

Office of  
LEGISLATIVE AUDITOR GENERAL  
State of Utah

**REPORT NUMBER ILR 2003-B**

**June 2003**



**A Review of the  
Utah High School Activities Association's  
Transfer of Athletic Eligibility Process**

The Utah High School Activities Association (UHSAA) administers and supervises interscholastic activities among its member schools. Representative Bourdeaux asked us to review the decision-making process regarding requests for transfer of athletic eligibility to determine if it is fair and consistent. One concern he raised was that the state could potentially face liability for the actions of the UHSAA. A recent United States Supreme Court case indicates that the association is a “state actor,” whose decision-making processes should meet similar standards as a governmental agency.

When a student changes schools (transfers), the association may restrict his or her eligibility to participate on sports teams if the transfer is motivated in whole or in part by athletics. We studied the Board of Education rules and UHSAA by-laws for athletic transfers and examined 28 cases of requests for eligibility transfer, including both cases that were approved and denied eligibility by the association.

Based on our review, we feel the association strives to maintain the integrity of the by-laws but the cases we reviewed raised some concerns. The decision-making process seems to generate inconsistency because many different principals are required to make subjective decisions about student’s intent when they transfer. In addition, UHSAA by-laws are not consistent with State Board of Education rules. Some changes to the by-

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The decision making process seems to generate some inconsistency because there are many different decision makers.

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laws and the process should be considered in order to promote fairness and to serve the best interest of the students.

## **Laws and Policies Impact the Process**

State law and Board of Education rules establish state education policy and provide a framework for the athletic eligibility determinations made by the UHSAA. However, in some instances we found that the process for deciding transfer eligibility described in the UHSAA by-laws and interpretations seemed inconsistent with the broader state policy. Still, we feel the association has tried to design a fair process.

When the state adopted an open enrollment (or school choice) policy in the early 1990s, athletic eligibility transfers became a greater concern. Open enrollment allows students to either attend their school of residence or apply as a nonresident student at another school. State law directs local school boards to establish standards for accepting or rejecting nonresident student applications; standards may include factors such as capacity, but not athletic ability. The 1990 legislation also required penalties for “any school official or employee who attempts to recruit a student athlete” under the open enrollment program. That statutory provision has since been amended to state:

The State Board of Education, in consultation with the Utah High School Activities Association, shall establish policies regarding nonresident student participation in interscholastic competition.  
[*Utah Code* 53A-2-208 (4)]

Thus, athletic eligibility does not automatically transfer along with the student.

### **Administrative Rule Conflicts with By-laws**

It appears the UHSAA by-laws have evolved in recent years so that they are not consistent with the Utah State Office of Education (USOE) rules established by the State Board of Education. Staff from the UHSAA, the USOE and the Attorney General’s Office told us that the association by-laws should comply with the state rules. Of course, the state rules must follow state law. UHSAA administrators told us they are

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State laws and rules set a framework for UHSAA by-laws. Transfer and eligibility rules must fall within the framework.

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aware of the conflicts with the rules and they will work with USOE to eliminate inconsistency.

The USOE rule says any student in the ninth grade or above who transfers between schools shall be ineligible for varsity level competition for one year after the first day of attendance, unless: 1) the transfer results from a change of residence; 2) the transfer results from a promotion to a grade not available in the previous school; 3) the transfer is required by the local board of education; 4) the transfer occurs under special “block” permit by the district; or, 5) the UHSAA Transfer Committee grants an exception based on exceptional circumstances and undue hardship.

The UHSAA by-laws say any transferring student shall lose eligibility (including varsity, junior varsity, sophomore, and freshman) for twelve months under the following circumstances: a) the transfer is motivated, in whole or in part, by intent to participate in varsity athletics; b) the transfer does not comply with State Office of Education rules; c) the principals of both the transferee and transferor schools do not certify that the transfer conditions have been met; d) the transfer was mandated by the district for disciplinary reasons; e) the local Board of Education has more restrictive policies.

These rules and by-laws are inconsistent. The rule states that the UHSAA Transfer Committee may grant a transfer of eligibility based on undue hardship, but the association no longer has a Transfer Committee. Association staff told us the undue hardship provision was done away with several years ago because transfer applicants were targeting the list of hardship reasons on their applications. Instead, the by-laws focus on whether the motivation for the transfer includes the intent to participate in varsity athletics. In addition, the rule indicates transfer students may be ineligible for varsity level competition, but the by-law provides for sub-varsity restrictions. Furthermore, proposed by-law changes may move them further out of compliance with state rules. Although the rule exempts students who move, the association intends to begin examining residence changes to determine whether the move is based on the intent to participate in athletics.

