



Ohio High School Athletic Association
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Guidance for 2020-2021–High School Principals and Athletic Administrators

Bylaw 4-7-2 – Transfer Bylaw Review - Exception #2 Change of Legal Custody; Re-Designation of Residential Parent within a Shared Parenting Plan

The OHSAA receives more inquiries about the **transfer bylaw** than any other aspect of eligibility. Unfortunately, we perhaps should receive more, as invariably an administrator has made his/her own call that later results in forfeiture or worse. Reach out when in doubt!

NOTE: Students who change high schools (transfer) are reminded that they must meet all eligibility standards found in Bylaw 4. This includes meeting the out of state residency bylaw 4-6-2, which requires a student to have a parent (biological or adoptive) residing in Ohio or to meet one of the exceptions to that residency bylaw.

4-7-2 A student is considered to have transferred whenever a.) enrollment is changed from one school to another school and the student attends a new school, or b.) enrollment is changed from one school to become home schooled, or c.) the student participates in a practice, scrimmage or contest with a school-sponsored squad of a school in which the student has not been enrolled and attending, or d) the participation opportunities afforded a student pursuant to state law change. Notwithstanding (c) and (d) above, if a non-enrolled student's participation is pursuant to O.R.C. §§ 3313.5311 (Ohio non-public school students) or 3313.537 (Ohio community/STEM school students), the non-enrolled student's participation opportunity shall transfer back and forth to the non-public school or Community/STEM school in which the student is enrolled without transfer consequences. If the non-public school or Community/STEM school ever sponsors the sport/sports in which the non-enrolled student wishes to participate, the student's participation opportunity shall also be transferred back to the school of attendance without consequence. Furthermore, any in-season changes in the participation opportunities that may be afforded by state law shall be subject to Bylaw 4-7-3.

If a student transfers at any time after commencing the ninth-grade year, the student shall be eligible, insofar as transfer is concerned, ONLY until the first 50% of the maximum allowable varsity regular season contests have been competed in those sports in which the student participated during the 12 months immediately preceding this transfer. The transfer consequence shall remain in effect until the one-year anniversary of the date of enrollment in the school to which the student transferred, at which time the student is no longer considered a transfer student. For purposes of the transfer bylaws, a student will be considered as having commenced the ninth grade year by either attending five or more days of school as a ninth grader or by establishing eligibility at a school by having participated in a contest. Furthermore, the term "participated in a contest" for purposes of the transfer bylaw means to have played at least one play in a scrimmage, preview/jamboree, Foundation game or regular season/ tournament game or contest.

After the first 50% of the maximum allowable varsity regular season contests have been competed (regardless of the participation level of the student), **the student shall then become INELIGIBLE for the remainder of the regular season contests at all levels. Furthermore, the student shall also remain ineligible to participate in the OHSAA sponsored tournament(s) in those respective sports until the one-year anniversary of the student's**

date of enrollment. A student who did not participate in an OHSAA recognized sport in the 12 months immediately preceding the transfer is not subject to the consequence of this transfer bylaw.

Notwithstanding the above, if a student transfers during the season of a sport in which he or she has participated in a regular season contest, and if Bylaw 4-7-3 requires that the student is ineligible for participation in the remainder of the contests in that sports season, the student shall remain ineligible for the remainder of all regular season contests, as well as the OHSAA tournament, in that sport at the school into which the student has transferred. Furthermore, the student shall finish fulfilling his/her transfer consequence, for ONLY that sport in which the mid-season transfer occurred, at the commencement of the sport season during the next school year. This consequence requires that the student shall remain ineligible for all preseason contests (scrimmages, preview/jamboree, Foundation games) and all regular season contests until the total number of varsity regular season contests missed (including those missed during the previous season) equals 50 percent of the maximum allowable varsity regular season contests in that sport.

