Texas Entertainment and Sports Law Journal

State Bar of Texas
Entertainment & Sports Law Section

Fall 2017 — Volume 26 • No. 2

#1 Record by Philip Durst

TESLAW.ORG

The Texas Entertainment and Sports Law section of the State Bar of Texas is comprised of more than 950 Texas-licensed attorneys practicing in the areas of film, music, art, book publishing, and collegiate and professional sports. The TESLAW website at www.teslaw.org offers attorneys a chance to be listed with their focus area of practice in a publicly searchable database. The TESLAW Journal is a recognized publication providing scholarly and insightful articles on the law and practice of entertainment and sports law. Join today to be part of a collegial organization growing the practice of entertainment and sports law in Texas; for new bar members, the first year's dues are free.

CHAIR'S LETTER

Mike Farris
Chair 2017-2018

Autumn is upon us, the leaves will soon turn, and there is an occasional chill in the air. It won't be long until it's fireplace season, one of my favorite times of the year. There's nothing better than a blazing fire (unless you don't have a fireplace), a hot cup of coffee, and a good book to read with your favorite music in the background. Or maybe watching football or catching up on all the movies you haven't had time to see.

These are all things that remind us of what we, as sports or entertainment lawyers, do for a living. For every book, there was a literary agent or attorney behind the publishing contract. For every song, a music lawyer; for every movie or television show, an entertainment attorney; for every game, a sports lawyer.

Texas has long been a hot spot for sports and music, and more recently, a prime location for film and television production. Texas is also home to some fantastic authors, from fiction to non-fiction, some of whom bridge the gap from literature to film or TV. If you attended the section's CLE program at the State Bar of Texas Annual Meeting this past year, you probably heard Dallas author Kathleen Kent, who was on a panel with other Texas writers. Her cop novel *The Dime* has just recently been optioned by Fox for a television series, to be executive produced by Matt Reeves, writer/director of *War for the Planet of the Apes* and the upcoming *Batman*. The pilot will be scripted by Tony and Joe Gyton, who created AMC Network's *Hell on Wheels*.

Texas State University professor Vicky Bynum's non-fiction book *The Free State of Jones* (University of North CarolineaPress) served as the basis for the movie *Free State of Jones*, released in 2016, which starred Matthew McConaughey and was directed by multi-time Oscar nominee Gary Ross.

Film rights to my own book, *A Death in the Islands: The Unwritten Law and the Last Trial of Clarence Darrow*, have been optioned by Aaron and Jordan Kandell, who were writers on the Disney hit *Moana*. They are also the writers and co-producers of *Adrift*, starring Shailene Woodley (*The Descendants*) and directed by Baltasar Kormakur (director of *Contraband*, with Mark Wahlburg, and *2 Guns*, with Denzel Washington).

I could go on, but the point is that there is plenty of sports and entertainment legal work to be found in Texas. The trick is to know the industries and the law, network with the right people, and be in the right place at the right time. There is no better place to check all three of those boxes than through membership in the State Bar's Entertainment and Sports Law Section. Membership entitles you to receive the TESLAW Journal and Newsletters (Joel Timmer and Victoria Helling, respectively, do a fantastic job with those), and provides you with opportunities to attend such things as the *Entertainment Law Institute* (this year in Austin, November 16-17) and the Section's CLE program at the State Bar's annual meeting.

If you have any questions about these opportunities, feel free to contact any of the Section's officers or council members, and we'll do our best to point you in the right direction. If you have articles to contribute to the Journal or the Newsletter, let Joel or Victoria know. And if you have suggestions on how to improve the Section or its programs, please let me hear from you. My email address is **msfarris1@att.net**.

Mike Farris

2017-2018 Chair

Tristan C. Robinson,
TESLAW Law Student Liaison

TESLAWyers,

I wear a number of hats for our Section, but of present I write you wearing that of Law Student Liaison to TESLAW.

Our Section's membership is comprised of a delightful mix of attorneys—some practicing, some not, those established in their careers, and those just setting out on them. We thrive on that composition of people, and the countless volunteer hours of so many whom have selflessly dedicated such time to the Section. And yet, we still have room for growth and progress in what boils down to an immensely important and often overlooked aspect of our outreach agenda—engaging law students, whom with a bit of effort may well be the future faces of TESLAW. Sadly, though "Entertainment and Sports Law" are sexy subjects, permeating the bureaucracy of Law Schools effectively has proven somewhat difficult.

In 2016, we had something of a breakthrough with St. Mary's University School of Law. We conducted a panel for the student body consisting of three members of TESLAW on the topic of "How to Become a Sports and Entertainment Lawyer." Not a seat was empty, and we fielded more questions than we had time to answer. As a practical result, these efforts allowed us to get the word out about 2016's ELI, and generally garner the interest of what later became many "affiliate" members of the Section—whom we certainly hope will become active members upon graduation. With a bit of a collaborative hand, it is my hope that we can fashion a "circuit" of similar panels throughout the various other law schools in Texas.

So other than panels, what can TESLAW offer? Well, Law Students, for a nominal fee (a mere $15.00), are eligible for an "affiliate" membership with the State Bar of Texas, whereby they receive access to all of our MCLE courses and major events free of charge—according to Mike Tolleson, this even includes the biggest event of the year, the Entertainment Law Institute (subject to space availability and advance registration). Moreover, our Journal Editor Joel Timmer almost always has a project in need of a few extra hands, which is not only a way to earn a "writing" credit, but potentially to even be published in our Journal.

It is no easy task to effectively fashion a call to action from Law Students, but is a crucial task in that we may generate the lifeblood of TESLAW tomorrow, today. If my words resonate with you at all, please do not hesitate to reach out—even as little as an hour of your time could ultimately yield the catalyst for a larger, more vibrant Section.

Tristan C. Robinson,
TESLAW Law Student Liaison, Co-Webmaster, and Council (Term Exp. 2020)

Submissions

All submissions to the TESLAW Journal are considered. Articles should be practical and scholarly to an audience of Texas lawyers practicing sports or entertainment law. Articles of any length are considered, but as a general guideline should not exceed twenty-five typewritten, double-spaced, 8 ½" x 11" pages, including any endnotes; however, longer articles will be considered. Endnotes must be concise, placed at the end of the article, and in Harvard "Blue Book" or Texas Law Review "Green Book" form. Please submit articles via e-mail in Word or similar format to j.timmer@tcu.edu or to discuss potential topics.

Once an article is submitted, the Journal does not request any additional authorization from the author to publish the article. Due to the number of submissions and the number of potential publications in the marketplace, it is nearly impossible to monitor publication of submissions in other publications. It is up to the author to assure that we are notified should there be any restrictions on our use of the article. This policy has been implemented to assure that our Journal does not violate any other publication's limitation on republication. The Journal does not restrict republication, and in fact encourages submission of an author's article to other publications prior to or after our election to publish. Obviously, the Journal will make the appropriate attribution where an article is published with the permission of another publication, and request such attribution to the Journal, if we are the first to publish an article.

ENTERTAINMENT & SPORTS LEGISLATIVE UPDATE: FALL 2017

By Stephen Aguilar

Texas

The 85th Texas Legislature closed out the special session on August 15, 2017, after consideration of numerous bills affecting the entertainment and sports industries in Texas. Many eyes in the entertainment industry were especially focused on a series of bills presented by various Texas legislators seeking to abolish the Music, Film, Television, and Multimedia Office, and end or further curtail the funding provided to the Texas Moving Image Industry Incentive Program (TMIIIP). While the bills ended up stalling and eventually dying, this represents the latest in a series of legislative efforts to reduce funding to the state's film incentives program. After lawmakers slashed the initial funding earlier this year to $0, Gov. Greg Abbott intervened and advocated for the incentive program, and funding to the TMIIIP was restored to $22 million. Nevertheless, opponents of these incentives have vowed to return with similar legislation in 2019, and have renewed their opposition to what they term "Hollywood handouts" in light of the Harvey Weinstein scandal.

Aside from this contentious issue, several other entertainment and sports-related bills became law during this session, including those affecting music piracy, operation of drones over sports arenas, and regulation of sports officials registered with the University Interscholastic League.

SB 1343—Relating to the capture, use, or recording of certain items for commercial purposes, including the prosecution of criminal offenses regarding unauthorized recordings.

Introduced by Senator Bryan Hughes (Dist. 1), this bill amended portions of the Business & Commerce Code and Code of Criminal Procedure. Citing the ability of music pirates to sell thousands of unauthorized sound recordings on digital storage devices like memory cards and thumb drives, this bill is intended to amend Texas's piracy laws by: 1) clarifying that music pirates dealing in hard-drives, flash drives, memory cards, and other digital storage devices filled with unauthorized sound recordings may not avoid criminal prosecution under state law; 2) promoting judicial economy and consistency by providing judges with clear guidelines on how to calculate restitution awards in piracy cases; 3) streamlining the forfeiture of contraband used in the commission of felony piracy cases; and 4) providing law enforcement representatives and prosecutors with clear and efficient legal tools that may be used to protect the vibrant music industry of Texas.

Effective: September 1, 2017

HB 2079—Relating to the promotion of tourism related to the musical heritage of this state.

Introduced by Reps. Todd Hunter (Dist. 32) and Donna Howard (Dist. 48), this bill amended portions of the Government Code to require the Texas Historical Commission (THC) to develop a Texas music history trail program to promote and preserve Texas music history. The bill requires the program, at a minimum, to include designation of locations or organizations that are historically significant to Texas' musical heritage; adoption of an icon, symbol, or other identifying device to represent such a designation; the use of the icon, symbol, or other identifying device in promoting tourism around Texas and at the designated locations or organizations; and, to the extent funds are available, the development of itineraries and maps to guide tourists to the designated locations or organizations. The bill requires THC to adopt eligibility criteria for a designation and procedures to administer the program and authorizes THC to enter into a memorandum of understanding, as necessary, with certain specified state entities to implement the bill's provisions. The bill authorizes THC to solicit and accept gifts, grants, and other donations from any source to implement the bill's provisions.

Effective: September 1, 2017

Continued on page 5.

ENTERTAINMENT & SPORTS LEGISLATIVE UPDATE: FALL 2017

Continued from page 4.

HB 3283—Relating to the designation of a portion of State Highway 16 in Duval County as the Al Dean Memorial Highway.