### **UHSAA Process for Deciding Transfer Eligibility**

UHSAA staff explained the transfer process to us as follows. Once a student has decided to transfer, he or she should obtain the necessary

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Association by-laws and USOE rules are inconsistent, due to recent modifications.

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forms from the principal of the new school (the receiving school). The student and/or parents then meet with the principal of the school from which he or she is transferring (the sending school). Both principals explain the transfer rules and implications. At the beginning of the 2002-03 school year, the UHSAA amended the transfer process to include four forms, for gathering information, which are designed to assure a paper trail that will be helpful in the decision-making process.

- **Form 1** - is the transfer application which must be completed and signed by the parents and principals of both schools. Each principal chooses to allow full eligibility, partial eligibility (sub-varsity only), or no eligibility.
- **Form 2** - is to be completed and signed by the parent or guardian. It states they are aware of the transfer rules and implications, they have not been recruited by anyone, and they are not transferring for athletic reasons.
- **Form 3** - is to be completed and signed by the principal and coaches of the sending school. It verifies the reasons for transfer and identifies any of the student's concerns with the athletic programs.
- **Form 4** - is to be completed and signed by the principal and coaches of the receiving school. It states that there has been no recruiting or undue influence directed toward the student.

The forms are completed and signed by the principals and coaches of both schools and then returned to the principal of the sending school so that he or she can make an informed decision and recommendation for the student's eligibility. The forms are then returned to the principal of the receiving school for his or her final review, recommendation, and signature. Finally, the whole package is forwarded to the UHSAA for their review and decision on eligibility.

The UHSAA reports it typically approves the most restrictive recommendation from the involved principals and notifies the student of the decision. These more restrictive recommendations usually come from the sending principal. If the student does not agree with UHSAA's decision, he or she can request a hearing by a panel of 3 UHSAA board members. At the hearing, the student will be able to present his or her

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UHSAA eligibility decisions follow the recommendations of the principals. A hearing and appeal may be requested if the decisions are not favorable.

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story, including reasons for the transfer, documentation, and testimony to justify the transfer. If the hearing panel's decision does not favor the student, he or she can appeal the decision to a new panel of 3 different UHSAA board members. The appeals panel will not consider any new evidence, but only determine if the hearing panel followed rules of protocol and came up with their decision appropriately. The ruling of the appeals panel is final and there are no other appeals for the student after this takes place.

## **File Review Shows Inconsistency**

We reviewed a sample of files and determined that there was some inconsistency with the decisions pertaining to athletic eligibility for transfer students in Utah high schools. We looked both at transfer cases that did not have any eligibility restrictions and those that had eligibility restrictions. Because our focus was on in-state transfers, we did not review the transfer requests of foreign and out-of-state students. Nor did we review cases where eligibility was restricted for another reason such as the sport season rule or the academic eligibility rule. The cases we reviewed raise a number of concerns about the transfer eligibility process.

UHSAA provided us with a list of eligibility determinations it had made for students who did apply for transfers for the current school year. At the time of our audit review (February 2003) there were 237 names on the list, of which 219 (over 92 percent) did not have any eligibility restriction. The other 18 students, at least initially, had their athletic eligibility restricted. We decided to randomly sample some of the 219 cases without restrictions and review all of the 18 cases with restrictions. Cases not related to the transfer rule were subsequently dropped from each of the two groups.

During our review, we became aware that some students change residence and consequently change schools without going through the transfer application process. Some people expressed concern that the athletic eligibility question can be avoided by students who move with a parent. However, transfers associated with a change of residence were not included in the list we obtained from UHSAA and thus were not included in our review. Association staff report they may start screening transfers associated with moves to make sure the family has a bonafide reason to change their residence.

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The files showed some examples of inconsistent decisions pertaining to eligibility.

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Some students bypass the eligibility rules because they change residence and are not required to apply for a transfer of eligibility.

