



# Members Only

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## Interscholastic Athletics in Ohio

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Over 300,000 high school students participate in interscholastic athletics in Ohio, making Ohio sixth in the nation in participation.<sup>1</sup> School sports teams attract the dedication of students, parents, coaches, booster clubs, and entire communities, stress teamwork and good sportsmanship, and boost community spirit. For some students, high school athletics can lead to college scholarships or higher-level amateur and even professional competition. Over the past several years, many participants have faced a changing environment as schools have implemented or raised fees that range from nominal amounts to several hundred dollars per student, per sport.

While Ohio law authorizes school districts to implement athletic programs and addresses student eligibility in a few circumstances, interscholastic athletics are regulated largely by school districts and the private Ohio High School Athletic Association. Student participation is a privilege and not a right, but federal laws address equality of opportunities for disabled students and female students. Ohio students who are home-schooled are not entitled to participate in interscholastic athletics, although laws have been passed in some states that entitle or permit home-schoolers to compete on public schools' teams.

### ***Powers of the school board***

As a general matter in Ohio, the management and control of each school district is vested in a district board of education, with the superintendent being the executive officer for the board.<sup>2</sup> School boards have the power to regulate athletic programs, including establishing eligibility requirements. The extent of the General Assembly's policymaking is summarized in the following table:

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*State law addresses some aspects of student athletic eligibility, but interscholastic athletics are regulated mostly by school districts and the private Ohio High School Athletic Association.*



R.C. section	Description of Authority
3313.20	Authorizes each district board of education to “make any rules necessary for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds and premises.”
3313.47	Authorizes boards of education to manage and control district schools.
3313.53	Permits boards of education to establish extracurricular programs, including athletics.
3313.535	Requires boards of education to establish a minimum grade point average (GPA) as a condition for participation in interscholastic extracurricular activities. <sup>3</sup>
3313.537	Allows students who attend community schools (commonly called “charter schools”) that are sponsored by their resident school district to participate in student activities in their school district.
3313.64(F)(6) and (7)	Entitles students to attend a school district other than the one in which the parent resides if the parent is having a home built or is waiting to close a mortgage, and to participate in interscholastic athletics if the board of education of the former district agrees.
3313.64(F)(12)	Permits a student to attend a school district other than the one in which the parent resides if both districts agree that the purpose is to protect the student’s physical or mental well-being or to deal with other extenuating circumstances, and requires that the student be allowed to participate in all student activities, including interscholastic athletics.
3313.664	Authorizes boards of education to adopt policies that prohibit a student from participating in any or all extracurricular activities.
3313.752	Requires boards of education to post anabolic steroid warnings in locker rooms of all school buildings with students above grade 6.
3315.062	Authorizes boards of education to spend up to 0.5% of their annual operating budget for student activities; requires that receipts of a student activity program exceeding \$50 be deposited in a student activity fund; and allows boards to purchase accident insurance or establish a self-insurance plan for student athletes.



## **Privilege, not a right**

Based on the statutory law and on court decisions, participation in interscholastic athletics is a privilege and not a right. In 1981, the Ohio Court of Appeals of the First Appellate district (Hamilton County) held that “participation in interscholastic athletics in and of itself has never been held to be a constitutionally protected civil right.”<sup>4</sup> Therefore, school boards and athletic associations have the authority to regulate interscholastic athletics and to establish eligibility requirements. This authority becomes especially relevant in determining the rights of home-schooled students to participate in interscholastic athletics (discussed below).

## **The Ohio High School Athletic Association**

Beyond the few Revised Code sections dealing with extracurricular activities and athletics, the state does not take a major role in regulating interscholastic athletics. That role is assumed by the Ohio High School Athletic Association (OHSAA).

The OHSAA regulates and administers interscholastic athletic competition for grades 7 through 12. Founded in 1907, the OHSAA is a voluntary, unincorporated, not-for-profit association of public and private schools. The OHSAA is managed by a Board of Control and governed by a constitution and

bylaws. The Association divides the state into six districts (Central, East, Northeast, Northwest, Southeast, and Southwest), each with its own district athletic board.

