A LEGAL AND DESCRIPTIVE ANALYSIS OF THE AUTHORITY, GOVERNANCE AND PERFORMANCE OF THE VIRGINIA HIGH SCHOOL LEAGUE, INC.

by

Frank J. Polakiewicz

Dissertation submitted to the Faculty of the
Virginia Polytechnic Institute and State University
in partial fulfillment of the requirements for the degree of

DOCTOR OF EDUCATION

in

Educational Administration

APPROVED:

M. David Alexander, Chairman

Richard G. Salmon

David J. Parks

Wayne M. Worner

James A. Gallion

November 1985

Blacksburg, Virginia

A LEGAL AND DESCRIPTIVE ANALYSIS OF THE AUTHORITY, GOVERNANCE AND PERFORMANCE OF THE VIRGINIA HIGH SCHOOL LEAGUE, INC.

by

Frank Polakiewicz

Committee Chairman: M. David Alexander

Educational Administration

(ABSTRACT)

PURPOSE OF THE STUDY

Since 1977 the Virginia High School League (VHSL) has been the subject of reports, legislative agendas and resolutions introduced in the General Assembly. These documents raised several questions concerning the authority, structure and performance of the VHSL. The purpose of this study was to answer the following primary questions:

1. What is the legal source and basis of the VHSL's authority?
2. Who governs the VHSL?
3. Does the VHSL provide adequate due process?
4. What is the source of any dissatisfaction that may exist and how can such dissatisfaction be abated?

DESIGN OF THE STUDY

The study consisted of two phases. The first involved the research and analysis of state statutes and case law related to the administration of interscholastic athletics, and a review of the handbooks of selected state athletic

associations. The second phase was the design, construction and implementation of a survey to determine and compare the opinions of a sample of principals, local superintendents, local school board chairmen and legislators concerning the authority, governance and performance of the VHSL. The data were analyzed using the cross-tabs and frequencies commands available on SPSS-X.

CONCLUSIONS

1. Based upon their implied authority to implement rules and regulations necessary to supervise the schools within their jurisdiction, local school boards have delegated the administration of interscholastic athletics to the VHSL.

2. The VHSL is governed by the principals of the member schools, but avenues of participation do exist for local school boards, the state department of education and others.

3. The due process provided by the VHSL satisfies any requirement that may exist concerning the provision of either substantive or procedural due process.

4. The respondents were satisfied with the performance of the VHSL, but authority and power was a source of dissatisfaction. Most high school principals believe the VHSL should be able to pass regulations binding upon local school boards, but the remainder of respondents disagreed. Most local school board chairmen believe they have no input

into the formulation of VHSL policy, but believe they should be actively involved in the governance of the VHSL. Principals disagreed and stated that local school boards should have an advisory role.

5. If the dissatisfaction of local school board members is not abated, the VHSL will be made accountable to local school boards by the concerted action of the local school boards or the General Assembly. The VHSL could reduce existing dissatisfaction by increasing the participation of local school boards in the governance of the VHSL within the existing structure of the VHSL. Most respondents did not favor the intervention of state agencies.

ACKNOWLEDGEMENTS

To the people who made my studies and the completion of this dissertation a professionally and personally rewarding experience, I extend my sincere thanks. I thank my committee for their patronage, patience and support, and their willingness to serve as mentors, teachers and counselors.

A special thanks to Dr. M. David Alexander for guiding me through the process, providing opportunities for professional growth and exemplifying the spirit and intent of the Bill of Rights; and Dr. Richard G. Salmon for taking a personal interest in his students, seeing the humor in life's stressful moments and managing my tutoring assignments. I thank Dr. David J. Parks for sharing his insight into research, administration and child rearing, and insuring the humility of his students. I extend my thanks to Dr. Wayne M. Worner for personifying the relationship between theory and practice, and Dr. James A. Gallion for sharing his insight. I also extend my thanks to Dr. W. Robert Sullins and Dr. Steve Parson for encouraging me to enjoy all phases of university life.

To my parents, who I can never thank enough, I extend my deepest thanks for instilling in me the value of education. I also thank my family for enduring the sacrifices and hardships inherent in such an endeavor.

To Dr. C. P. Penn and the Surry County School

Board--Newton M. Taliferro, Col. Nelson Richie, Rufus Blount, Noel Taylor and Ashby Blount--I extend my thanks for their outstanding support throughout the final stages of my program.

I dedicate this dissertation to my daughters, Barbara Gail and Tami Lyn, who brighten my life. Foremost, I dedicate this dissertation to the memory of Melissa Ann Polakiewicz, who in my moments of quiet introspection is my inspiration.

TABLE OF CONTENTS

		Page
ABSTRACT		ii
ACKNOWLEDGEMENTS		v
CHAPTER		
I.	INTRODUCTION	1
	Purpose of the Study	16
	Limitations	33
	Definitions	35
	Footnotes	44
II.	RESEARCH DESIGN	49
	Survey Research	56
	Sample Design and Procedures	56
	Design and Development of Survey Instrument	58
	Survey Procedures	61
	Analysis of Survey Data	62
	Design of the Study	64
	Footnotes	66
III.	STATE STATUTES CASE LAW AND THE AUTHORITY TO ADMINISTER INTERSCHOLASTIC ATHLETICS	67
	The Commonwealth of Virginia	74
	A Comparison of State Statutes	78
	Case Law and VHSL Regulations	95
	Parochial School Membership	95
	Conduct Rules	104
	Age Rule	108

Page

How Does the VHSL's Authority Compare to the Authority of State Athletic Associations? 257

How Do VHSL Rules and Regulations Compare to Existing Case Law? 258

How Do Educators and Policymakers Evalaute and Perceive the Authority of the VHSL? 260

Who Governs the VHSL? 261

How Does the Governance of the VHSL Compare to the Governance of Other Associations? 262

What Alternatives to the Existing Structure Are Available? 263

What is the Opinion of Educators and Policymakers Concerning the Governance of the VHSL? 266

Does the VHSL Provide Adequate Due Process to Member Schools, School Boards, and Participants? 267

Are Principals, Local Superintendents, Local School Board Chairmen and Legislators Dissatisfied With the Performance of the VHSL? 268

What is the Source of Any Dissatisfaction That May Exist? 269

How Can the Dissatisfaction Be Reduced or Resolved? 270

Footnotes 273

Bibliography 283

REFERENCES 295

APPENDICES 300

VITA

LIST OF TABLES

		Page
1-1.	A Classification of the Issues and Questions Raised in Resolutions Calling for a Study of the VHSL	31
3-1.	A Classification of State Statutes Granting School Boards The Authority to Join State Athletic Associations	79
3-2.	The Language Found in Statutes Granting the Expressed Authority to Join Associations	83
3-3.	A Classification of State Statutes Which Impliedly Grant Local School Boards the Authority to Join State Athletic Associations	85
3-4.	State Athletic Associations Classified by the Legal Basis of Their Authority	94
4-1.	Profile of Subjects by Subgroups and Corresponding Rate of Response	208

LIST OF FIGURES

Figure		Page
1-1.	A Classification of VHSL Rules and Regulations	10
1-2.	A Schematic Representation of the Composition of the Legislative Council of the VHSL	12
1-3.	A Schematic Representation of the General Structure of the VHSL, Inc.	13
5-1.	State Regulation of Athletic Associations	227
5-2.	Three Generic Models of the Structure of State Athletic Associations	253

CHAPTER I

INTRODUCTION

High school athletics, according to Appenzeller, began as "club" sports, similar to collegiate intramurals or club programs.[1] From the beginning, these programs were a source of controversy and conflict. Meadors cites several inherent problems which have confronted educators from the inception of interscholastic sports, such as extreme community pressure to produce winning teams; post season games involving extensive travel; undesirable recruiting practices by high schools, colleges and professional teams; a lack of eligibility requirements or rules; and undesirable behavior on the part of participants and spectators.[2] These problems are as pertinent today as they were in the late 1800's and early 1900's.

Reluctantly school administrators accepted the responsibility of supervising interscholastic athletics and established rules and regulations to promote order and equalize competition.[3] Acting locally, school administrators experienced limited success in attaining either of these objectives. As a result of this limited success, state athletic associations were formed. Grieve cites 1895 as the date state athletic associations were established in Wisconsin and Illinois. Other states followed their example

until all states had a state athletic association. The purpose of these organizations was to exert statewide control over eligibility, standardize rules of play, limit the length of seasons, equalize competition and resolve conflicts between schools.[4]

Grieve reports that in the 1920's, a group of Mid-Western associations formed an organization to aid state athletic associations, control intrastate competitions and address national problems.[5] This group evolved into the National Federation of State High School Associations. Presently, every state athletic association is a member of the National Federation of State High School Associations. The National Federation provides a model for state associations, recommends rules and standardizes both equipment and playing rules. Member associations may modify or even reject recommended federation rules. The National Federation maintains the Mutual Legal Aid Pact, which consists of a set of legal briefs concerning interscholastic athletics, and provides legal advice.[6]

There are differences of opinion concerning the classification of state athletic associations. Bolmeir classifies state athletic associations as: (1) associations established by statute, or (2) associations established by contract.[7] Meador classifies the associations as: (1) associations established by state departments of education,

(2) associations established by universities, and (3) associations established by school administrators.[8] Grieve identifies three types of state athletic organizations: (1) voluntary associations, (2) associations connected with the state department of education, and (3) associations directed by universities.[9] On the other hand, Doerhoff considers all state high school athletic associations to be voluntary associations, and characterizes these voluntary associations as having no statutory basis, and receiving no state or local tax money.[10]

Generally, associations consist of an executive board, the administrative body usually composed of school officials and an executive director, and a legislative or governing body. These associations are usually controlled by members who have framed a constitution, and determined specific rules and regulations. The member schools have the power and authority to amend the constitution and revise the rules and regulations. Grieve states that those associations administered and supervised by the state department of education are recognized and controlled by the legislature, the same as any other aspect of the public schools.[11] Therefore, the rules and regulations of such organizations are part of the state regulations. University directed associations are administered and directed by large universities because universities are more adept at

supervising such programs than high schools.[12] The regulations of university directed associations and those associations established by administrators are considered to be local board regulations.

The problems facing state athletic associations today have increased to include complex and controversial issues as reflected in recent litigation and controversies reported by the media. From 1938 to 1960, there were four court cases involving state athletic associations. From 1960 to the present the number of cases involving state athletic associations increased significantly, as did litigation involving education in general. Strope concludes that "the authority and liability of interscholastic associations at the local, state and regional levels has become a focus of considerable litigation."[13] Today the authority of voluntary athletic associations is being challenged on the basis of equal protection, first amendment issues, due process and civil rights.

The following questions are issues concerning interscholastic athletics which have been litigated and continue to be a source of litigation and debate:

1. Do transfer rules and "red shirt" rules infringe upon the individual rights of parents and students to live where they please or pursue educational goals?[14]

2. Are "summer camp" rules and independent team rules which apply to team sports, but not to individual sports, a violation of the equal protection clause?[15]
3. Are eligibility rules which require students to maintain a certain grade point average and standard of academic performance, within the authority of state associations to enforce, and are such rules reasonable?[16]
4. Do students have a "right" to participate in athletics, which is protected by the due process clause of the Fourteenth Amendment?[17]
5. Can athletic associations exclude parochial schools from membership, or is such an exclusion a violation of the first amendment right to exercise the religion of one's choice?[18]
6. Can handicapped students be excluded from participation in interscholastic athletics?[19]
7. Can males be excluded from participation on a female team, when a male team is not provided in the activity?[20]
8. Which legal theory should be applied to cases involving athletic associations, the law of private associations, state public law, or constitutional law?[21]

The media has also focused attention on problems related to interscholastic athletics. In 1983, H. Ross Perot focused public attention on the problems and excesses of interscholastic sports. Perot's overall objective was to build public support to force legislators to act to increase support for public education. Perot may have applied enough political pressure to force some changes. Texas law makers passed §21.920. Extracurricular Activities, which limits extracurricular activities to after-school and imposes an academic standard requiring students to receive grades of 70 percent or better in order to retain athletic eligibility.[22] The legislature also passed §21.921. Interscholastic Leagues, which requires the rules of interscholastic athletic associations to be consistent with state board of education rules and requires the University Interscholastic League to submit its rules to the State Board for approval, disapproval or modification.[23] Both of these laws went into effect September 1, 1984, and transformed a voluntary athletic association into an association supervised by the state. The Supreme Court of Texas ruled §21.920.(b), the law imposing academic standards, was a proper and permissible exercise of authority.[24]

In Virginia, athletics, and other extracurricular activities such as forensics, debate, drama and publications, are presently managed and supervised by the

Virginia High School League, Inc. (hereafter referred to as the VHSL). This organization, is considered to be a voluntary organization of accredited, state public high schools. The objective of the VHSL is "to foster among public high schools in Virginia, a broad program of supervised competitions, and desirable school activities as an aid in the total education of students."[25]

The VHSL originated as a debating league, organized by the Washington and Jefferson Literary Societies at the University of Virginia in 1913, and sponsored to promote debate throughout high schools in the Commonwealth.[26]

During the course of the VHSL's evolution, it experienced several changes due to growth, reorganization and merger.

The initial membership grew and in 1914 the Virginia High School Literary League was formed. During 1914-15 the League sponsored statewide competition in baseball, basketball, and track, in conjunction with the University of Virginia's General Athletic Association. As a result of the addition of these activities, the League was renamed the Virginia High School Literary and Athletic League and governed by an executive committee composed of one professor of secondary education, one representative from each literary society and one representative from the athletic association. The responsibility for maintaining the League

was assigned to the Extension Division of the University of Virginia.

Until 1925, both private and public high schools were eligible for League membership. In 1925 the League took legislative action to declare private schools ineligible for membership. The action was based on the fact that not all private schools adhered to League rules.

The following year, 1926, the Legislative Council was formed. This council was composed of principals from member schools and was designed to give principals more control of the League.

During 1946 the League was reorganized and the name changed to the Virginia High School League. In 1948 the VHSL was accepted into the National Federation of State High School Associations.

In 1960 the VHSL classified each school by student population, either A, AA, or AAA, and divided each group into regions and districts.

In 1968 the VHSL merged with the Virginia Interscholastic Association, a league for black public schools, and integrated its activities. Also in 1968 the League exercised its control over girls' athletic programs, which were reemerging in the public schools, and formed the Girls Sports Committee in 1972.

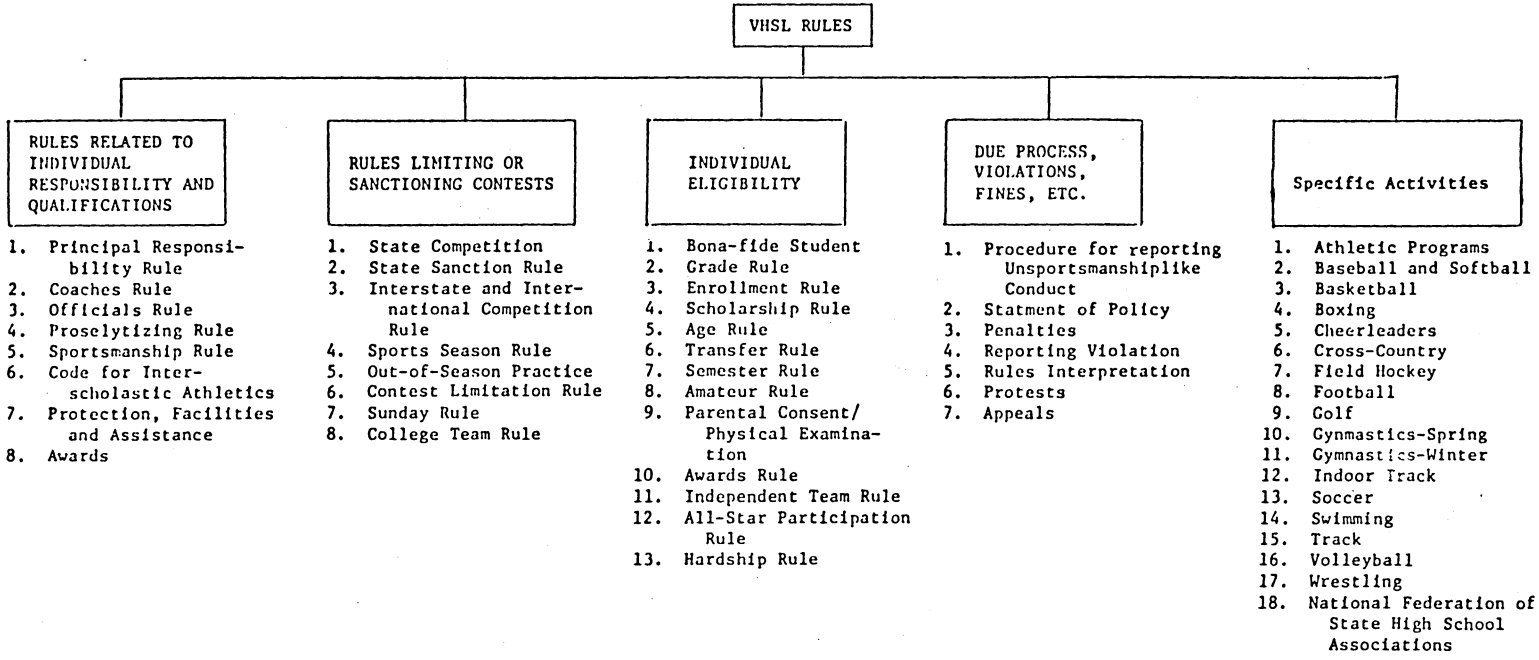
The desire for greater legislative autonomy and fiscal independence convinced the VHSL to seek further refinement of its program and on July 1, 1981, VHSL was incorporated.[27]

The VHSL is governed by a Legislative Council which adopts all regulations involving the administration, management and control of extracurricular activities in general. The Legislative Council also adopts rules specific to each activity. The rules and regulations of the VHSL can be categorized as rules which outline individual responsibilities; rules which limit competition; rules which define the eligibility standards of participants; rules regulating specific activities; and rules related to due process and the resolution of conflict. (See Figure 1-1).

> "The general legislative powers of the League shall be vested in the Legislative Council. The Council shall be charged with the responsibility of formulating general policy and taking action in matters concerning the welfare and conduct of the League as a whole. It shall serve as a court of last resort in cases of disagreement referred to it by the Executive Committee."[28]

The composition of the Legislative Council is clearly outlined in the VHSL Handbook as follows:

> "The Legislative Council shall be composed of the following persons: Chairman of the League; the immediate past Chairman of the League if he remains in an administrative position in public education; the principal of each member school; the Executive Secretary of the League; two representatives from the State Department of Education; two division superintendents of schools; two representatives from the Virginia School Boards Association; one Virginia citizen appointed by the Executive Committee in consultation with the Virginia State Board of



*Rules applying to the administration of athletics only.

Figure 1-1. A Classification of VHSL Rules and Regulations

> Education; and one male and one female supervisor of athletics elected by the Legislative Council from the state at large."[29] (See Figure 1-2)

The VHSL is composed of the Legislative Council, Executive Committee, Ad Hoc Committees, Group Boards Group Committees, Regional Council, District Council, and District Committees. (See Figure 1-3) The membership and duties of each committee, council or board, with the exception of the Legislative Council, which has been described, follows.

Executive Committee. The membership of the Executive Committee is defined as follows:

> "Membership -The Executive Committee shall be composed of the following members of the Legislative Council: Chairman of the League; the chairman, vice-chairman, secretary, and delegate-at-large of each group; the Executive Secretary of the League; the two representatives from the State Department of Education; the two division superintendents of schools; the two representatives from the Virginia School Boards Association; the Virginia citizen appointed by the Executive Committee; the two supervisors of athletics; the principal of any member school who is serving on the Executive Committee of the National Federation of State High School Associations; and the immediate past chairman of the League if he remains in an administrative position in public education."[30]

The Executive Committee has the power to present legislation to the Legislative Council and take emergency action, which must be approved by two-thirds of the Committee present. Emergency actions apply only to the immediate circumstances and are not binding or to be considered precedent. The Committee shall also make

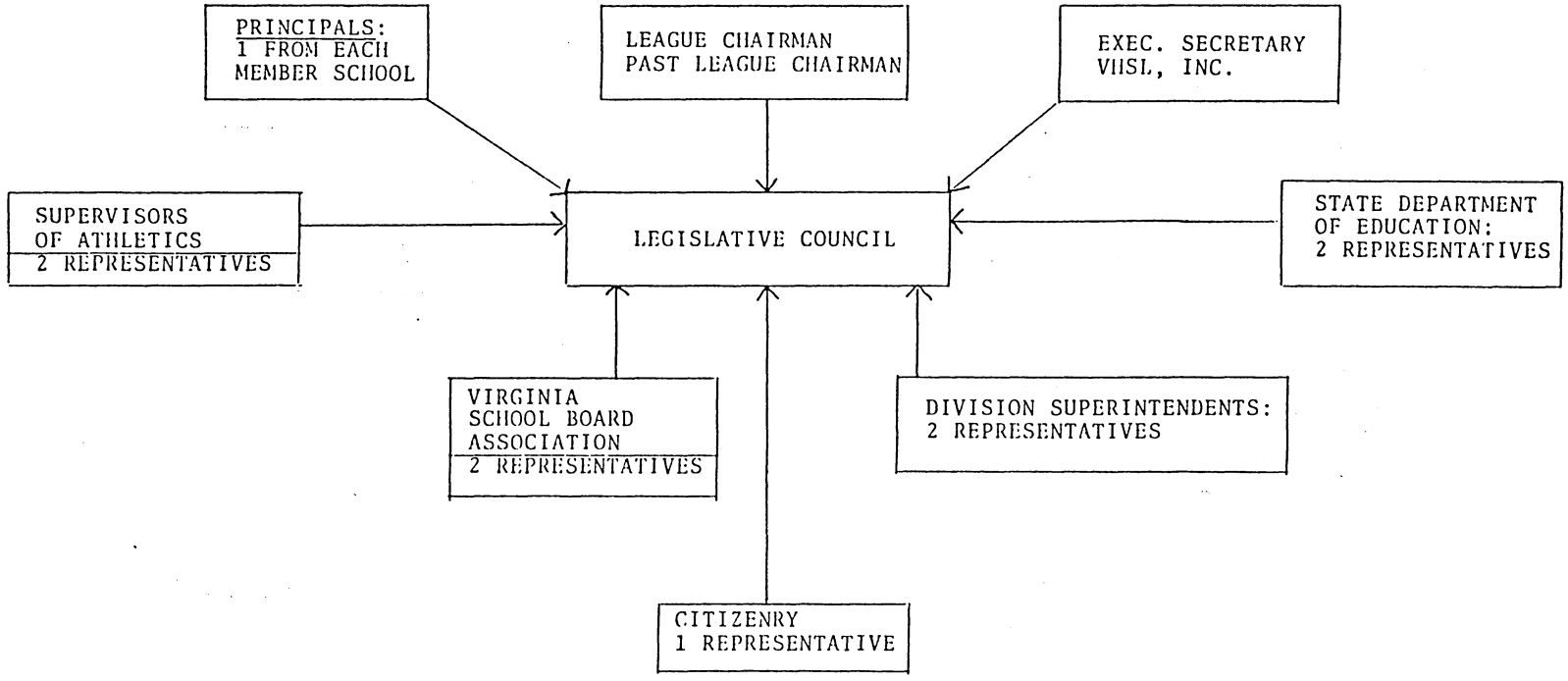


Figure 1-2. A Schematic Representation of the Composition of the Legislative Council of the VHSL.

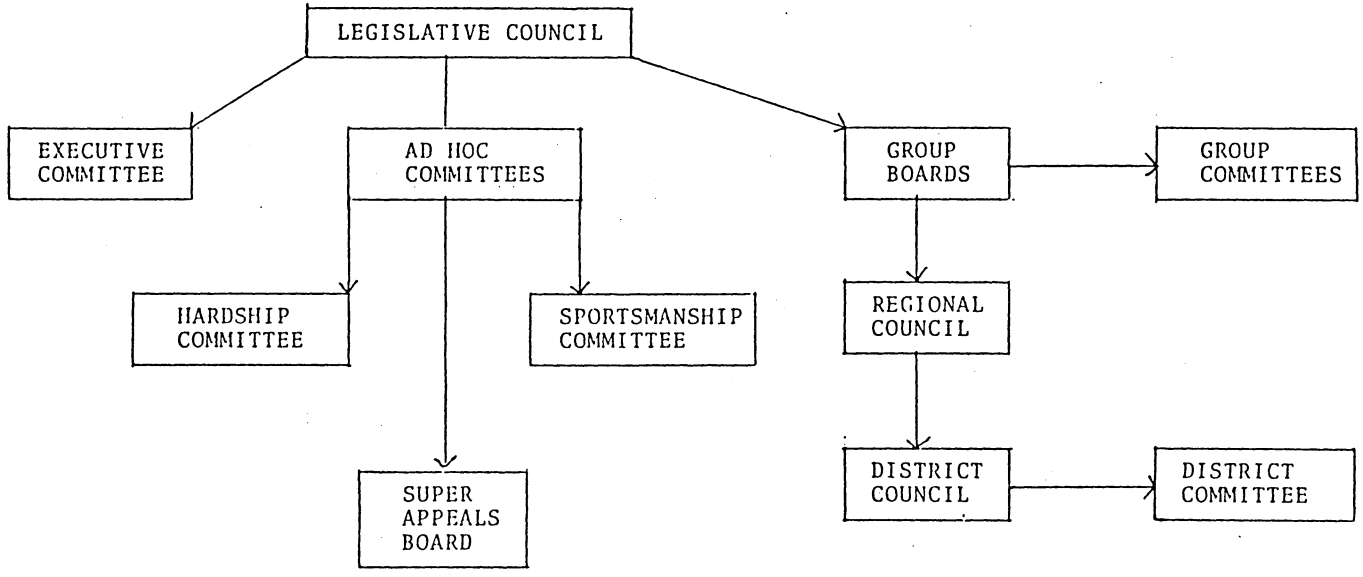


Figure 1-3. A Schematic Representation of the General Structure of the VHSL, Inc.

exceptions to the Bonafide Student Rule and Enrollment Rule on behalf of handicapped students, vocational students, and gifted and talented students, and appoint advisory committees.[31]

Hardship Committee. The Hardship Committee is composed of four principals, appointed by the League Chairman, and approved by the Executive Committee. One division superintendent shall be appointed by the League Chairman to conduct each hearing. This committee shall make exceptions to the Transfer Rule and Semester Rule and grant appropriate relief when, in their judgment, enforcement of these rules creates a hardship on a student. The decisions of this committee are considered final.[32]

Sportsmanship Committee. The Sportsmanship Committee is comprised of four principals, appointed by the Chairman of the League, and approved by the Executive Committee. One division superintendent shall be appointed by the League Chairman to conduct each hearing. This committee hears cases involving violations of the sportsmanship rule and imposes appropriate penalties. The decisions of this committee may be appealed.[33]

Group Boards. Each classification of schools, A, AA, AAA, shall form a general management board, consisting of the principal of each member school, to formulate and adopt specific rules, pertaining to the governance of these schools. The rules must conform with VHSL rules and regulations and be approved by the Legislative Council. The boards also introduce and recommend legislation.[34]

Group Committee. The officers of each group board shall form the administrative body of each group board and interpret and carry out policy. This committee has emergency authority similar to that of the Executive Committee.[35]

Regional Council. Three delegates from each district, plus the region's officers, shall compose the Regional Council. The Regional Council adopts rules and regulations, consistent with VHSL rules, to conduct regional affairs such as play-offs, awards, etc.[36]

District Council. The district council is composed of the principals of the member schools within the district. The council determines the district program and adopts the rules necessary to administer the program. Neither the program nor the rules adopted may conflict with VHSL rules.[37]

District Committee. The district committee shall manage, control and administer the district activities;

enforce and interpret VHSL rules, with the Executive Secretary's help; adjudicate inter-district conflict; and impose penalties for the violation of VHSL rules. The committee shall be composed of the officers of the district council.[38]

PURPOSE OF THE STUDY

Prior to 1977, the VHSL experienced little or no conflict. However, from 1977 to the present, there have been studies concerning the VHSL conducted by organizations such as the Virginia School Boards Association and the Fairfax County Public Schools, and on three occasions resolutions were introduced in the Virginia General Assembly, which requested the VHSL be studied. These resolutions stated specific concerns. A study of the VHSL was also conducted, at the request of two legislators, by the Office of the Secretary of Education.

The following is a chronological summation of resolutions requesting the VHSL be studied, actual studies conducted concerning the VHSL, the recommendations of such studies and the reaction of the VHSL.

1. In 1977 the Virginia School Boards Association formed the VSBA Committee to Study the VHSL. This committee surveyed school board members across the state and compiled the results. The committee sent surveys to all school divisions in Virginia. Seventy-seven responded for a

response rate of approximately 50 percent. Seventy respondents indicated that their responses reflected the opinion of the individual filling out the survey form, while five respondents indicated that the responses reflected a consensus of the school board. Respondents were asked:

1. "Do you understand the role of the VHSL?"
2. "Do you have problems understanding or interpreting the rules and regulations of the VHSL?"
3. "List any suggestions you would like the VSBA to make to the VHSL."[39]

The results of the VSBA survey were as follows:

"Do you understand the role of the VHSL?"

Yes - 71

No - 6[40]

Do you have problems understanding or interpreting the rules and regulations of the VHSL?"

Yes - 3

No - 74[44]

The VSBA Committee received 37 open-ended responses to a request asking respondents to list concerns. Some responses included two or more suggestions. A review of these responses showed a wide variety of concerns. A categorization of those responses produced the following results:

1. satisfaction with the operation of VHSL . . . 11
2. concern over the authority of the VHSL to pass binding regulations on local school boards 9
   - 2.1 more input into formulation of regulations by
     - a. superintendents 1
     - b. local school boards 3
     - c. state board of education. 2
3. concern with eligibility rules 3
4. dissatisfaction with formation of districts. 4
5. need to provide in-service for board members. 1
6. need to improve communications 3
7. why are segregated private schools listed in directory? 1
8. one-school, one-vote issue 1
9. too much power for principals and coaches. . . 1
10. activities should not be held during school time 1
11. too much power for individual schools. 1
12. the need for community input 1

The report concluded:

"After reading the comments from several school districts, I can see that a considerable number of people desire to see some changes made vis a vis the power of the VHSL regarding:

- the transfer eligibility rule
- independent team rule
- jurisdiction or decision regarding alignment of league or conference
- power of VHSL to make decisions without consulting school boards
- big city versus small district relations
- the power of the VHSL to commit public school funds, buildings, personnel, and students without the expressed approval of school boards."[42]

2. In 1978 House Joint Resolution No. 66 was introduced and passed. It requested that the State Department of Education study the VHSL and address three issues:

1. Who should govern the VHSL?
2. How can the VHSL be made responsible to local school boards?
3. How can citizens participate in the regulatory process of the VHSL?[43]

In response to House Joint Resolution No. 66, the Superintendent of Public Instruction appointed a ten-member Task Force, composed of two legislators, two school board members, two superintendents, two principals, and two members of the State Department of Education, to study the

VHSL. The Task Force held a public hearing, attended district, regional and state VHSL meetings, and reviewed pertinent handbooks, surveys, and case law.

The Task Force defined concerns at the public hearing. These concerns were:

"1. Lack of appeals procedure in which the merits of a particular issue can be reviewed, rather than simply whether there was adherence to a rule;

2. The lengthy procedure required in order to change rules;

3. Lack of communication between school boards and VHSL;

4. The possibility that League decisions could supersede school board authority and bind local school boards in a way that would make them subject to litigation;

5. Lack of citizen knowledge of League matters, and input into League decision-making;

6. The assignment of schools to districts, requiring lengthy travel in order to participate in extracurricular events;

7. The Independent Team Rule, which prohibits students involved in VHSL team participation from taking part in other nonschool activities during the same season;

8. Need for simplication and clarification of League rules;

9. Control of the VHSL by big districts and big schools;

10. Accountability for funds."[44]

Following the public hearing, the Task Force recommended the following:

"1. That the membership of the Executive Committee of the League be altered or expanded so as to include two division superintendents appointed by the Virginia Association of School Administrators, two local school board members appointed by the Virginia School Boards Association, and one lay citizen appointed with the advice of the Virginia Congress of Parents and Teachers.

2. That the Executive Committee or component thereof, hold at least one public hearing annually for the purpose of receiving citizen reaction to the governance of the League.

3. That present procedures be reviewed so as to assure an opportunity for local school boards and citizens, to the extent practical, to become aware of issues and policy positions to be voted upon by the total legislative body of the League.

4. That an appeals procedure be considered which would grant to either the Executive Committee or some other objective body, the authority to review both the substantive as well as the procedural aspects of matters appealed to it."[45]

The VHSL responded in a positive fashion to the preliminary recommendations of the Task Force, taking steps to incorporate the recommendations into VHSL regulations. The membership of the Executive Committee was expanded to include a second superintendent, two school board members and a citizen. The appeals procedure was expanded to authorize the Executive Committee to review the substantive, as well as the procedural, aspects of an appeal.

The Task Force summarized their findings and made several recommendations. The Task Force stated that the VHSL operated successfully, and didn't wish to tamper with it's structure. Therefore, they <u>did not</u> recommend that the

State Department of Education, or the General Assembly assume the administration of interscholastic activities. The Task Force, also, expressed the opinion that the expansion of the Executive Committee and Legislative Council, was sufficient enough to insure increased representation in the VHSL. The Task Force advised the VHSL to review their regulations, and modify any regulations which might conflict with local board rules and authority.

The Task Force commended the VHSL for taking steps to improve communications through news releases, sending summaries of proposed legislation and other relevant materials to school board chairmen and division superintendents, and holding one public hearing per year. The Task Force also noted they had not sufficiently investigated either the formation of districts or the funding of the VHSL to make recommendations concerning these issues.

3. In 1978, the Fifth Circuit Court of Appeals reversed a lower court ruling, and upheld the legality of the VHSL refusal to grant membership to Bishop Denis J. O'Connell High School, a parochial school. During this litigation the plantiff's counsel, and later members of the Virginia General Assembly raised these issues:

"1. Is the Virginia High School League a State agency?

2. Is the Virginia High School League in the minority in the exclusion of private schools from its membership?

3. What is the relationship of the Virginia High School League to the University of Virginia's Division of Continuing Education?"[46]

Delegates Vincent F. Callahan, Jr., and Alexander B. McMurtrie, Jr. requested the Secretary of Education study the VHSL and answer these concerns. The Office of the Secretary of Education conducted a survey of state interscholastic athletic associations to determine the relationship between such associations and nonpublic schools. The results of the survey and the general findings were:

RESULTS OF SURVEY

"1. Forty-five state interscholastic associations permit nonpublic schools to be members of their state activities or athletic association and only three do not (Virginia is a member of the minority).

2. Eighteen state interscholastic athletic associations defined the area from which nonpublic schools could draw potential athletes and 26 did not.

3. Twelve interscholastic athletic associations felt the drawing area of nonpubic schools compared favorably with that of public schools, however, 11 did not.

4. Forty-four state associations did not provide for separate state championships for nonpublic schools and two did.

FINDINGS

1. The Virginia High School League is not a State agency but is a voluntary organization consisting of public school principals.

2. The Virginia High School League is one of three State interscholastic athletic associations which

do not permit private schools as members (45 states permit membership).

3. The University of Virginia through its Division of Continuing Education supervises the League and has control over its hiring of personnel and some of its activities.

4. The Dean of the Division of Continuing Education is responsible for appointing the Executive Director, in consultation with the Chairman of the Legislative Council and with approval of the President of the University.

5. The University of Virginia fully funded and staffed the League during its initial years, but its percentage of funding has gradually been reduced over the years and is expected to be only four percent of the League's expenditures for the 1979-80 school year.

6. The Virginia High School League occupies 1,548 square feet of free office space in the Division of Continuing Education that is worth $5.00 per square foot or $7,740 per year.

7. The Division of Continuing Education contributed approximately $118,365 (1973-74 to 1977-78) to the League.

8. The League's staff are state employees, although the University is reimbursed by the League for the positions.

9. The University of Virginia will not support the employment of part of its staff under a personnel system with different standards, rules, and regulations from those of the State Classification system.

10. The Virginia High School League's operation is not totally autonomous from State policy (e.g., budget and personnel).

11. All League activities are paid for by the Division of Continuing Education, however, the League reimburses the Division for its expenses."[47]

4. On January 18, 1983 House Joint Resolution No. 30, which requested that the House Committee on Education and the Senate Committee on Education and Health jointly study the VHSL, was introducted in the General Assembly. The study was to focus on:

1. the appropriate governing body for the VHSL;

2. the appropriate membership of that governing body;

3. the manner in which the League should coordinate its activities with the local board of education;

4. the appropriate agency to oversee responsibilities for the League; and

5. the need for standards of conduct that would set forth procedure to protect the rights and interests of school board members, employees, and students.[48]

The VHSL responded to HJR No. 30 by soliciting the support of board members, superintendents, principals, coaches and sponsors in opposing the measure. The rationale for the VHSL's opposition was that the requested study was motivated by disciplinary action taken by the VHSL, in response to Mt. Vernon High School's violation of the Proselyting Rule. The resolution was defeated. However, the issue was not dead.

5. On January 24, 1983, Senate Joint Resolution No. 55, requesting the Senate Committee on Education and Health and the Education Committee of the House to study the VHSL,

was introduced. The resolution specifically asked that the following questions be addressed:

1. What is the scope of the League's authority over member schools, students in member schools, faculty members, and other individuals or groups of individuals connected with a member school, with respect to imposing penalties for violations?

2. Should the League be permitted, and to what extent, to impose penalties on member schools, students in member schools, faculty in member schools, and other individuals or groups of individuals connected with a member school?

3. Is the nature and operation of the League and its relationships to local school boards and governing bodies appropriate to a proper role in ensuring integrity in competition, and, if not, what changes are needed?[49]

The VHSL response to SJR No. 55 was much the same as it was to HR No. 30. The VHSL cited the reason for the request as the Mt. Vernon incident, and the cost involved as the basis of their opposition to the resolution. The VHSL asked principal's to contact their senators to voice their opposition and encouraged principals to solicit the support of board members, government officals, coaches, sponsors, booster club members and school patrons in the campaign to defeat SJR No. 55. The resolution was defeated.

6. A committee was established by the President of the State Board of Education of the Commonwealth of Virginia to review the concerns of the Virginia School Boards Association and the Virginia General Assembly concerning the VHSL. The committee issued a report on December 4, 1984, and issued the following summarizations:

"1. The Board of Education cannot act as a regulatory agency or intervene in the day-to-day operation of the VHSL.

2. Regulation by the Board of Education would entail an expensive outlay of taxpayers' money."[50]

The committee offered the following observations and concerns:

"1. The VHSL has been able to resolve most appeals with very little dissatisfaction.

2. The VHSL has financial ties to the state in its classification system and fringe benefit program that should be phased out.

3. The appeals procedure should be improved by providing an external appeals committee of truly disinterested persons, allowing school board members and parents the right to appeal, returning the fee required if the appeal is serious, even if the appeal is rejected and developing an emergency appeal procedure."[51]

7. In late 1984, the Virginia Association of School Administrators passed a resolution recommending the following changes to the appeals procedure:

"1. that an external appeals committee be established consisting of (a) two school board members appointed by the Virginia School Boards Association, (b) two superintedents appointed by the Virginia Association of School Administrators, and (c) one member appointed by the state superintendent of public instruction;

2. that the process for appeals be open to any aggrieved party;

3. that the fee refund policy should be stated clearly and should provide for return of the fee when the appeal is successful;

4. that members of the appeals committee should be covered by liability insurance provided by the League;

5. that emerging appeal procedures should be developed to resolve certain situations in a timely manner."[52]

In response to the resolution of the Virginia Association of School Administrators and the state board of education report, legislation was introduced and passed by the Legislative Council of the VHSL which established the Super Appeals Board. The Appeals Board is required to conduct a hearing and allow the individuals involved in the appeal to address the board. However, there is no cross-examination, except by members of the Appeals Board. Attorneys may be present but may neither examine nor cross-examine individuals who address the board, and may not address the board. The board will allot time for each principal to address the board. The hearing is to be conducted in accordance with the Freedom of Information Act. The regulation instituted a board of appeals, to be composed of two school board members appointed by the Virginia School Boards Association, two superintendents appointed by the Virginia Association of School Administrators, two principals appointed by the Chairman of the VHSL, and one member appointed by the state superintendent of public instruction.

8. The Virginia Congress of Parents and Teachers, requested that the VHSL be studied by the Virginia General Assembly, as part of their 1985 Legislative Program. The resolution read thusly:

> Resolved, that the Virginia Congress of Parents and Teachers request the Virginia General Assembly to establish a joint subcommittee to study the Virginia High School League with particular focus on but not limited to:
>
> 1. The establishment or designation of an appropriate governing body for the Virginia High School League;
>
> 2. The appropriate membership of that governing body;
>
> 3. The manner in which the League should be required to coordinate its activities with the local school boards responsible for the activities of the students under their charge;
>
> 4. The appropriate agency to assume oversight responsibilites for the League;
>
> 5. The need for standards of conduct that would set forth procedures to protect the rights and interests of member school boards, employees and students; and
>
> 6. Whether the Virginia High School League provides equal opportunities and recognition for female athletes in the State of Virginia.[53]

In addition to these resolutions, the media has focused attention on other issues. One such issue is the reclassification of member schools, from three classifications to four. Historically, the assignment

of schools to districts, or reclassification has caused controversy.[54] Another situation, which parallels concerns in other parts of the nation, concerned an increase in the standard of academic achievement required for students to be eligible to participate in VHSL activities. The Virginia Education Association passed a resolution asking the VHSL to require a minimum of a C average to participate in extracurricular activities.[55] The VHSL declined to adopt such a rule. The State Board of Education issued a new standard for accreditation: "Extracurricular activities and eligibility requirements shall be established and approved by the superintendent and the school board."[56]

The issues raised in the resolutions introduced in the Virginia General Assembly and formulated by the Virginia Association of School Administrators and the Virginia Congress of Parents and Teachers can be categorized into broad classifications. (See Table 1-1)

The issues can be categorized as:

1. Issues dealing with the scope of the VHSL's authority over local school boards with regard to the imposition of penalties, the nature and operation of the VHSL relative to local boards;

Table 1-1

	HR #60 - 1978	HR #30 - 1983	SR #66 - 1983	VASA Resolution 1984	VCPT - 1985
Authority	How can the VHSL be made responsible to local school boards?	How can the VHSL coordinate its activities with the local school boards?	What is the scope of the VHSL's authority over local school boards to impose penalties? Should the VHSL be allowed to impose penalties? Is the nature of and operation of the VHSL appropriate to local boards and governing bodies?		VHSL should coordinate activities with and be responsible to local boards.
Governance	Who should govern the VHSL? How can citizens participate in the regulatory process?	What is the appropriate governing body for the VHSL? What is the appropriate membership of that governing body? What agency should oversee the activities of the VHSL?			Designate the appropriate body to oversee the VHSL? What is the appropriate membership of that body? Designate the appropriate agency to oversee the VHSL?
Due Process		What standards of conduct are needed to set forth procedures to protect the rights and interests of school board members?		Establish external appeals committee. Allow any aggrieved party to appeal? Provide emergency appeal procedures?	Establish procedures to protect the rights of students, school board members and employees.
Title IX					Do female athletes receive equal opportunities for recognition?

