" is permissible; it's a city; but not "Lansing Everett" or "Lansing Catholic Central," which are the names of schools.



- d. In schools that sponsor girls competitive cheer, all cheer-related activities of both competitive cheer and sideline cheerleading (including but not limited to tumbling/gymnastics instruction and routine development) are prohibited for students with competitive cheer coaches and/or sideline cheerleading advisors, except as permitted by the three- (or four-) player rule, from the last Monday of March through the third Friday of May. Interpretation 236 applies. Competitive cheer coaches remain subject to the three- (or four) player rule with respect to competitive cheer activities until the Monday after Memorial Day when summer rules begin for all sports.
231. Booster clubs, alumni groups, parent organizations and groups that exist because of the school, and high school administrators (including athletic directors) acting on their own in programs involving students in grades 9-12, may not sponsor or support out-of-season programs or perform out-of-season functions which the school or coach is prohibited from doing. See Interpretation 131 for amateur status concerns related to students' involvement in out-of-season activities with financial support from school-approved fundraisers.
235. a. The regulation which permits a coach to coach a maximum of four students from the same school out-of-season during the school year (four player rule) does not allow two coaches to coach eight students from the same school. No matter how many coaches are present, no more than four players from the same school district may receive coaching or sport-specific instruction at the same time at the same facility or campus out-of-season during the school year.
- b. Voluntary structured and scheduled practice rotations throughout a facility of four player groups moving from conditioning programs or weight training or open gyms to skill development sessions (e.g. hitting, throwing, running, lifting) are permitted at the same time on the same campus or facility provided no more than one of the four-player groups involves sport-specific instruction. Two gyms does not permit two four player skill groups.  
 Within a voluntary practice rotation as above, when sport-specific equipment is used separately from the coaching instruction allowed in a four-player skill group, it is considered an activity of an open gym:
  - Student-conducted; students choose from offered activities.
  - Any coach of a sport under MHSAA jurisdiction who is present shall not coach, instruct, critique, direct, evaluate or participate in a sport he/she coaches.
  - **Recreational emphasis; not an organized program of instruction and/or competition.**
  - **There must not be any organized drills, practice structure and no instruction by any person, including team captains and parents.**
 During the school year, when it is out of season for both the boys and girls teams in the same sport, four-player skill groups may take place separately for each gender in that sport at the same time with separate coaches at the same facility or campus. If the same person is a school's coach for both the boys and girls teams in a sport during the school year, then four students of each gender may receive coaching at the same time and place, but the four-player groups may not interact in any activity. It is also intended that the four-player rule apply to Internet-based or other digital presentations. See Interpretation 245.
- c. School coaches of non-school teams are allowed to provide coaching in non-school **competition** to four students of that coach's school district while, in another part of the facility or on the same court, other students from that same school district are receiving coaching from another coach, even one of the same school, **provided the competition is the result of a tournament draw or progression.**
236. During, or in preparation for, the four-player limitation period, coaches shall not coordinate, officiate at, or in other ways assist with out-of-season school or non-school athletic events which involve more than four students from the same school district in grades 7-12 in a sport they coach that is sponsored by that school district in grades 7-12. This applies to coaches on all levels (varsity, junior varsity, etc.), for either gender, whether paid or volunteer. Violations of the four-player rule are likely, and allegations of violations are inevitable if coaches fail to heed this precaution. Administrators should

work with coaches to keep them above suspicion, avoiding even the appearance of violations at out-of-season athletic events.

- a. Some activities **generally prohibited** under Interpretations 235 and 236 are listed below. This is a partial list, there may be other unlisted activities not in compliance with out of season coaching controls:
  1. A coach may not book, schedule, or make other arrangements for more than four players to participate in an out of season activity (e.g. batting cages, tennis lessons, indoor soccer or lacrosse leagues, indoor track, fall ice time, etc.).
  2. A coach may not post or distribute a time or event schedule designed specifically for more than four players to attend out of season activities.
  3. A coach may not arrange for a parent or other non staff person to act as coach in an out of season coaching activity. A coach may not arrange for a parent or non staff person to do that which the coach is prohibited from doing under the regulation.
  4. A coach may not arrange transportation nor provide transportation on a regular basis to more than four players so they may be part of an out of season activity.
  5. The four-player limitation period applies to all out of season environments during the school year including club and AAU teams, camps, clinics, combines, leagues, profit or non profit facilities or enterprises.
- b. Some activities **generally permitted** under Interpretations 235 and 236 are listed below. This is a partial list; there may be other unlisted activities that would be in compliance with out of season coaching controls:
  1. The coach may be a spectator at an out of season activity but should have no contact with the athletes in competition.
  2. The coach may be present **as an employee** of a facility where sport coaching is taking place and where they are not providing coaching directly to more than four players from their district. The presence of more than four students from this coach's district within the same facility where this coach is employed but who is not receiving coaching from a school coach **is permitted if it is incidental to this coach's presence or employment and not scheduled or prearranged.**
    - a) This allowance is not intended to permit an employee of the facility who is also a school coach to provide coaching or to coordinate or assist in non-school activities which involve more than four players from the district during or in preparation for the four-player period.
    - b) This same allowance shall be permissible for coaches of bowling and golf regardless of the coach's employment by the facility provided the coaching occurs at a non-school bowling or golf facility and meets all other stated conditions.
    - c) This allowance for the incidental presence of more than four players shall also be permitted, regardless of the coach's employment by the facility, in practices at non-school facilities with multiple playing surfaces where the school coach had no advance involvement (arranging or promoting) in the participation of more than four students from the school district.
  3. The coach may be present as a school employee or volunteer at school sponsored competition as an administrator or contest worker (scorer, timer, announcer, etc).
  4. The coach may discuss or distribute information produced by others outside the school district that advertise out of season opportunities such as camps, clinics, competitions, or leagues that occur out of season and are not designed or arranged specifically for more than four players from the coach's school district. These communications must involve students enrolling and participating completely voluntarily of their own accord, disconnected from the school or coach and in no way may be mandatory or part of team selection.
  5. A coach who is also a registered official may officiate an athletic event in which more than four players from the district in grades 7-12 are participating out of season provided that the coach/official working the athletic event was assigned by an independent agent or organization and the contest is a random assignment for the official or the result of a random tournament



progression. In general, coaches shall not officiate when it is known in advance that they will encounter more than four players from the school district for which they coach.

6. In ice hockey, a school may commit to renting ice for the out-of-season period in order to secure ice and pricing discounts for in-season practice and contests. This is permitted provided the school and coach are in compliance with Section 11(H) including the preseason down time restriction. This ice may be rented or brokered to non-school programs.

237. School-sponsored conditioning programs shall not be mandatory or part of the team selection process which begins on the first day of practice as allowed under Regulation II, Sections (A) and (E). Conditioning programs are for the purpose of providing students a non-mandatory, non sport specific opportunity to improve their speed, strength endurance, cardiovascular capacity, coordination and flexibility. Conditioning programs provide injured athletes an opportunity to regain these attributes diminished by injury and illness and to help prevent injuries. Conditioning programs generally do not involve competition and may not involve instruction in skills of a particular sport.

