

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1403 High School Athletics
SPONSOR(S): K-20 Competitiveness Subcommittee; Stargel
TIED BILLS: **IDEN./SIM. BILLS:** SB 1704

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-20 Competitiveness Subcommittee	11 Y, 4 N, As CS	Fudge	Ahearn
2) Rules & Calendar Committee	13 Y, 4 N, As CS	Rubottom	Birtman
3) Education Committee			

SUMMARY ANALYSIS

The bill adds significant new provisions to the statutes governing the Florida High School Athletic Association (FHSAA). It creates new due process requirements, particularly in determining matters of eligibility, requires sanctions on coaches for recruiting violations, mandates acceptance to membership in the FHSAA of charter schools, virtual schools and home education cooperatives wishing to join, and increases the opportunity for students who attend a private school that is not a member of the FHSAA to participate in sports at public or FHSAA-member private schools.

The bill increases the enrollment cap in the applicable non-FHSAA member schools to 250 or fewer students allows participation in sports at a public school if the non-member private school does not offer the specific sport offered at the public school. The bill eliminates the requirement that any non-FHSAA member private school be required to provide to the FHSAA the financial records regarding students who wish to participate in public school interscholastic sports.

The bill allows a student who has transferred from one public school in the district to another during the school year, pursuant to approval by the district school board, to remain eligible for athletic competition at FHSAA member schools, and would allow a public school student athlete who transfers to a private school to participate in any sport offered by the private school. The bill permit student transfers during the school year without loss of eligibility.

The bill reforms recruiting sanctions and investigations by requiring FHSAA Bylaws that:

- Provide that a school may be required to pay a fine and participate in a higher competitive division for the sport in which a recruited student competes
- Establish sanctions for coaches who have committed major violations such as allowing an ineligible student to participate in a contest representing a member school or violating the FHSAA's recruiting or sportsmanship policies
- Require coaches to reimburse a member school assessed a financial penalty due to the coach's violation of FHSAA policies
- Prevent unfair punishment of students for the violations of adults
- Prevent ineligibility for violating recruiting rules unless the student or parent falsifies documents or accepts a prohibited inducement
- Regulate investigators and establish guidelines investigators must follow when conducting investigations

The bill imposes clear due process requirements on the FHSAA, particularly for determinations of student athlete eligibility. In addition to due process requirements, the bill requires sanctions against coaches and restricts sanctions against students for certain violations of recruiting rules and policies.

See FISCAL COMMENTS.

The bill is effective July 1, 2012.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1403c.RCC

DATE: 2/21/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida High School Athletic Association (FHSAA)

Founded in 1920,¹ the Florida High School Athletic Association (FHSAA) is a non-profit organization that governs interscholastic athletics in Florida's schools from grades 6 through 12. In 1997, the Florida Legislature enacted s. 1006.20, F.S., which regulates the FHSAA's organizational structure and governing authority. The FHSAA may adopt bylaws governing athletic participation of member schools and individual student athletes, consistent with and unless otherwise specifically provided by state statutes.²

The FHSAA's sixteen member Board of Directors ("board") is the organization's primary executive governing body. Seats on the board are statutorily designated for members representing public schools, nonpublic schools, school superintendents, school board members, and each administrative region. The Commissioner of Education, or the commissioner's designee, also sits on the board. Among other things, the board is responsible for organizing, establishing the rules for, and conducting statewide interscholastic athletic competitions, including those competitions that lead to state championships. The board is also required to appoint the FHSAA's Executive Director.³

Recruiting

In January 2006, the FHSAA revised its student athlete residency and transfer bylaws. The bylaws prohibited student athletes who transfer to another school from participating in varsity athletics for one calendar year. The student athlete would be permitted to participate in junior varsity athletics during this time. After one calendar year, the student athlete would be deemed to have established residency at the new school and permitted to participate in varsity athletics.⁴

Several stakeholders voiced concerns that the 2006 residency and transfer bylaws would inhibit parental school choice. The House PreK-12 Committee held a meeting in 2006 to investigate those concerns.⁵ As a result of the meeting, legislation was enacted⁶ that:

- Held the residency and transfer bylaws in abeyance until July 1, 2007;
- Established a Student Athlete Recruiting Task Force; and
- Directed the Office of Program Policy Analysis and Government Accountability (OPPAGA) to independently review secondary school recruiting violations among FHSAA member schools.⁷

The Student Athlete Recruiting Task Force was directed to study student athlete recruiting and review the FHSAA's 2006 residency and transfer bylaws and "make recommendations that preserve the parental right to school choice while protecting the integrity of Florida's interscholastic athletic programs."⁸ The legislation also required that the task force be comprised of proponents and opponents of the new bylaws and required the Governor to appoint the chair. The task force recommended that the FHSAA:

¹ Florida High School Athletic Association, *About the FHSAA*, available at <http://www.fhsaa.org/about> (last visited Feb. 1, 2012).

² Section 1006.20(1), F.S.

³ Section 1006.20(4), F.S.

⁴ Staff of the Florida House of Representatives, *Legislative Bill Analysis for HB 7119* (2006).

⁵ Hearing before the House PreK-12 Committee, February 7, 2006.

⁶ Chapter 2006-14, L.O.F.

⁷ *Id.*; see also Office of Program Policy Analysis and Government Accountability, *Public and Private High Schools Had About the Same Number of Student Athlete Recruiting Violations*, Report No. 06-65 (Oct. 2006), available at <http://www.oppaga.state.fl.us/reports/pdf/0665rpt.pdf>.

⁸ Chapter 2006-14, L.O.F.