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## Sample of Cases Without Restrictions Raise Questions

In order to review instances where students retained full eligibility following a transfer, we randomly selected 22 of the 219 cases from the UHSAA list. Of the 22 cases, 13 involved student transfers within Utah. In all 13 cases, we found that the UHSAA followed the recommendations of the school principals. In every case, each principal approved the transfer with full athletic eligibility and the UHSAA did likewise.

Although all 13 cases initially appeared routine, after reviewing the files, two cases raised questions about the approval process because some athletic motivation was indicated. According to the UHSAA Form 1,

A principal's approval on this form constitutes a representation that, after appropriate inquiry, the principal is aware of nothing to suggest that the transfer has been motivated by the student's intent to participate in varsity athletics.

Although the principals approved the transfer for athletic eligibility, in both cases, a coach at the sending school answered yes on the UHSAA Form 3 to the question, "Do you believe the reason for this transfer is in any way related to athletic participation?"

- In the first case, the coach and the principal of the sending school indicated they believed the transfer was partly related to athletic participation because the student wanted to play football for a bigger school.
- In the second case, the coach from the sending school stated he felt the student's request for a transfer was related to athletic participation because discussions with the parent indicated they were concerned with their son's playing time, status on the team, coaching philosophy and status of the program.

Regardless of the coaches' impressions, the principals approved the transfers and the association granted the two athletes full eligibility at their new schools. These two cases raise questions when compared with some of the cases that received restrictions that are discussed next. In some instances it seems principals apply different standards to evaluate the evidence of intent of the student seeking a transfer.

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A principal's approval of the transfer did not always mean there was no athletic motivation.

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## **Review of Cases with Restrictions Show Inconsistency**

To review cases with restrictions, we started with all 18 names on the list provided by UHSAA that had been restricted. Four of these cases were dropped from our review because they didn't apply to the transfer rule. In addition, one new case was added because we were able to observe a UHSAA hearing panel on the case. Thus, we finally studied the case files of 15 students that, at least initially, had their athletic eligibility restricted by the association.

For discussion purposes we organized the 15 cases into three groups. Each of the following groups included five students:

- ▶ Cases where no hearing panel was held
- ▶ Cases where the hearing panel or appeal panel restored full athletic eligibility to the student
- ▶ Cases where the hearing panel and appeal panel restricted the student's athletic eligibility.

Figure 1 summarizes the restrictions imposed at various stages of the UHSAA process. In every case, the association's initial eligibility ruling was the same as the sending principal's recommendation. In four cases we learned that the student's final eligibility status was different than that shown in the case file because of a subsequent action taken by the student. The cases included in each group are discussed following Figure 1.

**Figure 1. Transfer Cases Reviewed where UHSAA Imposed Eligibility Restrictions.**

Case	Sending Principal Recommend	Hearing Panel Ruling	Appeal Panel Ruling	Final Status (reason if different)
<b>No Hearing Held</b>				
1	SV			SV
2	SV	0		SV
3	SV			SV
4	N changed to SV	cancelled		SV
5	SV changed to V	cancelled		V
<b>Hearing or Appeal Restores Varsity Eligibility</b>				
6	SV	V		V
7	N	V		V
8	SV	V		V
9	N	SV	V	V
10	SV	SV	V	V
<b>Hearing and Appeal Restricts Eligibility</b>				
11	SV	SV	SV	SV
12	N	N		SV (school change)
13	N	SV	SV	V (residence move)
14	N	SV	SV	V (residence move)
15	SV	SV	SV	V (residence move)

*N = Not Eligible at any level (complete restriction)*  
*SV = Eligible at Sub-Varsity level (partial restriction)*  
*V = Eligible at Varsity level (no restriction)*

We did not attempt to determine whether some students were satisfied with a sub-varsity restriction. In most cases, students challenged the partial restriction but in some cases they did not.

**No Hearing Held.** The first group of five cases is similar in that they did not go through the hearing process. In three of these cases, the sending principals recommended sub-varsity restrictions and the association followed suit with its ruling. The three students accepted the decision without requesting a hearing and transferred to their new schools with the sub-varsity limitation.

In the other two cases, the sending principals changed their eligibility recommendations after the students asked for a hearing panel.

In one third of the cases, hearings were not held. In one third, eligibility was restored, and in one third, restrictions were sustained.