2. Requests to determine who should govern the VHSL, what the membership of a governing board should be, how citizens can participate in the regulatory process and what agency should oversee the VHSL; and
3. Requests to establish procedures and appeals processes to protect the interests, and rights of member schools, school board members, students, and employees.

The purpose of this study was to answer the following primary and secondary questions:

1. What is the legal source and basis of the VHSL's authority?
   a. How does the VHSL's authority compare to that of other state athletic associations?
   b. How do VHSL rules and regulations compare to existing case law?
   c. How do educators and policy-makers, such as principals, local superintendents, local school board chairmen and legislators evaluate or perceive the authority of the VHSL?
2. Who presently governs the VHSL?
   a. How does the governing body and the governing process of the VHSL compare to other state athletic associations?

b. What alternatives are available to the existing structure?

c. What is the opinion of principals, division superintendents, and local school board chairmen concerning the governance of the VHSL?

3. Does the VHSL provide adequate due process to member schools, school boards, employees, and participants?

4. Are principals, local superintendents, local school board chairmen and legislators dissatisfied with the performance of the VHSL?

a. What is the source of any dissatisfaction that does exist?

b. How can the dissatisfaction be reduced or resolved?

LIMITATIONS

This study is limited to a review of state statutes to determine the legal basis of the authority of state athletic associations to promulgate rules and regulations concerning interscholastic athletic associations. It does not include a comprehensive search of state board rules, state department regulations, or state athletic association handbooks. Findings and conclusions are restricted to and based upon the legislative action represented in state statutes.

The study is limited to the review and analysis of case law concerning state athletic associations, reported in the West Reporter System. Specifically, the study is limited to cases listed in the Federal Supplement, Federal Reporter, and Regional Reporters. The cases, with one exception, were from other jurisdictions. Therefore, the case law is considered persuasive rather than precedent.

This study is also limited to a review of a sample of state athletic association handbooks, rather than an exhaustive review of all handbooks. Therefore, patterns of governance are discussed in illustrative, rather than statistical terms.

Lastly, the study is limited to the rules and regulations of the VHSL, as they appear in the 1984-85 Handbook.

DEFINITIONS

Academic rule: Rules which define the required level of academic performance necessary for a student to retain eligibility and be allowed to participate in sports. An example of such a rule would be: student must pass four subjects per semester in order to participate in extracurricular athletic activities.

Age rule: Rules that restrict the age of participants by instituting a lower and upper age limit. The purpose of such regulations is to prevent physical mismatches and promote fair competition.

Association: The term association, within the context of this study, will mean a congeries of high schools within a state, which unite for the purpose of administering interscholastic athletics.

Civil Rights Act of 1871 (Section 1983 U.S.C.42): A challenge based on either the Civil Rights Act of 1871 or Section 1983 alleges that the state or a "person" acting under color of the state has denied the plaintiff of life, liberty or property without due process. This includes the rights created by federal laws and regulations. The plaintiff brings suit for relief in the form of damages or an injunction.

Damages: "A compensation or indemnity which may be recovered in the courts by any person who has suffered

loss, detriment or injury, whether to his person, property or rights, through the unlawful acts or mission or negligence of another."[57]

Declaratory Judgment: A judgment which simply declares the rights of the party of expresses the opinion of the court, without ordering any action. It is not necessary to show an actual wrong, which would give rise to action for damages.[58]

Due Process: An action may be brought on the basis that the plaintiff's right to due process, as guaranteed through the Fourteenth Amendment, has been violated. Such an action can be based upon a substantive issue or procedural issue.

The courts apply a two tiered test to determine such issues. First the courts decide the issue of substantive due process. The Fourteenth Amendment says the state shall not deprive you of life, liberty or property without due process of law. The court evaluates the subject or the "right" denied the plaintiff and determines if it is either a liberty right, such as the right to travel, right to privacy, or a right implied or expressed in the constitution and made applicable to the states through the Fourteenth Amendment. If the plaintiff has been denied such a liberty or property, the court determines if he was granted procedural due process

(notice, hearing, appeal) in accordance with precedents found in case law such as Goss v Lopez, prior to the denial.

The "right to participate" in athletics has been referred to in legal challenges to state athletic associations as a property right. The removal of a student from a team for violation of training rules without a hearing has been challenged as a denial of procedural due process.

Eligibility: Cases dealing with eligibility are concerned with rules that limit student participation in extracurricular activities based on age, academic standing, or residence. Students must meet requirements to be eligible or allowed to participate in such programs.

Equal Protection: Often the rules of athletic associations are challenged on the grounds that they deny the plaintiff equal protection of the law as guaranteed in the Fourteenth Amendment. Such cases are based on the rationale that the rules of athletic associations treat one group of individuals, such as resident students, differently from another group, such as transferring students.

First Amendment Issues: On a few occasions individuals or institutions have challenged state association

regulations based on whether an alleged infringement on the fundamental right of freedom of religion or speech.

Hardship rule: Rules promulgated by athletic associations, which allow students to protest the enforcement of an eligibility rule on the grounds that the rule harms the student and causes undue hardship. The hardship rule is usually applied in matters concerning transfers or the semester rule.

Independent Team rule: Rules prohibiting student participation on a school sponsored team and participation on an independent team sponsored by various recreational programs. Some associations ban participation on independently sponsored teams during the school sponsored season, while others ban such participation throughout the entire year.

Injunction: A prohibitive writ issued by a court of equity, at the suit of a party complainant, directed to the party defendant, forbidding the latter or his agents from committing or continuing to commit an unjust, inequitable or injurious act.[59]

Judicial Review: Judicial review refers to the type of analysis a court applies in deciding challenges based on the equal protection clause of the Fourteenth Amendment of the U.S. Constitution. In such cases the plaintiff alleges that a state action (classification) violates

their right to equal protection of the law or equal treatment. The court determines which level of scrutiny or which test to apply based on its analysis of whether the case involves a suspect class, defined as a class based on race, alienage, or religion (such a class is a discrete, insular minority without the political power necessary to protect itself) or infringes upon a fundamental constitutional right, such as the right to travel, right to privacy, and right to liberty.

Based on such an analysis the court determines its decision on an appropriate level of scrutiny.

Legal Strategy: Legal strategy, in this study, refers to the legal basis of the challenge, for example, is the challenge based on denial of due process, equal protection or the arbitrary and capricious application of association rules.

Middle Tier of Scrutiny: The middle tier of scrutiny was developed in 1976 by the Supreme Court and is applied to violations of the equal protection clause based on sex. The court had previously determined that sex was not a suspect class. In such cases the state, or agent of the state, must prove that the challenged state action is substantially related to important governmental functions.

Obiter dictum: Remarks made in the text of a case which are collateral or unnecessary generalities having no actual bearing on the decision.[60]

Petition: A written address or application made to a court playing for the exercise of the judicial power of the court to redress a wrong or grant some favor, privilege or license.[61]

Preliminary injunction: An injunction granted at the institution of a suit to restrain the defendant from acting or continuing to perform an act that is being disputed. The injunction may be discharged or made perpetual based on the decision of the court.[62]

Private School Membership: Some athletic associations do not accept private or parochial schools for membership. In recent years parochial schools have challenged this rule.

Ratio decendi: The point in a case which determines the judgment.[63]

Rational Scrutiny: Rational scrutiny, also referred to as the "rational basis" test, is applied if a classification (state action) involves neither a suspect class (a class based on race, alienage and religion) nor fundamental constitutional rights. When this test is applied the plaintiff must prove that the state action contested violated his right of equal protection. If this issue

resolved, the defendant (state) must show that the action in question is rationally related to a legitimate state interest.

This test is most frequently applied in legal action alleging a violation of the equal protection clause of the Fourteenth Amendment. Usually the state has little difficulty passing this test.

Red-shirt: The act of allowing a parent to voluntarily hold his son or daughter back a grade, prior to high school, to help ensure an added year of maturity.

Restraining Order: An order limiting, confining, abridging, narrowing, restricting, obstructing or staying the actions of the defendant. An order in the nature of an injunction.[64]

Semester Rule: The semester rule refers to association rules which allow students to be eligible for eight consecutive semesters starting when the student enters the ninth grade for the first time, or when they pass a specified number of eighth grade subjects. The rule may be waive by some associations in hardship cases.

State Constitutional Issue: A challenge of association rules based on the state constitution maintains that the application of the rule in question violates a liberty, property or right either implied or expressed in a state constitution.

Strict Scrutiny: Strict scrutiny is applied by the courts in cases involving the violation of the equal protection clause of the Fourteenth Amendment, the contested state action discriminates against a group based on race, alienage (citizenship) or religion. These groups constitute suspect classes, or discrete, insular minorities without the political power to protect themselves. Strict scrutiny is also applied if the state action (classification) infringes upon the fundamental rights, explicitly or implicitly implied by the Constitution. Such rights include the right to travel, the right to privacy and the right to practice religion.

In such circumstances the burden of proof is on the state to show the action serves a compelling governmental interest.

This standard of review is severe. It is not usually applied in cases involving interscholastic athletics, although it has been the basis of several challenges involving association rules.

Summary Judgement: A trial of a "summary" character, without a jury. A final decision that does not require a trial or presentation of evidence. It is an extreme measure and granted only when it is clear there is no material issue of fact. A judgment is rendered based on the papers before the court.[65]

Summer Camp rule: Rule limiting the students' attendance and participation in specialized sports camps.

Training rules/Conduct rules: Athletic associations, school boards, and individual schools often promulgate rules of behavior, which delineate acceptable student behavior concerning alcohol and drug use, use of profanity, sportsmanship, and behavior in schools. A violation of such a rule can result in a student being declared ineligible (prohibited from participation).

Transfer rule: Rule requiring students who move from one school district to another or from one school to another, within a district, to forfeit eligibility for a specified period of time. The rule is designed to deter recruiting or athletically motivated transfers. The rule may be waived in exceptional cases.

FOOTNOTES

[1]Herb Appenzeller, Athletics and The Law (Charlottesville, VA.: The Michie Co, 1975), p. 107.

[2]William J. Meadors, "The History of the National Federation of State High School Athletic Associations," Diss., Springfield College, 1970, p. 165.

[3]Appenzeller, p. 107.

[4]A. W. Grieve, The Legal Aspects of Athletics (A.S. Barnes and Co., Inc., 1969), p. 133.

[5]Ibid., p. 134.

[6]Ibid., p. 133.

[7]Edward C. Bolmeir and J. David Mohler, Law of Extracurricular Activities in Secondary Schools, (W. H. Anderson Company, 1968), p. 74.

[8]Meadors, p. 169.

[9]Grieve, p. 134.

[10]Dale C. Doerhoff, "State Athletic Associations and The Law," Journal of Law Education, No. 1 (Jan. 1973), p. 41.

[11]Grieve, p. 132.

[12]Ibid.

[13]John L. Strope, Jr., School Activities and the Law, (NASSP Reston, Va., 1984), p. vii.

[14]John C. Weistart, "Rule-Making in Interscholastic Sports: The Bases of Judicial Review," Journal of Law and Education, Vol. 11, No. 3, p. 353.

[15]Ibid., p. 305.

[16]Anne Bridgman, "Backlash Hits Efforts to Tie Achievement With Extracurriculars," Education Week, Mar. 13, 1985, p. 5, 16.

[17] Herbert v. Ventetudo, 638 F.2d 5 (1981).

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

[18] Davis J. O'Connell v. Virginia High School League, Inc., 581 F.2d 81 (1978).

Valencia v. Blue Hen Conference, 615 F.2d 1355 (1980).

[19] Grube v Wallace, 550 F. Supp. 418 (1982).

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

[20] Clark v. Arizona 695 F.2d 1126 (1982).

Gomes v Rhode Island Inter League 472 F.Supp 659 (1979).

[21] Weistart, p. 307.

[22]Texas, Texas State Law, 21.920.

[23]Ibid., 21.291.

[24]Martin Zabell, "No-pass, no play rule upheld in Texas," USA Today, May 10, 1985.

[25] VHSL Handbook (Virginia High School League, Inc., Charlottesville, Va., 1983), p. 12.

[26]Ibid.

[27]Ibid., p. 3.

[28]Ibid., 12-5-1, p. 20.

[29]Ibid., 12-3-1, p. 19.

[30]Ibid., 13-1-1, p. 21.

[31]Ibid., 13-3-1, p. 22.

[32]Ibid., 15-1-1, p. 24.

[33]Ibid., 14-1-1, p. 23.

[34]Ibid., 20-1-1, p. 27.

[35]Ibid., 20-7-1, p. 28.

[36]Ibid., 24-1-1, p. 33.

[37]Ibid., 22-1-1, p. 29.

[38]Ibid., 23-1-1, p. 31.

[39]Committee to Study the VHSL, Survey of Board Members Regarding the VHSL (Virginia School Boards Association, Richmond, Va., 1977).

[40]Ibid.

[41]Ibid.

[42]Ibid.

[43]Virginia General Assembly, House of Delegates, House Resolution No. 66, Jan. 31, 1978.

[44]Superintendent of Public Instruction, Task Force Report on the Virginia High School League, (Virginia State Department of Education, 1978), p. 2-3.

[45]Ibid., p. 6.

[46]Office of the Secretary of Education, Report on the Virginia High School League (Secretary of Education, 1979) p. 1.

[47]Ibid., p. 8-9.

[48]Virginia General Assembly, House of Delegates, House Joint Resolution No. 30, Jan. 18, 1983.

[49]Virginia General Assembly, Senate, Senate Joint Resolution No. 55, Jan. 24, 1983.

[50]State Board of Education, Report to the Board of Education: Virginia High School League Ad Hoc Committee, (Virginia State Board of Education, 1984).

[51]Ibid.

[52]Virginia Association of School Administrators, Virginia High School League Resolutions, 1984.

[53]Virginia Congress of Parents and Teachers, 1985 Legislative Program (Virginia Congress of Parents and Teachers, 1985).

[54]Blair Kierkhoff, "VHSL considers returning to four groups," Roanoke Times and World News, Jan. 20, 1984.

[55]"Virginia educators ask tougher athlete grade standards," Roanoke Times and World News, Mar. 14, 1984.

[56]John O'Connor, "Eligibility for athletes due change," Richmond Times-Dispatch, Sept. 20, 1984.

[57] Blacks Law Dictionary, Revised 4th Edition, (St. Paul, Minn.: West Publishing, 1968) p. 466.

[58]Ibid., p. 497.

[59]Ibid., p. 923.

[60]Ibid., p. 1222.

[61]Ibid., p. 1302.

[62]Ibid., p. 923.

[63]Ibid., p. 1429.

[64]Ibid., p. 1477.

[65] Family Legal Guide (Pleasantville, N.Y.: Reader's Digest Assoc., Inc., 1983) p. 593.

CHAPTER II

RESEARCH DESIGN

The research design of this study consisted of two phases. The first involved documentary research and analysis of state statutes, Virginia attorney generals' opinions, the Constitution of Virginia, case law related to VHSL regulations, accreditation standards and the handbooks of selected state athletic associations. The second phase involved survey research to determine the opinions of principals, superintendents, school board chairmen and members of the General Assembly, concerning the authority, governance and performance of the VHSL.

To determine the source of the VHSL's authority and compare it to the authority of other state athletic associations, the annotated statutes of all 50 states, concerning the management and control of interscholastic athletics, were located and analyzed. The rules and regulations of the VHSL were categorized and compared to the existing case law pertaining to interscholastic athletes. The purpose of this analysis was to determine whether or not the rules and regulations exceeded the limits of the VHSL"s authority or conflicted with common law.

The governing body and the governing process of the VHSL was compared to the structure of selected state

athletic associations, as represented in their respective handbooks. The review of selected handbooks also identified alternate systems of governance employed by other associations.

The following resources were utilized in the documentary and legal research conducted in this study. National Reporter System--The National Reporter System is an organized system for the publication of all American court decisions. The system includes all decisions of the highest courts in each state and also publishes the decision of any intermediate appellate courts that may exist. The New York Supplement and California Reporter print the decisions of lower New York and California courts. The System reports the decisions of all federal courts from district courts to the Supreme Court.

The National Reporter System consists of:

1. Seven regional reporters which report the decision of the highest court of each state and group the states according to industrial interests. The regional reporters are: North Eastern Reporter; Northwestern Reporter; Pacific Reporter; South Eastern Reporter; South Western Reporter; Southern Reporter. The System includes the two state reporters, referred to previously.

2. The Federal Reporter (1880) which at one time reported the decision of all the lower federal courts, but since 1932 has been devoted mainly to decisions of the U.S. Courts of Appeal.[1]
3. The Federal Supplement (1932) which is devoted to reporting, selectively, the decisions of the U.S District Courts.[2]
4. The Supreme Court Reporter (1882) reports Supreme Court Decisions.[3]

Corpus Juris Secondum--Corpus Juris Secondum is a legal encyclopedia published by the West Publishing Company. The text is based on an analysis of all the pertinent American cases and cites not only cases, but secondary authorities. Corpus Juris Secondum contains references to the American Digest System and the National Reporter.[4]

American Jurisprudence 2d--American Jurisprudence 2d is a legal encyclopedia published by the Lawyers Cooperative Publishing Co. The text is based on selected decisions and is cross referenced with the American Law Reports.[5]

The American Digest System--The American Digest System is a comprehensive index to judicial opinions. The digest classifies law into topics and subtopics to allow one to research specific points of law. This system of classification was developed by the publisher, the West Publishing Company.

The American Digest System consists of several units. Each succeeding digest covers a decade and runs from the First Decennial (1897-1906) through the Eight Decennial (1966-1976). The present unit is referred to as the General Digest, 5th Series, and contains the cases from 1976 to the present. A digest of cases related to similar points of law is presented.[6]

The American Law Reports--The American Law Reports is an annotated system containing selected case reports with annotations which list and analyze related cases. The reports "contain: (1) statements and reasons for general rules; (2) discussion of supposedly all cases on the point annotated, with jurisdictional analyses and emphasis; (3) consideration of the application of rules to specific facts as well as distinctions and commentaries; and (4) definitions of words and phrases."[7]

The A.L.R. series consists of four series: (1) First Series, cited as A.L.R.; (2) Second Series, cited as A.L.R. 2d; (3) Third Series, cited as A.L.R. 3d (1965); (4) Fourth Series, cited as A.L.R. 4th (1976); and (5) Federal Series, cited as A.L.R. Fed (1969). Prior to 1969 the A.L.R. reported both federal and state decisions. In 1969 the A.L.R. Fed commenced publishing the leading decisions of the federal courts.[8]

Shepard's Citations - Shepard's Citations are consulted to determine whether or not a case is still a reliable authority. The decisions are checked to determine if they have been modified or reversed by a higher court or overruled by the same court. It can also be determined if a case is frequently followed, referred to or distinguished. There is a set of Shepard's Citations corresponding to each reporter in the National Reporter System.[9]

Index to Legal Periodicals--The Index to Legal Periodicals is used to locate secondary sources in legal research, which often cite pertinent cases. The Index is used to locate law school publications, bar association publications and special subject publications.[10]

Opinions of the Attorney General and Reports to the Governor of Virginia--A collection of the official statements of an executive officer dealing with the interpretations of statutes and/or general legal problems. These opinions are advisory in nature, not mandatory, and therefore aren't binding. However, the opinions are persuasive, usually adhered to by executive officers and often influence the courts.[11]

Code of Virginia-Annotated--The Code is a compilation of the statutes of the state of Virginia which also contains an

abstract following each statutory section. The abstract contains citations of cases which apply, or interpret the statute.[12] The annotated codes of each of the remaining forty-nine states were reviewed to determine the statutory basis of authority of other state athletic associations.

Regulations of the Board of Education of the Commonwealth of Virginia--The administrative regulations of the State Board of Education govern every school division in the state.

Standards for Accrediting Schools in Virginia--A compilation of the standards that schools in the state of Virginia must meet in order to be accredited.

Reports which have been compiled to study and evaluate the VHSL are:

1. Virginia School Boards Association Committee to Study the VHSL, 1977.
2. Task Force Report on the Virginia High School League, 1978
3. The Secretary of Education's Report on the Virginia High School League, 1979.
4. The Sub-Committee of the House Education Committee's Report on the VHSL, 1980.

VHSL Handbook--The Virginia High School League Handbook is published annually and distributed to member schools. The

Handbook contains a synopsis of changes from the previous year, the constitution, regulations and interpretations.[13]

The Leaguer--The Leaguer is the official supplement to the VHSL Handbook, published quarterly. It contains announcements and clarifications concerning the League.[14]

League Notes--The League Notes are published throughout the year to supplement the Handbook. It contains announcements, schedules and information concerning sportsmanship violations, appeals, and other current conflicts.[15]

The National Federation of State High School Associations Handbook--The Handbook is a compilation of administrative procedures, the constitution of the organization, and recommended regulations.

The National Federation of State High School Associations Legal Aid Pact--The Legal Aid Pact is a set of legal briefs of cases which have challenged the authority or operating procedures of state athletic associations.

The following guides to legal research were used:

1. How to Find the Law, M.L. Cohen, General Editor
2. Legal Research Illustrated, J. Myron Jacobstein, R. M. Meyer
3. Legal Research in a Nutshell, M. L. Cohen
4. Schoolman in the Law Library, A. A. Renzy

SURVEY RESEARCH

Sample Design and Procedures

A sample consisting of 246 total educators and policy-makers was identified. The original sample consisted of 100 principals, 50 superintendents, 50 local school board members, and 46 members of the General Assembly.

The sample of high school principals was drawn at random from an alphabetical listing of all public, accredited high schools in the Commonwealth, listed in the Virginia High School League Directory 1984-85. Each school was numbered. A list of random numbers was generated using a locally developed random number generator and an Apple IIe microcomputer. The principals of the schools selected were included in the sample.

The division superintendents included in the sample were drawn in the same manner used for principals, with one exception. A listing of local superintendents found in the Virginia Educational Directory 1984-85 was used as the population for the sample.

Problems were perceived with the possible return rate for the next two groups, so the sampling procedures were modified. State legislators were selected in the following fashion. A list of all 119 members of the General Assembly, and a list of committee assignments, was secured. All

members of the House Committee on Education and Health, and all members of the Senate Committee on Education were included in the sample. The 12 remaining legislators were selected at random using the procedure previously employed for selecting principals and superintendents.

In order to incorporate local school board members familiar with the VHSL, local board members who were officers in the Virginia School Board Association were included in the sample. The Virginia School Board Association actively participates in VHSL affairs. Therefore, the officers were projected as knowledgeable of VHSL operations. The remainder of the sample of local school board members was composed of local school board chairmen, selected at random, utilizing the same procedures previously outlined for principals and superintendents. Local school board chairmen receive copies of the Virginia High School League Handbook and the League Notes. Therefore, the chairmen were projected as being the most knowledgeable school board members available.

Design and Development of
Survey Instrument

In order to assess the opinions of educators and policy-makers concerning the authority, performance and governance of the VHSL, a self-administered questionnaire was developed (see Appendix A). The questionnaire consisted of 17 questions based on the issues raised in resolutions critical of the VHSL. For this reason, the questionnaire was interpreted as "loaded" or "biased" by several respondents and nonrespondents.

The first section of the questionnaire dealt with the authority of the VHSL. Specific issues considered included:

1. VHSL authority to pass binding rules upon local school boards;
2. VHSL authority to limit membership to public schools;
3. VHSL authority to impose penalties (fines, probation, prohibition of participation) upon schools, coaches, and students;
4. VHSL authority to determine the eligibility standards of students;
5. VHSL authority to require the attendance of medical assistance at specific events; and
6. The preferred agency to hear final appeals in the procedural due process provided by the VHSL.

This section was composed of 11 questions. Respondents were asked to agree or disagree with several statements, identify individuals or institutions which should have penalties imposed upon them and identify a preferred agency to oversee the VHSL.

Section Two dealt with the performance of the VHSL and was composed of four questions. Respondents were asked to recall the number of complaints concerning the VHSL they received from patrons or constituents, to express satisfaction or dissatisfaction with the VHSL, to grade the VHSL on performance, and to express their opinion on the need to study the VHSL to determine the need for reorganization.

Section Three dealt with the governance of the VHSL and consisted of five questions. Respondents were asked to select an organization to oversee the VHSL and to express their opinion concerning VHSL affiliation with a university or college. They were also asked to rate the current input athletic directors, citizens, coaches, legislators, local school boards, state department and local superintendent have in the governance of the VHSL, as opposed to the input each group <u>should</u> have.

The first version of the questionnaire was presented to committee members for input and revised based on their concerns about the organization, flow of questions and

possible bias. The questionnaire was submitted to two legislators on the appropriate legislative committees, two practicing school administrators, and one athletic director for validation. A representative of the VHSL was reluctant to participate and expressed a concern that the study would renew conflicts which were dormant. Four validators offered specific suggestions concerning: (1) the bias of the transitional statements included in the questionnaire, (2) the need for an open response at the end of the survey, (3) the use of checks to respond, and (4) the wording of several questions. Based on these suggestions the questionnaire was revised. One validator expressed the concern that legislators would lack the knowledge necessary to respond.

The validators were asked to respond to the questionnaire as if they were filling out the form, and to respond and provide feedback on a form provided by the researcher. (See Appendix B for a copy of the cover letter, and evaluation form provided to validators.)

The final version of the questionnaire was prepared using the method described by Dillman in Total Design Method. The questionnaire was typed with a carbon ribbon, using 12-point type in a 7" x 9 1/2" space on a 8 1/2" by 11" paper. The pages were reduced 79 percent and reproduced on light blue paper and assembled in booklet form. The final dimensions were 6 1/8" x 8 1/4".[16]

Survey Procedures

The survey procedure recommended by Dillman was generally followed, with some minor modifications. The initial mailing consisted of:

1. Survey Instrument,
2. A self-addressed, stamped monarch envelope,
3. Cover letter.

This initial mailing was sent to the entire sample. The only difference was in the cover letter sent principals and local superintendents. Assuming principals and superintendents would be the most interested and likely to respond, they received a cover letter without a personalized heading. The letter was addressed "Dear Principal," or "Dear Superintendent." Each member of the Virginia General Assembly and each local school board member included in the study received a personalized cover letter, with the appropriate heading. (See Appendix C for a sample cover letter.) Approximately one week later, each member of the sample received a reminder in the form of a postcard, as recommended by Dillman (see Appendix D).

A final mailing followed the postcard by approximately two weeks. The final mailing consisted of:

1. A personalized cover letter,
2. A self-addressed, stamped envelope,

3. A survey instrument (See Appendix E for a sample of the final cover letter).

Analysis of Survey Data

The surveys were collated, coded onto IBM Fortran sheets and entered into the computer. An overall return rate of 80.08 percent was recorded.

All of the data were analyzed using the SPSS-X frequencies command. The resulting analysis was used to determine the total number of responses in each category and the appropriate percentages and cumulative percentages.

The SPSS-X crosstabs command was used to analyze the data by position. This command provided cell frequencies and percentages to enable the researcher to determine the percentage of each subgroup that held a certain opinion. This information was reported in Chapter 4. (See Appendix F for computer programs used.)

Open-ended responses, concerns, or opinions offered by respondents were categorized and reported.

Non-Respondent Survey and Analysis

One week following the mailing of the follow-up letter and replacement questionnaire, all results were coded and entered into the computer. Everyone who had not responded by this time was considered a nonrespondent.

Prior to the study, a 60 percent response rate was established as a minimal, acceptable response rate. It was determined that a response rate of less than 70 percent would require a nonrespondent survey and analysis. A response rate higher than 70 percent was identified as excellent and a nonrespondent survey and analysis was considered optional if such a rate was attained.

A proposed nonrespondent survey was developed for implementation. It was proposed that nonrespondents would be sent a cover letter and self-addressed, stamped postcard. The nonrespondents were to be asked to check the response that best represented their reason or reasons for not responding to the original survey. Nonrespondents were also to be asked if they would be willing to answer five questions over the phone or respond to a five question, postcard, questionnaire. The questions proposed for the nonrespondent survey were drawn from the original survey (See Appendix H). The responses were to be analyzed using the SPSS-X frequencies command. The results would have been compared to the results generated by these items in the original survey to determine if a difference of opinion existed between respondents and nonrespondents. However, due to the high response rate and the fact that several nonrespondents supplied explanations for not responding, the nonrespondent survey was not implemented.

Design of the Study

Chapter 2 describes the procedures utilized in conducting the legal and documentary research necessary to the study and the survey research and descriptive statistical analysis used to assess the opinion of educators and policy-makers within the Commonwealth.

Chapter 3 is divided into three sections. The first includes a review of state statutes and related common law to determine the basis of the VHSL's authority to administer athletics. A comparison of the VHSL to other state associations was included.

Section 2 of Chapter 3 compares the rules and regulations of the VHSL to existing common law to determine if the VHSL overextends its authority.

Section 3 of Chapter 3 compares the VHSL structure of governance to the structure used by a sample of other state athletic associations.

Chapter 4 presents the results of a survey of the opinion of educators and policy-makers concerning the authority, performance, and governance of the VHSL. The opinions were broken down by the position of the respondent and presented in tabular form and narrative item by item.

Chapter 5 consists of two sections: Findings, and Conclusions, and Recommendations. The Findings report patterns in the data and summarize major trends or patterns.

The Conclusions consist of answers to the research questions stated in Chapter 1 and incorporates Recommendations for alternative plans of action that interested parties could implement to improve and strengthen the VHSL.

FOOTNOTES

[1]Morris L. Cohen, How to Find the Law, (St. Paul, MN: West Publishing Co., 1976), pp. 36-38.

[2]Ibid., p. 38.

[3]Ibid., p. 36.

[4]J. Myron Jacobstein and Roy M. Mersky, Legal Research Illustrated (Mineola, NY: The True Foundations Press, Inc., 1977), pp. 248-249.

[5]Ibid., p. 249.

[6]Cohen, p. 53-61.

[7]Jacobstein and Meyer, p. 95.

[8]Ibid.

[9]Ibid., p. 229.

[10]Ibid., p. 262.

[11]Ibid., p. 308.

[12]Cohen, p. 83.

[13]Virginia High School League, Inc., Handbook (Virginia High School League, Inc., Charlottesville, VA, 1983), p. 10.

[14]Ibid.

[15]Ibid.

[16]Don A. Dillman, Mail and Telephone Surveys, (NY: John Wiley and Sons, 1978), p. 86.

CHAPTER III

STATE STATUTES CASE LAW AND THE AUTHORITY TO ADMINISTER INTERSCHOLASTIC ATHLETES

The authority and responsibility to provide education to the citizenry of the United States has been reserved to the states, through Article X of the Constitution, which states, "The power not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people."[1] Since the federal government has not been delegated the power to provide and control education, education is one of the powers and duties reserved for the states. McCarthy and Cambron classify the legal control of education as a sovereign power of the state, comparable to the state powers to tax and provide for the general welfare of its citizens.[2]

Most state constitutions assign the responsibility for establishing and providing free public schools to the state legislature. The state constitution and state statutes provide the framework for the operation of schools.[3] As a result of education being a power reserved to the states, which is expressly delegated in state constitutions to state legislatures, the state legislatures are considered to have plenary or absolute power over education. This means that state legislatures have absolute power over the management and control of education, on any level. The legislatures

may prescribe curriculum, methods of instruction, create or dissolve school districts, and "delegate the management and administration of the public schools to such subordinate agencies as it may select or create, and may confer on them any powers, or impose on them any duties not prohibited by the constitution."[4] The only restrictions upon the state legislatures' plenary power over education is that they may not take any action which is either expressly or impliedly forbidden by federal or state constitutions or violates contracts.

Alexander and Alexander express the concept of the state's plenary power over education differently. Rather than express the state's power in terms pertaining only to the legislature, they state "education is governed by the democratic legislative process, which requires action by both the legislative and executive branches of government."[5]

Each state legislature has created and delegated authority to agencies and agents which may be labeled, generically, as a state board of education; an executive to the board or commissioner overseeing a department of education and local school districts. The authority granted to these agencies may be either expressed or implied. "Where a power to act is granted in express direct terms, the person to whom the power is granted is said to have the express authority to act on another's behalf without

incurring liability."[6] "Implied authority is the power to act which is expressed indirectly. It is often clear that a granting of certain express authority necessarily incorporates a grant of implied authority to carry out additional acts. For example, if a teacher is given the express authority to control students, he/she has the implied authority to make and enforce reasonable rules and regulations governing conduct."[7]

State legislatures cannot delegate legislative or law-making power, but they can delegate the authority necessary to implement the law.[8] The state agencies charged with implementing and administering the law have three functions, defined by Alexander and Alexander as legislative, executive and quasi-judicial.[9] The legislative function involves the formulation and implementation of the rules and regulations necessary to enact state statutes. The courts, when asked to adjudicate conflicts involving the delegation of legislative authority to agencies, often apply the doctrine of "adequacy of standards." This doctrine requires that a delegation of legislative control to a state agency define what is to be done, who is to do it and the scope of the authority.[10]

The executive function involves "declaring and enforcing policy, and advising and supervising the implementation of policy."[11] Quasi-judicial functions

involve the authority to hear and resolve disputes or conflicts. Such functions are evident in agencies when internal procedures for hearings by a board or executive officer are provided.

The state education agencies created by the legislature perform two types of duties, discretionary and ministerial. Discretionary acts are duties that are governmental in nature and involve the use of discretion and judgement.[12] For example, the employment of personnel or the decision to build a new school are decisions that can be made only by the board of education. They are acts involving discretion and judgement. They cannot be delegated to subordinate agencies or employees. "Decisions that are private in nature or that can be carried out by anyone without having to make a decision between various factors are ministerial in nature and can be delegated to subordinate agencies, officials or employees."[13]

The three state education agencies, representing the generic hierarchy of education previously referred to, are the state board of education, the state commissioner of the department of education, and the local school district. They are granted powers and duties that may be mandatory or permissive. Mandatory legislation details standards that must be followed by a particular agency or agent.[14] Permissive grants of authority are general in terminology

and allow a great deal of administrative authority.[15] The administrative regulations and guides implementing and interpreting legislation, even if it is permissive, may be very detailed and exact.

All states have some type of state board of education charged with the "general control and supervision of public instruction or all state educational matters."[16] These state boards are designed to carry out legislation[17] and provide the overall structure for education in the state. The "state boards prescribe rules consistent with the state constitution and statutes"[18] in order to carry out their functions. The statutes granting state boards their powers may grant the authority to control, and generally manage school systems; promulgate, publish and enforce regulations to exercise authority; seek injunctions or other proper relief to enforce the school code; or outline specific duties that must be performed.[19] Or the statute may simply grant the board the power to generally control and manage the schools, and promulgate the necessary regulations.[20]

The State Department of Education consists of professionals and specialists, usually organized in departments, to carry out the administrative functions necessary to implement the rules and regulations of the State Board of Education. The State Department consults with local school boards, administers programs of

accreditation and certification and monitors local compliance to regulations. The State Superintendent is the executive officer of the State Board of Education and oversees the State Department of Education. He may be popularly elected, or appointed by either the State Board or the governor. In New York and New Jersey his title is Commissioner, and he functions as a hearing officer in local educational disputes.

Local School Boards are agents or officials of the state, charged with operating, controlling and managing local school districts. Local boards possess only the powers either expressly or impliedly granted them by the state legislature.[22] The local boards possess powers that are legislative, executive or administrative, and quasi-judicial in natures.[23] The boards perform duties which are discretionary, such as the selection and determination of the courses to be taught in the absence of state regulations or beyond state requirements,[24] the determination of teaching methods, the hiring and firing of personnel, and ministerial functions. The local boards formulate policy indicating educational objectives, and rules for the management and control of schools. These rules must be within the scope of the boards authority; necessary to accomplish an educational purpose; reasonable; and must not violate either contractual or constitutional rights.[25] Local

boards may neither redelegate decision making to other agencies,[26] nor delegate judicial authority. They may delegate ministerial duties, but not discretionary duties.

Extracurricular athletics and other activities are considered to be a part of the overall instructional program. In the Aappeal of Ganaposki,[27] the court noted that under the school code, physical education and the inclusion of organized sport in the program are recognized as a part of the curriculum of public schools. In Martin v Olyphant [28] the court ruled that intramural and interscholastic games are within the legitimate scope of school district educational opportunities and are a governmental function. According to the court's decision in Moyer v Board of Education of School District No. 186,[29] the state legislature intended to provide physical education and athletic activities to students in the public schools and the duty to administer and provide these opportunities rested with the local school boards. More recently courts have termed interscholastic athletics and other extracurricular activities as activities which combine to form the educational process.[30] Such activities are the separate components of the total educational process.[31] The Supreme Court of Appeals of West Virginia classified extracurricular activities, as either academic activities which compliment the formal curriculum, such as forensics,

theatre, music and journalism, or nonacademic activities.[32] The New York Code deals generally with interscholastic subjects and is the legal basis for sections in the New York Code Rules and Regulations which deal specifically with athletics and states, "Such courses shall be designed to aid in the well-rounded education of pupils and in the development of character, citizenship, physical fitness, health and the worthy use of leisure time."[33] The regulations require each board of education and trustees to "conduct school extraclass athletic activities" and to make such activities "an integral part of the physical education program."[34]

The Commonwealth of Virginia

Article VIII, Section 1 of the Constitution of Virginia states, "The General Assembly shall provide for a system of free public elementary and secondary schools for all children throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained."[35] Section 4 of Article VIII charges the State Board of Education with the general supervision of the public school system.[36] Section 5 outlines the powers and duties of the State Board of Education as: dividing the Commonwealth into school divisions; reviewing the adequacy of the school divisions; reporting to the Governor and General Assembly concerning

the performance of school divisions in meeting the Standards of Quality; certifying superintendents; approving textbooks and instructional aids; and effectuating the education policy set forth in Article VIII.[37] The Department of Education is responsible for administering the educational policies promulgated by the State Board. The Department operates under the direct supervision of the State Superintendent of Public Instruction and is one of the agencies overseen by the Secretary of Education. The Department enforces the Standards for Accrediting Schools in Virginia, adopted by the State Board of Education, which states:

> "School sponsored extracurricular activities shall be under the direct supervision of the staff and should contribute to the educational objectives of the school. They must be evaluated periodically and organized so that interruptions of the instructional programs are avoided. They should not be permitted to interfere with the individual's required instructional activities. Extracurricular activities and eligibility requirements shall be approved by the superintendent and the school board."[38]

Article VIII, Section 7, of the Virginia Constitution and the Code of Virginia, Sections 27.1-18, state that the supervision of schools in each school division shall be vested in a school board.[39] This grant of authority has been interpreted on several occasions by the judicial system. In Bradley v School Board[40] the Fourth Circuit Court of Appeals ruled that the power to operate, maintain, and supervise the

public schools in the Commonwealth is not within the jurisdiction of the State Board of Education. Such power is the exclusive jurisdiction of the local school boards and is a matter of local option.

In School Board of Richmond v Parham[41] the Supreme Court of Virginia further defined the power of local school boards in a conflict which concerned an attempt by the State Board of Education to compel a local school board to submit to binding arbitration. The court quoted sections 4 and 7 of Article VIII of the Virginia Constitution which granted "general supervision" of public schools to the State Board of Education, and granted the supervision of "schools" to local school boards. The court also declared that the General Assembly had granted local boards the extensive authority necessary to execute that supervision. The court further stated that it considered binding arbitration a delegation of power, because the decision was final and binding, and local school boards cannot delegate essential and indispensable power. A delegation of such power and authority violated the local boards' constitutional powers of supervision.

Litigation in other states has dealt with and defined the authority of local school boards and their power to delegate authority to various agencies. The State Supreme Court of South Dakota, in Anderson v South Dakota High

School Activities Association,[42] made several general statements dealing with the issue of a local school board delegating authority to associations. The court defined the state legislature's control over education as unlimited and said local school boards possessed the general power and authority to direct and manage the schools within their districts. More specifically, the court considered the control of interscholastic athletics to be within the discretionary authority of local boards and did not interpret state statutes allowing school boards to join athletic associations as a delegation of governmental authority. State athletic associations were classified as creatures of contract. The final ruling of the State Supreme Court stated the statute allowing school districts to join such associations was not a delegation of governmental power to the association. Further, school boards, by joining these associations and adhering to their rules, did not unlawfully redelegate the powers granted to them by the legislature.

The case of Bunger v Iowa High School Athletic Association[43] is often cited in cases involving the delegation of authority by local school boards. The case, heard by the Supreme Court of Iowa, concerned student eligibility and the rule making authority of the state association. The court ruled that local school boards and

the state board of education may delegate the administrative functions or ministerial functions, but may not delegate discretionary functions. The court further explained that the promulgation of eligibility rules involved discretion but said the association had not usurped authority. Schools had voluntarily turned the authority over to the association.

A COMPARISON OF STATE STATUTES

The authority of local school boards to allow schools to join state athletic associations and delegate the administrative functions or duties associated with interscholastic athletics is either expressed or implied in state statute. Fourteen of the state statutes reviewed expressed the authority of school boards to either allow high schools to join, or delegate administrative duties to state athletic associations. (See Table 3-1) The grant of authority, allowing local boards to join associations, was implied in thirty-five of the states.[44]

The language of the statutes expressly granting local boards the authority to join state athletic associations varied from state to state. Massachusetts grants the authority to supervise, manage, and control interscholastic athletics to the school committee or an authorized representative.[45]

Table 3-1

CLASSIFICATION OF STATE STATUTES

STATUTORY AUTHORITY TO DELEGATE THE MANAGEMENT OF ATHLETICS TO STATE ASSOCIATIONS

EXPRESSED AUTHORITY

	State	Statute
1.	Massachusetts	- sec. 47*
2.	New Jersey	- sec. 18A:11-3
3.	Michigan	- sec. 380:1289
4.	Minnesota	- sec. 129:121(1)*
5.	West Virginia	- sec. 18-2-25*
6.	Nevada	- sec. 386.420
7.	Washington	- sec. 28A.58.125
8.	Pennsylvania	- sec. 5-511.(b)
9.	Illinois	- sec. 10-22.40
10.	North Dakota	- sec. 15-29-08.(20)*
11.	California	- sec. 35179.(b)
12.	Alaska	- sec. 14.07.058(c)*
13.	Oregon	- sec. 223.075(c)
14.	South Dakota	- sec. 13-36-4.

*denotes states in which statutes expressly grant authority to join specific organization.