Introduced by Rep. Guillen (Dist. 31), this bill designates a portion of State Highway 16 north of Freer, Texas, in Duval County as the Al Dean Memorial Highway, honoring Dean's contributions to his local community as well as to the state and its musical culture. Dean was a recording artist who recorded some rockabilly tunes, as well as "Cotton Eyed Joe" in 1967, which would become a standard in bars, clubs, and dance halls all over the country.

Effective: June 1, 2017

1424—Relating to the operation of an unmanned aircraft over certain facilities or sports venues; creating a criminal offense.

Authored by Reps. Jim Murphy (Dist. 133) and Paul Workman (Dist. 47), this bill amends the Government Code to create a Class B misdemeanor for operating an unmanned aircraft not higher than 400 feet above ground level over a sports venue, defined by the bill as an arena, automobile racetrack, coliseum, stadium, or other type of area or facility that has a seating capacity of 30,000 or more people and is primarily used for one or more professional or amateur sports or athletics events. There are customary exemptions for government agencies, those under contract with or working on behalf of those entities, an owner or operator of the sports venue, and others.

Effective: September 1, 2017

HB 3125—Relating to charitable raffles conducted by the charitable foundations of certain professional sports teams.

Primarily authored by Rep. John Kuempel (Dist. 44), this bill expands the definition of "professional sports teams charitable foundations" to include minor league charitable foundations, with such foundations conducting raffles to fund programs aimed at disadvantaged youth by providing scholarships to financially eligible families so kids can participate in community youth basketball leagues, programs, trainings and tournaments. This bill takes effect on the date below, only if the constitutional amendment (HJR 100) authorizing additional professional sports team charitable foundations to conduct charitable raffles at additional venues is approved by voters. If voters do not approve that amendment, this bill would have no effect.

Effective: December 1, 2017

HB 1075—Relating to the frequency of criminal background checks for sports officials registered with the University Interscholastic League (UIL).

This bill, introduced by Rep. Ed Thompson (Dist. 29), amends the Education Code by clarifying that sports officials authorized to officiate a contest sponsored by UIL must complete a background check upon initial registration and again once every three years

Effective: September 1, 2017

Several other entertainment and sports-related bills that did not advance to the stage of becoming law included HB 986 and SB 849 and (relating to an exemption from licensing requirements for physicians associated with certain sports teams); HB 1457 and SB 1970 (relating

Continued on page 15.

Overview of Texas Moving Image Industry Incentive Program Statistics

By Joel Timmer

JOEL TIMMER, Journal Editor

The following two pages provide statistics on the Texas Moving Image Industry Incentive Program. The charts break out the number of applications in each category of production (feature film, television, commercial, and video game) as well as the total amount of grants for each production category. In addition, the charts show the number of jobs and total Texas spending associated with those grants. These statistics are provided for each biennium since the Incentive Program began in 2008-2009, as well as for the life of the Program. For the most recent 2016-2017 biennium, these statistics are also broken down by regions within the state.

For the most recent period (2016-2017), these charts show that there were more applications for commercials than any other production category (62 of 111 or nearly 56%). However, this represented only a small portion of the Texas spending compared to other categories of production, with commercial production accounting for only about 6.5% of Texas spending by grant recipients during that period.

The largest amount of spending for 2016-2017 came from television projects, which represented $156 million of the $257 million spent in Texas over the two-year period, or 60% of all Texas spending.

More money was granted to television projects than any other production category as well, with $31.5 million of the $48.5 million granted—or 65%—going to television production. Television projects also provided the largest number of jobs.

Overall for 2016-2017, $48.5 million in grants in all production categories combined resulted in Texas spending of $257 million, or a return on investment of $5.30 for every dollar granted.

While the percentages have varied over time, these general trends have held true over the life of the program. Over the life of the program, commercials have represented nearly 64% of all applications, while the largest percentage of grants—56.7%—has gone to television projects. Those television project grants have resulted in about 44.8% of all Texas spending by program participants.

Over the life of the program, every dollar spent has provided a return of $6.30 in Texas spending.

The vast majority of grants for 2016-2017 were for projects in the Austin region, with $41 million of the total grants of $48 million for the period, or nearly 85% of grants going to projects in that region. The Austin region also led other regions in the number of projects in all categories: feature film, television, commercials, and video games: About half of all applications (56 of 111) were for projects in the Austin region. The Dallas region was second, with about 29% of the total applications during that period originating from that region.

A couple of notes of the meanings of some of the categories of statistics:

- "Production Jobs" represent the number of actual positions filled by Texans for the duration of the production. The "Full-Time Equivalent Jobs" numbers look at how Texas production jobs, which are fixed-term, would translate to full-time employment.
- The "Applications" numbers include both pending applications and paid projects. These numbers reflect the sum of actual spend and jobs for projects that have completed the audit review and are paid, and the as-applied estimates of spend and jobs from applications for projects not yet submitted for audit review. As all projects are ultimately submitted and reviewed, these numbers will necessarily change.

The Journal wishes to thank The Office of the Governor, Texas Film Commission for providing these charts.

TEXAS MOVING IMAGE INDUSTRY INCENTIVE PROGRAM
2016-2017 Biennium Program Grant Report
(As Of July 31, 2017)

Summary of Applicants

	Feature Film	Television	Commercial	Video Game	Totals
Applications	8	23	62	18	**111**
Production Jobs	6,000	13,504	8,982	1,025	**29,511**
Full-Time Equivalent Jobs	854	3,457	95	806	**5,212**
Texas Spending	$38,619,582	$156,316,254	$16,631,145	$45,884,265	**$257,451,246**
Grant Amount	$8,122,583	$31,587,260	$1,053,197	$7,780,838	**$48,543,878**

Regional Applicant Spending Summary

	Feature Film Spending	Television Spending	Commercial Spending	Video Game Spending	Texas Spending	Grant Amount
Austin Region	$32,696,895	$124,031,820	$7,417,684	$39,031,034	$203,177,433	$41,104,230
Dallas Region	$4,048,004	$17,204,227	$5,707,516	$4,305,600	$31,265,348	$4,933,350
El Paso Region	$0	$0	$0	$0	$0	$0
Houston Region	$0	$311,600	$1,846,227	$1,447,631	$3,605,458	$342,791
San Antonio Region	$0	$3,590,120	$770,010	$0	$4,360,130	$479,929
Other Regions	$1,874,683	$11,178,487	$889,708	$1,100,000	$15,042,878	$1,683,579
Totals	**$38,619,582**	**$156,316,254**	**$16,631,145**	**$45,884,265**	**$257,451,246**	**$48,543,878**

Regional Applicant Project Summary

	Feature Film	Television	Commercial	Video Game	Totals	Jobs	FTE Jobs
Austin Region	3	12	26	15	56	17,879	3,550
Dallas Region	2	4	25	1	32	5,448	775
El Paso Region	0	0	0	0	0	0	0
Houston Region	0	1	5	1	7	445	62
San Antonio Region	0	3	4	0	7	952	172
Other Regions	3	3	2	1	9	4,787	653
Totals	**8**	**23**	**62**	**18**	**111**	**29,511**	**5,212**

NOTES:
1. Reflects the sum of actual spend and jobs for projects reviewed and paid, and the as-applied estimates of spend and jobs from applications for projects not yet submitted. As all projects are ultimately submitted and reviewed, these numbers will necessarily change.
2. The Grant Amounts above do not reflect any contingency, as that is no longer required by Program Rule.

TEXAS MOVING IMAGE INDUSTRY INCENTIVE PROGRAM
(As Of July 31, 2017)

2008-2009 Biennium

	Feature Film	Television	Commercial	Video Game	Totals
Applications	7	9	113	26	**155**
Production Jobs	4,955	13,760	5,906	530	**25,151**
Full-Time Equivalent Jobs	562	1,333	135	528	**2,558**
Texas Spending	$39,025,067	$60,544,338	$24,615,114	$17,581,969	**$141,766,488**
Grant Amount	$2,135,767	$3,197,093	$1,289,740	$913,461	**$7,536,061**

2010-2011 Biennium

	Feature Film	Television	Commercial	Video Game	Totals
Applications	32	28	144	37	**241**
Production Jobs	8,226	18,783	7,043	1,342	**35,394**
Full-Time Equivalent Jobs	1,100	3,618	119	1,247	**6,083**
Texas Spending	$107,602,791	$129,358,144	$28,123,912	$91,431,815	**$356,516,662**
Grant Amount	$17,702,040	$27,928,837	$1,787,034	$5,258,234	**$52,676,146**

2012-2013 Biennium

	Feature Film	Television	Commercial	Video Game	Totals
Applications	19	23	151	45	**238**
Production Jobs	3,974	7,415	8,118	1,531	**21,038**
Full-Time Equivalent Jobs	385	2,170	128	1,204	**3,887**
Texas Spending	$35,457,801	$60,748,450	$27,784,274	$52,068,219	**$176,058,744**
Grant Amount	$4,930,798	$13,767,758	$1,696,439	$5,595,142	**$25,990,137**

2014-2015 Biennium

	Feature Film	Television	Commercial	Video Game	Totals
Applications	22	34	193	43	**292**
Production Jobs	9,355	18,641	10,774	2,074	**40,844**
Full-Time Equivalent Jobs	922	5,177	174	1,874	**8,146**
Texas Spending	$73,430,083	$188,598,570	$40,516,410	$95,574,153	**$398,119,216**
Grant Amount	$14,537,860	$43,084,603	$2,401,478	$16,133,093	**$76,157,033**

2016-2017 Biennium

	Feature Film	Television	Commercial	Video Game	Totals
Applications	8	23	62	18	**111**
Production Jobs	6,000	13,504	8,982	1,025	**29,511**
Full-Time Equivalent Jobs	854	3,457	95	806	**5,212**
Texas Spending	$38,619,582	$156,316,254	$16,631,145	$45,884,265	**$257,451,246**
Grant Amount	$8,122,583	$31,587,260	$1,053,197	$7,780,838	**$48,543,878**

Life of Program

	Feature Film	Television	Commercial	Video Game	Totals
Applications	88	117	663	169	**1,037**
Production Jobs	32,510	72,103	40,823	6,502	**151,938**
Full-Time Equivalent Jobs	3,823	15,754	651	5,659	**25,886**
Texas Spending	$294,135,324	$595,565,757	$137,670,855	$302,540,421	**$1,329,912,356**
Grant Amount	$47,429,048	$119,565,551	$8,227,888	$35,680,768	**$210,903,255**

NOTES:

1. Reflects the sum of actual spend and jobs for projects reviewed and paid, and the as-applied estimates of spend and jobs from applications for projects not yet submitted. As all projects are ultimately submitted and reviewed, these numbers will necessarily change.