- a. If a school were to include skills instruction by the school coach or another person arranged by the school coach during what is called conditioning, it would not be a violation of MHSAA rules if this occurred during the summer months (except during the summer dead period and preseason down time) or if it occurred out-of-season during the school year with a maximum of four students in grades 7-12 of the school district present in the facility.
- b. The school or a school related organization shall not contact or arrange for out of season instruction or conditioning programs that the school coach would be prohibited from doing. For example:
  - It is a violation for the school, coach or a school related organization to have an outside shooting or dribbling instructor teach basketball skills to more than four 7-12 grade students of the school district at one time during conditioning programs out-of season during the school year.
  - It is a violation for the school, coach, or a school related organization to have an outside gymnastics instructor arranged for to teach tumbling skills, whether or not mats other than those used for competitive cheer are utilized, outside the competitive cheer season during the school year.

238. The Summer Dead Period is intended to provide at least seven consecutive days when school coaches will have no contact with students in grades 7-12 of the school district in any manner related to any sport sponsored by that school. Unplanned, casual, normal community contact is permitted.

It is intended that no sport-related involvement, including attendance at school sport-related fundraisers and functions, take place during the Summer Dead Period.

It is intended that no sport activities occur on school premises during the Summer Dead Period that involve school coaches or are sponsored by the school or supported by the school.

Because school personnel are prohibited from holding such activities, it is intended that no school facilities be planned for use by non school groups or individuals for athletic purposes (including student-led practices or conditioning) during the Summer Dead Period.

239. The preseason down time is intended to demonstrate a clear demarcation to the start of the upcoming season and its practices and to provide all students a legitimate opportunity to make the school team during tryouts (which are only to occur after the MHSAA designated start date). Out-of-season sports activities should have no bearing on school team qualification.

240. Out-of-season activities of competitive cheer teams shall adhere to the preseason down time regulations regardless of a school's sponsorship of sideline cheerleading in the fall or winter.

# **APPENDIX C: LEGAL ASPECTS OF INTERSCHOLASTIC ATHLETICS UNIQUE TO MICHIGAN**

## **Foreword**

General courses in legal aspects of athletics cannot be specific to every level of sports in every state. Therefore, the Michigan High School Athletic Association offers this publication as a supplement to any publication or course of study that intends to discuss legal aspects of interscholastic athletics with an audience of practitioners of school sports in Michigan.

Mark Uyl  
MHSAA Executive Director

### **I. THE ROLE OF THE MICHIGAN HIGH SCHOOL ATHLETIC ASSOCIATION**

#### **A. RELATIONSHIP TO SCHOOLS**

1. The Michigan High School Athletic Association, Inc., is a **voluntary association** of public and nonpublic schools. The association has no direct authority to discipline individual students, coaches or other school representatives.
2. The MHSAA is a **joint enterprise of schools**. The association helps administer rules jointly agreed upon by the membership, and the association is an arbitrator when disagreements occur among members.
3. **The membership has adopted**
  - a. a **Constitution** which governs the association, not local programs; and
  - b. **policies and procedures** that serve as
    - (1) entrance requirements for MHSAA sponsored and conducted postseason tournaments and
    - (2) baseline requirements for regular season competition for schools which wish to participate in MHSAA tournaments.

These adoptions have centralized some coordination and control within the Representative Council, Executive Committee and staff of the MHSAA. This is inevitable in any association. It is why associations are formed: to do what individual members cannot. But it is also the nature of an association that its leaders cannot do for long what its members don't find serves their needs.

4. **Schools use the MHSAA to**
  - a. review and revise the best practices for interscholastic athletics;
  - b. interpret the intent of previously adopted policies and procedures;
  - c. waive previously adopted policies and procedures when they fail to serve their intended purposes in a particular case; and
  - d. investigate and mediate disputes between members regarding those policies and procedures.

## **B. STATUTORY PROVISIONS**

1. MICHIGAN — At no time has any state statute created, empowered or restricted the Michigan High School Athletic Association, which is a voluntary, private, not-for-profit corporation of Michigan.
2. FEDERAL — The Amateur Sports Act of 1978 states that an amateur sports organization which conducts competition which is restricted to high school students has exclusive jurisdiction over such competition. The United States Olympic Committee and national governing bodies for particular sports do not have authority to interfere with high school sports programs; by law, they have the obligation to minimize conflicts with school sports.

This legislation was revisited by the U.S. Congress in 1998, and none of the changes made then affected the autonomy of schools and their statewide organizations to administer multi-sport interscholastic programs without interference from the USOC and national single-sport governing bodies.


## **C. ARTICLES OF INCORPORATION**

The MHSAA was first incorporated in 1972. Its purpose, as amended June 8, 2005, states:

“To create, establish and provide for, supervise and conduct interscholastic tournaments throughout the state consistent with educational values of high school curriculums, to make and adopt rules and regulations and interpretations for such tournaments, to provide assistance in the training of coaches, athletic directors and officials, as well as the registering of officials, to publish and distribute such information consistent therewith, and to do any and all acts and services necessary to carry out the intent hereof.”

## **D. KEY MICHIGAN ATTORNEY GENERAL OPINIONS**

1. Opinion No. 4795 dated August 11, 1977:
  - a. Participation in interscholastic athletics is deemed a privilege and not a part of the educational function of the school district.
  - b. If interscholastic contests are among schools of a single school district, the supervision and control of those contests are the responsibility of that school district’s board of education; and if interscholastic contests are among schools of more than one school district, the boards of education of the involved school districts may agree among themselves as to the rules that would control the contest and each board of education would be responsible for the adoption of such rules and for their enforcement in its own schools.
  - c. To that end, boards of education of school districts could join in an association and voluntarily could adopt the rules of the association; but the enforcement of such rules would be the responsibility of each board of education as to its own schools.


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- d. Boards of education could provide in their rules that interscholastic contests engaged in by their respective schools be refereed by officials certified by the association.
  - e. Boards of education may elect to participate in statewide interscholastic tournaments sponsored by the association, and to that end it is necessary that each school district sign an Adoption Resolution annually adopting the rules and regulations of the MHSAA as their own and agreeing to the primary enforcement of same.
2. Attorney General Opinion No. 5346 dated August 3, 1978:
    - a. Nothing prevents a board of education from joining the MHSAA and voluntarily adopting and enforcing the rule which prohibits coaches from working with more than three players at one time outside the high school season.
  3. Attorney General Opinion No. 5348 dated August 8, 1978:
    - a. The MHSAA is a private, nonprofit corporation and not an agency or instrumentality of the state; and, as a private, nonprofit corporation, the MHSAA may engage in any conduct or activity not prohibited by law or beyond the purpose as stated in its articles of incorporation.
    - b. Sponsorship of high school tournament games is within the Association's stated corporate purpose; and nothing legally prohibits the MHSAA from establishing and collecting fees for the right to broadcast games.
  4. Attorney General Opinion No. 6352 dated April 8, 1986 confirmed the reasoning of Opinion No. 4795 (above)
    - a. The MHSAA is not an agency or instrumentality of the state.
    - b. Tournaments sponsored by the MHSAA are private corporate activities of the Association.
    - c. Public high schools may participate in such tournaments.
    - d. The MHSAA may establish whatever conditions and requirements it sees fit for participation in these tournaments.
    - e. Whether violations involve athletic contests between high schools within the same district or between different school districts, each board of education which has adopted the rules as its own is ultimately responsible for their enforcement in its schools.
    - f. While a school district is not bound by the decisions rendered by the MHSAA regarding rule violations, the MHSAA may condition eligibility for and participation in its tournaments on compliance with its rule and its

determinations concerning rules violations and the penalties to be imposed upon school districts for violation of the rules.

