SPORTS LAW FOR EDUCATIONAL INSTITUTIONS

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Preface

With the broadening of the scope of American law during the twentieth century—particularly over the past three decades—many occupational fields that have traditionally remained outside the purview of judges and juries have become exposed to frequent legal entanglements. One such field is athletic administration—the administration of the athletic programs of educational institutions. Organized secondary school and collegiate sports are a popular, wide-reaching institution in American society and as such have presented a ripe area for the expanding law. Recent developments in the law from all sources—legislative, judicial, and administrative—have caused concern among athletic administrators at all educational levels.

The purpose of this book is to explore the current relationship of the law to organized secondary school and collegiate sports in order to provide athletic administrators with basic knowledge of the wide range of legal principles that relate to the performance of their duties. The book primarily consists of edited texts of leading judicial opinions on legal issues that have frequently arisen in cases involving organized athletics. These opinions are supplemented with explanatory notes and comments by the authors, which are based upon research into leading works on athletic law and general legal principles as well as into additional decisions of courts in similar cases.

Sports Law for Educational Institutions

Contents

CHAPTER I
Equal Opportunity for Participation

The emphasis on individual rights in American society over the past two decades has made "equal opportunity" a household phrase. During this period, groups or classes of persons that were traditionally excluded or restricted by discriminatory laws, rules, or policies increasingly sought to obtain equal opportunity to enjoy certain societal benefits or privileges through legal action in the courts. Due to the importance of education to a person's future success, the discriminatory exclusions or restrictions in public education have perhaps been attacked more frequently than any other traditional barrier. Since varsity athletics are sponsored by most public schools, the growing trend of legal action against discriminatory rules or policies has served to make the topic of "equal opportunity for participation" in varsity sports a crucial one for athletic administrators at the secondary school and collegiate levels.

Another factor that underlies the trend toward both litigation and legislation pertaining to participation in varsity athletics is the amount of financial return that potentially is at stake for the excluded athlete. An athlete who loses the opportunity to develop his or her skills in varsity competition at the high school level typically loses both the opportunity to obtain an athletic scholarship to college and any potential for a lucrative career in professional athletics, regardless of the degree of natural talent or ability he or she may possess.

A final underlying factor in the trend towards lawsuits challenging discrimination in varsity athletic programs is the extent of the psychological harm that may be suffered by the excluded athlete. In our society, successful athletes are typically the focus of public attention, and students who are excluded from varsity sports are also excluded from the opportunity to win the plaudits of their parents, classmates, and community. In addition, students who derive satisfaction and self-confidence from athletic competi-

tion are likely to feel a great deal of inner frustration at being denied the opportunity to compete.

The topic of equal opportunity for participation includes several legal questions which have been the subject of much litigation over the past ten to fifteen years, as the materials in this chapter will illustrate. Two of the general questions that have been addressed by these cases are (1) the legal extent of a student's "right" to an equal opportunity (i.e., eligibility) to participate in varsity sports and (2) whether local schools and school boards or state athletic associations can justifiably discriminate against particular classes or groups of students. Following the presentation of these questions as they have been answered by the courts, the chapter concludes with a discussion of the degree of equality between men's and women's athletic programs that is required by federal statutes and administrative regulations.

A. VARSITY PARTICIPATION AS A LEGAL RIGHT

1. The Issue of Constitutional Protection: Conflicting Viewpoints

Mitchell v. *Louisiana High School Athletic Association* (LHSAA)
430 F. 2d 1155 (5th Cir. 1970)

GEWIN, Circuit Judge:

LHSAA is an unincorporated association of Louisiana high schools which coordinates and regulates the interscholastic athletic competition among its members. Its basic eligibility rule, known as the "Eight Semester Rule," provides in part:

> A student must not have attended high school for eight semesters. (Attendance in school for twenty days shall be counted as a semester's attendance.)
>
> Beginning with the sixth grade, a student repeating any grade in school which he has passed shall lose his fourth year of eligibility in high school. NOTE: This does not apply to a student repeating a grade because of failure in that grade.

The three students involved in these consolidated cases attended the eighth grade during the 1964–1965 school year. Each successfully completed the course requirements for that grade, but elected voluntarily to repeat it during the 1965–1966 school year. The following school year the students entered high schools which were members of LHSAA. Subsequently, officials of their respective high schools questioned the eligibility of the students to participate in interscholastic athletics during their senior year. . . . Each of the students was ruled ineligible for the school year 1969–1970, under the provisions of paragraph two of the "Eight Semester Rule" as set out above.