Review of Interscholastic Court Cases and Current Issues Facing State High School Athletic Associations

By Scott L. Jefferies, Ed. D.

Review is from a dissertation titled 'An Analysis of the Performance, Governance, and Authority of the Virginia High School League, Inc.' This article was originally published in Volume 28, Number 2 of the Entertainment, Arts and Sports Law Journal (Summer 2017), a publication of the Entertainment, Arts and Sports Law Section of the New York State Bar Association.

Scott L. Jefferies, Ed. D. has spent 18 years in public education, working in roles such as a Teacher, Coach, Activities Director, Assistant Principal, Principal, Assistant Superintendent, and Superintendent. He is currently the Superintendent of Lexington City Schools, and has served as Superintendent since July 2015. Dr. Jefferies is a recent graduate of Virginia Polytechnic Institute and State University, where he completed his doctoral studies in Educational Leadership and Policy Studies.

Introduction

Athletics and extracurricular activities are major components in the lives of many high school students in the United States. In 2013, an estimated 7.7 million students participated on high school sports teams, according to the National Federation of State High School Associations.[1] Since each state is responsible for establishing a system of supervision and oversight for regulating interscholastic athletics and activities, differences in the administrative structures among each state's athletic associations are inevitable. This review contains court cases from across the country regarding interscholastic athletics, and their impact on state athletic associations. Additionally, because this review is from a dissertation titled '*An Analysis of the Performance, Governance, and Authority of the Virginia High School League, Inc.*,[2] this review contains some court cases in Virginia involving the Virginia High School League. Current issues facing not only the Virginia High School League, but all state high school athletic associations, are also examined in this review.

Students participating in athletics and activities date back to the 19th century with the commencement of mandatory school attendance in Massachusetts in 1852. Concurrent with the enactment of compulsory school attendance across the nation came increased amounts of leisure time in public schools, which led to the development of competitive sports. In 1903, the first public school athletic association, the "Public School Athletic League for Boys," was established in New York City, and formal athletic contests emerged as a primary strategy to maintain school enrollment of boys.[3] By 1910, a total of 17 other cities in the United States had formed their own competitive athletic associations, commonly entitled "Leagues." These leagues—formed by cities—served as a foundation for states to form their own athletic associations.

In 1920, the National Federation of State High School Associations (NFHS) was founded, leading to the development of education-based interscholastic sports and activities.[4] By 1930, 28 athletic leagues were members of the NFHS and, by 1940, the membership had increased to 35. Finally, in 1969, all 50 state athletic leagues plus the District of Columbia had joined the NFHS.[5]

The NFHS establishes standards and rules for competition and provides guidance and assistance to the administrators who oversee high school sports and activities. The NFHS, from its home office in Indianapolis, Indiana, serves its member state high school athletic/activity associations and leagues. Specifically, the mission of the NFHS is to "serve its members, related professional organizations and students by providing leadership for the administration of education-based interscholastic activities, which support academic achievement, good citizenship and equitable opportunity."[6] The NFHS publishes rules for 16 sports and actively administers fine arts programs in speech, theater, debate and music. It also provides a variety of program initiatives that reach the 18,500 high schools and over 11 million students involved in athletic and activity programs.[7]

Continued on page 10.

Review of Interscholastic Court Cases and Current Issues Facing State High School Athletic Associations

Continued from page 9.

Each state has established a system of supervision and oversight in regard to regulating interscholastic athletics and activities. Consequently, inevitable differences in the administrative structures exist among the state athletic associations. For example, three state associations (Maryland Public Secondary Schools Athletic Association, North Carolina High School Athletic Association, and Texas University Interscholastic League) and the District of Columbia allow only public school membership.[8] Gender is another example of how individual state associations differ. The State of Iowa has two separate state athletic associations, with the Iowa High School Athletic Association responsible for the supervision of boys' athletics only, and the Iowa Girls High School Athletic Union responsible for the supervision of girls' athletics.[9] The number of state associations within individual states illustrates yet another example. Texas, Iowa, New York, Alabama, Mississippi and Georgia all have more than one athletic association that govern interscholastic activities.[10]

Court Cases

From 1938 to 1960, only four court cases across the nation involved state athletic associations.[11] From 1960 to the present, the number of cases involving state athletic associations increased significantly.[12] A main issue surrounding some of these court cases is student-athlete eligibility concerns.

Student-Athlete Eligibility

Every state is responsible for providing governance and establishing policies regarding high school athletics and activities. A major policy on which every state athletic association must provide clear expectations is student-athlete eligibility. This review will explore court cases relating to student-athlete eligibility based on residency, undue influence, special education, and transfer rules. The results of some of these court cases helped to shape policies regarding student-athlete eligibility across the nation.

The term student-athlete implies that the student involved with athletics and education is both a good student and an active participant in athletics.[13] Efforts to reform academic eligibility for student-athletes has been a task for state and local athletic associations for decades. Charles E. Forsythe identified six reasons why student-athlete eligibility rules were necessary for state athletic associations:

1. They provide standards for all schools to meet.

2. The rules will be clearly known to all involved.

3. They relieve individual schools from potential criticism.

4. Individual administrators will not make rules.

5. They establish minimum academic standards.

6. They aid in maintaining positive relationships among schools.[14]

In the 1930s, almost all states had a minimal rule for the academic eligibility of athletes.[15] In the 1950s, a total of 46 states had policies in place that required student-athletes to pass three major academic subjects in order to be eligible.[16] As the eligibility standards were becoming more prevalent, so was corresponding litigation.

In *Mitchell v. Louisiana High School Athletic Association*,[17] the ruling held that Louisiana had a legitimate interest in the regulation of high school sports, and that policies can be established in order to promote fair and level competition between schools. In *Dallam v. Cumberland Valley School District*,[18] the rules surrounding the eligibility of transfer rules established in Pennsylvania were found not to violate the due process and equal protection rights of student-athletes. In *Moreland v. Western*

Continued on page 17.

RECENT ENTERTAINMENT AND SPORTS LAW PUBLICATIONS

Compiled by ALI GHAZA

Entertainment Bibliography:

Copyright

Elizabeth J. Tao, *A Picture's Worth: The Future of Copyright Protection of User-Generated Images On Social Media*, 24 IND. J. GLOBAL LEGAL STUD. 617 (2017).

Moon Her Lee, *Seeing's Insight: Toward A Visual Substantial Similarity Test For Copyright Infringement of Pictorial, Graphic, and Sculptural Works*, 111 NW. U. L. REV. 833 (2017).

Wendy J. Gordon, *Copyright Owners' Putative Interests In Privacy, Reputation, and Control: A Reply to Goold*, 103 VA. L. REV. ONLINE 36 (2017).

Scott M. Sisun, *The Ball is in Your Court: An Update on Trademarks (And Copyright) in Sports (The Work)*, 33 SUM. ENT. & SPORTS LAW 21 (2017).

Music

Alison P. Wynn, *Copyright Law-Unique Characteristics of Music Warrant Its Own System: How Adopting the Intended Audience Test Can Save Music Copyright Litigation*, 39 W. ENG. L. REV. 1 (2017).

Courtney Willits, *Candidates Shouldn't "Cruz" Through Political Campaigns: Why Asking For Permission to Use Music is Becoming So Important On the Campaign Trail*, 16 J. MARSHALL REV. INTELL. PROP. L. 457 (2017).

Frances Choi, *Comment: Equal Access Requires Full Captioning of Music and Song Lyrics For the Deaf and Hard of Hearing*, 37 LOY. L.A. ENT. L.J. 271 (2017).

Glenton Davis, *When Copyright is Not Enough: Deconstructing Why, As the Modern Music Industry Takes, Musicians Continue to Make*, 16 CHI.-KENT J. INTELL. PROP. 373 (2017).

Tuneen E. Chisolm, *Whose Song is That? Searching For Equality and Inspiration For Music Vocalists Under the Copyright Act*, 19 YALE J. L. & TECH. 274 (2017).

Photography

Amanda DeFeo, *Humans of New York, Shut Your Blinds*, 33 TOURO L. REV. 957 (2017).

Emily A. Rehm, *Breaking News and Breaking the Law: Reining in California's Criminalization of Paparazzi and the Intent to Photograph*, 46 SW. L. REV. 469 (2017).

Continued on page 12.

Recent Publications

Continued from page 11.

Television

Angela J. Campbell, *Newbs Lose, Experts Win: Video Games in the Supreme Court*, 95 NEB. L. REV. 965 (2017).

David W. Sussman, *Are Our Pastimes Past Their Time? How Will the Media Industry Disruption and Changes to the Legal Environment Affect the Sports Industry?*, 67 SYRACUSE L. REV. 449 (2017).

Henry H. Perritt, *Keeping the Internet Invisible: Television Takes Over*, 21 J. TECH. L. & POL'Y 121 (2017).

Joshua Irwin, *Good TV Makes Bad Justice: How the Rules of Professional Conduct Can Protect Fair Trial Rights*, 102 IOWA L. REV. 2325 (2017).

Samantha C. Franchim, *It's A Deal: Forging Media Rights Deals in Response to Spectator Live Streaming*, 21 J. TECH. L. & POL'Y 223 (2017).

Video Games

Bridget A.J. Whan, *A New Player Has Entered the Game: Immigration Reform For ESports Players*, 24 JEFFREY S. MOORAD SPORTS L.J. 351 (2017).

Matthew Dobil, *Leveling (Up) the Playing Field: A Policy-Based Case for Legalizing and Regulating ESports Gambling*, 37 LOY. L.A. ENT. L.J. 139 (2017).

Taylor Stanton Hardenstein, *"Skins" in the Game: Counter-Strike, ESports, and the Shady World of Online Gambling*, 7 UNLV GAMING L.J. 117 (2017).