- g. Hearings before the executive committee or representative council of the MHSAA regarding possible rules violations, held pursuant to the Association's due process procedure, are not subject to the provisions of the Open Meetings Act.


## **E. KEY CASE LAW INVOLVING MHSAA**

1. Berschback v. Grosse Pointe Schools, 154 Mich App 102, 397 NW2d 234 (1986).
  - a. Athletic cases, at least in the Michigan system, are not moot with the passage of time as they involve issues of significant public importance and are capable of repetition.
  - b. Under traditional equal protection analysis where classifications do not involve a suspect class or a fundamental right, once legitimate regulatory purposes have been identified, the only question remaining is whether the rule makers reasonably believe that use of the challenged classification would promote that purpose. Therefore, a rule will be upheld against an equal protection challenge if it contains a classification rationally related to a legitimate governmental interest.
  - c. Participation in interscholastic athletics does not constitute an exercise of a fundamental right.
  - d. The right to a public education does not create a right to participation in interscholastic sports such that participation in interscholastic sports is a protected interest which may be abridged only through due process of law. Since there is no property or liberty interest in participation in interscholastic sports, there exists no due process right to a hearing or opportunity for review before the MHSAA.
  - e. The courts are not the proper forum for making or reviewing decisions concerning the eligibility of students in interscholastic athletics; therefore, change of eligibility rules and the application of those rules must be through the political rather than the judicial process.
2. Cardinal Mooney High School v. The Michigan High School Athletic Association, Inc., 437 Mich 75, 468 NW2d 21 (1991).
  - a. Regulation V, Section 4(C) is a valid restitutive provision reasonably designed to rectify the competitive inequities that would inevitably occur if schools were permitted without penalty to field ineligible athletes under the protection of a temporary restraining order pending the outcome of an ultimately unsuccessful legal challenge to one or more eligibility rules.
  - b. Compliance with MHSAA rules on the part of a student athlete is an appropriate and justifiable condition of the privilege of participation in interscholastic athletics under the auspices of the MHSAA.

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- c. The MHSAA may have valid reasons for declining to permit case by case exceptions to its uniform age eligibility rule, and the interest of uniformity and predictability justify even-handed application of Regulation V, Section 4(C).
      - d. In light of the unique issues of competitive equity in the area of eligibility rules for athletic contests, Regulation V, Section 4(C) is a valid regulation which neither infringes on the authority of the courts nor improperly restricts access to the judicial system.
    3. Kirby v. The Michigan High School Athletic Association, Inc., 459 Mich 23, 585 N.W. 2nd 290 (1998)
      - a. While the Association exercises no independent authority over schools or students during regular-season competition, the MHSAA has authority to deal reasonably with situations outside its rulebook as they arise during the MHSAA postseason tournaments.
      - b. The Association's rule to not advance teams who have been defeated in MHSAA tournaments by opponents who used ineligible players has a rational basis, and its handling of the matter also serves to maintain the integrity of the tournament process.
      - c. Schools agree, for the purpose of having orderly competition, to let the MHSAA set the rules and govern the postseason tournaments sponsored by the Association. Such an agreement is analogous to the consent given by a party entering arbitration, who agrees in advance to be bound by any ruling that is within the scope of the arbitrator's authority.
    4. Sandison v. The Michigan High School Athletic Association, Inc., 64 F.3d 1026 (6th Cir. 1995).
      - a. Regulation V, Section 4(C) prevents dismissal of an appeal based upon mootness.
      - b. Non-waivability of maximum age rule is neutral with the respect to a disability when neutrally applied by the Association.
      - c. Neither the Rehabilitation Act nor the Americans With Disabilities Act requires either waiver or non-application of a neutral age rule.
      - d. Nineteen year old high school students held back due to learning disabilities were not "otherwise qualified" to participate in interscholastic sports. Thus, the state high school athletic association's rule prohibiting students who turn 19 years old before September 1st of the school year from playing interscholastic sports does not violate the Rehabilitation Act nor ADA as the age regulation was necessary and waiver of the regulation was not a reasonable accommodation because waiver would fundamentally alter the sports program.



- e. It places an undue burden to require high school coaches to determine whether individual factors render a student's age an unfair competitive advantage. It is unreasonable to call upon coaches and physicians to make these near impossible determinations.
  - f. There is a significant peculiarity in trying to characterize the waiver of the age restriction as a "reasonable accommodation" of the plaintiffs' learning disability. Ordinarily, an accommodation of an individual disability operates so that the disability is overcome and the disability no longer prevents an individual from participating. In this case, although playing high school sports undoubtedly helped plaintiffs' progress through high school, the waiver of the age restriction is not directed at helping them overcome learning disabilities; the waiver merely removes the age ceiling as an obstacle.
  - g. Sandison did not rule on whether the MHSAA is a public entity covered by Title II.
  - h. Sandison held that the MHSAA is not covered by Title III of the ADA because the MHSAA is not a place to which a disabled individual alleges unequal access.
5. McPherson v. The Michigan High School Athletic Association, Inc., 119 F.3d 453 (6th Cir. 1997).
- a. Graduation from high school does not render a case moot in view of Regulation V, Section 4(C). Regulation V, Section 4(C) is the lynch pin of appellate practice in reviewing injunctions in athletic settings.
  - b. The Eight Semester Rule is a neutral rule as is the Age Rule.
  - c. The MHSAA's determination that a rule may sometimes be waived under some circumstances does not mean that the rule is not necessary to the successful functioning of the sports program.
  - d. There is no principled distinction between the nature and purpose of the Age Limit Rule and the Eight Semester Rule that could lead to the conclusion that the former is necessary while the latter is not. The purpose served by the two rules is largely the same.
  - e. Requiring a waiver of the Eight Semester Rule under the circumstances presented in McPherson would work a fundamental alteration in Michigan high school sports programs.
  - f. Requiring a waiver would impose an immense financial and administrative burden on the MHSAA by forcing it to make near impossible determinations about a particular student's physical and athletic maturity.
  - g. It is unclear how the MHSAA could ever be expected to sort out the legitimate request for waiver from those based on a desire to gain an unfair advantage. In short, requiring the MHSAA to grant waivers under these circumstances would be to require it to take on an immense administrative burden. This necessarily means that the plaintiff's requested accommodations are not reasonable.

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6. Frye v. The Michigan High School Athletic Association, Inc., Unpublished (6th Cir. 1997). Adopted the reasoning of McPherson and stands for the proposition that results in the McPherson would be no different if the student, instead of graduating, simply did not return to school to finish high school.
  7. Reid v. Kenowa Hills Public Schools, 261 Mich App 17 (2004)
    - a. Extracurricular activities are not non-core courses in which a student enrolled in a private school that does not offer the non-core classes may have a statutory right to enroll.
    - b. There is a legal distinction between physical education classes that are educational requirements and extracurricular interscholastic athletic activities that are not required by the state's educational system.
    - c. Participation in interscholastic athletics is a privilege, not a right. Compliance with MHSAA rules is an appropriate and justifiable condition of the privilege of participating in interscholastic athletics under the auspices of the MHSAA.
    - d. The MHSAA enrollment regulations is neutral on its face and in its application and serves legitimate governmental purposes.
    - e. There is no religious discrimination or equal protection violation resulting from enforcement of the enrollment regulations of the MHSAA.
  8. Breighner v. Michigan High School Athletic Association, Inc., 471 Mich 217, 683NW2d639 (2004)
    - a. The MHSAA is a private, self-regulated, non-profit corporation with a wholly voluntary membership. It has no authority over schools or students. The member schools remain free to join other athletic organizations instead of or in addition to the MHSAA.
    - b. The MHSAA is financially subsidized neither by nor through a government authority.
    - c. The MHSAA is not a creation of either state or local government.
    - d. The MHSAA is not an agency of any governmental organization.
    - e. The MHSAA is not a public body subject to the Michigan Freedom of Information Act.