In addition to administrative powers and duties, the Board of Control also determines contest rules for each sport recognized by the OHSAA; organizes and conducts all statewide interscholastic athletic tournaments; holds hearings regarding student eligibility, school qualifications, game contracts, and controversies among schools or participating officials; and makes and approves regulations.<sup>5</sup> The constitution and the bylaws must comply with Ohio law, and the Board has the authority to immediately change a bylaw or part of the constitution to do so.<sup>6</sup>

In 2004, OHSAA had 832 member schools. Membership is voluntary and “open to any school with any combination of grades seven through twelve” as long as it meets all of the following requirements. First, the school must be “chartered by the Ohio Department of Education or [operate] in accordance with the Ohio Department of Education Minimum Standards [for] Non-Chartered Non-Tax Supported School[s].” This includes school districts, community schools, and private schools. The school must also have “conformed with all bylaws and regulations of the OHSAA for one year prior to the date of application.” In addition, the school must have “sponsored two varsity ‘recognized sports’ . . . per

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*Student participation in interscholastic athletics is a privilege, not a right.*

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*Generally, the OHSAA requires that students and their parents reside in Ohio, and the students be enrolled in and attending the schools sponsoring their teams, in order to participate in athletics in the state.*

sport season in the school year prior to becoming a member and will continue at this minimum sponsorship level, which includes participation in OHSAA tournaments, for each year in which the school intends to renew its membership.” If the school has not sponsored two varsity “recognized sports” per season in the prior school year, the school may be accepted if it (a) pays an annual membership fee, the amount to be determined by the Board of Control and (b) is “authorized for participation in the appropriate enrollment division of any OHSAA tournament without affecting division dividing lines.”<sup>7</sup>

The OHSAA Board of Control has ten members (eight of whom are voting members), including one representative from each of the six district athletic boards, one representative who teaches seventh or eighth grade at least 60% of the time, one representative who is a racial minority, a nonvoting ex officio member of the Ohio Department of Education, and a nonvoting ex officio member from the Ohio Interscholastic Athletic Administrators Association. Although a representative of the Ohio Department of Education serves as a nonvoting member of the Board, the Department does not participate in the regulation of school athletics. Other than the two ex officio members, a person must be a teacher or administrator of a member school to sit on the Board of Control.<sup>8</sup>

### ***Student eligibility under OHSAA--an overview***

The rules of the OHSAA (Bylaw 4--Student Eligibility) generally require that the student and parent reside in Ohio and that the student be enrolled in and attending the school sponsoring the team.<sup>9</sup> Each district board of education is responsible for establishing the minimum number of classes a student must take to be considered “enrolled” in the school. As a result, enrollment policies may vary across districts.

In addition to each school district’s disciplinary policies and minimum GPA requirement, the OHSAA has its own eligibility requirements. High school students who turn 19 before August 1 are ineligible in the ensuing school year, unless the student is disabled, and the student cannot have been enrolled in high school for more than eight semesters. Students must maintain amateur status and not accept awards, equipment, or prizes valued at greater than \$200 per item. Students cannot compete in structured or mandatory open-gyms, nor can they receive instruction from a school coach, outside of the sport season or a ten-day period (seven for football) between June 1 and July 31. Competing on a nonschool team during the school team’s season, recruitment by the school, anabolic steroid use, and drug, alcohol, and tobacco use at the game site are all prohibited.<sup>10</sup>



Under OHSAA, high school students must have received passing grades in a minimum of five one-credit courses in the immediately preceding grading period. Seventh- and eighth-grade students must also be currently enrolled in a member school and have received a passing grade in 75% of their subjects. Students may not use summer school grades to make up for a failed class or lack of courses taken in the final grading period.<sup>11</sup>

### ***Student transfer regulations***

One set of OHSAA rules that receives much attention concerns athletic eligibility of students who transfer schools. Under the OHSAA bylaws:

If a student transfers after the first day of the student's ninth grade year or after having established eligibility prior to the start of school by playing in a contest . . . the student will be ineligible for one year from the date of enrollment in the school to which the student transferred.<sup>12</sup>

This rule applies to all schools, public and private, but there are exceptions. For instance, a student is "immediately eligible" to participate in the athletic program of a new school if the student's parents or legal guardian have made a "bona fide legal change of residence from

one public school district to another"; if one of the student's parents in a shared parenting plan has made a "bona fide legal change of residence"; or if the school in which a student was enrolled closes. To determine a "bona fide" move, OHSAA considers such factors as where the parents and family sleep, receive mail, and prepare and eat meals, where the parents are registered to vote, and where "important family activities" take place.