- In Case 4, the student’s listed reason for the transfer was to get away from the destructive influence of peers. The sending principal denied any eligibility to the student because she had played on the girls volleyball team. The family wrote letters pleading for at least a minimal level of eligibility. A hearing was scheduled and as the date grew nearer, the principal changed his recommendation from no eligibility to sub-varsity eligibility except when the receiving school played the sending school.
- In Case 5, the sending principal wrote a letter to the association and asked them to change his recommendation from sub-varsity to varsity eligibility. The initial recommendation had been motivated by two factors: (1) to protect the sending school’s athletic programs by encouraging students in its area to participate in its programs; and, (2) to discourage the risky practice of students having a long commute. However the sending principal decided that a hearing panel would only stir up ill feelings and he declined to attend.

After the principals changed their recommendations, the association followed suit in each case and changed their decisions to match the sending principals. The hearings were cancelled and the students were allowed to transfer with their new levels of eligibility.

**Hearing or Appeal Restored Varsity Eligibility.** In the second group, the five cases were similar because the process helped the students get the full eligibility transferred as they desired. Four of five cases are similar because they were transfers from the same school.

- Cases numbered 6 through 9 in Figure 1 all involved the same sending school. Although the case files included little or no evidence of athletic motivation, the principal routinely restricted eligibility for all transfers. The school’s administrators and coaches were concerned about losing athletes to competing schools and so decided to deny eligibility transfer requests to “keep the playing field equal.” In addition, school administrators reported that in the fall of 2003 their School District will have a new policy of not allowing students to participate in athletics for one year if they transfer to a school out of the home school boundary. The school wanted to begin enforcing the policy early.

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Sometimes the hearing process helped the students by reversing the decision to restrict eligibility.

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All four of the students requested hearings and the hearings panel restored varsity eligibility for three of them. In the other case, the hearing panel denied varsity eligibility but “as an equitable matter” approved sub-varsity eligibility. Consequently, the fourth student appealed the decision and the appeals panel restored varsity eligibility. Association staff explained to us that the basis for all of these reversals was that the principal had not given the students their due process when he made a blanket decision to deny eligibility to all transfers.

- Case 10 was denied varsity eligibility by the sending principal, the association, and the hearing panel. We observed the hearing panel on this case where the student’s family acknowledged some athletic motivation. In fact, the father said that although he had been told the way to get eligibility approved was to lie about the motivation, he refused to do so. Instead, the family reported that the transfer was based on assurances from the principal that it would be allowed. They claimed that in a meeting with players and parents after a coach had been fired, the principal promised that the school would not stand in the way of any player transferring to another school. However, the hearing panel denied eligibility based on the athletic motivation. Later, an appeals panel reversed the decision and restored varsity eligibility. According to association staff, the appeal panel restored varsity eligibility because the transfer was based on the assurances of the sending principal.

**Hearing and Appeal Restricted Eligibility.** The last five cases were grouped together because they were restricted following the hearing and appeal process. The four cases that were appealed were all upheld by that panel. However, we learned that in four of these five cases the student obtained greater eligibility either by changing residences or changing schools.

- On Case 11 we were able to observe the hearing panel. It involved a student whose family had moved a couple of months earlier, but he did not change schools at that time. The student reported that he was transferring to his local school now because he had made new friends in his church and neighborhood. However, the sending school reported that the student’s father had expressed dissatisfaction with their coaching staff and so they felt the transfer was athletically motivated. School staff said they felt they were

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Sometimes the hearing process upheld the eligibility restrictions, but the students avoided the rulings and regained eligibility by changing residences.

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compromising by allowing sub-varsity but not varsity eligibility. The hearing panel decided on a split vote (2 to 1) to deny varsity eligibility to the student. The appeals panel affirmed the decision.

- In Case 12 the student had not previously attended the sending school, but had participated on one of their athletic teams while attending a nearby junior high school. When the student decided to attend a private high school, the coach at the sending school reported “teammates told us [he] was getting a scholarship to play” at the receiving school. The student was denied all eligibility by the sending principal and the hearing panel. Of all the cases we reviewed, this was the only student that was denied all athletic eligibility after a hearing panel.

Association staff told us that after the student learned he wouldn’t be allowed to participate in athletics at the new school, he transferred to what had been the sending school. The student did not go through the transfer process again but he was allowed to regain sub-varsity eligibility by the same principal who had previously denied all eligibility.