William K. Ford, *Restoring Rogers: Video Games, False Association Claims, and the "Explicitly Misleading" Use of Trademarks*, 16 J. MARSHALL REV. INTELL. PROP. L. 306 (2017).

Visual Art

Andrea Sobolewski, *The Authenticity Debacle: Why Art Authentication and Litigation Don't Mix*, 35 CARDOZO ARTS & ENT. L.J. 515 (2017).

Derek Finsham, *Authenticating Art By Valuing Art Experts*, 86 MISS. L.J. 567 (2017).

SPORTS BIBLIOGRAPHY

Amateur Sports

Charles J. Russo, *Treating Intercollegiate Student-Athletes as Employees: "Killing the Goose That Laid the Golden EGG?"*, 342 ED. LAW REP. 1 (2017).

Continued on page 13.

Recent Publications

Continued from page 12.

Kelly Charles, *The Amateurism Myth: A Case for A New Tradition*, 28 STAN. L. & POL'Y REV. 181 (2017).

John T. Wolohan, *What is Reasonable: Are the NCAA's Restraints on Athlete Compensation Reasonable?*, 67 SYRACUSE L. REV. 515 (2017).

Josephine R. Potuto, *Two, Four, Six, Eight; What Can We Now Regulate? The Regulatory Mentality and NCAA Satellite Camps (Et Al)*, 35 QUINNIPIAC L. REV. 287 (2017).

Lora Wuerdeman, *Sidelining Big Business in Intercollegiate Athletics How the NCAA Can De-Escalate the Arms Race By Implementing A Budgetary Allocation For Athletic Departments*, 39 N.C. CENT. L. REV. 85 (2017).

Marc Edelman, *The Future of College Athlete Players Unions: Lessons Learned From Northwestern University and Potential Next Steps in the College Athletes' Rights Movement*, 38 CARDOZO L. REV. 1627 (2017).

Wayne M. Cox, *One Shining Moment to A Dark Unknown Future: How the Evolution of the Right of Publicity Hammers Home the Final Nail in the NCAA's Argument on Amateurism in Collegiate Athletics*, 80 ALB. L. REV. 195 (2017).

William W. Berry III, *Employee-Athletes, Antitrust, and the Future of College Sports*, 28 STAN. L. & POL'Y REV. 245 (2017).

Fantasy Sports

Andrea Maclver, *Shoot Now, Ask Questions Later: How Technology-Based Startups Draftkings and Fanduel are Changing the Way We Do Business*, 35 QUINNIPIAC L. REV. 217 (2017).

Andrew Brandt, *Professional Sports Leagues' Big Bet: "Evolving" Attitudes on Gambling*, 28 STAN. L. & POL'Y REV. 273 (2017).

Andrew J. Griffin, *A Fantastic Gamble: An Analysis of Daily Fantasy Sports Under the UIGEA and the Predominance Test*, 23 B.U. J. SCI. & TECH. L. 456 (2017).

Ashley Menard, *"Follow the Money and the Laws Will Follow": State Legislative Solutions to Daily Fantasy Sports*, 33 SYRACUSE J. SCI. & TECH. L. 101 (2017).

Christopher L. Blanford, *Why DFS Requires Regulation of Whether it is Skill Based: An Outline of the Growth of Fantasy Sports, the Scandals, and A Return to Gaming in the United States*, 7 UNLV GAMING L.J. 161 (2017).

Randolph Andrew Scott, *Updating Your Fantasy Lineups and the Federal Law: The Case for Federal Regulation of Daily Fantasy Sports*, 47 SETON HALL L. REV. 603 (2017).

Roni Mathew, *The Legality of Daily Fantasy*, 24 JEFFREY S. MOORAD SPORTS L.J. 275 (2017).

Thomas Wisniewski, *A Game of Skill or Chance?: The Legality of Daily Fantasy Sports in Canada and the US*, 26 TRANSNAT'L L. & CONTEMP. PROBS. 523 (2017).

Continued on page 14.

Recent Publications

Continued from page 13.

Intellectual Property

Jason Zenor, *If It's in the Game: Is There Liability for User-Generated Characters That Appropriate A Player's Likeness?*, 16 J. MARSHALL REV. INTELL. PROP. L.J. 291 (2017).

Professional Sports

Jeremy M. Evans, *We Have Come Full Circle: Where Sports Franchises Derive Their Revenue*, 33 ENT. & SPORTS LAW. 12 (2017).

Karim Popatia, *A Law Student's Perspective: For the Love of the Game: Looking at the Differences in the NHL and MLB Collective Bargaining Agreements*, 33 ENT. & SPORTS LAW. 48 (2017).

Sarah Kanoy, *Pregnancy Clauses in Female Athletic Contracts: Discriminatory, or Just the Industry Standard?*, 85 UMKC L. REV. 1033 (2017).

Zia Akhtar, *Match Fixing, Illegal Gambling, and Cricket in the Indian Subcontinent*, 33 ENT. & SPORTS LAW. 75 (2017).

Torts

Jayce Born, *National Protection of Student-Athlete Mental Health: The Case for Federal Regulation Over the National Collegiate Athletic Association*, 92 IND. L.J. 1221 (2017).

ENTERTAINMENT & SPORTS LEGISLATIVE UPDATE: FALL 2017

Continued from page 5.

to the regulation and operation of fantasy sports contests); HB 4155 and SB 2035 (relating to the regulation of athlete agents); and HB 2495 and SB 1147 (relating to the establishment of a Texas State Music Museum and Texas Music Foundation).

Federal

S. 3183—Better Online Ticket Sales (BOTS) Act of 2016

This bill prohibits the circumvention of a security measure, access control system, or other technological measure on an Internet website or online service of a ticket issuer that is used to enforce posted event ticket purchasing limits or to maintain the integrity of posted online ticket purchasing order rules for a public event with an attendance capacity exceeding 200 persons. The bill also prohibits the sale of or offers to sell an event ticket in interstate commerce obtained through such a circumvention violation if the seller participated in, had the ability to control, or should have known about the violation. Violations shall be treated as unfair or deceptive acts or practices under the Federal Trade Commission Act.

Effective: December 14, 2016

Recently introduced federal bills of note include:

H.R. 3945—Copyright Alternative in Small—Claims Enforcement (CASE) Act of 2017: This bill establishes an alternative dispute resolution program for copyright small claims, and for other purposes.

H.R. 890, H.R. 4241—Copyright Office for the Digital Economy Act: This bill establishes the U.S. Copyright Office as a separate independent agency in the legislative branch, to be headed by a director appointed by the President with the advice and consent of the Senate. (Currently, the Copyright Office is part of the Library of Congress (LOC) and is headed by the Register of Copyrights.) The Copyright Office shall: (1) provide services in a manner that reflects technological needs and developments, and (2) promptly register copyright claims within a period that does not adversely impact the timely enforcement of rights and remedies. Copyright owners may register their copyright claims by delivering examination copies of their works to the Copyright Office. The Copyright Office must then provide the LOC access to such examination copies and related data solely for the LOC's determination of whether to demand a deposit of the material or to otherwise engage with copyright owners regarding works of authorship that may be of curatorial and collection interest to the national library.

H.R. 1914—Performance Royalty Owners of Music Opportunity To Earn Act (PROMOTE) of 2017: This bill amends federal copyright law to provide copyright owners the exclusive right to prohibit performance of a sound recording publicly by a broadcast transmission of a terrestrial AM/FM radio station. Exceptions are provided that allow terrestrial AM/FM radio broadcasts of a sound recording without the copyright owner's permission if: (1) a terrestrial AM/FM radio station pays royalties identical to those paid under the statutory license rates determined by Copyright Royalty Judges for eligible non-subscription transmission services that apply to digital Internet radio streaming and webcasts; (2) the broadcast is of a religious service, by an educational terrestrial radio station, or by a low-power FM radio station; or (3) the broadcast is an incidental use. (Under current law, the exclusive right for the public performance of sound recordings extends only to digital audio transmissions, such as Internet and satellite radio broadcasts.)

H.R. 1836—Fair Play Fair Pay Act of 2017: This bill amends federal copyright law to extend a sound recording copyright owner's rights to include the exclusive right to perform or authorize the performance of the recording publicly by means of any audio transmission, thereby requiring terrestrial AM/FM broadcast radio stations that play copyrighted sound recordings to pay royalties for the nondigital audio trans-

Continued on page 16.

ENTERTAINMENT & SPORTS LEGISLATIVE UPDATE: FALL 2017

Continued from page 15.

missions of the recordings. (Currently, sound recording copyright owners have a performance right that applies only to digital transmissions by cable, satellite, and Internet radio stations.)

H.R. 881—Allocation for Music Producers Act (AMP) Act: This bill amends federal copyright law to require a collective designated by the Copyright Royalty Judges to implement a policy providing for the acceptance of instructions (referred to as a "letter of direction") from a person who owns the exclusive right to publicly perform a sound recording by means of a digital audio transmission, or from a recording artist of a such a sound recording, to distribute a portion of royalty payments to a producer, mixer, or sound engineer who was part of the creative process behind the sound recording.

H.R. 3301—Compensating Legacy Artists for their Songs, Service, and Important Contributions to Society (CLASSICS) Act: This bill provides Federal protection to the digital audio transmission of a sound recording fixed before February 15, 1972, and for other purposes.

Review of Interscholastic Court Cases and Current Issues Facing State High School Athletic Associations

Continued from page 10.

Pennsylvania Interscholastic Athletic League,[19] the appeals judge ruled that Pennsylvania had an interest in establishing minimum standards for student-athletes. Results from court cases like these established that state athletic associations have the authority to establish rules and policies regarding student-athlete eligibility.

In 1983, the Los Angeles Unified School District created a rule that stated "to be eligible for participation in extracurricular activities, students must maintain a C average in four subjects and have no failures."[20] In June 1984, the State of Texas passed House Bill 72, which would later be named 'No Pass/No Play' (Flygare, 1985). This House bill stated that if a student-athlete is failing any class, they are ineligible to participate in sports for a period of six weeks. While the academic eligibility policies across states continued to develop, eligibility in interscholastic athletics has also evolved to take into consideration residency, transfers, and age limits. Court cases across the United States have shown that student-athlete eligibility has its complexities.