A student who transfers from the State School for the Blind or the State School for the Deaf is eligible upon enrollment in the new school.

**Commissioner rulings.** If a student who is a ward of the state receives a new court-appointed guardian with whom the student lives, or if a court orders a custody change in parent and a student moves to live with the new custodial parent, that student may be ruled eligible by the OHSAA Commissioner. The Commissioner must also rule on the eligibility of a student in the following cases:

(1) A student whose parents' residence is annexed to a different district or consolidated with another district and that student transfers to a school in the annexed or consolidated district;

(2) A student who resides in a different district than the student's parents, is considered "self-supporting," and enrolls in a school in the district in which the student resides;

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*Students who transfer in high school are ineligible to participate in athletics for one year, but there are exceptions.*



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*Equal treatment  
in athletics is a right  
protected by federal  
law.*

(3) A student who enrolls in a school in the district where the parents have a “contracted domicile” that is not yet “available for their habitation”;<sup>13</sup> and

(4) A student who exercises the option under the federal No Child Left Behind Act to transfer out of a poorly performing or unsafe school, “if the student can demonstrate to the satisfaction of the Commissioner’s office that the transfer is for purely academic reasons and not athletic reasons.”<sup>14</sup>

***One-time exceptions.*** A student can also receive an eligibility exception for one of the following reasons approved by the Commissioner, but may qualify only once for only one of the following exceptions:

(1) A transfer because the student’s school cancels its athletic program, but only if the student was on a team the entire previous season, the transfer happens at the beginning of the school year or beginning of the next grading period following the cancellation, and the student participates for one year in the new school only in the sports in which the student participated in the previous year;<sup>15</sup>

(2) A transfer to a school in the student’s parent resident school district (this appears to apply to students who attend a private school, charter school, or school in another school district and transfer to their parents’ home school district); or

(3) A transfer to “protect the student’s physical or mental well-

being” mutually agreed upon by the superintendents of both the student’s original and new school.

### ***Rights of athletes under federal law***

While participation in interscholastic athletics is a privilege and not a protected right, equal treatment in sports is. Federal legislation addresses equal access to opportunities for disabled and female students.

#### ***Students with disabilities***

The federal Individuals with Disabilities Education Improvement Act (IDEA) entitles all students with disabilities to a free and appropriate public education.<sup>16</sup> This entitlement also encompasses extracurricular activities within school. Under IDEA, school districts must “provide nonacademic and extracurricular services and activities in a manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.”<sup>17</sup> These “nonacademic and extracurricular services” include athletics.<sup>18</sup>

The federal Rehabilitation Act of 1973 also protects the rights of individuals with disabilities. Under section 504 of that act,

No otherwise qualified individual with a disability in the United States . . . shall,



solely by reason of her or his disability, be excluded from the participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.<sup>19</sup>

The act directs school districts to provide disabled students access to all opportunities and services available to their non-disabled peers, including extracurricular activities such as athletics. Access to an opportunity, however, does not mean a guarantee for participation in an activity.

### ***Female students; Title IX***

Passed by Congress to give equal academic and extracurricular opportunities for boys and girls, Title IX of the federal Education Amendments of 1972 protects against gender discrimination under any school program or activity that receives federal assistance.<sup>20</sup> It applies to all schools receiving federal assistance, including school districts, chartered nonpublic schools, and most colleges and universities and is enforced by the U.S. Department of Education through its Office for Civil Rights (OCR). Two areas are examined to determine compliance with Title IX: participation and treatment.

