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The impact of legal decisions rendered from 1970-76 pertaining to state athletic association and public school board eligibility rules for student participation in athletics

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The impact of legal decisions rendered from 1970-76 pertaining to state athletic association and public school board eligibility rules for student participation in athletics

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CHAPTER I: INTRODUCTION

Each of the fifty states has at least one activities or athletic association to regulate the interscholastic activities of the schools within the state (1, p. 7). The state athletic associations were established to organize, control and set standards for the competitive activities between schools. Frequently, legal challenges to the rules and standards of the state athletic associations are made by the parents or legal guardians of the students to whom the rules and standards apply.

Newspaper headlines and journal headings such as (2, 3): (1) "Girl hassled; quits boys team"; and (2) "Another Athletic Association Rule Bites the Dust" have increasingly caught the attention of the public as well as school board members, school administrators, and state athletic association officials. Most frequently, these headlines signaled the beginning of hearings and litigation to determine the eligibility of a specific student in an athletic activity sponsored by a local school system or to challenge athletic association regulations that prohibit some form of student participation.

In the December, 1971, publication of the National Organization on Legal Problems of Education, the editor acknowledges that a new area of litigation may be forming which involves the question of whether state athletic association rules or

actions discriminate against certain individuals or school districts (4). The number of existing suits within the United States against state athletic associations as well as the numerous articles in newspapers citing the attempt of girls to participate on varsity athletic teams indicates a growing challenge to association rules (4).

The purpose of this study is to present and examine court decisions of record since 1970 that directly relate to the authority and regulatory function of state athletic associations in the United States. Specifically, court challenges dealing with eligibility, the right to participate in athletic contests, the denial of due process and equal protection afforded by various amendments to the United States Constitution, and discrimination on the basis of sex and/or marriage will be investigated for the principles of law established by the courts. An analysis of these court decisions is intended to suggest eligibility guidelines to those officials formulating public school athletic policies and rules.

This chapter relates the nature of the problem and the need for the study. The remainder of the chapter includes delimitations, sources of data, terminology, and the order in which the study is presented.

Statement of the Problem

Many court challenges to state athletic associations over the past several years have been directed at their specific rules regulating the eligibility of students. Issues have arisen regarding: (1) the equality of athletic participation offered girls as compared to boys; (2) whether athletic participation is on an equal basis with basic education; and (3) whether due process was extended to athletic participants when their behavior warranted disciplinary action. The problem is therefore, to determine:

1. Whether athletic participation in a public school is a right or a privilege of students.
2. The legality of state athletic associations to establish eligibility requirements for student participation.
3. The status of state athletic associations' policies which classify student participation on the basis of marriage and/or sex.
4. How the intent of the due process clause of the Fifth and Fourteenth Amendments to the Constitution of the United States can be applied within the rules and regulations of the state athletic associations.
5. How the intent of the equal protection clause of the Fourteenth Amendment to the United States Constitution can be applied within the rules and regulations of the state athletic associations.

Need for the Study

Since 1970, there has been a growing tendency for the courts to review state athletic association rules and rulings

in terms of constitutional guarantees and nondiscrimination on the basis of marriage and/or sex. This consideration has been afforded individuals by the equal protection clause of the Fourteenth Amendment to the United States Constitution and more recently, Title IX of the Education Amendment of 1972. The application of the Constitutional principles by the courts warrants the creation of new awarenesses among officials concerned with the enactment and enforcement of athletic eligibility rules and policies.

The literature reviewed on this subject indicated a lack of any comprehensive study of court cases as did the present study. A review of Dissertation Abstracts, a publication listing research of the United States Office of Education, indicated no record of the study of the problem prior to this study. A review of the Bibliography of School Law published by the National Organization on Legal Problems of Education did list a doctoral dissertation by Eugene Albo in 1971 entitled "The Legal Status of State High School Activities Associations in the Fifty States." Upon further investigation, this dissertation was found to focus on the historical development of activity associations, and it offered a comprehensive study of court cases and state statutes bearing on the legal status of state high school activities associations. In correspondence with Dr. M. Chester Nolte, professor in charge of Eugene Albo's dissertation at Denver University and President

of the National Organization on Legal Problems of Education, he advised (see Appendix A):

> . . . I am convinced that the problem of the legal status of state high school activities association needs up-dating since Gene Albo did his dissertation in 1971.
>
> At that time, no one thought anything of girls competing in boys' sports, nor of the other implications of the use of the constitutional quarantee as a lever in such voluntary organizational operations. . . I therefore am convinced as I said above that the study needs to be updated, and it will read in a very significant way from what Albo found in his study in 1971.
>
> . . . the new thing which has come to pass since 1971 is the introduction of sex problems and in the lack of due process of law in declaring athletics ineligible for various impermissible reasons.

This study is intended to provide a comprehensive review of current court opinion relating to athletic eligibility which should prove useful to officials of state athletic associations, departments of public instruction, and public secondary schools. Attorneys and members of judicial offices may also find the information useful when involved in litigation proceedings or providing counsel.

Delimitation of the Study

Litigation in state and federal courts reviews many different types of involvement of state activity associations. This study is limited to the following:

1. Court cases involving public high school athletic associations.

2. Court cases within the United States whose principles affect state athletic associations.

3. Court cases since 1970 or those before 1970 that still stand as precedent setting or leading cases.

4. Court cases which only address the question of whether athletic participation in a public school is a right or a privilege of students.

5. Court cases which only rule on the eligibility policies of athletic associations.

6. Court cases which only involve the question of discrimination on the basis of marriage and/or sex in athletics.

7. Court cases ruling on the policies of athletic associations which involve the due process and equal protection clause of the Fourteenth Amendment.

The foregoing list is intended to confine this investigation to a workable, researchable body of material. However, it is recognized that there is overlap and linkage between and among the various delimiting statements above.

Procedures and Techniques Used in this Study

The research referred to in this dissertation is almost entirely limited to primary source data. These data consisted of: (1) the American Digest System and its Descriptive Word Index; (2) the National Reporter System; (3) the American Law Reports; (4) the Shepard Citation to Court Cases; (5) the

Corpus Juris Secundum; and (6) the American Jurisprudence. Court cases reviewed for this study were decisions rendered during the period from 1970 into 1976. The volumes of the National Reporter System contain complete cases from all state and federal courts within the United States.

Secondary sources of information included: (1) dissertations; (2) publications from the National Organization on Legal Problems in Education; (3) amicus curiae briefs and other legal briefs from the National Federation of State High School Athletic Associations; (4) legal briefs from the Iowa High School Athletic Association; and (5) other publications offering commentary regarding the law and athletics. Research considered from these sources was conducted since 1970.

The basic legal research procedure used for the briefing of cases was decided after review of a reference to legal research written by Remmlein and Rezney (5, p. 49). The basic approach to case briefing was determined by this writer to consist of obtaining four major sources of information from each case: (1) essential facts, (2) major issue(s), (3) decision, and (4) reasons supporting the decision. An example of a brief prepared from the case of Bunger v. Iowa High School Athletic Association (6) is presented.

Facts: 1. The Iowa High School Athletic Association adopted in 1968 the Good Conduct Rule and its interpretation which included in it the "beer rule."

2. The "beer rule" declared an athletic participant ineligible for six weeks of interscholastic competition if he possessed, consumed or transported alcoholic beverages, admitted to possession or consumption of same, or was a passenger in a vehicle containing alcoholic beverages and/or dangerous drugs.

3. The appellant's son was arrested with three other minors who were in possession of beer while traveling in an automobile. The appellant's son pleaded not guilty and the charges were dropped. After reporting the incident to the school officials and explaining that he had knowledge of the beer in the car, the Waverly Shell Rock Community School officials declared the appellant's son ineligible.

4. The appellant brought suit to enjoin enforcement of the rule.

5. The trial court upheld the rule, the appellant appealed the decision to the Supreme Court of Iowa.

Issues: Does the Iowa High School Athletic Association have authority to promulgate the rule in question?

Is the rule valid on its merits?

Decision: Reversed.

Reasons: 1. The State Board must submit all general application rules to the Attorney General and then to the Legislative Departmental Rules Committee for a prescribed procedure as provided in Chapter 17A of the 1971 Code. This, in fact, had not been done and therefore, the rule was an Iowa High School Athletic Association rule and not a rule of the Waverly Shell Rock Board of Education or the State Board.

2. Neither the State Board nor the Waverly Shell Rock Board of Education could re-delegate its rule-making authority.

3. The rule in question is invalid since the Iowa High School Athletic Association does not have authority to promulgate it.

4. The rule, when applied, must be so extended that it involves the innocent in order to convict the guilty and is, therefore, invalid as unreasonable.

In addition to the four major sources of information obtained by briefing court cases, the writer attempted to supply the following:

1. Year in which case was decided.

2. Name of plaintiff and defendant.

The case brief presented above is in outline form to illustrate the main points obtained from the briefing of a court case. The presentation of case briefs in the following chapters will be in narrative form rather than outline as presented above.

Definition of Terms

A study of court cases requires an understanding of legal terminology. This list will facilitate a better understanding of the court case interpretations presented in this study.

Action: A proceeding in court which if completed will result in a judgment

Ad litum: For the purposes of litigation

Affirm: To uphold the judgment of a lower court

Allegation: A statement made in the pleadings in the course of an action at law

Amicus curiae: A friend of the court. One who, not a party to a litigation, is permitted by the court in the interest of justice, to present argument in respect, therefore

Appeal: A procedure by which a case is brought from a lower to a higher court

Appellant: The party in a litigation that seeks to have a judgment in a lower court reversed in whole or in part

Appellee: The party against whom an appeal is taken

Arbitrary: Not supported by fair cause and without reason given

Civil action: A legal proceeding brought to enforce a civil right or obtain redress for its violation

Class suit: A case in which one or more in a numerous class, having a common interest in the issue, sues in behalf of themselves and all others of the class

Concurring opinion: An opinion rendered separately by a judge concurring in the opinion of the court

Damages: The amount of money allowed by a court or compensation for the violation of a duty

Decree: The judgment of a court of equity

Defendant: A person who is being sued in a civil action

Defense: In the law of procedure, an affirmative setting up of facts in answer to a complaint

De minimis: The law does not care for or take notice of; the law does not concern itself about trifles

Demurrer: Allegation by one party that other party's allegations may be true but, even so, are not of such legal consequence as to justify proceeding with the case

Dictum: A statement in the opinion of a court supporting its judgment

Dismissed for want of equity: Case dismissed because the allegations in the complaint have been found untrue, or because they are insufficient to entitle complainant to the relief sought

Dissenting opinion: The opinion given by a justice of an appellate court, indicating his reasons for disagreeing with the result reached by the majority

Discrimination: The making of improper distinctions between persons or classes

Due process: The exercise of the powers of government in such a way as to protect individual rights

Enjoin: To issue an injunction

Estop: To prevent

Injunction: A judgment or decree of a court of equity, ordering a person to refrain from doing a comtemplated act or from continuing to do it

Invalid: Without binding force, not valid

Majority opinion: The statement of reasons for the views of the majority of the members of the bench in a decision in which some of them disagree

Mandamus: We command. A prerogative writ issued by a higher court directed to some official carrying on official functions, commanding the performance of a public duty

Petition: Written application or prayer to the court for the redress of a wrong or the grant of a privilege

Plaintiff: The person who brings an action at law

Promulgate: To make known by open declaration or official proclamation

Restrain: To prohibit from action; to enjoin

Stare decisis: To stand by the decided things and not disturb things at rest

Writ of certiorari: A writ emanating from a higher court requiring the record of a case in the court below to be sent up to itself for re-determination

Writ of error: A writ used to review the judgment of an inferior court, directing that the record be sent up for review as to error of law

Organization of the Study

The study is organized into six chapters related to the following topics:

Chapter I Introduction

Chapter II Athletic Participation

Chapter III Athletic Eligibility

Chapter IV Due Process in Athletics

Chapter V Equal Protection in Athletics

Chapter VI Summary and Recommendations

After the introductory chapter, each succeeding chapter deals with the problems stated in Chapter I. The last chapter contains a summary of the study and recommended guidelines for public school officials and state athletic associations to use in establishing eligibility rules for interscholastic competition.

CHAPTER II: ATHLETIC PARTICIPATION

The purpose of this chapter is to review the common law status of athletic participation in the public schools. The specific objective of the review is to determine whether athletic participation in a public school is a right or a privilege of students. The sources of data for the development of this chapter are exclusively court decisions.

The question of athletic participation being a right or a privilege is frequently raised in litigation proceedings. When eligibility rules of a state athletic association are the subject of a litigation, the plaintiff frequently alleges that athletic participation is a property right guaranteed by the Constitution of the United States. The state athletic associations, in their answer, frequently contend that athletic participation is a privilege and not a protected property right guaranteed by the Constitution of the United States. These two positions are reviewed to determine the general common law status of athletic participation in the public schools.

Right or Privilege

In the 1970 case of Mitchell v. Louisiana High School Athletic Association (7), the plaintiffs-appellees gained an injunction preventing the athletic association from enforcing an eligibility rule. The rule caused any student to forfeit

his fourth year of high school eligibility if the student repeated any grade after completion of fifth grade based on his decision rather than that of the school. The district court enjoined the association from enforcing the rule. The appellants appealed to the United States 5th Circuit Court of Appeals where the court vacated and remanded with directions the earlier decision of the trial court.

The court, in acknowledging the right of the athletic association to enforce rules concerning the eligibility of high school students, reasoned (7, p. 1158): (1) the due process clause of the Fourteenth Amendment does not insulate a citizen from every injury at the hands of the state; (2) only those rights, privileges and immunities that are secured by the Constitution of the United States or some Act of Congress are within the protection of the federal courts; (3) the rights, privileges and immunities not derived from the federal constitution or secured thereby, are left exclusively to the protection of the states; (4) the privilege of participating in interscholastic athletics is outside the protection of due process; and (5) the association eligibility rule was neither suspect nor an encroachment on a fundamental right, but rather it was grounded in, and reasonably related to, a legitimate state interest.

In a 1970 Florida case, Paschal v. Perdue (8), the plaintiff sought, under the Civil Rights Act of 1964, a

discretionary waiver of the eligibility requirements to permit a transfer student to play football for the school to which he transferred. A violation of the Civil Rights Act was alleged since the transfer student was black. At issue was whether or not the decision not to waive the eligibility requirement was founded solely on the color of the player's skin. In the deliberations that followed, the court rendered a judgment in favor of the defendants. The court reasoned (8):

> Although there is no federal constitutional right to play football, there is a federally enforceable right under the equal protection clause not to be denied eligibility, by state action, to play football solely because of the color of the player's skin.
>
> * * *
>
> The . . . decision which precludes [plaintiff's] playing football does not rise to constitutional dimensions, absent a showing that [decision] was based on color.
>
> Plaintiffs have failed to carry their burden of proving that the minor plaintiff was denied any rights or privileges because of race or color, or that any conspiracy existed to deprive such plaintiff of any rights or privileges guaranteed by the federal Constitution.

As stated in Mitchell (7), supra, the privilege of participation in interscholastic athletics is outside the protection of due process and is not a right guaranteed by the federal constitution (8, p. 1276).