- Clarify the definition of recruiting;
- Require parents, students, and others to sign affidavits that explain what recruiting is and certify that they have not engaged in recruiting;
- Hire trained investigators to investigate recruiting violations;
- Modify penalties so that coaches who are found guilty of recruiting not be allowed to coach in any event, competition, game or match between FHSAA member schools;
- Adopt progressively more rigorous sanctions for multiple violations; and
- Withdraw its proposed bylaw on residency and transfer.⁹

After the Task Force report was issued, the FHSAA did amend its proposed bylaws. Those changes included affidavits and the organization began to utilize trained investigators. The FHSAA implemented, through administrative policy a very broad definition of recruiting and refused to adopt tough recruiting sanctions on coaches. While the calendar year prohibition on varsity eligibility of all transfers was reduced to the remainder of the current school year,¹⁰ the Bylaws retained the bias against student transfer, making many students ineligible when no recruitment is evidenced and exempting coaches from sanctions for recruiting. The only exceptions to ineligibility after transfer are when the student is reassigned by their School Board or the student makes a full and complete residence move.¹¹ Such move requires that no member of the student's household has remained at the former residence, regardless of child custody orders, domestic violence or other reason for the change in residence. The only exceptions to that strict rule are the death or imprisonment of a household member, the student being placed under a court-ordered guardianship,¹² or the marriage of the student.¹³

Any student who has a prior player/coach relationship with the school coach, whether at a prior school (within one year of a coach's move¹⁴) or through many American Legion, AAU or church league teams,¹⁵ is ineligible for one calendar year if the student transfers to the coach's school regardless of the reason for the transfer. This includes new ninth graders at all private schools, charter schools or any public school where the student has a right to enroll excepting the student's residence zoned school.

Students who change schools after beginning ninth grade now have to file an affidavit, under penalty of perjury, that they have not been recruited or accepted any impermissible benefit, while coaches carry no equivalent responsibility. In a case of true recruiting, the student who signs such an affidavit can risk criminal sanction if they tell the truth to a FHSAA investigator, while a coach or booster can lie, without risk of criminal sanction. Moreover, when recruitment has been determined, the student is declared ineligible for one year, regardless of whether the student has any intent to violate the rules.

Interscholastic Athletics

Present Situation

Eligible home school and charter school students may participate in interscholastic extracurricular activities at assigned public schools or public schools to which students could attend pursuant to district controlled open-enrollment policies.¹⁶ A student from a charter school may be eligible to participate in

⁹ Student Athlete Recruiting Task Force, *Final Report*, at 25-30 (Dec. 2006).

¹⁰ Bylaw 9.3.1, *FHSAA Handbook*.

¹¹ Bylaw 9.3.2.

¹² Bylaw 9.3.2.2.

¹³ Bylaw 9.3.2.3.

¹⁴ Bylaw 9.2.5.

¹⁵ Bylaw 9.3.5.2.

¹⁶ Sections 1002.41(4) and 1006.15(3)(c) and (d), F.S. "Interscholastic activities" are limited to high school athletic competitions. Section 1006.20(1), F.S. The Florida High School Athletic Association defines interscholastic contest as "any competition between organized teams of different schools in a sport recognized or sanctioned" by the FHSAA. Florida High School Athletic Association, *Interscholastic Contests*, available at <http://www.fhsaa.org/about> (last visited March 17, 2011). "Extracurricular" activities include any school-authorized or education-related activity occurring during or outside the regular instructional school day. Section 1006.15(2), F.S.

interscholastic extracurricular activities at the public school if such activity is not offered by that charter school.¹⁷ Both home school and charter school students must register with the public school their intent to participate in interscholastic extracurricular activities and are subject to the same eligibility requirements as other public school students.¹⁸

To be eligible to participate in interscholastic extracurricular activities, a student must maintain a 2.0 grade point average (GPA) in the semester prior to participation or a 2.0 cumulative GPA in specified high school courses. If a student's cumulative GPA falls below 2.0 in the specified courses, the student must execute an academic performance contract with the district school board, the FHSAA, and the student's parents. At a minimum, the contract must require the student to attend summer school to improve his or her GPA.¹⁹ A student must also maintain good conduct to remain eligible to participate in interscholastic extracurricular activities. The district school board policy governs the eligibility of a student to participate in these activities if he or she is found to have committed a felony or delinquent act.²⁰

A student attending a private middle school or high school may participate in interscholastic or intrascholastic sports at a public school that is zoned for the physical address at which the student resides if the private school where the student is enrolled is not a member of the FHSAA and does not offer an interscholastic or intrascholastic athletic program. Students attending a non-FHSAA member private school with enrollment of 125 or fewer students may participate in a public school athletic program.²¹ A private school with a student who wishes to participate in a public school athletic program must make all student records, including, but not limited to, academic, financial, disciplinary, and attendance records, available upon request of the FHSAA.²²

Effect of Proposed Changes

Currently, participation in public school interscholastic or intrascholastic sports by private school students is limited to students from non-FHSAA member private schools that have 125 or fewer students in any given year and that do not offer an interscholastic or intrascholastic program. The bill increases the number of private school students who may participate in interscholastic or intrascholastic sports by increasing the enrollment cap for non-FHSAA member private schools from 125 to 250 students. However, schools with more than 125 students more often become members of the FHSAA.²³

In addition, the bill allows students attending non-FHSAA member private schools to participate in public school interscholastic sports, even though the private school offers an interscholastic program, if the the specific sport offered at the public school is not available at the non-FHSAA member private school. The bill requires that private FHSAA member schools be authorized to accept such participants on the same basis as public schools when a private member school choses to offer such participation to the students of non-FHSAA member schools. However, because FHSAA bylaw states that a student can attend only one school at a time for purposes of interscholastic athletic eligibility,²⁴ students attending public schools and member private schools would be unable to enjoy the same right to access a particular sport that the bill extends to students at non-member private schools.

The bill also removes the requirement that a non-FHSAA member private school must make a student's financial records available to the FHSAA if the student wishes to participate in public school interscholastic sports.

¹⁷ Section 1006.15(3)(d), F.S.

¹⁸ Section 1006.15(3), F.S.

¹⁹ Sections 1006.15(3)(a)1. and 2. and 1003.43(1), F.S.

²⁰ Section 1006.15(3)(a)4., F.S.

²¹ Section 1006.20(8), F.S.