***Participation.*** The OCR uses three “tests” to determine equality of participation. A school need only

comply with *one of the three*. In a 2003 clarification on Title IX, OCR lists the “three prongs” of the tests as:

- (1) The . . . participation opportunities for male and female students at the institution are “substantially proportionate” to their respective . . . enrollments;
- (2) The institution has a “history and continuing practice of program expansion” for the under-represented sex; or
- (3) The institution is “fully and effectively” accommodating the interests and abilities of the underrepresented sex.<sup>21</sup>

In a 1996 clarification, OCR had labeled the proportionality test “a safe harbor” for compliance with Title IX, which led many to believe it to be the preferred test. Some commentators suggested that this belief, in turn, may have contributed to the decision of some schools, colleges, and universities to eliminate some male sports. However, the 2003 clarification stated that each of the three tests is equally valid and one is not preferred over any other, and in 2005 OCR again stated that “each part of the three-part test is a safe harbor.”<sup>22</sup> Also in the 2003 clarification, the OCR states that eliminating teams to comply with

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*Title IX was passed by Congress in 1972 to protect against gender discrimination in any school program or activity that receives federal assistance.*

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*Two areas examined to determine compliance with Title IX are equal treatment and participation.*



Title IX is “a disfavored practice” that is not in the spirit of Title IX since it lessens opportunities for students and does not “[enhance] opportunities for students who have suffered from discrimination.”<sup>23</sup> Essentially, these clarifications make it safe for schools and institutions to move away from attempting to maintain gender proportionality as long as they adhere to one of the other two guidelines.

In 2005, the OCR made it easier for schools and institutions to comply with Title IX by providing a model web-based survey that schools could use to meet the terms of the third prong for compliance. The OCR held that surveying student interest via the Internet is a reliable and “acceptable method to measure students’ interests in participating in sports.”<sup>24</sup> This decision caused much controversy, especially among advocacy groups for women in athletics and education, which claimed that institutions could construe lack of response to e-mail surveys as lack of interest in athletics by women.

**Treatment.** Under Title IX, female athletes should receive the same advantages and access provided to male teams. In weighing equal treatment of athletes, the OCR considers several different categories, such as:

(1) Whether the selection of sports and levels of competition effectively accommodate the interests

and abilities of members of both sexes;

(2) The provision of equipment and supplies;

(3) Scheduling of games and practice time;

(4) Opportunity to receive coaching and academic tutoring;

(5) Assignment and compensation of coaches and tutors;

(6) Provision of locker rooms and practice and competitive facilities; and

(7) Publicity.<sup>25</sup>

Title IX does not require a “tit-for-tat” system, but instead a system where an advantage or favorable treatment is not concentrated on boys’ athletics. For example, the amount of funding girls’ sports receive does not necessarily have to equal the amount boys’ sports receive. However, girls’ and boys’ teams should be afforded equal opportunity for funding. In a presentation about Title IX funding, Christina Henagen Peer suggested the following as an “acceptable funding structure”: the boys’ football team and the girls’ volleyball team both have the opportunity to replace out-dated or worn-out equipment before the start of the season. Since football equipment is more expensive than volleyball equipment, the boys’ football team receives more money than the girls’ volleyball team. Conversely, if girls lack opportunities because of lack of funding, the school must increase its funding of girls’ sports, reduce funding to boys’ sports, or both.<sup>26</sup>

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*Title IX requires that female athletes receive the same opportunities and access as male athletes, including equipment, scheduling, coaching, and publicity.*



## **Home-schoolers’ participation**

According to the National Center for Education Statistics, 1.1 million students were home-schooled in 2003. This was approximately a 29% increase over four years.<sup>27</sup> As the home schooling movement continues to grow, more questions arise concerning participation of home-schoolers in extracurricular activities offered by school districts.

### **Ohio**

OSHA bylaws require that a student, “participating in a school sponsored sport must be *enrolled and attending* in accordance with all duly adopted Board of Education or similar governing board policies of that school”<sup>28</sup> (emphasis added). Therefore, a home-schooled student who takes no classes in a member school is not eligible. In a 1996 statement, OHSAA affirmed that conclusion,<sup>29</sup> and subsequent telephone conversations with the OHSAA confirmed that this interpretation remains current. However, according to the 1996 statement, OHSAA “has adopted the most liberal interpretation of enrolled.”<sup>30</sup> In the exception section of the bylaw, OHSAA states that a student who is home-schooled may be eligible if enrolled in a member school under partial enrollment, meaning it could be possible for a home-schooled student to participate in interscholastic sports if that student was taking at

least one class in a member school and attending that school for that class.