Note: ORC 3313.5312 (Ohio home educated students) has been intentionally left out of the exclusions of subpart (b) addressing students participating in programs where they are not enrolled. Once a home-educated student, in accordance with state law, participates with a school sponsored squad of a school in which the student is not enrolled, the student's eligibility is established at that school. Participating on any other schools' sponsored squad will be considered a transfer for which the balance of this bylaw and its exception would be applicable.

Please note, each participation change will be considered a transfer.

In the event of a student transfer, no ruling is required from the Executive Director's Office, and no paperwork is necessary if that student's transfer does not meet an exception to the transfer bylaw or if the student did not participate in any OHSAA recognized sport at any high school in the **12 months immediately preceding the transfer into the new high school.** Understanding that basic rule is fundamental to dealing with transfer students.

Of course, in our society today, students do indeed change schools for various reasons. The member schools have identified a few transfer scenarios that they recognize should be exempted from the general transfer bylaw. To deal with those limited scenarios our member schools have adopted **12 exceptions**, one of which MAY apply to a student who changes high schools.

The use of the word MAY is instructive since not all transfer students can meet one of these exceptions and for each of these exceptions (unless no ruling is required as in exception 3), the transfer student is **ELIGIBLE, insofar as transfer is concerned, for all pre-season contests and up through the first 50% of the maximum allowable varsity regular season contests. The period of INELIGIBILITY begins at the second 50% of the maximum allowable varsity regular season contests and continues through the OHSAA tournament OR until ruled eligible by the Executive Director's Office.** For a student to avail herself/himself of one of these exceptions, action on the part of the member school administrator as well as the OHSAA staff is required. The purpose of this series on the Transfer Bylaw is to provide guidance as to the required action on each of the exceptions, if applicable.

This bylaw requires the administrator to determine the following:

1. **Is the student a transfer student? In other words, did the student change schools/participation opportunity after establishing eligibility by attending five or more days of school as a 9th grader or by participating in a high school contest?** If the answer is NO, then the transfer consequence is not applicable, and the student is fully eligible insofar as this bylaw is concerned. If the answer is YES, proceed to step #2.
2. **Did the student play an OHSAA sport at ANY high school in the 12 months immediately preceding the date of transfer into the new high school? Get this information in writing from an administrator at the previous school or schools.** If the answer is NO, the student is fully eligible insofar as transfer is concerned for that respective sport at the new school and no paperwork or ruling is necessary. **(Please note that if a**

student transfers back to a school in which they were previously enrolled, then their “lookback” review could include participation that took place at the same high school where they are now desiring a participation opportunity). If the answer is YES, then please proceed to step #3.

3. **If the answer to both #1 and #2 is YES, then does the student meet one of the 12 enumerated exceptions to this bylaw?** If the answer is YES, the student meets an exception, then paperwork will be required, and the school administrator must seek a formal ruling from the OHSAA. The student may commence participation and is eligible, insofar as transfer is concerned, for all contests until the second 50% of the maximum allowable regular season varsity contests begin. Once the student is ruled eligible in accordance with an exception, the transfer eligibility is restored for as long as the student maintains enrollment and attendance at that school. If the answer is NO, the student does not meet the requirements of an exception, the student may commence participation and is eligible, insofar as transfer is concerned, for all contests **until the second 50% of the maximum allowable varsity regular season contests begin. At that point, the student becomes ineligible for the second 50% of those contests AND the OHSAA tournament in that respective sport.** In such a situation, no paperwork or ruling is required from the OHSAA. The student simply participates until the ineligibility commences as prescribed within the transfer bylaw.

