

Restoration of Transfer Exceptions/Bylaws; Name, Image & Likeness; Extra Semesters and Other Legislative Updates

What are the Implications for OHSAA Member Schools?

August 6, 2021

This document will serve as a summary of the recent legislative action taken by the Ohio General Assembly that the Ohio High School Athletic Association has been tracking for potential impact on its member schools for the upcoming 2021-22 school year.

Restoration of Transfer Exceptions/Bylaws

Current Impact on any Member Schools? Yes

Timeline: Imminent, Expected Fall 2021

Summary: Within House Bill 110 (“the budget bill”), which was passed on June 30, 2021, language was added to repeal 3313.5316. This action will now allow the OHSAA to restore the stricken bylaws it had previously removed for the 2019-20 and 2020-21 school years because of the language within 3313.5316. At the August 2021 Board Meeting, the Executive Director’s Office will be making a recommendation to the Board of Directors on the most appropriate way to potentially restore these exceptions/rules for the remainder of the 2021-22 school year. The bylaws/exceptions which are impacted include:

- BYLAW 4-7-2 – Potentially restore exceptions 5 (State School for the Blind or State School for the Deaf) and 6 (home not ready for habitation under ORC §§ 3313.64 (F)(6) or 3313.64 (F)(7))
- BYLAW 4-7-4 – Potentially restore Exception 5- Intra-district transfer from a poor performing school.
- BYLAW 4-7-5 – Potentially restore Inter-district transfer from a poor performing school.
- BYLAW 4-7-6 – Potentially restore the “redistricting option.”
- BYLAW 4-7-7 – Potentially restore the “Transportation and Financial Hardship Options.”

Students Transferring to an Online School

Current Impact on any Member Schools? Yes

Timeline: Immediate, Ongoing

Summary: Within House Bill 110 (“the budget bill”), language was added in Sec. 3302.42, which requires a school district to “*assign all students engaged in online learning to a single school which the department shall designate as a district online school.*” It should be noted that the option of operating a Blended Learning model under Revised Code section 3302.41 or an Alternative School pursuant to Revised Code section 3313.533 is NOT impacted by this new law. Therefore, if a school district has elected to open a new online school with a separate IRN, as opposed to using the Blended Learning model within 3302.41, students who transfer to this new school are, by definition, transfer students in accordance with Bylaw 4-7-2. However, the Executive Director’s Office has elected to utilize Constitution Article 6-1-9 and waive strict compliance with the transfer bylaw **but only for those student-athletes transferring to a new online school sponsored by the district and specifically created in response to 3302.41**. The decision to waive strict compliance with this transfer rule only for these students is because had this law not been implemented, the student(s) would have otherwise maintained their enrollment at the member school to access online schooling in that capacity.

Name, Image & Likeness

Current Impact on any Member Schools? No

Timeline: N/A at this time

Summary: Within House Bill 110 (“the budget bill”), language was added in Sec. 3376.03 to allow college athletes to earn compensation as a result of the use of the student’s name, image, or likeness. Note that this

rule has no impact on students participating in interscholastic athletics at the high school level. As such, Bylaw 4-10, which is the OHSAA Amateurism bylaw, is still in play but is being reviewed for potential modifications for a membership vote during the 2022 referendum cycle. Current OHSAA student-athletes are not permitted to hire an agent or receive money/cash prizes for their participation in their sport. They are also not permitted to capitalize on their athletic fame by receiving money, merchandise or services of value based on the notoriety they achieve as an athlete. However, athletes ARE permitted to receive awards/gifts/prizes which do not exceed \$400 in value if the award/gift/prize is a direct result from participation in their sport (Bylaw 5). Examples of acceptable awards would be an athlete winning a \$15 "Player of the Game" gift card to a local restaurant, or an athlete competing in a golf scramble and winning a polo shirt valued at \$75.