- Cases 13 through 15 are notable because each of these students subsequently changed residences and were able to regain their varsity eligibility. One of the students had been granted sub-varsity eligibility by the sending principal and the other two cases were granted sub-varsity eligibility as an equitable matter by a hearing panel. In each case, the appeal panel affirmed the prior decision, but the student’s family changed residence so the student was able to participate in varsity athletics.

Case 15 also is notable because the sending principal wrote a letter in support of allowing full varsity eligibility. The principal wrote that “the transfer form limiting participation was signed in an effort to support UHSAA policy, not to do what we feel is best for [the student].” The principal indicated that based on the existing circumstances the sending school supported allowing the student varsity eligibility. The fact that UHSAA did not change their ruling based on this letter seems inconsistent with Cases 4, 5, and 12 where the student’s status was changed based on written or verbal communication from the sending principal.

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The system has some problems that can be addressed and resolved with by-law modifications or policy changes.

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## Case Reviews Raise Concerns

Many concerns were raised by the cases we reviewed. The cause of many concerns seems to be the focus on student intent as evaluated by the sending principal to decide transfer applications. Because determining intent is so difficult, and the sending principal may not be impartial, there is a risk that decisions are made arbitrarily. A second major cause of concern is the consistency of the UHSAA by-laws with broader state education policy. State law allows for open enrollment but the transfer rule seems to be an impediment to open enrollment because it restricts eligibility. Furthermore, the UHSAA by-laws are inconsistent with USOE rules. The remainder of this section describes some of the specific concerns.

- **Inconsistency Among Decision Makers** - Sending principals make the first determination of eligibility for a transfer student. The fact that there are many different principals, each with their own background and understanding of the transfer rules, tends to contribute to inconsistent decisions pertaining to eligibility. For example, we found two cases where transfer eligibility was approved despite coaches' claims of athletic motivation, but some other cases where eligibility was restricted without any evidence of athletic motivation.
- **Low Standard of Evidence** - According to the transfer form, the principal approval of transfer eligibility means "the principal is aware of nothing to suggest that the transfer has been motivated by the student's intent to participate in varsity athletics." The UHSAA by-law says if the "transfer was motivated, in whole or in part, by the student's intent to participate in varsity athletics" the student shall lose eligibility. The phrases "nothing to suggest" and "in whole or in part" seem to establish a low threshold for denying eligibility. The association administrators informed us that this by-law has been modified for the upcoming year with the word "varsity" and the phrase "in whole or in part" being removed.
- **Evaluation of Student Intent** - In many of the cases we reviewed, the student reported the transfer was motivated by a non-athletic reason (e.g., academic, social, religious). In restricting eligibility, the sending principal is denying the truthfulness of the student's claim. But frequently, the student's reported reasons do not appear

to be considered; instead the decision is based on the principal's assertion of an athletic motivation. For example on case 12, the principal wrote "regardless of the reasons stated by parents, this transfer was motivated by a desire to play football for a school other than [the sending school]."

- **Impartiality of Sending School Decision Makers** - The sending school principal and coaches are the key decision makers for transfer requests. They are placed in the potentially awkward position of evaluating why a student has chosen to leave their school in favor of another school. Furthermore, sending schools may have an incentive to deny eligibility in order to discourage potential future transfers. The protection of the sending school's athletic programs was specifically cited by sending school officials in denying eligibility in cases 5 and 6 through 9, and was implied on some other cases.
- **Restrictions on Sub-varsity Participation** - In six of the cases we reviewed, UHSAA initially restricted the transfer student from both varsity and sub-varsity participation. Such a complete restriction appears inconsistent with the USOE rule that only addresses "varsity level" competition. Association directors are aware of this conflict and they will work to eliminate the inconsistency.
- **Restrictions on Resident Students** - In cases 11 and 12 the students were denied varsity eligibility at their school of residence. *Utah Code* 53A-2-208 only directs the establishment of "policies regarding nonresident student participation." It's not clear whether the Legislature intended for students to be denied eligibility even at their local school.
- **Restrictions on Junior High School Transfers** - Ninth grade students may play on high school teams even if they attend a junior high school. In fact, of the fifteen cases shown in Figure 1, seven involved students who had attended junior high schools the prior year. We do not know whether the high schools encouraged the lower school students participation or whether these students were well informed and fully understood the ramifications of their participation. But we did encounter a number of cases where

sending principals denied transfer eligibility for students who had never attended their high school.

