



The Ohio High School Athletic Association

Coach/Student Relations and Bullying Motivated Transfers

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The Perfect Storm

Three Conditions Always Present for “The Perfect Storm”

1. Political Climate – *Choice in Ohio*
2. Bullying Epidemic
3. Transfer Restrictions



Political Climate – Choice

- ▶ Governor Kasich and General Assembly = One Party System
 - Tie in with Ohio Department of Education

- ▶ No bigger proponent for “Choice” than these

- ▶ Within Past 5 years – Four pieces of legislation “affording the opportunity for participation” of non-enrolled students “in all extra-curricular activities” at the public schools
 - Home schoolers
 - Community schoolers
 - Non-public (chartered and non-chartered) students whose schools do not sponsor the desired activity



Bullying Epidemic

- ▶ ODE Executive Summary identifies the goal that schools must provide physically safe and emotionally secure environments for all students and all school personnel
- ▶ ORC § 3313.666 requires boards of education of each city, local, exempted village and joint vocational school district to establish a policy prohibiting harassment, intimidation or bullying.
 - Amended in 2012 to include, among other things, cyber-bullying
- ▶ ORC § 3301.22 required the State Board of Education (delegated to Ohio Department of Education) to develop a model policy to prohibit harassment, intimidation or bullying in order to assist school district in developing their own policies under 3313.666
 - Model Policy can be found on ODE website at www.education.ohio.gov



Transfer Restrictions

- ▶ Like most all states, Ohio member schools have placed some limitations on transfers in order to promote the beliefs that (1) a stable educational environment is important for learning, (2) transfer decisions should not be made based upon athletics, yet (3) some transfers are inevitable and unavoidable
 - 10 exceptions to the transfer bylaw including a legal change of bona fide residence, change of custody, closing of schools etc.
 - Numerous legislators who believe that any and all impediments to “choice” should be eliminated forthwith and if not



Controlling What We Can the “Perfect Storm” Conditions

▶ Lessons Learned from our past meetings

- Of the three conditions, 1 or 2 of these conditions you have absolutely no control over
- Sometimes you may have some “control” over the third conditions which “control” may mean being pro-active
- In “recognition” that bullying truly does exist in society and in some of our schools
- In further recognition that we had no means to permit a student who transfers because they were victims of bullying, Board of Directors approved for referendum Exception 7 – anti-harassment, anti-intimidation, anti-bullying.



Exception 7 – Anti-bullying

- ▶ In its simplest form, this exception allows the Commissioner’s Office to restore eligibility to a student who is the victim of harassment, intimidation or bullying “as those terms are defined” in the Ohio Revised Code
 - Provided the District’s anti-bullying policy has been followed
 - Appropriate relationship between the alleged bullying that “compelled” the transfer
 - Note: Transfer “consequences” if no exception met is 50% of the maximum allowable contests in those sports in which the student participated in the 12 months immediately preceding the transfer.



“No Good Deed Should Go Unpunished”

- ▶ In the 5 years this exception has been in play, there have been 2–3 “legitimate” claims of transfer that were compelled as a result of harassment, intimidation or bullying.

- ▶ Go down the list, check off the box
 - Notwithstanding the 50% rule, still not acceptable to some
 - Check the box for relief
 - Bingo – “let’s claim bullying”

- Trends
 - 1st time school from which transferred ever heard of such a claim
 - No documentation
 - Discern from “typical” horse play



Most Disturbing Trend: ID the Bully

- ▶ Overwhelming majority of the transfers who seek to utilize Exception 7 identify the “bully” in their case as . . .
 - “The former Coach”
- Challenging Appeal Hearings
 - From “she yelled at me” to “he made me run gassers after practice” as the Appeals Panel tries to drill down into what “repeated behaviors” constituted this bullying, the appellant only end up drilling a deeper hole
 - Vol III of “*You Can’t Make this Stuff Up*” – “*The Place Kicker*”



James Dickey v. OHSAA

- ▶ Litigated December 2016
- ▶ Freshman basketball player
 - Injured second week of regular season during practice
 - Sidelined, attempted foul shots (passive, no physical stress), sidelined
 - Team feed, ER, diagnosed concussion; dad text messages coach with results
 - Placed into concussion protocols
- 2 week follow-up with Dr.
 - No release for RTP
 - Coaches invitation
- Father's invitation



Take Aways

- ▶ Continue to try to control as many “Perfect Storm” conditions as we can
 - No regrets in proposing the “bullying exception” to transfer
 - Right thing to do
- Educate membership of trends
 - Observe and talk about “trends” and unintended consequences
 - Recommend ways to “protect” against frivolous claims
- “Reasonable Person” introduces in law school
 - May not know who she is but
 - Courts like a good laugh too.