

# Members Only



AN INFORMATIONAL BRIEF PREPARED FOR MEMBERS OF THE OHIO GENERAL ASSEMBLY BY THE LEGISLATIVE SERVICE COMMISSION STAFF

Volume 132 Issue 6  
March 7, 2017

## Interscholastic Athletics

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Nearly 320,000 high school students participate in interscholastic athletics in Ohio, making Ohio fifth 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.

Ohio law authorizes school districts to implement athletic programs and addresses some aspects of interscholastic athletics, such as the participation of nonenrolled students in district athletic programs and protocols and safeguards for sports-related head injuries. Nevertheless, interscholastic athletics are regulated largely by schools and school districts and the private Ohio High School Athletic Association (OHSAA). The OHSAA regulates and administers interscholastic athletics through its constitution and bylaws, which by their own terms must be in compliance with Ohio law.

Federal law generally does not regulate interscholastic athletics. However, federal law does address equal access to opportunities for students with disabilities and female students and requires equal treatment in sports.

### ***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 for 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>2</sup> Therefore, school boards and athletic associations have the authority to regulate interscholastic athletics and to establish program and eligibility requirements, so long as any such regulations and requirements comply with state and federal law.

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

\*This *Members Only* brief is an update of an earlier brief on this subject dated January 8, 2007 (Volume 127 Issue 1).



## **State law**

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>3</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 Appendix (pages 9-11). Recent state legislation is discussed below.

### ***Participation of nonenrolled students***

In recent years, the General Assembly has expanded eligibility for interscholastic athletics to students who are not enrolled in the school sponsoring the sport. Specifically, Ohio law affords students who are residents of a school district, but who are enrolled in a community school or STEM school<sup>4</sup> or who are home schooled,<sup>5</sup> the opportunity to participate in any extracurricular activity (including interscholastic athletics) at the district school to which they would have been assigned.

Similarly, resident students who attend a private school are also afforded this opportunity, but only if the private school does not offer the particular sport in which the student wants to participate. Additionally, under certain circumstances, a student who attends a private school may be allowed to participate at the district in which the student's private

school is located (rather than at the student's resident district).<sup>6</sup>

If a nonenrolled student chooses to participate at the resident district, state law prohibits additional rules to be imposed on that student that do not apply to the district's students participating in the same activity.<sup>7</sup>

### ***Head injuries and concussions***

In response to the growing concern about sports-related head injuries, the General Assembly enacted statutory procedures and safeguards for athletes exhibiting symptoms of a concussion or head injury. A coach or referee of interscholastic athletics at all public and private schools (as well as a coach, referee, or official of a youth sports organization) must remove from practice or competition an athlete exhibiting signs, symptoms, or behaviors consistent with a concussion or head injury.<sup>8</sup> Following removal, a coach, referee, or official is prohibited from allowing an athlete to return to any practice or competition until the athlete has been assessed and cleared for return by a statutorily authorized licensed health care professional.<sup>9</sup>

Additionally, a school cannot allow a student to participate in interscholastic athletics unless the student's parent or guardian has signed a form stating that the student and parent or guardian received the concussion information sheet created by the Ohio Department of Health. This form must be submitted for each school year, as well as for each sport in which the student participates.<sup>10</sup>

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*Interscholastic athletics are regulated mostly by school districts and the private Ohio High School Athletic Association. But in recent years, the General Assembly has addressed eligibility and safeguards against concussions and sudden cardiac arrest.*



### ***Sudden cardiac arrest***

The General Assembly also has enacted similar statutory procedures and safeguards for athletes who exhibit syncope or fainting or who have a personal or family history of sudden cardiac arrest. Coaches at public and private schools (as well as coaches of youth sports organizations) must remove from participation an athlete exhibiting syncope or fainting. Following removal, the coach is prohibited from allowing the athlete to return to practice or competition until assessed and cleared by a statutorily authorized licensed health care professional.<sup>11</sup>

The statute also prohibits a student from participating in interscholastic athletics if the student is predisposed to sudden cardiac arrest or is known to have experienced syncope or fainting, unless the student has been evaluated and cleared for participation. Additionally, a school cannot allow a student to participate unless the student and the student's parent or guardian have signed a form stating that they have received the sudden cardiac arrest guidelines created jointly by the Ohio departments of Health and Education. This form must be submitted for each school year, as well as for each sport in which the student participates.<sup>12</sup>

