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

**Bylaw 4-7-2 – Transfer Bylaw Review**

**Exception #7 – Student-on-Student Anti-Harassment, Anti-Intimidation, Anti-Bullying**

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 (2 have been stricken by legislative action)**, 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 9<sup>th</sup> 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 issue will focus on exception #7 – **Student-on-Student Anti-Harassment, Anti-Intimidation, Anti-Bullying**

This exception has been adopted to address cases of severe **STUDENT-ON-STUDENT** harassment, intimidation and/or bullying that cause a student’s continued enrollment at a high school to place that student’s health and welfare in jeopardy.

The Executive Director’s Office will entertain consideration of transfers under this provision **only** with the most exhaustive documentation from the school in accordance with established ODE or Board of Education/governing board policies as outlined in the six steps contained within the exception. Here is the exact text of this exception:

#### **4-7-2 – Exception Seven – Anti-Harassment, Anti-Intimidation, Anti-Bullying**

*If a student is a victim of **student-on-student** harassment, intimidation or bullying as those terms are defined at **ORC §3313.666 (A)(2) which harassment, intimidation or bullying has been documented to the school district in accordance with the ORC**, and as a result of this **documented** harassment, intimidation or bullying, the student is compelled to transfer, the Executive Director’s Office, in its sole discretion, may waive all or part of the 50% period of ineligibility for one or more sport/sports seasons provided;*

- 1) *The District’s Anti-Harassment, Anti-Intimidation, Anti-Bullying policies and procedures adopted in accordance with ORC §3313.666 have been **substantially** followed and complied with; and*
- 2) *The District provides the Executive Director’s Office with a copy of the duly adopted policies and procedures; and*
- 3) *The District secures the appropriate releases from the student/student’s parents authorizing the District to provide a complete record of the events and circumstances on which the policies and procedures were initiated including:*

- a) A specific, detailed report of the prohibited incident(s);
- b) An outline of the procedures used to respond to and investigate the reported incident(s);
- c) A copy of the findings that were a result of the complaint process and investigation;
- d) A specific, detailed disciplinary procedure for any individual found guilty of harassment, intimidation or bullying;
- e) All reports of notification to parents or guardians of all student involvement in the incident(s);
- f) A report of the intervention strategies and remedial action the school has undertaken to assist the student and redress the complaint.

4) The District provides the Executive Director's Office with all the above-referenced records.

**5) In concurrence with ORC§3313.666 (A)(2), this exception cannot be used for any isolated incidents or alleged incidents of harassment, intimidation or bullying, nor can this exception be used in cases where there has been no contemporaneous reporting of the alleged bullying harassment or intimidation.**

To request a ruling, the principal or a senior administrator from the receiving school shall submit all documentation included in the steps listed above along with a cover letter to either Deborah Moore or Roxanne Price. Please review all documents to ensure that they are complete and that all issues required in the guidance are addressed. Failure to submit a complete application will result in ineligibility for the transfer student beyond the first 50% of the maximum allowable varsity regular season contests.

NOTE: It is the responsibility of the receiving school to work with the parents and the sending school to obtain all of the required documentation. If a parent approaches a school administrator and informs him/her that they have never filed a formal complaint with the former school then this will disqualify the student from using this exception.

**Special Note: In cases of alleged sexual harassment/sexual violence, please be advised that your district should consult the United States Department of Education Office for Civil Rights 2001 Guidance and the September 2017 "Dear Colleague Letter," <https://www.cmu.edu/title-ix/colleague-title-ix-201709.pdf> and the Q & A on Campus Sexual Misconduct <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>, as such cases could be considered a Title IX violation. Your Title IX compliance coordinator should likewise be engaged in such complaints.**

**Please feel free to contact Debbie Moore or Roxanne Price if you have any questions!**