IMPLIED AUTHORITY

	State	Statute
1.	Virginia	- sec. 22.1.28
2.	North Carolina	- sec. 115C-47
3.	Alabama	- sec. 16-8-8
4.	Arizona	- sec. 15-341A(1)
5.	Colorado	- sec. 22-32-109
6.	Connecticut	-
7.	Indiana	- sec. 28-1709
8.	Delaware	- sec. 122(18)
9.	Mississippi	- sec. 37-7-301(r)
10.	Utah	- sec. 53-6-20
11.	Ohio	- sec. 3313.47
12.	Oklahoma	- sec. 5-117A(1)
13.	Tennessee	- sec. 49-2-203(A)(2)
14.	Vermont	- sec. 16-563(1)
15.	Wyoming	- sec. 21-3-110(A)(1)
16.	Nebraska	- sec. 79-433
17.	Georgia	- sec. 20-2-59
18.	Florida	- sec. 230-22-(2)
19.	South Carolina	- sec. 59-15-40
20.	Missouri	- sec. 162-621
21.	Maryland	- sec. 4.107(4)
22.	Maine	- sec. 20-A-1001
23.	New York	- sec. 803/1604
24.	Arkansas	- sec. 80-402
25.	Rhode Island	- sec. 16-2-2
26.	Idaho	- sec. 33-512(c) - 33-506(1)
27.	Wisconsin	- sec. 40.29(1)
28.	New Hampshire	- sec. 194:2 194:3
29.	Montana	- sec. 20-1-211-(2)
30.	Texas	- sec. 22.08(d)
31.	Kentucky	- sec. 160.290
32.	Iowa	- sec. 273.12(1)(2)
33.	Kansas	- sec. 72-1603 72-8206
34.	Louisiana	- sec. 17.81
35.	New Mexico	- sec. 22-5-4

The majority of the states expressly granting the authority to join voluntary athletic associations to local school boards mention no specific association. Nevada statutes simply state school district trustees may form a nonprofit association to regulate, supervise and control athletics.[46] The legislature also regulates the association to some degree.

California grants local boards control of interscholastic athletics and grants authority to join voluntary athletic associations.[47] Other sections of the code regulate and adopt standards for such associations. New Jersey Statute grants boards of education the power to join voluntary associations to regulate student activities, provided such associations are approved by the Commissioner of Education.[48] Pennsylvania School Code grants expressed authority to any school, with local board approval, to join state associations related to school programs.[49] Michigan State Law expressly grants the authority to join an organization, association or league to promote or regulate sport and other activities, provided the association allows a representative of the State Board to serve on the association's governing body.[50] South Dakota delegates the power and authority to local boards to delegate the control, supervision, and regulation of athletics to any association meeting the standards outlined in the code.[51] The State of

Oregon, through state statute, declares that a school board may allow district schools to join a voluntary association which administers inter-school activities.[52] Illinois Statute allows local school boards to join athletic associations, provided such associations submit to a state audit.[53]

Five states name specific voluntary athletic associations in statutes expressly granting local boards the power and authority to join such associations. The State of Washington allows local boards of directors to delegate, on a year-to-year basis, the control, supervision and regulation of extracurricular activities to the Washington Interscholastic Activities Association or any other voluntary, nonprofit association meeting expressed conditions.[54] North Dakota Century Code permits public schools to join the North Dakota High School Activities Association for the purpose of administering interscholastic athletics.[55] The Minnesota Code permits governing boards to delegate the control, supervision and regulation of interscholastic athletics to the Minnesota State High School League.[56] School boards in West Virginia are allowed to delegate the control, supervision and regulation of interscholastic athletics to the West Virginia Secondary School Activities Commission.[57] The Department of Education in Alaska created the Alaska School Activities Association

and states that public or private school districts may join The Association, which will govern interscholastic athletics.[58]

Of the 14 states granting expressed authority to join voluntary athletic associations to local school boards or schools, two grant the authority to delegate the administration of athletics, two grant the authority to delegate governance, eight allow local boards to delegate the control, regulation and supervision of athletics, and two use no specific language other than to state local boards may join such associations. Those states allowing the delegation of the governance of athletics also provide for the regulation of state associations by the state departments of education. The states granting the authority to delegate the control, regulation and supervision of athletics to voluntary associations, regulate such associations by providing for supervision of the associations by the state department, state commissioner, state board or statutes in seven out of eight cases. The two states which allow the delegation of the administration of athletics to state associations differ in terms of state regulation. Oregon regulates athletic associations in terms of a specific issue, transfers,[59] while North Dakota has no other reference to the associations in statute.[60] (See Table 3-2)

Table 3-2

THE LANGUAGE FOUND IN STATUTES GRANTING
THE EXPRESSED AUTHORITY TO JOIN ASSOCIATIONS

States	Statement of Expressed Authority to Join Association: (a) Administration	(b) Governance	(c) Control, Regulation and Supervision	State Regulation of Associations
Massachusetts			X	No
Nevada			X	Yes, explicit regulations governing associations
California		X		Yes
Minnesota			X	Yes
New Jersey			X	Yes
South Dakota			X	Yes
Michigan			X	Yes
Pennsylvania		Statute grants	permission to "affiliate"	Yes, specific issues (private schools, coaches)
Alaska		X		Yes
Oregon	X			Yes, specific issues (transfers)
Washington			X	Yes
West Virginia			X	Yes
North Dakota	X			No
Illinois		Grants permission to pay dues for membership		Yes, specific issue (audit by state)

Of the forty-nine state statutes researched (Hawaii was omitted due to the unique structure of the state concerning education), a majority of thirty-five states allowed local school boards to join voluntary state athletic associations based on an implied grant of authority. Some of the statutes, such as Virginia's, were permissive in form, and some, such as North Carolina's or Indiana's are very specific and outline the specific duties of local school boards in a mandatory format.

The wording of statutes granting the implied authority to local boards to join state athletic associations varied, but four generic forms could be identified (see Table 3-3). The most popular form of the statute, employed by seventeen of the states, charged local school boards with the responsibility to prescribe or make the rules and regulations necessary to conduct, manage or govern the local schools.

Ten states granted local school boards the management and control of the school district. Three states use terminology specific to the purpose. Iowa Statute gives local school boards the power and duty to maintain adequate administration and policies concerning extracurricular activities.[61] Local school boards in North Carolina are responsible for making the rules and regulations for extracurricular activities,[62] and local boards in

TABLE 3-3

A CLASSIFICATION OF STATE STATUTES WHICH IMPLIEDLY GRANT
LOCAL SCHOOL BOARDS THE AUTHORITY TO JOIN STATE ATHLETIC ASSOCIATIONS

Local School Boards Prescribe Rules and Regulations to Conduct or Govern the Local Schools	Local School Boards Manage and Control the Schools	Local School Boards and Administer or Control Schools	Local School Boards Responsible for Administration, Policies, and Regulations for Extra-curricular Activities
South Carolina *1	Ohio	New Mexico *1	North Carolina *1
Kansas *3	Indiana	Alabama	Iowa *1
Montana	Connecticut	Virginia	Mississippi
New York *2	Texas *1		
Delaware *1	Kentucky *1		
Colorado	Tennessee		
Utah	Wisconsin		
Louisiana *1	Rhode Island		
Missouri	Nebraska		
Maryland	Maine		
Georgia			
Florida *3			
Idaho			
Arizona			
Oklahoma			
Vermont			
Wyoming			

*1 = Regulated by state board of education
*2 = Regulated by state department of education
*3 = Regulated by statute

Mississippi have the authority to provide and regulate interscholastic athletics.[63] New Mexico and Alabama grant local boards the authority to supervise and administer or control local public schools.[64] (See Table 3-3)

Eleven of the thirty-five states which grant local boards the implied authority to join associations are regulated or recognized to some degree by the state. Eight of the state associations are regulated by the state boards of education, two are regulated by state statutes rather than a specific agency and one is regulated by the state department of education. (See Table 3-3 for specifics)

State athletic associations may be classified by the basis or source of their authority and power. All state athletic associations are considered to be voluntary associations and are referred to as such in statute and case law, regardless of their source of authority. The associations may be classified as those associations established purely by contract and those established, recognized, or regulated by state statute.

Of the forty-nine associations and statutes researched, a majority of thirty are established by contract. Schools enter into contracts, based on either the expressed or implied authority granted them in state statute, with the associations, and agree to abide by the rules of the association. The association agrees to administer and

regulate interscholastic activities. The authority of these associations are defined in the contract, the association rules and regulations, and related case law.

Nineteen of the associations researched are controlled, established, regulated or recognized in state statutes. State statutes express limits of authority by limiting or defining the functions state associations may serve. Unless granted discretionary authority by the state legislature, state athletic associations can exercise only ministerial duties or administrative functions.

The most common form of state regulation is for the legislature to expressly grant state boards of education supervision of athletic associations. Nine of the nineteen associations established or regulated by state statutes are supervised by or must meet the standards established by the state board of education. The degree of regulation varies from general to specific. The state statutes of four states simply say that the state board shall prescribe rules and regulations for the conduct of interscholastic activities and that the rules of any authority administering such activities shall conform to state board regulations.

Iowa Statute Sec. 280.13 states that no public school will participate in contests administered by an association unless the association registers with the state department of public instruction; files financial statements with the

Department; and complies with State Board regulations concerning supervision, eligibility, operation, and scheduling.[65]

New Mexico State statutes state that the State Board of Education shall approve all rules or regulations promulgated by any association regulating public school activities, and invalidate any rules conflicting with State Board regulations.[66]

The state statutes of North Carolina explain that "all interscholastic activities shall be conducted in accordance with rules and regulations prescribed by the State Board of Education."[67] In Delaware, the statute dealing with interscholastic athletics states the State Board shall prescribe rules and regulations governing interscholastic athletics and implies that the state board shall approve the rules and regulations of associations.[68] The statute also governs specifically, the independent team rule, which prohibits a student from participating in a school sponsored activity and the same activity in a recreation league or independent league. The State Board explains it will not approve such rules.

Two states regulate specific aspects of the operation of state athletic associations, rather than requiring that rules and regulations conform to State Board regulations.

Louisiana State Code deals with athletics and scholastics. The Louisiana state legislature instructed the State Board to adopt the Louisiana High School Athletic Association Scholastic Rule and directed the Board to review the rule annually and adopt whatever rules necessary to maintain or upgrade the minimum academic standards students must meet in order to participate.[69]

South Carolina statutes regulate the academic requirements students must meet in order to participate; charge local boards with monitoring interscholastic activities not under the jurisdiction of the South Carolina High School League; allows handicapped students to participate if participation is part of their individualized education plan (IEP); and allows local boards to adopt more stringent regulations if they wish.[70] In accompanying regulations the State Board sanctions the South Carolina High School League and makes specific recommendations to the League.[71]

Four of the state statutes that expressly grant the state board of education the authority to control and regulate state athletic associations require the state boards to annually approve all rules and regulations. Washington State requires, expressly in state code, that voluntary nonprofit associations submit annual reports summarizing the determination of appeals and financial

transactions to the State Board; refrain from discrimination in matters of employment and membership; annually submit rules, regulations, and amendments to the State Board for review and approval; and requre due process be provided students pertaining to eligibility.[72]

West Virginia State Code requires that the State Board approve the rules and regulations of the West Virginia Secondary School Activities Commission.[73]

Kentucky is more specific than either Washington State or West Virginia. Kentucky Revised Statutes expressly grant the authority to control athletics to the State Board and allows the State Board to designate an organization to manage interscholastic athletics. The rules and regulations of the organization must be approved by the State Board and the State Board shall be the final hearing board in appeals concerning the decisions of such an organization.[74]

The State Legislature of Texas enacted a law which says that all rules for conducting athletics must be consistent with State Board rules and requires the University Interscholastic League to submit its rules to the State Board of Education for approval, disapproval or modification.[75]

Five state statutes assign the supervision or regulation of state athletic associations to the state departments of education or public instruction, and in some instances to the Commissioner of Public Instruction.

Minnesota expressly grants the Minnesota High School League the authority to control, regulate and supervise extracurricular activities, provided the Commissioner of Education is an ex officio member of the governing body. The Commissioner reports annually, to the state legislature, the activities of the League and recommends any new legislation required concerning the activities of the League.[76]

The State of New Jersey requires voluntary athletic associations to submit their charters, constitutions, bylaws, rules and regulations to the Commissioner of Education for approval and details a specific appeals process each association must adhere to in matters requiring hearings.[77]

New York State Code requires public schools to provide extracurricular activities under the direction of the Commissioner of Education, as determined by the Board of Regents.[78] The Commissioners Regulations established the standards governing interscholastic athletics and the New York State Public School Athletic Association is said to operate under the "aegis" of the Commissioner of Education.[79]

The Alaska Department of Education created the Alaska School Activities Association, defined its purpose, membership, and structure, and approves the association's rules and regulations.[80]

California Statutes explicitly state that the Department of Education shall supervise all athletic activities in the public schools.[81] The code further states that local boards shall select their representatives to the athletic league; the association shall establish a neutral final appeals body; and the association shall comply with federal and state law.[82] The state department is not empowered to change any rules and regulations not in compliance with such laws, but can initiate legal proceedings to ensure compliance.[83]

Five states regulate state athletic associations through statutes only, and do not assign the supervision to any agency. The regulation ranges from the general to the very specific. Both Florida and Pennsylvania deal with specific aspects of athletic associations in their state codes. Florida details a specific academic standard students must attain in order to participate in extracurricular activities,[84] and regulates the purchase of insurance for athletic activities.[85] Pennsylvania Statutes regulate the membership of private schools and the employment of coaches by private schools.[86]

Michigan regulates state athletic associations by requiring such associations to provide membership on the governing board to a member of the State Board of Education; makes the association responsible for promulgating

eligibility regulations; and requires the participation of females on noncontact athletic teams to be based on athletic ability.[87]

Nevada has six sections of the code dealing with associations governing interscholastic activities. Nevada Revised Statutes provide for: the formation of associations; the adoption of rules; the adoption of procedures for resolving disputes; the membership of private schools; and the liability of such associations.[88]

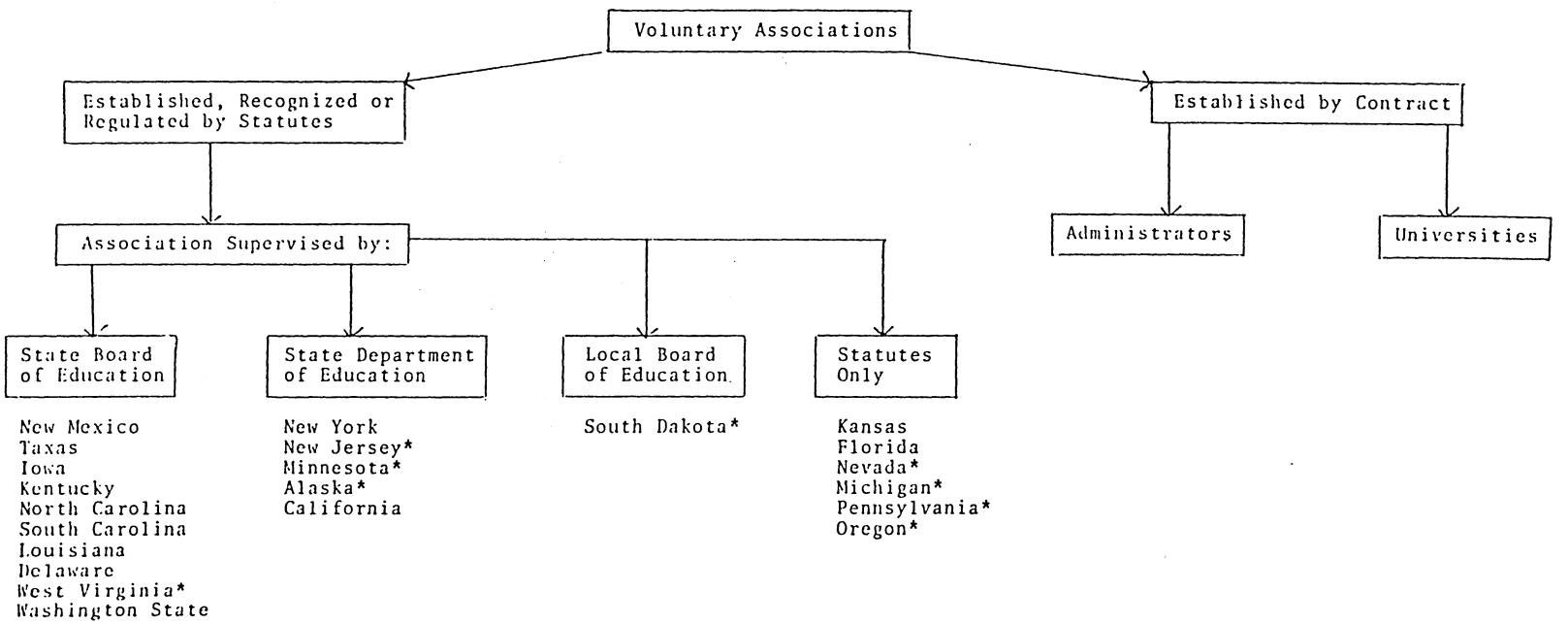
Oregon Statute states that a student shall not be denied the right to participate in athletics because he transferred or participated at another school.[89]

Kansas Statutes provide the structure of the high school athletic association including the composition of the board of directors, executive board and an appeals board; defines activities, boards and school districts; and outlines a specific appeals process.[90]

One state provides for the regulation of interscholastic activities associations by local school boards. South Dakota Law requires that membership be open to all high schools, rules provide for a proper review procedure and board, and that the rules and regulations of the association are subject to the ratification of local school boards.[91] (See Table 3-4)

TABLE 3-4

STATE ATHLETIC ASSOCIATIONS CLASSIFIED
BY THE LEGAL BASIS OF THEIR AUTHORITY



*Local boards have expressed authority to join associations

CASE LAW AND VHSL REGULATIONS

The VHSL governs interscholastic athletics and member schools, through its constitution and regulations, which are published in the VHSL Handbook. The constitution establishes the structure and procedure for the governance of the VHSL. Sections of the constitution explain and establish the standards for membership, procedures for finance, criteria for classification of member schools, and responsibilities of the individuals and groups composing the VHSL.

The rules and regulations of the VHSL consist of school regulations, which define individual responsibilities, qualifications, and roles; rules limiting or sanctioning contests; individual eligibility regulations; and due process.

School regulations governing member schools have not been a major source of litigation. However, both individual eligibility regulations and questions concerning due process have been frequently contested in the courts.

Parochial School Membership

The VHSL constitution states that only accredited state public high schools, with the written permission of their school board, are eligible for membership in the VHSL.[92] This point has been contested in the courts, concerning the VHSL specifically, and other state associations.

In 1981 the Supreme Court of New Jersey decided Christian Brothers Institute of New Jersey v Northern New Jersey Interscholastic League.[93] Christian Brothers Institute ran Bergen Catholic High School and the high school applied for membership in the Northern New Jersey Interscholastic League (hereafter referred to as the League), which excluded parochial or private schools from membership. A previous denial of membership in the League prompted Bergen Catholic to file a complaint with the New Jersey Division of Civil Rights in 1974. As a result of this complaint, a "Conciliation Agreement" was signed in which the League agreed to drop the clause in their constitution excluding parochial or private schools from membership and consider Bergen Catholic for future membership, as vacancies occurred. In return Bergen Catholic agreed that the Conciliation Agreement would be the final disposition of the matter.

When a vacancy occurred in the League, Bergen Catholic was one of eight schools to apply for membership. The League used a criteria for selection involving eight variables. According to the criteria, Bergen Catholic received the lowest rating and was denied membership. As a result of this, Christian Brothers filed a complaint alleging violations of First Amendment Rights to the free exercise of religion, the equal protection clause of the

Fourteenth Amendment and corresponding clauses in the New Jersey State Constitution.

The trial court found no discrimination based on religion but ruled that the criteria for selection not objective. The trial court ordered the League to admit Bergen Catholic and to develop nondiscriminatory criteria to determine eligibility for membership. The appellate division upheld the trial court's decision.

However, the State Supreme Court reversed the decision based on the following rationale:

1. the claim should have been taken before the Division on Civil Rights and then appealed to the court, if necessary;
2. the lower court determined that no religious discrimination was evident;
3. the classification of schools as public or parochial does not amount to a suspect classification, if a rational reason for such a classification exists;
4. a rational basis for classifying schools as parochial or public does exist since parochial schools have no defined attendance areas, and the League has an interest in maintaining competitive balance. The court also cited there is no fundamental right to participation in

interscholastic athletics. Thus, no violation of the equal protection clause of the Fourteenth Amendment was evident.

A United States Federal District Court in Delaware, heard a similar case, Valencia v Blue Hen Conference.[94] The parents of students attending a parochial high school in New Castle, Delaware filed a complaint because of the Blue Hen Conference's (hereafter referred to as the Conference) refusal to grant membership to parochial/private schools. The complaint alleged that the exclusion of parochial schools was a constitutionally impermissible infringement on the First Amendment right to the free exercise of religion, because sending one's children to parochial school resulted in a burden. This burden impeded the practice of one's religion. The alleged burden consisted of: the increased travel members of the parochial school were subjected to in order to compete; the lack of press coverage; and the lack of attendance at competitions involving parochial schools. Allegedly these burdens diminished opportunities for athletic scholarship and/or professional careers. The plaintiffs also asserted that the exclusion from Conference membership violated the equal protection clause of the Fourteenth Amendment and that the Delaware Secondary School Athletic Association said that parochial/private schools may be granted membership to public school athletic conferences.

The plaintiffs had appealed the Conference's decision to the State Association and the State Board of Education, but both bodies upheld the decision of the Conference.

The federal district court ruled in favor of the Conference, substantiating the rationale of the Conference in excluding parochial schools from membership. The court ruled that:

1. the exclusion of parochial schools from Conference membership was not impermissible since its motives were not to deter the practice of one's chosen religion;
2. the burden caused by the exclusion of parochial schools from Conference membership was minimal and due to the Conference exercising a legitimate interest;
3. the state may provide secular benefits to parochial school children, it is not required to do so;
4. the classification of schools as public and parochial did not constitute a suspect classification since the Conference based the classification on the rationale that in order to control recruiting and competitive balance, it needed to exclude parochial schools.

The Third United States Circuit Court of Appeals upheld the decision of the district court, without an opinion.[95]

The Fourth United States Circuit Court of Appeals dealt with the issue of the membership of parochial schools in state athletic associations in Denis J. O'Connell High School v Virginia High School League.[96] Denis J. O'Connell High School brought suit under Section 1983 of the United States Code alleging that the exclusion of private/parochial schools from membership in the Virginia High School League (hereafter referred to as the VHSL) and from participation in tournaments for major sports, was based on an arbitrary classification, in violation of the equal protection clause of the Fourteenth Amendment. This classification and exclusion denied O'Connell students the right to participate in tournaments and earn scholarships. In its defense the VHSL stated it was not denying O'Connell High School a federally protected right; admission of O'Connell High School to the VHSL would violate the establishment clause of the First Amendment; and the membership of parochial schools in the VHSL would make enforcing eligibility regulations difficult, since private schools have no defined attendance zones.

The lower court ruled in favor of the plaintiffs, and stated that no rational basis, substantiated by data, for the exclusion of parochial schools from the VHSL, existed. The court also stated that the admission of O'Connell to the VHSL would not violate the First Amendment. Upon appeal the

Fourth Circuit Court of the United States reversed the ruling of the lower court and said:

1. participation in interscholastic athletics or state tournaments, or the possibility of attaining a scholarship, is not a fundamental right;
2. public and private schools lack similar attendance zones or areas, therefore, the admission of private schools to the VHSL would make the transfer rule difficult to enforce;
3. since a fundamental right does not exist, and there is a rational reason for the exclusion of private schools, there is no violation of the equal protection clause;
4. it is not the role of the court to determine if a rule is the best method to achieve a legitimate state interest. The role of the court is simply to establish a rational relationship between a rule and a legitimate state interest.

In Windsor Park Baptist Church, Inc., v Arkansas Activities Association,[97] the Eighth Circuit Court of Appeals ruled on the exclusion of unaccredited private schools from interscholastic athletic associations. Fort Smith Christian School, operated by the Windsor Park Baptist Church, was a member of the Arkansas Activities Association (hereafter referred to as the Association), based on the

agreement that the school would seek accreditation. The school refused to seek accreditation based on the religious belief that they could serve one master, God. The school believed that submitting to regulation by the state, as personified by the rules and regulations governing accreditation, violated this religious belief.

Fort Smith Christian School was placed on probation and filed an action in federal district court. They stated that their exclusion from association-sponsored competition, as a penalty for not seeking accreditation, amounted to being penalized for practicing their religion and therefore violated the First Amendment of the Constitution of the United States. The federal district court ruled in favor of the Association. The plaintiffs appealed and the Eighth Circuit Court of Appeals affirmed the decision of the lower court.

The Circuit Court explained that the Association is a delegate of most school districts of the state, and the state acts through the Association. Religiously motivated activities may be regulated by the state, through the exercise of its sovereign powers to provide for the health, safety, and welfare of its citizens. State accreditation standards are a permissible exercise of the power of the state over private schools. The Fourteenth Amendment forbids states to prohibit attendance at nonpublic schools,

but it doesn't forbid nondiscriminatory regulation of private schools. Such regulation advances the secular interests of the state. Therefore, the exclusion of Fort Smith Christian School from participation in association-sponsored activities, as a penalty for refusing to seek state accreditation, does not violate the First Amendment right of free exercise of religion.

A related matter was heard by the Fifth Circuit of the United States Court of Appeals in Holy Cross College, Inc. v Louisiana High School Athletic Association.[98] Plaintiffs/Appellants brought action against the Louisiana High School Athletic Association (hereafter referred to as the Association) on the grounds that the Association rules prohibiting recruiting infringed upon First Amendment Rights of Free Speech. The plaintiffs sought relief under Section 42USC§1983. The Association rule was enacted to curtail recruiting abuses and restrain schools from exerting undue influence and pressure upon prospective students.

A high school coach was found to be in violation of this rule by the Association when he spoke to students at a middle school about the programs at Holy Cross High School. The district court dismissed the case as immaterial, meritless and frivolous. The Circuit Court reversed and remanded the case, stating that the district court had jurisdiction over the action.

The VHSL, in Section 28 of the League Handbook, lists and interprets the individual eligibility regulations applicable to students in member schools. These rules are comprehensive and deal with: conduct, scholastic standards, enrollment, age, transfer, academic progress, parental consent, independent team participation, and hardship cases. The area of individual eligibility accounts for approximately 70-80 percent of the litigation concerning interscholastic athletics, and transfer rules have generated the most interest in the legal community.

Conduct Rules

The Bonafide Student Rule states that "a student shall be a regular bonafide student in good standing."[99] The rule is interpreted to mean the student must be carrying at least four subjects, which count towards graduation, and the student must neither be under suspension nor reflect discredit upon his school. There is no specific litigation involving the VHSL and this rule. However, other associations have comparable good conduct rules and these rules have been contested on several occasions.

In 1970 the Supreme Court of New York which is a trial court rather than the highest court of appeals, decided O'Connor v Board of Education,[100] a case concerning rules regulating the behavior of student athletes. O'Connor was an 18 year old high school athlete, seen eating and drinking

beer by a coach, at the local Knights of Columbus. O'Connor received a letter describing his behavior as violating a rule stating that smoking and drinking are undesirable behaviors for high school athletes, and any flagrant violation of the rule, at any time in the school year, results in the forfeiture of letters earned. O'Connor claimed his behavior was not a flagrant violation of the rule; the board had no authority to revoke his letter; and he received no hearing. The court, however, ruled in favor of the defendants stating that the regulation of the conduct of high school student athletes is reasonable.

The State Supreme Court of Iowa also ruled on the reasonableness of "good conduct rules" in Bunger v Iowa High School Athletic Association[101] in 1972. The incident in question took place in the summer of 1971, when William Bunger was present in a car in which there was beer. The highway patrol stopped the car, discovered the beer, and charged the occupants with possession of alcoholic beverages by minors. Bunger pleaded not guilty and the charges against him were dismissed. Bunger informed school officials of the incident and he was charged with violating the good conduct rule of the Iowa High School Athletic Association. The rule declared that a student found guilty of possession, transportation, and consumption of alcoholic beverages would be ineligible for six weeks, whether the

incident occurred during the school year or during the summer. Bunger contested the decision of the association and school officials.

The Supreme Court of Iowa reversed a lower court decision, upholding the good conduct rule, and ruled in Bunger's favor. In a lengthy opinion, the court said it is logical to expect more from athletes, since they influence other students and represent the school. Rules regulating such conduct and extracurricular activities may be broad, but must be reasonable. The conduct regulated must pertain to conduct directly related to and effect the management and efficiency of schools. Therefore, school authorities may make student athletes ineligible for drinking, possessing, delivering or transporting beer during the school year, but regulating such conduct outside the school year is not reasonable.

In 1972 the Supreme Court of Minnesota ruled on the Minnesota State High School League's alcohol rule in Thompson v Barnes.[102] Craig Thompson was suspended as a sophomore, from participation in athletics for 18 weeks, for the use of alcohol. He was found to be in violation of the rule forbidding the use of alcohol again, the following year. The second violation called for a one-year suspension. Thompson appealed to the high school league and school board without success, and sought injunctive relief

in state district court, also to no avail. Upon appeal the State Supreme Court upheld the lower court and said the high school league was authorized to promulgate such rules.

Braesch v DePasquale[103] decided by the State Supreme Court of Nebraska in 1978, involved rules regarding conduct and drinking. Five high school seniors, members of the boys and girls varsity basketball teams, were suspended from interscholastic competition for possessing and drinking beer at a party. The students successfully sought injunctive relief in the lower court, but the State Supreme Court reversed the decision based on the rationale that schools have a right to make reasonable rules for the regulation of student conduct. The court explained further that rules governing the behavior of athletes by prohibiting the use of alcohol are appropriate and serve a legitimate state interest. Such rules will not be invalidated unless they are arbitrary and unreasonable.

A United States District Court in Pennsylvania ruled on the conduct rule of the Central Dauphine Athletic Association, a member of the Pennsylvania Interscholastic Athletic Association in the case of Davis v Central Dauphine School District School Board.[104]

The rule in question states that if a student "leaves" a team for dishonorable reasons, he is suspended for a period of one year. Dishonorable reasons are interpreted to

include smoking, drinking, using drugs, destroying property, stealing, quitting, and conduct unbecoming of an athlete. After a game, Russell Davis struck a fellow teammate, fracturing the teammate's jaw. The fellow athlete had made no attempt to strike Davis. The matter was investigated and Davis duly suspended.

Davis contended he was denied due process in the matter and claimed the rule was vague. The court, ruling in favor of the defendant school district, stated the rule might be imprecise, but it forewarned the student that certain conduct was prohibited.

Age Rule

The VHSL rule Age Rule states that a student may not have attained the age of 19 on or before October 1, of the year he wishes to compete.[105] The rule is further interpreted to specify the documentary proof necessary to prove or substantiate a birth date in question.[106]

The case of Blue v University Interscholastic League[107] illustrates the legal status of age rules. Phil Blue and other members of his football team were 19 years old, in violation of the University Interscholastic League (hereafter referred to as the UIL) rule, which said anyone who turned 19 on or before September 1 of the year in which they wished to compete was ineligible. The overage players participated in five games before the violation was

discovered. The UIL declared the overaged participants ineligible and forced the team to forfeit the five games already played. The plaintiffs sought injunctive relief and claimed a violation of their rights to due process and the equal protection clause of the Fourteenth Amendment. The United States District Court rejected the charges of the plaintiffs and found for the UIL. In the decision the court said that participation in athletics is an expectation, not an entitlement, and is therefore not protected by due process. The resulting classification of students, based on age was neither suspect nor infringed on a fundamental right. The classification was rationally related to the legitimate state interest of assuring fair competition and reducing hazards by ensuring that mature, skilled 19 year olds did not compete with younger, less able participants.

In State Ex Rel. Missouri State High School Athletic Assocition v Schoenlaub,[100] (hereafter referred to as the Association) the Association brought action in the Supreme Court of Missouri to halt a lower court judge from enjoining their enforcement of the age rule. The age rule in question prohibited 19 year old students from competition. The Association granted exceptions in eligibility when a student found himself in situations beyond his control, if the exception didn't violate the intent of a regulation.

The plaintiffs in the original case were two high school students who missed school due to illness and were held back. Both were skilled athletes and had been offered scholarships, contingent on participation during their senior year. They were denied eligibility due to the age rule.

The plaintiffs sought and received an injunction based on the charges that the rule was unreasonably arbitrary and capricious; the hardship ruling was arbitrary; they were denied due process; and their rights to an athletic scholarship were jeopardized.

The Association maintained the lower court erred in granting the injunction because it acted without reason. They maintained participation in athletics was a privilege, not a protected right, and the speculative possibility of a scholarship was neither property nor contract right.

The State Supreme Court said courts should only intervene in the affairs of athletic associations where there was inconsistency, fraud, collusion, aribtrary action or capriciousness. The State Supreme Court found the rule to be reasonable, since it was adopted to promote the safety of younger athletes and maintain equal competition. The court further stated that the enforcement of the rule was also reasonable and did not deprive the students of property rights. The court reiterated the finding of sister courts,

which declared no property right existed in participation in extracurricular athletics and no property right existed in the speculative possibility of a college scholarship. Therefore, the court ordered the lower court judge to proceed no further with injunctive action, and upheld the rule.

Mahan v Agee[109] concerned the enforcement of the Oklahoma Secondary School Activities Association's age rule, which prohibited 19 year olds from participation in athletics.

The plaintiff/appellee was a 19 year old high school senior who wished to run track. He maintained he was a 19 year old senior because he had dyslexia and wasn't provided proper instruction. Therefore, he had to repeat a grade, and was a 19 year old student, due to the school system's oversight.

The State Supreme Court determined the rule was a reasonable exercise of authority, and it was related to legitimate purposes. Those purposes were to protect younger students from the potential harm of participating with older, more mature students, and eliminate "red-shirting." The absence of a hardship exception for the rule was also deemed to be reasonable, because a 19 year old was still a potential danger to other athletes, whether he was a hardship exception or not.

The court further explained that their role was to intervene only when there was evidence of arbitrary, capricious, or fraudulent acts. The State Supreme Court reversed the lower courts decision.

Academic Progress

The VHSL has promulgated three rules, often considered together by state athletic associations and state courts. These rules deal with the first date of eligibility, minimal academic progress and hardships or exceptions to these rules.

VHSL Rule 28-2-1 says a student becomes eligible for varsity competition upon entering the ninth grade for the first time, or once he has passed four eighth grade subjects in a previous year.[110] This establishes the first date of eligibility.

VHSL Rule 28-7-1 says a student has eight consecutive semesters of eligibility, commencing on the date he first attains varsity eligibility as outlined in 28-2-1.[111]

VHSL Rule 28-13-1 Hardship Rule states the principal of a school may file for a waiver of the semester rule where it creates an undue hardship upon a participant.[112]

These issues have been adjudicated and reported several times. In 1975, the District Court of Appeals of Florida decided the eligibility of a high school student in Florida High School Activities Association v Bryant.[113] The

Association granted each student four consecutive years of eligibility, or eight semesters. According to this rule, Bryant, a high school senior, was ineligible. The student claimed he was a "hardship" case and successfully sought to enjoin the association from prohibiting his participation. The trial court maintained that the youth's circumstances constituted an adequate hardship to excuse the application of the four-year rule. The court ruled that participation in basketball was an integral part of the student's scholastic and social development and rehabilitation from prior problems as a juvenile delinquent. Participation in basketball had been credited with the improvement of the student's grades, attitude, self-confidence, discipline and maturity. The trial court realized the rule was promulgated to deter "red-shirting" and found no evidence of such a problem in this instance and the appellate court upheld the decision.

In Lee v Florida High School Activities Association, Inc.[114] (hereafter referred to as the Association) the Florida State Court of Appeals considered the case of a high school student who entered in the ninth grade in California in September 1969, and stayed until 1971. At that time the family moved to Florida and the student had to work to aid his family. In 1972 the student reenrolled in school, and in 1973 was deemed ineligible for athletic competition on

the basis of the rule granting each student four consecutive years of eligibility. The trial court dismissed the case.

The Court of Appeals interpreted the actions of the Association to be harsh because they did not allow the plaintiff the opportunity to be heard and present evidence. The court reversed and remanded the case with directions.

In 1977, the State Supreme Court of Georgia, in Smith v Crim[115] heard a case contesting the authority of the Georgia High School Association to enforce a "semester" rule. The rule stated a student is eligible for four consecutive years or eight consecutive semesters from the date of his first entrance into the ninth grade. The specifics of the case involved a student who entered the ninth grade in 1973 and was forced to drop out and work, when his mother suffered an emotional illness. The student reentered school in the fall of 1975, completed the tenth and eleventh grades, and hoped to attain a football scholarship. However, due to the semester rule, the student was declared ineligible his senior year. The student sought to enjoin the rule, claiming a violation of his due process and equal protection rights.

The trial court ruled that even though sports are an important part of school, they are not essential to the curriculum. Therefore, no protectable property interest existed. The court also stated that the "semester" rule created reasonable classifications, since the purpose of the

rule was a legitimate state interest. The court interpreted the legitimate state interest to be insuring the safety of the athletes by maintaining the physical equality of the participants; limiting the number of years of eligibility of participants so more students may play: and protecting students from pressures to "red-shirt."

The Supreme Court affirmed the lower courts decision and found that even though the rule seemed harsh, the goal was a legitimate state interest and did not violate the student's right to an education.

The Supreme Court of New York dealt with the issue of exceptions to the semester rule, under somewhat unusual circumstances in Burtt v Nassau County Athletic Association[116] (hereafter referred to as the Association). Several high school football players sought a judgment to grant an extension of their individual eligibility beyond their eight semesters in school. The plaintiffs missed their senior year of football due to a teachers strike; failed to graduate; and sought an additional semester of eligibility.

The rule in question provided eight consecutive semesters of eligibility and provided waivers for exceptions, exclusive of academic failure and was designed to prevent red-shirting. The plaintiffs claimed the strike constituted an exception. However, the Association denied

that the strike constituted an exception and since it acted neither arbitrarily or capriciously, the court refused to overturn the Association's ruling. The court dismissed the petition.

In Pennsylvania Interscholastic Athletic Association, Inc. v Geisinger,[117] the Commonwealth Court of Pennsylvania heard an appeal involving the ruling of a lower court, which enjoined the Pennsylvania Interscholastic Athletic Association (hereafter referred to as the PIAA) from declaring two students ineligible, based on the semester rule. The semester rule, in this instance, granted students eight consecutive semesters of eligibility, except in cases involving an illness or injury requiring the student to repeat a grade.

In Geisinger, two students repeated a year and as a result had been in attendance eight semesters before their senior year. Their principal petitioned the appropriate committee for extra semesters of eligibility. One student had contracted mononucleosis and missed an excessive amount of time, which prompted his parents to request that the student not be promoted. The other student missed excessive amount of time due to psychological treatment and his doctor recommended he repeat a grade to aid his treatment and rehabilitation. The requests were denied.

The lower court granted the students injunctive relief and stated that the inconvenience the ruling caused the PIAA was outweighed by the benefits it granted the students. The appeals court agreed that the grounds cited for granting the injunction were reasonable and affirmed the ruling.

In Alabama High School Athletic Association v Medders,[118] an Alabama high school senior was declared ineligible because he voluntarily repeated the eighth grade. The Alabama High School Athletic Association (hereafter referred to as the AHSAA) semester rule said a student had four fall semesters and four spring semesters of eligibility after he completed the eighth grade or entered the ninth grade. The lower court interpreted the rule to declare the student eligible.

The Supreme Court of Alabama said the eight semester rule had been interpreted the same way for 35 years and the student was ineligible. The court further ruled that the decisions of the AHSAA are subject to judicial review only when the plaintiff proves fraud, collusion or arbitrary action. The lower court decision was reversed.

The United States Fifth Circuit Court of Appeals dealt with the issue of academic progress and red-shirting in Mitchell v Louisiana High School Athletic Association[119] in 1970. Suit was brought against the Louisiana High School Athletic Association (hereafter referred to as the LHSAA) by

the parents of students who were declared ineligible during their senior year, because they voluntarily repeated the eighth grade. The LHSAA stated a student must not have attended high school more than eight semesters and any student who voluntarily repeats a grade once he has entered the sixth grade loses one year of eligibility. The district court ruled in favor of the plaintiff/students, and said the rule was constitutionally defective. The decision was based on the rationale that the rule did not provide adequate notice to students in either grammar school or junior high school, and it did not penalize students who failed academically, just those who repeated a grade for other reasons.

The Fifth Circuit reversed the lower court and stated the rule did not create suspect classification since it was rationally related to a legitimate state interest. That interest was the promotion of fair competition and the minimization of the hazard of older, more skilled players competing with lesser skilled players. The rule did not infringe on any fundamental rights and no constitutional interests were involved.

In a related case, DeKalb County School System v White,[120] a parent brought suit to have his son declared eligible to play football his senior year, after the son had voluntarily repeated the eighth grade. The parent signed a

waiver, which stated he understood his son would be ineligible his senior year. The trial court discounted the waiver and declared the son eligible. The State Supreme Court, however, ruled that the waiver clarified existing policy and reversed the decision.

Sportsmanship

The VHSL, in 27-13-1 through 27-33-6 and in the Code for Interscholastic Athletes, has set forth rules governing the behavior of school officials, competitors and spectators attending VHSL sanctioned events. Such rules are promulgated to instill the spirit of good sportsmanship. The rules state:

1. The host school is responsible for taking reasonable steps to provide for control of spectators, including the provision of police, if necessary.[121]

2. The teams or competitors may not withdraw from a competition prior to its conclusion, because of dissatisfaction with the officials.[122]

3. The coaches shall not harass officials or interrupt play to complain about officiating or react so as to influence the team and spectators that the game is being poorly officiated.[123]

4. The member schools shall use all means possible to inform players, students, coaches and officials of the importance of good sportsmanship.[124]

The Code expresses the responsibilities of administrators, spectators, athletes, and coaches in promoting good sportsmanship.

Rules 27-13-8 through 27-13-11 outline the procedure to be followed in the event of unsportsmanlike action, specific penalties which may be enforced, and VHSL policies concerning such incidents.

No cases were located contesting actions taken by the VHSL concerning sportsmanship violations. However, litigation was found concerning the enforcement of sportsmanship rules in other states, involving spectators and players.

In 1973, a federal district court in Texas, ruled on a sportsmanship case involving a participant. In Stock v Texas Athletic Interscholastic League,[125] the plaintiff, a 17 year old football player on a parochial school team, contested the action of the Texas Athletic Interscholastic League (hereafter referred to as the TAIL), which prohibited his further participation in interscholastic athletics. The action was the result of his alleged misconduct during a football game. The incident was investigated by the TAIL. Their ruling terminated the plaintiff's eligibility and excluded the member school from competing for district honors. The principal appealed on the student's behalf and the ruling was revised to exclude the plaintiff from participation for one year, contingent upon a documented improvement in his attitude, concerning good sportsmanship.