The General Assembly has considered two bills since 1995 that would have entitled home-schooled students to participate in extracurricular activities in public schools. Am. Sub. H.B. 512 of the 121st General Assembly, introduced in 1995, and H.B. 47 of the 122nd General Assembly, introduced in 1997, both would have required school districts to permit home-schooled children to participate in school district extracurricular activities as long as they met certain academic and other performance requirements. They both essentially would have nullified OHSAA’s bylaw prohibiting home-schooler eligibility. Neither was enacted.

### **Other states’ statutes**

The statutes of eight states allow home-schooled students to participate in extracurricular activities at a public school without the need to enroll in the school: Arizona, Colorado, Florida, Maine, Minnesota, New Hampshire, Oregon, and Vermont.<sup>31</sup> These states do not specify any further requirements for students wishing to participate in extracurricular activities, though it seems reasonable to conclude that home-schooled students must comply with the same standards as enrolled students. Some of the statutes specify that a home-schooled student may participate only

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*In Ohio, OHSAA bylaws require home-schooled students to be enrolled in and attending a school in at least one class in order to participate in school athletics.*



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*Rules and laws regarding home-schooled student participation vary from state to state.*

at the school that the student otherwise would be eligible to attend.

Three states allow home-schooled students to participate in extracurricular activities with certain caveats. North Dakota and South Dakota require approval from the school board or administrator for a student to participate.<sup>32</sup> Pennsylvania and North Dakota specify that home-schooled students must meet the same eligibility criteria required of students enrolled in the school district in order to take part in extracurricular activities.<sup>33</sup>

Four other states require students to either “dual enroll” or enroll part-time in a public school to participate in extracurricular activities: Idaho, Iowa, Utah, and Washington.<sup>34</sup>

In addition, home-schoolers in some states can participate in interscholastic athletics by rule of that state’s high school athletic association. Those states include Nevada, Rhode Island, Wyoming, and Massachusetts. (See below for a summary of a Massachusetts state court decision entitling home-schoolers to participate.) The athletic associations of Rhode Island and Massachusetts explicitly require athletes’ compliance with additional association rules.

#### ***Other states’ courts***

Several state courts have ruled that participating in interscholastic athletics is not a fundamentally protected right of home-schooled students. These courts affirmed

the rights of school boards and independent athletic associations to make and enforce rules as they find necessary as long as those rules are fair and not arbitrary or suspect.

In 1980, for instance, a New York intermediate appellate court stated that “participation in interscholastic high school competitions is not a substantial right.”<sup>35</sup> Therefore, the parent of a student denied eligibility for an international gymnastics competition on the basis of an athletic association’s rule could not bring a substantive due process claim unless some fundamental right was the basis of the parent’s complaint. Further, the parent’s equal protection claim was subject only to a rational basis test and the court found that the parent failed to submit any proof that the rule was not rational. That decision and rationale has been cited in numerous trial and appellate cases in New York since that time.

Similarly, in 2005, the Supreme Court of Appeals of West Virginia also found that students had no fundamental right to participate in interscholastic athletics and that the West Virginia Secondary Schools Activities Commission had a “rational basis for excluding home-schooled children from participating in interscholastic athletics.”<sup>36</sup>

However, in 1995, a Massachusetts trial court found that, although a home-schooled student’s interest in interscholastic competition was not a fundamental right, the enforcement of an association’s rule excluding her from eligibility was not rational. The



court held that “the classification [created by the Massachusetts Interscholastic Athletic Association (MIAA) that disallowed the student from participating] creates varying treatment of students based on in-school and home-school status and the classification and varying treatment are not rationally related to a legitimate State purpose.” The court stated that since the student’s home-school program met the standards required by the state, the student was in fact attending school, just not in the public school building. Therefore, the court found that the MIAA’s exclusion of home-schoolers from interscholastic athletics was “varying treatment” and issued an injunction allowing the student to try out for and, if she made the team, participate on the public high school’s athletic team.<sup>37</sup>