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

Beyond the statutes summarized above and in the Appendix, 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 competition for grades 7 through 12. Founded in 1907, it is a voluntary, unincorporated, not-for-profit association of public and private schools that is governed by its own constitution and bylaws. The OHSAA is managed by a Board of Directors and employs a staff for its day-to-day operations, including several staff within the Commissioner's Office who serve as sport-specific administrators and oversee student eligibility. Each of the state's six districts (Central, East, Northeast, Northwest, Southeast, and Southwest) also has its own district athletic board.

The Board of Directors 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, participants, or officials; establishes an appeals process by which decisions of the Commissioner's Office can be reviewed; suspends a school from membership in the Association, if necessary; and makes and approves regulations.<sup>13</sup> The constitution and the bylaws themselves specify that they must comply with Ohio law, and the Board has the authority to immediately change a bylaw or part of the constitution as necessary.<sup>14</sup>

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*The OHSAA is a voluntary, not-for-profit association of public and private schools that regulates and administers interscholastic competition for grades 7 through 12.*



OHSAA's website includes an "Eligibility Resource Center" to help students, parents, and school administrators understand the requirements and exceptions for athletic eligibility.

Students who wish to participate in athletics under an exception generally must receive approval from the OHSAA Commissioner's office.

### **Membership in the OHSAA**

For the 2016-2017 school year, the OHSAA had 821 member high schools and 895 member middle schools. Membership is voluntary and "open to any school with any combination of grades seven through twelve" as long as it is chartered by the Department of Education or operates in accordance with the Department's minimum standards for nonchartered schools. This includes school districts, community schools, STEM schools, and private schools. The school must also have "conformed with all bylaws and regulations of the OHSAA for a minimum period of one year immediately prior to the date of application." In addition, the school must have "sponsored at least two varsity 'recognized sports' . . . per sport season in the school year immediately prior to becoming a member" and must intend to continue at this minimum sponsorship level, including participation in OHSAA tournaments.<sup>15</sup> Membership in the OHSAA must be renewed annually.

### **Student eligibility under the OHSAA**

One set of OHSAA rules that receives much attention concerns the athletic eligibility of students. Therefore, the OHSAA has recently updated its website to include an "Eligibility Resource Center," which is available to the public. The resource center includes nine individual resource centers that pertain to aspects of student eligibility: transfers, age limitations, enrollment and attendance, scholarship, conduct/character/discipline, residence,

international and exchange students, recruiting, and amateur status. Each resource center explains the pertinent bylaws, and exceptions to those bylaws, that govern student eligibility under OHSAA.<sup>16</sup>

Generally, the OHSAA rules require that: (1) the student and student's parent reside in Ohio, (2) the student is enrolled in and attending the school sponsoring the team, (3) a seventh- or eighth-grade student does not turn 15 before August 1 in the ensuing school year, (4) a high school student is under age 20, (5) a seventh- or eighth-grade student participates for no more than four semesters at the seventh- and eighth-grade levels, (6) a high school student is enrolled in high school for no more than eight semesters, (7) the student receives passing grades in at least five one-credit courses in the immediately preceding grading period, (8) the student maintains amateur status, (9) the student does not participate in mandatory open gyms or conditioning outside of the sport's prescribed season, (10) the student has a physical examination each year and the examination is on file at the school, and (11) if the student transfers schools, the student fulfills the applicable requirements, depending on the type of transfer, which may include not participating in contests for a portion of the season.<sup>17</sup>

**Exceptions and appeals.** The OHSAA website also includes the exceptions to each bylaw. In order to maintain athletic eligibility under an exception, the student, often through a school official, must submit a form or documentation showing compliance



with the exception. For many cases, the OHSAA Commissioner's Office retains the power to grant or deny athletic eligibility, in accordance with OHSAA rules. For example, when making a decision involving a transfer student, the Commissioner's Office looks to OHSAA bylaws and determines, on a case-by-case basis, whether the student meets one of the exceptions. Decisions by the Commissioner's Office may be appealed to the OHSAA Appeals Panel.