In a class action suit in 1972, Bucha v. Illinois High School Association (9), the plaintiffs challenged the Illinois High School Association by-laws which placed limitations on

girls' athletic contests that were not applicable to those available to boys. The suit challenged three by-laws of the association: (1) rule prohibiting member schools from conducting interscholastic swimming competition for girls; (2) rule placing restrictions on girls' athletic contests which were not applicable to boys' contests (no organized cheerleading, one dollar limitation on value of awards, and prohibition on overnight trips in conjunction with girls' contests); and (3) rule prohibiting competition between members of the opposite sex.

At issue were the association's rules and whether or not they violated the equal protection clause of the Fourteenth Amendment. In the deliberations that followed, the court ruled in favor of the defendants. In so ruling, the court referred to the question of whether athletic participation is a right or privilege by recording these remarks (9, p. 73):

> Of course, it is clear that participation in interscholastic athletics is not a right guaranteed by the constitution or laws of the United States . . . . But, plaintiffs have not asserted that they have a constitutional right to participate in interscholastic athletics. Rather, they assert the right to equal educational opportunity . . . and the right to equal treatment regardless of sex . . . .

In the 1973 Minnesota case of Brenden v. Independent School District 742 (10), the High School League of Minnesota contended that the relief sought by the plaintiffs was inappropriate because participation in interscholastic sports is a

privilege and not a right. The plaintiffs-appellees, two female students, filed civil rights action to enjoin enforcement of a rule barring females from participation with males in high school interscholastic activities. The female students contended that they were denied participation in the non-contact sports of tennis, cross-country, skiing, and running since teams existed for males but not for females within the school. The basic issue of the suit was whether or not an association could enforce a rule prohibiting the participation of females on male teams in noncontact sports when no such corresponding teams for females were provided.

The United States 8th Circuit Court of Appeals affirmed the lower court's verdict. In the decision handed down, the court disagreed with the high school league. The court saw the plaintiffs being denied the benefits of activities provided by the state for male students, a denial of equal protection under the Fourteenth Amendment, and not whether the plaintiffs have an absolute right to participate in interscholastic athletics. Since the question of constitutional rights was the issue, the court referred to the 1971 Supreme Court decision rendered in the case of Graham v. Richardson, 91 S.Ct. 1848 (10, p. 1297):

> The Supreme Court has rejected 'the concept that constitutional rights turn upon whether a governmental benefit is characterized as a 'right' or as a 'privilege'. . .'.

In a similar suit in 1974, Gilpin v. Kansas State High School Activities Ass'n, Inc. (11), a female student claimed deprivation of equal protection provided by the Fourteenth Amendment when an association rule prevented plaintiff from participating in a cross-country competition solely on the basis of her sex. The school did not provide a separate girls' cross-country team. The rule which was the issue in the case prevented boys and girls from being members of the same athletic teams in interscholastic contests. The court ruled in favor of the plaintiff.

In arguing the case, the association reasoned (11, p. 1240):

> . . . [P]articipation in interscholastic competition is a privilege, rather than a right, and . . . relief under the Civil Rights Act is accordingly inappropriate.

The court, agreeing with the association's contention, but disagreeing with its conclusion, stated (11, p. 1240):

> Although the Court fully agrees with the Association's contention that participation in interscholastic sports is not a fundamental right, it cannot accept the conclusion which the Association draws from that fact.

Vested Property Right

Frequently, when the eligibility rules of an athletic association prevent a student from participating in athletic contests, the student, through court action, has sought a

judgment against the athletic association involved, alleging loss of an opportunity to acquire a future property. Such a suit was filed in Taylor v. Alabama High School Athletic Association (12) in 1972. The plaintiffs, basketball players in an Alabama high school, brought suit against the Alabama High School Athletic Association to seek relief from sanctions imposed upon their high school. The sanctions prevented their high school from hosting or participating in an invitational basketball tournament for a period of one year. The plaintiffs contended that the privilege of participating in interscholastic athletics and the chance provided by participation to acquire a college scholarship were "property rights" protected by the due process clause of the Fourteenth Amendment.

In dismissing the suit for absence of a federal question, the court in its memorandum opinion stated (12, p. 57):

> . . . [T]he privilege of participating in interscholastic athletics is not a property right and is, therefore, outside of the protection of the due process clause of the Fourteenth Amendment.
>
> * * *
>
> The Supreme Court of Alabama [citing Scott v. Kilpatrick, 237 So. 2d 652] has held that a plaintiff's possibility of acquiring an athletic scholarship if allowed to display his athletic prowess is no property right . . .:
>
> 'We hold that the speculative possibility of the complainant acquiring a football scholarship as shown under the facts presented furnishes no basis for a finding that the complainant was deprived of any property right.'

In the case of Dallam v. Cumberland Valley School District (13) concluded in 1975, the court decided on whether the constitutional protection afforded to public school students by the Fourteenth Amendment extended to the extracurricular activity of interscholastic athletics. The plaintiff, a fifteen year old student who had transferred to Cumberland Valley School District from a neighboring district, sought a permanent injunction to enjoin enforcement of a rule of the Pennsylvania Interscholastic Athletic Association. The specific rule from which relief was sought automatically barred from interscholastic competition for one school year any student who transferred from one school district to another, but who did not reside in the transferee's district with a parent or guardian. The plaintiff did not disagree with the reasoning behind the rule, but argued that the automatic ineligibility rule acts as an unrebuttable prescription, a violation of his equal protection and due process rights guaranteed under the United States Constitution. The issue before the court was the question of whether or not the association rule denied due process and equal protection as afforded by the Fourteenth Amendment to the Constitution.

In deciding for the defendant, the court dismissed the case for want of subject matter jurisdiction. In its opinion, the court concluded (13, p. 362):

> . . . [T]here exists no constitutionally protected property interest in competing for a place on a high school athletic team. To hold otherwise would too greatly strain the concept of property.
>
> * * *
>
> Even were this court to find a property interest in interscholastic athletics, it would clearly be a de minimis one. As noted, the plaintiff has access to physical exercise, athletic instruction and even competition (with athletes from his own school). He is merely barred from competing as a member of one high school team against athletes from other schools for one year.

To further support this decision, the court quoted this ruling from the 1970 decision of Mitchell (7) supra, (13, p. 361):

> '[T]he due process clause of the fourteenth amendment does not insulate a citizen from every injury at the hands of the state. 'Only those rights, privileges and immunities that are secured by the Constitution of the United States or some Act of Congress are within the protection of the federal courts. Rights, privileges and immunities not derived from the Federal Constitution or secured thereby are left exclusively to the protection of the states.' The privilege of participating in interscholastic athletics must be deemed to fall in the latter category and outside the protection of due process.'

Summary

The question of whether athletic participation is a property right or a privilege guaranteed by the Constitution was presented through an examination of court cases occurring from 1970 into 1976. Court cases representing the plaintiff's

contention that athletic participation is a property right guaranteed by the Constitution of the United States were presented. In other cases presented, the defendant's argument was that student participation in high school interscholastic athletics is a privilege and not a right guaranteed by the constitution and laws of the United States. An analysis of the case decisions presented in this chapter would indicate that the following legal principles should be acknowledged by those officials establishing eligibility rules for interscholastic competition with public high schools:

1. Students in public high schools do not have an inherent right to participate in interscholastic athletics.

2. Students within public high schools do not have a vested property right in interscholastic athletics.

3. Student participation in interscholastic athletics is a privilege falling outside the protection of the due process clause of the Fourteenth Amendment.

4. The legal principle that participation in interscholastic competition is a privilege rather than a right cannot be provided as a basis for excluding females from male non-contact sports when no provision allows for the separate maintenance of the same non-contact sports for females. To do otherwise is a violation of the equal protection clause of the Fourteenth Amendment.

CHAPTER III: ATHLETIC ELIGIBILITY

This chapter is a review of litigation that has been directed at various state high school athletic association eligibility rules regulating the participation of high school students in interscholastic competition. The general objective of state athletic association eligibility rules was determined in a study by Albo in which he stated (1, p. 70):

> The rules had been designed to equalize competition by holding participants to the same standards regarding their age, amateur standing, scholastic requirements, residence and transfer requirements, attendance, outside participation, and other special eligibility requirements.

Whenever an interscholastic high school participant violates or fails to meet a respective eligibility rule, the association, through its member high school, invokes disciplinary action against the participant. The disciplinary action follows the by-laws of the association to which the member high school belongs. The disciplinary action usually results in declaring the participant ineligible from further competition for a specified period of time. Litigation frequently results contending that the association's action: (1) violates the participant's individual rights; (2) was unreasonable, arbitrary, and capricious; or (3) was based upon a rule which is unreasonable.

Eligibility Litigation

The reasonableness and validity of a school rule is a subject of law for the courts. Generally, a rule which is adopted for the discipline and management of some phase of the operation of a school program is not disturbed by courts unless the rule can be shown to be unreasonable. According to American Law as restated in 79 Corpus Juris Secundum §496 (14, p. 444):

> A rule or regulation in regard to discipline and management of a public school, whether adopted by the teacher or by the school board, must be reasonable in itself, but as long as it is within reason it will not be disturbed. A presumption exists in favor of the reasonableness and propriety of a rule adopted by school authorities under statutory authority; and this presumption is not affected by the consideration of possible abuses of the rule where it may be construed as reasonably designed for a legitimate purpose. Whether a rule or regulation is reasonable and valid is a question of law for the court.

As early as 1938 in Oklahoma, a court decision, frequently cited in athletic eligibility cases today, involved a challenge to a state high school activities association's eligibility rule. In the case of Morrison v. Roberts (15), the plaintiffs-appellees, Roberts and fellow members of the Holdenville High School football team, were declared ineligible for athletic participation for a period of one year. The players had violated the amateur and awards rule by each receiving a gold football charm from a group of fans within their community.

A violation of the rule automatically declared a player ineligible for a period of one year.

Through trial court action, the plaintiffs-appellees had challenged the association's action as being arbitrary, erroneous, and subject to review. The court had awarded the plaintiff an injunction preventing the association from enforcing its eligibility rule, but upon review of the trial court's decision, the Oklahoma Supreme Court reversed the decision and dismissed the case. The court supported the right of the association to declare a student ineligible when the student's actions violate an association rule. In so doing, the Oklahoma Supreme Court stated one of the first decisions regarding a state athletic association's regulatory power. This decision has since come to be one of the most quoted common law principles in similar cases involving eligibility rules (15, p. 1024):

> If it be said that the rule involved and the fixed penalty is arbitrary, that may be so. And one unskilled in such matters might see no logic in or necessity for that rule, or might think it should be or might as well be otherwise. The same might be said also as to the arbitrary rule that "three strikes" retires the batter, not more nor less; or the rule that a "touchdown" counts six points, while the "point after touchdown" counts only one point; or the rule that the "base runner" advances if the pitcher makes a "balk"; and the same might be said of many of the other rules of the association above referred to. Many of those rules are in fact arbitrary rules. They might provide otherwise or might not be there at all. But so long as the

> member schools want them they are entitled to have them and to have them construed and enforced by final action of the Board of Control as long as they want that.
>
> It is often thought and sometimes vociferously stated that athletic officials, including referees and umpires, have grievously erred in decisions and rulings. But when adopted rules, acquiesced in by all, give them the power of final decision, such decisions should not ordinarily be reviewed by the courts and vacated by the writ of mandamus.
>
> It is a matter of common knowledge that in various athletic organizations, and in various athletic contests, certain officials are clothed with final authority to construe rules and enforce penalties, and to suspend players from the game in progress, or for a definite period of time, or to forfeit the game or the match to one participant or the other. Frequently such rule enforcements work more or less grievous injury to one directly affected thereby, without in any sense giving him a right to correct or change the result by court action such as this. The courts generally should leave the final authority in the athletic official or board, with whom that authority is placed by those who had authority to make the rules and authorize the method of application and enforcement.

An eligibility transfer rule was the subject of litigation in the 1970 Alabama Supreme Court case of Scott v. Kilpatrick (16). The complainant, Kilpatrick, had been declared ineligible for participation in football due to failure on his part to meet residency requirements during the prior semester. This ineligibility resulted when the complainant enrolled in a neighboring school during the spring semester without a subsequent move being made to that district

by his parents. The next fall the complainant re-enrolled in his former school district in which his parents resided. The eligibility rule of the Alabama High School Athletic Association that the complainant violated stated (16, p. 654):

> 'A pupil will be ineligible for one year if he transfers to a school where his parents do not reside. If a boy is living at home and commuting to attend a school that does not serve the area in which he lives, he cannot return to his home school and become immediately eligible. It will be necessary for him to attend his home school for one year before becoming eligible.'

The central issue was whether or not the association's rule could declare a student ineligible. The trial court enjoined the association from enforcing the rule, but upon appeal to the Supreme Court of Alabama, the court reversed the trial court's decision. In finding for the association, the court noted the decisions of courts in other states which had considered similar situations and had virtually been of the same conclusion. The court noted the principle developed in these cases as (16, p. 655):

> Participation in high school athletics is an extracurricula activity subject to regulations as to eligibility. Engaging in these activities is a privilege which may be claimed only in accordance with the standards set up for participation.

In the 1970 Minnesota case of Brown v. Wells (17), the plaintiff brought suit to nullify and enjoin the Minnesota High School League's eligibility rules pertaining to high

school hockey. The League's hockey rules for eligibility specifically stated that a student may not (1) participate on an independent hockey team; (2) participate in any hockey game, practice, or other hockey activities between the close of one season and the start of the next; and (3) attend a hockey school, camp, or clinic, unless sanctioned by the League's Board of Control (17, p. 709). The plaintiff violated the eligibility rule by attending a summer camp not sanctioned by the League, but the plaintiff contended that the rules were arbitrary, unreasonable, capricious, and "unlawfully deny constitutional rights, privileges, and immunities" to student athletes (17, p. 709).

The court declared the eligibility rule invalid, but the Minnesota High School League appealed the decision. The Supreme Court of Minnesota reversed the lower court and noted its reasons as follows (17, p. 711):

> 'In the alternative, the undersigned takes the view that [plaintiff-appellee] has a constitutionally protected right to participate in hockey competition at Roosevelt High School and to compete for team membership so long as he violates no law and no rules having a proper school related purpose or calculated to protect and further the welfare of the school.'
>
> * * *
>
> While the views expressed by the trial court are not without logic and reason, we must be controlled by well-established authority which recognizes that it is the duty of courts, regardless of personal views or individual philosophies, to uphold regulations adopted by

> administrative authorities unless those regulations are clearly arbitrary and unreasonable. Any other approach would result in confusion detrimental to the management, progress, and efficient operation of our public school system.

Also in 1970, two United States District Court cases, Mitchell v. Louisiana High School Athletic Association (7), supra, and Paschal v. Perdue (8), supra, heard arguments made by the plaintiffs challenging the right of state athletic associations to execute eligibility rules. In both cases, the courts decided in favor of the defendants.

In Mitchell (7, p. 1158), supra, the court reasoned that the Louisiana High School Athletic Association's eligibility rule was:

> . . . neither inherently suspect nor an encroachment on a fundamental right . . . . it is grounded in, and reasonally related to, a legitimate state interest.

The court in Paschal (8, p. 1276), supra, reasoned that the eligibility rule of the state athletic association is:

> . . . designed to prevent "raids" upon athletic teams. Its objective is also to assure the effectiveness of discipline in preventing an athlete from summarily quiting a team when he dislikes an order of the coach or requirement regarding training.