### **Parents’ rights and spectator conduct**

More and more incidents of parents and other school sports fans being verbally abusive, and sometimes even violent, against coaches or sports officials are being reported throughout the country. Ultimately, there is nothing in the constitution that guarantees parents the right to attend their children’s athletic events. Under R.C. 3313.20, the school district board of education must make rules for all people entering upon its school grounds or premises. Some school districts adopt specific policies to govern the behavior of parents and other spectators at school athletic events. These rules are commonly known as “sideline policies.”<sup>38</sup> If parents or other visitors fail or refuse to leave school property when notified to do so, those people could be charged with criminal trespass, a misdemeanor of the fourth degree.<sup>39</sup>

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*School district boards of education have the power to make rules for all people who enter school grounds. Some districts adopt “sideline policies” to govern the behavior of parents and other spectators at school athletic events.*

### **Endnotes**

<sup>1</sup> Smith, Karen, “Formed in 1907, Ohio High School Athletic Association serves more than 300,000 participants,” *NFHS News*, June 2004.

<sup>2</sup> R.C. 3313.47 and 3319.01.

<sup>3</sup> The Ohio High School Athletic Association also imposes academic eligibility standards for interscholastic athletics.

<sup>4</sup> *Menke v. Ohio High School Athletic Association*, 2 Ohio App.3d 244, 245 (1981).

<sup>5</sup> OHSAA Constitution, 5-7-1.

<sup>6</sup> OHSAA Constitution, 8-1-1.

<sup>7</sup> OHSAA Constitution, 3-1-1.

<sup>8</sup> OHSAA Constitution, Article 5.



<sup>9</sup> Exceptions to the requirement to reside in Ohio include cases such as: (1) a student who attended grade 11 in Ohio for at least 15 days before the parent moved out of Ohio, if the student maintains continuous Ohio enrollment, (2) a student who maintains continuous enrollment since grade K or 1 in an Ohio school offering grades 1 through 12, and (3) a student who resides in a neighboring state, whose school district pays tuition for the student's entire grade level to attend an Ohio public school, and who will be eligible for an Ohio high school diploma (OHSAA Bylaw 4-6-3). Exceptions to the requirement to attend the school sponsoring the team include such cases as: (1) a student enrolled in a joint vocational school, (2) a student enrolled full-time in a college, if receiving high school credit for at least five one-credit college courses, and (3) a ninth-grade student whose school is separate from the high school (OHSAA Bylaw 4-3-1). The bylaw also implements R.C. 3313.537, which permits a student of a community school that is sponsored by the student's resident school district to participate on the district's teams.

<sup>10</sup> "Your Athletic Eligibility: A Guide for Students for the 2006-07 school year," OHSAA Eligibility Bulletin, [www.ohsaa.org/eligibility/EligBulletin\\_Landscape\\_06.pdf](http://www.ohsaa.org/eligibility/EligBulletin_Landscape_06.pdf), last visited 9/14/06.

<sup>11</sup> OHSAA Bylaws 4-4-1, 4-4-5, and 4-4-7.

<sup>12</sup> OHSAA Bylaw 4-7-2.

<sup>13</sup> Ohio law entitles a student to attend a school district where the parent has purchased a home and is waiting either for construction to finish or the mortgage loan to close. A student may attend school in this circumstance for up to 90 days. The law entitles the student to participate in interscholastic athletics in the new district as long as the board of the old district "releases the student to participate." (R.C. 3313.64(F)(6) and (7).)

<sup>14</sup> OHSAA Bylaws 4-7-2 and 4-7-4.

<sup>15</sup> OHSAA Bylaw 4-7-2. Ohio law permits a student to attend school free of tuition in a school district other than the one in which the parent resides if the superintendents of both districts agree in writing that the purpose is to protect the student's physical or mental well-being or to deal with other extenuating circumstances. The student must be allowed to participate in all student activities, including interscholastic athletics, at the school of attendance on the same basis as a student who has always attended that district. (R.C. 3313.64(F)(12).)