Rules that are put into place by state athletic associations, such as four-year rules, eight-semester rules, or age rules, are enacted to restrict eligibility for a certain time period. In most cases, plaintiffs who challenge age rules put in place by state athletic associations are usually not successful. Courts have consistently held that a student-athlete does not have a constitutional right to participate in interscholastic athletics and activities.[21]

Residency

In *H. R. v. The Minnesota State High School League* (MSHSL),[22] a student was found ineligible for varsity competition for the 2012–2013 school year due to residency. During his middle school years, this student attended Hutchinson Middle School in Hutchinson, Minnesota. He alleged that during his time there, he experienced harassment and was threatened and assaulted. After middle school, the student moved in with grandparents and attended Woodbury High School in Woodbury, Minnesota. The student entered Woodbury as a freshman and did not participate in sports that year. At the conclusion of his freshman year, as a result of his grandmother's failing health, the student moved back with his parents in Hutchinson; however, he did not enroll in Hutchinson High School. Rather, he enrolled at Holy Family Catholic High in Victoria, Minnesota. While there during his sophomore year, he tried out and earned a spot on their varsity hockey team. After checking his eligibility, Holy Family Catholic High ruled the student ineligible because of MSHSL Bylaw 111.00.[23] This bylaw states that a student is ineligible for a period of one calendar year unless the student meets one of the following criteria:

A. The student is enrolling in the 9th grade for the first time.

B. The student's family has a change of residency and occupancy in Minnesota.

C. The student's residence is changed pursuant a child protection order, placement in a foster home, or a juvenile court disposition order.

D. The student's parents are divorced and student moves from one custodial parent to the other custodial parent.

E. The student's parents moved to Minnesota from a state or country outside of Minnesota and establish residency in a Minnesota public school district.

Holy Family Catholic High determined that this student did not meet any of the criteria described in MSHSL Bylaw 111.00, so they deemed him ineligible for competition for the 2012–2013 school year. The student appealed to the MSHSL but was not granted a waiver. The student then requested an eligibility hearing before an Independent Hearing Officer, retired Judge Michael T. DeCourcy, Sr.[24] The Judge affirmed the ineligibility decision. Then, on January 2, 2013, the student filed suit alleging due process and equal protection violations and sought a preliminary injunction, which was ultimately denied. Accordingly, the MSHSL committed no violations of due process or equal protection rights.

Continued on page 18.

Review of Interscholastic Court Cases and Current Issues Facing State High School Athletic Associations

Continued from page 17.

Undue Influence

A court of appeals concluded that the Indiana High School Athletic Association (IHSAA) acted arbitrarily and capriciously when they determined a high school basketball player was ineligible based on alleged violations of the IHSAA's undue influence rule.[25] The court examined evidence showing that coaches from a new school, alleged to be recruiting this student, did not offer bribes or any inducements. In contrast, evidence was produced to show the student's coaching staff at his current high school offered the student's family a home with a reduced rent, living quarters at an assistant coach's home, and transportation. The appeals court stated that, while the IHSAA determined the coach at the new school to be in violation of the undue influence rule, it was ignoring the far more egregious conduct of the coaches at the current school.

Another case, *Brentwood v. Tennessee Secondary Schools Athletic Association*,[26] also involved accusations of a school using undue influence to recruit student-athletes. Brentwood Academy, a private high school, was fined and placed on probation by the Tennessee Secondary Schools Athletic Association (TSSAA) for violating the TSSAA's recruitment rule. The TSSAA claimed that Brentwood provided game tickets to a middle school team, held impermissible off-season practices, and urged students who enrolled at Brentwood to attend their spring football practice.[27] The TSSAA also placed Brentwood on a postseason ban and declared some students ineligible. Brentwood appealed on the grounds the TSSAA violated their First Amendment rights and their right to substantive and procedural due process. This case went all the way to the Supreme Court of the United States, which determined that the TSSAA is allowed to impose limitations on the free speech of its members as long as these restrictions are necessary for its purposes as an athletic league, and Brentwood would not be excused from abiding by them.[28]

Special Education

A high school student diagnosed with Attention Deficit Disorder in Oregon sought injunctive relief against the Oregon School Activities Association (OSAA) pursuant to the Americans with Disabilities Act (ADA).[29] The student was ruled ineligible during his senior year under the OSAA's Eight Semester Rule, as the student needed to repeat his sophomore year of high school. The student claimed that his disability caused him to repeat his sophomore year, so he filed for a hardship waiver. The OSAA denied the waiver request, and the matter went to court. The federal district court granted the student injunctive relief and even awarded the plaintiff attorney's fees and costs, stating that the student is a 'qualified individual' under the ADA and a hardship waiver would be a reasonable modification.

In 1994, the United States Court of Appeals for the Eighth Circuit ruled in another case involving a student declared ineligible and who challenged the decision under the ADA.[30] The Missouri State High School Athletic Association (MSHSAA) declared the student in this case, who had learning disabilities, ineligible because of the student's age. The Eighth Circuit concluded that a change to the MSHSAA's age rule decision would not be reasonable based on the student's condition, and the court denied the student's claim.

In *Starego v. New Jersey State Interscholastic Athletic Association*,[31] an autistic student sought a fifth year of eligibility. Anthony Starego, a student at Brick Township High School, was denied a waiver to participate in the fall of 2013 because of the New Jersey State Interscholastic Athletic Association's (NJSIAA) age and eight semester rules. The NJSIAA age rule states that an athlete becomes ineligible for high school athletics if he or she reaches the age of 19 prior to September 1 of the current school year, and the NJSIAA eight semester rule states that, starting with the 9th grade, a student shall have eligibility for four consecutive years.[32]

Starego was hoping to participate in the fall of 2013, but this would have been his fifth year of eligibility, and he would also be over the age limit. However, Starego brought this case to court under the Americans with Disabilities Act, challenging the decision to deny him the opportunity to play. The judge ruled that the NJSIAA provided the student with equal access and opportunity and denied the plaintiff's motion for a preliminary injunction, which would have allowed him to play the season.[33]

Continued on page 19.

Review of Interscholastic Court Cases and Current Issues Facing State High School Athletic Associations

Continued from page 18.

The West Virginia Secondary Schools Activities Commission (WVSSAC) petitioned the Supreme Court of Appeals of West Virginia from a ruling that prohibited them from enforcing their age rule against a 19 year-old who wished to play high school football.[34] The judge in this case stated that, while the age rule may be waived for students whose disabilities have delayed their progression through the education process and are able to show that their participation would not alter the quality of the competition, the age rule would not be waived as an accommodation for a high school student whose disability resulted in repeating two years of education and who sought to play high school sports.

Two students, who were diagnosed with learning disabilities, spent additional time in elementary school as a result of their disabilities. Subsequently, they were found to be ineligible for participation their last year in high school by the Michigan High School Athletic Association (MHSAA).[35] Both students, who turned 19 before September 1 of their school year, were found to be ineligible under the MHSAA's age rule. The students appealed the decision. The District Court for the Eastern District of Michigan held that the plaintiffs were disabled and discriminated against solely on the basis of their disabilities under the Rehabilitation Act and the ADA. However, the Sixth Circuit court ended up reversing the district court's decision, concluding that the age regulation did not violate the Rehabilitation Act because the regulation disqualifies all overage students, both non-disabled and disabled students. Further, the Sixth Circuit held that the age regulation does not violate the ADA, as the age rule does not prevent the students from accessing their interscholastic sports program.[36]

The United States Court of Appeals for the Sixth Circuit heard a case involving a student who was declared ineligible under the eight-semester rule of the Michigan High School Athletic Association.[37] The student in this case was repeating his junior year, and played basketball during what was his seventh and eighth semester of eligibility. At the conclusion of his repeated junior year, the student was diagnosed with Attention Deficit Hyperactivity Disorder and a seizure disorder. While the lower court granted the student a preliminary injunction, the Sixth Circuit reversed the preliminary injunction and supported the Michigan High School Athletic Association's ruling of ineligibility. The Sixth Circuit based their decision to support the ruling of ineligibility was not because of the student's disability, but because of his age.

In *Mann v. Louisiana High School Athletic Association*,[38] a student transferred to a different school that could better accommodate the student's anxiety disorder. After the Louisiana High School Athletic Association (LHSAA) denied the student's request for an exemption to their transfer rule, the student appealed to the United States District Court of Louisiana seeking declaratory and injunctive relief alleging a violation of the Americans with Disabilities Act (ADA). As a result, the court granted a preliminary injunction that prevented the LHSAA from declaring the student ineligible and allowed the student to participate in the upcoming football season. When the United States Court of Appeals for the Fifth Circuit received the case, it reversed and vacated the grant of the preliminary injunction, stating that the student would likely not succeed on the merits of his claim of being disabled under the ADA.[39]

An additional case involving a special education student was heard in 1997 in the Circuit Court for the City of Hampton and eventually in the United States District Court for the Eastern District of Virginia.[40] The student claimed that his learning disability caused him to be over age, but the student failed to show that he experienced a delayed start or interruption in his educational progression due to an identified profound disability. The student was found to have been treated fairly and afforded due process by the VHSL as it went through the waiver process. The judge in the federal court found that the VHSL made a good faith effort to apply the criteria for appeals evenly across the board, adding that the plaintiff not only received due process but had received more than he was technically entitled to receive throughout the appeals process.

Sisson v. Virginia High School League, Inc.[41] was heard by a U.S. District Court in Roanoke, Virginia, in 2010. In this case, the plaintiff, a senior in high school, was one day too old to participate in league-sponsored athletic activities because he turned 19 on July 31, 2010. The student suffered from a mild learning disability but was behind in school because the student repeated a grade in elementary school due to his parents' voluntary decision. The student did not fail the grade, although the school did recommend that the student repeat the grade. The court denied the motion for a temporary injunction and set the case for trial. The court concluded that:

Continued on page 20.

Review of Interscholastic Court Cases and Current Issues Facing State High School Athletic Associations

Continued from page 19.

> In closing, the court is not unsympathetic to Sisson's plight and likely would have granted him a waiver if it had been responsible for making the decision. However, in light of the legal standards governing Sisson's federal claims and the instant motion, the court is unable to conclude that he is entitled to the extraordinary remedy of preliminary injunctive relief. Accordingly, his motion for temporary restraining order and preliminary injunction must be denied (*Sisson v. Virginia High School League, Inc*., 2010, p. 8).