The Oklahoma Supreme Court in 1972 tried the case of the Oklahoma State School Activities Association v. Midget (18). The appellants sought relief from an injunction barring the association from interfering in any manner with a scheduled football game playoff. The appellee was a high school

football player who had been declared ineligible for violation of a transfer rule. Since discovery of the appellee's ineligibility had not occurred until after conclusion of the season's football games, (1) the appellee was declared ineligible; (2) the high school team forfeited each game in which the appellee participated; and because of this action, (3) the team forfeited its right to participate in the scheduled football game playoff. This action was invoked according to the by-laws of the association to which the appellee's high school was a member.

The Supreme Court of Oklahoma ruled in favor of the association, declaring that the association had the right to discipline and regulate its membership. In citing the general authority of the Oklahoma State School Activities Association, the court recognized the position accepted by all state courts as stated in 6 American Jurisprudence 2d §37, page 466 (18, p. 178):

> 'With regard to associations, societies, and clubs generally, the trial or hearing before the tribunal or officers of the organization is judicial or quasi-judicial in nature, and a court will not re-try the case upon the facts or determine, as a matter of its own judgment, whether the member should have been suspended or expelled, but will limit its interference to certain other grounds. In such cases the courts never interfere except to ascertain whether or not the proceeding was pursuant to the rules and laws of the organization, whether or not the proceeding was in good faith, whether or not there was anything in the proceeding in violation of the law of

> the land. If it is found that the proceeding was had fairly, in good faith, and pursuant to the laws of the organization, and that there was nothing in it in violation of the law of the land, the decision is conclusive. . . .'

The Supreme Court of Missouri in 1974 ruled on the Missouri State High School Athletic Association's rule which declared high school students ineligible for interscholastic activities once they had attained the age of nineteen prior to September 1. In the case of State of Missouri, ex rel, Missouri State High School Athletic Association v. Schoenlaub (19), the association sought to prohibit the circuit court from proceeding further in an injunction suit filed by plaintiffs. In deciding whether the injunction against the enforcement of the eligibility rule should be granted, the court had to decide on the reasonableness of the rule, and the right of the association to make such rules. In its decision for the association to make the rule absolute, the court reasoned as in Morrison v. Roberts, (15), supra, and cited the similar 1963 case in Illinois of Robinson v. Illinois High School Association, 195 N.E. 2d 38 (19, p. 358):

> '. . . A determination of the ineligibility of plaintiff to play interschool basketball was made by those in whom the constitution, by-laws, and rules of the Illinois High School Association vested the power and duty to make that determination.
>
> 'In the absence of any evidence of fraud or collusion, or that the defendants acted unreasonably, arbitrarily, or capriciously, the

> Athletic Association must be, under the authorities cited, permitted to enforce its rules and orders without interference by the courts.'

The plaintiffs had alleged that the association's refusal to apply a hardship exception, in view of an illness which had held them back in school, was unreasonable and arbitrary. The Missouri Supreme Court rejected this argument (19, p. 359):

> If an athlete of more than 19 years of age were permitted to participate in athletic contests the fact that his may be a hardship case would in no manner diminish the dangers and other detrimental effects resulting from his participation.

The Supreme Court of Missouri, in considering the reasonableness of the rule, cited the 1970 Minnesota case of Brown v. Wells (17), supra, as authority (19, p. 359):

> 'In the final analysis, the court must determine if the board's action is so willful and unreasoning, without consideration of the facts and circumstances, and in such disregard of them as to be arbitrary and capricious. Where there is room for two opinions on the matter, such action is not 'arbitrary and capricious,' even though it may be believed that an erroneous conclusion has been reached.'
>
> There was a sound basis for the adoption of the rule in question and we see nothing to indicate that it is unreasonable, arbitrary, or unfair.

Also in 1974, the Supreme Court of New York State heard an appeal case regarding an athletic eligibility rule in Murtaugh v. Nyquist (20). The petitioners, Murtaugh and another high school student, attempted to set aside a

determination prohibiting them from participating in high school athletics. Their suit attacked an eligibility rule contained in the Rules and Regulations of the Commissioner of Education of New York State. The particular rule declared a student eligible for inter-high school athletic competition only during eight consecutive semesters after his entry into ninth grade, and prior to graduation, unless sufficient evidence could be shown that the student's failure to participate during one or more semesters was caused by illness, accident, or some other circumstance deemed acceptable. The petitioners claimed the rule was arbitrary.

In ruling in favor of the commissioner's rule, the Supreme Court of New York State declared the rule valid and dismissed the action. The court acknowledged the purpose of the rule as designed to prevent "red shirting." In giving its explanation of "red shirting" and the reason why the rule controlling the practice was not arbitrary, the court said (20, p. 596):

> "Red shirting" is a practice whereby a high school student is held back for one grade for academic reasons and does not compete in athletics for that school year. The student then competes in his fifth year in high school, when he is more mature, physically developed and presumably more proficient. . . . the older "red shirted" student is competing with younger, less developed students - a situation which could lead to injuries.

The court therefore declared (20, p. 597):

> . . . there is an obvious and reasonable basis for the regulation, and thus this court may not annul the regulation.

The Supreme Court of Louisiana in late 1975 rendered a decision on the transfer rule of the state athletic association in the case of Chabert v. Louisiana High School Athletic Association (21). The plaintiff, a high school student, had enrolled in a Catholic high school which was outside the public school district he had attended through eighth grade. Since the Catholic high school was outside the public school district in which he resided and had attended school previously, the transfer rule of the state athletic association declared him ineligible for one year. The association had advanced the rule to prevent recruiting of athletes from school district to school district. The plaintiff contended that the application of the rule was discriminatory and infringed upon the right to freedom of religion.

The trial court decided in favor of the plaintiff and issued an injunction against enforcement of the transfer rule. The court reasoned (21, p. 776):

> . . . [T]he transfer rule forces only those persons who reside outside [the public school district with the Catholic high school] to forfeit a year's athletic eligibility, while those who live within [that district] and wish to get a Catholic education . . . do not forfeit any athletic eligibility.

On appeal of the decision to the First Circuit Court of Appeals by the state association, the Court reversed the trial court's decision finding no denial of religious freedom nor

deprivation of equal protection. The Court of Appeals reasoned (21, p. 776):

> The court found a rational basis between the application of the transfer rule to the evil it was intended to protect against, namely, recruiting. Since the rule had a rational basis, the . . . court found no constitutional infirmity.

On writ of certiorari, the Louisiana Supreme Court reviewed the decision of the lower court. The court recognized the decision in this case to be made on the grounds of equal protection, not on a denial of due process. Also, the association's contention that athletics is a privilege and not a right and should thereby apply to this case, was rejected by the court. In citing its basis for the rejection, the court cited the 1971 case of Graham v. Richardson, supra, 91 S.Ct. 1848 which stated (21, p. 777):

> . . . But this court now has rejected the concept that constitutional rights turn upon whether a governmental benefit is characterized as a 'right' or as a 'privilege'.

In affirming the judgment of the Court of Appeals, the Supreme Court noted (21, p. 780):

> We recognize that the application of the transfer rule may work a hardship on plaintiff and others similarly situated. However, that fact does not make the rule unconstitutional.
>
> * * *
>
> As long as the rule is uniformly applied and not arbitrary, and related rationally to a legitimate governmental interest, that rule cannot be said to violate the guarantee of equal protection of the law.

Not all court decisions involving a challenge to a state athletic association eligibility rule have been in favor of the association. One such court case decided by the Supreme Court of Iowa in 1972 was the case of Bunger v. Iowa High School Athletic Association (6), supra. At issue was the association's "Good Conduct Rule" and that portion referred to as the "beer rule." The "beer rule" declared an athletic participant ineligible for six weeks of interscholastic competition if he possessed, consumed or transported alcoholic beverages, admitted to possession or consumption of same, or was a passenger in a vehicle containing alcoholic beverages and/or dangerous drugs. The plaintiff-appellant had been declared ineligible because he was a passenger in a vehicle where alcoholic beverages were being consumed.

The plaintiff-appellant brought suit to enjoin enforcement of the rule. The trial court upheld the rule, but upon appeal to the Supreme Court, the high court reversed the lower court decision. The court found that the rule in question was lacking on two counts. The first count regarded the association's enforcement of the rule to which the court stated (6, p. 563):

> The rule before us is, in fact, a rule of the IHSAA and not of the [local school board] or of the State Board. Neither of the latter public bodies could re-delegate its rule-making authority. We hold that the rule is invalid for want of authority in IHSAA to promulgate it.

The second count upon which the court ruled was the reasonableness of the rule. In this regard the court made this

statement (6, p. 565):

> We realize that the rule has been made broad in an effort to avoid problems of proving a connection between the student and the beer, but rules cannot be so extended as to sweep in the innocent in order to achieve invariable conviction of the guilty. We hold the rule in question is invalid as unreasonable.

The case of Sturrup v. Mahan (22) was heard in the State Supreme Court of Indiana in 1974 after more than two years of court action. Sturrup, plaintiff-appellant in the suit, had been declared ineligible from interscholastic competition after moving from Florida to Indiana without a similar move being made by his parents. Once in Indiana, his brother became his legally recognized guardian. The move to Indiana was cited as necessary to remove the plaintiff from a demoralizing home and school environment. The plaintiff cited as reasons for his move: (1) the extensive use of drugs by his fellow classmates; (2) poor study conditions in his home; (3) inadequate personal accommodations in his parent's two-bedroom house where he lived with his ten sisters; and (4) a need to relieve the stress felt by his mother who suffered from a heart condition.

The basic issue in the suit was whether the association's rule designed to prevent recruiting and "school-jumping" had been applied judiciously or in an arbitrary and capricious manner. The Supreme Court reversed the ruling of the lower

court and found that the rule's application had been arbitrary and capricious. The court noted its reason for the decision in this statement (22, p. 881):

> . . . the purported objective of the transferee eligibility rules is to prevent the use of undue influences and school "jumping," but their practical effect is to severely limit the transferee eligibility in general. The rules as presently constituted penalize a student - athlete who wishes to transfer for academic or religious reasons or for any number of other legitimate reasons. Surely, denying eligibility to such transferees in no way furthers [the association's] objectives.
>
> * * *
>
> . . . the [association's] decision to deny [plaintiff] eligibility - in the absence of any evidence of "undue influence" - can only be viewed as patently arbitrary, and capricious, and must be reversed.

Two similar court cases since 1974 were decided in the State of Florida against the State High School Activities Association. The case of Lee v. Florida High School Activities Association, Inc. (23) was decided in the District Court of Appeals in 1974. The plaintiff-appellant, a high school student, was declared ineligible from further athletic competition after four years had elapsed from his start in ninth grade. The court record showed the plaintiff attending: (1) ninth grade in 1969 in California; (2) until November of 1971 in California when he moved to Florida with his family; (3) a Florida high school in September, 1972, after staying

out of school during the remainder of the 1971-72 school year to help support the family; (4) school in September, 1973, when the association declared plaintiff ineligible. The plaintiff was declared ineligible since the rule limits the eligibility of each student to four consecutive years from the time he enters ninth grade. In a petition presented to the association, the plaintiff sought to have the ineligibility set aside on the grounds of undue hardship. The association's response was a refusal to waive the ineligibility ruling against the plaintiff.

The court suit contended that the association's actions were harsh and as enforced, denied plaintiff of due process in denying him the opportunity to establish his eligibility. The court's decision reversed and remanded with directions the ruling of the lower court. The court cited as its reasons for the decision (23, p. 638):

> . . . defendant [association] without establishing any uniform standards or affording the plaintiff an opportunity to present evidence, refused to declare the complainant a hardship case and failed to offer any reasons therefor. Thus, we conclude that the complaint on its face sufficiently alleges the harshness of the executive committee's action and the denial of due process in that it denied the plaintiff an opportunity to establish his eligibility, by relying upon the four year rule which was applied arbitrarily in the instant action.

In a similar 1975 Florida District Court of Appeals case, the court ruled against the association's application of the four-year eligibility rule. In the case of the Florida High School Activities Association, Inc. v. Bryant (24) the plaintiff-appellee, Bryant, claimed he qualified as a hardship case and therefore, the four-year eligibility rule should not be invoked in an arbitrary manner, excluding him from basketball during his senior year.

The decision of the court affirmed the lower court ruling against the defendant. In ruling for the plaintiff, the court noted the case of Lee v. Florida High School Activities Association, Inc. (23), supra, and the fact that "red shirting," which the four-year eligibility rule is designed to prevent, was not involved. The court felt that the plaintiff's participation in interscholastic basketball (24):

> '. . . is an important and vital part of his life providing an impetus to his general scholastic and social development and rehabilitation from his prior problems as a juvenile delinquent. It has resulted in the improvement of his grades, attitude, self-confidence, discipline and maturity.'

Summary

A review of litigation directed at the various state athletic association's eligibility rules and occurring from 1970 into 1976 was the subject of this chapter. The general

grounds for litigation occurring centered around challenges to: (1) the general authority of state athletic associations to regulate the eligibility of individual participants; (2) the association's alleged violation of an individual's constitutional rights; (3) an association's specific eligibility rule, alleging that the rule was unreasonable, arbitrary, and capricious; (4) the association's application of the rule to a specific individual's case, alleging that the rule created an undue hardship in view of the facts presented; and (5) the association's procedural process for declaring a participant's ineligibility, alleging that the participant was denied or limited due process rights.

From the case decisions analyzed in this chapter, certain legal principles tend to appear. These legal principles are presented for review by those officials who have within their responsibility the establishment of eligibility rules for interscholastic competition with public high schools:

1. Reflecting a state interest, a state athletic association is recognized in common law as having the authority to set rules and regulations for the supervision and control of the public school athletic programs within a state.

2. The court will not interfere with the discretion exhibited by an association, unless the rule or actions of the association are shown to be unreasonable, arbitrary, or capricious.

3. The court will not substitute its judgment for that of the association, but it will review the proceeding to establish whether or not the association followed its own guidelines for determining ineligibility.

4. The court will review the proceeding followed by an association to determine if any events within the proceeding were in violation of the due process clause of the Constitution of the United States.

5. The court will review the application of an eligibility rule to determine whether its basis is in violation of the equal protection clause of the United States Constitution.

6. Student participation in extracurricular activities is deemed a privilege and, therefore, such participation must be in accordance with the established standards of the association.

CHAPTER IV: DUE PROCESS IN ATHLETICS

This chapter is a discussion of the implications of the due process clause of the Constitution of the United States as applied to interscholastic competition in public high schools. The discussion of the implications of the due process clause is presented through a review of its common law status. Various court cases occurring during the span of time from 1970 into 1976 are the subject of the review.

Due Process of Law

Due process of law is defined as (25, p. 545):

> Recognition of the rule that a person shall not be deprived of life, liberty, or property without an opportunity to be heard in defense of his right . . . .

Its origin is historical, being older than written constitutions, and having been interwoven into the common law long prior to the adoption of the Magna Charta (25, p. 545).

The concept of due process of law became a guaranty to the people of the United States when it first became a clause written into the Fifth Amendment of the United States Constitution. The amendment provides that (25, p. 546):

> . . . 'no person shall . . . be deprived of life, liberty, or property, without due process of law.'

This amendment, however, was restricted and limited to the powers of the federal government and not to the states. As such, the due process clause by this amendment applies only to federal courts and not to state courts.

Recognition of this basic right and with the intent to extend this guaranty to all people governed by state actions, the due process clause was written into the United States Constitution for the second time. This came about in the writing of the Fourteenth Amendment with the inclusion of this clause (25, p. 548):

> . . . 'Nor shall any State deprive any person of life, liberty, or property, without due process of law.'