²² Section 1006.15(8)(e), F.S.

²³ Telephone interview with staff, Florida High School Athletic Association (March 18, 2011).

²⁴ Section 9.2.1.1 of Bylaw 9.2.1, *FHSAA Handbook*, available at

http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/complete_handbook_276pgs.pdf.

FHSAA Bylaws

Present Situation

The FHSAA must adopt bylaws that, unless specifically provided by statute, address athletic participation of member schools and individual student athletes.²⁵ The FHSAA must adopt bylaws that address student eligibility, residence, transfer, and recruitment.²⁶ Private schools that wish to engage in high school athletic competition are authorized to become FHSAA member schools. The FHSAA bylaws "are to be the rules by which high school athletic programs, and the students who participate in them, are governed."²⁷

The FHSAA's bylaws require member schools to comply with all bylaws, policies, and procedures.²⁸ Each member school must, as a condition of membership in the FHSAA, annually adopt the bylaws as the rules governing its interscholastic athletic programs.²⁹ The adoption of the bylaws acts as a contract between the FHSAA and the member school.³⁰ Member schools that violate the bylaws are subject to any disciplinary action determined to be appropriate by the FHSAA.³¹ In this context, FHSAA bylaws define a member school to include not just the institution, but also "its administration, faculty, athletic staff, student athletes, student body, and any other individual or group engaged in activities representing, supporting or promoting the athletic interests of the school."³² The FHSAA policies which implement the organization's bylaws bring "third parties" communicating with a student under scrutiny for recruiting even if they do not act on behalf of the school or its agents.³³

The FHSAA must also adopt bylaws prohibiting the recruitment of student athletes and establishing penalties and an appeals process for recruiting violations. The law does not prescribe the types of penalties that must be established or identify persons who must be penalized for such violations.³⁴

The FHSAA's bylaws prohibit recruitment of student athletes. The details of the FHSAA's recruiting policy are set forth in an administrative policy adopted by its board of directors.³⁵ The recruiting policy defines recruiting³⁶ and the individuals, including coaches, who may not engage in recruiting behavior,³⁷ prohibits student athlete receipt of impermissible benefits,³⁸ and establishes penalties for member schools and student athletes involved in recruiting.³⁹ "Athletic recruiting is any effort by a school employee, athletic department staff member, or representative of a school's athletic interests to pressure, urge, or entice a student to attend that school for athletic reasons."⁴⁰ The FHSAA official definition of recruiting tends to bring all communication about participation, even among students themselves, under the scrutiny of recruiting restrictions. The policies also prohibit "impermissible

²⁵ Section 1006.20(1), F.S.; *see also* Florida High School Athletic Association, *About the FHSAA*, available at <http://www.fhsaa.org/about> (last visited Jan. 27, 2012).

²⁶ Section 1006.20(2), F.S.

²⁷ Section 1006.20(1), F.S. Senior high schools, middle/junior high schools, combination schools, or home education cooperatives may be members of FHSAA. Section 3.1.1 of Bylaw 3.1, *FHSAA Handbook* Member senior high schools, middle/junior high schools, and combination schools may include traditional public schools, charter schools, private schools, and university lab schools. Section 3.2.2 of Bylaw 3.2, *FHSAA Handbook*.

²⁸ Bylaw 2.6, (compliance with rules) and s. 3.3.1(d) of Bylaw 3.3, *FHSAA Handbook* (conditions of membership), and ss. 3.51 and 3.52 of Bylaw 3.5 (obligations of membership).

²⁹ Section 3.3.1(d) of Bylaw 3.3, *FHSAA Handbook*.

³⁰ *Sult v. Gilbert*, 148 Fla. 31, 35 (1941).

³¹ *Sult*, 148 Fla. at 35; Bylaw 2.6, *FHSAA Handbook*.

³² Section 3.2.1 of Bylaw 3.2, *FHSAA Handbook*.

³³ Section 36.3.1 of Policy 36, *FHSAA Handbook*.

³⁴ Section 1006.20(2)(b), F.S.

³⁵ Bylaw 6.3, *FHSAA Handbook*; Policy 36, *FHSAA Handbook*. The law authorizes the FHSAA board of directors to adopt administrative policies, as authorized by the bylaws. Section 1006.20(4)(e)2., F.S. The administrative policy on recruiting is incorporated by reference by the bylaw. Bylaw 6.3, *FHSAA Handbook*.

³⁶ Section 36.3.2 of Policy 36, *FHSAA Handbook*.

³⁷ Sections 36.1.2. and 36.2.1.1 of Policy 36, *FHSAA Handbook*.

³⁸ Section 36.4 of Policy 36, *FHSAA Handbook*.

³⁹ Section 36.8 of Policy 36, *FHSAA Handbook*.

⁴⁰ Section 36.2.1 of Policy 36, *FHSAA Handbook*.

benefits," defined as an "arrangement, assistance or benefit that is not generally available to other students in the school or their families or that is based in any way on athletic ability".⁴¹

Recruiting is also declared to be an "act of unsportsmanlike conduct."⁴² However, the FHSAA's penalties for recruiting are not consistent with those for other forms of unsportsmanlike conduct. FHSAA bylaws classify ejection from contests, violations of the alcohol and tobacco use policy, and recruiting as "unsportsmanlike conduct".⁴³ Coaches who are ejected from contests or who violate the alcohol and tobacco use policy are subject to suspension.⁴⁴ Coaches who commit recruiting violations are not subject to suspension or other direct penalty. Only member schools and student athletes are penalized for recruiting.⁴⁵

A member school may be penalized for recruiting actions taken by its employees, boosters, or other individuals closely associated with the school. Member schools are subject to the following penalties:

- Mandatory forfeiture of games or championships won in which the recruited athlete participated;
- Public reprimand;
- A minimum fine of \$2,500;
- Probation;
- Disqualification from participation in the sport in which the violation occurred; or
- Expulsion or restricted membership in FHSAA for a period of one or more years.⁴⁶

Student athletes who transfer schools after beginning ninth grade are required to sign an affidavit that they have not been recruited to participate. Student athletes who are recruited or found to have accepted impermissible benefits are ineligible for athletic competition for a period of one or more years.⁴⁷ All games played must be forfeited because of the ineligibility. Apart from waiver requests, which require admission of ineligibility, there is no allowance in the eligibility provision for the severity of the student's recruitment offense, which could involve nothing more than deciding to participate based on the encouragement of fellow students involving no impermissible benefit and no deceit.