This document will focus on exception #2 – **Change of Legal Custody** to an individual who lives in a different public school district from that of the student's previous legal custodian. In accordance with the requirements found in Transfer Bylaw 4-7-2, Exception 2 – Change of Legal Custody – The Executive Director's Office may consider restoring eligibility to a transfer student when a court of proper jurisdiction or a government agency such as Children's Services has placed the student into the care of an individual or agency that shall have the care and custody of that child and the student is thus compelled to transfer to another high school. **In addition, the Executive Director's Office may consider application of this exception when parents who have a Shared Parenting Plan are compelled to transfer their student and seek a re-designation of who will be the residential parent for school purposes.**

This exception reads as follows:

EXCEPTION 2: If, as a result of a legal change of custody as between a student's parents, who live in two different school districts, the student is compelled to transfer from one school district to the other school district where the other parent resides, the Executive Director's Office may waive all or part of the period of ineligibility for one or more sport/sport seasons provided the student continues to live with the new custodian in order to support the approval of the transfer to the new high school. **If custody/guardianship of a student is changed to a non-parent which custody/ guardianship change is the result of the death or incarceration of the prior custodian, the intervention of child protective services, social services or similar state agency, and the new custodian/guardian lives in a different school district than the previous custodian/guardian, the Executive Director's Office may waive all or part of the period of ineligibility for one or more sports/sport seasons provided the student continues to live with the new custodian/guardian in order to support the approval of the transfer to the new high school.**

The Executive Director's Office, in its sole discretion, may waive the requirement of a court-ordered legal change of custody for a student who is 18, when circumstances are presented that the student was compelled to transfer schools and reside with a parent who is a bona fide resident of the state of Ohio.

By operation of statute, **both parents in a Shared Parenting Plan are the residential and custodial parents of the child at all times under such Plan. Therefore, so long as a Shared Parenting Plan remains in effect, there can be no “change of custody” as contemplated by this Exception 2. However, in the event a Shared Parenting**

Plan remains in effect but a change in the designation of “residential parent” has been made by the court within that plan, the student who is the subject of the Shared Parenting Plan may apply one time to the Executive Director’s Office for a one-time exception to the transfer bylaw under this provision.

Exception 2 permits the choice of the public high school located in the residential school district of the new legal custodian or new residential parent, or any non-public school.

To assist you in requesting a ruling on this exception, the OHSAA has developed a specific form. Please be sure to complete this form, which is found here <https://ohsaaweb.blob.core.windows.net/files/Eligibility/forms/Exception2Form.pdf> and include all other supporting material before submitting the request.

FOR A CHANGE OF CUSTODY FROM ONE PARENT TO THE OTHER PARENT

1. A certified **copy of the court order** changing the custodianship signed **by either a judge or magistrate**. Because of the nature of some custody cases, previous court orders may be required in order for the Executive Director’s Office to make a determination in any given case.
2. A **copy of the petition for the change of custody if available**.
3. The OHSAA form (<https://ohsaaweb.blob.core.windows.net/files/Eligibility/forms/Exception2Form.pdf>) which must include the following information:
 - a. The high school from which the student is transferring and the date of transfer.
 - b. Verification that the parent named in the custody document is a bona fide resident of the new public school district into which the student has transferred. (Note: If the student is transferring to a non-public school, please indicate in which public school district the custodial parent lives.)
 - c. Verification that the custodial parent understands that the student must continue to live with the custodial parent full time for a minimum of one calendar year. Failure to do so will cause the transfer consequence to be reinstated.
 - d. An explanation of the need for the change of custody to ensure the Executive Director’s Office that the student was compelled to transfer due to this custody change and that the transfer was not athletically motivated. **Please note that if the date of enrollment predates the date of the change of custody order, a presumption is created that this exception will not apply.**

A note on shared parenting

ORC § 3109.04 (L)(6) provides, in part, that:

“ . . . if an order is issued by a court pursuant to this section and the order provides for shared parenting of a child, each parent, regardless of where the child is physically located or with whom the child is residing at a particular point in time, as specified in the order, is the **‘residential parent,’** the **‘residential parent and legal custodian’** or the **‘custodial parent’** of the child.