This clause, in effect, placed the same limitations on the states as had been placed on the federal government by the Fifth Amendment.

Due process in the Fourteenth Amendment is that which is guaranteed by the constitution and laws of a particular state. According to American Law as restated in 16A Corpus Juris Secundum §568, (25, p. 552):

> . . . what due process requires in one state is not necessarily due process in another, and the amendment does not require that process of law be the same in all the states or the same as that prescribed for the federal courts.

The extent of application of the due process of law finds its principle being applied to administrative agencies, boards

and boards of education (25, p. 554). In fact, the due process of law guaranty extends to (25, p. 556):

> . . . every governmental proceeding which may interfere with personal or property rights, whether the proceeding be legislative, judicial, administrative, or executive.

In Chapter II of this study, the question of whether athletic participation is a right or privilege was studied through a review of court cases occurring from 1970 into 1976. The court cases presented dealt with many different types of eligibility situations in which the athletic associations presented, as a part of their argument, the concept that athletic participation in the public high school is a privilege rather than a right.

After examining the court cases presented, it was noted that the associations' arguments for athletic participation being a privilege did at times apply and at other times did not apply to the basic issue before the court; but in each court deliberation that followed, the court acknowledged the fundamental concept of athletic participation in the public high school as constituting a privilege rather than a right. The prevailing opinion of the courts also indicated that the chance of earning a college scholarship through high school athletic participation was just a chance, and as such, high school athletic participants have no vested property interest or guaranty of a future property as a result of their participation. Therefore, the due process clause cannot protect an

individual from being deprived of the privilege as long as the deprivation of the privilege is not based upon an arbitrary, capricious, or unreasonable decision.

The courts have further interpreted two aspects to the due process of law. One literal aspect refers to procedural rights. Whenever a person is being deprived of life, liberty, or property, due process requires that a notice be served and an opportunity be provided for the person being denied the right to be heard before a fair, competent and impartial tribunal having jurisdiction (25, p. 571).

The second aspect of due process of law refers to those rights classified as substantive. Due process when applied to substantive rights is interpreted to mean (25, p. 539):

> . . . the government is without right to deprive a person of life, liberty, or property by an act that has no reasonable relation to any proper governmental purpose, or which is so far beyond the necessity of the case as to be an arbitrary exercise of governmental power, ... In the concrete, it means that in a contest involving these rights a person will be accorded the opportunity to contest the propriety of each step in the action sought to be taken against him.

Therefore, substantive due process involves a determination of whether the reasons behind the actions taken against a person are proper and reasonable. As contrasted to substantive due process, procedural due process deals exclusively with the determination of whether a person has been provided with proper notice and the opportunity to respond to the

reasons given for denial of a right.

The study of the concept of due process as presented in the remainder of this chapter is directed at the states' and federal courts' interpretations of the application of procedural and substantive due process in high school athletics. Those court cases involving the two interpretations of due process are examined and presented for analysis.

Procedural and Substantive Due Process

In 1970, the case of Mitchell (7), supra, was an attempt by the plaintiff to use the due process clause of the Fourteenth Amendment as a shield against the enforcement of a state athletic association's eligibility rule. The plaintiff contended that the athletic association's eligibility rule did not provide the opportunity through procedural due process for the plaintiff to present a defense for the right of participation which the application of the eligibility rule would deny.

The court denied the plaintiff's contention that due process was violated by the actions of the athletic association. The basic reason for the court's decision centered around the fact that the court did not view the plaintiff's denial to participate in athletic contests as a fundamental right or privilege secured by the Constitution of the United

States. Therefore, the court was of the opinion that athletic participation was outside the protection of due process in the federal courts.

An argument was made by plaintiff respondents in the 1972 case of Bruce v. South Carolina High School League (26) that enforcement of a transfer rule deprived plaintiffs of due process and equal protection by arbitrarily depriving them of the right to participate in interscholastic athletics at the transferee high school. The plaintiffs transferred without a bona fide change of residence. The transfer rule of the high school league called for an automatic declaration of ineligibility for a period of one year, regardless of the motives prompting the transfer. It was determined that the transfer was voluntary and not the result of recruitment for athletic purposes.

The Supreme Court of South Carolina upheld the rule in favor of the high school league. In so moving, the court stated (26, p. 819):

> The rule in question does not infringe upon any constitutionally guaranteed right . . . . [P]articipation in [interscholastic athletics] is a privilege which may be claimed by students only in accordance with the eligibility standards prescribed for participation.
>
> Respondents further charge that the rule is arbitrary in its application to them, because it was adopted to prevent the recruiting of athletes and no provision is made for review in individual cases, so as to grant relief

> from its provisions where, as in this case, the transfer is voluntarily made without the prohibited element of inducement.
>
> * * *
>
> In contending that, since they were not recruited and the rule was designed to prevent recruiting, it should not apply to them, respondents confuse the reasons which prompted the adoption of the rule with the method adopted to accomplish the desired goal. Prohibitive administrative difficulties, as well as others, resulting from a determination in each case of the reason prompting the transfer could have properly influenced the member schools to decide that the best method to accomplish the elimination of the evil of recruiting was to bind themselves to adherence to a rule without exceptions or qualifications. The merits of such a rule or the wisdom of its adoption are not for the courts to determine.

Most court cases reviewed which alleged a denial of due process were concluded by the court citing Mitchell (7), supra, as the controlling case. Two exceptions to this conclusion were noted in the cases of Lee (23), supra, and Bryant (24), supra, in the State of Florida in 1974 and 1975, respectively. In both cases involving suits against the Florida High School Activities Association, Inc., the plaintiffs alleged that the actions of the association had denied to them the exercise of their right to the due process of law. Both plaintiffs had been declared ineligible from further athletic participation under the four year eligibility rule without being granted due process procedures to present

their claims that the ineligibility should be waived in view of their hardship cases.

In ruling in favor of the plaintiffs in both cases, the court noted in the case of Lee (23, p. 638), supra, that the association had failed to provide an opportunity for the plaintiffs to present evidence of an alleged hardship case. By refusing to provide due process procedures and reasons for the association's actions, the court felt the four year eligibility rule had been applied arbitrarily. In so ruling, the court stated its position in regard to due process of law claims involving actions of an association in this reference (23, p. 638):

> We hold that upon complaint of a citizen the court has the power and the duty to determine whether the citizen has been deprived of due process of law by the action of an association, such as the FHSAA whose conduct of affairs is state action in the constitutional sense.

Regarding the case of Bryant (24, p. 58), supra, in 1975, the court stated:

> In our view, the contentions of the appellant were answered squarely by this court's holding in Lee v. Florida High School Athletic Association, Inc., . . . 291 So 2d 636.
>
> Further, we do not think the defendant has shown that its initial finding that the plaintiff had not presented an adequate case of undue hardship was either fair or supported by competent substantial evidence.

A class action suit in 1975 was filed on behalf of the public school students in Ohio to determine the extent to which students were entitled to the constitutional guaranty of procedural due process in education. The case, Goss v. Lopez (27), was eventually appealed to the United States Supreme Court. Due to the case pertaining to the due process afforded public school students and, subsequently, decided in the highest court of the land, the case is presented for analysis of the court's reasoning and interpretation of the application of the due process clause of the Fourteenth Amendment.

Lopez, the plaintiff-appellee, alleged that students had been suspended from school for up to ten days without hearing, an act which the plaintiff claimed denied students procedural due process under the Fourteenth Amendment. The defendant-appellant, Goss, as principal had been empowered by Ohio statute to suspend pupils for misconduct for up to ten days, but each suspension required the principal to notify the student's parents and state the reasons for the action within twenty-four hours of the incident.

The issue brought before the United States Supreme Court was whether the statute deprived the students of the constitutional guaranty of procedural due process. In affirming the earlier decision of the United States District Court, the

Supreme Court found the Ohio statute as unconstitutional as it permitted suspension without notice or hearing, either before or after the suspension (27, p. 740).

In its reasoning, the United States Supreme Court noted that the State of Ohio had by law given every citizen from age five to twenty-five a free education in addition to requiring thirty-two weeks of compulsory attendance within each school year. The students, therefore, had a property and liberty interest that qualified for protection under the due process clause of the Fourteenth Amendment. This protection required that the right of an education cannot be withdrawn for misconduct without establishing fair procedures for determining whether the misconduct occurred and observing minimum procedures in taking away that right (27, p. 734).

The court further defined the requirements for due process in connection with a student's suspension of ten days or less (27, p. 739): (1) Student must be given written or oral notice of charges against him; (2) if student denies charges, an explanation of evidence the authorities have and an opportunity to present his version must be provided; (3) generally, notice and hearing should precede; but (4) if not feasible, if student's presence endangers persons, property, or threatens disruption of academic process and immediate removal is necessary, the necessary notice and hearing should follow as soon as practicable.

Shortly thereafter in 1975, the United States District Court of Pennsylvania tried the case of Dallam v. Cumberland Valley School District (13), supra, in which the court was called upon to decide whether the constitutional protection afforded to public school students by the decision in Goss v. Lopez (27), supra, also extended to the extracurricular activities of interscholastic athletics. In the case at hand, a student was automatically barred from interscholastic competition for a period of one year when the student transferred from one school district to another without residing in the transferee district with a parent or guardian. The basic issue argued on behalf of the plaintiff was not the athletic association's reasoning behind the rule, but the fact that the automatic ineligibility rule acted as an unrebuttable prescription in violation of the student's due process rights guaranteed by the United States Constitution (13, p. 359).

In deciding for the athletic association, the court distinguished the case at hand from that of Goss v. Lopez (27), supra, in this statement (13, p. 361):

> It is significant that in the context of finding a property interest in education the majority in Goss spoke in terms of a "total exclusion from the educational process." . . . it seems to us that the property interest in education created by the state is in participation in the entire process. The myriad activities which combine to form that educational process cannot be dissected to create hundreds of separate property rights, each cognizable under the Constitution. Otherwise, removal from a particular class,

> dismissal from an athletic team, a club or any extra-curricular activity, would each require ultimate satisfaction of procedural due process.

The court based its decision on the 1970 case of Mitchell v. Louisiana High School Athletic Association (7), supra, and quoting from it stated (13, p. 361):

> '[T]he due process clause of the Fourteenth Amendment does not insulate a citizen from every injury at the hands of the state. 'Only those rights, privileges and immunities that are secured by the Constitution of the United States or some Act of Congress are within the protection of the federal courts. Rights, privileges and immunities not derived from the Federal Constitution or secured thereby are left exclusively to the protection of the states.' The privilege of participation in interscholastic athletics must be deemed to fall in the latter category and outside the protection of due process.'

As noted in the general discussion of due process, this chapter is to be directed toward a presentation of court cases involving athletic associations in which the denial of procedural and substantive due process was the claim. A review of those cases presented revealed no cases within which the denial of substantive due process was the issue. All cases presented, consequently, involved the issue of procedural due process.

The review of court cases, as noted, did not produce one case involving an athletic association's alleged denial of substantive due process, but in the research conducted, one recent case in education did involve such an allegation. The

case cited was the 1975 Arkansas case of Wood v. Strickland (28) which was eventually reviewed by the United States Supreme Court by writ of certiorari. The case involved the respondent, Strickland, and two other high school girls, who had been expelled from school for "spiking" the punch. The girls had been placed in charge of the punch for an after school home economics party. In the course of events, the girls used malt liquor to mix with the punch. Some days after the party had concluded, the school administration learned of the incident and suspended the girls from school. Upon review of the incident by the school board, the girls were found in violation of a school policy which prohibited the use or possession of intoxicating beverages at school functions. The girls were then expelled by the board. The suit alleging that the school district had denied due process to the students was initiated.

The case was first heard by the United States District Court which issued a verdict for the school district. From this decision, the plaintiffs appealed and the case went to the Eighth Circuit Court of Appeals which reversed and remanded the trial court's decision. Among the reasons for the Court of Appeals decision was the court's finding that the students substantive due process had been violated by the school board in expelling the students on the basis of no evidence of a violation having occurred. The court reasoned

(28, p. 1001):

> 'To justify the suspension, it was necessary for the Board to establish that the students possessed or used an 'intoxicating' beverage at a school-sponsored activity. No evidence was presented at either meeting to establish the alcoholic content of the liquid brought to the campus. Moreover, the Board made no finding that the liquid was intoxicating. The only evidence as to the nature of the drink was that supplied by the girls, and it is clear that they did not know whether the beverage was intoxicating or not.'

The Court of Appeals had concluded that the school regulation prohibiting "intoxicating beverages" meant the same as the Arkansas statute's definition of "intoxicating liquor" which must have an alcoholic content of over five percent by weight. Consequently, the malt liquor was shown to have an alcoholic content of a little more than three percent, so the court reasoned no real evidence had been produced. Therefore, substantive due process had been denied the plaintiffs.

Upon review of the Court of Appeals reasoning by the United States Supreme Court, the court found that the conclusion reached was based upon an erroneous construction of the school regulation in question (28, p. 1001). The Supreme Court then reasoned (28, p. 1002):

> Testimony at the trial . . . established convincingly that the term "intoxicating beverage" in the school regulation was not intended . . . to be linked to the definition in the state statute . . . of "intoxicating." . . . In light of this evidence, the Court of Appeals was ill advised to supplant the interpretation of the regulation of those officers who adopted it and are entrusted with its enforcement.

The court established the fact that evidence was present to support the charge against the plaintiffs. Therefore, substantive due process had not been denied to the plaintiffs.

This case illustrates the meaning and application of substantive due process, even though the reasoning was finally struck down by the Supreme Court. The incidence of denial of substantive due process will most likely be infrequent in court cases involving education and, particularly, athletic issues. This statement is based upon the case just concluded and the Supreme Court's reasoning in that case (28, p. 1003):

> It is not the role of the federal courts to set aside decisions of school administrators which the courts may view as lacking a basis in wisdom or compassion. Public high school students do have substantive and procedural rights while at school . . . . But §1983 [part of the Civil Rights action for deprivation of rights] does not extend the right to relitigate in federal court evidentiary questions arising in school disciplinary proceedings or the proper construction of school regulations. The system of public education that has evolved in this Nation relies necessarily upon the discretion and judgment of school administrators and school board members and §1983 was not intended to be a vehicle for federal court correction of errors in the exercise of that discretion which do not rise to the level of violations of specific constitutional guarantees.

Summary

The common law principles presented in this chapter represent the courts' interpretation of the due process clause of the United States Constitution as applied in court cases

involving interscholastic athletics in the public high school. The court cases reviewed for this interpretation occurred from 1970 into 1976.

Two legal aspects of due process of law are procedural and substantive. The reviewed court cases revealed the claim that procedural due process was allegedly denied the plaintiffs. However, the denial of substantive due process was not found in any athletic cases. The only related case with the alleged denial of substantive due process was one in the broader field of education, but the United States Supreme Court overturned that claim in its review of the case.

Certain legal principles are noted upon review of the cases presented. These legal principles are summarized for those officials who have responsibility for the eligibility rules of interscholastic competition with public high schools:

1. Athletic participation has not been regarded by the courts as a property; therefore, due process does not apply.

2. Athletic participation is not named as a fundamental right or privilege in the United States Constitution; therefore, due process does not apply.

3. Procedural due process was found to apply to cases involving a general denial of the right to an education, but it does not apply to the individual programs comprising that education, such as athletics.