As a result of the injunction being denied, the student voluntarily dropped the case, and it never went to trial.[42]

In 2011, a Circuit Court in Norfolk, Virginia, heard the case of *Dean v. Virginia High School League, Inc.*[43] In this case, the plaintiff questioned the VHSL's use of its Age Rule in terms of student-athlete eligibility. A 19-year-old senior was seeking a waiver to the Age Rule, alleging a disability related to lead poisoning as a child. While being able to show documentation of lead poisoning as a 4-year-old, the family was unable to show his medical condition was the reason why the child repeated two grades. As such, the judge ruled in favor of the VHSL and stated that the VHSL provides a more than adequate appeals process. The judge added:

> The VHSL establishes rules that govern eligibility for thousands of high school athletes across Virginia. In the absence of the violation of a constitutional, statutory, or common law right, it ought to be allowed to adopt, interpret, and apply its own rules without interference from the courts.

Transfer Rule

State athletic associations develop transfer rules to govern the regulations of interscholastic sports.[44] While they vary from state to state, transfer rules essentially prohibit students from participating in certain sports and activities unless they fall under certain exemptions after transferring. The state athletic associations establish uniform procedures and regulations for interscholastic activities to protect the welfare of the students, and to establish sensible and educationally sound controls.[45] Transfer rules often place students and their families in the position of having to decide between participation in interscholastic sports and choosing a school for other personal or academic reasons.[46] Students, parents, and even schools have challenged transfer rules on grounds ranging from freedom of religion violations to procedural and substantive due process violations.[47]

The case of *Barnhorst v. Missouri State High School Activities Association*[48] involved a student with an outstanding academic record who had transferred from one private high school to another private high school. The family chose to transfer to the new school to improve the student's chances of attending a better college or university. The student had participated in track, volleyball and basketball at her former school. The Missouri State High School Activities Association (MSHAA) ruled the student ineligible for a period of 365 days because she transferred from one MSHAA member school to another. After appeals to the MSHAA, the case ultimately went to federal district court. While the court acknowledged the receiving school in this case was not an athletic power and was better known for its academic program, and the student was not recruited for athletic purposes, the student's appeal was denied just the same.[49]

Another case, *Indiana High School Athletic Association v. Carlberg*,[50] involved a student transferring to another school for academic reasons. Because the student did not transfer as a result of a change of residency, the Indiana High School Athletic Association (IHSAA) declared the student ineligible for a period of 365 days. While the IHSAA conceded that the student did not transfer for athletic reasons, the Indiana Supreme Court held that the IHSAA's transfer rule was rationally related to a legitimate interest.

In *Robbins v. Indiana High School Athletic Association*,[51] a student who played volleyball transferred from a public school to a parochial school. The student provided the district court evidence that she recently converted to Catholicism and therefore had a desire to take courses not available to her in public schools. Nonetheless, the district court upheld the IHSAA's decision to declare the student ineligible. The federal district court acknowledged that the transfer rule in question was imperfect but noted that the rule should be changed through the IHSAA and not through the courts.[52]

Continued on page 21.

Continued from page 20.

The case of *Mancuso v. Massachusetts Interscholastic Athletic Association, Inc.*[53] also examines the topic of students transferring schools. In the fall of 1999, Elizabeth Mancuso entered Austin Preparatory School, a private school, as a freshman. While at Austin, she did not participate on their swim team; rather, she participated as a member of a private swimming club. After her freshman year, Mancuso transferred to Andover High School, repeated her freshman year, and joined the swim team. She competed over her next three years and helped Andover earn three state championships.[54] Shortly before her senior year, the Massachusetts Interscholastic Athletic Association (MIAA) deemed her ineligible to compete because of their fifth-year student rule. The school appealed and requested a waiver on the grounds that she had not competed in her sport for a school for five years. The appeal went through the MIAA's internal review process, and was heard before a three-member subcommittee of the MIAA's Eligibility Review Board. The appeal for a waiver was denied. Subsequently, the family appealed to the Massachusetts Interscholastic Athletic Council, which was the final reviewing entity in the MIAA's waiver appeals process. This final appeal for a waiver was also denied, and on October 10, 2003, the student commenced action in state court where she filed a motion for a temporary restraining order to allow her to compete during her senior year.[55]

Her complaint was to seek relief from the MIAA's ineligibility decision and claim a civil rights violation. On October 23, 2003, a Superior Court judge granted a preliminary injunction, and she was allowed to swim her senior year. The Superior Court also heard Mancuso's argument that the MIAA's decision not to grant the waiver infringed on her property interest in participating in interscholastic athletics, and that the MIAA deprived her of that property interest without due process.[56] The judge submitted the issue to the jury, and they returned a verdict in favor of Mancuso. The jury decided that the MIAA did not provide her with due process and ultimately awarded her compensatory damages in the amount of $10,000.

The MIAA then appealed to the Supreme Judicial Court of Massachusetts. Mancuso needed to prove to the court that the MIAA deprived her of a right provided to her by the constitution in order to recover any damages. The court ruled that, while all children in Massachusetts have a constitutional right to a public education, that right is not synonymous with the right to participate in extracurricular activities. This decision reconfirms that, unless states are willing to enact laws or regulations that specifically grant students the right to participate in extracurricular activities, those activities will continue to be deemed a privilege and not protected under federal or state law.[57]

Current Issues

The Virginia High School League (VHSL) has been involved in litigation regarding policies and procedures for decades. The VHSL and other state associations face new issues that are resulting in new policies. Current issues that have emerged and potential litigated topics such as private school participation, home-schooled students, concussions, and transgender students will be discussed in this section.

Private School Participation

A recent court case involving Liberty Christian Academy (LCA) was settled in spring 2015. The VHSL and LCA reached a settlement in May 2015 on their antitrust lawsuit. The agreement resulted in action taken by the VHSL Executive Committee on May 7.[58] Similar action was then taken by the full membership of the VHSL and the LCA Board of Trustees to approve the agreement.

The resulting agreement allows all non-boarding private schools in Virginia to apply for membership to the VHSL. Any private school that desires to join the VHSL must meet the same participant eligibility requirements and regulations as public school students. The VHSL Executive Committee approved new regulations in May 2015 that provided updated language and guidelines in the VHSL Handbook to accommodate for the inclusion of private schools.[59]

Some states have implemented policies to address competitive balance of private school participation, while others are weighing options or have not implemented a system as of yet.[60] The Indiana High School Athletic Association is in its third

Continued on page 22.

Continued from page 21.

year of competition that classifies schools based on their previous year's tournament success. The Georgia High School Association passed a play-up penalty for all public or private member schools, which advances schools one level of classification if that school takes more than three percent of its students from outside the county in which the school is physically located. The Illinois High School Association uses a multiplier (1.65) for private schools to determine their postseason class.[61]

Home-schooled Students

The VHSL continues to prevail in the highly contested battle to allow home-schooled students the ability to participate in VHSL sanctioned activities at the school located where the home-schooled student resides. The "Tebow Bill," named after for University of Florida quarterback, Tim Tebow, has already been enacted in 29 states, allowing home-schooled students to play sports.[62] The Governor of Virginia, Terry McAuliffe, vetoed legislation that would have allowed home-schooled students to participate in VHSL sanctioned activities on February 20, 2017.[63]

According to an article on the National Federation of State High School Associations' website,[64] approximately 1.7 million students are home-schooled in the United States. This number has more than doubled since a home-school study was first conducted by the U.S. Department of Education's National Center for Education back in 1999. During the 2015–2016 school year, an estimated 33,000 students in Virginia, aged 5–17, were home-schooled.[65]

Two other states that do not allow home-school participation are New York and West Virginia. The New York State Public High School Athletic Association (NYSPHAA) requires student-athletes to be bona-fide students at the public schools they represent.[66] Additionally, the West Virginia Secondary School Activities Commission (WVSSAC) does not permit home-schooled students to participate on school teams. However, the WVSSAC does allow for home-schooled students who attend at least half of every school day at their school to participate in athletics (West Virginia Secondary School Activities Commission Handbook, 2016).

One state that does allow home-school participation is Iowa. The Iowa High School Athletic Association (IHSSAA) has permitted home-schooled students to participate on interscholastic sports teams since 1997. The IHSAA requires all home-schooled athletes to meet eligibility requirements set by the state association as well as any additional requirements the schools have where they will be playing.[67]

Two other states have recently approved home-schooled student participation: Tennessee and Ohio. In Tennessee, the Tennessee Secondary School Athletic Association passed a policy in 2011 that requires home-schooled students to meet 10 eligibility requirements in order to participate in extracurricular activities. In Ohio, the Ohio High School Athletic Association established policy in 2013 that home-schooled students held the same eligibility requirements as regular students, except for being enrolled in their local school.[68]

Parents who have decided to have their children home-schooled have not been successful in litigation over whether their children can participate in extracurricular activities.[69] Rather than litigation, the focus has now shifted to legislative action.

A rule prohibiting home-schooled students from participating in interscholastic athletics in West Virginia did not violate equal protection under the West Virginia state constitution.[70] When families made the voluntary decision not to have their children enroll in the public school system, they were not entitled to the privileges incidental to public education. This rule was determined to support the state's interest in promoting academics over athletics, as students enrolled in public schools had to maintain a minimum grade point average to participate.[71]

A family in Pennsylvania sued the Midd-West School District for its refusal to permit their daughter to participate in interscholastic basketball.[72] The student was home-schooled from the third grade through the eighth grade, and had never been enrolled in the Midd-West School District, which is where the family resided. In 2001, she stopped home-schooling and began attending Western Pennsylvania Cyber Charter School (WPCCS) as a ninth-grade student.[73] The WPCCS is an independent public school and not associated with the Midd-West School District. When the student attempted to play basketball for Midd-

Continued on page 23.

Review of Interscholastic Court Cases and Current Issues Facing State High School Athletic Associations

Continued from page 22.