The head coach of each varsity sport offered by a member school must certify that he or she has reviewed the FHSAA's recruiting policy, agree to comply with the policy, and agree to review the policy with the coaching staff and players.⁴⁸ Although the recruiting policy prohibits coaches from engaging in recruiting, the policy does not subject coaches found guilty of recruiting to suspension or other penalty although the FHSAA has the authority to do so.⁴⁹

Effect of Proposed Changes

The bill expressly states that any high school⁵⁰ in the state, including charter schools and virtual schools or home education cooperatives may become a member of the FHSAA and participate in the activities of the FHSAA.

The bill requires the FHSAA to adopt bylaws that regulate persons who conduct investigations on behalf of the FHSAA. The bylaws must include provisions that:

- Require the investigator to undergo level 2 background screening pursuant to s. 435.04, F.S.,⁵¹ unless the investigator:

⁴¹ Section 36.4.2 of Policy 36, *FHSAA Handbook*. The section lists specific examples; the quotation comes from a catch-all provision in subsection 36.4.2.14.

⁴² Section 6.3.1 of Bylaw 6.3, *FHSAA Handbook*.

⁴³ Section 6.3.1 of Bylaw 6.3., FHSAA; s. 30.3.1 of Policy 30, FHSAA; s. 31.1 of Policy 31, FHSAA.

⁴⁴ Section 30.3.1 of Policy 30, FHSAA; s. 31.1 of Policy 31, FHSAA.

⁴⁵ Section 36.8 of Policy 36, FHSAA.

⁴⁶ Section 36.8 of Policy 36, *FHSAA Handbook*.

⁴⁷ *Id.*

⁴⁸ Section 36.7.1 of Policy 36.7, *FHSAA Handbook*.

⁴⁹ Sections 36.1.2. and 36.2.1.1 of Policy 36 and s. 36.8 of Policy 36, *FHSAA Handbook*.

⁵⁰ High school is defined for purposes of FHSAA law, as grades 6 through 12. Section 1006.20(1), F.S.

- Proves that within the previous 5 years, they already successfully underwent a level 2 screening as part of some professional licensure requirement, having been engaged in such profession without a break in licensed service for more than 90 days, and
- Submits an affidavit of compliance with the provisions of chs. 435 and 1006, F.S.
- An investigator must carry photo identification showing their FHSAA credentials.
- In conducting investigations, an investigator:
 - Must be appointed by the Executive Director.
 - May only investigate matters assigned by the Executive Director.
 - May only conduct interviews on weekdays between the hours of 9 a.m. and 7 p.m. unless otherwise agreed to by the interviewee,
 - Must allow the parent of any student to be present during an interview.
 - May only search residences or other private areas upon the written consent of the student's parents and in the presence of the parent or a representative.
- An investigator may not be the individual who makes the actual determination that a violation has occurred.

The FHSAA must also adopt bylaws that establish sanctions for coaches who have committed major violations of the FHSAA's bylaws or policies. Major violations include, but are not limited to, knowingly allowing an ineligible student to participate in a contest representing a member school in an interscholastic contest or violations of the FHSAA's recruiting or sportsmanship policies. The bill also prescribes particular sanctions that may be placed upon coaches and that such sanctions remain in full force and effect during the term of the sanction even if the coach transfers to another member school.

A coach from a FHSAA member school must reimburse the member school assessed a financial penalty as a result of the coach's major violation before the coach is allowed to coach, participate, or attend any athletic activity sponsored by, recognized, or sanctioned by the FHSAA or another member school. The FHSAA must establish a due process procedure for sanctioned coaches consistent with the FHSAA's current appeals procedure.

Student Eligibility

Present Situation

The FHSAA must adopt bylaws that establish eligibility requirements for all students who participate in high school athletics at member schools. The bylaws governing residence and transfer must allow the student to be eligible in the school in which he or she first enrolls each school year or makes himself or herself a candidate for an athletic team by engaging in practice prior to enrolling in the school.⁵²

FHSAA bylaws governing student transfer generally allow a student to transfer to another school and remain eligible for athletics if the student moves to a new attendance area with a parent or guardian with whom the student has resided for one full calendar year. Subject to certain exceptions, a student transfer that is not accompanied by a corresponding "full and complete move"⁵³ of the parent's residence renders the student ineligible until the following school year.⁵⁴ The definition of full and complete move excludes from participation many children of divorce when their custodial parent moves but one or more other family members continue to reside at the former residence. This is especially common in a weak housing market. If there is any athletic motivation for the move, the FHSAA does

⁵¹ A Level 2 screening consists of a fingerprint-based search of FDLE and the Federal Bureau of Investigation databases for state and national criminal arrest records. Any person undergoing a Level 2 screening must not have been found guilty of any of the offenses listed in s. 435.04, F.S.

⁵² Section 1006.20(2), F.S.

⁵³ A "full and complete move" occurs when the former residence is no longer occupied by the student, all personal belongings are moved from the former residence, mail is received at the new residence, all utilities are transferred to the new residence, and driver's license, voter registration, and other forms of legal identification are changed to the new residence. Section 9.3.2.1.1 of Bylaw 9.3, *FHSAA Handbook*.

⁵⁴ Article 9.3, *2011-12 FHSAA Handbook*.

not recognize the validity of the move. Zero tolerance forfeiture is mandated for all eligibility violations, including those that are inadvertent and unknown to the coaches or administrators.