4. The denial of substantive due process which questions the reasoning and discretion of regulations was found to be an area in the general field of education into which the Supreme Court of the United States would not

enter unless specific constitutional guarantees were violated. Since no cases involving this denial could be found in athletics, and since athletics is only an individual program within the general field of education, it appears remote that any future claims of denial of substantive due process will be entertained by the courts.

CHAPTER V: EQUAL PROTECTION IN ATHLETICS

The purpose of this chapter is to review the interpretation of the equal protection clause of the Fourteenth Amendment to the United States Constitution as it is applied to interscholastic athletics in the public high schools. To interpret the meaning of the equal protection clause, its common law status is reviewed through an analysis of selected court cases occurring from 1970 into 1976.

Equal Protection of the Law

The equal protection clause of the Fourteenth Amendment to the United States Constitution had at its origin the primary purpose of providing a guaranty to the recently freed Negroes that various state and local laws in existence or to be enacted were unconstitutional if they denied equal rights and treatment to all within a state (29, p. 297). The express purpose of the clause was to forbid states from denying equal protection of the laws, in the same place and under like circumstances and conditions, to all persons subjected to state legislation (29, p. 296).

The equal protection clause written into the Fourteenth Amendment of the United States Constitution has been developed through common law to have this meaning (29, p. 296):

> Equal protection to all is the basic principle on which rests justice under the law. . . . a state may not deny to any person within its jurisdiction the equal protection of the laws. This clause is a pledge of equal protection of laws or protection of equal laws; and it means, and is a guaranty, that all persons subjected to state legislation shall be treated alike, under like circumstances and conditions, both in privilege conferred and in liabilities imposed; but it guarantees only the protection enjoyed by other persons or classes in the same place and under like circumstances, in pursuit of their lawful occupations; and it is not a guaranty of equality of operation or application of state legislation on all citizens of a state.

The equal protection clause is intended to guaranty to all persons physically present within a state, regardless of station or condition, the equal protection of the laws of that state (29, p. 300). Further, the clause is to (29, p. 299):

> . . . secure and safeguard equality of right and of treatment against intentional and arbitrary discrimination; but it operates only on legal rights otherwise created or existing and does not itself create any new legal rights, except the general right to equal protection of the laws.

Many of the court cases involving a claim against a state athletic association or a public school regulation has noted in the court record that the court viewed the actions of the association or public school as "state action in the strictest sense." As such, the equal protection clause is applied to the actions of the association or the public school.

Frequently, the various state athletic associations legislate or recommend to the public school boards for adoption

certain regulations which involve a classification of the persons participating in athletic contests. Since the actions of the association or the public school board are state action, a challenge to the classification frequently arises contending that the classification in question stands as a violation to the equal protection clause of the Fourteenth Amendment. A review of American Common Law on the subject of legislative classification reveals (29, p. 314):

> Legislative classification which is not palpably arbitrary and may reasonably be conceived to rest on some real and substantial difference or distinction bearing a just and fair relation to the legislation is not a denial of equal protection of the laws.
>
> The prohibition against denial of equal protection does not preclude a state or municipality from resorting to classification for purposes of legislation and confining the legislation to a certain class or classes, prescribing different sets of rules for different classes, or discriminating in favor of, or against, a certain class, provided the classification or discrimination is reasonable, rather than arbitrary, and rests on a real and substantial difference or distinction which bears a just and reasonable relation to the legislation or the subject or object thereof, and provided also the legislation operates equally, uniformly, and impartially on all persons or property within the same class.
>
> A classification having some reasonable basis does not offend the equal protection clause of the Fourteenth Amendment because it is not made with mathematical nicety or scientific exactness, or because in practice it certainly results in some inequality. Any state of facts which can reasonably be conceived to sustain the classification will be assumed to have existed at the time the law was enacted; and the classification will not be interfered with by the courts unless it

> is clearly, manifestly, palpably, and purely arbitrary and unreasonable . . . .

The study of the concept of equal protection as applied to athletics is presented in the remainder of this chapter. Specifically, those court cases which classify student participation on the basis of marriage and/or sex in public high school athletics are reviewed and presented for study. Cases occurring prior to 1970 which were controlling cases as well as those occurring after 1970 and into 1976 are reviewed.

Married Students as a Separate Classification

Prior to 1970, a precedent setting case which established married students as a separate classification in high school athletics was tried in 1959 in the Court of Civil Appeals in the State of Texas. The case, Kissick v. Garland Independent School District (30), involved a sixteen year old male student who married while in high school and was, subsequently, ruled ineligible from football and barred from further high school participation in athletics. The school district contended its decision was based upon a resolution adopted to discourage juvenile marriages among high school students. Further, the district felt it inappropriate for married students to participate in athletics in that separate facilities would be needed to accommodate the married students which could not be provided. Kissick, plaintiff-appellant, contended that he had planned to continue playing football to

qualify for a college scholarship. He alleged that the school resolution was discriminatory, unreasonable and unconstitutional.

The principal issue before the court was the question of whether married students could be classified separately from other students, thus making possible the establishment of different eligibility rules than exist for nonmarried students. The court affirmed the lower court judgment against the appellant. In so ruling, the court upheld the school district resolution barring married high school students from extracurricular activities. The reasons given by the court in support of its decision consisted of the following (30): (1) rule did not appear to penalize persons because of marriage; (2) rule was not void on ground that it deprived married high school student of equal protection of the law or due process of the law; and (3) school did not act in an arbitrary, capricious, discriminating, or unreasonable manner. The court's perceived role in issues dealing with boards of education was expressed in its concluding statement (30, p. 712):

> 'Boards of Education, rather than Courts, are charged with the important and difficult duty of operating the public schools. So, it is not a question of whether this or that individual judge or court consider a given regulation adopted by the Board as expedient. The Court's duty, regardless of its personal views, is to uphold the Board's regulation unless it is generally viewed as being arbitrary and unreasonable. Any other policy would result in confusion detrimental to the progress and efficiency of our public school system.'

Through the sixties, Kissick (30), supra, was the ruling case in most of the athletic cases involving married students' participation. In 1967, the Iowa Supreme Court considered the case of the Board of Directors of the Independent School District of Waterloo v. Green (31). The plaintiff-appellee, Green, a married male high school student, sought to enjoin the school board from enforcing its rule excluding all married pupils from participation in any extracurricular activities. The plaintiff, in not being permitted to continue as a member of the basketball team in his senior year, raised the issue that the board's rule was arbitrary, capricious, unreasonable, irrational, unauthorized, and unconstitutional. The Iowa Supreme Court decided in favor of the school board and reversed an earlier trial court decision against the board.

In supporting its decision, the Supreme Court recognized the board's rule as establishing two classes of students in the field of extracurricular activities; those married and those having not entered into a marital relationship. The court did not view the classification of students into the two groups as a violation of the equal protection clause of the Fourteenth Amendment since the classifications were merely a form of differentiation (31, p. 860). The court supported its reasoning by citing the case of Starkey v. Board of Education of the Davis County School District, 381 P. 2d 718, decided in 1963 which stated (31, p. 860):

> 'We have no disagreement with the proposition advocated that all students attending school should be accorded equal privileges and advantages. But the participation in extracurricular activities must necessarily be subject to regulations as to eligibility. Engaging in them is a privilege which may be claimed only in accordance with the standards set up for participation. It is conceded, as plaintiff insists, that he has a constitutional right both to attend school and to get married. But he has no 'right' to compel the Board of Education to exercise its discretion to his personal advantage so he can participate in the named activities.'

A United States District Court in Texas in 1971 heard the case of Romans v. Crenshaw (32). The plaintiff, Romans, a married and divorced female high school student, sought to enjoin the school district from enforcement of a regulation which prevented married or divorced students from participating in any extracurricular activities. The basic issue was to determine whether the regulation violated the equal protection of the law guarantee of the Fourteenth Amendment to the United States Constitution. The court's decision was to enjoin the defendant school district's superintendent, Crenshaw, from enforcing the regulation. The court's basis for the decision rested in the fact that the case developed no school disciplinary reason for the regulation or classification. Therefore, the court reasoned (32, p. 871):

> Any and all extracurricular activities cannot rationally or legally be disassociated from school courses proper where they do or may form an element in future collegiate eligibility or honors as here. Such a practice is not only discriminatory on its face, but is fundamentally

> inconsistent with the state's promise of a public education for its youth upon an equal basis.

In Iowa in 1971, the United States District Court heard the case of Rubel v. Iowa Girls High School Athletic Union (33). The plaintiff, a female high school student, had previously been a member of the girls' basketball team, winning recognition within the community and state for superior performance. Prior to the 1970 basketball season, the plaintiff was lawfully married and in December of that year, gave birth to a child. In January of 1971, the plaintiff requested the opportunity to be restored to the basketball team based on her ability to compete. The school denied her the opportunity to participate due to the athletic union's by-laws which declared any female student ineligible who was (33, p. 6): (1) associated with a marital status; (2) associated with motherhood; and/or (3) living with someone other than her parent or guardian. The plaintiff renewed her request to participate on the girls' basketball team in September of 1971 and again was denied. Just prior to the start of practice for the 1971-72 season, the plaintiff again requested the right to participate, but was again denied.

On November 18, 1971 the athletic union repealed the two by-laws denying the right of participation to a female who had been associated with marriage or motherhood and commenced a redraft of the by-law regarding residence to provide for

females that marry. To insure that the plaintiff would not be denied participation while the by-laws were being redrafted, a preliminary injunction was issued on November 22, 1971, to restrain enforcement of the by-laws. The plaintiff alleged discrimination and denial of due process in her suit. The court tried the case and found that the questioned by-laws denied the plaintiff equal protection rights under the Iowa Constitution. In the memorandum decision, the court issued a permanent injunction against enforcement of the by-laws. The court reasoned (33, p. 10):

> Students in Iowa's public high schools are a class whose constitutional rights under the Fourteenth Amendment have been expressly recognized.
>
> Classifications based on sex are also subject to the requirements and must be reasonable and not arbitrary . . . . No attempt has been made to show why females should be treated differently from males in these activities. Accordingly, the court perceives no reason why the [by-laws of IGHSAU] should not be held in violation of the Equal Protection Clause.
>
> Insofar as these rules created an unnecessary public interest and involvement with plaintiff's marital status and conjugal relations, they caused the state to invade marital privacy without rational justification and became violative of plaintiff's rights to privacy and personal freedom.

A United States District Court in Ohio in 1972 heard the case of Davis v. Meeks (34), in which the plaintiff, Davis, brought suit against the school board president to enjoin the district from enforcing a rule which excluded married high

school students from extracurricular activities. The specific rule challenged permitted married students to attend school but prevented them from participating in school sponsored extracurricular activities. The plaintiff contended that the rule deprived him of a part of the school program due to his marriage which is in itself a right and a civil liberty. This presented the court with the basic issue of determining whether the board's rule violated the constitutional rights of the plaintiff.

In its decision, the court granted a preliminary injunction against the board's enforcement of the rule. In so ruling, the court was of the opinion that the rule was an improper invasion of marital privacy (34, p. 302). However, in supporting this decision, the court noted (34, p. 299):

> This problem has been presented a few times in the past in the state courts, which have uniformly held, but often with vigorous dissents, that a rule of a board of education denying married students the right to participate in extracurricular activities is valid.

Also in 1972, a similar suit in Montana was brought before the United States District Court. The case was Moran v. School District #7 Yellowstone County (35) in which the plaintiff sought a preliminary injunction against a rule barring married high school students from extracurricular activities. The plaintiff was a senior who had been declared ineligible to play football due to his marriage. The basic issue to be

decided was whether or not the rule had violated the constitutional rights of the plaintiff.

The court's decision was to grant the preliminary injunction sought by the plaintiff. The court felt (35, p. 1187):

> It is incumbent upon the court to point out that the courts have held that marriage alone is not a reasonable grounds for expulsion . . . ; that premarital pregnancy is not a sufficient evidence of immorality to justify expulsion, . . . ; and that unwed mothers may not be excluded from public schools unless they are found so lacking in moral character that their presence in school will taint education of other students . . . . Without evidence of their corrupting influence the argument that in the informal atmosphere of extracurricular activities married students are more likely to have an undesirable influence on other students is hardly persuasive. In light of the conclusions by the board that association will be corrupting must be based upon substantial evidence recognizable by the court.

Again in 1972, in United States District Court in Tennessee, a married high school student brought suit against a school board's eligibility rule in the case of Holt v. Shelton (36). Holt, a married female senior high school student, sought a permanent injunction from a rule preventing her from participating in any activities at school except, after an automatic five day suspension, those activities associated with classes in which credit toward graduation is given. The plaintiff contended that her rights as secured by the constitution had been abridged by the school board's rule.

The court decided in favor of the plaintiff and granted a permanent injunction. In so moving, the court supported its decision with these reasons (36, p. 823):

> . . . the regulation . . . infringes upon [plaintiff's] fundamental right to marry by severely limiting her right to an education. . . . the sole purpose of the regulation is to discourage, by actually punishing, marriages which are perfectly legal under the laws of Tennessee and which are thus fully consonant with the public policy of that state. . . . such a regulation . . . impermissibly infringes upon the rights to due process and equal protection of the law of those students who come within its ambit.

The United States District Court in Texas tried the case of Hollon v. Mathis Independent School District (37) in 1973. The plaintiff sought a temporary injunction preventing the school district from enforcing a policy which prohibited married students from participating in interscholastic league athletic activities. The plaintiff, as a high school senior, had married with his parents consent and complied with Texas law. The school district had enacted the rule to prevent married students from participating in athletics because (1) marriages in high school increase the drop-out rate and (2) the marriage of one student encourages the marriage of other students. The basic consideration before the court, therefore, was to decide upon the constitutionality of the school board's policy excluding married students from athletic participation.

The court granted the injunction against the school board's enforcement of the policy excluding any married student from interscholastic athletic activities. The court did so on the basis that the policy was unconstitutional. The court supported its decision with this reasoning (37, p. 1270):

> The basis for each of the Federal District Court decisions varies slightly, some courts finding the denial of equal protection inherent in such a policy, other courts finding a fundamental invasion of marital privacy and the right to an education, or finding an unconscionable attempt to punish marriages which were both legal and fully consistent with the public policy of the state, but each decision found exclusionary policy from extracurricular activities based upon marriage to be unconstitutional.
>
> . . . no justifiable relationship [exists] between the marriage of high school athletes and the overall drop-out problem; nor does it appear that preventing a good athlete, although married, from continuing to play in whatever game he may excell, would in any way deter other marriages or otherwise enhance the drop-out problem.

In a similar Texas case in 1974, the Court of Civil Appeals tried the case of Bell v. Lone Oak Independent School District (38). The plaintiff-appellant, Bell, filed for an enjoinment of the school rule which prohibited married students from participating in extracurricular activities so that he could protect his eligibility to play football. The plaintiff-appellant supported his claim with these facts (38, p. 637): (1) the school regulation sets up an arbitrary and unreasonable classification for married students; (2) the

regulation was applied in an arbitrary manner; (3) the regulation infringes on the right to marry; (4) the trial court should have applied federal statutes and decision rather than state statutes and decision; and (5) he was denied the right to participate in school activities paid for out of school funds provided under Texas statutes. The case issue was to determine the validity of the school regulation banning married students from participation in extracurricular activities.