#### **F. OTHER KEY CASES AFFECTING THE MHSAA AND LEAGUES**

1. Attorney General v. Jackson Public Schools, 143 Mich App 634, 372NW2d638 (1985). Interscholastic athletics are not a necessary element of any school's activity, and those activities are not an integral and fundamental aspect of the educational process in view of the fact that those activities are optional and non-essential and provisions have been made to waive fees for students who cannot afford to pay.
2. Christensen v. Michigan State Youth Soccer Association, 218 Mich App 37, 533 NW2d 638 (1996). When a private association has provided reasonably effective means of resolving controversies, and there is no evidence of fraud by the association, courts should not interfere with orderly governing of the association.

3. Brentwood Academy v. Tennessee Secondary School Athletic Association , 127 S. Ct. 2489 (2007). The association’s anti-recruiting rule does not infringe upon free speech rights, but discourages precisely the sort of conduct that could lead to exploitation, distort competition between high school teams and foster an environment in which athletics are prized more highly than academics; any one of which detract from a high school sports league’s ability to operate “efficiently and effectively.”
4. Lowery v. Euverard, 497 F3d 584 (2007). The authority of school officials does not depend on the consent of students. Abstract concepts like team morale and unity are not susceptible to quantifiable measurement, yet they may be a basis of team membership. Common-sense conclusions do not require substantial evidentiary support. Students’ regular education is not impeded by dismissal from a team, nor is the right to express an opinion. When players voluntarily go out for a team they implicitly agree to accept the coach’s authority.

## **II. SPORTS SEASONS**

### **A. FEDERAL COURT (1973)**

On Oct. 1, 1973, in the case of Committee to Ensure Equal Opportunity in High School Athletics v. Michigan High School Athletic Association, the U.S. District Court for the Eastern District of Michigan, Southern Division, dismissed a complaint alleging schools’ scheduling of basketball and swimming seasons in the fall violated Title IX of the 1972 Education Amendments and the Due Process and Equal Protection Clauses of the 14th Amendment of the U.S. Constitution. The Court determined:

1. Because plaintiffs were not deprived of any property interest, the due process claim must be dismissed.
2. There is no requirement in the law that a given organization contain any particular proportion of any group of people and that the MHSAA had sought the input and approval of schools before scheduling its first tournaments in each sport.
3. There is a rational basis for schools’ scheduling of girls seasons at different times than boys (better utilization of facilities and more publicity for girls).
4. Title IX has not been held to preclude scheduling boys and girls seasons so as not to clash, thus no cause of action is stated under Title IX.

### **B. FEDERAL AGENCIES**

1. In 1973, 1975 and 1992, the Michigan Department of Civil Rights dismissed for no cause of action under Title IX cases brought by groups which challenged the sports seasons schedule of high schools in Michigan.
2. In 1984, the Office of Civil Rights issued a Statement of Findings that concluded the scheduling of seasons in Michigan ...
  - “does not necessarily result in discrimination against females;”
  - “has not presented any problems in scouting or recruiting females” in volleyball and basketball; and
  - “does not result in a denial of females of an equal opportunity to be scouted or recruited.”

The 1984 Statement of Findings also concluded ...

- “different lengths of sports’ seasons do not necessarily result in discrimination on the basis of sex;”
- smaller crowds for girls contests “cannot be attributed to the Association’s rules, regulations, or guidelines;”
- “the decline in popularity of field hockey cannot be attributed to the rules of the Association;”
- “The Association is not a recipient of Federal financial assistance” and “since the Association is not a recipient, it is under no obligation to monitor its members’ compliance with Title IX;” and
- “school districts can operate interscholastic athletic programs within the rules of the Association and in compliance with the requirements of Title IX.”

### C. FEDERAL COURTS (1998-2007)

Communities for Equity v. MHSAA is a class action lawsuit filed June 26, 1998, in the U.S. District Court for the District of Michigan, Western Division. Plaintiffs’ complaint made many allegations, among which is that the MHSAA’s failure to align interscholastic sports seasons with intercollegiate seasons violates state and federal statutes. The lawsuit sought to have the girls volleyball season of Michigan high schools moved from the winter to the fall and to have the sports seasons for five other sports be conducted at the same time for girls as they are for boys in Michigan.

A bench trial was held in September/October of 2001, the result of which was a finding in favor of the plaintiffs on Dec. 17, 2001. The District Court made a factual determination that some seasons are more advantageous than others for conducting high school sports and ordered the MHSAA to submit a plan that would place as many boys sports as girls sports in disadvantaged seasons. A subsequent order mandated that the plan include changing girls basketball from fall to winter and girls volleyball from winter to fall.

In February of 2003, the District Court approved a compliance plan that ordered the seasons of girls volleyball and girls basketball to be exchanged, as well as the seasons for boys and girls in Lower Peninsula golf, in Lower Peninsula tennis and Upper Peninsula soccer.

In July of 2004, the U.S. Court of Appeals for the Sixth Circuit upheld the lower court’s decision that the sports season alignment of Michigan schools violated the equal protection clause of the 14th Amendment to the U.S. Constitution. The Court of Appeals did not address plaintiffs’ Title IX or state law claims.

On May 2, 2005, the United States Supreme Court vacated the Sixth Circuit’s holding and remanded the case for reconsideration in light of a recent decision by the Supreme Court in a federal communications matter that appears to stand for the proposition that plaintiffs may not bring suit under the 14th Amendment when there is a comprehensive federal statute with jurisdiction over the subject matter. Oral argument before the Sixth Circuit Court of Appeals occurred March 14, 2006

On Aug 16, 2006, the Sixth Circuit issued a divided opinion on the issue of remand and then affirmed the District Court’s rulings of December 2001. On Aug. 30, defendants filed a petition for rehearing, or rehearing **en banc**, citing the division of the three-judge panel and inconsistencies on key issues between that ruling and previous decisions of the Sixth Circuit, other federal circuits and the U.S. Supreme Court. On Dec. 7, 2006, an order was filed denying the petitions for en banc rehearing.

A petition for a Writ of Certiorari was denied by the U.S. Supreme Court on April 2, 2007.

While the findings of fact of the District Court are unpopular and the conclusions of law of the District Court and Court of Appeals differ from the holdings of other Courts of Appeals, the result of this case presently stands for the following propositions, among others:

1. By ceding authority of interscholastics athletics to an organization that does not receive federal funds (MHSAA), schools that do receive federal funds create Title IX authority over the non-recipient.
2. The remedies of Title IX are not comprehensive enough to preclude a plaintiff from also making an athletic gender discrimination claim under the 14th Amendment.  
Note: In early 2009, the US Supreme Court held unanimously in Fitzgerald v. Barnstable School Committee (No. 07-1125 St. Ct. January 21, 2004) that Title IX does not preclude action under Section 1983 of the US Constitution, thus resolving the split in the federal circuits and confirming this point.
3. If plaintiffs allege that there is difference in treatment between males and females, and defendant's fail to prove an "exceedingly persuasive justification" for the different treatment, the result is an intended and illegal discrimination. Plaintiff's have no burden of proof.
4. Males and females must share equally in the advantageous and disadvantageous sports seasons, as determined by the court:  
basketball - winter; golf -fall; soccer - fall; swimming & diving - winter;  
tennis - spring; volleyball - fall

See 459F.3d676 (6th Circuit 2006) cert. den 549 US 1322, 127 Sct. 1912 (2007).