The FHSAA has a waiver policy that requires the school to pay the cost of the proceeding if the waiver is not granted. According to testimony from the FHSAA Executive Director, the costs assessed average approximately \$240.00 per appeal. The testimony indicated that approximately 2/3 of waiver requests are granted, but that may indicate that the rules are too restrictive.

The Rules & Calendar Committee received anecdotal reports of students being denied the opportunity to participate in competitive athletics because the coach: 1) moved to the same school selected by the student athlete when their former school closed, and 2) coached a non-school league sport for eighth grade athletes, and two athletes chose to attend the private school where the coach was employed. In both cases, the ineligibility hinged solely on the past participation of the player with the coach and did not involve any evidence of choosing the school for the coach or of any actual recruitment. These examples appear consistent with the actual bylaws and policies which limit eligibility of some students engaged in good faith behavior without sanctioning the coaches or schools involved.

Effect of Proposed Changes

The bill requires FHSAA residence and transfer bylaws to allow a student to be eligible in the school to which the student has transferred pursuant to approval by the district school board, thereby restricting the authority of the FHSAA to determine whether a "full and complete" move has occurred. The bylaws must also allow a public school student to transfer to a private school during the school year. However, if it is determined that a school has recruited a transfer student, the FHSAA may require the school to participate in a higher competitive division for the sport in which the student competes and pay any appropriate fine.

Due Process

Present Situation

The Bylaws of the FHSAA purport to provide due process to students, coaches, and schools in the investigation, determination, and punishment of violations.⁵⁵ A copy of the relevant Bylaws are reproduced in Appendix A. Notable in the Bylaws is a complete lack of process for an opportunity to present evidence to an unbiased individual or group making an initial determination of ineligibility or other violation of rules. Findings must be disclosed to the school or person alleged to have committed a violation.⁵⁶ When a member school accuses another school of using an ineligible player or violating other rules, a full written statement of the facts must be submitted to the Executive Director. The Executive Director must provide the accused party with a copy of the accusation and determine if the allegations warrant an investigation.⁵⁷ No other procedures are required for making the determination that a violation has occurred.

When a student is determined ineligible by their school or the Executive Director, the principal may appeal and must do so at the request of the student.⁵⁸ The student athlete, however, may not individually appeal an eligibility determination. Any violator of other rules, whether student, coach administrator or school, is entitled to appeal when "found to be in violation of the rules".⁵⁹

Beyond the right to appeal the determinations or findings made in a manner that the Bylaws do not prescribe, a school may file an "undue hardship waiver on behalf of a student".⁶⁰ However, to seek a

⁵⁵ All procedures are found in Chapter 10 of the Bylaws, *FHSAA Handbook*. See Appendix A, attached hereto.

⁵⁶ Bylaw 10.1.1, *FHSAA Handbook*.

⁵⁷ Bylaw 10.3.1.

⁵⁸ Bylaw 10.4.1.

⁵⁹ Bylaws 10.4.2, and 10.4.3.

⁶⁰ Bylaw 10.4.4.

waiver, the student and school must accept the status of ineligibility and cannot both appeal a ruling and seek a waiver in the alternative.⁶¹ The process to obtain a waiver is repeatedly called an "appeal", and the appeal process that governs requires the appellant or waiver applicant to pay the organization's cost if the appeal or waiver is denied.⁶²

The Bylaws do not set forth the burden of proof or evidentiary requirements for initial determinations of ineligibility or other violations. The Bylaws supply inconsistent provisions for evidence and burdens of proof in appeals proceedings. In one place the burden is on the appellant or applicant for waiver who must provide a brief statement of the facts supported by "any relevant documentary evidence available".⁶³ Another provision states that an appeals committee "may set aside findings of fact ... ONLY if the school shows that...the finding of the FHSAA staff is clearly not supported by evidence that is credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs."⁶⁴ Thus, the provision of evidence by the appellant may not even be considered if the FHSAA staff relied on reasonable evidence. The burden of proof on appeal is not "probably unsupported by the evidence" but "clearly not supported" (similar to a clear and convincing standard).⁶⁵ Finally, the appeals committee "can act only on the basis of the record in the case [consisting] of the notice of inquiry and/or allegations to the school, the report of the investigator and the written response by the school. The committee cannot consider information that was not available to the FHSAA staff when issuing its finding".⁶⁶ Thus, the high burden of proof on appeal can only be established on the record included in the investigator's report or a "written response" that the Bylaws do not at any point invite or guarantee.

If incomplete or inaccurate information is supplied by an appellant or waiver applicant, "sanctions provided by these bylaws shall apply".⁶⁷ This implies that the appeal or waiver request can be denied based on a mistake regardless of how meritorious the appeal or request. Similarly, when the Executive Director makes a determination of eligibility when requested by a school, a later determination that incomplete or inaccurate information was provided subjects the school to a retraction of the eligibility determination and to "such penalties as deemed appropriate" regardless of whether the inaccuracy or incompleteness would have affected the ruling.⁶⁸

The Bylaws allow, but do not require, a stay of any determination and reference of the matter "back to the FHSAA staff for review" when relevant new information is introduced in an appeal proceeding.⁶⁹ Thus, it is possible to have all relevant evidence considered, but there is no guaranteed right to such consideration at any point in the process.

The Bylaws provide for two types of appeals: appeals of "secondary cases" are heard by one of four sectional committees,⁷⁰ and appeals of "major cases" are reviewed by a statewide "Infractions Appeals Committee."⁷¹ The Bylaws do not define or distinguish "secondary" and "major" cases. Appeals from either type of panel may be made to the FHSAA Board of Directors.⁷²

The Bylaws do provide more procedure for the appeals but lack certain safeguards. In some cases, a student can be required to appear at an appeal, but the Bylaws do not state how that is communicated to the student or how much notice the student is entitled to. A student, whose eligibility is under review, or any person found to have committed an infraction, as well as any school involved, may appear at an appeal. However, when a student appears, the school must send a representative, implying a burden of

⁶¹ Bylaw 10.4.4.2

⁶² Bylaw 10.5.1.