Extra Semester(s) of High School Athletic Eligibility

Current Impact on any Member Schools? No

Timeline: N/A at this time

Summary: There are currently two bills, HB316 and SB200, which would look to extend a student-athlete's eligibility at the high school level past the traditional eight semesters outlined in Bylaw 4-3-3 as a result of covid-related educational issues. Both of these bills are currently in committee but do not appear to be moving at a rate which would impact any student for the 2021-22 school year. Unless informed otherwise, member schools should be following the guidance and applicable exceptions in Bylaw 4-3-3, which limits a student to eight semesters of athletic participation taken in order of attendance regardless of whether or not the student participates.

Transgender Athlete Participation

Current Impact on any Member Schools? No, but possibly forthcoming

Timeline: Possible committee action expected in fall 2021

Summary: There are currently two bills, HB61 and SB132, which would look to prevent the participation of transgender females on female athletic teams. Both bills are currently in committee and another hearing is expected to take place for HB61 in the fall. The current OHSAA transgender policy, which requires one year of hormone suppression treatment prior to a transgender female being permitted to participate on a girls team, can be found here:

<https://ohsaaweb.blob.core.windows.net/files/Eligibility/OtherEligibilityDocs/TransgenderPolicy.pdf>

Delay in ODE Background Checks for Pupil Activity Licenses

Current Impact on any Member Schools? Yes

Timeline: Immediate, Ongoing

Summary: Though this update is not about new legislation, the OHSAA Office has been notified of messages going to school administrators alerting them of "*potential delays associated with criminal background checks that are causing subsequent delays in the Ohio Department of Education's ability to issue and renew certain professional licenses including teaching and pupil activity licenses.*" If your school has a coach who is going through the renewal process and has experienced a delay in his/her certification, please note that ORC §119.06 will permit your school to allow *renewing* coaches who have completed all required applications/registrations within the time and manner provide by the rule of ODE to continue coaching even if they are awaiting a ruling from the agency. **This law does not apply to coaches applying for their initial certification.** Please review this link or contact the OHSAA compliance department if you have any questions about this law:

<https://codes.ohio.gov/ohio-revised-code/section-119.06>

Student religious expression in athletics, activities

Current Impact on any Member Schools? No, but likely forthcoming

Timeline: Likely committee action expected in fall 2021

Summary: While SB181 has no immediate impact on OHSAA member schools since the present OHSAA bylaws and sport regulations are currently in compliance with this bill, it should be known that SB181, if passed, would prevent schools and the OHSAA from adopting a rule, bylaw, or other regulation that prohibits or creates any obstruction to wearing religious apparel when competing or participating in interscholastic athletics or extracurricular activities, including requirements that participants obtain advanced approval, written waivers, or any other permission. Any person/entity who would violate this section would be subject to a civil action for damages, injunctive relief, or any other appropriate relief. This bill passed through the Senate with almost unanimous support and is now in the House Primary and Secondary Education Committee for vetting.

Increase assault penalties in certain circumstances

Current Impact on any Member Schools? No, but likely forthcoming

Timeline: Likely committee action expected in fall 2021

Summary: HB44, if passed, would increase an individual's assault penalty if the victim is a sports official and the assault is committed during or immediately before or after a sports event, or in retaliation for the official's actions as a sports official. It would increase the penalty for assault to a fifth-degree felony and require a mandatory fine and community service for the misdemeanor offense of "assault." Though this should have minimal impact on our schools, administrators should be aware of it as they assist the officials in navigating confrontational situations.

And in other noteworthy national news:

Mahanoy Area School District v. B.L. - Supreme Court

Summary: The US Supreme Court ruled in favor of a teenager who was kicked off her school cheerleading squad over a profane social media post. In an 8-1 ruling, it concluded that the Mahanoy Area School District had violated Brandi Levy's freedom of speech under the First Amendment since her comments were done via social media off campus. The ruling states that schools cannot punish a student for their speech off campus unless it *"materially disrupts classwork or involved substantial disorder or invasion of the rights of others."* The ruling still allows schools to discipline students for off-campus speech that's deemed racist, bullying, threatening or otherwise disruptive to learning, and schools can still discipline a student for vulgar language on campus if it's deemed disruptive. In an article from the AP News, Justice Samuel Alito wrote, *"If today's decision teaches any lesson, it must be that the regulation of many types of off-premises student speech raises serious First Amendment concerns, and school officials should proceed cautiously before venturing into this territory."*