- **Structure of Hearing and Appeal Process** - If a hearing or appeal is requested, the evidence is heard by a pre-selected panel of 3 UHSAA board members consisting of school board officials and principals from a non-related district. The hearing allows the student and the sending principal to each explain their positions. It is a concern that the basic form of the hearing is a panel where school administrators decide between a principal or a student. We were only able to observe two hearings conducted by the same panel and we felt the panel approached their task reasonably. However, one panel member did comment that it was important to support the sending principal who had been forced to make a difficult decision.

## **Policymakers Should Consider Changes**

Policy makers could address the concerns described above in a variety of ways. This sections discussed two alternative approaches. One approach is to fundamentally change the transfer review process so that it is not based on assessing student intent. A second approach is to keep the basic process currently used, but with modifications. Within each of these two approaches, there are a number actions that policymakers could consider. However, because of the limited scope of this review, we did not attempt to fully examine the ramifications of the options discussed here. Regardless, we think UHSAA should ensure that their by-laws are consistent with USOE rules.

Before taking any action, policymakers should consider the extent of the problem. The concerns we describe are based on a relatively few number of cases. We only found 15 students that were restricted under the transfer rule through February in the current school year, and six of those had their eligibility restored by the hearing and appeal process. Still, for those students who are restricted, it may be very important. In addition, UHSAA is planning to start scrutinizing the intent of students who move with their parents, so more students may be restricted. Since the UHSAA may be considered a “state actor,” it’s important that policymakers design a fair and consistent system that complies with state

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Some changes are in order to improve the consistency and fairness of the eligibility decision process.

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Broad sweeping policy changes could be made that would affect the actions of the UHSAA.

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laws and USOE rules. The state may be at risk for actions of the association and inconsistent standards could cloud the issue.

### **Possible Fundamental Changes to the Process By Eliminating Intent Criteria**

One approach policymakers could consider is moving away from basing transfer eligibility on student intent. Of course, all the students who apply under the UHSAA transfer process want to participate in athletics. If the transfer is motivated in part by the intent to participate in varsity athletics, even though there are other reasons as well, then eligibility is denied. In contrast, if the student wants to play athletics, but transfer is motivated only by academic, social, and personal reasons, then eligibility is granted.

While assessing student intent is all-important, it is very difficult. The challenge for the association is to determine why the student transferred without being able to rely on what the student and his or her family say. Since it's generally presumed that the a student who does have an athletic motivation will lie about it, the reasons a student cites for transferring may be given little credence.

Some decision-makers also seem to discount the importance of athletics as part of their overall high school experience. For example, on case 5 the sending school principal wrote that if the transfer was “not motivated by athletics, then our assumption was a denial of varsity participation should not be an unfair condition to place on going to a non-residence school for other social and personal issues.” Even UHSAA staff expressed the opinion to us that students who appeal an eligibility denial must have an athletic motivation.

Given the difficulty of determining intent, thought should be given to fundamentally changing the transfer process. The three options mentioned below are very different, but none of them would base decisions on transfer intent.

**Eliminate All or Most Transfer Restrictions.** Given the state's open enrollment policy, a reasonable question is whether anyone should have eligibility restricted for transferring schools. Instead, students could simply be allowed full participation in athletics as well as other aspects of any school where they are admitted. Colorado addresses this issue by allowing students to transfer without restrictions at the beginning of each

school year. A student can conceivably enroll and compete for four different high schools in his or her career without moving once. A concern with this policy is that athletic transfers could become more frequent and could lead to the creation of a sports dynasty.

**Impose a Uniform Restriction in All Cases.** Another option is to impose a uniform sanction on every transfer regardless of the reason. For example, all transfers could be restricted for a semester, a year, or some other period. Reportedly, Iowa automatically restricts eligibility for 90 school days for any transfer. This type of policy addresses the issues of equity and consistency because everyone is treated the same regardless of the reasons for transfer. Students would understand the rule from the onset and they would know the consequences. There would be no motivation to find the loopholes because there wouldn't be any. Depending on the length of the restriction, a concern with this policy is that many more students would be prevented from athletic participation.