The plaintiff, Stock, maintained he was denied due process, because he had a right to play football and the action of the TAIL was state action. The federal district court ruled for the defendant, TAIL, finding no denial of a protected right and no state action. The TAIL was considered a private association, unlike the University Interscholastic League, which supervised public school athletics.

Taylor v Alabama High School Athletic Association[126] (hereafter referred to as the AHSAA) involved the conduct of spectators during and after a high school basketball game. During a regional playoff game between Druid High School and Tuscalosa High School spectators behaved in an unruly manner. After the game, rock throwing and the rocking of cars was reported.

The AHSAA investigated and conducted a hearing involving principals and coaches. As a result of the hearing, Druid High School was prohibited from participating in or hosting any invitational basketball tournaments for one year. Members of the Druid basketball team sought to enjoin the action, claiming a deprivation of due process. Specifically they claimed they were denied the right to perform in tournaments, display their skill and possibly earn a scholarship. They also alleged that there were no pre-existing rules or standards of punishment for such

offenses and the penalties were excessive. The federal circuit court found no property rights involved and no violations of due process. The court upheld the defendant's action.

Watkins v Louisiana High School Athletic Association[127] (hereafter referred to as the LHSAA) concerned the unsportsmanlike conduct of a spectator. The plaintiff, Mrs. Edmund Watkins, went onto the basketball court immediately following a game. She complained to the official about his officiating and grabbed him by the arm.

The LHSAA conducted a hearing, which included the presentation of witnesses, and cross-examination. As a result of the hearing, the host high school was fined, and the team could not play while Mrs. Watkins was in attendance. The plaintiff claimed the decision humiliated her, damaged her reputation, and abridged her right to associate with family and friends. She sought an injunction and damages for mental stress, loss of privacy and loss of pleasure.

The trial court ruled there was no interest in the decision of the LHSAA or grounds for the plaintiff's action. The court of appeals ruled that the effect of the LHSAA decision prevented the plaintiff from attending games and associating with friends and family, therefore, the plaintiff had grounds for action. The court ruled further,

that even if the plaintiff had a right to attend such athletic contests, the LHSAA had the right to reasonably place nondiscriminatory limitations upon such conduct and rights. The court defined their policy towards private, unincorporated associations as one of nonintervention, unless the affairs were conducted unfairly, dishonestly, fraudulently, capriciously, arbitrarily, or discriminatorily. Therefore, the plaintiff had an interest and grounds for action, but the LHSAA ruling was upheld.

Independent Team Rule

The VHSL rule 28-11-1 is the Independent Team Rule. It states that no team member shall become a member of, or participate during the sports season, with any other organized team in the same sport, whether the team is within school or independent of the school. Tennis, golf, gymnastics, cross country and swimming are exceptions to the rule.[128]

The Minnesota High School League (hereafter referred to as the MHSL) rule prohibiting students from competing on independent hockey teams was challenged in 1970 and the Supreme Court of Minnesota ruled on the challenge in Brown v Wells.[129] The MHSL rule refused to allow students to retain eligibility if they participated on independent hockey teams or attended unsanctioned hockey camps. The father of a 16 year old hockey player instituted the action that challenged

the rule and the trial court ruled in favor of the plaintiff. The trial court expressed the opinion that the rule had no related school purpose and restrained a student from pursing legitimate interests.

The court ignored the defendant's explanation that the rule was designed to protect students from the pressure to specialize and limit their activities; avoid the overemphasis of extracurriculars; avoid the exploitation of students by outside interests; and secure fairness in competition so teams from disadvantaged districts could compete with those from wealthier districts. The MHSL maintained that any student who wished to hone his skills in anticipation of a professional career could do so in leagues and clinics, but forfeited MHSL eligibility if he did so.

The Supreme Court of Minnesota reversed the decision and said the courts were not to substitute their judgment for that of the MHSL and should uphold the decisions of administrative authorities unless those decisions are arbitrary.

The Supreme Court of New Hampshire ruled on New Hampshire's independent team rule in 1971, in the case of Hawkley v New Hampshire Interscholastic Athletic Association, Inc.[130] (hereafter referred to as the NHIAA). The by-laws of the NHIAA declared any certified player ineligible for "one-calendar" year in all sports if the

player participated in a nonschool tournament or played on an independent team, during the season. In the spring of 1971, Hawkley, a junior, played in such a tournament. He was declared ineligible in May 1971. He sought a restraining order, which the lower court denied. The Supreme Court upheld the rule since it was neither inconsistent with past rulings, nor unreasonable. However, the court interpreted one calendar year to end on December 31, 1971 and restored eligibility on January 1, 1972.

Texas High School Gymnastics Coaches Association v Andrews,[131] heard by the Court of Civil Appeals of Texas, dealt with the independent team rule promulgated by an association of coaches. The rule prohibited high school gymnasts from working out with, practicing with, taking lessons with or competing with private clubs. Violators were declared ineligible for school sponsored competition. The association claimed the rule was designed to prevent inequalities due to wealth or geography or between students or between schools

A group of parents/plaintiffs challenged the law as unfair and claimed it restricted the individual rights of students and restrained trade and free enterprise. The trial court granted a temporary restraining order.

The court of appeals reversed and remanded the case, stating that the regulation was rationally related to a

legitimate state interest, which was the maintenance of competitive equality between students and schools of different wealth and opportunity. The court of appeals also stated it was not the rule of the court to substitute its judgment for the judgment of an association, unless the association acted unreasonably, capriciously, or arbitrarily.

Dumez v Louisiana High School Athletic Association[132] involved a challenge to the LHSAA independent team rule. The rule in question said students participating in any sport not sponsored by the school, while they were a member of a school sponsored team in the same sport, shall be declared ineligible, for one year, to participate in that sport. The rule was waived for golf, tennis, and swimming. In the spring of 1974, seventeen students were declared ineligible under this rule because they practiced with local Babe Ruth teams, during baseball season. The parents of eight of these students instituted legal action to restrain the LHSAA from enforcing the independent team rule. The trial court granted the plaintiffs an injunction allowing the students to participate, but the appellate court reversed the decision and stated that the rule neither violated due process nor equal protection. The rule was fairly and consistently applied and absent fraud, collusion, arbitrary actions, or violations of constitutional or statutory rights, the court's intervention was unjustified.

Kubsizyn v Alabama High School Athletic Association[133] dealt with the constitutionality of an independent team rule. The rule of the AHSAA, which defined the independent team issue, said a team member could not participate on an outside team during the same season. Any player who did, became ineligible. The plaintiffs participated on YMCA or church sponsored teams, while they were members of a high school team, and were declared ineligible. They claimed the action violated their right to due process and equal protection, as protected by the Fourteenth Amendment.

The trial court ruled for the AHSAA and the appellate court affirmed. The appellate court ruled that there was no impairment of property rights, or fraud, collusion or arbitrariness. Therefore, the decision of the AHSAA was upheld.

In 1980 the New York State Supreme Court, Appellate Division, ruled on a challenge to the New York State Public High School Athletic Association, Inc.'s (hereafter referred to as the NYSPHSAA) rule concerning participation on independent teams. The case of Caso v New York State Public High School Athletic Association, Inc.[134] involved a high school gymnast who participated in an international gymnastic contest. The gymnast and his father both knew he violated the association rule, which stated no contestant may compete in independently (nonschool) sponsored contests,

once the school season has started. Violation of the rule resulted in a loss of eligibility for the remainder of the season. Bowling, skiing, golf, and tennis were exempted, since opportunities for competition were limited in these sports. The objectives of the rule were to insure safe and healthy conditions for competition; promote team loyalty; avoid overtraining; and assure a competitor had one coach. The athlete was declared ineligible and sought relief in the courts. The trial court denied relief and the gymnast appealed.

The appellant claimed the ruling stigmatized his name, which violated a liberty interest; violated his right to due process by penalizing him without either notice or a hearing; and violated the equal protection clause of the New York State Constitution. The appellate court ruled there was no property right to participation in athletics. Therefore, participation was not protected by due process. The plaintiff waived due process by not exhausting administrative procedures within the NYSPHSAA. The rule neither denied a fundamental right nor resulted in suspect classification, since the rule was related to a legitimate state purpose.

Summer Camp

An area closely related to the regulations controlling participation on independent teams is the regulation of

summer camps. Litigation concerning the sanctioning of summer camps appears infrequently, but such rules are challenged upon occasion.

The VHSL presently does not regulate summer sport camps. However, other associations do regulate summer camps and the cases involving this issue are of interest.

In 1973, the Missouri Court of Appeals heard a case involving a conflict between sports camp operators and the Missouri State High School Activities Association (hereafter referred to as the MSHSAA) in Art Gaines Baseball Camps, Inc. v Houston.[135] The M.S.H.S.A.A. promulgated a rule recommended by the National Federation of State High School Associations. The rule disallowed attendance for longer than two weeks at specialized athletic camps. Schools could conduct their own camps for two weeks, but students could only attend one specialized camp. A student could attend a general sports camp, which taught several sports for the entire summer.

The operators of the Art Gaines Baseball Camp challenged the rule in lower court, lost and appealed. The challenge alleged the rule violated the restraint of trade statutes, interfered with contracts, and was arbitrary and unreasonable. The plaintiff/appellant alleged several campers cancelled or reduced their stays at his sports camp due to the rule. He also presented testimony to support his

contention that the camp did not "burn" a boy out. He maintained it improved skills, taught fundamentals, and occupied the youth. They alleged the M.S.H.S.A.A. had no authority to regulate the summer activities of students.

The M.S.H.S.A.A. maintained the rule was designed to prevent inequalities between wealthy and less fortunate students and schools; burnout; premature specialization; exploitation; and conflict between campers and their coaches.

The court found the rule to be a reasonable exercise of the M.S.H.S.A.A.'s authority and declared it did not infringe upon the rights of the camp operators.

Kite v Marshall[136] is one of the most frequently cited cases concerning rules prohibiting student participation in summer sport camps. The parents of a high school basketball player challenged the constitutionality of the rule of the University Interscholastic League which prohibited student participation in specialized summer camp. The plaintiffs maintained the rule violated the fundamental right of the family to decide what is best for its children, which is protected by the First Amendment. The defendant UIL countered that the rule was necessary to keep athletics in proper prospective and eliminate excessive pressure exerted by parents, coaches, community and news media.

The trial court determined the right to send one's child to a summer sport camp was a matter of family choice and, therefore, a fundamental right protected by the constitution. Since a fundamental right was involved, the court applied the test of strict judicial review which says in essence, the state may not restrict the exercise of a fundamental right protected by the constitution, unless there is a compelling state interest, and the state has no other way to achieve its objectives. The court ruled there was no compelling state interest in the regulation, and the UIL failed to show it had no other way to attain its objective. The rule was found unconstitutional.

The UIL appealed the decision to the United States Court of Appeals, Fifth Circuit. In Kite v Marshall[137] the defendant/appellant sought to overturn the federal district court's decision to enjoin and declare unconstitutional the UIL regulation disallowing student participation in summer sports camps.

The plaintiff/appellees sought the affirmation of the lower court decision based on the family choice doctrine and an application of strict judicial scrutiny.

However, the Circuit Court ruled there was no fundamental right to send children to specialized sports camps or even participate in extracurricular activities. Therefore, the trial court erred in applying strict judicial

scrutiny or review and should have used rational scrutiny. When the Circuit Court applied rational scrutiny, they found the rule prohibiting participation in specialized summer sports camps to be rationally related to a legitimate state objective, which was the need to control coaches, communities and parents from applying excessive pressure on students to attend camp and to maintain competitive balance. Therefore, the rule was judged to be constitutional and the lower court ruling was reversed.

Scholarship Rule

The VHSL has promulgated rule 28-4-1 the Scholarship Rule which says the student shall have passed at least four subjects, the semester prior to the semester he seeks eligibility, and be currently enrolled in four courses necessary for graduation. The rule has not been the source of litigation within the Commonwealth. However, the issue has been a recent source of controversy and speculation in other states.

In West Virginia, the State Board of Education promulgated a rule that said students had to maintain a "C" grade point average in order to remain eligible to participate in extracurricular athletes. Several members of a local school board brought action against the State Board individually and as a group, which resulted in Bailey v Truby.[138] In addition, the Kanawha County School Board

passed a regulation which said in addition to maintaining a 2.0 (C) grade point average, students who wished to participate in extracurricular activities must pass all subjects. A student brought suit to stop the enforcement of the rule.

Both rules were challenged in court, and neither plaintiff received relief. Upon appeal the State Supreme Court of Appeals consolidated the cases in Bailey v Truby.[139]

The challenge to the State Board of Education rule was based on an interpretation of the State Constitution. The plaintiff/appellant board of education charged the promulgation of the rule in question violated the authority of local school boards to regulate, control and manage extracurricular activities. The state board is granted general supervising powers, while local boards are granted power to control, supervise and regulate extracurricular activities and may delegate the control to the West Virginia Secondary School Activities Commission. According to the plaintiffs/appellants, this meant the state board could promulgate general policies concerning attendance, and academics, but the authority to promulgate rules concerning extracurricular activities rested entirely with local boards.

The court ruled that the legislature intended the state board to regulate extracurriculars in a general way, the same way it intended for the state board to provide for the general supervision of education. The regulation requiring the state board to approve all regulations of the West Virginia Secondary School Activities Commission was interpreted to support the court's rationale. The court further explained it was the Legislature's intent that the state board set general rules, and the local school boards fill in the details where needed. The court concluded that the promulgation of a rule requiring a certain level of academic performance is a legitimate exercise of the power of "general supervision." No local boards have the authority to impede the state board in the pursuit of this interest.

A student who had successfully achieved the state standard of a 2.0 (C) grade point average, but failed one course while doing so, was declared ineligible to compete in interscholastic sports because he failed to meet local school board standards. The Kanawha County school board promulgated a regulation requiring a 2.0 (C) grade point average, and a passing grade in all subjects.

The student challenged the local board rule based on the argument that the rule violated the equal protection clause of the Fourteenth Amendment and due process as

guaranteed by the Constitution of West Virginia. The lower court upheld both rules. Upon appeal, the plaintiff/appellant identified three issues. They were the denial of procedural due process; the denial substantive due process; and the denial of equal protection as guaranteed by both federal and state constitutions.

The appellate court ruled that participation in athletics is not a constitutionally guaranteed liberty or property interest, therefore, no procedural due process is required.

The court stated that the achievement of academic excellence is a legitimate state interest, and the rule promulgated by the Kanawha County school board was rationally related to that interest. The rule considered was neither arbitrary nor capricious. Therefore, there was no violation of substantive due process.

The court ruled that the promotion of learning is a compelling state interest, because of the thorough and efficient clause of the West Virginia Constitution. Therefore, the rule could withstand even strict scrutiny, but it didn't need to since participation in nonacademic extracurriculars does not constitute a fundamental right.

The court also ruled that the enactment and enforcement of the rule requiring a student to maintain a 2.0 (C) average and pass all courses is a constitutional exercise of

the Kanawha County school board's power to control, supervise and regulate extracurricular activities.

Recently, the Texas legislature passed a rule pertaining to the academic achievement of participants in extracurricular activities. The rule required participants to earn a grade of at least 70 out of a 100, each grading period in all academic classes.[140] The rule was challenged in the Texas Supreme Court (a copy of the case is not presently available. It shall be appended to this document upon its availability). Reports of the decision said the court ruled that education took precedent over participation in athletics, and there was no constitutionally protected right or interest in participation in interscholastic or extracurricular activities.

Handicapped Students

The VHSL refers to handicapped students only in the interpretation of the exceptions allowed under the scholarship rule which states:

> 28-4-1(3) any student making progress at his level in special education for the handicapped which follow the standards set by the Special Education Service of the State Department shall be eligible.[141]

There are no exceptions for the handicapped listed in the transfer rules or the participation/physical consent rule. The Athletic Participation/Parental Consent/Physical Examination Rule is general and simply requires the student

to attain parental permission and a physician's approval in order to participate.[142]

There has been some conflict concerning the handicapped and the rules of athletic associations and school districts. These have concerned rules requiring a physicians approval for participation and transfer regulations as they relate to Section 504 of the Rehabilitation Act of 1973, PL. 94-142, and the equal protection clause of the Fourteenth Amendment.

In 1973, the Supreme Court of New York upheld a decision of the Commissioner of Education, affirming the ineligibility of a high school football player, with vision in one eye. In Spitaleri v Nyquist,[143] a family petitioned the court to set aside the Commissioner's ruling which disqualified their son from playing high school football. The rule in question required a school medical officer to approve students to participate in strenuous activities. The school medical officer, who relied on guidelines established by the American Medical Association, disqualified a student who lost the eyesight in one eye, due to an accident, at age six.

The parents appealed the decision to the Commissioner of Education who upheld the doctor. The parents sought a reversal in the courts. They based their action upon the facts that the student had participated in sports, including football, throughout elementary school and would be psychologically damaged if he wasn't allowed to participate.

The court ruled in favor of the respondents, stating that a ruling by the Commissioner is to be upheld by the courts unless it is arbitrary.

In Colombo v Sewankaka Central High School District No. 2,[144] the Supreme Court of New York ruled again on the application of the regulations of the Commissioner of Education of the State of New York, which said trustees and boards of education shall not permit the participation of students in strenuous activity without the approval of the school medical officer.

The plaintiff was a 15 year old high school student who had a congenital hearing defect which left him totally deaf in one ear and with 50 percent hearing in the other. He wore a hearing aid to correct the problem. As a result of the hearing defect, the school medical officer declared the plaintiff ineligible for the contact sport of football, soccer, and lacrosse. The doctor based the decision upon the rationale that the youth's disability left him more susceptible to bodily harm. The doctor relied upon guidelines established by the AMA.

The plaintiffs maintained the ruling was arbitrary and capricious. They presented expert testimony which contradicted the school medical officer, and evidence that the student had participated successfully in contact sports sponsored by private organizations. The plaintiffs also

maintained that prohibiting participation would hurt the student psychologically and emotionally.

The court, however, ruled for the defendant, saying determinations by administrative bodies, based upon the rational exercise of discretion should not be set aside. The court upheld the application of the rule, prohibiting the participation of the partially deaf student.

Doe v Marshall[145] pertained to the enforcement of the University Interscholastic League's (UIL) eligibility rule, and the eligibility of a handicapped student. A high school student, who was handicapped according to PL. 94-142, suffered from emotional problems exacerbated by his father's terminal bout with cancer. Upon the recommendation of his psychologist, the student went to live with his grandparents. He had been a successful football player at his previous high school. However, a UIL rule that declares a student ineligible if he moves from one school district to another, without a corresponding move by his parents, denied him the opportunity to play.

The plaintiff exhausted administrative remedies and sought a preliminary injunction against the UIL, to keep them from enforcing the rule.

The federal district court granted the injunction. The court reasoned that the defendants, in light of the student's handicap, had the responsibility to assess his

needs and develop an educational plan to meet those needs, and provide an appropriate education. The lack of such action was discriminatory and violated federal law. In this case, the court found that failure to provide the opportunity for participation in football could cause irreparable damage to the student and denial could perpetuate permanent emotional disability, rather than a normal adult life. Further, the potential for harm to the youth was considered far more severe than the possible harm the UIL could suffer if the youth participated. Therefore, the court granted the injunction.

The cases of Kampmeir v Harris and Kampmier v Nyquist chronicle the conflict that occurred due to the application of eligibility rules and a handicapped student.

In 1977 the United States Court of Appeals, Second Circuit, ruled on the case of Kampmeir v Nyquist.[146] The case was the appeal of a decision of a federal district court which denied an injunction, which would have allowed junior high school students with vision in only one eye to participate in contact sports.

The action was brought on behalf of two students, Margaret Kampmier and Steven Genecco. Kampmier had a congenital cataract in one eye and was an exceptional athlete. She wore special corrective glasses when she participated in sports. Genecco was blind in one eye due to

an accident and had participated in interscholastic basketball, recreation league football, and physical education. Both were declared ineligible to participate in any contact sport by the school district medical officer, who relied upon American Medical Association guidelines.

The plaintiff/appellants alleged violations of Section 504 of the Rehabilitation Act of 1973 and the equal protection clause of the Fourteenth Amendment. However, the circuit court affirmed the lower courts denial of an injunction, and said the exclusion which was contested was not improper because there was a substantial justification for the school's policy. The court explained that both the students and the school had significant interests in the decisions. Athletics play an important role in the growth of teenagers and the decision resulted in a deprivation of choice, but students may participate in other noncontact sports. The school officials had an important interest in protecting the students from possible injury to their good eye, which the court concluded was more substantial.

In 1978 the New York State Supreme Court, Appellate Division, issued a decision, Kampmeir v Harris,[147] involving the eligibility of the same Margaret Kampmier to participate in contact sports. The lower court had denied the petition. However, this challenge was based upon the application of a state regulation, rather than Section 504

of the Rehabilitation Act or the equal protection clause, requiring the approval of the school medical officers for participation in strenuous activities.

The student's parents produced substantial evidence to support their contention that it was in the best interest of the student to participate, and that the use of special protective eyeglasses, made it safe for her to do so. The court ruled in the student's favor and granted her eligibility.

In Grube v Bethlehem Area School District, a federal district court ruled on a challenge to the attempted exclusion of a high school football player with one kidney, from participation based on the Rehabilitation Act of 1973 and the equal protection clause of the Fourteenth Amendment.

The plaintiff was a high school senior who had a congenitally malformed kidney removed at age two. He had participated in football and other sports since the age of eight and through his junior year. At the end of the season during his junior year, he suffered a slight injury to his kidney. During team physicals, prior to his senior year, the school physician declared him ineligible based upon the fact that he had one kidney and could conceivably damage it engaging in contact sports.

The court enjoined the school from declaring the student ineligible and explained its decision was based on

the Rehabilitation Act of 1973. The court concluded that the student was handicapped based upon Section 504 of the act and his exclusion from participation in contact sports violated the spirit of the Act, which had been interpreted as providing the handicapped the right to participate in life fully, without the paternalistic encumberances often perpetuated by officials. The court also cited the convincing evidence of experts and the proposed the use of special protective equipment as substantial to the decision.

In the opinion expressed by the court, it was stated that the harm done to the student by denial of participation was greater than the harm suffered by the school district in the grant of relief. In dictum the court also said that had the case relied on the equal protection clause of the Fourteenth Amendment, the decision would have been different.

Title IX

VHSL rule 54-2-1 Participation Limitation states that boys may not participate on girls teams. If a school maintains separate teams in the same sport for girls and boys during the school year, regardless of sports season, girls may not compete on boys teams and boys may not compete on girls teams. If a school maintains only a girls team in a sport, boys may not participate on that team.[149] In Section 84 Track, the Handbook states, "If a school sponsors

separate teams for boys and girls, the boys team shall follow the VHSL boys standards and the National Federation boys rules at all levels of participation and the girls teams shall follow the VHSL girls standards and National Federation girls rules at all levels of participation. If a school sponsors one team composed of members of both sexes, the principal shall designate the team as a boys team on the eligibility form."[150] Other references are made in terms of specific rules for sports and are not related to participation. The only two references to participation and gender are in VHSL rules 54-2-1 and 84-1-1.

The area of sports litigation involving Title IX is extensive. The following cases are a representative sample of the litigation.

Title IX of the Education Amendments of 1972 states: "No person in the United States shall on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."[151]

H.E.W. regulations, released in 1974, stated, "a recipient of federal funds, operating competitive athletic programs cannot discriminate, based on sex, and must provide equal opportunity for participation, equal equipment, schedules, coaches, locker rooms, facilities and services."[152]

In Reed v Nebraska School Activities Association,[153] a female student sought an injunction to prohibit her exclusion from participation on the boys golf team. The federal district court enjoined the association from the enforcement of the rule and stated the denial of the opportunity to participate on a golf team because of gender, violated the equal protection clause of the Fourteenth Amendment. A classification based on sex must show a rational relationship to a legitimate state interest. Female students have the right to the same treatment as boys; the right to enhance their reputation; and the right to receive the same instruction as boys.

A federal district court in Pennsylvania heard a challenge to an athletic association rule which required separate girls and boys teams in noncontact sports, in Ritacco v Norwin School District.[154] The plaintiff claimed she was deprived of her constitutional rights by a rule promulgated by the Pennsylvania Interscholastic Athletic Association (PIAA), requiring separate teams in interscholastic noncontact sports.

The court ruled that the regulation would stand, because it was justifiable and there was a rational basis for the rule. The rule fostered greater participation for female athletes in sports, and it considered the fact that physical differences do exist between the sexes. The court

said males would dominate competition if equal teams were not provided.

A federal district court, in Gilpin v Kansas State High School Association, Inc.,[155] considered whether a rule which denied a high school student participation in cross country because of her sex, violated the equal protection clause of the Fourteenth Amendment. In deciding the case, the court considered three criteria. Those criteria were "the character of the classification, the individual interest affected, and the governmental interest asserted in support of classification."[156]

The high school provided one cross-country team, for males only. Therefore, a denial of equal protection based upon classification by sex was alleged. A middle level of scrutiny was utilized requiring that the regulation challenged have a substantial relation to the objective of legislation. The plaintiff had an interest in participation in an activity she excelled in, and could have derived great benefits from the sport. Those benefits were characterized as the development of skills, emotional patterns, and good citizenship. The association's interest was stated as the attainment of equitable competition among classes, and the maximum interscholastic development of all students. The association further stated that physical differences required the maintenance of separate teams, even in noncontact sports.

The district court ruled for the plaintiff and stated that the rule was overbroad and in violation of the equal protection clause of the Fourteenth Amendment.

In Yellow Springs Exempted Village School District v Ohio High School Athletic Association[157] a federal district court decided a case which involved a rule excluding females from participating in contact sports. The court ruled that the exclusionary clause of the rule violated due process because it deprived the girls of a liberty, the freedom of personal choice in education. The rule presumed all girls were inferior to boys. In this particular instance, the girls involved had already made the boys basketball team. Separate teams were considered a fine alternative, but the court said qualified girls were to be given the opportunity to compete with boys in contact sports. The defendants were enjoined from enforcing the rule in question.

In dictum the court expressed the opinion that federal regulations were unconstitutional since they suggested that mixed gender teams, separate teams for boys and girls in each sport or the creation of an all male team in contact sports[158] are methods of complying with Title IX.

In Dodson v Arkansas Activities Association,[159] decided by a federal district court, the plaintiffs alleged that the different rules for girls and boys basketball deprived girls of equal protection of the law and placed them at a

disadvantage. Boys teams played the full-court game, but girls played the half-court, six member game.

Experts who testified for the plaintiffs said the girls were not provided intense physical training and conditioning; did not learn the extensive shooting skills; and were at a disadvantage to pursue basketball in college, since colleges used five-man full court play. Expert testimony for the defendants refuted the preceding and said the six-man half-court game required more agility and skill.

The court, in their analysis searched for a substantial relationship between the gender based difference in playing rules and an important governmental objective. The court could find none and ruled for the plaintiffs.

In dictum the court stated that the findings of the sixth circuit court of appeals and other state courts, which contradicted this decision were not binding, and were incorrect.

In 1979 a male student sought to enjoin an athletic association rule denying him the opportunity to participate on a girls volleyball team, even though no boys volleyball team was provided. This case, Gomes v Rhode Island Interscholastic League[160] (hereafter referred to as the RILL) was decided by a federal district court.

The plaintiff had previously participated in volleyball before he relocated in Rhode Island. The high school the

plaintiff presently attended provided a female volleyball team, but no boys team. The school did provide some teams that were co-ed, and these teams were dominated by males. Testimony in the case speculated that if volleyball became co-ed, it would become male dominated.

The defendants maintained they were not required to provide male teams, or provide males the opportunity to compete in volleyball. They stated that the exclusion of males was designed to overcome the discrimination females suffered in the past. The defendants argued that because women had endured limited opportunities, one could form female teams without male counterparts because males have never endured the same limitations.

The plaintiff interpreted Title IX regulations differently, and stated that references to limited opportunities referred to specific sports, not past gender related discrimination. Therefore, since males had limited opportunities to compete in volleyball, they were eligible to compete

In its decision the court pointed out that separate but *equal athletic teams in contact sports*, based on gender, were acceptable because the state had a legitimate interest in terms of the safety of the participants. The provision of such separate teams was substantially related to that interest. The court also recognized that the provision of

separate teams provided increased opportunities for participation by female students. on the girls team or a male team had to be provided.

The court interpreted Title IX to require the high school to provide qualified male students, such as the plaintiff the opportunity to play volleyball by either the establishment of a boys' team or participation on the girl's team. The court believe males did not have adequate opportunities to participate in volleyball. Based on this interpretation, and the plaintiffs limited ability, the court granted a preliminary injunction.

Sex based discrimination has been the source of appeals heard in the United States Circuit Courts of Appeals.

In Morris v Michigan State Board of Education,[161] the Sixth Circuit Court of Appeals, heard an appeal concerning an association rule which prohibited girls from participating on male teams. A federal district court had granted a temporary injunction, in favor of the plaintiffs and the defendants appealed.

The original case involved female participation on an all-male tennis team. The plaintiffs alleged a violation of the equal protection clause of the Fourteenth Amendment. The district court agreed.

The Sixth Circuit found no rational relationship between a legitimate state interest and the sex based

classifications. They upheld the lower court decision, but stated the injunction applied to noncontact sports only.

Cape v Tennessee School Athletic Association,[162] decided by the Sixth Circuit also, dealt with an issue ruled on by a district court and described previously. The issue was whether the application of different rules to boys and girls basketball constituted a violation of the equal protection clause. The district court ruled for the plaintiffs based on the rationale that no rational relationship existed between legitimate state interests and a sex-based classification.

Upon review the Sixth Circuit decided the different rules were justified because distinct physiological differences exist between females and males. The circuit court based this decision on the concept that since different teams and leagues are maintained to accommodate the sexes, gender is a valid basis of classification. Therefore, it seemed reasonable that different rules should be allowed. The circuit court reversed the lower court ruling and allowed the association to maintain different rules for boys and girls teams.

The United States Court of Appeals, Eighth Circuit decided in Brendan v Independent School District 742[163] that the exclusion of females from participation when teams for females in noncontact sports were not provided, was

arbitrary, unreasonable and violated the equal protection clause of the Fourteenth Amendment.

The court determined that high school girls had a substantial and cognizable interest in participation in sports. The court stated further that the issue of sex-based classifications violated the equal protection clause of the Fourteenth Amendment was properly brought before the federal courts.

The court listed the criteria to be considered in such cases as a middle level of judicial review including the character of classification, the individual interests affected, and the governmental interests in support of the classification.

The court reiterated several key concepts concerning sex-based classifications, such as sex-based classifications frequently bear no relation to the ability to perform[164] and sex-based classifications are based on outmoded images of females as delicate creatures unable to care or provide for themselves.[165]

In Clark v Arizona Interscholastic Association,[166] the Ninth Circuit ruled on a claim by a male student that a rule which excluded him from participation on a girls volleyball team, when no boys team was provided, violated the equal protection clause of the Fourteenth Amendment.

In this case, the court once again applied the test of middle level scrutiny, which required that a classification be substantially related to a legitimate state interest.

The plaintiffs/appellants were male students who had participated on national championship AAU volleyball teams. They could not participate on volleyball teams in their high schools because the schools only sponsored girl's teams, and state athletic association rules excluded males from participation.

The court found the state's interest in promoting equal athletic opportunities for boys and girls, and addressing past discrimination as legitimate. The court stated that the exclusion of boys from a girls volleyball teams was substantially related to this objective. In dictum the court pointed out that other means of attaining this objective could have been implemented. However, the court stated its responsibility was simply to determine if a substantial relationship existed between the regulation and a state interest, not to determine the best method for meeting state objectives. The court noted there were other options available, such as provision of a separate boy's team, addition of a junior varsity squad, or limitation of the number of males participating on a girls team.[167] The court also reported the variance found in lower court decisions and reported that the equal rights amendments of some states would cause rejection of this decision.

Stribel v the Minnesota State High School League[168] dealt with a situation common to the VHSL. The Supreme Court of Minnesota, in 1982, heard the appeal of a complaint which challenged the establishment of separate seasons for boys and girls teams in tennis and swimming. The lower court ruled the arrangement was constitutional and did not deny equal protection of the law.

The Supreme Court ruled that facilities were limited, and separate seasons were required in the same sport for boys and girls. If neither season was advantageous and neither gender was burdened, there was no denial of equal protection of the law.

The Transfer Rule

Of the cases sampled for this study, the majority dealt with the issue of the transfer rule and eligibility.

The VHSL has promulgated a series of rules dealing with the issue of transfer students and eligibility. The basic rule is VHSL regulation 28-6-1 which says:

> "The student shall not have enrolled in one high school and subsequently transferred to an enrolled in another high school without a corresponding change in the residence of his parents, parent, or guardian."[169]

The VHSL recognizes and defines exceptions to the transfer rule in 28-6-2. A student will become eligible after he has completed one full semester in attendance. A student will become eligible if the school he attends is

closed and he must enroll in a new school that serves his parent's district. He also becomes eligible if he finishes the highest grade offered by middle school or junior high school, public or private, and enrolls in the high school serving his district. The first time a student transfers from a private school to the high school serving his district he becomes eligible, if he has not participated in the same sport at the private school. If a student is enrolling in the ninth grade for the first time, he becomes eligible no matter where his residence is. Also, foreign exchange students become immediately eligible.

The VHSL also enforces 27-10-1 Proselyting Rule, which forbids schools or groups representing the school from encouraging or influencing students to transfer for athletic purposes."[170] Each district committee is charged with determining what constitutes recruiting, influencing or pressuring students. The district may determine punishment or penalties. This rule, in conjunction with 28-6-1 controls transfers that are athletically motivated.

The majority of cases located concerning transfer rules were litigated in state courts. The following is a synopsis of the circumstances and rulings in those cases.

Saunders v Louisiana High School Athletic Association[171] was decided by the state court of appeals in 1970. A high school student sought to enjoin the LHSAA's

declaration of his ineligibility. The challenge was related to the association rule that said a student couldn't enroll in one high school, later in the year transfer, and be eligible for participation, until he had attended the new school for one year. The student involved enrolled in the school serving his parent's parish on August 27, 1969. His grandmother enrolled him in the school which served her parish on September 2, 1969. He attended both schools. He transferred to the school in his grandmother's district, when it opened. Due to racial strife this school did not open until November 10, 1969. The student attended the school in his grandmother's district, but did not participate in 1969-70. However, in 1970-71 he participated in football and played every game. A complaint was filed with the LHSAA, which claimed the student was not eligible prior to November 12, 1970. The trial court enjoined the LHSAA from penalizing the student or the school to which he had transferred.

The state circuit court of appeals reversed the decision and stated that the purpose of the transfer rule was designed to deter recruiting; it was related to that objective and should stand. The court further explained it was not the courts' role to develop the best rule or interfere unless there was fraud, collusion or arbitrary acts involved. In dictum the court noted there was no

property right to play football and cited cases to support that contention.

The Supreme Court of Alabama, in Scott v Kilpatrick,[172] ruled on the transfer rule of the Alabama High School Athletic Association, in 1970. The plaintiff/appellee, was a high school student who transferred to a school, outside of his parent's district, in the spring of 1969. In August of 1969, the parents moved, and the student moved with them to their new school district. The association ruled that the youth was eligible, and he played football in the fall of 1969. The ruling was based on the impression that each time the student moved, his parents had made a corresponding move. After a football game, a protest was lodged concerning the plaintiff/appellee's eligibility. It appeared he lost eligibility due to an association rule that stated if a student transferred to a school in a district his parents didn't reside in, he couldn't immediately regain eligibility if he returned to the school serving the district his parents resided in. The association ruled the student ineligible. The ruling was appealed and the appeal denied. The trial court granted a temporary injunction.

The Supreme Court after a review of the facts declared that the purpose of the rule was to deter recruiting and voluntary school hopping for athletic purposes. The rule was considered reasonably related to this purpose. The

court also expressed the opinion that neither participation in athletics nor the speculative possibility of a scholarship are property rights. The court stated it would not intervene in the affairs of the AHSAA unless their actions were arbitrary, capricious, or fraudulent. The trial court's decision was reversed and the plaintiff/appellee was declared ineligible.

In Sturrup v Mahan,[173] the Indiana court of appeals delivered an opinion concerning the transfer rule of the Indiana High School Athletic Association (hereafter referred to as the IHSAA). The the plaintiff/appellant, Sturrup, moved to Indiana from Florida because of demoralizing and detrimental conditions in both his home and school. The conditions were described as ridden with drug use and ten people living in a two-bedroom home. Sturrup was declared ineligible on the basis of a rule which stated when a student transferred, without a corresponding change in the residence of his parents, he would be ineligible for one year. The plaintiff/appellant contended he should be an exception since the move was due to unavoidable circumstances and he established new residence with a new legal guardian.

The trial court denied the injunction. Upon appeal the appellate court granted an injunction and stated its rationale for the decision rested upon a denial of legal

protection and the arbitrary and capricious ruling of the IHSAA. The court alleged the transfer rule, as applied in this instance, violated the equal protection clause because it burdened the plaintiffs right to travel among the states and was unreasonably broad.

Sturrup v Mahan[174] was transferred to the state supreme court to correct a fundamental error in the appellate court's ruling. The court of appeals ruled that the transfer rule violated the equal protection clause by infringing upon out-of-state transfer students right to travel. The supreme court ruled that the Fourteenth Amendment requires only that everyone be treated the same, and the rule applied equally to both interstate and intrastate transfers. The supreme court, however, agreed that the by-laws governing transfers were overboard and the denial of eligibility to Sturrup was arbitrary and capricious. Therefore, the ruling granting an injunction was upheld, and Sturrup was granted eligibility.

The Supreme Court of Louisiana decided a case concerning the application of a transfer rule in Chabert v Louisiana High School League.[175]

The rule stated that when a student attended a school, outside the district in which his parents resided he forfeited one year of eligibility. There was no Catholic school in the district in which Chabert's parents resided so

he attended a Catholic school outside the district. He was declared ineligible. Had Chabert attended the public school in his district, or had his parents lived in the district his parochial school was located in, he would have been eligible. He challenged the rule on the grounds that it violated his First Amendment and Fourteenth Amendment rights. The trial court agreed with Chabert and enjoined the association from enforcing the rule.

The appellate court, however, ruled that there was no abridgment of either religious freedom or of equal protection. The appellate court further declared that a rational relationship existed between the transfer rule and its objective, the deterrence of recruiting. It reversed the trial court's injunction and found for the defendants. The state supreme court upheld the decision of the appellate court and maintained that as long as a rule is uniformly applied and is rationally related to a legitimate state objective, it does not violate the equal protection clause.

In Kentucky High School Athletic Association v Hopkins County Board of Education,[176] the Court of Appeals of Kentucky heard a case in which a high school student moved from the home of his divorced mother, to the home of his divorced father and subsequently transferred from one school to another. He sued to enjoin the school from declaring him ineligible, based on a transfer rule which limited the

eligibility of a student who transferred without a corresponding change in his parent's residence. The rule included a hardship clause. The trial court enjoined the association from enforcing the rule.

The court of appeals found that the student moved for personal reasons and was not recruited. The court stated that courts should only become involved in the affairs of athletic associations if the association acts fraudulently, arbitrarily, or capriciously. The court determined that the transfer rule was not arbitrary, and the rule was reasonably related to a legitimate purpose, the elimination of recruiting. The court was concerned only with the relationship of the rule, not the wisdom or quality of the rule. The court also explained that no suspect classes or and constitutionally protected rights were involved. The ruling of the circuit court was, therefore, reversed, and the rule applied to the student.

Mozingo v Oklahoma Secondary School Activities Association[177] (hereafter referred to as the Association) heard in 1978 by the Oklahoma Court of Appeals, involved the appeal of a decision which enjoined the Association from enforcing its transfer rule.

The Association promulgated a transfer rule which stated that if a student participated in extracurricular activities at a school located outside his home district, he

forfeited eligibility at all other schools. Authorized exceptions were made due to hardships. Two students participated in sports at a school located in a neighboring district. Prior to their senior years, they enrolled in the high school which served their home district, and sought to play football. Both were declared ineligible and were denied eligibility when they appealed to the Association for an exception. The students were granted relief by the trial court, which restrained the Association from enforcing the transfer rule. The defendant/appellant appealed.

The court of appeals reversed the trial court's decision. The appellate court explained the situation by stating that courts should only be involved in the decisions of athletic associations when there is evidence of fraud, collusion, or arbitrary and capricious acts. Further, the court stated the rule was rationally related to a legitimate purpose. The court expressed the belief that it was the Association's role to determine hardship, not the court's. In closing the court declared that neither a trial nor an injunction should have been granted, since there was no protected right to athletic eligibility.

Crandall v North Dakota High School Activities Association[178] (hereafter referred to as the NDHSAA) concerned the enforcement of a transfer rule, which said if a student enrolled in a school, without a corresponding

change in the residence of his parents, he was ineligible for 18 weeks. The student, in this case, alleged he chose to transfer for academic reasons, not athletic reasons, and sought an injunction, which the trial court granted. The association appealed to the state supreme court which expressed three major concepts in its decision. The court declared it had jurisdiction in the matter because the association is supported by money derived from public funds and performs a "quasi-governmental" function, the administration of athletics. The court also observed that the legislature had endorsed the association in statute.

Secondly, the court declared that the rule was reasonably related to a legitimate state interest, the prevention of recruiting students for sports and the elimination of students transferring because of athletic programs. Finally, the court ruled that application of the rule to all members, constituted reasonable action and didn't result in arbitrary or capricious action. The appellate court reversed the trial court's decision.

Kriss v Brown[179] was an extensive ruling by the Court of Appeals of Indiana, concerning the transfer rule of the Indiana High School Athletic Association, Inc. (IHSAA). Kriss, the high school student involved, played varsity basketball in the school serving his district one year, and moved, in the spring, to the home of newly appointed

guardian in another district. The officials of the school in the district of Kriss' newly appointed guardians declared him ineligible, because they determined the guardianship was arranged for athletic purposes and the move was the result of undue influence, recruiting. Kriss sought and was denied an injunction to prevent enforcement of the transfer rule. The plaintiff appealed the trial court's decision. The appellate court found that the ISHAA rules clearly defined undue influence and based their conclusion on substantial evidence. The evidence included testimony that Kriss knew the coach at the school he transferred to, because he had coached Kriss at his original school. Also, the family appointed as Kriss' guardians, were friends of the coach. It was also established that the guardianship was arranged solely to establish athletic eligibility and violated the IHSAA rules.

The court ruled the action of the IHSAA to be state action and made it clear that a student had no constitutional right to participate in sports. Therefore, Kriss was not denied due process, and the rules involved were neither vague nor too broad. The court observed no arbitrary or capricious acts, no bias, and affirmed the lower courts decision.