The court rendered a decision in favor of the plaintiff-appellant, reversing and remanding with direction the earlier trial court's decision. The basis for the reversal of decision was a finding that the regulation of the school district was violative of the equal protection clause. In so ruling, the court chose to not follow the common law set forth by the 1959 decision rendered in Kissick v. Garland (30), supra, (38, p. 638):

> . . . [W]e feel that the rule there should be abandoned for one that is non-discriminatory and which does not violate constitutionally guaranteed rights.

In 1975, the United States Court of Appeals for Indiana set forth a precedent setting decision in the case of the Indiana High School Athletic Association v. Raike (39). The plaintiff-appellee, Raike, contended that the athletic association's rule barring married high school students from

participation in athletics and extracurricular activities was a denial of equal protection under the United States Constitution. The Association contended that the rule was necessary to accomplish these objectives (39, p. 70): (1) to allow married students time to discharge economic and family responsibilities; (2) to discourage teenage marriages so as to reduce the high percent of divorce and drop-out rates among married students; (3) athletes serve as models or heroes and teenage marriages are usually the result of pregnancy so that immorality is encouraged if married students are allowed to participate; (4) married students cause a double standard to be applied, thereby causing discipline, training and administrative problems; and (5) to prevent unwholesome interaction between married and nonmarried students in "locker room talk."

During the time the permanent injunction of the trial court was in force and the case was being appealed by the defendant-appellant to the United States Court of Appeals, the plaintiff was participating in athletics as a married person. Introduced into the court record were these accomplishments involving the plaintiff (39, p. 70): (1) won sectional wrestling tournament; (2) elected captain of wrestling team; (3) improved batting average in baseball by 100 points; (4) baseball team record improved from prior year; (5) maintained a B average; (6) held a part-time job; and (7) discharged family responsibilities.

The issue before the court was to determine if the rules of the Indiana High School Athletic Association prohibiting married high school students from participating in athletics and extracurricular activities deny plaintiff the equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution. The decision of the court affirmed the earlier court decision in favor of the plaintiff. The court, in supporting its decision, stated (39, p. 71):

> . . . Rules prohibiting a married high school student from participating in athletics and extra-curricular activities do not bear a fair and substantial relation to the objective sought, and therefore deny Raike equal protection of the laws contrary to the Fourteenth Amendment of the U.S. Constitution.

In the record of the court, the court noted that prior to 1970, the so-called transitional period, courts were reluctant to interfere with the propriety of the regulations prohibiting married students from participating in extracurricular activities (39, p. 78). The court noted the general feeling of the courts by citing this quote from the case of Starkey v. Board of Education of the Davis County School District, supra, 381 P. 2d 718 (39, p. 78):

> 'It is not for the courts to be concerned with the wisdom or propriety of a [school board] resolution [prohibiting married students from participating in extra-curricular activities] as to its social desirability, nor whether it best serves the objectives of education, nor the application to the plaintiff in his particular circumstances. So long as the resolution is deemed by the Board of Education to

> serve the purpose of best promoting the objectives of a school, and the standards of eligibility are based upon uniformly applied classification which bear some reasonable relationship to the objectives, it cannot be said to be capricious, arbitrary, or unjustly discriminatory.'

Since 1970, the court noted the earlier decisions of Kissick (30), supra, and Waterloo v. Green (31), supra, to have been overruled or abandoned (39, p. 78). The court noted the trend since 1970 as support for its decision (39, p. 78):

> The recent trend does support our conclusion of unconstitutionality, and in our opinion, expresses "the more acceptable view at this time" and implies that courts are "beginning to develop the conception that school children are the intended beneficiaries of public education . . . not its prisoners or servants."
>
> * * *
>
> For the reasons stated the Rules are a constitutionally impermissable classification denying Raike equal protection of the laws by excluding him from athletic and other extra-curricular activities solely because of his marital status. Insulating athletic competition from the baleful influence of high school students who may or may not have married in haste will not pass constitutional muster, because there is no fair and substantial relationship between such a prohibition and the desired objective of wholesomeness in interscholastic competition.

Sex as a Basis for a Separate Classification

A classification by sex that places women in a separate category from men simply because of the sex difference is a violation of the equal protection clause of the Fourteenth

Amendment. A classification distinguishing women from men must be based upon some real difference which relates to the goals or objectives for the classification. According to American Common Law as restated in 16 American Jurisprudence §485 (40, p. 899):

> It is settled that the equal protection clause of the Fourteenth Amendment operates fully to include women within its protective scope. Discriminations against women as such are invalid. But the Fourteenth Amendment does not interfere with a distinction based upon sex by creating a fictitious equality where there is a real difference. Classification on the basis of special considerations to which women are naturally entitled is permissible.

One of the early court cases of the seventies involving a claim of unjustified discrimination against females was presented in the 1972 case of Reed v. Nebraska School Activities Association (41) which was heard before a United States District Court. The plaintiff, a female high school student, brought suit against the association's regulation which provided an interscholastic golf and basketball program for boys while providing none for girls and prohibiting girls from participating with or against boys (41, p. 259). Specifically, the plaintiff had attempted to try out for the boys' golf team since none existed for girls but was refused because of the association's rule against such participation by females.

The issue before the court was to decide whether or not the basis for the rule preventing mixed teams of boys and girls

and competition between the sexes was founded upon a classification which had a reasonable basis. The court decided that the classification established by the association's rule denied females the equal protection of the laws and granted a preliminary injunction against the association's enforcement of the rule. The court struck down the defendant's claim that the rule was justified due to athletic participation being a privilege rather than a right. The court reasoned (41, p. 262):

> The issue is not whether Debbie Reed has a "right" to play golf; the issue is whether she can be treated differently from boys in an activity provided by the state. Her right is not the right to play golf. Her right is the right to be treated the same as boys unless there is a rational basis for her being treated differently.

The court found no rational basis for the plaintiff being treated differently than boys and, consequently, ruled in favor of the plaintiff.

The question of whether sex was the sole basis for a separate classification being made in interscholastic high school athletics was presented in the 1972 Illinois case of Bucha v. Illinois High School Association (9), supra. The suit, a class action filed on behalf of other female high school students, was directed at three by-laws of the association. Specifically, the three challenged by-laws stated (9, p. 71): (1) member schools could not conduct interscholastic swimming contests for girls; (2) contests between

girls could not include organized cheerleading, awards of more than one dollar in value, or overnight trips in conjunction with contests; and (3) competition between members of the opposite sex was prohibited.

During the course of the suit, the first by-law prohibiting interscholastic swimming contests between girls was amended to allow the contests to be conducted. The court recognized the plaintiffs as representing the class of all girls who may want to compete against boys as members of presently all-boy teams and those girls who wish to compete in an interscholastic program which is separate from but equal to the boys program (9, p. 71).

The court would not acknowledge the defendant's plea for case dismissal on the basis that athletic participation is not a fundamental right guaranteed by the constitution. The court concurred in recognizing athletic participation as not being guaranteed by the constitution, but instead, took the position that the plaintiffs assert the right to equal educational opportunity and the right to equal treatment, regardless of sex, as guaranteed by the constitution.

The issue before the court was to determine whether the by-laws of the association discriminated against girls in denying them equal protection of the law. The decision of the court was in favor of the defendants. This decision allowed

the continuation of the by-laws which separated competition by sex class and established different governing rules applicable to each class. The basis for the court's decision rested upon "expert" testimony that distinguished a rationale for maintaining separate programs for the sexes.

Before determining whether the rationale for maintaining two separate programs for the sexes was constitutional, the court reviewed the United States Supreme Court tests for analyzing an alleged denial of equal protection. The two tests for analyzing the validity of a regulatory classification are known as the rational basis test and the compelling state interest test. The rational basis test identifies the purposes of a legislative act and then asks whether the challenged discrimination bears a rational relationship to any of those purposes (9, p. 74). The compelling state interest test is applied when the classification is grounded on certain "suspect" criteria or otherwise infringes upon certain "fundamental" rights (9, p. 74). In the case at hand, the court ruled out the compelling state interest test because, in the case of Reed v. Reed, 92 S.Ct. 251, the court had held that sex is not an inherently suspect classification (9, p. 74). Therefore, the court applied the rational basis test and kept in mind the statement of Justice Holmes from the case of Quong Wing v. Kirkendall, 32 S.Ct. 192 (9, p. 74):

> . . . '[T]he 14th Amendment does not [create] a fictitious equality where there is a real difference," . . . .

In summary, the court found that a rational relationship existed between the actions of the association and the goals for interscholastic athletic competition. The court, by its decision, did not decide on what is the best program for girls, but did declare the existing program for girls as constitutionally permissible (9, p. 75).

At about the same time a decision was rendered in Bucha (9), supra, the Supreme Court of Indiana ruled on an athletic association regulation which denied females the right to participate or compete with males in noncontact sports. The case of Haas v. South Bend Community School Corporation (42) involved the appellant's challenge to the Indiana High School Athletic Association's rule which stated (42, p. 498):

> 'Boys and girls shall not be permitted to participate in interschool athletic games as mixed teams, nor shall boys' teams and girls' teams participate against each other in interschool athletic contests.'

The appellant's specific goal was to recognize the right of females to participate in noncontact interscholastic athletic competition such as golf, swimming, tennis, track, and gymnastics. The appellant conceded that a male-female classification is reasonable in contests involving physical contact (42, p. 498). The main issue before the court was to determine if the application of the association's rule denied equal

protection to female high school students under the Fourteenth Amendment to the Federal Constitution.

The decision of the Indiana Supreme Court reversed and remanded the ruling of the Circuit Court and permanently enjoined the association's rule. The court refused to allow the association's rule to (42, p. 500):

> . . . deny female high school students the opportunity to qualify for participation with male high school students in interscholastic athletic contests which do not involve physical contact between the participants.

In support of its decision, the court reasoned (42, p. 498):

> It is clear that the rule differentiates between male and female students. To withstand a constitutional challenge the classificiation "must be reasonable . . . and rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."
>
> The trial court found that the classification was reasonable because of the difference in athletic ability between boys and girls. The court further reasoned that since the rule operates to deny to both classes the opportunity to compete in "mixed" athletic contests, no discrimination results from its application. The trial court was careful to observe that the rule does not prohibit girls from participating in interscholastic athletic contests with other girls.
>
> The evidence introduced at trial indicates that neither the appellant's high school nor the great majority of high schools throughout the state maintain interscholastic athletic programs for female students. By denying female students the opportunity to participate on varsity athletic teams in interscholastic competition, the rule, in effect, prohibits

> females from participating in interscholastic athletics altogether. Although the difference in athletic ability is a justifiable reason for the separation of male and female athletic programs, the justification does not exist when only one athletic program is provided . . . . It follows that if the rule cannot be justified on grounds other than the difference in athletic ability, it must be struck down as violative of the equal protection clause.

One of the athletic association's arguments in support of the rule centered around the belief that the rule prevented boys' from taking positions on girls' teams, thus preserving girls' participation in sports. The court's reply to this argument was notable, logical, and amusing (42, p. 500):

> It is unnecessary to sound the fire alarm until the fire has started. We have not held the rule is per se unconstitutional but we are here only concerned with its application. Appellees' argument, which demonstrates admirable concern for the welfare of girls' athletic programs, must fail when one considers that at the present time few, if any, programs are in operation which need such protection. Until girls' programs comparable to those established for boys exist, the rule cannot be justified on these grounds.

In 1973, the case of Ritacco v. Norwin School District (43) was heard in United States District Court in Pennsylvania. The plaintiff filed suit against a rule of the Pennsylvania Interscholastic Athletic Association which established separate girls' and boys' teams for interscholastic noncontact sports. The suit contended that girls' had a right to participate on boys' teams, and that separate teams based on sex was discriminatory. Since the suit was filed after the students'

graduation from high school, the court referred the motion for the suit to represent a class action. The plaintiff's complaint arose when she was prevented from trying out for the boys' tennis team, even though she participated on the girls' tennis, gymnastic and swim teams. The issue centered around the association rule forbidding mixed teams of boys' and girls' in noncontact sports and whether the rule unfairly discriminated against females.

The court found the association rule as not being discriminatory against females and allowed the rule to stand. The court noted that no opportunities for girls in sports existed prior to 1970, but with the adoption of the rule presently being questioned, the participation of girls on interscholastic sports teams had mushroomed (43, p. 932). The court further reasoned (43, p. 932):

> . . . [T]he maintenance of separate sports teams suggests the possibility of a denial of equal protection of the laws, but sound reason dictates that "separate but equal" in the realm of sports competition, unlike that of racial discrimination, is justifiable and should be allowed to stand where there is a rational basis for the rule. . . . Sex, unlike race, is not an inherently suspect classification. Indeed it seems clear that where the opportunities for engaging in sports activities are equal, as is true here, the rule requiring separate teams based on sex fosters greater participation in sports.

Factors similar to those presented by the plaintiff in Haas (42), supra, were responsible for the 1973 Minnesota case

of Brenden v. Independent School District (10), supra, appealed to the Eighth Circuit United States Court of Appeals. In the suit, the female plaintiffs-appellees sought an action to enjoin the Minnesota State High School League's enforcement of a rule which barred females from participation with males in the noncontact sports of tennis, cross-country skiing and running. In addition to being denied participation on the male teams, no alternate teams for females were provided. The United States District Court had ruled that the league rule was unreasonable, but the league appealed the decision. The issue to be decided by the Court of Appeals regarded the application of the rule and whether it was arbitrary, unreasonable and in violation of the equal protection clause of the Fourteenth Amendment (10).

In affirming the lower court's decision, the Court of Appeals ruled (10, p. 1294):

> . . . [Plaintiffs-appellees] are being prevented from participating on the boys' interscholastic teams in tennis, cross-country, and cross-country skiing solely on the basis of the fact of sex and sex alone.

The court, in having rendered a decision, stated for the record that the ruling did not decide (10, p. 1295):

> First, because neither high school provided teams for females in the sports in which [plaintiffs-appellees] desired to participate, we are not faced with the question of whether the school can fulfill their responsibilities under the Equal Protection Clause by providing separate but equal facilities for females in

> interscholastic athletics . . . . Second, because the sports in question are clearly noncontact sports, we need not determine if the High School League would be justified in precluding females from competing with males in contact sports such as football.

In the 1973 class action case of Morris v. Michigan State Board of Education (44), the Sixth Circuit United States Court of Appeals heard the allegation of sex discrimination against the Michigan High School Athletic Association rule which stated (44, p. 1208):

> Girls are not to engage in interscholastic athletic contests when part or all of the membership of one or both of the competing teams is composed of boys.

The suit arose when two high school girls attempted to participate in interscholastic tennis, were denied, and brought the issue before the United States District Court as a denial of equal protection and due process under the Fourteenth Amendment to the United States Constitution. The trial court entered a preliminary injunction invalidating the association's rule and enjoining the association from (44, p. 1208):

> 'Preventing or obstructing in any way individual plaintiffs or any other girls in the State of Michigan from participating fully in varsity interscholastic athletics and athletic contests because of their sex.'

In reviewing the case on appeal, the Court of Appeals noted that the Michigan Legislature had enacted a statute which, when effective, would permit female student participation in certain noncontact interscholastic athletic contests.

The statute stated (44, p. 1209):

> Female pupils shall be permitted to participate in all noncontact interscholastic athletic activities, including but not limited to archery, badminton, bowling, fencing, golf, gymnastics, riflery, shuffleboard, skiing, swimming, diving, table tennis, track and field and tennis. Even if the institution does have a girls' team in any noncontact interscholastic athletic activity, the female shall be permitted to compete for a position on the boys' team. Nothing in this subsection shall be construed to prevent or interfere with the selection of competing teams solely on the basis of athletic ability.