West at the beginning of the 2001 school year, the student was not permitted to play because she was not enrolled in the Midd-West School District. The court determined that the student did not have the right to participate in interscholastic basketball because she failed to establish the claim of a property interest to play.[74]

Similarly, the parents of home-schooled students in Michigan failed in their challenge to allow their children to participate in interscholastic athletics.[75] The appellate court in this case affirmed that the students in this case lacked a right to participate because interscholastic athletics are not required of students in Kenowa Hills Public Schools.[76]

Concussions

Among individuals 15 to 24 years of age, an estimated 300,000 sports-related concussions occur annually.[77] While interest in sports-related concussions is usually focused on full-contact sports like football and ice hockey, concussions occur across a wide variety of high school sports. This study captured data from 20 sports during the 2008–2010 academic years. During this study, 1936 concussions were reported in total. The majority (47.1%) of the reported concussions occurred in football, followed by girls' soccer (8.2%), boys' wrestling (5.8%), and then girls' basketball (5.5%).[78]

A recent concussion suit in Tampa, Florida, was settled in October 2015.[79] A former football player for Wharton High School received a $2 million settlement from the Hillsborough County School Board. In this unusual situation, the plaintiff was playing catch before practice and hit his head on the paint machine left on the field used to line the football field. He was not wearing a helmet, and both the trainer and coaches evaluated him after the incident. They allowed him to drive home after the incident, even though he lived more than five miles away from the school. His father recognized the seriousness of his condition upon his arrival home and rushed him to the hospital. He was found to have a fracture in his skull. In addition to providing the family with the largest settlement in the school district's history, the school district provides $1 million in insurance coverage for every high school athlete beginning in the 2015–2016 school year.[80] Furthermore, a policy has been created in the school district for staff members to follow students home if they suspect a student sustained a head injury.

In California, former high school football player John Enloe III filed a lawsuit against the San Diego Unified School District claiming he suffered "traumatic and catastrophic brain injuries from which he is still recovering, and from which he may never recover" as a result of multiple hits during a football game last year that resulted in a "serious concussion."[81] According to the lawsuit, the teen attempted to leave the field after the first hit left him confused and feeling nauseous. However, an assistant coach told the teen to re-enter the game whereupon he was hit again.[82]

In July 2014, a 24-member task force of medical doctors, high school coaches, athletic trainers, and key national leaders in high school sports met to create recommendations for minimizing head impact exposure and concussion risk in football.[83] This task force developed a list of fundamentals for reducing the risk of concussions in high school football that the NFHS Board of Directors and the NFHS Sports Medicine Advisory Committee approved. The recommendations and guidelines presented by the task force are as follows:[84]

1. Full-contact should be limited during the regular season, as well as during activity outside of the traditional fall football season. For purposes of these recommendations and guidelines, full-contact consists of both "Thud" and "Live Action" using the USA Football definitions of Levels of Contact.

2. Member state associations should consider a variety of options for limiting contact in practices. The task force strongly recommends full contact be allowed in no more than 2–3 practices per week. Consideration should also be given to limiting full contact on consecutive days and limiting full-contact time to no more than 30 minutes per day and no more than 60–90 minutes per week.

3. Pre-season practices may require more full-contact time than practices occurring later in the regular

Continued on page 24.

Continued from page 23.

season, to allow for teaching fundamentals with sufficient repetition.

4. During pre-season twice-daily practices, only one session per day should include full contact.
5. Each member state association should review its current policies regarding total quarters or games played during a one-week time frame.
6. Consistent with efforts to minimize total exposure to full-contact, head impact exposure, and concussion risk, member state associations with jurisdiction over football outside of the traditional fall football season should review their current policies to assess if those policies stand in alignment with the Fundamentals discussed within this report and, if needed, modify the policies accordingly.
7. Each member state association should reach out to its respective state coaches' association on designing and implementing a coach education program that appropriately integrates youth, middle school, and high school football programs in every community. USA Football and the NFHS Fundamentals of Coaching courses should be the primary education resources for all coaches. Education for coaches should also include the proper fitting and care of helmets.
8. Each member state association should regularly educate its schools on current state concussion law and policies and encourage schools to have a written Concussion Management Protocol. Schools should also be encouraged to share this information with coaches, parents, and students annually.
9. An Emergency Action Plan (EAP) with clearly defined written and practiced protocols should be developed and in place at every high school. When possible, an athletic trainer should be present at all practices and games (National Federation of State High School Associations Recommendations and Guidelines for Minimizing Head Impact and Concussions Risk in Football, 2014, p. 1–4).

The recommendations were designed to allow flexibility for state associations that collectively oversee the more than 15,000 high schools across the country that have football programs. As a result, each state association will be tasked with developing its own policies and procedures for implementation.[85]

In 2011, the Virginia Board of Education passed guidelines that direct each school division to develop policies and procedures regarding the identification and handling of suspected concussions in student-athletes.[86] Additionally, the guidelines suggest that consideration should also be given to addressing the academic needs and gradual reintroduction of cognitive demands for students with diagnosed concussions.[87]

Transgender Students

State athletic associations are dealing with policies regarding transgender students and athletic participation.The U.S. Department of Education's Office for Civil Rights (OCR) found that Township High School District 211 in Palatine, Illinois, unfairly denied a transgender teenager, who was undergoing hormone therapy but had not undergone gender reassignment surgery, access to school facilities in violation of Title IX, which bars discrimination in federally funded education programs.[88] The Nebraska State Activities Association (NSAA), which governs high school sports in Nebraska, is planning to draft a policy on participation of transgender students following a failed policy attempt two years prior.[89] Current NSAA policy requires student-athletes to participate in activities according to their biological gender, although, based on Title IX requirements, girls are able to participate on boys' teams where there are no corresponding girls' teams, such as wrestling and football.[90]

In South Dakota, a policy adopted by the state association allowing students to play on sports teams based on the gender with which they identify faced numerous attempts by state legislators to overturn the policy.[91] Now, one state legislator plans to introduce a bill that would eliminate that choice, relying instead on birth certificates and "visual inspections." Now, at least

Continued on page 25.

Review of Interscholastic Court Cases and Current Issues Facing State High School Athletic Associations

Continued from page 24.

38 states have policies addressing transgender students, with policies ranging from those that allow students to participate according to their identified gender, to policies that require students to provide evidence that they have had hormone treatments or surgery.[92]

The Virginia High School League adopted a new transgender policy in an Executive Committee Meeting in February 2014. The organization approved the measure to allow students who have undergone sex re-assignment surgery or hormone therapy to participate in athletics and activities with their identified gender. The new policy states:[93]

> When a school identifies a transgender student who seeks to participate in VHSL sports or activities, the school should submit a letter requesting an appeal to the district chairman and the VHSL executive director. The letter should be responsive to the conditions in the policy below.
>
> Privacy Statement: All discussions and documents at all levels of the process either by a member school, appeals panel, and/or the VHSL shall be kept confidential unless specifically requested by the student and family.
>
> VHSL rules and regulations allow transgender student-athlete participation under the following conditions:
>
> A. A student-athlete will compete in the gender of their birth certificate unless they have undergone sex reassignment.
>
> B. A student-athlete who has undergone sex reassignment is eligible to compete in the reassigned gender when:
>
> 1. The student-athlete has undergone sex reassignment before puberty, OR
>
> 2. The student-athlete has undergone sex reassignment after puberty under all of the following conditions:
>
> a. Surgical anatomical changes have been completed, including external genitalia changes and gonadectomy.
>
> b. Hormonal therapy appropriate for the assigned sex has been administered in a verifiable manner and for a sufficient length of time to minimize gender-related advantages in sports competition.
>
> c. If a student-athlete stops taking hormonal treatment, they will be required to participate in the sport consistent with their birth gender.
>
> C. A student-athlete seeking to participate as a result of sex reassignment must access the VHSL eligibility appeals process.
>
> Note: VHSL honors and respects all individuals based on gender, race, sexual orientation and creed while striving to provide safe and equitable competition.[94]

ENDNOTES

1 Hilary Levey Friedman, *When Did Competitive Sports Take Over American Childhood?*, The Atlantic (Sep. 20, 2013), https://www.theatlantic.com/education/archive/2013/09/when-did-competitive-sports-take-over-american-childhood/279868/.

2 Frank J. Polakiewicz, *A Legal and Descriptive Analysis of the Authority, Governance and Performance of the Virginia High School League, Inc.*, Vir. Tech. Univ. Lib. (1985).

3 *Id.*

4 National Federation of State High School Associations, *Annual Report* 2013-2014 (2014), https://www.nfhs.org/media/1014511/2013-14-annual-report_website.pdf.

5 National Federation of State High School Associations, *National Federation of State High School Associations Handbook* (2015), https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf.

6 National Federation of State High School Associations, *National Federation of State High School Associations Brochure* (2015), https://www.nfhs.org/media/885655/nfhs-company-brochure.pdf.

7 National Federation of State High School Associations, *Annual Report* 2013-2014 (2014). https://www.nfhs.org/media/1014511/2013-14-annual-report_website.pdf.

8 Howard & Hunt, *If Variety is the Spice of Life, Each State Association is its Own Herb Garden*, NFHS NEWS (1999).

9 *Id.*

10 *Id.*

Continued on page 26.

Review of Interscholastic Court Cases and Current Issues Facing State High School Athletic Associations

Continued from page 25.

11 Frank J. Polakiewicz, *A Legal and Descriptive Analysis of the Authority, Governance and Performance of the Virginia High School League, Inc.*, Vir. Tech. Univ. Lib. (1985).

12 *Id.*

13 Bruce J. Bukowski, *A Comparison of Academic Athletic Eligibility in Interscholastic Sports in American High Schools*, The Sport Journal (Nov. 15, 2015), http://thesportjournal.org/article/a-comparison-of-academic-athletic-eligibility-in-interscholastic-sports-in-american-high-schools/.

14 Charles A. Forsythe, *Administration of High School Athletics*, J. Am. Ass'n Health, Physical Educ., & Recreation (3rd ed. 1954).

15 *Id.*

16 *Id.*

17 *Mitchell v. Louisiana High Sch. Athletic Ass'n*, 430 F.2d 1155 (5th Cir. 1970).

18 *Dallam v. Cumberland Valley Sch. Dist.*, 391 F. Supp. 358 (M.D. Pa. 1975).

19 *Moreland v. Western Pennsylvania Interscholastic Athletic League*, 572 F.2d 121 (3d Cir. 1978).