Sullivan v the University Interscholastic League[180] involved the enforcement of the UIL rules which said that

any student who represented a high school, other than his present high school, in football or basketball is ineligible for one year following a transfer, to participate in either sport. The intention of the rule was to deter recruiting. Sullivan, a student who moved to Texas from Vermont, claimed the rule violated the equal protection clause by infringing on his right to interstate travel and violated his right to due process. The lower court denied the plaintiff relief, and he appealed.

The appellate court affirmed the lower courts decision and declared the rule did not violate the equal protection clause of the Fourteenth Amendment by infringing on the right to interstate travel. The court found the rule was applied to students who transferred within the state as well as those who transferred from out-of-state. Furthermore, the rule was found to be rationally related to a legitimate state interest, the deterrence of recruiting students to participate in two highly competitive sports. The court ruled that participation in athletics was <u>not</u> a property interest protected by due process.

The plaintiff/appellant sought relief by appealing to the supreme court of Texas, in 1981.[181] The supreme court decided that the rule in question was <u>not</u> rationally related to the purpose of deterring the recruitment of athletics, and therefore violated the equal protection clause of the

Fourteenth Amendment. The court ruled it was plainly evident Sullivan had not been recruited.

The rule was labeled as overbroad and over inclusive and burdened students who were not recruited, but were forced to transfer for family reasons. The fact that no means of challenging the rule existed showed the rule was based on the presumption that all transfer students had been recruited and was interpreted to illustrate the rule as arbitrary and capricious.[182]

The Oregon Court of Appeals has ruled on the transfer rule of the Oregon School Activities Association on two occasions. In 1981, the court heard Cooper v Oregon School Activities Association.[183] The case involved a transfer rule which barred a student from athletic competition for one year, after a transfer from one school to the other. In this instance, the students involved transferred from parochial schools to public schools and were declared ineligible according to the transfer rule. The purpose of the rule was to deter recruiting or even the appearance of recruiting.

The plaintiffs contended the rule penalized them for exercising religious beliefs, violated the privileges and immunities clause of the state constitution and deprived them of their First and Fourteenth Amendment rights to religious freedom and equal protection.

The court decided that no one was prohibited from attending parochial schools nor denied an education in public schools. The law didn't say students are entitled to participate in all school activities. Further, the rule was reasonably related to the objective of fostering athletic competition.

The court decided the transfer rule's impact on religious freedom was minimal and the rule did not apply only to parochial schools. The regulation of recruiting was a necessity and the minimal burden that resulted was permissible. The benefit of the rule in controlling recruiting and the appearance of recruiting outweighed the burden to the plaintiffs. Therefore, the rule was declared constitutional under the Oregon state constitution.

In the determination of the equal protection issue, the court determined participation in athletics is not a fundamental right, therefore, the test of rational scrutiny was applied. The court that noted a rational relationship existed between the rule and the legitimate state interest of controlling recruiting. The appellate court upheld the trial court's denial of an injunction and allowed the rule to be enforced.

Whipple v Oregon School Activities Association[184] was a companion case to Cooper. The trial court, in this case, declared the transfer rule unconstitutional and ruled a

student who transferred to a private high school was entitled to participate in interscholastic activities. The defendants appealed.

Whipple attended a private school one year and participated in sports. The next year she attended public school and participated in sports, and the following year she transferred back to the private school she originally attended. She was declared ineligible for competition at this time. Whipple alleged the act denied her procedural and substantive due process. The appellate court disagreed, stating that participation in athletics did not rise to the level of a protected interest or property right, and therefore, did not require due process.

The Commonwealth Court of Pennsylvania has ruled that the transfer rule did not violate the equal protection clause and there was no property right involved in participation in interscholastic sports. In Pennsylvania Interscholastic Athletic Association v Greater Johnston School District[185] the appellate court defined the issue as follows:

> "when a student transfers from one school district to another he may be prohibited from participating in interscholastic athletics by actions of the PIAA where the PIAA determines the transfer was athletically motivated..."[186]

Upon a review of the facts which clearly illustrated that a high school senior transferred for athletic purposes,

the PIAA declared him ineligible. He sought and received an injunction from the trial court.

The appellate court, however, found no property right in participation in interscholastic athletics and decided the transfer rule was rationally related to a valid state interest, the control of recruiting and transfers for athletic purposes. Therefore, even the resulting classification did not violate the equal protection clause.

Alabama High School Athletic Association v Rose[187] illustrates the intervention of a court in the affairs of a state athletic association due to arbitrary and capricious actions.

The plaintiff, Rose, and his family moved into and established permanent residence in the Emma Swanson High School District in September 1982. The plaintiff attended the school in 1982-83 and 1983-84. During the 1982-83 school year the executive director of the AHSAA received phone calls from three coaches who alleged the plaintiffs move into the Emma Swanson High School District was not permanent, and his parents didn't remain there after the initial move. The director, without an investigation, declared Rose ineligible. The plaintiff's school appealed for a ruling by the district athletic board. Prior to the hearing the director contacted several board members and received commitments from them concerning their vote. They

promised their vote would be cast to determine Rose ineligible. After the hearing the director of the AHSAA remained with the board during deliberations and influenced the board to declare the plaintiff ineligible.

The trial court discovered that the plaintiff and his family temporarily moved out of the attendance zone because of financial hardships. The trial court ruled that the director, the AHSAA, and the district athletic board had denied the plaintiff an impartial hearing, which association rules granted. Therefore, the defendants were enjoined from imposing ineligibility on Rose. The appellate court upheld the lower court's decision and restated several important concepts, such as:

1. participation in sports is a privilege which may be regulated by associations;
2. courts should not intervene in the activities of athletic associations unless the association acts arbitrarily or capriciously;
3. courts should not substitute their judgment for the judgment of the association.

In Herbert v Ventetuolo[188] the plaintiff challenged the enforcement of a transfer rule, which denied him eligibility, on the grounds that the rule violated his rights of due process and equal protection.

Two high school students were suspended from participating on a hockey team because they had transferred and changed guardianship to play hockey. The association denied their appeal for eligibility. The trial court ruled in favor of the defendants.

The appellate court declared that the transfer rules were neither arbitrary nor capricious. The court explained further, that in determining the issue of equal protection, rational scrutiny is applied since neither a fundamental right nor suspect class is involved. The court declared the transfer rule was a rational method of dealing with the problem of recruitment and school hopping by athletes, and was related to this legitimate state objective. Therefore, there was no violation of the equal protection clause of the Fourteenth Amendment and the rule was enforced.

The following cases are examples of conflict concerning the transfer rule that have been litigated in various federal district courts.

In Kulovitz v Illinois High School Association[189] the plaintiff moved to Arizona in 1977 and was declared ineligible due to academic problems. In June of 1978, the plaintiff, then 18 years old, returned to his original school district in Illinois and resided with his grandmother. Since he was 18 years old, he could not have his grandmother appointed as his guardian. In August of

1978, he sought a ruling concerning his athletic eligibility and the executive secretary of the state association declared him ineligible. An investigative hearing and a full hearing, which included counsel and cross examination, both affirmed the decision. Kulovitz was ineligible, but if he had been younger, and had his grandmother appointed guardian, exceptions to the transfer rule would have allowed him to participate.

The plaintiff sought relief in the federal district court and alleged the rule violated his rights to due process and equal protection. The court, upon examination of the evidence confirmed there was no constitutionally protected right to participation in athletics, and cited Goss v Lopez, stating even if there were constitutionally protected rights, the plaintiff received more than minimal due process during the hearings conducted by the association. The determination of the equal protection issue was resolved by applying the rational basis standard. The court asserted that the classification, based on age, was rationally related to a state interest, the elimination of recruiting. Also, 18 year old is an emancipated adult and less restrained in terms of relocation. The court upheld the association's ruling.

Dallam v Cumberland Valley School District[190] dealt with the transfer rule of the Pennsylvania Interscholastic

Athletic Association, which enforced a rule that stated if a student transfers without a corresponding change in the residence of his guardians, he loses eligibility for one year. The plaintiff, a 15 year old high school student moved without a corresponding change in his parent's resident. He charged that the rule violated his rights to due process and equal protection of the law. The plaintiff conceded that the rule was designed to deter recruiting and athletically motivated transfer, but he was not afforded the opportunity to prove his transfer was not athletically motivated or a case of recruiting of athletics.

The court relied on Goss v Lopez to determine the issues, and said participation in athletics was not a property right protected by the constitution. The only property right protected was participation in the entire educational process, not participation in the separate activities comprising the process. The court rationalized that the plaintiff was denied neither the right to an education nor the privilege of participating in athletic activities. He was denied the privilege to participate in interscholastic athletics, only. Since no property right existed, the court decided it had no subject matter jurisdiction and granted a motion to dismiss. The transfer rule withstood the challenge.

Several cases concerning athletic eligibility and the transfer rule have been reviewed by the various United States Courts of Appeals. The following is a summation of several of these decisions.

In 1976, the Tenth Circuit decided Albach v Odle,[191] which contested the constitutionality of the transfer rule adopted by the New Mexico Activities Association. The rule declared a student ineligible for one year if he transferred from his home school district to a boarding school, or vice versa. The federal district court dismissed the case.

The Tenth Circuit Court affirmed the action of the district court and explained that issues such as the application of transfer rules; exceptions for hardship or unavoidable circumstances; or the delegation of authority to associations are not issues which fall under the jurisdiction of the federal courts, since constitutional principles are not at issue. The court asserted that the only issues involving interscholastic regulations and associations that raise constitutional issues are "sexual discrimination, invasion of martial privacy, alienage discrimination, racial discrimination"[192] and restrictions to the exercise of religious beliefs. The court noted that the regulation of interscholastic athletics falls within the discretion of state boards of education. The circuit court cited Goss and reiterated that students have property rights

to involvement in the total educational process, not individual components of the process. The Tenth Circuit affirmed the lower courts dismissal.

Walsh v Louisiana High School Athletic Association[193] was decided in 1980 by the Fifth Circuit and challenged the transfer rule promulgated by the LHSAA as unconstitutionally burdening the free exercise of religion and violating the equal protection clause of the Fourteenth Amendment. The federal district court upheld the challenge.

The plaintiff/appellees challenged the association's transfer rule which was designed to deter or eliminate recruitment of athletes from elementary or junior high school. If a student transfers to a high school, public or private, outside his attendance zone, he is ineligible for one year. In this case, the student finished junior high and enrolled in a Lutheran High School outside his attendance zone. There was no Lutheran High School within his attendance zone. He was ineligible for one year.

In reviewing the lower court decision, the Fifth Circuit declared that LHSAA rules constituted state action and the issue raised concerning religion constituted a federal issue. The court ruled that the regulation did not violate the First Amendment, although it did result in an incidental or minimal burden. The transfer rule denied the plaintiff neither the right to enroll in a parochial school

nor the right to practice religion. It denied the plaintiff participation in athletic activities for one year. The court explained the minimal burden was justified due to the state's interest in regulating athletics and wasn't unconstitutional.

The court determined that participation in interscholastic athletics is not a property right protected by the Fourteenth Amendment, it is a "mere expectation." The court applied the rational-relationship test to determine if the transfer rule violated the equal protection clause. The court observed that the rule created two classes of students, those who transferred to schools outside their district as opposed to those who attended high school in their district. It also created two classes of schools, those with parish-wide attendance zones and those with districts less than parish-wide. The rule which created the classifications was deemed rationally related to a legitimate state interest and therefore was constitutional.

In Laurenzo v Mississippi High School Activities, Inc.[194] the Fifth Circuit was asked to rule upon a variation of the transfer rule, which dealt specifically with the issue of divorce. The plaintiff's parents divorced and custody was awarded to the mother, who resided in Tennessee. The parents and the plaintiff decided the youth would live

with his father, who resided in Mississippi. The mother, however, retained custody. The rule stated specifically that if a student transferred his residence from the parent who had legal custody, to the parent who didn't have custody, he was ineligible for one year.

The plaintiff challenged the constitutionality of the rule and stated the rule violated his right to due process and impinged on the freedom of family choice. The district court dismissed the case, stating no federal issue was raised. The circuit court determined that no federally protected right to participate in interscholastic athletics existed, but the issue of the rules infringement on the freedom of family choice warranted review by the federal district court. However, since the period of ineligibility had expired, the Fifth Circuit dismissed the claim as moot.

Niles v the University Interscholastic League[195] concerned a high school student who moved from Texas to California to live with his mother, who received legal custody of the student in a divorce. He returned to Texas after a transfer of legal guardianship, and participated in football. The UIL declared the student ineligible, citing a rule which required transfer students to be in residence for one year before they were eligible for participation in athletics. The plaintiff challenged the rule. The district court dismissed the challenge and noted that no violation of due process or the fundamental right to travel existed.

Niles appealed and stated that the UIL rules denied him due process because they created a conclusive presumption that his transfer was athletically motivated and denied him a hearing while they infringed upon his fundamental right to travel. The Fifth Circuit Court determined that the participation of interscholastic athletics is not a property right protected by the constitution. The court further stated that the transfer rule was related to a state interest in regulating athletics, which outweighed the incidental and insignificant burden it placed on his right to travel. Niles' right to travel was not directly affected, he simply couldn't travel and continue to participate in sports. The case was correctly dismissed by the district court.

In Re U.S. Ex Rel. Missouri State High School[196] was an appeal to the Eighth Circuit, which consolidated lower court cases and appeals involving the transfer rule of the Missouri State High School Activities Association (herafter referred to as the MSHSAA) decided in 1982. The case consolidated Zander v Missouri State High Activities Associations, Barnhorst v Missouri State High School Activities Association and ABC League v Missouri State High School Activities Association. Zander[197] involved a student who transferred to Missouri from Florida and was declared ineligible for a year, but received an injunction

to stay the enforcement of the declaration with two other cases. In Barnhorst,[198] a lower court declared the transfer rule violated the equal protection clause of the Fourteenth Amendment, because students in a league for private schools were exempted. ABC League[199] concerned a league of private schools, who had been exempted from the transfer rule because the schools had no physical education program and all students had to participate in interscholastic sports. The exemption was repealed. The ABC League was granted an injunction prohibiting the association from enforcing the transfer rule where the ABC League was concerned and the trial court declared the rule violated the equal protection clause of the Fourteenth Amendment.

The U. S. Circuit court evaluated the constitutionality of the regulation on the basis of equal protection and due process. The court reiterated the fact that participation in interscholastic athletics is neither a fundamental right nor is it a property right protected by the constitution. The rule's impact on interstate travel was termed minimal as was its impact on the right to attend private school. Therefore, the transfer rule should have been tested using rational review rather than strict review.

Upon such analysis the court determined the transfer rule was rationally related to a legitimate state interest, the prevention of recruiting and athletically motivated

transfers. Once such a relationship is identified, the court observed that no further judicial intervention is appropriate. The court also expressed the belief that the rule does not violate due process and the system and procedures provided for seeking exceptions would fulfill due process requirements if they existed. The decisions of the lower courts were reversed, and the regulation upheld.

The Right to Participate

Several cases discussed previously have dealt with the concept of participation in athletics as an alleged property right. Most of these cases will be referred to again in this context in Chapter 5. Several additional cases, and those previously reported or discussed which offer a different perspective are summarized at this point.

French v Cornwell[200] discussed previously for the content of the case, dismissal of students from teams for violating "good conduct" rules, is more important for its view of student participation. The Supreme Court of Nebraska stated, "A student has a significant interest in participation in interscholastic athletics which may be the subject of Fourteenth Amendment protections."[201]

In Duffley v New Hampshire Interscholastic Athletic Association[202] the Supreme Court of New Hampshire ruled on a case where a student was denied eligibility. The court ruled that the NHIAA denied the plaintiff procedural due

process. The court paraphrased Tinker v Des Moines by stating, "It can hardly be argued that high school students wishing to participate in interscholastic athletics shed all their constitutional rights at the entranceway to the New Hampshire Interscholastic Athletic Association."[203]

The plaintiff sought an exception to the semester rule, due to illness, and the exception was denied, with no reasons. It was not until legal action was initiated that reasons for the denial came to light. In seeking judicial relief, the plaintiff contended his rights to due process had been violated. The defendant association responded that participation in high school basketball is not a protected property interest, and in any event, he had been afforded due process.

The court relied on case law and state statute to explain the rationale for its decision. The court ruled that according to established law, property interests are created by state law, existing rules or understandings. The court also relied on Board of Regents v Roth, which said entitlements are found in state law and are varied and intangible. In deciding whether or not a property interest existed, the court claimed to rely upon a common sense recognition of the "benefits, both economic and educational that accrue to those who participate in interscholastic athletics."[204]

The court explained further that state department regulations considered athletics part of the curriculum, and the athletic association considered athletics an integral part of the educational program. Since they are considered an "integral and important" part of the educational program, the court interpreted participation in athletics to be an entitlement protected by the State constitution. Denial of this entitlement cannot occur without notice, hearing and finding of facts supported by evidence.

The Supreme Court of West Virginia stated "participation in interscholastic athletics or extracurricular activities is not a constitutionally protected liberty or property interest," in Bailey v Truby.[205]

In Buhlman v Board of Education of Ramapo Central School District the court determined that "participation in a varsity sports program would seem to fall within the category of privilege and, clearly such participation does not rise to the level of a right or even a protected property interest."[206] The court stated also that wherever due process is involved there must be "fair proceedings to determine wrong doing, or ... some kind of notice, some kind of hearing."[207]

The Supreme Court of Missouri ruled in State Ex Rel. Missouri State HIgh School Athletic Association v

Schuenlaub[208] that participation in athletics was not a property right even if it deprived students of a scholarship.

The Supreme Court of Georgia ruled that there was no protectable property right in the participation in athletics, in Smith v Crim.[209] An Oregon Appellate Court agreed in Whipple v Oregon School Activities Association, when it determined "participation in interscholastic sports was not a liberty or property interest of constitutional proportions."[210] The Commonwealth Court of Pennsylvania concurred in Pennsylvania Interscholastic Athletic Association, Inc. v Greater Johnstown School District and simply stated "there is no property right to participate in interscholastic athletics."[211] In Scott v Kilpatrick[212] the Alabama Supreme Court found no property right in the speculative possibility of an athletic scholarship. The court in Mozingo v Oklahoma Secondary School Activities Association said "eligibility is not a vested right."[213] Likewise the Rhode Island Supreme Court ruled there was no constitutionally protected right to participation in interscholastic sports in Herbert v Ventetulo.[214] In Kentucky High School Athletic Association v Hopkins County Board of Education,[215] the court of appeals in Kentucky found athletic participation wasn't a protected right, even if it resulted in the loss of opportunities to compete for

scholarships. Both the Louisiana court of appeals and supreme court ruled that neither eligibility in sports nor the speculative possibility of a scholarship are vested property rights. Participation in athletics was termed a privilege rather than a constitutional right in Sanders[216] and Chabert,[217] respectively.

The court was convinced in the Florida High School Activities Association, Inc. v Bradshaw[218] that participation in athletics is neither a protected right nor an interest. In Ward v Robinson,[219] the court agreed and remarked that no constitutional rights to participation in basketball existed. In Peagram v Nelson, the court generally agreed but announced in a lengthy discussion, "there was no property interest in each separate component of the educational process, denial of opportunity to participate in merely one or several extracurricular activities would not give rise to the right to due process, however, total exclusion from participation in the part of the educational process designated as extracurricular activities for a lengthy period of time could be sufficient deprivation to implicate due process."[220]

The United States Court of Appeals, Fifth Circuit has ruled on the issue of participation in athletics on several different occasions. In Walsh v Louisiana High School Athletic Association the court stated "due process of

Fourteenth Amendment extends protection to those fundamental aspects of life, liberty and property that rise to the level of legitimate claims of entitlement but does not protect lesser interests or more expectations, and a student's interest in participating in a single year of interscholastic athletics amounts to a mere expectation."[221] The court substantiated the concept in Niles v University Interscholastic League when it said "a high school student's interest in participating in interscholastic athletics falls outside of the protection of constitutional due process."[222]

The 10th Circuit also expressed the opinion that participation in athletics was not a constitutionally protected right, in Albach v Odle.[223]

The 4th circuit ruled in Dennis J. O'Connel High School that "education is not a fundamental right under the constitution, nor is participation in interscholastic athletics, nor is the speculative possibility of acquiring an athletic scholarship or professional bonus a federally protected right."[224]

THE GOVERNANCE OF INTERSCHOLASTIC ATHLETICS

The governance of state athletic associations varies greatly from state to state. The following is a sample of the structure of governance, and in some instances, a general outline of the due process provided by the association.

The Minnesota State High School League is composed of two bodies, the Representative Assembly and the Board of Directors. The assembly is the legislative body. It is composed of 90 members which include: 32 representatives of "A" schools; 32 members from "AA" schools; two representatives each for music, speech, athletic directors, coaches (male), coaches (female); and eight school board representatives from both "A" and "AA" school boards. The Board of Directors, which is the administrative body, is composed of: eight school representatives, two school board members, the Commissioner of Education, one minority representative, and four activity representatives.

The Commissioner of Education is required by state statute to report annually to the legislature on league activities.

The league provides due process to aggrieved parents or students concerning eligibility. The aggrieved parties are afforded a hearing and can appeal a decision to the Board of Directors.

The Illinois High School Association is composed of a Board of Directors, consisting of elected member principals and a Legislative Commission, consisting of 21 principals elected from the districts. All member schools vote on issues. Due process is afforded any student, parent, or school. They may request a hearing before four hearing

officers and appeal decisions to the Board of Directors or they may appeal directly to the board.

The South Carolina High School League is composed of an executive committee. This is the administrative body, and it is made up of the following: the league officers; the board representatives; one member each from the school superintendents association, secondary principals association, state department, school board association, coaches association, junior high schools, officials association; and one member at large. The Legislative Assembly is representative, and is made up of one representative from each region and class. The representative may be a superintendent, principal or school administrator.

The Tennessee Secondary School Athletic Association has a Board of Control, the administrative body, consisting of nine members, one representative from each district, who may be either principals or superintendents, and a Legislative Council. The Legislative Council is a representative body composed of superintendents or principals. However, member principals may petition to introduce legislation.

Wyoming has a relatively simple structure. The Wyoming High School Activity Association is composed of a Board of Control. The Board is composed of two members of the state school board association, one member of the state department

and 19 elected members. It appears the entire membership votes on by-laws and related issues.

Due process appears to be quite extensive. Any student, parent, coach, official or school dissatisfied with a decision of the Board of Control or Executive Secretary can appeal to an appeals board.

In contrast to the Wyoming Association's simplicity, one can find elaborate structures for governing athletics. The University Interscholastic League of Texas is composed of a State Executive Committee, whose members are appointed by the president of the University of Texas. Related to the Executive Committee are separate committees for: academics, policy, academic rules, music, music rules, and athletics.

The Legislative Committee is a representative body composed of superintendents, assistant superintendents and/or principals.

The due process procedure is extensive, allowing for sworn testimony, cross-examinations and representation by legal counsel. Final appeals are heard by the executive committee.

The California Interscholastic Federation is divided into two sections, a "northern" and "southern" section. The "Southern Section" of the Federation consists of an executive committee made up of a principal, assistant principal, superintendent, and athletic director. The

Federated Council, the legislative body, consists of representatives from each section of the state and the following: two ex officio members: the chief physical education director from the state department; the past chairman of the Section; two representatives each from the coaches association and the athletic directors association; one representative each from the school board association, school administrators association, and the California Superintendent's Liaison Committee.

The appeals process is involved and the appellant may elect to use the Federation procedure or the state procedure which involves an appointed panel; taped hearing, witnesses, the introduction of exhibitions and the opportunity to rebut evidence.

The Vermont Headmaster's Association, Inc. is composed of an Executive Council, the administrative body, and the Legislative Council, composed of the membership. The Executive Council consists of 12 members, one representative from the National Association of Elementary School Principals, and one representative from the National Association of Secondary School Principals. The remainder are principals elected to the Executive Council. Due process is granted for eligibility and involves the introduction of evidence, witnesses, and recordings.

Athletics in Massachusetts are supervised and organized by two associations or boards which interact. The Massachusetts Interscholastic Athletic Association, Inc. (MIAA) is an association of principals responsible for the enforcement and administration of athletics. This organization formulates and recommends policy. The MIAA is made up of a Board of Control, the administrative or executive board which interprets rules, imposes penalties, and hears appeals from the standing committees. The Board of Control has representatives from the secondary school administrators association, association of school committees, superintendents association, the athletic directors association and the coaches association. Member school principals compose the Assembly, the legislative body.

No policy which the MIAA promulgates is official or enforced until it is approved by the Massachusetts Interscholastic Athletic Council (MIAC). The MIAC approves the policies recommended by the MIAA, and hears appeals on the actions of the MIAA and the Board of Control. The MIAC is composed of five members each from the association of school committees, the association of superintendents, and the secondary school administrators association and two members from the junior high/middle school principals association. A representative from the athletic directors

association, coaches association and women sports committee serve in an advisory capacity (see Figure 3-3-1).

The State of Kansas outlines the structure for the governance of athletics in statute. The Association is composed of a Board of Directors, the legislative authority. The board is a representative body consisting of: (1) six school board members, one elected from each of five congressional districts and one elected by all school boards in the state; (2) two of the preceding directors shall be members of the state board of education; (3) one representative each from six districts in the state, based on enrollment. An executive board is responsible for the administration, enforcement, and interpretation of policy. The executive board is elected from the board of directors. An appeals board exists, consists of five school board members, selected by the boards of education of association members, and five administrators elected by member administrators.

The Michigan High School Athletic Association, Inc. is composed of an Executive Committee, the administrative body, and a Representative Council, the legislative body. The "Council" has the responsibility of taking care of the financial obligations of the association, and passing any by-laws necessary for the association to carry out its duties. The constitution, however, can be amended only by a two-thirds vote of the membership.

The "Council" consists of representatives of the various classes of schools, A through D, by sections of the state. The representatives may be principals, athletic directors, central office administrators or superintendents. These representatives are elected. There are also two elected representatives of physical educators, junior and middle school principals, and one private/parochial school representative on the board. There are appointed representatives from school boards (2), superintendents (1), and the state superintendent serves as an ex officio member on the council.

The due process procedure is extensive. Anyone violating the constitution or by-laws is given notice; an investigation of fact; a report of the investigation; a determination of whether or not a violation has occurred; and the right to a hearing. The party charged with a violation may file for a hearing before a hearing officer, and may be represented by counsel. The party may also confront, cross-examine, and present witnesses. The aggrieved party may appeal to the executive committee and ultimately to the representative council.

The Georgia High School Association is composed of a state Executive Committee, the administrative body, and the Board of Trustees, the legislative body. The legislative body is representative, consisting of one member of each

class of school, based on size, per region. The executive committee consists of the state officers, one director of state schools, one member from each region, one representative each from the state school board association and state superintendents association.

FOOTNOTES

[1]U.S. Constitution, Art. 10.

[2]Martha M. McCarthy and Nelda H. Cambron, Public School Law (Boston: Allyn and Bacon, Inc., 1981), p. 2.

[3]Ibid., p. 1.

[4]"Schools and School Districts" Corpus Juris Secondum, V. 78, Sec. 83, p. 815.

[5]Kern Alexander and M. David Alexander, American Public School Law. (St. Paul, Minnesota: West Publishing Co., 1985), p. 85.

[6]Richard D. Gatti and Daniel J. Gatti, Encylopedic Dictionary of School Law (West Nyack, New York: Parker Publishing Co., Inc., 1975), p. 174.

[7]Ibid.

[8]McCarthy and Cambron, p. 3.

[9]Alexander and Alexander, p. 88.

[10]Ibid., p. 89.

[11]Ibid., p. 90.

[12]Gatti and Gatti, p. 174.

[13]Ibid.

[14]McCarthy and Cambron, p. 3.

[15]Ibid.

[16]Corups Juris Secondum, V. 78, Sec. 90, p. 820.

[17]McCarthy and Cambron, p. 3.

[18]Gatti and Gatti, p. 255.

[19]New Mexico, New Mexico Statutes Annotated, 22-2-1 to 2.

Delaware, Delaware Code Annotated, 14 Sec. 121 to 122.

Colorado, Colorado Revised Statutes, 22-2-106 and 107.

[20]Virginia, Virginia School Laws, 22, 1-8.

[21]Gatti and Gatti, pp. 255-256.

[22]Bradley v School Board, 402 F.2d 1058 (4th Cir 1972).

[23]Alexander and Alexander, p. 88.

[24]Corpus Juris Secondum, V. 79, sec. 485, p. 428.

[25]Gatti and Gatti, p. 235.

[26]Bunger v Iowa High School Athletic Assoc., 197 N.W.2d 535 (Iowa 1972).

[27]Appeal of Ganaposki, 2 A.2d 742 (Pennsylvania).

[28]Martin v Olyphant, 83 DC 206.

[29]Moyer v Board of Education School District No. 186, 62 N.E. 2d 802 (Illinois 1945).

[30]Adamek v PIAA, 426 A.2d 1206 (Pennyslvania Commonwealth, 1981).

[31]Pegram v Nelson, 469 F. Supp. 1134 (M.D. North Carolina, 1979).

[32]Bailey v Truby, 321 S.E. 2d 302 (West Virginia 1984).

[33]New York, New York Code, Section 803.

[34]New York, New York Code, Rules and Regulations, 135.4.

[35]Virginia, Virginia Constitution, Art. 7, Sec. 1.

[36]Ibid., Art. 7, Sec. 4.

[37]Ibid., Art. 7, Sec. 7.

[38]Virginia, Standards for Accrediting Schools in Virginia, No. 22, p. 9.

[39]Virginia, Virginia School Laws, Sec. 22.1-28.

[40]Bradley v School Board, supra.

[41]School Board of Richmond v Parham, 243 S.E. 2d 468 (Virginia, 1978).

[42]Anderson v South Dakota High School Activities Assoc., 247 N.W. 2d 481 (South Dakota, 1976).

[43]Bunger v Iowa, supra.

[44]Since Hawaii's structure for education is unique, Hawaii was excluded from the study.

[45]Masachussets, Massachusetts General Law Annotated, Education, Sec. 47.

[46]Nevada, Nevada Revised Statutes, 386.420.

[47]California, West's Annotated California Codes, Education, Art. 3, Sec. 35179(b).

[48]New Jersey, New Jersey Statutes Annotated, 18A:11-3.

[49]Pennsylvania, Pennsylvania School Law, Title 24, Sec. 5-511(b).

[50]Michigan, Michigan Compiled Laws, Annotated, 380.1289.

[51]South Dakota, South Dakota Compiled Laws, 13-36-4.

[52]Oregon, Oregon Revised Statutes, 332.075.

[53]Illinois, Illinois State Laws, 10-22.40.

[54]Washington, Washington State Code, 28A.58.125.

[55]North Dakota, North Dakota Century Code, 15-29-08(20).

[56]Minnesota, Minnesota Statutes, 129.121.

[57]West Virginia, West Virginia Code, 18-2-25.

[58]Alaska, Alaska Statutes, 14.07.058.

[59]Oregon, 339.450.

[60]North Dakota, 15-2-08-(20).

[61]Iowa, Iowa Statutes, 280.14.

[62]North Carolina, General Statutes of North Carolina, 115C-47(4).

[63]Mississippi, Mississippi Code, 38-7-301(r).

[64]New Mexico, New Mexico Statutes Annotated, 22-2-2(Q).

Alabama, Code of Alabama, 16-2-3.

[65]Iowa, 280.13.

[66]New Mexico, 22-2-2(Q).

[67]North Carolina, 115C-47.(4).

[68]Delaware, 122.b(18).

[69]Louisiana, Louisiana Revised Statutes, 17:176(C).

[70]South Carolina, South Carolina Code, 59-39-160.

[71]South Carolina, South Carolina Regulations, R43-245.

[72]Washington, Revised Code of Washington, 28A.58.125.

[73]West Virginia, West Virginia State Code, 18-2-25.

[74]Kentucky, Kentucky Revised Statute, 156.070.

[75]Texas, Texas State Law, 21.921.

[76]Minnesota, Minnesota State Code, 129.121.

[77]New Jersey, New Jersey Statutes Annotated, 18A:11-3.

[78]New York, New York Code, 803.

[79]New York, New York Code, Rules and Regulations, 135.4.

[80]Alaska, Alaska Statutes, 17.07.058.

[81]California, 33352.

[82]Ibid., 33353.

[83]Ibid., 33354.

[84]Florida, Florida Statutes, 232.425.

[85]Ibid., 232.43.

[86]Pennsylvania, 5-511.

[87]Michigan, Michigan Compiled Laws Annotated, 380.129.

[88]Nevada, 386.420-470.

[89]Oregon, 339.450.

[90]Kansas, Kansas Statutes Annotated, 72-130 to 134.

[91]South Dakota, 13-36-4.

[92]VHSL Handbook, 8-1-1, p. 13.

[93]Christian Brothers Institute v Northern New Jersey Interscholastic League, 432 A.2d 26 (New Jersey, 1981).

[94]Valencia v Blue Hen Conference, 476 F. Supp. 809 (D. Delaware 1979).

[95]Valencia v Blue Hen Conference, 615 F.2d 1355 (3rd Cir. 1980).

[96]Denis J. O'Connell High School v VHSL, 581 F.2d 81 (5th Cir. 1978).

[97]Windsor Park Baptist Church, Inc. v Arkansas Activities Association, 658 F.2d 618 (8th Cir. 1981).

[98]Holy Cross College, Inc. v. Louisiana High School Athletic Association, 632 F.2d 1287 (5th Cir. 1980).

[99]VHSL Handbook, 28-1-1, p. 55.

[100]O'Connor v Board of Education, 316 N.Y.S.2d. 799 (N.Y.S. Ct. 1970).

[101]Bunger v Iowa High School Athletic Association, supra.

[102]Thompson v Barnes, 200 N.W. 2d 921 (Minnesota 1972).

[103]Braesch v De Pasquale, 265 N.W. 2d. 842 (Nebraska 1978).

[104]Davis v Central Dauphine School District School Board, 466 F. Supp. 1259 (N.D. Pennsylvania 1979).

[105]VHSL Handbook, 28-5-1, p. 58.

[106]Ibid.

[107]Blue v University Interscholastic League, 503 F. Supp. 1030 (N. D. Texas 1980).

[108]In State ex Rel. Missouri State High School Athletic Ass'n. v Schoewlaub, 507 S.W.2d. 354 (Missouri 1974).

[109]Mahan v Agee, 652 P.2d 765 (Oklahoma 1982).

[110]VHSL Handbook, 28-2-1, p. 55.

[111]Ibid., p. 61.

[112]Ibid., p. 66.

[113]Florida High School Activities Assoc., Inc. v Bryant, 313 So.2d 57 (Fla. App. 1975).

[114]Lee v Florida High Sch. Act. Assn., Inc., 291 So.2d 636 (Florida App. 1974).

[115]Smith v Crim, 240 S.E.2d 884 (Georgia 1977).

[116]Burtt v Nassau County Ath. Ass'n., 421 N.Y.S. 2d 172 (New York S. Ct. App. 1979).

[117]Pennsylvania Interscholastic Athletic Assn., Inc. v Geisinger, 474 A.2d 62 (Pennsylvania Commonwealth 1984).

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

[119]Mitchell v Louisana High School Athletic Association, 430 F.2d 1155 (5th Cir., 1970).

[120]DeKalb County Sch. System v White, 260 S.E.2d. 853 (Georgia 1979).

[121]VHSL *Handbook, 27-13-2*, p. 49.

[122]Ibid., 27-13-3.

[123]Ibid., 27-13-4.

[124]Ibid., 27-13-5.

[125]Stock v Texas Catholic Interscholastic League, 364 F. Supp. 367 (N.D. Texas 1973).

[126]Taylor v Alabama High School Athletic Association, 336 F. Supp. 54 (N.D. Alabama 1972).

[127]Watkins v Louisiana High School Athletic Ass'n., 301 So.2d 695 (Louisiana App. 1974).

[128]VHSL Handbook, 28-11-1 to 4, p. 64-65.

[129]Brown v Wells, 181 N.W.2d 708 (Minnesota 1970).

[130]Hawksley v New Hampshire Inter. Ath. Ass'n., Inc. 285 A.2d 797 (New Hampshire 1971).

[131]Texas High School Gymnastics Coaches Ass'n. v Andrews, 532 S.W.2d 142 (Texas Civ. App. 1976).

[132]Dumez v Louisiana High School Ath. Assoc. 334 So.2d 494 (Louisiana App. 1976).

[133]Kubiszyn v Alabama High School Ath. Assoc., 374 So.2d 256 (Alabama 1979).

[134]Caso v New York State Public High School Athletic Assoc., Inc., 434 New York S. 2d 60 (New York S. Ct. App. 1980).

[135]Art Gaines Baseball Camp, Inc. v Houston, 500 S.W. 2d 735 (Missouri App. 1973).

[136]Kite v Marshall, 494 F. Supp. 227 (S.D. Texas 1980).

[137]Kite v Marshall, 661 F.2d 1027 (5th Cir. 1981).

[138]Bailey v Truby, 321 S.E. 2d. 302 (West Virginia 1984).

[139]Ibid.

[140]Texas, Texas Statutes, 21.920.

[141]VHSL Handbook, 28-4-1(3), p. 56.

[142]Ibid., 28-9-1, p. 61.

[143]Spitaleri v Nyquist, 345 N.Y.S.2d 878 (N.Y.S. Ct. 1973).

[144]Colombo v Sewanhak Central High School Dist. No. 2, 383 N.Y.S. 2d 518 (New York S. Ct. 1976).

[145]Doe v Marshall, 459 F. Supp. 1190 (S.D. Texas 1978).

[146]Kampmeier v Nyquist, 553 F.2d 296 (2nd Cir. 1977).

[147]Kampmeier v Harris, 411 N.Y.S. 2d 744 (New York S. Ct. App. 1978).

[148]Grube v Wallace, 550 F. Supp. 418 (E.D. Pennsylvania 1982).

[149]Virginia High School League Handbook, 84-85, 54-2-1, p. 78, (Charlottesville, Virginia).

[150]Ibid., 84-1-1, p. 100.

[151]Education Amendments of 1972, Title IX.

[152]U.S., H.E.W. Regulations, 1974.

[153]Reed v Nebraska School Activities Association, 341 F. Supp. 258 (D. Nebraska 1972).

[154]Ritacco v Norwin School District, 361 F. Supp. 930 (W.D. Pennsylvania 1973).

[155]Gilpin v Kansas State High School Association, 377 F. Supp. 1233 (D. Kansas 1973).

[156]Ibid., p. 1234.

[157]Yellow Sp. Exempted School District v Ohio High School, etc., 443 F. Supp. 753 (S.D. Ohio 1978).

[158]Ibid., p. 758.

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

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

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

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

[163]Brenden v Independent School District, 477 F. 2d 1292 (8th Cir., 1973).

[164]Ibid., p. 1297.

[165]Ibid., p. 1293.

[166]Clark v Arizona Interscholastic, 695 F. 2d 1126 (9th Cir., 1982).

[167]Ibid., 1131.

[168]Stiebel v Minnesota State High League, 321 N.W. 2d 400 (Minnesota 1982).

[169]VHSL Handbook, 28-6-1, p. 58.

[170]Ibid., p. 47-48.

[171]Sanders v Louisiana H. S. Ath. Assoc., 242 So. 2d. (Louisiana App. 1970).

[172]Scott v Kilpatrtick, 237 So. 2d 652 (Alabama 1970).

[173]Sturrup v Mahan, 290 N.E. 2d 64 (Indiana App. 1973).

[174]Sturrup v Mahan, 305 N.E. 2d. 877 (Indiana 1974).

[175]Chabert v Louisiana High School League, 323 So. 2d 774 (Louisiana 1975).

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

[177]Mozingo v Oklahoma Secondary School Activities Assoc., 575 P.2d 1379 (Oklahoma App. 1978).

[178]Crandall v North Dakota High School Activities Association, 261 N.W. 2d 921 (North Dakota 1978).

[179]Kriss v Brown, 390 N.E. 2d. 193 (Indiana App. 1979).

[180]Sullivan v University Interscholastic League, 599 S.W. 2d 860 (Texas Civ. App. 1980).

[181]Sullivan v University Interscholastic League, 616 S.W. 2d 170 (Texas 1981).

[182]Ibid., p. 173.

[183]Cooper v Oregon School Activities Association, 629 P. 2d 386 (Oregon App. 1981).

[184]Whipple v Oregon School Activities Association, 629 P. 2d 384 (Oregon App. 1981).

[185]Pennsylvania Interscholastic Athletic Assoc. v Greater Johnstown School District, 463 A.2d 1198 (Pennsylvania Commonwealth 1983).

[186]Ibid., p. 1203.

[187]Alabama High School Athletic Assoc. v Rose, 446 So. 2d. 1 (Alabama 1984).

[188]Herbet v Ventetuolo, 480 A.2d 403 (Rhode Island 1984).

[189]Kulovite v Illinois High School Ass'n., 462 F. Supp. 875 (North Dakota Ill. 1978).

[190]Dallan v Cumberland, 391 F. Supp. 358 (M.D. Pa. 1975).

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

[192]Ibid., p. 984.

[193]Walsh v Louisiana High School Athletic Assoc., 616 F.2d 152 (5th Cir., 1980).

[194]Laurenzo v Mississippi High School Activities Assoc., Inc., 662 F.2d 1117 (5th Cir., 1981).

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

[196]In Re U.S. Ex Rel Missouri State High Sch., 682 F.2d 147 (8th Cir. 1982).

[197]Zander v Missouri High School Activities Association, No. 81-0369-C(1) (E.D. Mo. April 7, 1981).

[198]Barnhorst v Missouri State High School Activities Assoc., 504 F. Supp. 449 (W.D. Missouri 1980).

[199]ABC League v Missouri State High School Activities Assoc., 530 F. Supp. 1033 (E.D. Missouri 1982).

[200]French v Cornwell, 276 N.W. 2d 216 (Nebraska 1979).

[201]Ibid., p. 201.

[202]Doffley v New Hampshire Interscholastic Athletic Association, 446 A.2d 462 (New Hampshire 1982).

[203]Ibid., p. 463.

[204]Ibid., p. 467.

[205]Bailey v Truby, supra.

[206]Buhlman v Board of Education of the Ramapo Central School District, 463 N.Y.S. 2d. 192 (New York S. Ct. 1981), p. 194.

[207]Ibid., p. 197.

[208]In State Ex Rel Missouri State High School Ath. Ass'c., v Schoenlaub, supra.

[209]Smith v Crim, supra.

[210]Whipple v Oregon, supra at 210.

[211]Pennsylvania Interscholastic Athletic Association, Inc. v Greater Johnstown School District, supra at 1201.

[212]Scott v Kilpatrick, supra.

[213]Mozingo v Oklahoma Secondary School Activities Association, supra at 1382.

[214]Herbert v Ventuolo, supra.