### **III. MISCELLANEOUS**

#### **A. STATE ACTION**

1. In 1986, the Michigan Court of Appeals held the MHSAA's actions, for purpose of the Fourteenth Amendment claim, are state actions since it is composed to a large extent of public school members.
2. Subsequently, in a series of decisions, the Sixth Circuit of the United States Court of Appeals parted with other federal circuits in holding that voluntary, private organizations are not state actors even if they interact regularly with or are composed of public entities.
3. The United States Supreme Court issued a 5-4 decision in Brentwood Academy v. Tennessee Secondary School Athletic Association et al (531 US 288, 121 S Ct. 924, 148 L. Ed. 2d 807 (Feb. 20, 2001)) in which the majority held that the Association's regular activity is state action. Among the bases for the majority opinion are:
  - a. The TSSAA is comprised mostly of public schools from within a single state.
  - b. There is "pervasive entwinement" of public institutions and public officials in the TSSAA's composition and workings. The entwinement is "bottom up" (only 16% of the TSSAA membership is private schools) and it is "top down" (state board members sit ex-officio on the Association's governing bodies and TSSAA employees participate in the state retirement system).

The decision was limited to the TSSAA. The Supreme Court held that an independent inquiry would be necessary to determine whether or not state high school associations were state actors and for what purposes.

## B. “GOOD SAMARITAN” LAW

In May of 1987, an amendment to Public Act 17 of 1963 was signed into law to relieve certain persons from civil liability when rendering emergency care. Here are pertinent portions:

Sec. 1 (1) A physician, registered professional nurse, or licensed practical nurse who in good faith renders emergency care at the scene of an emergency, where a physician-patient relationship, registered professional nurse-patient relationship, or licensed practical nurse-patient relationship did not exist before the advent of the emergency, shall not be liable for civil damages as a result of acts or omissions by the physician, registered professional nurse, or licensed practical nurse in rendering the emergency care, except acts or omissions amounting to gross negligence or willful and wanton misconduct.

(2) A physician who in good faith performs a physical examination, without compensation, upon an individual to determine the individual’s fitness to engage in competitive sports and who has obtained a statement signed by the individual or, if the individual is a minor, the parent or guardian of the minor, that the person signing the statement knows that the physician is not necessarily performing a complete physical examination and is not liable for civil damages as a result of acts or omissions by the physician in performing the examination, except acts or omissions amounting to gross negligence or willful and wanton misconduct or which are outside the scope of the license held by the physician, or a physician, registered professional nurse, or licensed practical nurse who in good faith renders emergency care, without compensation, to an individual requiring such care as a result of having engaged in competitive sports shall not be liable for civil damages as a result of acts or omissions by the physician in performing the physical examination or acts or omissions by the physician, registered professional nurse or licensed practical nurse in rendering the emergency care, except acts or omissions amounting to gross negligence or willful and wanton misconduct and except acts or omissions which are outside the scope of the license held by the physician, registered professional nurse, or licensed practical nurse. The subsection shall apply to the rendering of emergency care to minors even if the physician, registered professional nurse, or licensed practical nurse does not obtain the consent of the parent or guardian of the minor before the emergency care is rendered.

(3) A physician, physician’s assistant, registered professional nurse, or licensed practical nurse who in good faith **renders emergency care without compensation** to an individual requiring emergency care as a result of having engaged in **competitive sports** is not liable for civil damages as a result of acts or omissions by the physician, physician’s assistant, registered professional nurse, or licensed practical nurse in rendering emergency care, except acts or omissions amounting to gross negligence or willful and wanton misconduct and except acts or omissions that are outside the scope of the license held by the physician, physician’s assistant registered professional nurse, or licensed practical nurse. This subsection applies to the rendering of emergency care **to a minor even if** the physician, physician’s assistant, registered professional nurse, or licensed practical nurse **does not obtain the consent of the parent or guardian** of the minor before the emergency care is rendered.

As used in this section:

(a) “Competitive sports” means sports conducted as part of a program sponsored by a public or private school which provides instruction in grades kindergarten through 12 or a charitable or volunteer organization. Competitive sports does not include sports conducted as a part of a program sponsored by a public or private college or university.

(b) “Licensed practical nurse” means an individual licensed to engage in the practice of nursing as a licensed practical nurse under article 15 of the public health code. Act No. 368 of the Public Acts of 1978, being sections 333.16101 to 333.18838 of the Michigan Compiled Laws.



(c) “Physician” means an individual licensed to practice medicine or osteopathic medicine and surgery under article 15 of Act No. 368 of the Public Acts of 1978.

(d) “Registered professional nurse” means an individual licensed to engage in the practice of nursing under article 15 of Act No. 368 of the Public Acts of 1978.

**The effect is that the liability of medical authorities who volunteer their services to the interscholastic athletic program is less than that of medical authorities who are paid for their services. Donating medical services saves money for schools and saves liability concerns for medical authorities.**

### **C. INSURANCE REQUIREMENTS**

Prior to 1996 when the School Code was rewritten, Section 1522 of the School Code of 1976 allowed a board of education to require a fee from participants in interscholastic programs for the cost or a portion of the cost for medical care or insurance for the protection of pupils. However, the section very specifically stated that a pupil could not be barred for participation because of the inability to pay the fee. The section read:

(4) A board may require a fee from participants in interscholastic athletic programs for the cost or a portion thereof of medical care, mutual benefit programs or insurance programs to ensure protection for pupils. A pupil shall not be barred from participation in interscholastic athletic activities because of inability to pay the fee.

Prior to the repeal of this section, it was considered likely, but not absolutely certain, that a school district would not be permitted to require proof of health insurance as a pre-condition of students’ participation in interscholastic athletics. The question of insurance could have been asked and probably should have been asked of participants’ families, but participation should not have been denied to those students who were without insurance.

That would appear to be the wisest counsel today. And if there are one or more students who cannot provide proof of insurance, it would be prudent for the school district to send home literature which describes how the family might purchase protection for their unprotected children on a voluntary basis directly from an insurance administrator or how the family might participate in a program purchased by the school.

At no cost to MHSAA member high school and junior high/middle schools, the MHSAA purchases a policy that provides a \$1,000,000 layer of excess accident medical benefits, payable after a deductible of \$25,000 per claim. Only eligible student-athletes are covered. The *MHSAA Handbook* provides additional details of coverage.