⁶³ Bylaw 10.5.2.

⁶⁴ Bylaw 10.6.5.2.1(a).

⁶⁵ Id.

⁶⁶ Bylaw 10.6.5.2.3.

⁶⁷ Bylaw 10.5.3.

⁶⁸ Bylaw 10.5.4.

⁶⁹ Bylaw 10.6.5.2.3.1.

⁷⁰ Bylaw 10.6.5.1.1.

⁷¹ Bylaw 10.6.5.1.2.

⁷² Bylaw 10.6.5.3.

travel cost to the appeals hearing in most cases. When a student is required to appear, an attorney may not appear in lieu of the student, although a student is granted a right to counsel.⁷³

Any appeal must be "filed [in a case of the Executive Director's findings] so that it is received in the office of the FHSAA within ten business days of the receipt of the finding or notification of the imposition of penalty"⁷⁴ or within ten days of receipt "of the FHSAA staff's decision in secondary cases, or ... of the infractions report in major cases."⁷⁵ Any delay waives the appeal right. The "received in the office" aspect of these appeals petitions appears more difficult to comply with than many similar legal proceedings. There does not appear to be any requirement that the organization note the time of receipt or even acknowledge receipt of the appeal.

[See further discussion below under: III. Comments, A. Constitutional Issues, 2. Other]

Effect of Proposed Changes

The CS provides due process protections in the form of a right to notice of an investigation and a right to present evidence to an unbiased decision maker, either the Executive Director or an individual designated by the Executive Director. It also requires the provision of a *de novo* proceeding on appeal in an eligibility matter if new evidence is introduced or a full and fair hearing was not available on the initial determination. The *de novo* proceeding can be avoided if the appeals committee remands the case for a full and fair determination based on all the evidence.

The bill allows the FHSAA to choose the due process provided for enforcement proceedings in Florida's Administrative Procedures Act⁷⁶ in lieu of the due process requirements set forth in the bill.

The bill provides that ineligibility must be proven by clear and convincing evidence. It provides that contests may not be forfeited for ineligible athletes unless the coach or school had reason to know of the ineligibility and that contests forfeited for ineligible players may not exceed the number of contests that responsible coaches or other adults are prospectively suspended. In addition, the bill prohibits prospective suspension of any student's right to participate for a recruiting violation unless the student or parent falsified documents or accepted a benefit or offer of benefit that is currently defined by the FHSAA as an impermissible benefit.

The bill focuses sanctions for recruiting violations on coaches and responsible adults and not chiefly on students.

B. SECTION DIRECTORY:

Section 1. Amends s. 1006.15, F.S., relating to student standards for participating in interscholastic and intrascholastic extracurricular student activities; to authorize students attending certain private schools to participate in public school athletic programs if the private school does not offer the specific sport.

Section 2. Amends s. 1006.20, F.S., relating to athletics in public K-12 schools; to require the FHSAA to adopt bylaws governing transfer of students, penalties for recruiting violations, sanction of coaches, regulation of investigators; and new due process requirements.

Section 3. Amends s. 1012.468, F.S., relating to exceptions to certain fingerprinting and criminal history checks; to provide background screening exception for certain investigators of the FHSAA.

Section 4. Provides an effective date of July 1, 2012.

⁷³ Bylaws 10.6.3, 10.6.3.1, and 10.6.3.2.

⁷⁴ Bylaw 10.6.4.

⁷⁵ Bylaw 10.6.5.1.

⁷⁶ Sections 120.569 and 120.57, Florida Statutes.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Investigators who conduct investigations on behalf of the FHSAA are not currently required to undergo background screenings. Unless the FHSAA chooses to pay for background screening, FHSAA investigators will experience increased costs because the bill requires all investigators to undergo background screening if not screened for active professional licensure purposes within the previous 5 years. The cost of a state and federal criminal history check is \$43.25.

D. FISCAL COMMENTS:

The administrative workload associated with the maintenance of student records for eligibility, compliance, and program participation is indeterminate; however, it is not expected to have a significant fiscal impact on the school districts or the FHSAA.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not affect county or municipal governments.

2. Other:

If the process set forth in the Bylaws was a legal process adopted by a governmental entity for enforcing laws, ordinances or rule, it likely would not satisfy the minimal constitutional requirements of due process. These requirements include notice, an opportunity to be heard, the right of persons and organizations to confront witnesses against them and access to an unbiased decision maker. FHSAA representatives emphasize that athletic participation is a privilege and not a property right. But while that may prevent courts from interfering on the basis of constitutional claims of students or coaches, it does not excuse the problems created by an arbitrary and unfair process that does in fact regulate the access of student-athletes to the enjoyment of statutory rights to participate in interscholastic athletics and of professional coaches to pursue their chosen profession, most often in positions of public employment at public schools.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Some of the transfer provisions in the Committee Substitute could be better placed elsewhere in the relevant statute.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the K-20 Competitiveness Subcommittee reported proposed committee substitute for HB 1403 favorably as a committee substitute. The committee substitute differs from HB 1403 in that the committee substitute:

- Removed the establishment of a governing body for private schools athletics;
- Provided an exemption for investigators from the background screening requirement if certain conditions are met;
- Exempted investigators from the noninstructional personnel background screening requirement;
- Removed the ability of coaches to coach or volunteer for other organizations; and
- Removed the provisions specifying the allocation of fines collected by the FHSAA.

On February 20, 2012, the Rules & Calendar Committee reported CS/HB 1403 favorably with a committee substitute. The strike-all amendment adopted in that committee included the substance of the CS by the previous committee, but clarified transfer rights for private school students, midyear transfers, added to the regulation of investigators and adjusted the limitations of sanctions on students. The amendment also added significant due process requirements.

This analysis is drafted to the Rules & Calendar Committee Substitute.