[215]Kentucky High School Athletic Association v Hopkins County Bd. of Ed., supra.

[216]Sanders v Louisiana High School Athletic Ass'n., supra.

[217]Chabert v Louisiana High School Athletic Ass'n., supra.

[218]Florida High School Act. Ass'n., Inc. v Bradshaw, 369 So.2d 398 (Florida App. 1979).

[219]Ward v Robinson, 496 F. Supp. 1 (E.D. Tennessee 1978).

[220]Pengram v Nelson, supra at 1135.

[221]Walsh v Louisiana High School Ath. Ass'n., supra at 159.

[222]Niles v University Interscholastic League, supra at 1028.

[223]Albach v Odle, supra.

[224]Denis J. O'Connel High School v Virginia High School League, supra at 84.

CHAPTER IV

THE SURVEY

A survey of principals, school board chairmen, local superintendents and members of the General Assembly was conducted in accordance with the guidelines proposed by Dillman in Mail and Telephone Surveys, The Total Design Method, with some modification. A final request of participants was made using first class mail instead of registered mail, as recommended by Dillman.

The sample reflected the proportions of the community of policy-makers and educators as they actually exist. Principals made up the largest segment of policy-makers and educators, and they represented a corresponding segment of the sample (see Table 4-1). The same rationale was applied in determining the size of the other subgroups of the sample. Principals, superintendents, legislators and school board chairmen were represented in the same proportions in the sample as they exist in the Commonwealth.

The responses of the total sample, as well as the responses of the subgroups, were analyzed, since the source of the conflict concerning the VHSL has been attributed to a difference of opinion that exists among subgroups.

Data were analyzed using the crosstabs and frequencies procedures available on SPSS-X. The responses were reported

TABLE 4-1

PROFILE OF SUBJECTS BY SUBGROUP AND CORRESPONDING RATE OF RESPONSE

Groups	Population Size	% of Population Represented by Group	Sample Size	% of Sample by Group	Respondents	% of Respondents by Group	Rate of Response
Principal	297	42%	100	40%	86	44%	86.0%
Superintendent	147	21%	50	21%	42	22%	84.0%
Legislator	119	16%	46	18%	21	11%	45.6%
School Board Chairman	147	21%	50	21%	45	23%	90.0%
Total	710	100%	246	100%	194	100%	

as percentages throughout the survey and modal responses were reported for questions #19 and #20. Twenty-five subjects responded to the optional request to provide further comments. The comments were compiled and categorized by subgroups. The comments provided additional insight into the opinion of the subgroups involving the performance of the VHSL. However, since the number of respondents providing such feedback was small, the responses were used to illustrate points of view, rather than infer or generalize an opinion.

Nonrespondents

Two targets were set concerning the rate of response. One dealt with an acceptable rate of response and the other with a nonrespondent survey. Sixty percent was set as an acceptable response rate and a nonrespondent survey was constructed. However, a response rate of approximately 80 percent was attained, eliminating the necessity of a nonrespondent survey (see Table 4-1). Several respondent legislators and two nonrespondent legislators offered explanations for not participating in the survey. Those reasons were recorded and reported (See Appendix G). They provided insight into the disparity between the response rates of the subgroups. With the exception of the members of the General Assembly, the range of the response rate for subgroups was 84 percent to 90 percent. The response rate for legislators was only 45.6 percent.

The following is a summation of the responses of all educators and policy-makers and the subgroups within the sample. For a detailed tabular representation of the survey response, see Appendix I.

Authority

1. A majority of 54.7 percent of the principals favored the VHSL having the authority to pass binding regulations upon local boards and 40.7 percent opposed such authority. However, superintendents, local school board chairmen and legislators opposed the VHSL having such authority.

2. The issue of whether or not state accredited parochial schools should be allowed to join the VHSL revealed a different distribution of opinion. A majority of principals (57%), and superintendents (71.4%) were opposed to granting VHSL membership to state accredited parochial schools. However, 61.9 percent of the legislators and 68.9 percent of the school board chairmen favored the membership of such schools.

3. There was general agreement on the part of all respondents that the VHSL should not determine the qualifications of coaches (74.2%). Only 23.7 percent of all the respondents agreed that the VHSL should determine the qualifications of coaches. All of the subgroups reflected this opinion.

4. A majority of respondents agreed that the VHSL should set the level of scholastic achievement or academic standards necessary for athletic participation. 75.8 percent agreed, while 22.2 percent disagreed. However, the subgroups were not all as enthusiastic. 90.7 percent of the principals favored the VHSL setting academic standards, while 76.2 percent of the superintendents, 61.9 percent of the legislators and 53.3 percent of the school board chairmen expressed the same opinion.

5. A majority of 59 percent of all respondents disagreed with the idea that the VHSL should require that a physician be present at athletic contests involving contact sports. 61.9 percent of the legislators expressed the opinion that the presence of physicians should be required at such contests, while 66 percent of the principals, 64 percent of the superintendents and 57 percent of the school board chairmen disagreed.

6. The opinions of the respondents concerning the possibility of requiring the presence of a qualified trainer or emergency medical technician at all contests and practices, were evenly divided. However, as a subgroup, principals expressed opposition to the idea, and 52.3 percent disagreed with the idea of requiring some type of emergency medical technician to be present at practice.

7. A majority of 58.2 percent of all respondents favored the VHSL policy of imposing fines, while 39.2 percent opposed the use of fines. All the subgroups except school board chairmen shared this opinion while 73.3 percent of the principals favored the use of fines, only 54.8 percent of the superintendents and 52.3 percent of the legislators supported the use of fines. Only 40 percent of school board chairmen supported the use of fines, while 60 percent disapproved.

Of all respondents, 55 percent favored the imposition of fines upon schools, 30 percent favored the imposition of fines upon coaches and 17 percent approved of the imposition of fines upon participants. Principals, superintendents, and legislators reflected these same sentiments.

8. A majority of 87.6 percent of all respondents favored the use of probation and considered it a proper exercise of authority. The subgroups reflected this sentiment. 83 percent of all respondents approved of the imposition of probation on member schools, 52.6 percent favored its use with coaches and 45.4 percent considered it appropriate to use probation with participants. The subgroups shared these opinions.

9. A majority of 79.9 percent of all respondents approved of the VHSL using the authority to prohibit participation. All subgroups reflected this opinion,

although the percentage of legislators and school board members favoring its use was 66.7 percent and 68.9 percent respectively.

Further, 69.6 percent of all respondents approved of prohibiting schools from participation, and 46 percent approved of applying prohibition to players. All subgroups reflected these opinions with minor differences.

10. A majority of respondents (57.2%) agreed that the imposition of penalties by the VHSL was appropriate. The majority of legislators responded that they had no idea whether the use of penalties was appropriate.

11. Most respondents (49%) favored the use of an impartial fact finding panel as a board of final appeal. Only principals did not concur. A plurality (44.25) of principals favored the use of a VHSL established board.

Performance

12. The number of total respondents who indicated they had received complaints last school year (1983-84) concerning the VHSL, Inc. was consistent with the subgroup responses. 57.2 percent of all respondents received no complaints. 32.5 percent received 1-5 complaints, 4.1 percent received 6-10 complaints, and 1.5 percent claimed they received 11 or more complaints. When the data were collapsed, approximately 90 percent of all respondents received less than five complaints last school year, and the

range for subgroups was 85 percent to 94 percent reporting fewer than five complaints.

Only 5.6 percent of the total respondents claimed they received more than five complaints, but only 1.5 percent received 11 or more complaints. These results were reflected throughout the subgroups. Superintendents and school board chairmen reported the highest rate of complaints. 9.6 percent of the superintendents responding reported they received more than five complaints per year, and 9.9 percent of the school board chairmen reported the same.

13. A majority of 76.3 percent of the respondents expressed satisfaction with the VHSL's performance in administering athletics. A larger percentage of principals and superintendents appeared to be satisfied. 89.5 percent of the principals and 83.3 percent of the superintendents responding reported satisfaction. *School board members* reported overall satisfaction, but only 57.8 percent were satisfied as opposed to 37.8 percent who reported dissatisfaction. 33.3 percent of the legislators registered dissatisfaction and 47.6 percent reported their satisfaction.

14. A majority of 91.2 percent of all respondents evaluated VHSL performance and awarded the organization a grade of "C" or better. Only 5.7 rated or graded the VHSL

below average. This reflected the opinions expressed in reporting complaints previously. In further analysis, the majority of all respondents (46.9%) assigned the VHSL a grade of "B" (above average), and 52.3 percent of respondent principals and 50 percent of respondent superintendents reflected this attitude. 34.9 percent of the principals and 31 percent of the superintendents awarded the VHSL an "A," but only 4.8 percent of the legislators and 2.2 percent of the school board chairmen concurred. 38.1 percent of the legislators graded the VHSL's performance "B" or above average, and 33.3 percent assigned a grade of "C." 37.8 percent of the school board chairmen graded VHSL's performance as above average or "B," and 44.4 percent ranked it as average, "C."

Only 7.1 percent of the respondent superintendents, 9.5 percent of the respondent legislators, and 12.2 percent of respondent school board chairmen considered the VHSL performance below average. No principals agreed with that evaluation.

15. The majority of respondents (58.2%) thought the VHSL should not be studied by an outside agency, while 37.6 percent favored such a study. However, these results are not reflected in the data representing the opinions of the subgroups. Principals and superintendents generally agreed. 75.6 percent of the principals did not favor such a study,

and 59.5 percent of the superintendents expressed the same opinion. Once again, legislators and school board chairmen reflected a different opinion. 47.6 percent of the respondent legislators favored the study, and 33.3 percent opposed the study. However, 60 percent of the school board chairmen favored the concept of the study, and 35.6 percent opposed it.

Governance

16. A minority of state athletic associations are overseen or supervised by a state agency. The supervising agency may be the state board of education, the state department of education (or commissioner), the general assembly (through legislation) or, in one case, local school boards. The majority of respondents (74.2%) disapproved of such an arrangement for the VHSL. 91.9 percent of the principals, 71.4 percent of the superintendents, 57.1 percent of the legislators, and 51.1 percent of the school board chairmen disagreed with the idea of state supervision.

17. Only 22.7 percent of the respondents favored the idea of a state agency supervising the VHSL. In terms of the total number of respondents, 10 percent of the respondents favored the state department of education as a supervising agency, and 10.3 percent favored the state board of education. 1.5 percent favored other agencies, such as local school boards.

18. A majority of 78.9 percent of all respondents expressed the opinion that the VHSL should operate independently of any college of university. All subgroups reflected this opinion.

19. The VHSL has representation from groups within the educational community, other than principals. Principals make up the primary group and are the only group with strong input into the legislative process. This means they are the only group involved in the adoption and administration of VHSL regulations.

The present perception of the governance of the VHSL was indicated by the modal response of the subgroups and appeared consistent throughout the subgroups, with a few exceptions. Generally, athletic directors, coaches, and local superintendents were perceived to have moderate input in the governance of the VHSL. They were perceived as routinely expressing opinions and making nonbinding recommendations concerning pending legislation. This role or degree of input is synonymous to an advisory role.

The modal response of the subgroups indicates that citizens, legislators, local school boards and the state department of education were perceived as having slight input and influence into the decision-making and governance of the VHSL. This means the group was called upon in limited circumstances to offer input.

The modal response of respondent legislators and school board members indicate that both perceived athletic directors as having a strong influence on the governance of the VHSL, instead of the moderate input principals and superintendents perceived. School board members perceived citizens as having no input or influence on the governance of the VHSL.

The modal response of legislators indicated they believed they had no input into the governance of the VHSL, and the modal response of school board members indicated they had no idea of the legislative role in the governance of the VHSL. The modal response of local school board members illustrated that they perceived they had no role in the governance of the VHSL and had no idea of the state department's role. Legislators had no idea of the role of the superintendents.

20. The modal response of all respondents, when asked how much influence each group should have, indicated a perception exists that the influence of two groups, local school boards and the state department of education should be increased from slight input to moderate input. The modal response of all subgroups, except local school board chairmen, indicated that local school boards should have at least a moderate amount of input into the governance of the VHSL, or an advisory role. The modal response of local

board members indicated that school board chairmen believe they should have strong input into the governance of the VHSL, which means they should participate in the adoption and administration of VHSL regulations. The modal responses of legislators and school board members indicate that citizens should have a moderate rather than a slight degree of input into the VHSL's governance. The modal response of the superintendents expressed the opinion that the legislature should have no input rather than slight input. The modal response of legislatures expressed the opinion that they should have moderate input rather than slight input. The modal response of principals indicated that the state department of education should have slight input, rather than moderate input.

The following represents a compilation of the open-ended responses offered by 25 of the respondents. The responses are categorized by subgroups.

Principals

#158 - VHSL does good job.

#107 - I believe that the VHSL serves a very useful purpose and has been very efficient in carrying out its duties.

#145 - The main concern I have with the VHSL is "grouping." Rural systems have difficulty competing with city systems within the same classifications. ex. - Piedmont District - the schools of Henry and Pittsylvania Co. cannot compete with Martinsville even though enrollments are the same.

#190 - The VHSL works - I agree to the need for an "outside" final appeal board. The VHSL is run by the principals of the public schools in this state with the permission of the local school boards and local superintendents. The legislature and state board should stay out of it!!!

#176 - Keep parochial schools out because of recruitment of players.

#119 - A concern I hear often has to do with the "cliquishness" of the executive board of the VHSL - that is the "good old boys" at work. It would be extremely helpful to the image of the VHSL to broaden the representation of various parts of the state on the board.

#149 - The VHSL needs to recognize the special needs that differ between and are caused by the size of the school, AAA, AA, A, etc. One rule cannot adequately govern all circumstances.

#186 - The VHSL should definitely remain an independent organization, made up of member principals who best understand the problems and projected solutions. Under no circumstances should it be under the direction of politicians, the state department of education, the state superintendent of public instruction, or the state board of education. The VHSL is one of the few state-wide organizations related to public education that works reasonably well in the state of Virginia, in my opinion.

#162 - Generally, the league functions well. Problems do arise from time to time, but nothing terribly

different from what any organization has. Having a league operated by people who know many of the problems of the day-to-day problems and understand them helps us have an organization far superior to these in some other states.

#164 - Superintendent and school boards have the authority to influence principals and their voting within the VHSL - they certainly supervise VHSL activities.

#156 - There are too many busy body politicians who want their hands in a pot that does not need them. Butt out, please!

Of these responses four cite the VHSL for a job well done and three seem defensive and express the need to keep the politicians, state board, state department and others out of VHSL business. Three responses cite problems or complaints, one with the "good ole boy" network that runs the VHSL and two concerning the needs of rural schools.

Superintendents

#229 - VHSL should operate athletic programs outside the public schools. Public schools should get out of the business of sports and stick to basic education.

#248 - The VHSL saves us many hours of irritation. In this study, the organization has operated with almost no complaints. I do not see any reason to believe that we should start receiving complaints.

#228 - if it ain't broke, don't fix it!

#238 - "The VHSL is a principal's group and it should be left as is. Superintendents, state boards, etc., have input in these groups. It is one of the most democratic groups I have dealt with. Superintendents and school boards have input through their principals. The biggest mistake is getting the legislators and state board involved in the day-to-day operations. I have participated in hearings many times as a superintendent and have spent hours just for one hardship case."

Only four superintendents offered responses. Three of a positive nature, claiming the VHSL performs well and shouldn't be tampered with or changed. Only one was critical.

Legislators

#323 - Why did you raise your dues, given your present high amount of reserve?

P. S. What do you do with your money?

#304 - The VHSL should be stronger in regulating the scheduling of schools within the state. At the present time some schools are going outside the state in selective scheduling. This causes incomplete schedules and permits some schools to avoid competition where it is perceived to be to their advantage.

Only two legislators responded to this question and both were critical of the VHSL. One was concerned about fairness, and the other was concerned about scheduling.

School Board Members

#407 - Generally, the VHSL does a good job, but they have been "high-handed" in their policy making. They should not be allowed to override the authority of local school boards on matters of eligibility, etc.

#411 - I feel many school boards do not realize the influence the VHSL has.

The many school boards let their representatives to the VHSL make rules and regulations without consulting with school boards or their administrative staff.

The VHSL was needed but now has assumed too much authority.

#444 - Leave it as is!!!

#425 - Many of the questions seemed "loaded." I recently spent two years as a director on the Virginia School Board Association and heard many people speak of their dissatisfaction with the League. This actually was never true with my school division as we always felt we received good treatment.

#406 - I think your survey does not ask the right questions and thus you may get misleading results. Overall the VHSL does a great job, but not withstanding this, it still has two major problems that must be solved.

1. There is too much power in the hands of too few individuals that don't have to answer to a higher authority.

2. The VHSL has exercised power that conflict with the power granted to school boards in the Constitution of Virginia.

#435 - A. VHSL principals should adhere to more informative relationship concerning VHSL activities with their respective local boards and superintendents.

B. The Virginia High School Coaches Association remains an excellent source of practical knowledge for a resource to be used more selectively by the VHSL principals.

#405 - The greatest concern we have about VHSL is in the realm of eligibility. If a school board determines a student should attend a high school, then that student should be eligible to participate in that school's VHSL programs.

#407 - I feel the VHSL's primary problem is one of communications and public relations. It generally fulfills its functions satisfactorily.

Eight school board members responded. Three congratulated the VHSL for a job well done, and six were critical of the VHSL. The criticisms involved the exercise of authority by the VHSL that may conflict with a school board's authority and the need for an informative relationship between the VHSL and the school boards.

Nonrespondents

The only subgroup with a considerable number of nonrespondents was the General Assembly. However, the respondents and nonrespondents offered insight into the lack of participation. One member of the House of Delegates stated she did not know enough about the topic to participate, but expressed an interest in the results. Two senators explained it was their policy not to participate in surveys and subjects #339 and 332 explained they did not know enough about the subject to participate. However, subject #332 expressed the opinion that such a study could help educate the General Assembly and indicate whether or not "all is well." Therefore, the lack of response from members of the General Assembly may be due to:

1. a lack of knowledge on the part of the members of the General Assembly, and
2. a policy concerning response to surveys.

CHAPTER V

FINDINGS

STATE STATUTES AND THE AUTHORITY TO ADMINISTER ATHLETICS

State statutes either express or imply that local school boards may join state athletic associations and delegate to those associations the ministerial duties involved in the supervision, control, management or regulation of interscholastic athletics. Fourteen states express this authority and thirty-five imply this authority. Virginia is among the majority, and local boards possess the implied power to delegate ministerial duties to the VHSL.

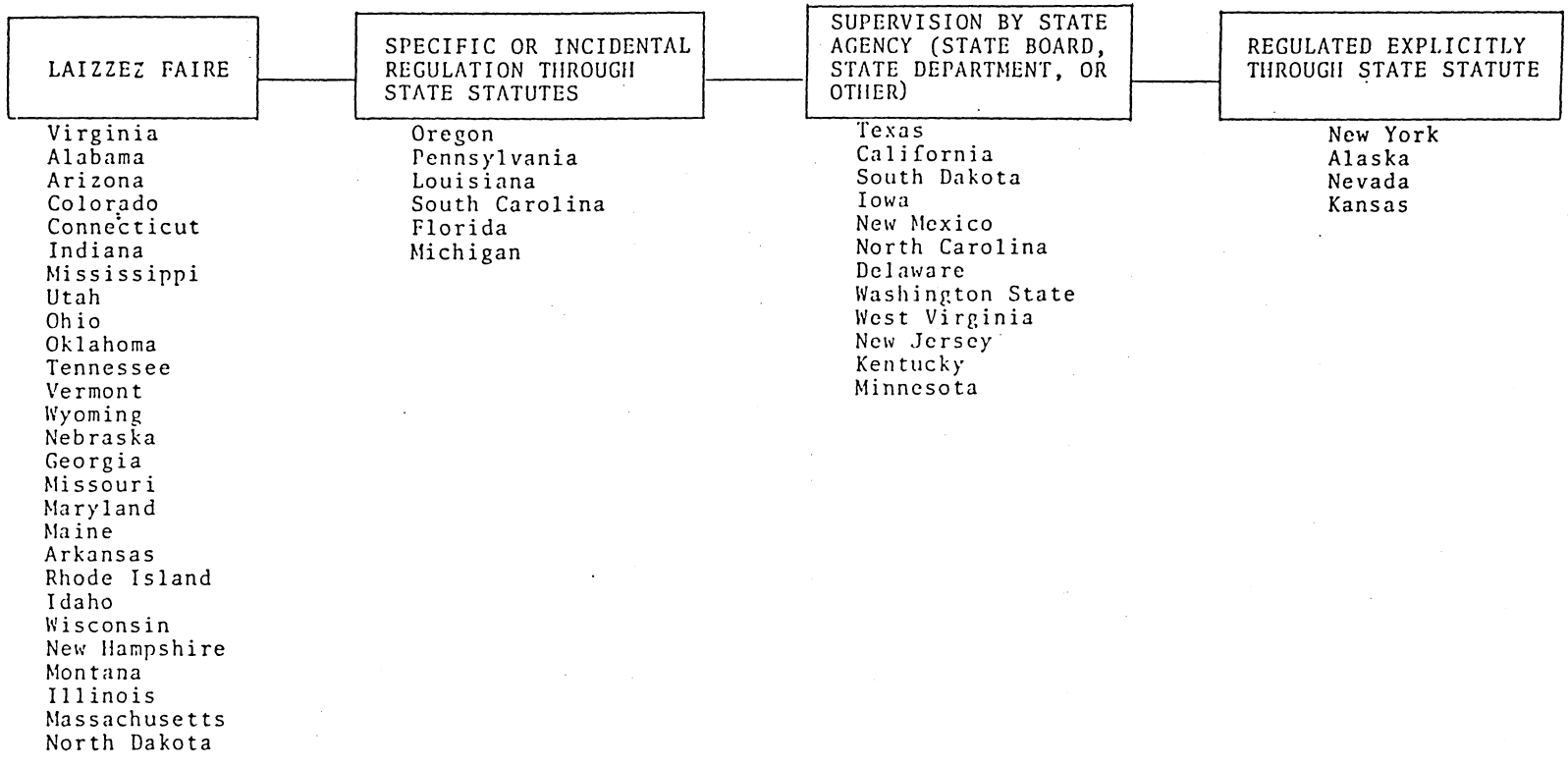
Statutes expressly granting local school boards the authority to join state athletic associations vary in language, but they state their local boards may either delegate the administration; or the governance; or the control, regulation, and supervision of athletics to state athletic associations. Statutes which imply the authority to join state athletic associations either direct local school boards to prescribe the rules or regulations necessary to conduct local schools; or to manage and control local schools; or to specifically regulate, control or manage interscholastic athletics.

The literature concerning state athletic associations leads one to believe that all state athletic associations

are voluntary organizations that are not regulated by the states. However, a review of the sources of authority and state regulations reveal a different picture. State athletic associations are treated in a laizzez faire manner by some states and are extensively regulated in other states. A continuum of state influence can be developed which includes no direct state influence or control at one extreme, and strict regulation at the opposite extreme. (see Figure 5-1).

Based on the statutes reviewed, the majority of states, including Virginia, would be classified as states with voluntary athletic associations established by contract, that are not directly governed, regulated or sanctioned by state statutes. Several states regulate state athletic associations in relation to a specific aspect or rule. Oregon, for example, requires that no student be prohibited from participating in athletics simply because he has changed residence.[1] Louisiana,[2] South Carolina.[3] and Florida[4] have statutes establishing the academic standards which students must meet in order to participate. Pennsylvania regulates the membership of private schools in state athletic associations.[5]

Other state statutes require state athletic associations to submit their rules and regulations to state boards of education or state departments of education, for



Laizzez Faire - State statutes, or state agencies, do not regulate athletic association.

Specific or Incidental Regulation - State statute regulates only specific aspect of athletic associations, such as transfer rule, parochian school membership, or academic standards.

Supervised by State Agency - State board or state department review and approve rules and regulations.

Regulated by State Statute - State statutes or regulation require adherence to guidelines concerning membership, appeals, representation, eligibility, etc.

Figure 5-1. State Regulation of Athletic Associations

approval. The objective of such statutes is to assure that the association complies with state school board regulations or state department regulations. Presently, eleven states have such an arrangement. This review and approval of rules is a form of state control of athletic associations.

Kentucky,[6] Texas,[7], West Virginia,[8] Washington State[9] and New Mexico[10] expressly state that the state board of education must approve the rules and regulations promulgated by associations administering interscholastic athletics.

North Carolina,[11] Iowa[12] and Delaware[13] require state athletic associations to comply with the rules and regulations promulgated by the state board of education concerning the administration of interscholastic athletics.

New Jersey[14] requires state athletic associations to submit their charters and by-laws to the State Commissioner of Education for approval. California[15] statutes expressly state that the California State Department of Education shall oversee the California Interscholastic Federation and review its rules and regulations to assure compliance with state and federal laws and regulations.

South Dakota[16] statutes require local school boards, which are state agencies, to ratify the rules and regulations of state athletic associations.

Four states have, in essence, regulated athletic associations through statutes or regulations. The states of

Alaska[17] and New York[18] have both created regulations which govern athletics and the state athletic associations are essentially a part of the state department of education. Nevada[19] has passed state statutes requiring state athletic associations to adhere to state procedures for adopting rules and regulations, and reviewing disputes. The statutes also require that membership be provided to private or parochial schools. The State of Kansas[20] has promulgated statutes that regulate the structure of representation, the penalties, compliance, and the appeals process of any association administering athletics in the state.

Twenty-two states regulate state athletic associations to some degree.

CASE LAW AND VHSL REGULATIONS

1. Authority to Regulate Membership

The exclusion of private/parochial schools from membership in state athletic associations or local athletic conferences has been upheld by state supreme courts, federal district courts and the 3rd, 4th, and 8th United States Circuit Court of Appeals, under specific circumstances.

Challenges to the exclusion of private/parochial schools from membership in state athletic associations have been based upon the following strategies:

A. Exclusion from state athletic associations is a violation of the First Amendment right to the free

exercise of religion, since the exclusion is based on religion and students are penalized for practicing their religion. These penalties take the form of increased travel, lack of press coverage and reduced chances of obtaining a scholarship.[21]

B. Classification of schools based on religion is a violation of the equal protection clause of the Fourteenth Amendment. Therefore, legislation or state action based on such a classification is constitutionally impermissible.[22]

In response to the challenges, the courts clearly stated:

A. There is no fundamentally protected or guaranteed right to participate in interscholastic activities.[23]

B. The exclusion of parochial/private schools from athletic associations or conferences does not infringe upon the constitutionally protected right to the free exercise of religion. Any burden, which is a result of such exclusion, is minimal in comparison to the legitimate interest that exists in the regulation of athletic competition.[24]

C. The state may grant the secular benefits that public school children receive, to parochial school children, but they are not required to do so. The state is required to enact legislation neutral to religion in both motive and effect.[25]

D. Classifying schools as public vs. parochial/private is not a suspect classification. The classification is rationally related to a legitimate state interest, the regulation of interscholastic athletics to maintain competitive balance, discourage recruiting, and aid in the enforcement of transfer rules[26]

E. Also, a real difference exists between parochial and private schools in terms of attendance zones.[27]

F. Holy Cross College illustrates that problems with the recruiting of students are real concerns and do constitute a legitimate state interest.[28]

2. Bonafide Student

The courts consider rules regulating the conduct of interscholastic athletes to be a legitimate interest[29] and will not invalidate such rules unless they are unreasonable and/or arbitrary.[30] In order to be considered reasonable, such rules should regulate behavior related to the

efficiency and management of the school,[31] and should concern the behavior of the athlete during the school year.[32] The courts will uphold rules specifying unacceptable behaviors or generally referring to "unbecoming behavior."[33]

Such matters are usually decided in state courts, and several state supreme courts have uniformly upheld good conduct regulations, even though some lower courts have ruled for the student. If a federal issue is raised, such as the right to participate, a federal district court may decide to hear the case.

3. Age Rules

Age rules neither deny due process nor do they create suspect classifications. Such rules do not deny due process since neither participation in athletics[34] nor expectation of a scholarship[35] is an entitlement protected by the constitution. Classifications based on age, pass rational judicial review since they are related to legitimate state interests,[36] such as minimizing potential injury by prohibiting older, more skilled and mature nineteen year-olds from participating with younger students[37] and deterring red-shirting.[38]

The VHSL age rule can be expected to withstand legal challenge and is within the authority of the VHSL to maintain and enforce.

4. Academic Progress Rules

The courts have agreed that the promulgation of eligibility rules, which grant students a definite number of years of athletic eligibility, usually four, or eight consecutive semesters of eligibility starting when they successfully complete the eighth grade, are rationally related to legitimate state interests,[39] such as:

A. assuring fair competition;[40]

B. reducing the hazards inherent when an older, more skilled player participates with less mature, developed and skilled younger players;[41]

C. allowing a definite number of years of participation so more students can participate;[42] and

D. deterring the pressuring of students to "red-shirt."[43]

Some associations grant exceptions for hardships, but unless the hardship caused by the enforcement of the semester rule is harsh and damages the student, the courts normally let the rule stand. Specifically, when the enforcement of the semester rule hinders the social rehabilitation of a student with a prior problem with juvenile delinquency[44] or the rehabilitation of a student with psychological problems,[45] or when illness or injury hampers a student's progress[46] some courts have waived the

semester rule. Courts normally adhere to a judicial policy of nonintervention in the affairs of athletic associations, absent fraud, collusion or arbitrary action.[47]

The case of DeKalb County Schools v White[48] illustrated the need for such rules.

5. Sportsmanship Rules

Sportsmanship rules have been challenged by both participants and fans. Participants who have been prohibited from competition because of unsportsmanship like conduct, have challenged such rules as excessive and in violation of due process.[49] Fans who have been banned from attending athletic contests have challenged sportsmanship rules on the grounds that they are humiliating and deny them the right to associate with family and friends.[50]

The courts have upheld the rules, stating there is no property right in athletic participation[51] or attendance at such events.[52] The courts have further stated that the associations have the right to place nondiscriminatory limitations upon behavior at athletic events.[53]

6. Independent Team Rules

Association rules restricting the participation of high school athletes on independent teams have been challenged in state courts, on the grounds that such rules violated the due process and equal protection clauses of the Fourteenth

Amendment,[54] and restrained students from pursing interests.[55] However, the courts have ruled that unless such rules are fraudulent, arbitrary, unreasonable,[56] or violate constitutional rights,[57] the courts should not intervene. The courts stated again that there is no property right involved in participation in athletics.[58]

Such rules are considered to be rationally related to legitimate state interests, such as:

A. the deterrence of the pressure to specialize, overemphasize sports, or exploit students;[59]

B. the prevention of inequities due to wealth or geography;[60] and

C. the insurance of safe conditions, avoidance of overtraining, and maintenance of team loyalty.[61]

7. Summer Camp Rules

Based on a review of related litigation, it appears that regulations designed to control student participation in specialized sports camps are rationally related to a legitimate state interest and, therefore, upheld in court. These state interests have been stated as:

A. the need to maintain a competitive balance between wealthy and less fortunate students and schools;

B. the need to prevent the exertion of undue pressure on students;

C. the avoidance of conflict between camper and coach;[62]

D. the need to keep athletics in the proper perspective; and (5) the need to eliminate the pressure exerted by parents, coaches, communities and the media on athletics.[63]

The courts have declared that such rules do not violate the fundamental rights of family choice and, therefore, are to be evaluated using rational scrutiny, not strict scrutiny.[64] Neither do such rules violate the restraint of trade acts nor do they interfere in contractual relationships between campers and operators.[65]

Therefore, such rules are a legitimate exercise of the authority of state athletic associations.

8. Academic Standards Rules

Recently, state courts have ruled that the promotion of academic excellence is a legitimate state interest, and may even be a compelling state interest, depending on the state constitution.[66] Both state and local boards of education have the authority to implement regulations requiring students to attain a specific standard of academic achievement in order to be eligible to participate in interscholastic athletics. State boards of education, which are usually granted the authority to generally supervise schools, can promulgate minimal academic standards.[67] Local

boards, usually granted the authority to control, manage, and regulate schools, can promulgate detailed regulations in accordance with state board regulations, but they cannot impede the intent of state regulations.[68] Since the promotion of academic achievement is a legitimate state interest, and since local school boards can delegate the administration of athletics to state associations, such associations could promulgate academic rules, within the same restraints applying to local school boards.

Such academic or scholastic rules have been challenged on the grounds that state boards and local boards lack the authority to promulgate such rules.[69] Challenges have also been based on alleged violation of both the due process clause and equal protection clauses of the Fourteenth Amendment.[70] The challenges have not been upheld.

9. Physical Condition Rules

Recent cases contesting the application of rules requiring a student to be approved for athletic competition by a school district physician have been successfully challenged. These successful challenges were based on Section 504 of the Rehabilitation Act of 1973,[71] P.L. 94-142[72] and applications of state law.[73] The success of the challenges depended on:

A. the nature of the handicap;[74]

(2) the possibility of further harm;[75]

(3) the provision of special safety equipment;[76] and

(4) expert testimony on behalf of the plaintiff.[77] However, the state can exclude a handicapped student from participation if there is a substantial state interest in such an exclusion.[78] The courts generally balanced the interest the individual had in participation and weighed the harm he would suffer if excluded, against the harm the association might endure if the student were allowed to play.[79]

One court said that claims based on Section 504 of the Rehabilitation Act of 1973 are more likely to be successful than challenges based on the equal protection clause.[80] Adherence to P.L. 94-142 definitely takes precedence over the adherence to the rules of state athletic associations, such as transfer rules.[81] The challenges were successful in both state and federal courts.

10. Title IX

Challenges to sex-based classifications in interscholastic athletics have been based upon alleged violations of the equal protection clause of the Fourteenth Amendment, violations of Title IX of the Education Amendments of 1972 and accompanying regulations, and state equal rights amendments. There has been general agreement among the courts.

Sex-based classifications must withstand middle level scrutiny, as opposed to rational scrutiny or strict

scrutiny. This means sex-based classifications must be substantially related to a state interest. The test of middle level scrutiny requires the courts to identify the nature of the classification, the individual interest affected and the governmental interest asserted in support of the classification.[82]

In adjudicating cases involving sex-based classifications, the courts have generally agreed upon the following:

A. Females cannot be denied participation on male teams in noncontact sports, if no team is provided for females.[83] Such an action constitutes a deprivation of equal protection and violates the spirit of Title IX.

B. If separate teams are provided for both sexes, members of the opposite sex may be excluded from participation on any team, except the team provided for his/her gender. For example, if boys and girls basketball teams are provided, girls may not participate on the boys team and vice-versa. Such a rule is usually interpreted to be substantially related to the state interest of providing increased athletic opportunities for females.[84]

C. If a team is provided for females, and a corresponding team for males does not exist, the

prohibition of male participation is usually upheld. The rule is usually interpreted as being substantially related to a state interest to provide increased opportunities for female participation to correct past discrimination.[85] A few courts have disagreed,[86] and considered such rules in violation of equal protection.

There is disagreement between some federal district courts and circuit courts, concerning the application of different rules to male and female basketball teams. A district court declared such rules unconstitutional and did not find a substantial relationship to a legitimate state interest.[87] The Sixth Circuit Court of Appeals of the United States took a more conservative approach and declared that such rules were related to the physiological difference between the sexes and determined there was a substantial relationship between the rules and providing for those differences.[88] Courts have determined that when limited facilities cause a boys and girls sport to operate in different seasons, it is allowable, provided one season does not offer benefits over the other.[89] For example, boys basketball teams play in the winter, while the girls play in the fall or winter. Such an arrangement is fine as long as neither season affords benefits over the other.

Generally the courts have determined that their role is to determine whether sex-based classifications are substantially related to a legitimate state interest, not if the classification is the best or most effective method of meeting governmental objectives.[90]

11. Transfer Rules

Challenges to transfer rules are usually based on charges that the association was arbitrary or capricious,[91] denied due process[92] or violated the equal protection clause.[93] Such challenges have been brought in both state and federal courts. However, federal courts dismissed cases based on either the misapplication of state rules or arbitrary action for lack of jurisdiction, and only heard cases based on federal issues, such as matters of due process or equal protection.

Generally state and federal courts have considered state athletic associations to be "voluntary" associations performing a quasi-governmental function, supported by money derived from public funds, and utilizing facilities constructed and maintained by public funds.[94] Therefore, the courts have considered the actions of such associations to constitute state action, reviewable in terms of the Fourteenth Amendment of the Constitution and corresponding amendments in state constitutions.

State and federal courts utilized the same rationale in determining whether or not transfer rules violate equal protection of the law or the due process clause. When called upon to determine if there is a violation of equal protection, the courts have applied rational scrutiny to determine if the regulation was rationally related to a legitimate state interest, and if the rule was equally applied to everyone.[95] The courts have generally agreed that transfer rules are rationally related to a state interest, the deterrence of recruiting and athletically motivated transfers.[96]

Generally state courts have expressed the opinion that no constitutionally protected property right or entitlement existed in either participation in interscholastic athletics[97] or the speculative possibility of an athletic scholarship.[98]

State appellate and supreme courts have not ordinarily intervened in the affairs of state athletic associations or overruled the decisions of administrative boards unless there was evidence of fraud, collusion, or arbitrary and capricious acts.[99] These courts stated that it was the state athletic association's role to determine hardships and exceptions to the transfer rule, not the courts.[100] If an association granted hearings in the case of appeals, the hearing board, executive secretary or others involved should

not discuss their intended vote or lobby for votes. Such behavior has been considered collusion, arbitrary and capricious.[101] Such hearings should adhere to the dictates of administrative law regarding fair hearing procedures.

The state courts have stated that transfer rules must be determined to apply equally to interstate and intrastate transfers in order to be in compliance with equal protection clauses.[102] Most of the state courts have determined that the interest of the state in controlling recruiting and deterring athletically motivated transfers outweighed any incidental or minimal infringement on the right to travel or attend parochial schools.[103] Only the Supreme Court of Texas ruled that transfer rules were in violation of the equal protection clause and arbitrary because they presumed all transfers from outside an existing district were athletically motivated.[104] The Supreme Court of Indiana has expressed concern about transfer rules and called them overbroad while overturning such a rule.[105] Usually state appellate and supreme courts have been conservative in their reviews, and have applied rational review to issues involving transfers. The lower courts were more activist, and interventionist, applying the standards of strict review or their own rationale.

Federal district courts have dismissed cases which challenged the transfer rule because they lacked

jurisdiction in such cases, unless federal issues were raised. The federal courts have also refused to hear cases concerning the arbitrary or capricious actions of state associations. The courts ruled there is a constitutionally protected property interest or entitlement to an education, but not to the components of an education, such as interscholastic athletics.[106] No federal issue exists and, therefore, there is no guarantee of due process. However, the investigative or full hearings provided by most state associations, some of which include counsel and cross-examinations, would easily fulfill any requirements of procedural due process that might exist.

The United States Circuit Courts of Appeal have also stated that issues such as the application of transfer rules, the determination of exception to the transfer rule due to hardships or unavoidable circumstances, and the delegation of authority to state associations are not federal issues and the federal courts lack jurisdiction in such cases.[107] The only issues that raised federal questions are sexual discrimination, invasion of marital privacy, alienage discrimination, racial discrimination and restrictions to the exercise of religious beliefs.[108] The regulation of interscholastic athletics falls within the discretion and jurisdiction of the states.[109]

Federal courts have concurred with the opinion of state courts, and stated that the minimal burden on rights, such as the right to travel, are justified due to the state's legitimate interest in regulating athletics and such burdens are not unconstitutional.[110]

12. The Right to Participate

The majority of courts agree that participation in athletics is not a property right, interest or entitlement protected by the Fourteenth Amendment of the United States Constitution.

The majority of state courts have said:

A. participation in interscholastic sports is not a protected liberty or property interest;[111]

B. participation is a privilege, not a right or an interest;[112] or

C. eligibility is not a "vested" right.[113]

The courts have also stated on several occasions that there is no property right in the speculative possibility of attaining or competing for an athletic scholarship.[114]

Two minority points of view express a different interpretation of the relationship of participation in interscholastic athletics to property interests. The Supreme Court of Nebraska expressed the opinion that a student has significant interests in athletic participation that could be within the limits of constitutional

protection.[115] The Supreme Court of New Hampshire said the economic and educational benefits enjoyed by those who participate in sports were an entitlement created by state laws and regulations and therefore, participation was protected by the state constitution.[116] This court also pointed out that property interests are often intangible, dynamic and created by the state.[117]

The federal district courts, without exception, found no property right in either participation, eligibility, or the speculative possibility of a scholarship. Some courts have simply said athletic participation is neither a protected right nor an interest;[118] or participation in athletics is a mere expectation that does not rise to the level of a constitutionally protected entitlement.[119] One court offered an interesting opinion when it stated there is no protected property interest in the separate components of the educational process, but <u>total</u> exclusion from all extracurricular activities for a lengthy period might constitute deprivation of an interest sufficient enough to invoke due process.[120]

The 5th, 3rd, 1st, 10th and 4th United States Circuit Courts of Appeal agreed that participation in interscholastic athletics is not a constitutionally protected property right. The 5th Circuit said participation in athletics is merely an expectation, not a

claim of entitlement.[121] The 4th Circuit ruled that neither athletic participation nor the speculative possibility of a scholarship are fundamental rights protected by the Constitution.[122]

Therefore, any requirement to provide due process before denying participation in athletics would be based on the interpretation of state statutes, not federal statutes or federal court decisions, excluding cases involving Title IX or the handicapped.

THE SURVEY

An examination of all responses revealed that a majority or plurality of all subgroups agreed upon or shared the same opinion on 14 of 30 questions. An examination of the 16 items in the questionnaire which did not illustrate agreement among subgroups, but illustrated disagreement, revealed that a majority or plurality of principals and superintendents agreed or shared the same opinion of 12 of these 16 items. A majority or plurality of school board chairmen and legislators expressed the same opinions on 7 of the 16 items which illustrated disagreement among subgroups. However, the low response rate of legislators disallows generalizations or inferences based on the response of legislators. Most school board chairmen and legislators expressed the opinion that parochial schools should be granted membership in the VHSL and had no idea whether or

not the VHSL imposed penalties which are considered to be appropriate.

Three issues illicited disagreement on the part of one subgroup. Only principals expressed the opinion that the VHSL should have the authority to pass rules and regulations which are binding upon local school boards. Most of the members of all subgroups, except school board chairmen supported the use of fines by the VHSL. Most school board chairmen did not support the use of fines. Most principals favored the use of a VHSL appointed board as an appeals board. Most members of the other subgroups disagreed and supported the use of an impartial board.

Authority

A majority or plurality of all subgroups agreed on four issues concerning the authority of the VHSL. These issues were:

1. the VHSL should not determine the qualifications of coaches;
2. the VHSL should determine the academic standards students should meet in order to be eligible to participate in athletics;
3. the VHSL should have the authority to impose probation; and
4. the VHSL should have the authority to impose prohibition.