The MHSAA is not involved in claims beyond \$1,025,000 per claim, but **school districts could reduce the potential of litigation brought on behalf of participants who are uninsured or who suffer injuries with expenses beyond \$1,025,000 by encouraging or providing such coverage.**

**Starting with the 2015-16 school year, the MHSAA began providing eligible athletic participants at each MHSAA member junior high/middle school and senior high school with insurance that is intended to pay accident medical expenses resulting from diagnosis and treatment of concussions. The policy limit is \$25,000 for each accident.**

**School districts can further reduce their potential liability by assuring that all of their junior high/middle schools are members of the MHSAA and thus covered under the MHSAA-purchased insurance plans.**

## **D. DRUGS/DIETARY SUPPLEMENTS**

1. Public Act 31 of 1990 – In 1990, the Michigan Legislature enacted Public Law 31 which requires athletic service providers – including both educational and recreational athletic facilities – to post notice that warns that any person who uses or knowingly possesses and androgenic anabolic steroid violates Michigan law and is punishable by imprisonment and fine.
2. Public Act 187 of 1999 – Michigan public school employees and volunteers are prohibited from promoting or supplying dietary supplements with claims of enhanced athletic performance as a result of a bill signed into law Nov. 23, 1999.

The new law - designated Public Act 187 on Nov. 30, 1999 - covers androstenedione and creatine and any compounds labeled as performance enhancing.

While the substances are legal and may still be obtained by students through their parents, the new law should help protect schools from the ethical, health and liability issues that may evolve as the long-term effects on adolescents become known. It may provide an early wake-up call to students, parents and others that the health effects of these substances are unknown, especially as they might affect growing boys and girls.

Violations are punishable by up to 90 days in jail and/or a \$500 fine.

3. Public Act 215 of 2006 – The Michigan Legislature enacted this law which requires each public school's board of education must include in its local code of conduct that a student's use of performance-enhancing substances that are listed by the Department of Community Health shall be deemed a violation and subject to penalties prescribed by that local board of education. The Department of Community Health will adopt the list of banned drugs of the National Collegiate Athletic Association.

## **E. HAZING**

Public Acts 111 and 112 of 2004 prohibit and penalize hazing, which is defined as an intentional, knowing or reckless act by a person who acted alone or with others that was directed against an individual and that person knew or should have known would endanger the physical health or safety of the individual, and that was done for the purpose of affiliation with, participation in, or maintaining membership in any organization. The laws do not apply to an activity that was normal and customary in an athletic program sanctioned by the educational institution. Because there is so much left open to legal interpretation by the language of these laws, coaches must take precautions with team leadership early and often to ensure that nothing approaching the broadest interpretations of hazing occurs when the coach is, or might be, aware.

If the violation results in physical injury, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days, a fine of not more than \$1,000, or both. A violation resulting in impairment of a body function would be a felony resulting in imprisonment of up to five years and a fine up to \$2,500, or both. A violation resulting in death of the person hazed would be punishable by up to 15 years imprisonment and a maximum fine of \$10,000 or both.

## F. CONCUSSIONS

Public Acts 342 and 343 of 2012 address concussion awareness in non-MHSAA sports activities. The law mandates that the Michigan Department of Community Health (MDCH) establish a concussion awareness website for youth sports sponsoring organizations (including schools) with educational material in **non-MHSAA** sport activities including physical education, intramurals, out-of-season activities, as well as out-of-season camps or clinics.

- Students and parents must review concussion material and the organization maintain an acknowledgement of this material until age 18 or the student discontinues the activity.
- Participants with a suspected concussion must be withheld from activity and evaluated by an appropriate health care provider and not be returned to activity until written approval is provided by an appropriate health care provider. For MHSAA practices and competition, an MD, DO, Nurse Practitioner or Physician's Assistant must provide written return to play. See MHSAA Concussion Protocol on *MHSAA Handbook* page 111.

The MDCH Website is accessible through MHSAA.com Health & Safety Page or directly at [Michigan.gov/sportsconcussion](http://Michigan.gov/sportsconcussion).

Public Acts 342 and 343 make no demands on schools for interscholastic sports served by the MHSAA beyond the requirements the MHSAA already makes for MHSAA member schools. For athletic activities outside the scope of MHSAA sponsorship, schools need to comply with the law. Areas to which schools may need to give attention are these (the laws do not speak specifically to some of these matters):

- Sports sponsored by schools on an **interscholastic** basis that are **not** served by the MHSAA (e.g., equestrian, field hockey, water polo), **AND** out-of-season activities in interscholastic sports that **are** served by the MHSAA (e.g., camps, clinics).
- **Physical education.**
- **Intramural sports.**

## G. CARDIAC CARE

**1. Public Act 12 (2014)** - The law mandates that all public schools adopt and implement a cardiac emergency response plan that addresses the following:

- Use and regular maintenance of automated external defibrillators (AEDs)
- Activation of a cardiac emergency response team.
- A plan for communication throughout the school campus.
- A training plan for use of automated external defibrillators and cardiopulmonary resuscitation
- Integration of the local emergency response system with the school's emergency plans.
- Annual review and evaluation of the cardiac emergency response plan.

**2. Public Act 388 (2016)** - The law requires that all public schools incorporate training, at a minimum, in hands-only Cardiopulmonary Resuscitation (CPR) into any health curriculum offered between 7th and 12th grades. The three main requirements are

- 1) The training must be based on the American Heart Association, American Red Cross or another nationally recognized organization's evidence-based guidelines.
- 2) The training must include hands-on-a-manikin practice. Watching a training DVD alone is not sufficient to meet the requirements of this law.
- 3) The training must include education on Automated External Defibrillators (AEDs). The training does not need to be hands-on-an-AED practice, but instead simply needs to be education on AEDs. For example, education regarding what they look like, how they work and why they are needed if someone is suffering a cardiac arrest.

## H. TITLE IX COMPLIANCE

The spirit of the implementing regulations for Title IX promulgated by the US Department of Health, Education and Welfare in July 1975 is that the interests and abilities of female (and male) students should be assessed and accommodated:

“In determining whether equal opportunities are available, the Director will consider, among other factors:

- (1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;”

- 34 CFR S. 106.41(C)

The spirit of the September 1975 Memorandum of the US Department of Health, Education and Welfare to Chief State School Officers, Superintendents of Local Education Agencies and College and University Presidents is that the interests and abilities of female (and male) students should be assessed and accommodated:

“ . . . educational institutions operating athletic programs above the elementary level should . . .

- (2) Determine the interests of both sexes in the sports offered by the institution . . .
- (3) Develop a plan to accommodate effectively the interests and abilities of both sexes,”

The spirit of the 1976 HEW Manual Competitive Athletics: In Search of Equal Opportunity is to evaluate (not dictate) and to accommodate (not duplicate):

“(Title IX) does not require colleges to duplicate their men’s program for women or to offer exactly the same sports in exactly the same fashion for both women and men . . . Rather, it requires overall equal athletic opportunity, with specific athletic offerings being determined primarily by the interests and abilities of female and male students.” (Page 1)

The spirit of the December 1979 Policy Interpretation of HEW for athletics was that the interests and abilities of female (and male) students should be assessed and accommodated:

“*Compliance in Meeting Interests and Abilities of Male and Female Students:* Pursuant to the regulation, the governing principle in this area is that the athletic interests and abilities of male and female students must be equally effectively accommodated.”

- Federal Registered/Vol. 44, No. 239, p. 71414

The spirit of the Title IX Athletics Investigators Manual published in 1990 by the Office for Civil Rights of the US Department of Education is not to mandate the male model of sports programs but evaluate interests and accommodate them even if females’ interests differ:

“Institutions are not required to offer the same sports or even the same number of sports to men and women . . . Institutions are required to provide equal opportunity to participate and to equally effectively accommodate the athletic interests and abilities of men and women.” (PP. 10 & 11)

In the realm of interscholastic athletics, this spirit is advanced when local and state leaders listen both to high school girls and boys and design programs that they want and will support, even if they are different for girls and boys.

