



State of New Jersey  
DEPARTMENT OF EDUCATION  
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Acting Commissioner

April 17, 2017

Kayleen Egan, Esquire  
Parker McCay, P.A.  
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P.O. Box 5054  
Mount Laurel, NJ 08054-5054

Dear Ms. Egan:

On March 28, 2017, the New Jersey Department of Education received correspondence from your office on behalf of the New Jersey Interscholastic Athletic Association, ("NJSIAA"), wherein you submitted an amendment to NJSIAA's bylaws, adopted by the NJSIAA Executive Committee at its February 2017 meeting.

I reviewed the amendment, which modified NJSIAA's bylaw regarding transfer students ("Transfer Rule"). Although the amendment purports to promote fairness in high school athletic competition by discouraging students to transfer for athletic advantage, it fails to take into account legitimate reasons for student transfers that may be beyond their control. Accordingly, in accordance with *N.J.S.A. 18A:11-5* and, for the reasons set forth below, I disapprove the amendment.

**Current Transfer Rule:**

The current Transfer Rule provides,

A student-athlete transferring from one secondary school to another, without a bona fide change of residence by that student's parent or guardian, shall be ineligible to participate for a period of thirty (30) calendar days or one half of the maximum number of games allowed in the sport by NJSIAA rules (the ineligibility period) from the beginning of the regular schedule, whichever is less, in any sport in which the student has previously participated at the varsity level<sup>1</sup>.

Article V, Section 4(K)(2)a.

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<sup>1</sup> The current Transfer Rule defines "bona fide change of residence" as when "the parent/guardian moves with the student from one public high school district to another public high school district. The term 'guardian' refers to that person who has control over the person and property of a child as established by the order of a court of competent jurisdiction." Article V, Section 4(K)(1).

Furthermore, in order to prevent possible recruitment or transfer for athletic advantage, the current Transfer Rule further requires the two schools involved in the transfer to execute a Transfer Form prior to any interscholastic participation. See Ibid. The Transfer Form confirms that the transfer is a bona fide change of residence. See Article V, Section 4(K)(1).

### **Proposed Transfer Rule:**

NJSIAA's Proposed Transfer Rule eliminates the "bona fide change of residence" justification for immediate eligibility and, with the exception of two (2) extremely narrow circumstances, applies a blanket restriction on eligibility to all students who transfer.

Specifically, the Proposed Transfer Rule provides that "*all* student athletes who transfer from one secondary school to another shall be subject to a 30-day period of ineligibility, or one half of the maximum number of games allowed in the sport by NJSIAA rules, whichever is less, in each sport in which the student participated" (emphasis added). The only exceptions that permit immediate eligibility are placement by an outside entity (the Division of Child Protection and Permanency, the Courts, or the military) and a change in school district effectuated by the resolution of an investigation under the Anti-Bullying Bill of Rights Statute.

Part of NJSIAA's rationale for the Proposed Transfer Rule is to alleviate NJSIAA's administrative burden of evaluating the legitimacy of the "bona fide change of residence" transfers. As a result of NJSIAA's inability to properly investigate the legitimacy of each transfer, NJSIAA claims that there are "rampant, unnecessary transfers of students for athletic advantage." While the blanket rule may alleviate the administrative burden of evaluating each transfer, this rationale is not sufficient to justify the potential hardship to students. Although the Proposed Transfer Rule may arguably solve the issue of recruitment, it does so at the expense of many other students who have not been subject to recruitment or transferred for athletic advantage.

The Proposed Transfer Rule presumes that the student-athlete's transfer was not bona fide and for that reason it is overbroad and overreaching. It ignores the many situations that may lead to a bona fide change in residence, which include, but are not limited to: a parent's job transfer, foreclosure on a home, or the death of a parent/guardian. For one, these examples are easily verifiable through legal and other official documentation. Significantly, students undergoing any of the above circumstances should be able to move forward with some sense of normalcy and routine; to place these students making a bona fide change of residence in the same category as students engaging in athletic recruitment would be a punishment and contradictory to NJSIAA's mission of enhancing the educational experience of all students and promoting positive school/community relations.

NJSIAA also appears to imply that by keeping the "bona fide change of residence" exception, students are encouraged to transfer schools, which, according to the article cited by NJSIAA, causes students to "generally lose about three months of reading and math learning each time they switch schools." However, the article does not specify the age group covered by this statistic, and the section referencing the statistic only discusses students in K-8, middle schools, or "early grades," not high schoolers, to which the Transfer Rule applies. More importantly, the article cites the most common causes of residential moves as parents' jobs or other financial instability. Again, these are legitimate

reasons for families to move; families should not have to factor in their child's inability to immediately participate in interscholastic sports as part of their personal decisions.

Finally, NJSIAA also argues that the removal of the "bona fide change of residence" exception will promote fair play between member schools because "already-successful schools" will no longer be able to have "high profile athletes transfer to their teams." As stated above, in the attempt to promote fair play between member schools, the amendment fails to take into account legitimate reasons for student transfers that may be beyond their control.

Based on the foregoing, I am unable to approve NJSIAA's Proposed Transfer Rule. The New Jersey Department of Education is willing to work with the NJSIAA to develop a solution that strikes the appropriate balance between ensuring students who transfer for legitimate reasons can participate in sports immediately, while discouraging those students seeking to transfer for athletic advantage.

Sincerely,



Kimberley Harrington  
Acting Commissioner

KH:CH:CP/gmb