A majority or plurality of principals and superintendents expressed the same opinion on two additional items, which did not illustrate agreement among subgroups. Most principals and superintendents expressed the opinion that:

1. parochial schools should not be admitted to the VHSL; and
2. the penalties imposed by the VHSL are appropriate.

Performance

Most respondents in all of the subgroups expressed opinions indicating their satisfaction of the performance of the VHSL. A large majority of the respondents in all subgroups reported that they received less than five complaints last year concerning the VHSL. A majority or plurality of the respondents in all subgroups reported satisfaction with the VHSL's administration of athletics, and a large majority of the respondents in all subgroups graded the VHSL's performance average or better. However, a majority of respondent school board chairmen and a plurality of respondent legislators believe the VHSL should be studied by an outside agency to assess the need for reorganization while a majority of both respondent principals and superintendents oppose such a study.

Governance

A majority of respondents in all subgroups agreed that the VHSL should not be supervised and overseen by a state agency. The majorities varied from large majorities of principals and superintendents to a slight majority of both legislators and school board chairmen. A large majority of responding principals, superintendents and school board chairmen agreed that the VHSL should operate independently of any university or college, and a slight majority of legislators concurred.

The modal responses of respondent principals and superintendents indicate that most perceive athletic directors, coaches, and local superintendents (professionals) to have an advisory role in the governance of the VHSL, while citizens, local school boards, legislators and the State Department of Education are perceived to have slight input in the governance of the VHSL. The modal response of respondent legislators indicate that most legislators perceive athletic directors to have strong input, citizens and legislators to have no input, coaches and superintendents to have moderate input, and school boards and the State Department to have slight input into the governance of the VHSL. The modal responses of school board chairmen indicate agreement with most legislators on the perceived degree of input in governance

of the VHSL on the part of athletic directors, citizens and coaches. The modal responses concerning the input of legislators and the State Department indicated that most school board chairmen had no idea of the input exercised by legislators or the State Department and expressed the opinion that school boards had no input into the governance of the VHSL.

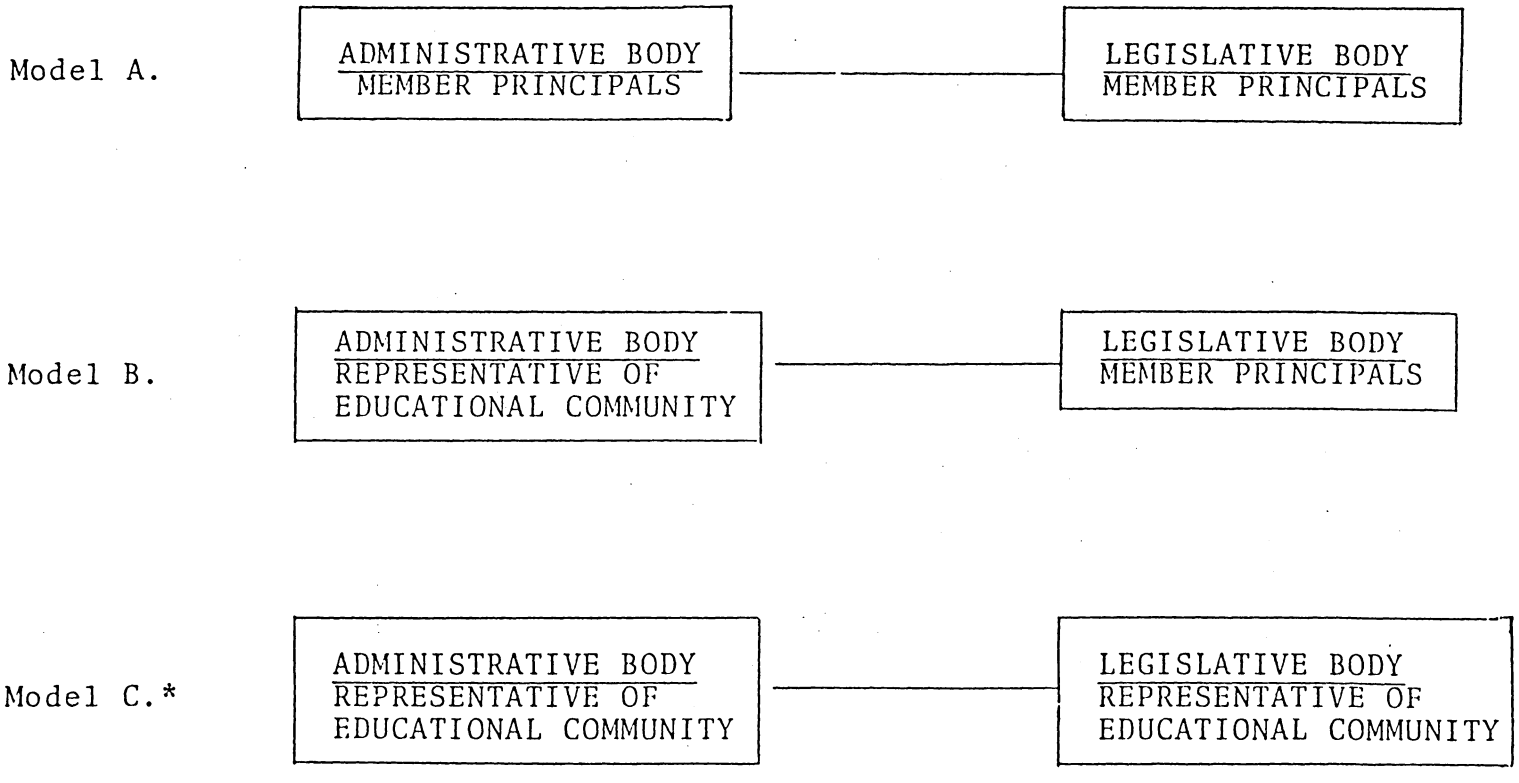
The modal responses of respondent subgroups, when asked how much input in governance groups should have, indicated that most respondents believed local school boards and the State Department of Education should have an advisory role. However, the modal response of respondent school board members indicated that most of them believe they should have a strong role in the governance of the VHSL and participate in the legislative process. The modal response of legislators also indicates that most of this group believes they should have an advisory role in the governance of the VHSL. The modal responses of school board chairmen and legislators indicate that most of them believe citizens, legislators, local school boards and the State Department should have more active roles in the governance of the VHSL. The modal response of principals and superintendents indicates they believe school boards should have more input into the governance of the VHSL.

A SAMPLE OF THE STRUCTURE OF THE GOVERNANCE OF INTERSCHOLASTIC ATHLETICS

A review of the handbooks of a sample of state athletic associations illustrated a great deal of variety in the governance of interscholastic athletics. Generally, the variety is due to the make-up of the administrative body or the legislative body. Either or both bodies may be composed exclusively of principals or a combination of principals, superintendents, assistant superintendents, athletic directors, coaches or other elements within the educational community.

Three generic structures can be identified within the sample (see Figure 5-2). The first structure is the most conservative. Both the administrative and legislative bodies are composed of member school principals. It appears this structure is used by the state athletic associations in Illinois and Vermont.

The second structure identified consists of an administrative body composed of a variety of representatives from the educational community such as: superintendents, state department officials, school board members, coaches, athletic directors, and sponsors of a variety of extracurricular activities. The legislative body was composed of principals. This structure is evident in Wyoming and to some extent in Massachusetts.



*VHSL is in this group.

Figure 5-2. Three Generic Models of the Structure of State Athletic Associations

The third structure involved an administrative and legislative body, both composed of the representatives of various segments of the educational community. The degree of representation varies from an administrative body composed of principals, superintendents and school board members, to a combination of principals, superintendents, school board members, coaches, athletic directors and sponsors. This appears to be the structure of the athletic associations in South Carolina, Kansas, Michigan and Georgia. The VHSL also exhibits this type of organizational structure and is one association that exhibits one of the largest cross-sections of representation on either administrative or legislative bodies. The VHSL was the only association with a citizen serving on either the legislative or administrative bodies.

Just as the structure varied among the associations reviewed, the due process provided varied also. Essentially the variance existed in: (1) who could appeal a decision; (2) what issues or decisions could be appealed; and (3) how extensive and "impartial" was the hearing offered. Some associations restrict the right to appeal to students, while others allow any party aggrieved by a decision of the association to appeal. Some associations allow for appeals only on specific issues, such as eligibility, while other associations allow appeals on any decision that may have an

adverse effect on the parties involved. Finally, some associations provide minimal due process consisting simply of notice, a hearing and appeals before an association selected board. Other associations provide for an extensive hearing, allowing for representation by counsel, cross-examination, an impartial appeals board and recordings of the hearing.

Open-ended Comments

Twenty-five respondents offered additional comments in the space provided on the questionnaire. The remarks generally reflected the sentiments expressed throughout the questionnaire. Principals and superintendents were the most supportive, while school board members appeared the most critical.

Principals expressed the need to keep politicians, the state board, and state department of education out of VHSL affairs. Superintendents reflected the sentiments of principals. Legislators criticized finances and scheduling. School board members were the most critical.

Some of the criticisms offered concerned: (1) an insensitivity to rural schools; (2) "high-handed" policy making; (3) unfair treatment; (4) too much power in the hands of too few people; (5) policy in conflict with school board policy; (6) poor communications and public relations; and (7) the VHSL is run by a "good ole boy" network.

CONCLUSIONS

What is the Legal Basis and Source Of the VHSL's Authority?

The Constitution of Virginia grants the General Assembly plenary power over education. Through constitutional provisions and state statutes, the Commonwealth has delegated the general supervision of the public schools to the State Board of Education. This means the State Board of Education has the authority to effect policy that might generally supervise interscholastic athletics by establishing minimal requirements or standards. This also means the State Department of Education may promulgate regulations, corresponding to state board initiatives, which accomplishes this general supervision.

The Constitution and state statues also grant to local school boards the authority to supervise the schools in their division. This grant of authority has been interpreted by both federal and state courts to mean local school boards, and only local school boards, are responsible for the day-to-day operations of the schools. Neither the State Board of Education nor the State Department may promulgate rules and regulations controlling the day-to-day operations of schools. Only the General Assembly may supersede local school board authority. This is an implied grant of authority, and means that local school boards have

the authority necessary to fulfill this responsibility. The authority to delegate ministerial authority to subordinate agencies is an example of this implied grant of authority. Local school boards have chosen to exercise their implied authority to supervise interscholastic athletics by delegating the ministerial duty to administer interscholastic athletics to the VHSL through their local schools. Therefore, the authority of the VHSL to administer interscholastic athletics has been legally delegated to the VHSL by local school boards. Such a delegation of authority is both appropriate and common.

How Does the VHSL's Authority Compare to the Authority of State Athletic Associations?

The majority of state athletic associations have also been delegated the ministerial duty to supervise interscholastic athletics, based on the implied authority of local school boards to supervise, regulate, control and manage their local school. A minority of states expressly grant local school boards the authority to delegate the ministerial duty to supervise athletics to state athletic associations. Almost all such states also regulate state interscholastic athletic associations in some manner.

Such associations may be required to submit their rules and regulations to a state agency for approval, or they may be regulated by state statute concerning either a specific

issue or all aspects of the associations. Since the supervision of the schools within a division is a responsibility granted to local school boards in Virginia, any change in the current arrangement, which would require a state agency to supervise the VHSL would require a revision of state statutes and an amendment to the state constitution.

How Do VHSL Rules and Regulations Compare To Existing Case Law?

As a delegate of local school boards, the VHSL has administrative/executive, legislative and judicial functions. The VHSL may promulgate regulations necessary to carry out the ministerial duties required in the administration of athletics. Since such action is portrayed by the VHSL as a result of its delegated duties, and such action is related to a state interest, the action of the VHSL is considered to be state action. These state actions can be reviewed by the courts. The courts have said that the rules and regulations of state athletic associations must be reasonable, they must be rationally related to a legitimate state interest and they may not infringe upon state or federal constitutional rights.

The present rules and regulations of the VHSL concerning the following areas comply with the opinions and interpretations of the majority of courts and could withstand legal challenges:

1. the exclusion of parochial schools from membership in the VHSL;
2. the regulation of athletic eligibility based on conduct, age, academic achievement, sex and handicaps or physical and emotional condition;
3. the regulation and rules effecting students who transfer from one district to another;
4. the regulation of the behavior of fans, participants, coaches or officials associated with athletic contests; and
5. the regulation of the participation of students on independent teams or in summer camp.

Generally, legal challenges to the authority of state athletic associations, such as the VHSL, concerning the internal operations of the association or the rules of the association must be filed in state courts. The federal courts will rule that they lack jurisdiction in such cases, unless the case raises a constitutional issue, such as discrimination based on sex, alienage, or race; or concerns interference with fundamental constitutional rights, such as the right to practice ones chosen religion, or travel between states. The federal courts have ruled there is no constitutionally protected right to participate in athletics and will not hear cases based on such a legal challenge. Exceptions may exist because property rights and

entitlements are created by state constitutions or statutes, and some states may create such property rights.

How Do Educators and Policymakers Evaluate and Perceive the Authority of the VHSL?

Based on the responses of participating superintendents, principals, legislators and school board chairmen, specific issues concerning the authority of the VHSL are not supported by specific subgroups. A majority of respondent principals expressed the opinion that the VHSL should have the authority to pass regulations binding upon local school boards. A majority of respondent school board chairmen expressed the opinion that the VHSL should not be allowed to impose fines as a penalty. A majority of respondent principals expressed the opinion that a VHSL appointed board should hear appeals, rather than an impartial board as favored by a majority of the respondents of the other subgroups. A large majority of principals and superintendents support the exclusion of parochial schools from the VHSL, while a majority of respondent school board members and legislators disagreed. A majority of all the respondents in each subgroup agreed upon certain issues, and support the authority of the VHSL to determine academic eligibility standards and impose probation as penalties.

Who Governs the VHSL?

The VHSL is governed by a legislative body called the Legislative Council, which consists of the entire membership and representatives of a cross-section of the educational community. The representatives are:

1. two representatives each from the State Department of Education, the division superintendents, and the Virginia School Boards Association; and
2. one citizen, male supervisor of athletics and one female supervisor of athletics.

Theoretically, every member of the Legislative Council has a strong influence on the VHSL. These members vote on every issue, and propose legislation. However, in practice, principals control the council since they compose the overwhelming majority of the council. The representation of these diverse groups does give them the opportunity to introduce legislation that may have been formulated by their respective group, e.g. superintendents or school board members. They may assertively lobby and persuade other members of the council to support such legislation. If school boards and superintendents assertively and collectively discuss the issues and legislation with their principals, they could successfully introduce and pass legislation.

The representation of these groups on the council also provides a forum for the discussion of that group's concerns and sentiments. Therefore, in practical terms, principals govern the VHSL, and the groups represented on the council have the opportunity, if they organize and act assertively, to influence the VHSL.

How Does the Governance of the VHSL Compare to the Governance of Other Associations?

The VHSL is governed by a representative body, however, this body is not proportionately representative. This arrangement is not unusual among state athletic associations. Other associations may be governed by organizations which are: exclusively composed of principals, in both the executive or administrative body and the legislative body; composed of an executive body representing the different factions found within the educational community; or consisting of a representative executive and legislative body. The VHSL seems to provide one of the more representative structures in both bodies. However, some associations do have proportionately representative legislative bodies, and some associations allow members to elect either a principal, central office administrator, or superintendent to represent the member on the legislative or governing body.

What Alternatives to the Existing Structure Are Available?

There are alternatives to the existing structure of the VHSL which could be utilized to administer interscholastic athletics. Several of these alternatives involve state regulation of the VHSL. For example, interscholastic athletics could be controlled, regulated and managed by a state agency, in varying degrees, with an appropriate revision of state statutes. Based on the General Assembly's plenary power over education, they could adopt statutes that required any organization which administers interscholastic athletics to meet specific guidelines concerning the structure, function and procedures of the governing body.

The General Assembly could require, once again, with the appropriate change in state laws, that any association administering athletics adhere to guidelines developed by the state board of education or the state department of education. Or the General Assembly could require that the regulations of any agency or association administering athletics be approved by a state agency, such as the state board of education, state department of education, or even local school boards. Arrangements such as these exist in other states, but a majority of every subgroup of respondents does not favor such alternatives. Several alternatives could be implemented by local school boards.

Since local school boards possess the authority to "supervise" the day-to-day operations of the schools in their divisions, they could collectively exercise their authority and modify the administration of interscholastic athletics. The least radical action would be for the local school boards to modify their delegation of duties to the VHSL. For example, they could state that the VHSL has the authority to administer and manage athletics, with the exception of eligibility, and delegate the authority to determine eligibility regulations to the Virginia Association of School Boards. Local school boards could expressly grant local schools the authority to join an association for the purpose of administering interscholastic athletics, providing such an organizations by-laws or regulations are ratified by a specified percentage of school boards.

A more radical approach would be for local school boards, in a concerted effort, to refuse to delegate the duty to administer interscholastic athletics to the VHSL and either establish an organization under the control of the Virginia School Boards Association (VSBA) or delegate the duty to the VSBA. The VSBA could adopt the VHSL Handbook as their own, and modify those regulations or rules as they desired.

Another alternative would be for local school boards to establish their own organization, replicating the VHSL, and establishing a board of control. This board of control could be composed of a representative sample of the VSBA, or a representative sample from the VSBA and Virginia Association of School Administrators. The role of the board of control would be to approve all legislation formulated by the "association" before it could be enforced. A similar system exists in Massachusetts.

The other source of change or alternative solutions would be the VHSL, itself. The VHSL has made concessions to groups within the educational community in an attempt to maintain the status quo. They responded to the suggestions of the Task Force of '78 and increased the representation on the executive committee and adjusted the appeals process. The VHSL responded recently to the concern of the VASA, and modified the due process procedures enforced by the VHSL.

The VHSL has not operated in a vacuum and has responded to concerns expressed by other bodies, such as the VASA. However, the VHSL has also demonstrated it is capable of holding its own in the political arena, and successfully worked to defeat two resolutions in the General Assembly that called for the VHSL to be evaluated. If the VHSL thought it was in its best interests, it could make any modifications necessary to reduce dissatisfaction or

perceived problems. For example, the VHSL could initiate the formation of a board of control composed of school board members and superintendents, if it deemed such a move either beneficial or necessary.

The majority of all respondents and all subgroups oppose the concept of a state agency overseeing or supervising the VHSL. A larger percentage of principals opposed the concept compared to school board chairmen. Still, based on the results, one can conclude that most principals, superintendents, and board chairmen oppose the supervision of the VHSL by a state agency, such as the state department of education, or state board of education. Therefore, such an alternative would be neither well supported nor well received.

What is the Opinion of Educators and Policymakers Concerning the Governance of the VHSL?

It is obvious that principals do and should have strong input into the operation of the VHSL. According to the modal response of the respondent subgroups, athletic directors, coaches and superintendents are perceived to have moderate input or an advisory role in the governance of the VHSL. Citizens, legislators, local school boards and the state department, as indicated by the modal responses of subgroups, were perceived respondents as having slight input into the operation of the VHSL.

The modal response of all subgroups indicated that local school boards and the state department of education should have moderate input rather than slight input into the operation of the VHSL. It is interesting to note that the modal response of local board chairmen indicated that local school boards believe they have no input and thought they should have strong input into the operation of the VHSL. This means school board chairmen believe local school boards should have the opportunity to formulate legislation and policy. They wish to operate as the peers of the principals in the VHSL.

Does the VHSL Provide Adequate Due Process to Member Schools, School Boards, and Participants?

The VHSL offers students the right to seek exceptions to rulings concerning eligibility in terms of the transfer rule and the semester rule by filing an appeal with the Hardship Committee. Students who may be ineligible will be declared ineligible only after the principal conducts a hearing according to the due process standards set by the VHSL. Decisions involving penalties or protests rendered by district councils, sportsmanship committees, or conflicts can be appealed to an Appeals Committee. The decision of the appeals can be referred to the Executive Committee for review. Recently, a "super appeals" board, an external appeals board, was established to hear appeals.

The courts have said there is no property right or entitlement in the participation in interscholastic athletics. Even if there were, the appeals process, due process proceeding, and hardship hearings provided by the VHSL would easily fulfill any minimal due process requirements that would exist, if participation were a property right. However, such due process is available only to specific parties, rather than any party aggrieved by an action of the VHSL and is considered minimally adequate. In order to be totally adequate, any party aggrieved by any action of the VHSL, including school boards, should have access to the super appeals board.

Are Principals, Local Superintendents, Local School Board Chairmen and Legislators Dissatisfied With the Performance of the VHSL?

The results of a survey concerning the performance of the VHSL reflect overall satisfaction with the VHSL. Generally, the results indicated few complaints and above average "grades" assigned to the VHSL's performance by a majority of respondents in all subgroups. Further, a majority of respondents in all subgroups except school board members, disapprove of conducting a study to determine the need to reorganize the VHSL. However, an analysis of response by subgroup indicates a larger percentage of respondent principals and respondent superintendents are

satisfied than are respondent legislators or respondent school board members. The response rate of members of the General Assembly was too low to allow generalization or inference and may be attributed to either a lack of knowledge or concern.

What is the Source of Any Dissatisfaction That May Exist?

The source of dissatisfaction concerns power and authority. The modal response of respondent school board chairmen indicates most believe they have no input into the governance of the VHSL, but should have strong input. Strong input means an active role in the legislative and policy making process. The modal response of participating principals indicated most believed that school board members should have an advisory role. A slight majority of respondent principals also expressed the opinion that the VHSL should pass regulations binding upon local school boards.

This dissatisfaction on the part of most school board members could account for the dissonance found in the opinions expressed by respondent school board chairmen. A majority of the respondent school board chairmen rated the performance of the VHSL average or above, expressed satisfaction with the VHSL, reported few complaints being received concerning the VHSL, but expressed the opinion that

the VHSL needed to be studied to determine the need for reorganization.

How Can the Dissatisfaction Be Reduced or Resolved?

The following are recommendations of actions that could reduce dissatisfaction with the VHSL. The least radical approach to stem the feelings of dissatisfaction and impotency on the part of school board members would be for the VHSL to encourage the VSBA to take an active and assertive role in the administration of athletics, within the existing structure of the VHSL. Representatives of the VSBA who serve on the Legislative Council should discuss pending legislation with their membership and instruct members to discuss such legislation with their principals. This provides school boards with the opportunities to "influence" their principals and share their opinions with these principals. The VSBA could compose a formal opinion on legislation and ask the statements be either read to the Legislative Council or mailed to all member school principals. The VSBA could also request that the officials of the VHSL address the VSBA on a regular basis and respond to questions and concerns.

If such an approach, as outlined above, did not improve the situation, the VHSL could actively move to correct the situation by allowing school board members to take an active role in the governing process or at least promoting the

concept school boards have the right to appeal decisions of the VHSL. The later can simply be accomplished by allowing any party who is aggrieved or adversely effected by a decision of the VHSL to appeal the decision to the "super" appeals board. The former could be accomplished by altering the composition of the Legislative Council to include a larger percentage of school board members. One possible way to accomplish this would be to modify the legislative body so it is representative of the membership rather than all inclusive, and include school board members in the body.

An alternative approach would be for the VHSL to establish a board of control, composed of superintendents, school board members, and principals, to approve all legislation promulgated by the VHSL. This would make the VHSL accountable to educators, but would not involve the formal intervention of state agencies, such as the state board of education or state department. The formal intervention of such state agencies is not favored by the respondents.

If the VHSL is unresponsive to the concerns of school board members, local school boards possess the authority to remedy the situation. The local school boards have the authority to supervise the day-to-day operations of the schools within their respective divisions. They have elected to delegate the ministerial duties involved with the

administration of interscholastic athletics to the VHSL. They also possess the authority to rescind or modify that delegation of duty. The local school boards, in a concerted effort, could grant their respective schools the authority to join athletic associations that comply with restrictions and standards established by the VSBA. For example, local school boards could grant their schools permission to join an athletic association which submits its rules and regulations to the VSBA for approval, or to a specified board of control for approval. Local school boards could even, as previously mentioned, establish their own organization to administer interscholastic athletics through the VSBA. Any of the previously mentioned modifications would probably satisfy school board members and help resolve their feeling of dissatisfaction.

FOOTNOTES

[1]Oregon, Oregon Revised Statutes, 339.450.

[2]Louisiana, Louisiana Revised Statutes, 17:176(C).

[3]South Carolina,, South Carolina Code, 59-39-160.

[4]Florida, Florida Statutes, 232.425.

[5]Pennsylvania Pennsylvania Law, 5-511.

[6]Kentucky, Kentucky Revised Statutes, 156.070.

[7]Texas, Texas State Law, 21.921.

[8]West Virginia, West Virginia State Code, 18-2-25.

[9]Washington State, Revised Code of Washington, 28A.58.125.

[10]New Mexico, New Mexico States Annotated, 22-2-2(Q).

[11]North Carolina, General Statutes of North Carolina, 115C-47.(4).

[12]Iowa, Iowa Statutes, 280.13.

[13]Delaware, Delaware State Code, 122.b(18).

[14]New Jersey, New Jersey Statutes Annotated, 18 A:11-3.

[15]California, Annotated California Codes, 33352.

[16]South Dakota, South Dakota Law, 15-36-4.

[17]Alaska, Alaska Statutes, 14.07.058.

[18]New York, New York Code, Rules and Regulations, 135.4.

[19]Nevada, Nevada Revised Statutes, 386.420-470.

[20]Kansas, Kansas Statutes Annotated, 72-130 to 134.

[21]Valencia v Blue Hen Conference, 476 F. Supp. 809 (D. Delaware, Cir. 1979)

Denis J. O'Connell v VHSL, 581 F. 2d 81 (4th Cir. 1978)

Windsor Park Bapt. Church, Inc v Ark. Act. Assoc., 658 5.2d 618 (8th Cir. 1981).

[22]Christian Bros. Inst. v North N. J. Intersch. League, 432 A.2d 26 (New Jersey 1981).

Valencia v Blue Hen, supra.

Denis J. O'Connell v VHSL, supra.

[23]Valencia v Blue Hen, supra.

Denis J. O'Connell, supra.

[24]Valencia v Blue Hen, supra.

Denis J. O'Connell, supra.

Windsor Park, supra.

[25]Windsor Park, supra.

[26]Valencia v Blue Hen, supra.

Denis J. O'Connell, supra.

[27]Valencia v Blue Hen, supra.

Denis J. O'Connell, supra.

[28]Holy Cross College, Inc. v Louisiana High School Athletic Association, 632 F.2d 1287 (5th Cir. 1980).

[29]O'Connor v Bd. of Education, 326 N.Y.S. 2d 799 (New York S. Ct. 1970).

[30]Thompson v Barnes, 200 N.W. 2d 842 (Minnesota 1972).

[31]Bunger v Iowa High School Athletic Assoc., 197 N. W. 2d 555 (Iowa 1972).

[32]Ibid.

[33]Davis v Dauphine Sch. Dist. Bd., 466 F. Supp. 1259 (M.D. Pennsylvania 1979).

[34]Blue v University Interscholastic League, 503 F. Supp. 1030 (N. D. Texas 1980).

[35]Ex. Rel Missouri State High School Ath. Assoc. v Schoewlaub, 507S.W. 2d 354 (Missouri 1974).

[36]Blue, supra.

[37]Mahan v Agee, 652 P. 2d 765 (Oklahoma 1982).

[38]Ibid.

[39]Mitchell v Louisiana High School Athletic Assoc., 430 F.2d 1155 (5th Cir. 1970).

[40]Smith v Crim, 240 S.E. 2d 884 (Georgia 1977).

Mitchell v Louisiana, supra.

[41]Smith v Crim, supra.

[42]Ibid.

[43]PIAA v Geisinger, 474 A.2d. 62 (Pennsylvania Cmwlth. 1984).

[44]Florida H.S. Act. Assoc. v Bryant, 291 So. 2d. 636 (Florida App. 1975).

[45]PIAA v Geisinger, supra.

[46]Ibid.

[47]Alabama H.S. Ath. Assoc. v Medders, 456 So. 2d 284 (Alabama 1984).

Burtt v Nassau Co. Ath. Assoc., 421 N.Y.S. 2d 172 (New York S. Ct. App. 1979).

[48]DeKalb Co. Sch. System v White, 260 S.E. 2d 853 (Georgia 1979).

[49]Stock v Texas Catholic Interscholastic League, 364 F. Supp. 367 (N. D. Texas 1973).

[50]Watkins v Louisiana High School Athletic Assoc., 301 So. 2d 695 (Louisiana App. 1974).

[51]Stock v Texas Catholic Interscholastic League, supra.

Taylor v Alabama High School Athletic Assoc., 336 F. Supp. 54 (N. D. Alabama 1972).

[52]Watkins v Louisiana High School Ath. Assoc., supra.

[53]Ibid.

[54]Kubizyn v Alabama High School Ath. Assoc., 374 So. 2d 256 (Alabama 1979).

Caso v New York State Public High School Ath. Assoc. Inc., 434 N.Y.S. 2d 60 (New York S. Ct. 1980).

[55]Brown v Wells, 181 N.W. 2d 708 (Minnesota 1970).

[56]Ibid.

[57]Dumez v Louisiana High School Ath. Assoc., 334 So. 2d 494 (Louisiana App. 1976).

[58]Caso v NYSPHSAA, supra.

[59]Brown v Wells, supra.

[60]Texas High School Gymnastics Coaches Ass'n. v Andrews, 532 S.W. 2d 142 (Texas Civ. Appl. 1976).

[61]Caso v NYSPHSAA, supra.

[62]Art Gaines Baseball Camp, Inc. v Houston, 500 S.W. 2d 735 (Missouri App. 1973).

[63]Kit v Marshall, 661 F. 2d 1027 (5th Cir. 1981).

[64]Ibid.

[65]Art Gaines Baseball Camp, Inc. v Houston, supra.

[66]Bailey v Truby, 321 S.E. 2d 302 (West Virginia 1984).

[67]Ibid.

[68]Ibid.

[69]Ibid.

[70]Ibid. Texas Supreme Ct. Case, unavailable presently.

[71]Grube v Bethlehem Area School District, 550 F. Supp. 418 (E.D. Pennsylvania 1982).

[72]Doe v Marshall, 459 F. Supp. 1190 (S.D. Texas 1978).

[73]Kampmeir v Harris, 441 N.Y.S. 2d 744 (New York S. Ct. 1978).

[74]Columbo v Sewanhaka Central High School District, 383 N.Y.S. 2d 518 (New York S. Ct. 1976).

[75]Kampmeir v Harris, supra.

[76]Kampmeir v. Harris, supra.

Grube v Bethlehem, supra.

[77]Kamapmeir v Harris, supra.

Grube v Bethlehem Area School District, supra.

[78]Kampmeir v Myquist, 533 F. 2d 296 (2d Cir. 1977).

[79]Doe v Marshall, supra.

[81]Doe v Marshall, supra.

[82]Gilpin v Kansas State High School Association, Inc., 377 F. Supp. 1233 (D. Kansas 1974).

[83]Reed v Nebraska School Activities Assoc., 341 F. Supp. 258 (D. Nebraska 1972).

[84]Ritacco v Norwin School District, 361 F. Supp. 930 (W.D. Pennsylvania 1973).

[85]Clark v Arizona Interscholastic, 695 F. 2d 1126 (9th Cir. 1982).

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

[87]Dodson v Arkansas Activities Association, 458 F. Supp. 394 (E.D. Arkansas 1979).

[88]Cape v Tennessee Secondary School Athletic Assoc., 563 F. Supp. 659 (6th Cir. 1977).

[89]Striebel v Minnesota State High School League, 321 N.W. 2d 400 (Minnesota 1982).

[90]Clark v Arizona Interscholastic, supra.

[91]Sullivan v University Interscholastic League, 616 S.W. 2d 170 (Texas 1981).

[92]Sullivan v University Interscholastic League, supra.

Chabert v Louisiana H.S. Ath. Assoc., 323 So. 2d 774 (Louisiana 1975).

Whipple v Oregon School Activities Assoc., 629 P. 2d 386 (Oregon App. 1981).

Herbert v Ventetuolo, 480 A. 2d 403 (Rhode Island 1984).

Kulovitz v Illinois High School Ass'n., 462 F. Supp. 875 (N. D. Illinois 1978).

[93]Chabert v Louisiana H. S. Ath. Assoc., supra.

Herbert v Ventetuolo, supra.

Kulovitz v Illinois High School Ass'n., supra.

[94]Crandall v North Dakota High School Activities Ass'n., 261 N.W. 2d 921 (North Dakota 1978).

[95]Herbert v Ventetuolo, supra.

Kentucky High School Athletic Assoc. v Hopkins County Bd. of Education, 552 S.W. 2d 685 (Kentucky App. 1978).

Mozingo v Oklahoma Secondary School Act. Ass'n., 575 P.2d 1379 (Oklahoma App. 1978).

Cooper v Oregon School Activities Assoc., 629 P. 2d 386 (Oregon App. 1981).

[96]Sanders v Louisiana H. S. Ath. Ass'n., 242 So. 2d 19 (Louisiana App. 1970).

Scott v Kilpatrick, 237 80.2d 652 (Alabama 1970).

Mozingo v Oklahoma Sec. Sch. Act. Ass'n., supra.

Crandall v North Dakota High School Activities Ass'n., supra.

[97] In Re. U.S. Ex Rel. Missouri State High Sch., 682 F. 2d 147 (8th Cir. 1982).

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

Laurenzo v Mississippi High School Act. Ass'n., Inc., 662 F.2d 1117 (5th Cir. 1981).

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

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

Whipple v Oregon School Activities Assoc., supra.

Sanders v Louisiana H.S. Ath. Ass'n., supra.

[98]Scott v Kilpatrick, supra.

[99]Alabama High School Athletic Assoc v Rose, 446 80.2d 1 (Alabama 1984).

Scott v Kilpatrick, supra.

Kentucky High School Athletic Assoc. v Hopkins County Bd. of Education, supra.

Mozingo v Oklahoma Secondary School Act. Ass'n., supra.

[100]Mozingo v Oklahoma Secondary School Act. Ass'n., supra.

[101]Alabama High School Athletic Assoc. v Rose, supra.

[102]Sturrup v Mahan, 305 N.E. 2d. 877 (Indiana 1974).

[103]Cooper v Oregon State Activities Assoc., supra.

[104]Sullivan v University Interscholastic League, supra.

[105]Sturrup v Mahan, supra.

[106]Kulovitz v Illinois High School Ass'n., supra.

[107]Albach v Odle, supra.

[108]Ibid.

[109]Ibid.

[110]Walsh v Louisiana High School Athletic Ass'n., supra.

Niles v University Interscholastic League, supra.

In Re U.S. Ex. Rel. Missouri State High School, supra.

[111]Bailey v Truby, supra.

Smith v Crim, supra.

Whipple v Oregon School Activities, Ass'n., supra.

[112+]Buhlman v Board of Eduction of Ramapo Central School District, 463 N.Y.S. 2d 192 (New YOrk S. Ct. 1981).

[113]Mozingo v Oklahoma Secondary School Act. Ass'n., supra.

Sanders v Louisiana High School Athletic Assoc., supra.

Chabert v Louisiana High School Athletic Assoc, supra.

[114]States Ex Rel. Missouri St. H.S.A. Ass'n. v Schoenlaub, (Missouri 1974).

Scott v Kilpatrick, supra.

Kentucky High School Athletic Association v Hopkins County Board of Education, supra.

Sanders v Louisiana High School Athletic Assoc., supra.

Chabert v Louisiana High School Athletic Assoc., supra.

[115]French v Cornell, 276 N.W. 2d 216 (Nebraska 1979).

[116]Duffley v New Hampshire Interscholastic Athletic Association, 446 A. 2d 462 (New Hampshire 1982).

[117]Ibid.

[118]Florida High School Act. Ass'n., Inc. v Bradshaw, 369 So. 2d 398 (Florida App. 1979).

[119]Walsh v Louisiana High School Athletic Ass'n., supra.

[120]Peagram v Nelson, 469 F. Supp. 1134 (M.D. North Carolina 1979).

[121]Walsh v Louisiana High School Athletic Ass'n., supra.

[122]Denis J. O'Connell v VHSL, supra.

BIBLIOGRAPHY

Legal Research Aids

American Digest System. St. Paul, Minnesota: West Publishing Company.

Century Digest 1903. Digest of all reported cases from 1658 to 1896.

First Decennial Digest 1910. Digest of all reported cases from 1897 to 1906.

Second Decennial Digest 1922. Digest of all reported cases from 1906 to 1916.

Third Decennial Digest 1929. Digest of all reported cases from 1916 to 1926.

Fourth Decennial Digest 1936. Digest of all reported cases from 1926 to 1936.

Fifth Decennial Digest 1949. Digest of all reported cases from 1936 to 1946.

Sixth Decennial Digest 1958. Digest of all reported cases from 1946 to 1956.

Seventh Decennial Digest 1967. Digest of all reported cases from 1956 to 1966.

Eighth Decennial Digest 1979. Digest of all reported cases from 1966 to 1976.

West's General Digest, Fifth Series. Volumes 1 to 33. Digest of all reported cases from 1976 to 1981.

West's General Digest, Sixth Series. Volumes 1 to 4. Digest of all reported cases from 1981 to 1982.

American Jurisprudence. Rochester, New York: The Lawyer's Co-operative Publishing Company.

American Law Reports. Rochester, New York: The Lawyer's Co-operative Publishing Company.

Black's Law Dictionary. (Revised 5th ed.) Edited by Joseph R. Nolan and M. J. Connolly, St. Paul, Minnesota: West Publishing Company, 1979.

Corpus Juris Secundum. New York: The American Law Book Company.

National Reporter System. St. Paul, Minnesota: West Publishing Company. 1879 to the present:

The Atlantic Reporter. Reports decisions of the courts of last resort of Connecticut, Delaware, Maine, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island and Vermont from 1885 to the present.

The Calfornia Reporter. Reports decisions by the California Supreme Court and lower courts for California from 1960 to the present.

The Federal Reporter. Reports decisions by the United States District Courts and the United States Cir.cuit Courts and other federal courts from 1880 to the present.

The Federal Supplement. Reports decisions by the United States District Courts since 1932, Court of Claims from

1932 to 1960, and the United States Customs Court since 1949.

Federal Rules Decisions. Reports Federal Rules of Civil Procedure since 1938 and Federal Rules of Criminal Procedure since 1946.

The New York Supplement. Reports decisions by the New York Court of Appeals and lower courts of record in New York from 1888 to the present.

The North Eastern Reporter. Reports decisions of the courts of last resort of Illinois, Indiana, Massachusetts, New York and Ohio from 1885 to the present.

The Northwestern Reporter. Reports decisions of the courts of last resort of Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin from 1879 to the present.

The Pacific Reporter. Reports decisions of the courts of last resort of Alaska, Arizona, Calfornia, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Okalhoma, Oregon, Utah, Washington, and Wyoming from 1883 to present.

The South Eastern Reporter. Reports decisions of the courts of last resort of Georgia, North Carolina, South Carolina, Virginia, and West Virginia from 1887 to the present.

The Southern Reporter. Reports decisions of the courts of last resort of Alabama, Florida, Louisiana, and Mississippi from 1887 to the present.

The South Western Reporter. Reports decisions of the courts of last resort of Arkansas, Kentucky, Missouri, Tennessee and Texas from 1886 to the present.

Shepard's Reporter Citations. Colorado Springs, Colorado: Shepard's Citations, Inc.

STATE STATUTES AND REGULATIONS

Alabama, Code of Alabama.

Alaska, Alaska Statutes.

Arizona, Arizona Revised Statutes.

Arkansas, Arkansas Statutes.

California, West's Annotated California Codes.

Colorado, Colorado Revised Statutes.

Connecticut, General Statutes of Connecticut.

Delaware, Delaware Code, Annotated.

District ofColumbia, District of Columbia Code.

Florida, Florida Statutes.

Georgia, Code of Georgia.

Idaho, Idaho Code.

Illinois, Illinois State Laws.

Indiana, Indiana Code.

Iowa, Iowa Statutes.

Kansas, Kansas Statutes, Annotated.

Kentucky, Kentucky Revised Statutes.

Louisiana, Louisiana Revised Statutes.

Maine, Maine Revised Statutes, Annotated.

Maryland, Maryland School Law.

Massachusetts, Massachusetts General Laws, Annotated.

Michigan, Michigan Compiled Laws, Annotated.

Minnesota, Minnesota State Code.

Mississippi, Mississippi code.

Missouri, Missouri Revised Statutes.

Montana, Montana Revised Code.

Nebraska, Revised Statutes of Nebraska.

Nevada, Nevada Revised Statutes.

New Hampshire, New Hampshire Revised Statutes, Annotated.

New Jersey, New Jersey Revised Statutes, Annotated.

New Mexico, New Mexico Statutes, Annotated.

New York, New York Code.

New York, New York Code, Rules and Regulations.

North Carolina, General Statutes of North Carolina.

North Dakota, North Dakota Century Code.

Ohio, Ohio Revised Code, Annotated.

Oklahoma, Oklahoma Statutes.

Oregon, Oregon Revised Statutes.

Pennsylvania, Pennsylvania School Law.

Rhode Island, Rhode Island General Laws.

South Carolina, South Carolina Code.

South Carolina, South Carolina Regulations.

South Dakota, South Dakota Compiled Laws.

Tennessee, Tennessee Code.

Texas, Texas State Law.

Utah, Utah Code, Ananotated.

Vermont, Vermont Statutes, Annotated.

Virginia, Virginia School Laws.

Washington, Washington State Code.

West Virginia, West Virginia State Code.

Wisconsin, Wisconsin Statutes.

Wyoming, Wyoming Statutes.

CASES CITED

ABC League v Missouri State High School Activities Association, 530 F. Supp 1033 (E.D. Missouri 1980).

Adamek v Pa. Interscholastic Association, 426 A.2d 1206 (Pennsylvania Cmwlth. 1981).

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

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

Art Gaines Baseball Camp, Inc. v Houston, 500 S.W. 2d 735 (Missouri App 1973).

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

Barnhorst v Missouri State High School Activities Association, 504 F. Supp 499 (W.D. Missouri 1980).

Blue v University Interscholastic League, 503 F. Supp. 1030 (North Dakota Texas 1980).

Braesch v De Pasquale, 265 N.W. 2d 842 (Nebraska 1978).

Brenden v Independent School District, 477 F.2d 1292 (8th Cir. 1973).

Brown v Wells, 181 N.W. 2d 708 (Minnesota 1970).

Buhlman v Board of Education of Ramapo Cent. School Dist., 436 N.Y.S. 2d 192 (S.Ct. 1981).

Bunger v Iowa High School Athletic Association, 197 N.W. 2d 555 (Iowa 1972).

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

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

Caso v New York State Public High School, Etc., 434 N.Y.S.2d 60 (New York S. Ct. App. 1980).

Chabert v Louisiana High School Athletic Asociation, 323 So. 774 (Louisiana 1975).