1. “Proportionality” vs. Student Interest

Since Title IX has become law, the Office for Civil Rights has issued a series of memos – in 1979, 1996, 2003 and 2005 – which advance a “three prong test” to assess whether an institution (1) offers opportunities for sports participation that are proportionate to the enrollments for each gender, or (2) has established a history and ongoing practice of increasing opportunities for the under-represented gender, or (3) has fully accommodated the athletic interests of the under-represented gender.

That it has required three clarifications is testimony to how difficult OCR was making things; and as a result, most institutions took refuge in the first prong – “proportionality” – because it was the simplest and most straightforward to measure, a “safe harbor” no matter how badly it affected students.

In 2003, the Commission on Opportunity in Athletics issued 25 recommendations to the Secretary of the US Department of Education, including a number that were critical of OCR’s policy that tended to cause schools to default to the proportionality test. Among the recommendations related to this that were adopted without dissent:

- The Office for Civil Rights should make clear that cutting teams in order to demonstrate compliance with Title IX is a disfavored practice.
- The designation of one part of the three-part test as a “safe harbor” should be abandoned in favor of a way of demonstrating compliance with Title IX’s participation requirement that treats each part of the test equally. In addition, the evaluation of compliance should include looking at all three parts of the test, in aggregate or in balance, as well as individually.

A number of the other adopted recommendations were designed to make compliance clearer and easier under the second and third tests as a way to reduce reliance on the more easily quantified proportionality test that had evolved into the “only” test.

One of the results of the 2003 Commission recommendations was the development and dissemination in 2005 of a simpler web-based survey model, which was criticized by some observers, but had been designed in response to input that the 1996 “clarification” had been so ambiguous that institutions “could not determine when compliance had been achieved under Prong Three.”

On April 1, 2010, the US Civil Rights Commission found that the Department of Education’s 2005 model survey provides “the best method available for achieving compliance under prong three.” The Commission recommended that “the regulations be revised to explicitly take into account the athletic interests of both sexes rather than just the interests of the under-represented sex, restoring Title IX to its original goal of providing equal opportunity for individuals of both sexes.”

But on April 20, a “Dear Colleague letter” from the assistant secretary for Civil Rights of the US Department of Education provided another clarification, this one titled “Intercollegiate Athletics Policy Clarification: The Three-Part Test – Part Three,” withdrawing the 2005 clarification and all related documents accompanying it, including the “User’s Guide to Student Interest Surveys Under Title IX” and the related documents issued by the Department in March of 2005.

This latest clarification replaces the model survey with 12 pages of factors to be considered when assessing student interest, all of which is open to interpretation and evaluation and will likely have the result of discouraging schools’ use of the third prong and their reliance again on only the first prong (proportionality) to assure Title IX compliance.

## 2. Competitive Cheer as a Sport

In 1975, those charged with Title IX policymaking promulgated the following: “. . . drill teams, cheerleaders and the like . . . are not a part of the institution’s ‘athletic department’ within the meaning of the regulation.”

- US Department of Health, Education and Welfare, September 1975

The policy may have been justified at one time, but it is out of date and out of step with the modern world where sideline cheerleading has become highly athletic and competitive and in many places has evolved to its own, self-reliant and focused sport.

Such is the case, for example, in Michigan where the sport of competitive cheer draws as many participants and twice the spectators as high school gymnastics and skiing combined and has been deemed by the participants, their schools, their leagues and the Michigan High School Athletic Association to be a sport.

Correctly so, the Office for Civil Rights has permitted high schools to make the determination that competitive cheer is a sport.

“This material tends to support in several ways the characterization of MHSAA-sanctioned competitive cheerleading as a Title IX sport in that it specifies the season of sport, identifies the eligibility requirements and standardized judging criteria used by registered officials, notes the availability of some state and conference championships and scholarship monies, and certifies that this activity is recognized as a sport by MHSAA and interscholastic athletics conferences within Michigan.”

- OCR Letter to MHSAA, Oct. 18, 2001

Neena Chaudhry, senior counsel for the National Women’s Law Center, concurred in the ESPN.com Timeout Chat Show on June 19, 2002:

“Cheerleading could be considered or counted as a sport if the cheerleading team’s primary purpose is to compete.”

In Michigan, that is the sole purpose of girls competitive cheer.

On Aug. 1, 2002, the US District Court in Kalamazoo, MI ordered competitive cheer to be included in the calculation of female participants in high school athletics in Michigan.



In Michigan, there is no rational argument for the proposition that MHSAA girls competitive cheer is not a sport.

## I. GENDER-SPECIFIC TEAMS

### 1. Girls on Boys Teams

The Michigan School Code states:

#### **380.1289 Participation of female pupils in interscholastic athletic activities.**

Sec. 1289. Female pupils shall be permitted to compete for a position in all interscholastic athletic activities. If a school has a girls' team in an interscholastic athletic activity, a female shall be permitted to compete for a position on any other team for that activity. This subsection shall not be construed to prevent or interfere with the selection of competing teams solely on the basis of athletic ability.

**History:** 1976, Act 451, Imd. Eff. Jan. 13, 1977;—Am. 1994, Act 416, Eff. Mar. 30, 1995;—Am. 1995, Act 289, Eff. July 1, 1996.

### 2. Boys on Girls Teams

The Michigan High School Athletic Association *Handbook* stipulates that “Boys may not participate on a girls team in MHSAA-sponsored postseason meets and tournaments.”

This policy is consistent with federal regulations adopted to enforce Title IX of the Education Amendments of 1972 which allow separate athletic programs if such promote and protect athletic opportunities for the gender whose overall athletic opportunities have been more limited historically than the other gender. See 34 C.F.R. See 106.41(b) (2004).

The MHSAA is consistent with many judicial decisions in many states, for example, Cape v. Tennessee Secondary School Athletic Association 563 F.2d 793 (1977); Gomes v. Rhode Island Interscholastic League 604 F 2d 733 (1979); Petrie v. Illinois High School Association 394 NE 2d 855 (1979); Forte v. Board of Education of North Babylon Free School District 431 NYS 2d 321 (1980); Clark v. Arizona Interscholastic Association 464 US 818 (1983); and Bukowski v. Wisconsin Interscholastic Athletic Association, an unpublished decision in District VI of the Wisconsin Court of Appeals (No. 2004CV472, Nov. 30, 2006).

During the regular season, the MHSAA honors the following options available to schools which desire to preserve an interscholastic team that consists of girls only.

- (a) Schools may break girls sports contracts with schools which submit eligibility rosters for contests which include boys; and tournament management may exclude teams which include boys. Schools should clearly indicate on school contracts that contests are “girls competitive cheer,” or “girls volleyball,” or “girls gymnastics,” etc.
- (b) Officials may require a forfeit by any school which refuses to play girls only in a contest. Schools should clearly indicate on officials contracts that contests are “girls competitive cheer,” or “girls volleyball,” or “girls gymnastics,” etc.

- 
- (c) Leagues and conferences may establish league/conference meets and schedules for girls teams only and exclude teams which include boys.

## **J. STUDENTS WITH DISABILITIES**

On Jan. 25, 2013, the Office for Civil Rights of the US Department of Education issued a “Letter of Clarification” about the obligations of schools with respect to providing athletic participation opportunities for students with disabilities under Section 504 of the Rehabilitation Act of 1973. The immediate public reaction was that OCR was expanding the mandates of Federal law, notwithstanding a footnote which states: “This letter does not add requirements to applicable law.”