20 D. Stanley Eitzen & George H. Sage, Sociology N. Am. Sports (4th ed. 1989).

21 Walter T. Champion Jr., *12:6 Rules Restricting Eligibility*, in Fundamentals of Sports Law (Thomson/West, 2015).

22 *H.R. ex rel. S.R. v. Minnesota State High School League*, Civil No. 13-16, 2013 U.S. Dist. LEXIS 5215, 2013 WL 147416 (D. Minn. Jan. 14, 2013).

23 Minnesota State High School League, Inc., *Minnesota State High School Official Handbook*, National Federation of State High School Associations (2015).

24 *H.R. ex rel. S.R. v. Minnesota State High School League*, Civil No. 13-16, 2013 U.S. Dist. LEXIS 5215, 2013 WL 147416 (D. Minn. Jan. 14, 2013).

25 *Ind. High Sch. Ath. Ass'n, Inc. v. Watson*, 913 N.E.2d 741, 2009 Ind. App. LEXIS 1672 (Ind. Ct. App. 2009).

26 *Brentwood Acad. v. Tenn. Secondary Sch. Athl. Ass'n*, 531 U.S. 288, 121 S. Ct. 924, 148 L. Ed. 2d 807 (2001).

27 *Id.*

28 *Id.*

29 *Bingham v. Ediger*, 20 Fed. Appx. 720 (9th Cir. 2001).

30 *Pottgen v. Missouri State High Sch. Activities Ass'n*, 40 F.3d 926, (8th Cir. 1994).

31 *Starego v. New Jersey State Interscholastic Athletic Ass'n*, 970 F.Supp.2d 303, (D. N.J. 2013).

32 New Jersey State Interscholastic Athletic Association, New Jersey State Interscholastic Athletic Association Constitution, Bylaws, Rules and Regulations, N. J. State Interscholastic Athletic Association (2015).

33 *Starego v. New Jersey State Interscholastic Athletic Ass'n*, 970 F. Supp. 2d 303 (D. N.J. 2013).

34 *Baisden v. W. Va. Secondary Sch. Activities Comm'n*, 211 W.Va. 725, 568 S.E.2d 32 (2002).

35 *Sandison v. Michigan High Sch. Athletic Ass'n*, 64 F.3d 1026 (6th Cir. 1995).

36 *Id.*

37 *McPherson v. Mich. High Sch. Athletic Ass'n, Inc.*, 119 F.3d 453 (6th Cir. 1997).

38 *Mann v. La. High Sch. Athletic Ass'n*, 535 F. App'x 405 (5th Cir. 2013).

39 *Id.*

40 *Perry v. Virginia High Sch. League, Inc.*, Circuit Court for the City of Hampton, Case No. CL97036652-00 (1997).

41 *Sisson v. V.H.S.L.*, Civil Action No. 7:10CV00530, 2010 U.S. Dist. LEXIS 132264 (W.D. Va. Dec. 14, 2010).

42 *Id.*

43 *Dean v. Va. High School League, Inc.*, 83 Va. Cir. 333 (Norfolk 2011).

44 Van Ann Bui, *Varsity Blues: A Call to Reconfigure the Judicial Standard for High School Athletic Association Transfer Rules*, 34 Colum. J.L. & Arts 231 (2011).

45 R. Trichka & T. Sawyer, *State High School Athletics Association's Limited Participation Rules: Transfer*, 8 J Legal Aspects Sport (1998).

46 Van Ann Bui, *Varsity Blues: A Call to Reconfigure the Judicial Standard for High School Athletic Association Transfer Rules*, 34 Colum. J.L. & Arts 231 (2011).

47 *Id.*

48 *Barnhorst v. Missouri State High School Activities Ass'n*, 504 F. Supp. 449 (W.D. Mo. 1980).

49 *Id.*

50 *Ind. High Sch. Ath. Ass'n, Inc. v. Carlberg by Carlberg*, 694 N.E.2d 222 (Ind. 1997).

51 *Robbins v. Indiana High Sch. Athletic Ass'n*, 941 F. Supp. 786 (S.D. Ind. 1996).

52 Van Ann Bui, *Varsity Blues: A Call to Reconfigure the Judicial Standard for High School Athletic Association Transfer Rules*, 34 Colum. J.L. & Arts 231 (2011).

53 *Mancuso v. Massachusetts Interscholastic Athletic Assn., Inc.*, 453 Mass. 116, 900 N.E.2d 518 (2009).

54 John T. Wolohan, *Court Determines That Interscholastic Sports Participation is Privilege, Not Right*, Athletic Business (Apr. 2009), https://www.athleticbusiness.com/rules-regulations/court-determines-that-interscholastic-sports-participation-is-privilege-not-right.html.

55 *Mancuso v. Massachusetts Interscholastic Athletic Assn., Inc.*, 453 Mass. 116, 900 N.E.2d 518 (2009).

56 John T. Wolohan, *Court Determines That Interscholastic Sports Participation is Privilege, Not Right*, Athletic Business (Apr. 2009), https://www.athleticbusiness.com/rules-regulations/court-determines-that-interscholastic-sports-participation-is-privilege-not-right.html.

57 *Id.*

58 Virginia High School League Settlement News Release, *Virginia High School and Liberty Christian Academy Jointly Announce Settlement* (2015), http://www.vhsl.org/news.rel-2015-vhsl-lca-settlement-announcement.

Continued on page 27.

Review of Interscholastic Court Cases and Current Issues Facing State High School Athletic Associations

Continued from page 26.

59 *Id.*

60 Mike Dyer, *State Associations Continue Quest For Competitive Balance of Schools*, National Federation of State High School Associations (Oct. 13, 2015), https://www.nfhs.org/articles/state-associations-continue-quest-for-competitive-balance-of-schools/.

61 *Id.*

62 Daily Progress Staff, *'Tebow Bill' Veto Override Fails in House of Delegates*, The Daily Progress (Apr. 15, 2015).

63 Vernon Freeman Jr., *McAuliffe Vetoes Legislation on Concealed Handgun Permits, Switchblades, 'Tebow Bill'*, CBS (Feb 20, 2017), http://wtvr.com/2017/02/20/mcauliffe-vetoes-legislation-on-concealed-handgun-permits-switchblades-tebow-bill/.

64 Ben Sieck, *A House Divided: Homeschool Students On School Sports Teams*, National Federation of State High School Associations (Apr. 20, 2015), https://www.nfhs.org/articles/a-house-divided-homeschool-students-on-school-sports-teams/.

65 Ann Zeise, *Number of Homeschoolers in US 2017–2018*, A2Z Home Schooling (Aug. 21, 2017), https://a2zhomeschooling.com/thoughts_opinions_home_school/numbers_homeschooled_students/.

66 Ben Sieck, *A House Divided: Homeschool Students On School Sports Teams*, National Federation of State High School Associations (Apr. 20, 2015), https://www.nfhs.org/articles/a-house-divided-homeschool-students-on-school-sports-teams/.

67 *Id.*

68 *Id.*

69 C. J. Russo & A. G. Osborne, *Sports Participation and Home Schooling: A Game Changer?*, Ed. L. Rep. (2014).

70 *Jones v. W. Va. State Bd. of Educ.*, 218 W. Va. 52, 622 S.E.2d 289 (2005).

71 *Id.*

72 *Angstadt v. Midd-West School Dist.*, 377 F.3d 338 (3rd Cir. 2004).

73 *Id.*

74 C. J. Russo & A. G. Osborne, *Sports Participation and Home Schooling: A Game Changer?*, Ed. L. Rep. (2014).

75 *Reid v Kenowa Hills Pub Schools*, 261 Mich. App. 17, 20; 680 N.W.2d 62 (2004).

76 C. J. Russo & A. G. Osborne, *Sports Participation and Home Schooling: A Game Changer?*, Ed. L. Rep.. (2014).

77 M. Marar, N. M. Mcllvain, S. K. Fields, & R. D. Comstock, *Epidemiology of Concussions Among United States High School Athletes in 20 Sports*, Am. J. Sports Med. (2012).

78 *Id.*

79 Anastasia Dawson & Nick Williams, *Hillsborough OKs Record $2 Million Settlement for Injured Prep Football Player*, The Tampa Tribune (Oct. 28, 2015), http://www.tbo.com/news/politics/high-school-football-lawsuit-brings-new-rules-biggest-settlement-20151027/.

80 *Id.*

81 Gillian Mohney, *Multiple Concussions of Student Athletes in Spotlight After High-Profile Cases*, ABC News (Oct. 15, 2015), http://abcnews.go.com/Health/syracuse-quarterbacks-ban-contact-sports-draws-attention-dangers/story?id=34478505.

82 *Id.*

83 National Federation of State High School Associations, *Annual Report* 2013-2014 (2014), https://www.nfhs.org/media/1014511/2013-14-annual-report_website.pdf.

84 *Id.*

85 *Id.*

86 SB 652, Student-Athlete Protection Act § 22.1-271.5 (2011).

87 *Id.*

88 Michael E. Miller, *Feds Say Illinois School District Broke Law by Banning Transgender Student from Girls' Locker Room*, The Washington Post (Nov. 3, 2015), https://www.washingtonpost.com/news/morning-mix/wp/2015/11/03/feds-say-illinois-school-district-broke-law-by-banning-trans-student-from-girls-locker-room/?utm_term=.9f58ff6ff9d1.

89 Margaret Reist, *NSAA Drafting Policy on Participation of Transgender Students in Sports*, Lincoln Journal Star (Sep. 21, 2015), http://journalstar.com/news/state-and-regional/nebraska/nsaa-drafting-policy-on-participation-of-transgender-students-in-sports/article_875642c6-e7fd-5439-8ae7-ecc7b7512e20.html.

90 *Id.*

91 *Id.*

92 Margaret Reist, *NSAA Drafting Policy on Participation of Transgender Students in Sports*, Lincoln Journal Star (Sep. 21, 2015), http://journalstar.com/news/state-and-regional/nebraska/nsaa-drafting-policy-on-participation-of-transgender-students-in-sports/article_875642c6-e7fd-5439-8ae7-ecc7b7512e20.html.

93 Virginia High School League, Inc., *Virginia High School League Handbook* (2016), http://www.vhsl.org/doc/upload/pub-handbook-2016-17.pdf.

94 *Id.*