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COMMONWEALTH OF KENTUCKY  
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**OAG 15-022**

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December 30, 2015

*Subject:* Whether a board of education or school-based decision making council may regulate middle school students from playing on high school sports teams

*Requested by:* Eric G. Farris  
Counsel, Bullitt County Public Schools

Chad Collins, General Counsel  
Kentucky High School Athletics Association

*Written by:* Matt James

*Syllabus:* A board of education or school-based decision making council may regulate middle school students from playing on high school sports teams.

*Statutes construed:* KRS 156.070(2)(c); KRS 160.290

*OAGs cited:* OAG 92-98; OAG 90-87

***Opinion of the Attorney General***

Eric G. Farris, counsel for Bullitt County Public Schools, and Chad Collins, General Counsel for the Kentucky High School Athletics Association ("KHSAA"), have requested an opinion of this office as to whether a board of education or school-based decision making council may regulate middle school students playing on high school sports teams. We advise that a board of education or school-based decision making council may regulate middle school students playing on high school sports teams.



KRS 156.070(2)(c) provides:

The state board or any agency designated by the state board to manage interscholastic athletics shall not promulgate rules, administrative regulations, or bylaws that prohibit pupils in grades seven (7) to eight (8) from participating in any high school sports except for high school varsity soccer and football, or from participating on more than one (1) school-sponsored team at the same time in the same sport. The Kentucky Board of Education, or an agency designated by the board to manage interscholastic athletics, may promulgate administrative regulations restricting, limiting, or prohibiting participation in high school varsity soccer and football for students who have not successfully completed the eighth grade.

KRS 156.070(2)(c) provides that the Board of Education or an agency designated by the Board of Education cannot promulgate rules preventing students in grades seven and eight from playing on high school sports teams, except for soccer and football. 702 KAR 7:065 § 1 provides that "the Kentucky High School Athletic Association (KHSAA) shall be the Kentucky Board of Education's agent to manage interscholastic athletics at the middle and high school level in the common schools." At issue is whether the prohibition in KRS 156.070(2)(c) applies to local boards of education or school-based decision making councils.

In OAG 90-87, we advised that:

The prohibition in the Act also applies to local school boards. Pursuant to KRS 160.290, rules made by local school boards must be consistent with the general school laws of the state. Because House Bill 443 amends KRS 566.070, which may be considered a "general school law," local school boards have no authority to make rules that would be inconsistent with House Bill 443. Accordingly, local school boards may not prohibit 7th and 8th grade students from participating in high school sports or from participating in more than one (1) school sponsored team at the same time in the same sport.

We advised that KRS 156.070(2)(c) also applies to local school boards, on the grounds that KRS 160.290(2) provides that "the rules, regulations, and bylaws made by a board of education shall be consistent with the general school laws of the state," and that local school boards had no authority to make laws inconsistent with KRS 156.070(2)(c). In OAG 92-98, we reaffirmed this opinion:

We have previously opined that the prohibition of the statute applies to local school boards as well as to the state board and to the KHSAA, although nothing prohibits those entities from making rules that limit a student's participation in sports activities based on the student's health, safety, and academic standing. OAG 90-87. We remain of that opinion.

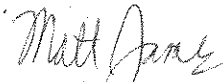
The opinion requesters and the Department of Education advocate for a reconsideration of our prior opinions. They argue that by the plain language of the statute, KRS 156.070(2)(c) applies only to the "the state board or any agency designated by the state board to manage interscholastic athletics." The KHSAA is the agency designated by the state board to manage interscholastic athletics, and so the only entities mentioned in KRS 156.070(2)(c) are the state Board of Education and the KHSAA. We agree. "In determining legislative intent, we must refer to the language of the statute and are not at liberty to add or subtract from the legislative enactment or interpret it at variance from the language used." *Johnson v. Branch Banking & Trust Co.*, 313 S.W.3d 557, 559 (Ky. 2010). KRS 156.070(2)(c) mentions only the state Board of Education and the agency it designates to manage high school athletics, the KHSAA. It does not refer to any additional entities, such as local boards of education or school-based decision making councils.

Both local boards of education and school-based decision making councils are given authority to make rules and regulations for extracurricular activities and the general welfare of students. KRS 160.290(1) provides that "each board of education shall have general control and management of the public schools in its district . . . as it deems necessary for the promotion of education and the general health and welfare of pupils," and KRS 160.290(2) provides that "each board shall make and adopt, and may amend or repeal, rules, regulations, and bylaws for . . . the conduct of pupils." KRS 160.290 thus gives local boards of education the authority to adopt rules and regulations for the welfare of pupils. Similarly,

KRS 160.345(2)(i)(8) requires school-based decision making councils to adopt policies for "selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision." Both local boards of education and school-based decision making councils are granted statutory authority to regulate participation in sports for the welfare of the pupils.

Contrary to OAGs 90-87 and 92-98, the authority granted to local boards of education and school-based decision making councils to regulate sports is consistent with regulating middle school students playing on high school sports teams. KRS 160.290(2) requires that "the rules, regulations, and bylaws made by a board of education shall be consistent with the general school laws of the state," but KRS 156.070(2)(c) mentions only the state Board of Education and the KHSAA, and does not mention local school boards or school-based decision making councils. Accordingly, we advise that local boards of education and school-based decision making councils may regulate middle school students playing on high-school teams consistent with KRS 156.070(2)(c).<sup>1</sup> To the extent OAGs 90-87 and 92-98 advise otherwise, they are hereby withdrawn.

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<sup>1</sup> The opinion requesters additionally ask whether KRS 156.070(2)(c) and KRS 160.290 prohibit a local school board or school-based decision making council from establishing a rule barring high school athletic coaches from cutting high school student athletes to make room for a middle school student athlete. For the reasons argued above, we advise that a local school board or school-based decision making council may establish such a rule.