<sup>16</sup> 20 United States Code (U.S.C.) § 1400 *et seq.*

<sup>17</sup> 34 Code of Federal Regulations (C.F.R.) § 300.306(a).

<sup>18</sup> 34 C.F.R. § 300.306(b).

<sup>19</sup> Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794).

<sup>20</sup> 20 U.S.C. § 1681.

<sup>21</sup> "Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance," U.S. Department of Education, Office for Civil Rights, July 11, 2003.

<sup>22</sup> "Additional Clarification of Intercollegiate Athletics Policy: Three-Part Test--Part Three," U.S. Department of Education, March 17, 2005. However, it appears that Title IX may not outright prohibit reducing male teams. In a federal court case decided in 2002, male athletes from wrestling, tennis, and soccer programs had brought an action against Miami University of Ohio alleging the school eliminated their teams to comply with Title IX. The athletes claimed the eliminations actually violated Title IX. The Sixth Circuit Court of Appeals upheld the federal district court's ruling in favor of the university, and stated that Title IX "focuses on opportunities for the underrepresented gender, and does not bestow rights on the historically



overrepresented gender.” *Miami University Wrestling Club v. Miami University*, 302 F.3d 608, 615 (6th Cir. 2002). The holdings of the Sixth Circuit are binding in all federal courts in Ohio, Michigan, Kentucky, and Tennessee. The Court in the *Miami University* case cited other federal appeals courts that made similar statements. See *Cohen v. Brown University*, 101 F.3d 155, 174-176 (1st Cir. 1996) and *Neal v. Board of Trustees of the California State Universities*, 198 F.3d 763, 770 (9th Cir. 1999).

<sup>23</sup> “Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance,” U.S. Department of Education, Office for Civil Rights, July 11, 2003.

<sup>24</sup> “Additional Clarification of Intercollegiate Athletics Policy: Three-Part Test--Part Three,” U.S. Department of Education, March 17, 2005.

<sup>25</sup> 34 C.F.R. § 106.41.

<sup>26</sup> Christina Henagen Peer, Esq., “Prime Time Title IX: The Tough Issues.” Ohio School Boards Association Sports Law Workshop, June 23, 2006.

<sup>27</sup> See [nces.ed.gov/pubs2006/homeschool/estimated.asp](http://nces.ed.gov/pubs2006/homeschool/estimated.asp).

<sup>28</sup> OHSAA Bylaw 4-3-1.

<sup>29</sup> *Athlete*, November 1996, pg. 3.

<sup>30</sup> *Ibid.*

<sup>31</sup> Arizona Revised Statutes § 15-802.01, Colorado Revised Statutes § 22-32-116.5, Florida Annotated Statutes § 1002.20(18)(b), Maine Revised Statutes Title 20-A § 5021, Minnesota Annotated Statutes § 123B.49 Subd. 4(a), New Hampshire Revised Statutes Annotated § 193:1-c, Oregon Annotated Statutes § 339.460, and Vermont Statutes Annotated Title 16 § 563(24).

<sup>32</sup> North Dakota Century Code § 15.1-23-16, South Dakota Codified Laws § 13-36-7.

<sup>33</sup> 24 Pennsylvania Statutes Annotated § 13-1327.1(f.1), North Dakota Century Code § 15.1-23-16.

<sup>34</sup> Idaho Code § 33-203, Iowa Code §§ 256.46, 299A.8, Utah Code Annotated § 53A-11-102.5, and Annotated Revised Code of Washington § 28a.150.350.

<sup>35</sup> *Caso v. New York State Public High School Athletic Association*, 434 N.Y.S. 2d 60, 64 (1980).

<sup>36</sup> *Jones v. West Virginia Board of Education*, 622 S.E. 2d 289, 296 (2005).

<sup>37</sup> *Davis v. Massachusetts Interscholastic Athletic Association*, 3 Mass. L. Rep. 375 (1995). The decision was not appealed.

<sup>38</sup> Martin, Julie C. “Students Rights, Parent Rights, and School Rights.” Ohio School Boards Association Sports Law Workshop, June 23, 2006.

<sup>39</sup> R.C. 2911.21.



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