Christian Bros., Etc. v Northern N.J. Interscholastic League, 432 A.2d 26 (New Jersey 1981).

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

Columbo v Sewanhak Cent. High School, 383 N.Y.S. 2d 518 (New York S. Ct. 1976).

Cooper v Oregon School Activities Association, 629 P.2d 386 (Oregon App. 1981).

Crandall v North Dakota High School Activities Association, 261 N.W.2d 92 (North Dakota 1978).

Dallam v Cumberland, 391 F. Supp 358 (M.D. Pennsylvania 1975).

Davis v Central Dauphin Sch. Dist. Sch. Bd., 466 F. Supp. 1259 (M.D. Pennsylvania 1979).

Denis J. O'Connell High School v Virginia High Sch., 581 F.2d 81 (5th Cir. 1978).

DeKalb County School System v White, 260 S.E. 2d 853 (Georgia 1979).

Dodson v Arkansas Act. Ass'n, 468 F. Supp 394 (E.D. Arkansas 1979).

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

Duffley v New Hampshire Interscholastic Athletic Ass'n, 446 Aa.2d 462 (New Hampshire 1982).

Dumez v Louisiana High School Athletic Ass'n., 334 So.2d 494 (Louisiana App. 1976).

Fla. High School Activities Ass'n v Bradshaw, 369 So.2d 398 (Florida App. 1979).

Fla. High School Activities Ass'n v Bryant, 313 So.2d 57 (Florida App. 1975).

French v Cornwell, 276 N.W. 2d 216 (Nebraska 1979).

Genusa v Holy Cross, Inc., Louisiana App, 389 So. 2d 980.

Gilpin v Kansas State H.S. Ass'n, 377 F. Supp 1233 (D. Kansas 1973).

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

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

Hasson v Boothby, 318 F. Supp. 1183 (1970).

Hawksley v New Hampshire Interschoo. Ath. Ass'n, 285 A.2d 797 (New Hampshire 1971).

Herbert v Ventetuolo, 480 A.2d 403 (Rhode Island 1984).

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

Holy Cross College, Inc. v Louisiana High Sch. Ath. Ass'n, 632 F.2d 1287 (5th Cir. 1980).

In Re U.S. ex Rel. Missouri State High Sch., etc., 682 F.2d 147 (8th Cir. 1982).

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

Kampmeier v Nyquist, 553 F.2d 296 (2nd Cir. 1977).

Kentucky High Sch. Ath. Ass'n v. Hopkins City Bd. of Ed., 552 S.W.2d 685 (Kentucky App. 1977).

Kite v Marshall, 494 F. Supp. 227 (S.D. Texas 1980).

Kite v Marshall, 661 F.2d 1027 (5th Cir. 1981).

Kubiszyn v Alabama High Sch. Ath. Ass'n., 374 So. 2d 256 (Alabama 1979).

Kulovitz v Illinois High School Ass'n., 462 F. Supp. 875 (North Dakota Illinois 1978).

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

Laurenzo v Mississippi High Sch. Act. Ass'n., 662 F.2d 1117 (5th Cir. 1981).

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

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

Mitchell v Louisiana High School Ath. Ass'n., 430 F.2d 1155 (5th Cir. 1970).

Moreland v Western Pa. Interscholastic, etc., 572 F.2d 121 (3rd Cir. 1978).

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

Moringo v Oklahoma Secondary School Activities, 575 P.2d 1379 (Oklahoma App. 1978).

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

O'Conor v Bd. of Ed., 316 N.Y.S. 2d 799 (New York S. Ct. 1970).

Pennyslvania Interscholastic Ath. Ass'n. v Great. Johnstown Sch., 463 A.2d 1198 (Pennsylvania Cmnwlth. 1983).

Pennsylvania Interscholastic Ath. Ass'n v Geisinger, 474 A.2d 62 (Pennsylvania Cmwlth 1983).

Passell v Fort Worth Independent School District, 453 S.E. 2d 888.

Pegram v Nelson, 469 F. Supp. 1134 (M. D. North Carolina 1979).

Reed v Nebraska School Activities Ass'n., 341 F. Supp 258 (D. Nebraska 1972).

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

Sanders v Louisiana High School Athletic Ass'n, 242 So.2d 19 (Louisiana App. 1970).

Scott v Kilpatrick, 237 So.2d 652 (Alabama 1970).

Smith v Crim, 240 S.E. 2d 884 (Georgia 1977).

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

State Ex Rel. Missouri St. High Sch. Ath. Ass'n v Schoenlaub, 507 S.W.2d 354 (Missouri 1974).

Stock v Texas Catholic Interscholastic League, 364 F. Supp. 362 (North Dakota Texas 1973).

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

Sturrup v Mahan, 290 N.E. 2d 64 (Indiana App. 1973).

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

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

Sullivan v University Interscholastic League, 616 S.W. 2d 170 (Texas 1981).

Taylor v Alabama High School Athletic Ass'n, 336 F. Supp 54 (North Dakota Alabama 1972).

Texas High School Gymnastics Coaches Ass'n v Andrews, 532 S.W.2d 142 (Texas Civ. App. 1976).

Thompson v Barnes, 200 N.W.2d 921 (Minnesota 1972).

Valencia v Blue Hen Conference, 476 F. Supp 809 (D. Delaware 1979).

Valencia v Blue Hen Conference, 615 F.2d 1355 (3rd. Cir. 1980).

Walsh v Louisiana High Sch. Ath. Ass'n, 616 F.2d 152 (5th Cir. 1980).

Ward v Robinson, 496 F. Supp. 1 (E.D. Tennessee 1978).

Watkins v Louisiana High Sch. Athletic Ass'n, 301 So.2d 695 (Louisiana App. 1974).

Windsor Park Baptist Church v Arkansas Act. Ass'n, 658 F.2d 618 (8th Cir. 1981).

Whipple v Oregon School Activities Ass'n, 629 P.2d 384 (Oregon Appeal 1981).

Yellow Spring Exempted Village School District Bd of Ed v Ohio High School Ath. Ass'n, 443 F. Supp. 753 (S.D. Ohio 1978).

Zander v Missouri State High School Activities Assoc.,

REFERENCES

Books

Alexander, Kern and Alexander, M. D. American Public School Law. St. Paul, MN: West Publishing Co., Inc., 1975.

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

Bolmeir, Edward C. and Mohler, David J. Law of Extracurricular Activities in Secondary Schools. Cincinnati: W. H. Anderson Co., 1968.

Cohen, Morris L. How to Find the Law. St. Paul, MN: West Publishing Co., 1976.

Cohen, Morris L. Legal Research in a Nutshell. St. Paul, MN: West Publishing Co., 1978.

Dillman, Donald A. Mail and Telephone Surveys. New York: Wiley and Sons, 1978.

Family Legal Guide. Pleasantville, NY: Reader's Digest Assoc., Inc., 1983.

Gatti, Richard D. and Gatti, Daniel J. Encyclopedia Dictionary of School Law. West Nyack, NY: Parker Publishing Co., Inc., 1975.

Grieve, A. W. The Legal Aspects of Athletics. S. Brunswick, N.J.: A. S. Barnes and Co., Inc. 1969.

Jacobstein, J. Myron and Merskey, Roy M. Legal Research Illustrated. Mineola, NY: The True Foundations Press, Inc., 1977.

McCarthy, Martha M. and Cambron, Nelda H. Public School Law. Boston: Allyn and Bacon, Inc., 1981.

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

Periodicals

Bridgman, Anne. "Backlash Hits Efforts to Tie Achievement with Extra-curriculars." Education Week, March 13, 1985.

Doerhoff, Dale C. "State Athletic Associations and the Law," Journal of Law Education, No. 1, January 1973.

Kierkhoff, Blair. "VHSL considers returning to four groups," Roanoke Times and World News, January 20, 1984.

O'Connor, John. "Eligibility for athletics due change," Richmond Times-Dispatch, September 20, 1984.

Weistart, John C. "Rule-Making in Interscholastic Sports: The Bases of Judicial Review." Journal of Law and Education, Vol. 11, No. 3, July, 1982.

Unpublished Sources

Committee to Study the VHSL, Survey of Board Members Regarding the VHSL. Richmond, VA, 1977.

Meadors, William J. "The History of the National Federation of State High School Athletic Associations." Unpublished doctoral dissertation, Springfield College, Springfield, MS, 1970.

Office of the Secretary of Education. Report on the Virginia High School League. Richmond, VA: Secretary of Education, 1979.

State Board of Education, Report to the Board of Education: Virginia High School League Ad Hoc Committee, Virginia State Board of Education, 1984.

Superintendent of Public Instruction. Task Force Report on the Virginia High School League. Richmond, VA, Virginia State Department of Education, 1978.

Virginia Association of School Administrators, Virginia High School League Resolutions, 1984.

Virginia Congress of Parents and Teachers. 1985 Legislative Program. Virginia Congress of Parents and Teachers, 1985.

Virginia General Assembly, Senate, Senate Joint Resolution No. 55, January 24, 1983.

Virginia General Assembly, House of Delegates, House Joint Resolution No. 30, January 18, 1983.

Virginia General Assembly, House of Delegates, House Resolution No. 66, January 31, 1978.

Athletic Association Handbooks

California Interscholastic Federation, Southern Section, 1984-85, Bluebook: Constitution and By-laws. California Interscholastic Federation, 1984.

Georgia High School Association, Constitution and By-laws. Thomaston, GA: Georgia High School Association, 1984-85.

Handbook of Michigan High School Athletic Association, Inc.: East Lansing, MI: Michigan High School Athletic Association, Inc., 1985.

IHSA Official Handbook 84-85. Bloomington, IL: Illinois High School Association, 1984.

Kansas State High School Activities Association Handbook, 85-86. Topeka, KS. Kansas State High School Activities, Assoc., 1985.

Massachusetts Interscholastic Athletic Association, Rules and Regulations Governing Athletics. Ashland, MS: Massachusetts Interscholastic Athletic Association, 1984-85.

Minnesota State High School League Handbook, Anoka, MN: Minnesota State High School League, 1985.

New York State Public High School Athletic Association Handbook, 1984-86. Albany, NY, 1984.

North Carolina High School Athletic Association, Inc., Handbook, 1984-85. Chapel Hill, NC: North Carolina High School Athletic Association, 1984.

Rhode Island Interscholastic League, Inc. Rules and Regulations. Providence, RI: Rhode Island Interscholastic League, Inc., 1983-85 edition.

South Carolina High School league, 84-85 Handbook. Columbia, South Carolina. South Carolina High School League, 1984.

Tennessee Secondary School Athletic Association, 1984-85 Official Handbook. Hermitage, TN. Tennessee Secondary School Athletic Association, 1984.

Texas University Interscholastic League, Constitution and Contest Rules. Austin, TX: University of Texas, Division of Continuing Education, 1984.

Vermont Headmaster's Association, Inc. By-Laws, Eligibility Rules and Athletic Standards. Montpelier, VT: Vermont Headmaster's Association, Inc., 1984.

VHSL Handbook. Charlottesville, VA: Virginia High School League, 1983.

Wisconsin Interscholastic Athletic Association. Official Handbook. Stevens Point, WI: Wisconsin Interscholastic Athletic Assoc., 1984-85.

Wyoming High School Activities Association, Handbook. Casper, WY: Wyoming High School Activities Association, 1984.

APPENDIX A

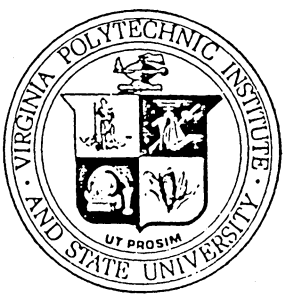
VHSL, INC:

AUTHORITY, GOVERNANCE

AND

PERFORMANCE

YOUR OPINION, PLEASE!



F POLAKIEWICZ
VIRGINIA TECH
MAY, 1985

SECTION 1 AUTHORITY

Please share your opinion with us concerning the authority of the Virginia High School League (VHSL). How much authority do you think the VHSL should have?

Please CHECK the one (1) response that best represents your opinion.

1. The VHSL should have the authority to pass regulations which are binding upon local school boards.

   (1) AGREE

   (2) DISAGREE

2. State accredited parochial schools which adhere to VHSL rules should be allowed to join the VHSL.

   (1) AGREE

   (2) DISAGREE

3. The VHSL should determine the qualifications of coaches.

   (1) AGREE

   (2) DISAGREE

4. The VHSL should determine the scholastic eligibility standards for participation.

   (1) AGREE

   (2) DISAGREE

5. The VHSL should require that a physician be present at all athletic contests involving contact sports (football, basketball, and wrestling).

   (1) AGREE

   (2) DISAGREE

6. The VHSL should require qualified medical assistance such as a trainer or emergency medical technician be present at all contests and practice sessions.

   (1) AGREE

   (2) DISAGREE

For the following questions more than one (1) response may be appropriate. Please CHECK the response or responses that best represent your opinion.

7. The VHSL should have the authority to impose fines upon:

   (1) COACHES/SPONSORS

   (2) MEMBER SCHOOLS

   (3) PARTICIPANTS

   (4) ALL OF THE ABOVE

   (5) NONE OF THE ABOVE

8. The VHSL should have the authority to impose a period of probation upon:

   (1) COACHES/SPONSORS

   (2) MEMBER SCHOOLS

   (3) PARTICIPANTS

   (4) ALL OF THE ABOVE

   (5) NONE OF THE ABOVE

9. The VSHL should have the authority to prohibit the participation of:

   (1) COACHES/SPONSORS

   (2) MEMBER SCHOOLS

   (3) PARTICIPANTS

   (4) ALL OF THE ABOVE

   (5) NONE OF THE ABOVE

Please CHECK the one (1) response that best represents your opinion.

10. Generally, the VHSL imposes penalties which are:

    (1) LENIENT

    (2) APPROPRIATE

    (3) HARSH

    (4) I DON'T KNOW

11. If a member school, participant, or coach wishes to appeal a decision or disciplinary action of the VHSL, who should hear the final appeal?

    (1) A BOARD SELECTED BY THE VHSL

    (2) AN OUTSIDE AGENCY ESTABLISHED BY THE STATE

    (3) AN IMPARTIAL FACTFINDING PANEL

    (4) OTHER (SPECIFY) _____

SECTION 2 PERFORMANCE

12. How many complaints did you receive last school year (1983-84), concerning the VHSL?

    (1) 0

    (2) 1 - 5

    (3) 6 - 10

    (4) 11 - 20

    (5) 20 +

13. I am satisfied with the VHSL's administration of athletics.

    (1) AGREE

    (2) DISAGREE

14. If I were to evaluate the VHSL on its performance, I would assign the following grade:

    (1) A EXCELLENT

    (2) B ABOVE AVERAGE

    (3) C AVERAGE

    (4) D BELOW AVERAGE

    (5) F FAILING

15. The Virginia High School League should be studied by an outside agency to assess the need for reorganization or change.

    (1) AGREE

    (2) DISAGREE

SECTION 3 GOVERNANCE

16. The VHSL should be supervised and overseen by a state agency.

    (1) AGREE (IF YOU AGREE GO ON TO #17)

    (2) DISAGREE (IF YOU DISAGREE SKIP #17 and GO TO #18)

17. If your response to #16 was AGREE, which state agency should supervise the VHSL?

    (1) GENERAL ASSEMBLY

    (2) STATE BOARD OF EDUCATION

    (3) STATE DEPARTMENT OF EDUCATION

    (4) OTHER (SPECIFY) _____

18. THE VHSL should operate independently of any college or university in the Commonwealth.

    (1) AGREE

    (2) DISAGREE

19. CHECK the response representing how much INFLUENCE you believe each of the following groups CURRENTLY has in the decision-making and governnance of the VHSL.

STRONG (5) means the group is involved in the adoption and administration of VHSL regulations
MODERATE (4) means the group routinely expresses opinions and makes nonbinding recommendations concerning proposed action or legislation.
NI (3) means you have no idea or opinion
SLIGHT (2) means the group may be called upon in limited circumstances to offer input
NONE (1) means the group has no input.

	STRONG	MODERATE	NI	SLIGHT	NONE
1. ATHLETIC DIRECTOR	(5)	(4)	(3)	(2)	(1)
2. CITIZENS	(5)	(4)	(3)	(2)	(1)
3. COACHES	(5)	(4)	(3)	(2)	(1)
4. LEGISLATORS	(5)	(4)	(3)	(2)	(1)
5. LOCAL SCHOOL BOARDS	(5)	(4)	(3)	(2)	(1)
6. STATE DEPARTMENT	(5)	(4)	(3)	(2)	(1)
7. LOCAL SUPERINTENDENT	(5)	(4)	(3)	(2)	(1)

20. CHECK the proper response, representing how much influence you believe each of the following groups SHOULD HAVE in the decision-making and governance of the VHSL.

	STRONG	MODERATE	NI	SLIGHT	NONE
1. ATHLETIC DIRECTOR	(5)	(4)	(3)	(2)	(1)
2. CITIZENS	(5)	(4)	(3)	(2)	(1)
3. COACHES	(5)	(4)	(3)	(2)	(1)
4. LEGISLATORS	(5)	(4)	(3)	(2)	(1)
5. LOCAL SCHOOL BOARDS	(5)	(4)	(3)	(2)	(1)
6. STATE DEPARTMENT	(5)	(4)	(3)	(2)	(1)
7. LOCAL SUPERINTENDENT	(5)	(4)	(3)	(2)	(1)

IF YOU HAVE ANY FURTHER COMMENTS OR OTHER CONCERNS PLEASE INCLUDE THEM IN THE SPACE PROVIDED BELOW.

THANK YOU FOR YOUR ASSISTANCE, IT IS GREATLY APPRECIATED.

IF YOU WISH TO RECEIVE A COPY OF THE RESULTS OF THIS SURVEY, PLEASE WRITE "COPY OF RESULTS REQUESTED" ON THE BACK OF THE RETURN ENVELOPE AND PRINT YOUR RETURN ADDRESS BELOW IT. DO NOT PUT THIS INFORMATION ON THE QUESTIONNAIRE.

APPENDIX B

VIRGINIA TECH

Division of Administrative
and Educational Services

March 29, 1985

University City Office Building
Blacksburg, VA 24061

Dear

I am presently engaged in a study of the structure and function of the Virginia High School League (VHSL). The study is essentially a legal analysis of the authority of the League and a comparison of the League's structure to that of other state athletic associations. As a part of my study I intend to assess the attitudes of educators and policymakers concerning the issues raised in the Virginia General Assembly pertaining to the administration of athletics in the Commonwealth. Your input, based on your distinguished service to the Commonwealth as Executive Director of the VHSL would be most beneficial to the study.

It would be most helpful if you would read the cover letter, and complete the enclosed questionnaire as if you were a respondent in the survey. Upon completion, please return the questionnaire, with any constructive criticism and feedback you deem appropriate, in the enclosed self addressed stamped envelope. Please feel free to write on the survey form. It would be helpful if you addressed the following issues in addition to any comments you provide:

1) Is the cover letter clear and concise?
2) Is the format of the questionnaire easy to follow, and comprehend?
3) Are the instructions clear and complete?
4) Are any questions offensive, vague or inappropriate?
5) Are any questions biased, do they influence people to respond in a certain way?
6) Are any questions double questions, asking you to answer more than one question?
7) Do the questions assume too much knowledge on the part of the respondent?
8) Does the questionnaire require too much effort or time?

I appreciate your taking the time to share your insight and expertise.

Sincerely,

Frank Polakiewicz
Graduate Ass't

VIRGINIA TECH

Division of Administrative
and Educational Services

March 29, 1985

University City Office Building
Blacksburg, VA 24061

Dear

Dr. R.G. Salmon suggested I contact you and seek your highly regarded professional opinion. I am presently engaged in a study of the structure and function of the Virginia High School League (VHSL). As a part of my study I intend to assess the attitudes of educators and policymakers concerning the administration of athletics in the Commonwealth. Before I implement such a survey your input would be invaluable.

It would be most helpful if you would read the cover letter, and complete the enclosed questionnaire as if you were a respondent in the survey. Upon completion, please return the questionnaire, with any constructive criticism and feedback you deem appropriate, in the enclosed self addressed stamped envelope. Please feel free to write on the survey form. It would be helpful if you addressed the following issues in addition to any comments you provide:

1) Is the cover letter clear and concise?
2) Is the format of the questionnaire easy to follow, and comprehend?
3) Are the instructions clear and complete?
4) Are any questions offensive, vague or inappropriate?
5) Are any questions biased, do they influence people to respond in a certain way?
6) Are any questions double questions, asking you to answer more than one question?
7) Do the questions assume too much knowledge on the part of the respondent?
8) Does the questionnaire require too much effort or time?

I appreciate your taking the time to share your insight and expertise.

Sincerely,

Frank Polakiewicz
Graduate Ass't
Virginia Tech
267 UCOB

APPENDIX C

A LAND-GRANT UNIVERSITY

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

Blacksburg, Virginia 24061

College of Education AES Division

May 6, 1985

Dear Superintendent:

In recent years, resolutions have been introduced in the Virginia General Assembly requesting that the Virginia High School League be studied and reorganized. These resolutions have raised questions concerning the governance and authority of the League. However, no one has assessed the opinion of educators and policymakers to determine if they perceive a need for such a study or reorganization.

You are one of a sample of 250 educators and policymakers being asked to share your opinion on these matters. In order that the results represent the educators and policymakers of the Commonwealth, it is important that each questionnaire be completed and returned.

The questionnaires will be kept completely confidential. Each questionnaire has an identification number for mailing purposes only. This will allow me to check your name off the list of respondents when your questionnaire is returned. Your name will never appear on the questionnaire or be reported in the study.

The results of this research will be made available to educators and policymakers throughout the Commonwealth. Hopefully the results will provide the information necessary for objective and enlightened decisionmaking concerning the administration of Virginia high school athletics.

Thank you for your assistance.

Sincerely,

Frank Polakiewicz
Graduate Assistant, OCES

Enclosure

APPENDIX D

As a member of a random sample of educators and policymakers drawn from within the Commonwealth, you received a questionnaire seeking your opinion about the administration of high school athletics in Virginia.

If you have completed and returned the questionnaire, please accept my thanks for your assistance. If not, please do so today. It is important that your opinion be included, if the results are to accurately depict the opinions of Virginia's educators and policymakers.

If you have misplaced the questionnaire, or did not receive one, please call and I will mail you another today.

Sincerely,

Frank Polakiewicz

APPENDIX E

A LAND-GRANT UNIVERSITY

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

Blacksburg, Virginia 24061

AES Division, College of Education

June 5, 1985

Dear Delegate

About three weeks ago I wrote to you seeking your opinion of the administration of athletics in the Commonwealth. As of today I haven't received your completed questionnaire.

I have undertaken this study to provide educators and policymakers in the Commonwealth with the information necessary for enlightened and objective decisionmaking concerning the administration of Virginia high school athletics.

Each questionnaire is important to the study. Your name was drawn at random from a list of all principals, superintendents, board members, and legislators in the Commonwealth. In order for the results to be representative of all the educators and policymakers in the Commonwealth, it is essential each member of the sample return a completed questionnaire. Please take the time to complete and return your questionnaire today. It should take from seven to twelve minutes to complete, and it requires an opinion, not special knowledge or information. Your support is essential.

In the event you have misplaced your questionnaire, a replacement has been enclosed.

Your cooperation and support is greatly appreciated.

Sincerely,

Frank Polakiewicz
Graduate Assistant, OCES

Enclosure

APPENDIX F

COMPUTER PROGRAMS USED IN ANALYSIS OF SURVEY DATA

```
//B0714FJP JOB     ,POLAK,REGION=500K
***LONGKEY THETIME
***JOBPARM LINES=30
***ROUTE PRINT MVS1.RMT72
// EXEC SPSSX
DATA LIST
 /ID 1-3POS BIND PRIVSCH COACH ACAD MD
 MEDTECH FINES PROB PROHIB PENAL APPBD COMPL
 SATIF GRADE STUDY STATAGE NAMEAGE UNIVAFF
 CURINAD CURINCIT CURINCH CURINLEG CURINLBD
 CURINSTD CLSUPT SHAD SHCIT SHCH SHLEG
 SHLSBD SHSTD
VARIABLE LIST
 ID 'ID NUMBER'
 POS 'POSITION'
 BIND 'PASS BIND REGS'
 PRIVSCH 'PRIVATE SCH MEMBERS'
 COACH 'STDS FOR COACH'
 ACAD 'ACADEMIC ELIGIBILITY'
 MD 'DOC FOR GAMES'
 MEDTECH 'TRAINES AT PRACTICE'
 FINES 'FINE WHO'
 PROB 'PROBATION WHO'
 PROHIB 'PROHIBIT WHO'
 PENAL 'PENALITIES FAIR'
 APPBD 'WHICH APPEALS BD'
 COMPL 'NUMBER COMPLAINTS'
 STAIF 'SATISFACTION'
 GRADE 'GRADE VHSL EARNS'
 STUDY 'NEED FOR STUDY'
 STATAGE 'AGENCY SUPV VHSL'
 NAMEAGE 'WHICH AGENCY'
 UNIVAFF 'VIBL AND UNIF'
 CURINAD 'INPUT AD'
 CURINCIT 'INPUT CITIZEN'
 CURINCH 'INPUT COACH'
 CURINLEG 'INPUT GENERAL ASS'
 CURINLBD 'INPUT LOCAL BOARD'
 CURINSTD 'INPUT STATE DEPT'
 CLSUPT 'INPUT LOCAL SUPT'
 SHAD 'AD SHOULD INPUT'
 SHCIT 'CITIZEN SHOULD INPUT'
 SHCH 'COACH SHOULD INPUT'
 SHLEG 'GENERAL ASS INPUT'
 SHLSBD 'LOCAL BD SHOULD INPUT'
 SHSTD 'STATE DEPT SHOULD INPUT'
VALUE LABELS
 BIND TO SHLSUPT 9 'NO RESPONSE'/
 POS 1 'PRIN' 2 'LSUPT' 3 'LEG' 4 'LBDCHMN'/
 BIND TO MEDTECH 1 'AGREE' 2 'DISAGREE'/
 PENAL 1 'LENIENT' 2 'FAIR' 3 'HARSH' 4 'DON'T KNOW'/
 APPBD 1 'VHSL SELECTED' 2 'OUTSIDE BD STATE' 3 'IMPARTIAL
```

```
PANEL' 4 'OTHER'
 FINES TO PROHIB 1 'COACH' 2 'SCHOOL' 3 'PLAYERS' 4 'ALL'
5 'NONE' 6 'COACH AND SCHOOL' 7 'COACH AND
PLAYERS' 8 'SCHOOL AND PLAYER'/
 COMPL 1 'NONE' 2 'ONE-FIVE' 3 'SIX-TEN' 4
'ELEVEN-TWENTY' 5 'TWENTY PLUS'/
 SATIF 1 'AGREE' 2 'DISAGREE'/
 GRADE 1 'A' 2 'B' 3 'C' 4 'D' 5 'F'/
 STUDY 1 'AGREE' 2 'DISAGREE'/
 STATAGE 1 'AGREE' 2 'DISAGREE'/
 NAMEAGE 1 'GENERAL ASS' 2 'STATE BD ED' 3
'STATE DEPT ED' 4 'OTHERS' 5 'NONE'/
 CURINAD TO SHLSUPT 5 'STRONG INPUT' 4 'MODERATE
INPUT' 3 'NO IDEA' 2 'SLIGHT INPUT' 1 'NO INPUT'/
 UNIVAFF 1 'AGREE' 2 'DISAGREE'/
FREQUENCIES VARIABLES=POS TO SHLSUPT
STATISTICS=ALL
BEGIN DATA
END DATA
CROSSTABS POS BY BIND TO SHLSUPT
OPTIONS 3 4 5
STATISTICS 1
```

APPENDIX G

COMMONWEALTH OF VIRGINIA

SENATE

STANLEY C. WALKER
6TH SENATORIAL DISTRICT
P. O. BOX 3628
NORFOLK, VIRGINIA 23514

July 1, 1985

Mr. Frank Polakiewicz
College of Education
Virginia Tech
267 UCOB
Blacksburg, Virginia 24061

Dear Mr. Polakiewicz:

Please forgive my belated reply to your letter of June 17. I appreciate very much being asked to participate in the study concerning the administration of Virginia high school activities.

As Chairman of Education and Health, I have made it a policy not to participate in any studies or questionnaires of this nature. Thank you for your cooperation in this matter.

Wishing you every success, I am

Sincerely,

SCW:lpb

COMMONWEALTH OF VIRGINIA
HOUSE OF DELEGATES
RICHMOND

MARY SUE TERRY
P. O. DRAWER 369
STUART, VIRGINIA 24171
TENTH DISTRICT

COMMITTEE ASSIGNMENTS:
COURTS OF JUSTICE
EDUCATION
CORPORATIONS, INSURANCE AND BANKING
CONSERVATION AND NATURAL RESOURCES

July 1, 1985

Mr. Frank Polakiewicz
Graduate Assistant, OCES
AES Division
College of Education
Virginia Polytechnic Institute
and State University
Blacksburg, VA 24061

Dear Mr. Polakiewicz:

This letter is written in response to your letter of June 5, with reference to your questionnaire concerning the administration of athletics in the Commonwealth.

Inasmuch as I am an announced candidate for Attorney General and will not be returning to the General Assembly in my capacity as a legislator and member of the Education Committee, I would respectfully request that you seek the opinion of another legislator on the questions which you pose.

I wish you much luck in your endeavor.

Very sincerely,

Mary Sue Terry

COMMONWEALTH OF VIRGINIA
HOUSE OF DELEGATES
RICHMOND

JOAN H. MUNFORD
205 E. EAKIN STREET
BLACKSBURG, VIRGINIA 24060
THIRTEENTH DISTRICT

COMMITTEE ASSIGNMENTS:
EDUCATION
CORPORATIONS, INSURANCE AND BANKING
LABOR AND COMMERCE

April 23, 1985

Mr. Frank Polakiewicz
University City Office Building
Virginia Tech
Blacksburg, Virginia 24061

Dear Mr. Polakiewicz:

Thank you so much for forwarding to me a copy of your questionnaire for the Virginia High School League. It looks as though you have put together an in-depth resource. After studying the questionnaire, I don't feel I am qualified to adequately answer the detailed questions. The limited legislation pertaining to V.H.S.L. reviewed by the Education Committee has dealt with more general concerns. I would not want to mislead or distort what appears to be thorough research.

I do hope you receive a good response and please share the results with me when they are available.

I appreciate your bringing this to my attention.

Sincerely,

Joan H. Munford

JHM:cw

APPENDIX H

Authority

1. The VHSL should have the authority to pass regulations which are binding upon local school boards.

	Agree	Disagree	No Response
Total	41.8%	55.2%	3.1%
Principals	54.7%	40.7%	4.7%
Superintendents	31.0%	64.3%	4.8%
Legislators	38.1%	61.9%	
School Board Chairmen	28.9%	71.1%	

2. State accredited parochial schools which adhere to VHSL rules should be allowed to join the VHSL.

	Agree	Disagree	No Response
Total	43.4%	54.5%	2.1%
Principals	40.7%	57.0%	2.3%
Superintendents	28.6%	71.4%	
Legislators	61.9%	33.3%	4.8%
School Board Chairmen	68.9%	28.9%	2.2%

3. The VHSL should determine the qualifications of coaches.

	Agree	Disagree	No Response
Total	23.7%	74.2%	2.1%
Principals	23.3%	74.4%	2.3%
Superintendents	23.8%	73.8%	2.4%
Legislators	19.0%	76.2%	4.8%
School Board Chairmen	26.7%	73.3%	

4. The VHSL should determine the scholastic eligibility standards for participation.

	Agree	Disagree	No Response
Total	75.8%	22.2%	2.0%
Principals	90.7%	7.0%	2.3%
Superintendents	76.2%	23.8%	
Legislators	61.9%	33.3%	4.8%
School Board Chairmen	53.3%	44.4%	2.3%

5. The VHSL should require that a physician be present at all athletic contests involving contact sports (football, basketball, and wrestling).

	Agree	Disagree	No Response
Total	37.6%	59.8%	2.6%
Principals	30.2%	66.3%	3.5%
Superintendents	35.7%	64.3%	
Legislators	61.9%	28.6%	9.5%
School Board Chairmen	42.2%	57.8%	

6. The VHSL should require qualified medical assistance such as a trainer or emergency medical technician be present at all contests and practice sessions

	Agree	Disagree	No Response
Total	48.5%	48.5%	3.0%
Principals	44.2%	52.3%	3.5%
Superintendents	50.0%	50.0%	
Legislators	52.4%	33.3%	14.3%
School Board Chairmen	53.3%	46.7%	

7. The VHSL should have the authority to impose fines upon:

	Coaches	Schools	Players	None	No Response
Total	30.0%	55.0%	17.0%	39%	2.6%
Principals	29.0%	72.0%	15.0%	24%	2.3%
Superintendents	31.0%	54.7%	19.0%	45%	
Legislators	38.1%	43.0%	28.6%	43%	4.3%
School Board Chairmen	22.2%	33.3%	13.3%	60%	4.4%

Each cell in the previous table represented the percentage of all respondents that favor imposing fines upon the specific groups, listed horizontally. The cells do not represent mutually exclusive choices.

The following represents a breakdown of the respondents who generally favor the use of fines as a penalty.

	VHSL Should Impose Fines	VHSL Should Not Impose Fines	No Response
Total	58.2%	39.2%	2.6%
Principals	73.3%	24.4%	2.3%
Superintendents	54.8%	45.2%	
Legislators	52.3%	42.9%	4.8%
School Board Chairmen	40.0%	60.0%	

8. The VHSL should have the authority to impose a period of probation upon:

	Coaches	Schools	Players	None	No Response
Total	52.6%	83.0%	45.4%	9.3%	3.1%
Principals	55.0%	88.4%	50.0%	3.5%	3.5%
Superintendents	45.2%	90.0%	39.1%	9.5%	
Legislators	52.4%	66.6%	42.9%	19.0%	9.5%
School Board Chairmen	51.0%	77.8%	44.4%	15.6%	2.2%

Each cell represents the percentage of all respondents that favor the use of probation as a penalty.

	Favor Use of Probation	Opposed To Use of Probation	No Response
Total	87.6%	9.3%	3.1%
Principals	93.0%	8.5%	3.5%
Superintendents	90.5%	9.5%	
Legislators	71.5%	19.0%	9.5%
School Board Chairmen	82.2%	15.6%	2.2%

9. The VHSL should have the authority to prohibit the participation of:

	Coaches	Schools	Players	None	No Response
Total	46.0%	69.6%	43.3%	17.5%	2.6%
Principals	53.5%	80.2%	59.3%	8.1%	2.3%
Superintendents	40.4%	69.0%	43.0%	21.4%	
Legislators	47.6%	66.6%	42.8%	23.8%	9.5%
School Board Chairmen	37.8%	66.6%	31.1%	28.9%	2.2%

Each cell in the following table represents the percentage of all respondents that favor the use of prohibition as a penalty.

	Favor Use of Prohibition	Opposed To Use of Prohibition	No Response
Total	79.9%	17.5%	2.6%
Principals	89.6%	8.1%	2.3%
Superintendents	78.6%	21.4	
Legislators	66.7%	23.8%	9.5%
School Board Chairmen	68.9%	28.9%	2.2%

10. Generally, the VHSL imposes penalties which are:

	Lenient	Appropriate	Harsh	No Idea	No Response
Total	20.1%	57.2%	.5%	20.1%	2.1%
Principals	25.6%	67.4%		5.8%	1.2%
Superintendents	28.6%	66.7%		2.4%	2.4%
Legislators	14.3%	28.6%		47.6%	9.5%
School Board Chairmen	4.4%	42.2%	2.2%	51.0%	

11. If a member school, participant, or coach wishes to appeal a decision or disciplinary action of the VHSL, who should hear the final appeal?

	VHSL Established Board	Outside Agency	Impartial Fact-Finding Panel	Other	No Response
Total	25.3%	14.4%	49.0%	7.2%	3.6%
Principals	44.2%	5.8%	41.9%	5.8%	2.3%
Superintendents	16.7%	31.0%	40.5%	7.1%	4.8%
Legislators	14.3%	14.3%	57.1%		14.3%
School Board Chairmen	2.2%	15.6%	66.7%	13.3%	2.2%

Performance

12. How many complaints did you receive last school year (1983-84), concerning the VHSL?

	0	1-5	6-10	11-20	20+	No Response
Total	57.2%	32.5%	4.1%	.5%	1.0%	4.5%
Principals	59.3%	34.9%	2.3%			3.5%
Superintendents	59.5%	28.6%	4.8%	2.4%	2.4%	2.4%
Legislators	52.4%	38.3%	4.8%			9.5%
School Board Chairmen	53.3%	31.1%	6.7%		2.2%	6.7%

	Less Than Five Complaints	+5
Total	89.7%	5.6%
Principals	94.2%	2.3%
Superintendents	88.1%	9.6%
Legislators	85.7%	4.8%
School Board Chairmen	84.4%	9.9%

13. I am satisfied with the VHSL's administration of athletics.

	Agree	Disagree	No Response
Total	76.3%	19.1%	4.6%
Principals	89.5%	8.1%	2.3%
Superintendents	83.3%	14.3%	2.4%
Legislators	47.6%	33.3%	19.0%
School Board Chairmen	57.8%	37.8%	4.4%

14. If I were to evaluate the VHSL on its performance, I would assign the following grade:

	A	B	C	D	F	No Response
Total	23.2%	46.9%	21.1%	3.1%	2.6%	3.1%
Principals	34.9%	52.3%	11.6%			1.2%
Superintendents	31.0%	50.0%	9.5%		7.1%	2.4%
Legislators	4.8%	38.1%	33.3%	9.5%		14.3%
School Board Chairmen	2.2%	37.8%	44.4%	8.9%	4.4%	2.2%

	Average or Above	Below Average
Total	91.2%	5.7%
Principals	98.8%	
Superintendents	90.5%	7.1%
Legislators	76.2%	9.5%
School Board Chairmen	84.4%	13.3%

15. The Virginia High School League should be studied by an outside agency to assess the need for reorganization or change.

	Agree	Disagree	No Response
Total	37.6%	58.2%	4.1%
Principals	23.3%	75.6%	1.2%
Superintendents	38.1%	59.5%	2.4%
Legislators	47.6%	33.3%	19.0%
School Board Chairmen	60.0%	35.6%	4.4%

Governance

16. The VHSL should be supervised and overseen by a state agency.

	Agree	Disagree	No Response
Total	22.7%	74.2%	3.1%
Principals	5.8%	91.9%	2.3%
Superintendents	26.2%	71.4%	2.4%
Legislators	33.3%	57.1%	9.5%
School Board Chairmen	46.7%	51.1%	2.2%

17. If your response to #16 was AGREE, which state agency should supervise the VHSL?

	General Assembly	State Board of Education	State Department of Education	Other	No Response
Total	1.0%	10.3%	10.8%	1.5%	4.1%
Principals		1.2%	4.7%		3.5%
Superintendents		14.3%	9.5%	4.8%	2.4%
Legislators	9.5%	14.3%	9.5%	4.8%	14.3%
School Board Chairmen		22.2%	24.4%		2.2%

18. The VHSL should operate independently of any college or university in the Commonwealth.

	Agree	Disagree	No Response
Total	78.9%	7.7%	13.4%
Principals	82.6%	5.8%	11.6%
Superintendents	76.2%	11.9%	11.9%
Legislators	52.4%	14.3%	33.3%
School Board Chairmen	86.7%	4.4%	8.9%

19. CHECK the response representing how much INFLUENCE you believe each of the following groups CURRENTLY has in the decision-making and governance of the VHSL.

STRONG (5) means the group is involved in the adoption and administration of VHSL regulations.

MODERATE (4) means the group routinely expresses opinions and makes nonbinding recommendations concerning proposed action or legislation.

NI (3) means you have no idea or opinion

SLIGHT (2) means the group may be called upon in limited circumstances to offer input.

NONE (1) means the group has no input.

THE MODAL RESPONSES OF
PERCEIVED STRUCTURE OF GOVERNANCE

	Athletic Director	Citizen	Coach	Legislators	Boards	State Department	Local Superintendents
Total	Moderate	Slight	Moderate	Slight	Slight	Slight	Moderate
Principals	Moderate	Slight	Moderate	Slight	Slight	Slight	Moderate
Superintendents	Moderate	None/Slight	Moderate	Slight	Slight	Slight	Moderate
Legislators	Strong	None/Slight	Moderate	None	Slight	Slight	No Idea
School Board Chairmen	Strong	None	Moderate/Strong	No Idea	None	No Idea	Moderate

20. CHECK the response representing how much INFLUENCE you believe each of the following groups SHOULD HAVE in the decision-making and governance of the VHSL.

STRONG (5) means the group is involved in the adoption and administration of VHSL regulations.

MODERATE (4) means the group routinely expresses opinions and makes nonbinding recommendations concerning proposed action or legislation.

NI (3) means you have no idea or opinion

SLIGHT (2) means the group may be called upon in limited circumstances to offer input.

NONE (1) means the group has no input.

MODAL RESPONSE FOR THE
STRUCTURE OF GOVERNANCE AS IT SHOULD BE

	Athletic Director	Citizen	Coach	Legislators	Local Boards	State Department	Local Superintendents
Total	Moderate	Slight	Moderate	Slight	Moderate	Moderate	Moderate
Principals	Moderate	Slight	Moderate	Slight	Moderate	Slight	Moderate
Superintendents	Moderate	Slight	Moderate	None	Moderate	Moderate	Moderate
Legislators	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate
School Board Chairmen	Moderate	Moderate	Moderate	Slight	Strong	Slight to Strong	Moderate

APPENDIX I

PROPOSED NONRESPONDENT SURVEY

Please check the response or responses that best represent your reason or reasons for not responding the original survey.

(1) I have no interest in the study.

(2) I don't fill out questionnaires as a matter of policy.

(3) I didn't have time.

(4) I don't know enough about the subject to respond.

Would you be willing to answer 5 questions concering the VHSL during either a phone interview or on a short, postcard, questionnaire?

(1) No ____

(2) Yes ____ (A) Phone ____ (B) Postcard ____

Please check the appropriate response or supply the necessray information.

(1) How many complaints did you receive last school year concerning the VHSL? _____

(2) I am satisfied with the VHSL's administration of athletics

(1) agree _____ (2) disagree ____

(3) If I were to grade the VHSL on its administrative performance, A thru F, I would assign a grade of

_____.

(4) The VHSL <u>should</u> be studied by an outside agency to assess the need for reorganization or change.

(1) agree ____ (2) disagree ____

(5) The VHSL <u>should</u> be supervised by a state agency.

(1) agree ____ (2) disagree ____

The preceeding five questions would serve as the script for a telephone survey.

The 4 page vita has been removed from the scanned document

The 4 page vita has been removed from the scanned document

The 4 page vita has been removed from the scanned document

The 4 page vita has been removed from the scanned document