**Compliance.** All OHSAA rules must comply with state law, including those related to athletic eligibility. For example, when the General Assembly passed laws entitling students of community schools, STEM schools, and private schools, and students who are home schooled, to participate in interscholastic athletics at their resident school districts, the OHSAA amended its rules to reflect those changes. If there is a discrepancy between state law and OHSAA rules, state law prevails.

### ***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 students with disabilities and female students.

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

The federal Individuals with Disabilities Education Act (IDEA) entitles all students with disabilities to a free and appropriate public education.<sup>18</sup> This entitlement also encompasses extracurricular activities. Under IDEA, each public school must "provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities."<sup>19</sup> These "nonacademic and extracurricular services" may include athletics.<sup>20</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 the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.<sup>21</sup>

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

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

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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.*



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

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

### *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>22</sup> It applies to all schools receiving federal assistance, including public schools, 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 equal access to athletics under Title IX: participation and treatment.

**Participation.** The OCR uses three "tests" to determine equality of participation. A school need comply only with one of the three. According to the OCR's "Title IX Resource Guide," these tests are:

- (1) Whether participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments;
- (2) Where the members of one sex have been and are underrepresented among athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; or

(3) Where the members of one sex are underrepresented among athletes, and the institution cannot show a history and continuing practice of program expansion, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.<sup>23</sup>

In a 2010 Dear Colleague Letter, the OCR explained that the three-part test is "intended to allow institutions to maintain flexibility and control over their athletic programs consistent with Title IX's nondiscrimination requirements." The OCR also confirmed that if an institution has met any part of the three-part test, the institution will be considered to have met this requirement.<sup>24</sup>

**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) Travel and per diem allowance;

(5) Opportunity to receive coaching and academic tutoring;


(6) Assignment and compensation of coaches and tutors;

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

(8) Provision of medical and training facilities and services;

(9) Provision of housing and dining facilities and services; and

(10) 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. The Women's Sports Foundation explains that "the only dollar for dollar expenditure requirement is in the athletic financial assistance area, where schools are required to spend dollars proportional to participation rates."<sup>26</sup> 

## Endnotes

<sup>1</sup> National Federation of State High School Associations (NFHS), "High School Sports Participation Increases for 27th Consecutive Year," NFHS News, September 2016. For an online version of this article, see <https://www.nfhs.org/articles/high-school-sports-participation-increases-for-27th-consecutive-year/>. Current issues of the Federation's magazine can be accessed at its website under "Resources" and then under "Publications."

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

<sup>3</sup> R.C. 3313.47 and 3319.01.

<sup>4</sup> R.C. 3313.537.

<sup>5</sup> R.C. 3313.5312.

<sup>6</sup> R.C. 3313.5311.

<sup>7</sup> R.C. 3313.537(E), 3313.5311(E), and 3313.5312(F).

<sup>8</sup> R.C. 3313.539, 3314.03(A)(11)(d), 3326.11, and 3707.511.

<sup>9</sup> R.C. 3313.539(E) and 3707.511(E).

<sup>10</sup> R.C. 3313.539(B) and 3707.52.

<sup>11</sup> R.C. 3313.5310, 3314.03(A)(11)(d), 3326.11, and 3707.58.

<sup>12</sup> R.C. 3313.5310(C).

<sup>13</sup> OHSAA Constitution, 5-6-1.

<sup>14</sup> OHSAA Constitution, 8-1-1.

<sup>15</sup> OHSAA Constitution, Article 3.

<sup>16</sup> The "Eligibility Resource Center" can be accessed through OHSAA's website at [www.ohsaa.org](http://www.ohsaa.org), under "Eligibility."

<sup>17</sup> OHSAA Bylaw 4—Student Eligibility. Also see "Eligibility Guide for Participation in High School Athletics: 2016-2017 Edition," OHSAA, May 17, 2016.

<sup>18</sup> 20 United States Code (U.S.C.) § 1400 *et seq.*



<sup>19</sup> 34 Code of Federal Regulations (C.F.R.) § 300.107(a).

<sup>20</sup> 34 C.F.R. § 300.107(b).

<sup>21</sup> Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794).

<sup>22</sup> 20 U.S.C. § 1681.

<sup>23</sup> "Title IX Resource Guide," U.S. Department of Education, Office for Civil Rights, April 2015.