Since the new statute was not to become effective during the duration of the case, the Court of Appeals, acting on the record of the lower court, affirmed the District Court's preliminary injunction but modified the injunction by inserting the word "noncontact" between the words "interscholastic" and "athletics" (44, p. 1209).

The 1974 United States District Court case of Gilpin v. Kansas State High School Activities Association, Inc., (11) supra, involved a claim of deprivation of equal protection of the law under the Civil Rights Act of 1871. The plaintiff, a female high school student, was prevented from participating on the boys' cross-country team solely on the basis of her sex. The high school which the plaintiff attended encouraged and permitted mixed competition in certain noncontact sports. The plaintiff had met the criteria for participation, but just before the team's first meet, the high school administration had to prevent her participation due to a state association's

rule which stated (11, p. 1236):

> 'Boys and girls shall not be members of the same athletic teams in interscholastic contests.'

The school was forced to abide by the rule because it feared a violation of the association rule would result in a sanction against the entire athletic program. The issue required the court to determine whether the alleged violation of the plaintiff's equal protection of the law had occurred.

The court issued a temporary restraining order enjoining the association from interfering with the plaintiff's participation on the boys' cross-country team until a hearing could be held on her claim. As a result of that hearing, the court found the rule preventing mixed competition as unconstitutional as applied to this plaintiff. The court stated (11, p. 1243):

> Accordingly, [the plaintiff is] permitted to compete on the boys' cross-country team . . . during the remainder of the current school year . . . . [T]he Kansas State High School Activities Association is enjoined from imposing any sanction or penalty upon [the plaintiff's high school] for complying with this Court's order, and it is similarly enjoined from imposing any sanction or penalty upon any other high school for engaging in interscholastic competition with [the plaintiff's high school].

The court, in determining that the plaintiff's constitutional rights had been violated, deterred from the traditional rational basis test for determining whether the classification by sex met constitutional standards. Instead, the court

invoked the "compelling state interest" test and treated the classification by sex as a suspect classification. In so doing, the court was guided by the following reasoning (11, p. 1239):

> Although it has consistently been held that classifications based upon race, . . . alienage, . . . and national origin, . . . are inherently suspect and must be subjected to close judicial scrutiny, it was not until the recent Supreme Court decision in Frontiero v. Richardson, . . . 93 S.Ct. 1764 . . . , that sex was added to the list of suspect classifications.
>
> * * *
>
> In light of the Supreme Court's decision in Frontiero, and regardless of the particular semantic label attached to the test to be applied in sex-oriented cases, there can no longer be any doubt but that sex-biased classifications are subject to close scrutiny by the courts under the Equal Protection Clause.

A note regarding the United States Supreme Court's interpretation of Frontiero, supra, should be made at this point. The Supreme Court's decision was a plurality decision and as such, did not firmly establish sex as a suspect classification (11, p. 1239). Of the nine members of the court: (1) four elevated sex to the "suspect" status; (2) three members did not elevate sex to the "suspect" classification, although concurring in the result; (3) one member referred to sex as "invidious discrimination," but concurred in the result; and (4) one member dissented (45, p. 548).

Although the decision in the Frontiero, supra, case was 8 to 1 for the petitioner, the traditional rational basis test

for determining whether a sex classification meets constitutional standards still stands. However, the court in Gilpin (11, p. 1239), supra, was persuaded by the reasoning of the opinion.

The Court in Gilpin (11, p. 1236) further felt that the Supreme Court's reasoning in the prior case of Reed v. Reed, supra, 92 S.Ct. 253, had required a more stringent test than the rational basis test to justify sex classifications by noting Chief Justice Burger's quote from the case:

> '[T]his Court has consistently recognized that the Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways . . . . The Equal Protection Clause of that amendment does, however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.'

The court did acknowledge and agree with the association's stated objective for the development of a girls' interscholastic athletic program. Furthermore, the court agreed with the separation of male and female interscholastic competition, once separate and substantially equivalent programs for males and females were, in fact, in existence (11, p. 1240).

The State of Pennsylvania in 1975 filed suit in the Commonwealth Court of Pennsylvania against the state athletic

association in the case of Commonwealth v. Pennsylvania Interscholastic Athletic Association (46). The Attorney General for Pennsylvania filed a complaint against the athletic association challenging the association's by-law which stated (46, p. 840):

> 'Girls shall not compete or practice against boys in any athletic contest.'

The State's claim was that the by-law violates both the equal protection clause of the Fourteenth Amendment and the Equal Rights Amendment of the Pennsylvania Constitution by denying females the same opportunities afforded males to practice and compete in interscholastic sports (46, p. 841). The complaint specifically exempted football and wrestling from the suit.

In rendering a decision for the State, the court acknowledged that the athletic association's by-law was unconstitutional in view of the Equal Rights Amendment by stating (46, p. 841):

> . . . [N]one of the justifications for [the By-Law] . . . , even if proved, could sustain its legality. We need not, therefore, consider whether or not the By-Law also violates the Fourteenth Amendment to the United States Constitution.

The court maintained that the adoption of the Equal Rights Amendment in Pennsylvania had caused the courts to reject previous statutes and case law principles which discriminated against either sex. An example of the change that the Equal Rights Amendment had brought about was noted by the court in the 1974 case of Conway v. Dana, 456 Pa. 536, in which (46,

p. 841):

> . . . [T]he court cast aside the presumption which had previously existed to the effect that the father, because of his sex, must accept the principal burden of financial support of minor children. The court there indicated that support is the equal responsibility of both parents and that, in light of the [Equal Rights Amendment], the courts must now consider the property, income, and earning capacity of both in order to determine their respective obligations.

The athletic association contended in its suit that athletic participation was a privilege and not a right, but to this the court replied (46, p. 842):

> There is no fundamental right to engage in interscholastic sports, but once the state decides to permit such participation, it must do so on a basis which does not discriminate in violation of [its own constitution which includes the newly adopted Equal Rights Amendment].

The second justification advanced by the association for the separation of girls and boys in athletic contests was that boys generally possess a higher degree of athletic ability than girls. Therefore, girls have a greater opportunity to participate if they compete with members of their own sex. The court did not agree with this rationale in two respects (46, p. 842):

> [First], this attempted justification can obviously have no validity with respect to those sports for which only one team exists in a school and that team's membership is limited exclusively to boys . . . . [Secondly], even where separate teams are offered for boys and girls in the same sport, the most talented girls still may be denied the right to play at

> that level of competition which their ability might otherwise permit them. For a girl in that position, who has been relegated to the "girls' team," solely because of her sex, "equality under the law" has been denied.

Due to the Equal Rights Amendment, girls cannot as a group be denied participation on the basis of a general characteristic that is said to be more true with their sex than with boys. The amendment requires that each girl be individually evaluated in terms of her qualifications for participation in a particular sport. Exclusion of a girl from competition may be made on the basis of her individual qualifications, but not on the basis of her sex alone.

The court ordered, as a result of this trial, that the association permit the participation of boys and girls in practice and competition in interscholastic athletics beginning with the 1975 school year. Even though the State had wanted to exempt football and wrestling from the suit, the court saw no apparent reason to do so. The order, in effect, made mixed competition the rule rather than the exception.

A case involving an athletic association's rule against mixed teams, when a team in the same sport was provided to each sex, was at issue in the Court of Appeals for Indiana in 1975. The case, Ruman v. Eskew (47), involved the plaintiff-appellant Ruman, a female high school student who attempted to participate on the boys' tennis team even though a girls' team in tennis existed. The athletic association's rule provided for

girls' participation on boys' teams when a school did not provide a team for girls, but if a team for girls in the sport existed, eligibility for girls was limited to the girls' team. The plaintiff sought a preliminary injunction against enforcement of the rule, but the trial court refused. On appeal of the case to the Court of Appeals, the court also refused the request.

The Court of Appeals made its decision based on two considerations: (1) the reasonableness of the sex classification, and (2) the rule's constitutional basis. As authority for the decision, the court referred to the Indiana Supreme Court case of Haas (42), supra. In that case, the athletic association's rule, excluding boy and girl participation on a mixed team, was declared unconstitutional for denying equal protection rights to females. The basis for the decision resided in the fact that girls were not provided a separate team. From the case, the Court of Appeals reasoned that a classification by sex was reasonable in athletics. Since the case at bar represented a school which did operate a girls' tennis program, then the plaintiff was given the same opportunity as boys' in tennis; therefore, the association's rule was not violative of the equal protection of the law.

The Supreme Court of Washington in 1975 heard the case of Darrin v. Gould (48). The plaintiffs-appellants, Darrin, were two sisters attending high school who had been prevented from

participating on the high school football team by a rule of the Washington Interscholastic Athletic Association. The association's rule expressly prohibited girls from participating on the boys' interscholastic contact football team. Prior to filing the class action suit to contest the regulation, the two girls had met all the requirements for football participation, practiced with the team, and would have participated in the first football contest of the season if the athletic association's regulation had not prevented it. The issue required the court to determine if the classification was based on sex per se or an inability to play contact football; and if the finding was the former, was it prohibited by constitutional and/or statutory law (48, p. 884)? The trial court ruled in favor of the defendant, but on appeal to the Supreme Court, the court reversed the decision of the trial court in finding for the plaintiff and girls like them who wish to participate in contact football.

The reasoning of the Washington Supreme Court paralleled the reasoning of the Commonwealth Court of Pennsylvania in the case of Commonwealth v. Pennsylvania Interscholastic Athletic Association (46), supra, which the court referred to frequently in its decision. Basically, the court could find no other basis than sex per se as the reason for denying the girls' participation in football. It did note that the lack of a corresponding girls' football team made the discrimination on

account of sex even more notable. Like the facts presented in the Pennsylvania case noted above, the newly adopted Equal Rights Amendment figured prominently in the decision as this quotation from the court's record indicates (48, p. 893):

> In sum, the [athletic association's] rule discriminating against girls on account of their sex violates Const. art. 31 [Equal Rights Amendment], if not the Equal Protection Clause of the Fourteenth Amendment . . . . No compelling state interest requires a holding to the contrary. The overriding compelling state interest as adopted by the people of this state in 1972 is that: "Equality of rights and responsibility under the law shall not be denied or abridged on account of sex." . . . We agree with the rationale of Commonwealth v. Pennsylvania Interscholastic Athletic Ass'n, supra, that under our ERA discrimination on account of sex is forbidden. . . .

The importance of the Equal Rights Amendment to this decision and its possible application to similar cases in the future was presented in the concurring opinion of Justice Hamilton (48, p. 893):

> With some qualms I concur in the result reached by the majority. I do so, however, exclusively upon the basis that the result is dictated by the broad and mandatory language of . . . Washington's Equal Rights Amendment (ERA). Whether the people in enacting the ERA fully contemplated and appreciated the result here reached, coupled with its prospective variations, may be questionable. Nevertheless, in sweeping language they embedded the principle of the ERA in our constitution, and it is beyond the authority of this court to modify the people's will. So be it.

Summary

The contents of this chapter present the common law principles relating to classifications by sex and by marriage of students in public high school athletics. The common law principles were drawn from leading cases prior to 1970 and occurring into 1976. The main allegation against the classifications by sex and by marriage of students in athletics was that the classifications denied the plaintiffs the equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution. There appears to be a trend toward application of the Equal Rights Amendment to the classification of females in athletics.

A review of the court cases presented within this chapter highlight certain legal principles relating to the validity of the classifications of females and married students in public high school athletics. These legal principles are presented in summary to aid those officials and representatives of athletic associations who are responsible for the rules governing participation of high school students in the public schools.

1. High school students have a fundamental right to marry and any classification of married students, denying to them the opportunities afforded other high school students, is an invasion of marital privacy and a violation of the equal protection of the law guaranteed by the United States Constitution.

2. The Equal Rights Amendment, once adopted in a state's constitution or if it becomes law in all states by ratification in thirty-eight states, appears to eliminate all sex-based classifications and to establish an athlete's ability as the only basis for different treatment.

3. Where the Equal Rights Amendment has not been applied to court cases involving classifications by sex in athletics, separate teams for girls and boys in noncontact sports have generally been upheld provided both sexes have been offered the opportunity to participate separately.

4. When the Equal Rights Amendment has not been a factor, the courts have generally ordered mixed teams of boys and girls in noncontact sports where separate teams were not provided to the girls.

5. The courts have generally separated boys and girls in contact sports even when no separate team for girls was provided in the sport.

6. In states where the Equal Rights Amendment has been applied, the courts have ordered the athletic associations to permit girls to participate with boys in all sports, both contact and noncontact, even where separate teams for girls and boys have been provided in the same sport.

7. Generally, classification by sex is permitted in athletics, provided the classification has a rational basis and is not based upon sex per se. Again, the Equal Rights Amendment appears to place sex classifications in the "suspect" category where no rationale can sustain it.

8. If the Equal Rights Amendment is ratified, future court cases involving the question of a classification by sex in athletics will most likely be settled by the language of the Equal Rights Amendment rather than the application of the equal protection clause of the United States Constitution.

CHAPTER VI: SUMMARY AND RECOMMENDATIONS

Need for the Study

Since 1970, the courts have had a greater tendency to apply constitutional guarantees to those court cases involving challenges to state athletic association eligibility regulations. Therefore, this study was intended to inform officials of state athletic associations and public schools regarding the status of current common law principles affecting the enforcement and substance of athletic eligibility rules and policies. The information provided should assist these officials in the revision of existing regulations and the creation of new rules and policies to regulate public high school athletic participation.

Statement of the Problem

Many student eligibility issues have arisen over the past several years as a result of the enforcement of state athletic association regulations. Since many of these issues were decided by the courts, certain legal principles tended to emerge which have affected present and will likely affect future athletic eligibility regulations. The problem was, therefore, to determine:

1. Whether athletic participation in a public school is a right or a privilege of students.

2. The legality of state athletic associations to establish eligibility requirements for student participation.

3. The status of state athletic associations' policies which classify student participation on the basis of marriage and/or sex.

4. How the intent of the due process clause of the Fifth and Fourteenth Amendments to the Constitution of the United States can be applied within the rules and regulations of the state athletic associations.

5. How the intent of the equal protection clause of the Fourteenth Amendment to the United States Constitution can be applied within the rules and regulations of the state athletic associations.

Procedures and Techniques Used in the Study

Legal data referred to in this study were almost entirely primary sources. These data were drawn from: (1) the American Digest System and its Descriptive Word Index; (2) the National Reporter System; (3) the American Law Reports; (4) the Shepard Citation to Court Cases; (5) the Corpus Juris Secundum; and (6) the American Jurisprudence. The decisions from state and federal courts were reviewed by using the National Reporter System. Court cases from the National Reporter System were briefed by securing four major sources of information from each case: (1) essential facts; (2) major issue(s); (3) decision, and (4) reasons supporting the decision. The case briefs were presented in narrative form and analyzed for the legal

principles they presented. These findings were organized into chapters which included: (1) athletic participation; (2) athletic eligibility; (3) due process in athletics; (4) equal protection in athletics; and (5) summary and recommendations. Each chapter was divided into sub-topics. This chapter contains the summary and recommendations.

Limitations

This study analyzed those court cases dealing with student athletic eligibility in public schools. The reader should be reminded, therefore, that the application of the findings of this study does not include the athletic eligibility of students in private schools or parochial schools.