Compliance and Enforcement

10.1 PENALTIES

10.1.1 General Principles. The Executive Director shall have the authority to investigate all alleged violations of this Association's Bylaws, as well as regulations, guidelines, policies or procedures established by the Board of Directors. All findings shall be disclosed to the school or person alleged to have committed a violation. The Executive Director shall have full authority to invoke one or more of the following penalties against the violating school or person:

- (a) REPRIMAND—An official letter of censure to the concerned party in regard to the offense committed which warns against further violations. This letter will be kept on file for future reference.
- (b) FINE—A monetary payment.
- (c) FORFEIT—The forfeiture of an interscholastic athletic contest.
- (d) PROBATION—Types of probation that may be imposed are as follows:
 - 1) Administrative Probation—The school is reprimanded, fined and served notice that it is in a period of warning for a minimum of one calendar year. Additional violations during this time will result in increased penalties which may include expulsion.
 - 2) Restrictive Probation—The school faces the same penalties as administrative probation, with the additional consequence of restriction from participation in championship competition in one or more sports, or other restrictions deemed appropriate by the Executive Director, for one or more calendar years.
 - 3) Suspension Probation—The school faces the same penalties as administrative probation, with the additional consequence of suspension from one or more sports for one or more calendar years.
- (e) EXPULSION—Involuntary termination of a school's membership in the Association for one or more calendar years. Any member school that competes with a currently expelled school may subject itself to expulsion from the Association for one calendar year.

10.1.1.1 Restricted Membership. The Board of Directors, instead of expulsion, may restrict one, more or all the membership privileges of the school. The school remains a member even if all of its membership privileges are restricted.

10.1.2 Reimbursement of Expenses. A member school found to have committed a violation shall pay to this Association any expenses incurred related to such violation, including, but not limited to, the costs of the investigation, attorney's fees and legal costs, and all other related costs.

10.1.3 Court Injunctions. If a member school or student, in violation of or noncompliance with any provisions of this Association's rules, competes based on an injunction or restraining order which is later voluntarily vacated, stayed or reversed, or it is determined that injunctive relief is not or was not justified, they will still be subject to the penalties listed in 10.1.1.

10.2 FORFEITURE OF CONTEST

10.2.1 General Principle. If an ineligible student is inadvertently or intentionally permitted to participate in an interscholastic athletic contest, forfeiture of the game and honors shall be automatic and mandatory.

10.2.1.1 Team or Individual Sports. In team sports, the contest and honors shall be forfeited. In individual sports, the points won by the ineligible student, individually or as the member of a relay team shall be forfeited.

10.2.1.2 Procedures. If an ineligible student is allowed to participate in an athletic contest, the principal shall notify the Executive Director the dates of the competition and provide copies of the letters of forfeiture to the opposing school(s) the student participated against.

10.2.1.3 Intentional Use of Ineligible Students. The Executive Director shall have full authority to invoke additional penalties against a member school that in his/her determination intentionally permits an ineligible student to participate.

10.3 PROTEST PROCEDURE

10.3.1 Protesting Actions of Another School. Any member school filing a protest over the eligibility of a student or the actions of a member school shall submit to the Executive Director in writing a full statement of the facts signed by the principal. The Executive Director shall provide the accused party or parties with a copy of the accusation and determine if the allegations warrant an investigation.

10.3.2 Protesting Actions of Contest Officials. The decisions of contest officials shall be final and not subject to review. Member schools should file reports with the Executive Director of unsatisfactory performance by contest officials which may be due to alleged lack of knowledge of the rules, errors in judgment or improper conduct.

10.4 DUE PROCESS

10.4.1 Eligibility Appeals. When a student is determined to be ineligible by a member school and/or is ruled ineligible by the Executive Director, the member school principal may appeal the ruling of the Executive Director if he/she or the student takes issue with it, and must do so at the student's request.

10.4.2 Rules Violations Appeals. Any student athlete, coach or member school who is found to be in violation of the rules of this Association may appeal the finding of the Executive Director if he/she takes issue with it, or may appeal the penalty imposed if he/she believes it to be too severe, and must do so at the student's request.

10.4.3 Disputes Between Member Schools Appeals. A member school principal may appeal the findings by the Executive Director which arise from a dispute between one or more member schools.

10.4.4 Undue Hardship Waivers. A member school principal may file a request for undue hardship waiver on behalf of the student when enforcement of the provision(s) which render(s) the student ineligible works an undue hardship upon the student, and must do so at the student's request.

10.4.4.1 Basic Principle. The eligibility rules of this Association are designed to promote academic achievement and to encourage students to advance with their graduating class. Unless a student exerts every reasonable effort to make up credit not earned, such effort including attendance at summer school or other alternative programs, an undue hardship request seeking a waiver of the limit of eligibility shall not be granted.

10.4.4.2 Criteria for an Undue Hardship Waiver Determination. By seeking an undue hardship waiver, the student and the member school accept the fact that the student is ineligible under the FHSAA Bylaws but are asking for a grant of waiver of those Bylaws. For the purpose of determining whether to grant or deny an undue hardship waiver the Sectional Appeals Committees and the Board of Directions shall be guided by the following criteria, other criteria contained in these Bylaws and FHSAA Policies, and their respective experience related to high school athletics.

10.4.4.2.1 Insufficient Grounds for Undue Hardship Waiver. The fact that a student is retained in a lower grade shall not be sufficient grounds for granting an undue hardship waiver if the student fails to pass the required number of courses, or is voluntarily withdrawn from school, or repeats a lower grade to gain physical, social or emotional maturity

10.4.4.2.2 Potentially Sufficient Grounds for Undue Hardship Waiver. The fact that a student is unable or desires to participate in interscholastic athletics shall not, in and of itself, be grounds for granting an undue hardship waiver request. The fact that a student is retained in a lower grade because he/she misses school for a prolonged period of time due to serious injury or illness, which must be supported by a physician's record indicating that the absence was directly and solely related to such injury or illness, or events which were beyond the control of the student and/or the parent or guardian which causes the student to miss

school for a prolonged period of time causing the student to repeat a grade, may be grounds for granting an undue hardship waiver request.