On April 18, 2013, during a video conference between the principal author of the Jan. 25 letter, Acting Assistant Secretary for Civil Rights Seth M. Galanter, and an audience in Indianapolis of state high school association executive officers and their legal counsel, Mr. Galanter gave an unequivocal “No” to the following two questions:

1. If, after a reasonable accommodation that does not change the fundamental nature of the sport, a student with a disability still cannot make the school’s competitive athletic team in that sport, must the school create a team the student can make?
2. If, after a reasonable accommodation that does not change the fundamental nature of the sport, a student with a disability still cannot qualify for the state high school association tournament series, must the state association create events or modify qualifying standards so this student can participate in that tournament?

Mr. Galanter said that OCR encourages schools to be creative in accommodating students with disabilities in existing or new and different programs. However, no new rights or responsibilities were established on Jan. 25.

On Dec. 16, 2013, OCR issued a letter to the General Counsel of the National School Board’s Association which confirms that OCR’s Jan. 25, 2013 letter “. . . does not announce new obligations or rules . . .” The Dec. 16, 2013 letter states:

**“It does not mean every student with a disability has the right to be on an athletic team, and it does not mean that school districts must create separate or different activities just for students with disabilities.”**

## **APPENDIX D: EXPERT WITNESS REPORT**

*The following excerpts are taken from the Expert Witness Report prepared by MHSAA Executive Director John E. "Jack" Roberts for Brentwood Academy v. TTSSAA, May 20, 2002*


Based on my education, training, study and experience, it is my fundamental opinion that the recruiting of students for athletic purposes at the high school level should be prohibited by a prophylactic rule. There are a number of reasons for my belief in this policy which I will discuss in more detail below. In order to fully understand the problem, however, one must first appreciate the special and unique circumstances of high school athletics as opposed to other high school extracurricular activities.

Sports is an extracurricular program unlike non-athletic extracurricular activities or classroom subjects. Sports draw crowds and media coverage. Because competition is involved, people will always look for competitive advantages, including unfair competitive advantages. A fair and level playing field requires a uniform code of rules to restrain the temptation of coaches and administrators to shift the focus of the educational mission of interscholastic athletics from the welfare of the students to the won-loss record of a team, entertainment of an audience, the competitive zeal of coaches and alumni, and the commercial interests of others. Unlike music, speech, debate, and drama, competitive educational athletics tend toward excess and abuse. For example, while it is unlikely that schools will start recruiting tuba players and elevating tuba playing over other aspects of academic education, evidence abounds that many coaches and high schools need firm rules to limit athletic transfers and frustrate undue influence for athletic purposes by representatives of schools. The possible, yet extremely remote possibility of fame, glory, and substantial compensation at the professional level, especially in the mass-market sports of football, basketball, and baseball, presents a potent and dangerous tool for the exploitation of impressionable teenagers.

Experience has proven that the temptation of adult coaches and administrators to secure an unfair competitive advantage is so powerful and corrupting that attempts will always be made by some to circumvent clearly prescribed rules. The unfortunate irony of such conduct by high school educators is that there is no educational goal, purpose or need that requires athletic recruiting nor that cannot be accomplished in the total absence of athletic recruiting. Similarly, athletic recruiting serves no competitive athletic purpose other than the dubious distinction of using unfair advantage over one's opponents to possibly win a few more competitions. Neither access to alternative educational opportunities, nor access to "better" athletic programs, nor student financial need require athletic recruiting. All of these concerns may be addressed without the solicitation of junior high students simply because of their athletic skills.

On the other hand, however, the harmful consequences of athletic recruiting for any comprehensive education program are numerous. In many respects these harmful effects are subtle and act as an infection within the educational process. All states in this nation have determined that academics must be the paramount mission of our educational systems. Interscholastic athletics can be a valuable educational tool within the academic system, but in our society, it can also undermine the academic mission unless it is kept in proper perspective as simply one subordinate part of a balanced educational "mix." Interscholastic athletics exist to supplement the academic missions of member schools in organizations like TSSAA and MHSAA, not to supplant those missions. For those coaches, parents, children, and other sports enthusiasts who wish to be involved in athletic competition unaffected by overriding educational concerns, other avenues like AAU basketball may be pursued. However, in assessing rules of an interscholastic association like TSSAA or MHSAA, it must be remembered that the overriding function of the association is to regulate school sports in school settings as part of the educational process.

The practice of athletic recruiting sends a message to the recruited middle school student that athletic skills are a viable substitute for life skills and that athletics is a viable alternative to academics. I have seen many young lives ruined or at a minimum, compromised and diminished by the seductive message that athletics can provide a "life ticket." In my professional career, I have heard of many, many more such sad stories. For



a very select few students within a state's educational system, athletics may ultimately provide some form of a career. Athletic recruiting at the high school level, however, sends the subliminal message that interscholastic athletics is actually a viable vocational program. That is a dangerous, deceptive and false message to send to any 8th-grade student, and it undermines the education system's goal to focus the primary attention of all students on academic education.

Less than two percent of high school athletes play intercollegiate sports on any level or for any length of time, and most who do participate without any financial aid based on athletic performance or potential. There is far more financial aid for college based on academic performance than athletic performance in high school. Taken a step further, only a small fraction of one percent of high school athletes ever receive a professional sports contract. The likelihood of a high school student becoming a doctor or lawyer is far greater than the likelihood of becoming a professional athlete. By recruiting junior high students for their athletic potential, placing greater emphasis on athletics than on the academic and social aspects of education, we begin those students on a path which is less, rather than more, likely to bring them prosperity and personal satisfaction in later life.

One must look no further than the abysmal graduation rates of NCAA Division I basketball and football programs, in comparison to the higher graduation rates in Division III institutions where recruitment for athletic purposes is less a way of life, to assess the reality of abuses and excesses and the damage to students and the integrity of programs. If high school administrators allowed athletic recruitment and scholarships, high school interscholastic athletics would be where NCAA Division I programs are now. It is to the credit of those high school principals and administrators who make and enforce broad rules to prohibit athletic recruiting that high school sports have not reached that level.

Athletic recruiting contributes to the "athlete subculture" in our schools in which athletes become convinced that they are entitled to special treatment because of their athletic skills and become segregated to some extent from the general student populace. This limits rather than enhances the development of those social skills the student needs later in life.

Athletic recruiting intrudes on the decision-making interaction between parent and child. Once a student has been praised and stroked by a prominent coach, the dynamics of any discussion between parent and child about education opportunities are forever changed.

The fundamental premise of any competitive sport is the idea of a "level playing field." Athletic recruiting undermines that foundation and causes damage to three categories of interested parties. First, the athletes who benefit from the unfair advantage of athletic recruiting are deprived of a fair assessment of their own skills and receive instead an artificially inflated impression of their abilities. Second, the athletes at schools which will never be able to recruit are similarly deprived of a fair competitive test. Finally, the community is deprived of the full historical force of high school sports as a community rallying point.

Perhaps, most importantly, students need role models who will teach by example the virtues of fair play, integrity, and respect for the rules. Schools and coaches should not be teaching 14 to 18 year-old students that winning at all costs, even by bending and breaking the rules, is acceptable. Regardless of what now occurs at some levels of collegiate sports, students in intermediate and high schools deserve better role models than that in their schools and coaches.