

Haywood County asks state to investigate fairness of NCHSAA, questions its legal authority as private entity

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— Through its legal counsel, Haywood County Schools delivered a letter to members of the state government earlier this month outlining its concerns over the policies and procedures of the N.C. High School Athletic Association.

According to the school district, which includes two NCHSAA-member

high schools, one of its schools – Tuscola High School – is placed in an unfair position due to the alignment procedures of the NCHSAA.

"Specifically, our concern is that the manner, policies, and procedures of the NCHSAA are having an adverse effect upon Tuscola High School in Haywood County, and in all probability, other schools across the State," [the letter reads](#).

Pisgah High School, the second high school in Haywood County, is a 2A school with an average daily membership of 990, according to the letter. Tuscola is a 3A school with an even smaller average daily membership of 974.

Tuscola is the smallest school in its Mountain Athletic Conference. The second smallest school in the league is North Henderson High School with an average daily membership of 1,066. The largest school is T.C. Roberson with an average daily membership of 1,644 – a total of 670 more students than Tuscola.

"The unfairness of the current alignment for competition is 'self-evident,'" the letter states. "Regionally, not only must Tuscola High School compete in a classification and conference in which the pool of athletes is much larger, but the 3A designation is not equitable when you consider that statewide there are 13 other 2A schools larger than Tuscola."

In addition to Pisgah, the following 2A schools all have larger average daily membership numbers than Tuscola: Durham School of the Arts (1,107) Hibriten High School (1,034), St. Pauls High School (1,027), Ledford High School (1,023), Atkins High School (1,019), North Forsyth High School (1,014), South Point High School (999), Nash Central High

School (990), North Lincoln (988), Currituck County (983) and Forest Hills (980).

Meanwhile, T.C. Roberson – the largest school in Tuscola's conference – has a higher average daily membership than 11 schools in the 4A classification.

The lawyers for Haywood County Schools point to the new alignment procedure – [the 20-30-30-20 plan](#) – as the reason for the disparity. In the plan, the smallest 20 percent of schools go to the 1A classification, the next largest 30 percent go to the 2A classification, the next 30 percent to the 3A classification, and the largest 20 percent to the 4A classification.

"This change was made without a formal voting process with recorded written votes by Association members. At local and regional meetings the Association asked for a show of hands. No votes were tabulated. Tuscola and many other schools objected to the unfairness and inequity caused by this arbitrary classification. We question whether the entire membership across the state voted in favor of this change," the district's lawyers wrote.

The change was made for the 2017-2021 realignment and was voted on and approved by the NCHSAA Board of Directors, which is made up of coaches, athletic directors and administrators from schools and districts across the state. However, HighSchoolOT.com reported at the time of the vote, in May 2015, that the majority of schools in the state indicated they did not support the new policy.

According to Haywood County Schools, Tuscola appealed its classification on Apr. 20, 2016, prior to its new classification

assignment going into effect the next fall. The appeal was denied.

On Nov. 27 of last year, Tuscola appealed to the NCHSAA again, requesting it be dropped to the 2A classification given its smaller average daily membership number. The appeal was again denied.

"In denying the appeal, (NCHSAA) Commissioner Que Tucker cited a new rule required for reclassifying which was posted to the Association's website, with no notice being sent to Association members. According to Commissioner Tucker, reclassification would only be allowed if there was a 10% reduction in student population," Haywood County Schools' legal representatives stated.

Tuscola saw a decrease in its student population of 8.6 percent.

In December 2018, Tuscola requested a face-to-face meeting with Tucker, but the meeting was denied, according to the letter. Then on Jan. 15, Tuscola requested the procedure to file a formal grievance with the NCHSAA, but the Association said no such procedure existed.

Questioning the Association's authority

A North Carolina statute grants the State Board of Education the authority to designate an organization to oversee high school athletics for public schools in the state. The NCHSAA is the organization the board delegates that responsibility to.

The NCHSAA was formed in 1912 as an extension of the University of North Carolina, and thus part of the state government. In 1947, a new constitution was adopted by the Association that removed financial obligations from the UNC system, but kept the NCHSAA in UNC

offices. However, in June 2010, the NCHSAA broke all ties with the UNC system and became a private non-profit organization.

Its status as a private organization raises questions about the NCHSAA's ability to legally oversee high school athletics on behalf of the state government, according to the lawyers for Haywood County Schools.

"While the NCHSAA may maintain they are a private, nonprofit Association, not held to the same requirements and standards for government entities ensuring that decisions are not made in an arbitrary and capricious manner, and with due process protection; we firmly disagree for two reasons," the letter states.

The first reason stated in the letter is that the NCHSAA should have to "meet the requirements of all other State entities, and not permit decisions to be mad in an arbitrary and capricious manner without due process."

According to the lawyers for Haywood County Schools, this standard should be required because the State Board of Education is mandated to "adopt rules governing interscholastic athletic activities."

"Second, legally, we believe the delegation of authority by the The State Board to the NCHSAA requires them to do so as an agent of the State," the letter reads.

In addition to sending its letter to the chairman of the state board of education, Eric Davis, and to the state's superintendent, Mark Johnson, Haywood County Schools copied Tucker, Governor Roy Cooper, Lt. Governor Dan Forest, Speaker of the House Phil Berger,

Senator Jim Davis, Representative Michele Presnell, and Representative Joe Sam Queen.

"If necessary, (we) ask the legislature to study and examine the delegation of authority to the NCHSAA, assuming that has occurred, and the manner in which they are making decisions on behalf of the state," the district's lawyers wrote. "Additionally, on behalf of the Haywood County School Board, this is to request that your respective offices begin an immediate investigation and examination of the procedures and policies of the NCHSAA regarding their decision making and process classifying and reclassifying high school for athletic competition."

HighSchoolOT.com has reached out to numerous government officials named as recipients on the letter to ask if any investigations had started or were planned, but as of Wednesday evening had not heard back.

NCHSAA Commissioner Que Tucker issued a written statement on Wednesday evening, but declined to comment on specifics.



"The NCHSAA did receive the letter from Haywood County Schools' attorney late last week, but as the letter came from an attorney, it is considered a legal matter. As a matter of policy, the NCHSAA does not comment on ongoing legal matters," Tucker said.

There are numerous topics Haywood County Schools would like addressed by the state government, particularly around due process and the alignment procedures of the Association.

"As part of this investigation, we request that you investigate the on-

going self-appointment of NCHSAA board members, the lack of formal written voting and record keeping of member high schools, lack of a formal grievance procedure for classification and reclassification to include a hearing, as well as other due process and grievance protections for arbitrary rules and regulations," the letter said. "It is the opinion of the Haywood County School System that the NCHSAA has created a harmful and detrimental system for high school competition, not only for Tuscola High School, but other schools and school systems throughout the state."

The next realignment process, which sparked this letter from Haywood County Schools, is expected to begin this spring. The current conference and classification assignments are valid for two more school years. Under its current policy, the NCHSAA realigns every four years based on the average daily membership of schools.



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