Many have argued that a “reallocation” or re-designation of the residential parent in an existing shared parenting plan constitutes a change of custody, thus triggering Exception 2. However, the statute supersedes any language of a court ordered shared parenting plan and, insofar as the statute declares both parents the “legal custodian,” “residential parent” and “residential parent and legal custodian,” no language “reallocating” rights under a shared parenting plan changes the legal status afforded a parent under this statute. There can be no change of custody so long as a shared parenting plan remains in effect given this statutory language. However, this exception does allow the Executive Director’s Office to consider waiving the transfer consequence **when there has been a court-ordered re-designation of residential parenting rights within an intact Shared Parenting Plan.** Thus, even though changing the legal status of parents who have a Shared Parenting Plan, requires the SPP to be **dissolved or terminated**, a one-time re-

designation of the residential parent may be used to waive the transfer consequence and allow the choice of either the public school in the district of the new residential parent or any non-public school.

For Exception 2 to apply in such a case of re-designation, that student must reside and continue to reside with the newly-designated residential parent for a minimum of one year in order to maintain eligibility at the high school into which the student's transfer eligibility has been approved.

FOR A RE-DESIGNATION OF RESIDENTIAL PARENT FROM ONE PARENT TO THE OTHER PARENT WITHIN A SHARED PARENTING PLAN

1. A certified **copy of the court order re-designating the residential parent within the Shared Parenting Plan**, signed **by either a judge or magistrate**.
2. The OHSAA form (<https://ohsaaweb.blob.core.windows.net/files/Eligibility/forms/Exception2Form.pdf>) which must include the following information:
 - a. The high school from which the student is transferring.
 - b. Verification that the parent named in the **re-designation document** is a bona fide resident of the new public school district into which the student has transferred. (Note: If the student is transferring to a non-public school, please indicate in which public school district new residential parent lives.)
 - c. Verification that the residential parent understands that the student must live with the him or her full time for a minimum of one calendar year. Failure to do so will cause eligibility to cease immediately.
 - d. An explanation of the need for re-designation of the residential parent to ensure the Executive Director's Office that the student was compelled to transfer due to this change and that the transfer was not athletically motivated. **Please note that if the date of enrollment predates the date of the re-designation order, a presumption is created that this exception will not apply.**

FOR A CHANGE OF CUSTODY/GUARDIANSHIP FROM PARENT OR PARENTS TO A NON-PARENT/AGENCY (NOTE THAT THE BIOLOGICAL OR ADOPTIVE PARENT OR PARENTS MUST LIVE IN OHIO – See 4-6-2 exception #1 when parents live outside Ohio and custody is being transferred to a primary relative-grandparent, aunt/uncle or sibling)

1. A certified **copy of the court order** or agency placement changing the custody/guardianship from the parents or parent to the non-parent or agency **signed by either a judge or magistrate or an agent of a protective services agency**. Note: Affidavits for School Attendance, such as a Grandparent's Power of Attorney are not acceptable.
2. **Written evidence** that this change of custody/guardianship is a result of death or incarceration of the former custodian/guardian, the intervention of child protective services, social services or similar state agency.
3. The **OHSAA form** (<https://ohsaaweb.blob.core.windows.net/files/Eligibility/forms/Exception2Form.pdf>) which must include the following information:
 - a. The high school from which the student is transferring.
 - b. Verification that the individual or agent named in the custody/guardianship document is a bona fide resident of the new public school district into which the student has transferred. (Note: If the student is transferring to a non-public school, please indicate in which public school district the new custodian/guardian or agent resides).
 - c. Verification that the student resides with and will continue to live with the new custodian/guardian full time for a minimum of one calendar year in order to maintain eligibility at the high school into which the student's transfer eligibility has been approved.
 - d. An explanation of the need for the change of custody/guardianship to ensure the Executive Director's Office that the student was compelled to transfer due to this custody/guardianship change and that the transfer was not athletically motivated. **See Item #2 requiring this written verification. Please note that if the date of enrollment predates the date of the change of custody order, a presumption is created that this exception will not apply.**

3/31/2020

We prefer that these documents be scanned and sent to us via email. Please feel free to contact Deborah Moore or Roxanne Price if you have any questions!