The parents of the students filed separate actions on behalf of the students in the district court contending that the subject regulation violated their rights under the due process and equal protection clauses of the fourteenth amendment. The suits sought a declaration that the pertinent portion of the "Eight Semester Rule" is unconstitutional and prayed for appropriate injunctive relief against LHSAA. The court declared that LHSAA's eligibility formula violated the equal protection clause. . . . The court permanently enjoined LHSAA from preventing the students from participation in interscholastic athletics . . . [during their senior year].

While it is clear that LHSAA's disqualification of the students is state action for constitutional purposes, neither of appellees' allegations raises a substantial federal question.

. . . For better or worse, the due process clause of the fourteenth amendment does not insulate a citizen from every injury at the hands of the state. "Only those rights, privileges and immunities that are secured by the Constitution of the United States or some Act of Congress are within the protection of the federal courts. Rights, privileges and immunities not derived from the federal Constitution or secured thereby are left exclusively to the protection of the states." The privilege of participating in interscholastic athletics must be deemed to fall in the latter category and outside the protection of due process.

A claimed denial of equal protection by state action is without merit. The classification made by the eligibility regulation is neither inherently suspect [e.g., racial] nor an encroachment on a fundamental right. On the other hand it is grounded in, and reasonably related to, a legitimate state interest.

The eligibility rules of LHSAA are designed to assure fair competition among its member schools, and between individuals; and to minimize the hazard of having the usual high school athletes competing with older, more skilled players. The "Eight Semester Rule" was first adopted to prevent high schools from failing talented senior athletes in order to retain a veteran team. The clause in question was added when it appeared that some high school coaches were obtaining the same result by having promising high school athletes repeat pre–high school grades. These individuals would have the same advantage of additional maturity and experience, and hence pose the same threat to fair competition and safety, when they reached high school.

The judgments appealed from are vacated and the cases remanded to the district court which is directed to dismiss the complaints. . . .

COMMENT

The *Mitchell* case is considered to be the leading case that expresses the view that a high school or college student's interest in varsity athletic participation is not within the range of the rights or privileges protected by the Constitution.[1] That view appears to have been adopted by a majority of

the courts that have considered similar cases; however, some courts have reached the opposite conclusion, as demonstrated by cases described by Weistart and Lowell[2] and subsequently presented in this text.

Note: The Requirement of State Action under the U.S. Constitution

In order for the actions of an athletic administrator or the rules of an athletic organization to be a violation of a student's rights under the U.S. Constitution, the actions must legally be considered "state action." *State action* is a legal concept which defines the actions or rules that are subject to the Equal Protection and Due Process clauses of the Fourteenth Amendment to the U.S. Constitution. Actions and rules which are totally private conduct are not subject to these constitutional guarantees, no matter how inequitable or discriminatory they may be.[3]

The federal courts have extended the concept of state action through interpretation of the Fourteenth Amendment to cover a wide range of authorities outside the scope of the actual state governments. Generally, the actions or rules of any person or organization associated with, or performing the functions of, a duly constituted governmental entity constitute state action. Therefore, the actions, rules, or policies of athletic administrators or other public school officials that affect athletes are state action under the Equal Protection and Due Process clauses of the Fourteenth Amendment.[4]

In addition, it has been accepted since the early 1970s that the actions and regulations of state high school athletic organizations and their officials constitute state action. In making this determination, the courts have applied a concept known as the "entanglement theory," which focuses upon the "entanglement" of the functions of a particular organization with those of government as the basis for determining whether its actions and regulations amount to state action. The courts have reasoned that state high school athletic organizations are sufficiently entangled with government because of several factors: (1) the vast majority of member schools of such organizations are public schools; (2) the principals, coaches, and other public school officials are typically participants in the operation of such organizations and are charged with enforcing their rules; (3) such organizations are funded by assessments paid by public schools from tax dollars; and (4) the athletic events they sponsor are held in public stadiums and arenas.[5]

Until recent years, it was generally accepted that the actions or regulations of the National Collegiate Athletic Association (NCAA) and other college athletic organizations involving public institutions also constituted state action, based on reasoning similar to that applied to the cases dealing with state high school athletic organizations.

However, in 1982, the U.S. Supreme Court discarded the entanglement theory and adopted a new, three-part test for determining whether a partic-