The review of legal principles presented in this study is a general review of court cases in the United States. In order to apply these principles within a specific state, the state's constitution and legislative statutes applicable to student eligibility in public school athletics would need to be reviewed.

Since 1970, the application of constitutional guarantees has been increasingly applied to the athletic eligibility of students in the public high school. If this trend continues, the legal principles presented by the cases in this study very possibly will be further modified. Thus, persons interested

in remaining current must be constantly alert to changes as court decisions are rendered.

Summary

A brief summary of the legal principles originating from the court cases reviewed in each chapter will be presented. Each chapter will be represented as a sub-topic. The sequence of presentation is in the same order as chapter arrangements.

Athletic participation

The question of whether athletic participation is a property right or a privilege guaranteed by the United States Constitution was analyzed by a study of court cases pertaining to the subject. Subsequent to this analysis, the following legal principles were acknowledged:

1. Students in public high schools do not have an inherent right to participate in interscholastic athletics.

2. Students within public high schools do not have a vested property right in interscholastic athletics.

3. Student participation in interscholastic athletics is a privilege falling outside the protection of the due process clause of the Fourteenth Amendment.

4. The legal principle that participation in interscholastic competition is a privilege rather than a right cannot be provided as a basis for excluding females from male noncontact sports when no provision allows noncontact sports for females. To do otherwise is a violation of the equal protection clause of the Fourteenth Amendment.

Athletic eligibility

Litigation challenging the enforcement of state athletic associations' eligibility rules was investigated. The litigation revealed many different reasons and strategies used in challenges to the associations' eligibility rules. From a survey of this litigation, certain legal principles were developed which may be applied to future eligibility cases. These legal principles appear to be as follows:

1. Reflecting a state interest, a state athletic association is recognized in common law as having the authority to set rules and regulations for the supervision and control of the public school athletic programs within a state.

2. The court will not interfere with the discretion exhibited by an association, unless the rule or actions of the association are shown to be unreasonable, arbitrary, or capricious.

3. The court will not substitute its judgment for that of the association, but it will review the proceeding to establish whether or not the association followed its own guidelines for determining ineligibility.

4. The court will review the proceeding followed by an association to determine if any events within the proceeding were in violation of the due process clause of the Constitution of the United States.

5. The court will review the application of an eligibility rule to determine whether its basis is in violation of the equal protection clause of the United States Constitution.

6. Student participation in extracurricular activities is deemed a privilege and, therefore, such participation must be in accordance with the established standards of the association.

Due process in athletics

Over the past few years, the attempt to apply the due process clause of the United States Constitution to state athletic associations' enforcement of eligibility rules has increased. Although due process is considered in two aspects, procedural and substantive, the procedural aspect was found to be applied to most litigation. A denial of substantive due process was not alleged in any of the athletic cases researched.

After reviewing those court cases against state athletic associations alleging a denial of due process, these legal principles tended to appear:

1. Athletic participation has not been regarded by the courts as a property; therefore, due process does not apply.

2. Athletic participation is not named as a fundamental right or privilege in the United States Constitution; therefore, due process does not apply.

3. Procedural due process was found to apply to cases involving a general denial of the right to an education, but it does not apply to the individual programs comprising that education, such as athletics.

4. The denial of substantive due process which questions the reasoning and discretion of regulations was found to be an area in the general field of education into which the Supreme Court of the United States would not enter unless specific constitutional guarantees were violated. Since no cases involving this denial could be found in athletics, and since athletics is only an individual program within the general field of education, it appears remote that any future claims of denial of substantive due process will be entertained by the courts.

Equal protection in athletics

The equal protection clause of the Fourteenth Amendment to the United States Constitution has increasingly been applied to eligibility rule decisions of the state athletic associations. These challenges to the eligibility decisions of athletic associations have been made most frequently where the eligibility rules enforce separate classifications of students. Those classifications which were challenged most frequently, and which were the subject of this review, separated females from males and married students from unmarried students in high school athletic participation. A review of those court cases involving a challenge to the eligibility rules which established these classifications revealed these legal principles:

1. High school students have a fundamental right to marry and any classification of married students, denying to them the opportunities afforded other high school students, is an invasion of marital privacy and a violation of the equal protection of the law guaranteed by the United States Constitution.

2. The Equal Rights Amendment, once adopted in a state's constitution or if it becomes law in all states by ratification in thirty-eight states, appears to eliminate all sex-based classifications and to establish an athlete's ability as the only basis for different treatment.

3. Where the Equal Rights Amendment has not been applied to court cases involving classifications by sex in athletics, separate teams for girls and boys in noncontact sports have generally been upheld provided both sexes have been offered the opportunity to participate separately.

4. When the Equal Rights Amendment has not been a factor, the courts have generally ordered mixed teams of boys and girls in noncontact sports where separate teams were not provided to the girls.

5. The courts have generally separated boys and girls in contact sports even when no separate team for girls was provided in the sport.

6. In states where the Equal Rights Amendment has been applied, the courts have ordered the athletic associations to permit girls to participate with boys in all sports, both contact and noncontact, even where separate teams for girls and boys have been provided in the same sport.

7. Generally, classification by sex is permitted in athletics, provided the classification has a rational basis and is not based upon sex per se. Again, the Equal Rights Amendment appears to place sex classifications in the "suspect" category where no rationale can sustain it.

8. If the Equal Rights Amendment is ratified, future court cases involving the question of a classification by sex in athletics will most likely be settled by the language of the Equal Rights Amendment rather than the application of the equal protection clause of the United States Constitution.

Recommendations

These recommendations are presented in view of the findings provided by the analysis of court cases reviewed. Those officials concerned with the formulation and enactment of present and future policies of eligibility for public school athletics should find these recommendations beneficial. The following recommendations are presented for consideration:

1. Even though athletic participation has been ruled by the courts as a privilege rather than a right, this fact should not be used by the association as a rationale in response to every claim made against their eligibility rules. Instead, it should be the basis upon which athletic associations bind those who choose to participate to the observance of the eligibility rules for participation.

2. Eligibility rules should be constructed so as to reflect reasonable objectives. The objectives for the eligibility rule(s) should also be in print, perhaps in the form of a brief preamble to each rule.

3. State athletic association rules should become local school district rules either through legislative statute or through local school board adoption.

4. The eligibility standards of a state athletic association should be based upon valid considerations, but the standards should not be so definite and final to exclude consideration of an individual participant's particular circumstances.

5. Provisions should be made at the local level for the student facing ineligibility to have the opportunity for a spokesman or representative to present information in his behalf before a final decision is made.

6. Provisions should be made at the local level for a person to be designated hearing officer for the purpose of hearing and ruling on appealed ineligibility cases.

7. Although state courts have varied in their rulings, the state athletic associations should establish uniform standards and appeal procedures for hearing or receiving evidence regarding individual participants who have been declared ineligible, but who further seek an opportunity to establish reasons for their eligibility.

8. Every decision related to an alleged violation of eligibility should go to the parent and student in writing, noting: (1) the specific eligibility rule allegedly violated; (2) the date and reason the alleged violation of eligibility occurred; (3) the reason for the eligibility rule; (4) the date, time, and place the appointed official(s) met with the parent and student and reviewed information regarding the alleged violation of eligibility; and (5) the decision of the appointed official(s).

9. No separate classifications for married and unmarried students should exist for participation in public high school athletics.

10. No separate classifications for boys and girls in noncontact sports should exist unless both classifications have the same opportunities to complete separately.

11. Mixed teams of boys and girls in noncontact sports should be initiated where separate teams for each cannot be provided.

12. The separation of boys and girls in contact sports can be substantiated on the basis of reviewed court decisions.

13. In those states having enacted the Equal Rights Amendment into their state constitutions, no rationale can sustain the recommendations contained in 10, 11 and 12. State associations in these states must eliminate all classifications having any relationship to sex and provide participation in contact and noncontact sports on the basis only of ability to compete.

14. If the Equal Rights Amendment is ratified by three-fourths of the states, the Amendment becomes a part of the United States Constitution superseding all state laws and regulations. Therefore, each state athletic association not now affected by the Equal Rights Amendment in the state constitution should explore plans for athletic participation founded on the basis of participation by ability alone. The recommendations numbered 10, 11 and 12 would then not apply. All competition would be mixed in both noncontact and contact sports with participation based on the sole criterion of ability.

BIBLIOGRAPHY

1. Albo, Eugene Anthony. The Legal Status of State High School Activities Associations in the Fifty States. Unpublished Ph.D. dissertation, University of Denver, Denver, Colorado, 1971. (Libr. Congr. Card Mic. No. 72-73, 703). 188 pp. University Microfilms, Inc., Ann Arbor, Mich.

2. Herndon, Lucia. "Girl Hassled; Quits Boys Team." Des Moines Register, (February 1, 1973: 1.

3. Moran, Don, gen. ed. "Another Athletic Association Rules Bites the Dust." National Organization on Legal Problems in Education 7 (May 1972): 1.

4. Moran, Don, gen. ed. "A New Area of Litigation May be Forming." National Organization on Legal Problems in Education 6 (December 1971): 4.

5. Remmlein, Madaline K., and Rezney, Arthur A. A Schoolman in the Law Library. Danville, Illinois: 64 pp. The Interstate Printers and Publishers, 1962.

6. Bunger v. Iowa High School Athletic Association, 197 N.W. 2d 555, (1972).

7. Mitchell v. Louisiana High School Athletic Association, 430 F. 2d 1155, (1970).

8. Paschal v. Perdue, 320 F. Supp. 1274, (1970).

9. Bucha v. Illinois High School Association, 351 F. Supp. 69, (1972).

10. Brenden v. Independent School District 742, 477 F 2d 1292, (1973).

11. Gilpin v. Kansas State High School Activities Association, Inc., 377 F. Supp. 1233, (1974).

12. Taylor v. Alabama High School Athletic Association, 336 F. Supp. 54, (1972).

13. Dallam v. Cumberland Valley School District, 391 F. Supp. 358, (1975).

14. Gilbert, Harold J. and Ludes, Francis J., gen. ed. Corpus Juris Secundum, 101 vols. Brooklyn: The American Law Book Co., 1952. Vol. 79: Schools and School Districts: Public Schools, §323-512, pp. 7-455.

15. Morrison v. Roberts, 82 P 2d 1023, (1938).

16. Scott v. Kilpatrick, 237 So. 2d 652, (1970).

17. Brown v. Wells, 181 N.W. 2d 708, (1970).

18. Oklahoma State School Activities Association v. Midget, 505 P 2d 175, (1972).

19. State of Missouri, ex rel, Missouri State High School Athletic Association v. Schoenlaub, 507 S.W. 2d 354, (1974).

20. Murtaugh v. Nyquist, 358 N.Y.S. 2d 595, (1974).

21. Chabert v. Louisiana High School Athletic Association, 323 So. 2d 774, (1975).

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

23. Lee v. Florida High School Activities Association, Inc., 291 So. 2d 636, (1974).

24. Florida High School Activities' Association, Inc. v. Bryant, 313 So. 2d 57, (1975).

25. Gilbert, Harold J. and Ludes, Francis J., gen. ed. Corpus Juris Secundum, 101 vols. Brooklyn: The American Law Book Co., 1956. Vol. 16A: Constitutional Law: Due Process of Law, 567-707, pp. 536-1205.

26. Bruce v. South Carolina High School League, 189 S.E. 2d 817, (1972).

27. Goss v. Lopez, 42 L. Ed. 2d 725, (1975).

28. Wood v. Strickland, 95 S.Ct. 992, (1975).

29. Gilbert, Harold J. and Ludes, Francis J., gen. ed. Corpus Juris Secundum, 101 vols. Brooklyn: The American Law Book Co., 1952. Vol. 16A: Constitutional Law: Equal Protection of the Laws, §502-566, pp. 296-536.

30. Kissick v. Garland Independent School District, 330 S.W. 2d 708, (1959).

31. Board of Directors of the Independent School District of Waterloo v. Green, 147 N.W. 2d 854, (1967).

32. Romans v. Crenshaw, 354 F. Supp. 868, (1971).

33. Rubel v. Iowa Girls High School Athletic Union, Civil #11-412-C-2, Memorandum Decision, (1971).

34. Davis v. Meeks, 344 F. Supp. 298, (1972).

35. Moran v. School District #7 Yellowstone County, 350 F. Supp. 1180, (1972).

36. Holt V. Shelton, 341 F. Supp. 821, (1972).

37. Hollon v. Mathis Independent School District, 358 F. Supp. 1269, (1973).

38. Bell v. Lone Oak Independent School District, 507 S.W. 2d 636, (1974).

39. Indiana High School Athletic Association v. Raike, 329 N.E. 2d 66, (1975).

40. Gulick, George S. and Kimbrough, Robert T., gen. ed. American Jurisprudence 2d, 82 vols. Rochester, N.Y.: The Lawyers Co-operative Publishing Co., 1964. Vol. 16: Constitutional Law: Equal Protection of the Laws; Class Legislation, §485-541, pp. 846-930.

41. Reed v. Nebraska School Activities Association, 341 F. Supp. 258, (1972).

42. Haas v. South Bend Community School Corporation, 289 N.E. 2d 495, (1972).

43. Ritacco v. Norwin School District, 361 F. Supp. 930, (1973).

44. Morris v. Michigan State Board of Education, 472 F. 2d 1207, (1973).

45. Rubin, Richard Alan. "Sex Discrimination in Interscholastic High School Athletics." Syracuse Law Review 25 (Spring 1974): 535-574.

46. Commonwealth v. Pennsylvania Interscholastic Athletic Association, 334 A. 2d 839, (1975).

47. Ruman v. Eskew, 333 N.E. 2d 138, (1975).

48. Darrin v. Gould, 540 P. 2d 882, (1975).

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APPENDIX

National Organization On Legal Problems of Education

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Secretariat: 825 Western, Topeka, Kansas 66606 / 913-357-7242

University of Denver
Denver, Colorado 80210
May 12, 1975

Mr. John Cox
7604 Madison
Urbandale, Iowa 50322

Dear Mr. Cox:

In response to your phone call of today, please be advised that I am convinced that the problem of the legal status of the state high school activities association needs up-dating since Gene Albo did his dissertation in 1971. His study may be obtained from the Dissertation Serivces at Ann Arbor under the general appellation: Eugene A. Albo, The Legal Status of State High School Activities Associations in the Fifty States, Denver: unpublished doctoral dissertation, University of Denver, 1971, 200 pages.

At that time, no one thought anything of girls competing in boys' sports, nor of the other implications of the use of the constitutional guarantee as a lever in such voluntary organizational operations. Your own Bunger case is a good example of what has happened since that time. I therefore am convinced as I said above that the study needs to be updated, and it will read in a very significant way from what Albo found in his study in 1971.

He found that even in early Greek times that some sort of controls had to be put on the Olympic Games because of the abuses of eligibility rules. But the new thing which has come to pass since 1971 is the introduction of sex problems and in the lack of due process of law in declaring athletes ineligible for various impermissible reasons.

If you need cases to get you started, I believe that I could find some around here. Look also in your Yearbooks of School Law, published by NOLPE and in other sources in magazines for these materials. I wrote a series for the American School Board Journal in 1973 (see those checked in red on the enclosed listing).

Yours very sincerely,

M. Chester Nolte
NOLPE President

P.S. Good dissertations usually get published in our NOLPE monograph series. This would be no exception provided it is finished in time.