<sup>24</sup> "Part Three of the Three-Part Test," U.S. Department of Education, Office for Civil Rights, Dear Colleague Letter, April 20, 2010. This letter can be accessed at the U.S. Department of Education website at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100420.html>.

<sup>25</sup> 34 C.F.R. § 106.41.

<sup>26</sup> "A Title IX Primer," Women's Sports Foundation, August 1998. This article can be accessed at the Women's Sports Foundation website at [www.womenssportsfoundation.org](http://www.womenssportsfoundation.org).

**Appendix**, "State Statutes Addressing Interscholastic Athletics," begins on page 9.

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**Appendix**  
**State Statutes Addressing Interscholastic Athletics**

R.C. Section	Description of Authority
3109.78	Prohibits a person from creating a power of attorney or executing a caretaker authorization affidavit for the purpose of enrolling the child in a school or school district so that the child may participate in the school's or district's academic or interscholastic athletic programs.
3301.60	Includes Ohio in the Interstate Compact on Educational Opportunity for Military Children to remove barriers imposed on children of military families by facilitating the qualification and eligibility for enrollment, including participation in interscholastic athletics.
3313.20 and 3313.47	Authorizes boards of education to manage and control district schools and to adopt reasonable rules for their governance.
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 athletics. <sup>a</sup>
3313.537	Entitles students who are district residents, but who attend community schools or STEM schools, to participate in interscholastic athletics at the district school to which the student would have been assigned.
3313.538	Prohibits a student who attends school in Ohio from being denied the opportunity to participate in interscholastic athletics solely because the student's parents do not reside in the state, so long as the student resides in Ohio with a specified guardian or relative that has legal or temporary custody.
3313.539, 3707.511, 3707.52, and 3707.521	Requires schools to provide students and parents with information on head injuries; requires coaches and referees of interscholastic athletics at all public and private schools to remove from practice or competition an athlete exhibiting signs, symptoms, or behaviors consistent with a concussion or head injury; and prohibits removed athletes from returning to practice or competition until the athlete has been assessed and cleared for return by a statutorily authorized licensed health care professional.

<sup>a</sup> The OHSAA also imposes academic eligibility standards.

<b>R.C. Section</b>	<b>Description of Authority</b>
3313.5310, 3314.145, 3326.29, 3707.58, and 3707.59	Requires coaches at public and private schools to remove from participation an athlete exhibiting syncope or fainting; requires coaches to annually complete a sudden cardiac arrest training course; and prohibits students from participating if predisposed, known to have experienced symptoms, or removed from participation due to symptoms until cleared by a statutorily authorized licensed health care professional.
3313.5311	Entitles students who attend a private school to participate in interscholastic athletics at the district school to which the student would have been assigned or, under specified circumstances, the district in which the nonpublic school is located, if the private school does not offer that athletic activity.
3313.5312	Entitles students who are district residents, but who are home schooled, to participate in interscholastic athletics at the district school to which the student would have been assigned.
3313.5314	Prohibits students from being denied participation in interscholastic athletics solely due to the student's participation in the College Credit Plus (CCP) program.
3313.603(K)	Permits schools to adopt a policy excusing high school students who participate in interscholastic athletics, for at least two full seasons, from the physical education requirement for graduation.
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.
3313.97, 3313.98, 3313.983, 3314.06, and 3326.10	Prohibits most school districts for purposes of open enrollment, and all community schools and STEM schools, from limiting admission to students on the basis of athletic ability.



<b>R.C. Section</b>	<b>Description of Authority</b>
3313.982	Permits a school district to limit admission of open enrollment students on the basis of athletic ability only if (1) the district was operating under that policy before October 1, 1989, or (2) the district submits a plan to the State Board of Education to operate under that policy and receives the State Board's approval.
3315.062	Authorizes district boards 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.
3319.303	Requires individuals to obtain a pupil-activity program permit issued by the State Board in order to coach or supervise interscholastic athletics. In order to obtain or renew a permit, individuals must complete training on head injuries and concussions.
3321.041	Requires school districts to count up to four days of absences as excused absences, if a student is traveling out of the state to participate in interscholastic athletics. Students still must complete classroom assignments that were missed during that period.