**“Play Where You Live” System.** There has been some discussion among high school athletic administrators to look into a “play where you live” mandate. This is a popular option among coaches and principals who are frustrated about student-athletes who transfer from their school. A “play where you live” system would only allow students to play sports at their school of residence even if they attend another school. However, a problem with this policy is that under USOE rules, most students can only play sports in their school of attendance. Even if the USOE rule was changed, it may not be practical for students to attend one school and play for another. Thus, a concern with the “play where you live” system is that it may be contrary to the state open enrollment policy.

### **Possible Changes to Improve the Process While Keeping Intent Criteria**

It may be more effective to make a few minor policy changes and not risk upsetting the system with such emphatic changes as mentioned above. Some minor changes could be made to improve the system without a lot of difficulty. One needed step is to ensure the UHSAA by-laws conform to the state laws and USOE rules. Other changes to consider include clarifying evidence standards, restructuring the hearing and appeal process, and making restrictions less harsh.

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Minor policy changes could be made to the by-laws that would improve the decision making process and have less of an impact on the organization.

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**Ensure By-laws Conform with Laws and Rules.** Regardless of any other changes considered or adopted, the association by-laws and procedures must be in line with constitutional standards and state laws and rules. A recent United States Supreme Court decision on a Tennessee case recognized that a high school athletic association is considered a “state actor,” and must comply with constitutional and state laws. We gathered opinions from legal experts and administrators at both the USOE and the UHSAA and they all agree that association by-laws should conform to state rules.

Whether the state has any liability for the actions of the association is doubtful. However, the experts we asked said it depends upon the courts, and it is difficult to predict how a judge will rule. Although the association carries Directors & Officers liability insurance, the broker indicated it was not designed to cover all claims that might be filed by students or persons outside the association. He suggested that a rider on the policy might be needed to protect the organization against outside claims.

**Clarify the Standard of Evidence.** The transfer rule refers to athletic motivation in whole or in part. It is difficult to determine the true intent of a transfer request because there are usually several motivating factors. Athletics may be 5 percent of the motivation and social reasons may account for 95 percent. It is not the primary motivation for the request but it is still part of the reason. The decision to restrict eligibility often comes down to the intuition of the principal and he or she is not required to produce any evidence that the request is athletically motivated. On the other hand the student may produce ample evidence that there are other reasons for the request but if the principal doesn’t believe them, the request is denied. UHSAA should try to clarify its evidence standards to ensure student intent is evaluated as consistently, objectively, and impartially as possible.

**Consider Restructuring Hearing and Appeal Process.** UHSAA should consider changing the hearing and appeal process just for the sake of appearances. Some people expressed concern to us that it is difficult for the principals on the panels to overrule other principals’ decisions. It may be worthwhile to consider some diversification and alternatives to the hearing and appeal panels. We learned that in one state an impartial judge makes decisions on eligibility for the athletic association. In another state, an attorney who specializes in the eligibility and transfer laws makes the

determination. Other options include inviting someone to sit on the panel who is not from the educational ranks, or having appeals go outside UHSAA entirely, perhaps to USOE.

**Consider Making Restrictions less Severe.** The current restriction for student transfers calls for no eligibility in any sports for a full year from the date of attendance. One principal calls this the ‘death penalty’ for a student athlete. To many students, athletics is an important part of the overall high school experience, along with academics, social, and other aspects. Taking away their opportunity to compete for a year is taking away part of their school involvement and perhaps their motivation to attend school. As described on case 15, some decisions are made not in the best interests of the student, but are made to uphold UHSAA rules. Because taking away the ability to participate in school athletics is a heavy penalty, UHSAA should consider the following.

- ▶ **Always allow sub-varsity.** This would be consistent with the current state rule.
- ▶ **Reduce length of restriction.** A shorter length of time, partial season, or one sport restriction might discourage athletic transfers without being such a harsh penalty.
- ▶ **Allow junior high school students to transfer eligibility.** If junior high transfers continue to be restricted, then UHSAA should consider steps to ensure ninth grade athletes and their parents understand the ramifications of playing on a high school team while a junior high student before they commit to doing so.
- ▶ **Always allow resident school eligibility.** This would be consistent with the current state law and might encourage more of a “play where you live” system.

We hope this provides you with the information you need. If we can be of further assistance, please don’t hesitate to call.

Sincerely,

Wayne L. Welsh  
Auditor General

WLW:PAH