10.4.5 Waiver of Bylaws Due to Special Circumstances. The principal of a member school or his/her designee may request a waiver of any Bylaw or other regulation, guideline, policy or procedure of this Association not directly related to student eligibility when special circumstances, in the opinion of the person or entity making the appeal, call for a relief from or a modification to the effects of the rule.

10.4.6 Appeals of Executive Director's Findings. The principal of a member school or his/her designee, or any other individual, who is found to be in violation of the rules of this Association by the Executive Director, whether or not such finding results in the imposition of penalty, may appeal the finding of the Executive Director if he/she takes issue with it, or may appeal the penalty imposed, if any, if he/she, while not disagreeing with the finding, believes the penalty to be too severe.

10.4.7 No Appeal or Waiver of Florida Statutes. The Sectional Appeals Committee, the Infraction Appeals Committee and the Board of Directors do not have the authority to waive a provision of the Florida Statutes including but not limited to:

- (a) Mandatory GPA requirements;
- (b) Definition of a grading period as being one semester;
- (c) Mandatory grading scale;
- (d) Authority of school districts to establish codes of conduct by which students must abide to be eligible to participate in interscholastic competition;
- (e) Home Education guidelines;
- (f) Charter School guidelines.

10.5 GENERAL PRINCIPLES FOR APPEALS AND REQUESTS FOR WAIVER

10.5.1 Cost of Appeal. The cost of an appeal, if any, including the Association's attorney fees, shall be borne by the person or entity making the appeal if the finding of the Executive Director or the penalty imposed is upheld.

10.5.2 Burden Of Proof. The burden of showing error in the determination of ineligibility or in showing why a waiver should be granted is on the person or entity making the appeal. Such proof shall include, as a minimum, a brief statement of the facts involved, the specific bylaw(s) or policy(s) involved and argument in support of the relief requested. This statement shall be supported by any relevant documentary evidence available.

10.5.3 Complete and Accurate Submissions. The person or entity making the appeal must ensure that the information submitted to support such appeal or request is complete and accurate. In the event a decision by the Sectional Appeals Committee or the Board of Directors was made based on incomplete or inaccurate information, the decision shall be withdrawn and the sanctions provided by these bylaws shall apply.

10.5.4 Request for Eligibility Ruling. Each member school principal or his/her designee having reasonable cause to believe that a student is ineligible to participate in, or continue to participate in, interscholastic athletic competition under any provision of these regulations may request an official ruling on the student's eligibility from the Executive Director on a form to be provided by this Association, and must do so at the student's request. The Executive Director or his/her designee shall issue a ruling based on the statement of facts and any other information available to the Executive Director, which additional information shall be included in the official ruling related to the student's eligibility. In the event the Executive Director later determines that incomplete or inaccurate information has been included in the statement supporting the member schools request for an eligibility ruling, the ruling may be retracted and such penalties as deemed appropriate may be imposed by the Executive Director against the member school requesting the ruling.

10.5.5 Initial Appeals or Requests for Waivers. Initial appeals or requests for waivers will be heard by the Sectional Appeals Committee.

10.5.6 Subsequent Appeals or Requests for Waivers. Unfavorable decision found on the initial appeal or request for waiver rendered by the Sectional Appeals Committee will be heard by:

- (a) The Sectional Appeals Committee, provided new information is provided, or
- (b) The Board of Directors, which will not hear any evidence that was not presented to the Sectional Appeals Committee, and decisions will be final.

10.5.7 Appeals of Major Violations. Appeals of major violations will be heard by the Infraction Appeals Committee. Decisions of the Infraction Appeals Committee can be appealed to the Board of Directors. Decisions by the Board of Directors will be final.

10.5.7.1 Infraction Appeals Committee.

10.5.7.1.1 Purpose of Committee. The Board of Directors appoints an Infractions Appeals Committee to hear and act upon appeals of schools found to have committed major violations.

10.5.7.1.2 Composition of Committee. The committee is composed of five members as follows:

- (a) One public school member, who must be a school-based administrator;
- (b) One public school member, who must be either a school-based administrator or a district-level administrator;
- (c) One private school member, who must be a school-based administrator;
- (d) One private school member, who must be either a school-based administrator or a regional or state-level administrator in a private school accrediting organization that is recognized by the FHSAA; and
- (e) One attorney who within the last five years has been a member in good standing of the Florida Bar or the bar of any other state in the union, and who cannot be connected with any member school, public school district or private school accrediting organization, or represent student-athletes, coaches or athletic directors in any manner.

10.5.7.1.2.1 Restrictions on Appointments. No member of the Board of Directors or any Sectional Appeals Committee can serve on the Infractions Appeals Committee. The two public school members cannot be from the same public school district. The two private school members cannot be from the same private school accrediting organization. Otherwise, there are no restrictions on who may be appointed to the committee.

10.5.7.1.2.2 Quorum and Alternate Members. A quorum of the committee is four members. The Board of Directors will designate alternates the Executive Director may call as substitutes to ensure a quorum when regular committee members are absent.

10.5.7.1.2.3 Attorney Serves as Committee Chair. The attorney member chairs the committee, and is the only committee member who may have contact with the FHSAA staff regarding any case. The committee elects from among its remaining four members a vice chair who presides when the chair is absent or unable to act.

10.5.7.1.3 Term of Service. A member serves a term of three years, except as stipulated in paragraph 10.5.7.1.3.1 below. A member may be reappointed to a second term, but cannot serve more than six years on the committee.

10.5.7.1.3.1 Initial Terms of Service to Establish Rotation. To ensure that the terms of all members of the committee do not expire at the same time, each member initially appointed to the committee will serve the following initial terms of service:

- (a) The attorney will serve an initial term of five years and may be reappointed to a second term of three years;

- (b) One of the public school administrators and one of the private school administrators, selected at random by the Board of Directors, will serve an initial term of four years and may be reappointed to a second term of three years; and
- (c) The remaining public school administrator and private school administrator will serve an initial term of three years and may be reappointed to a second term of three years.

10.5.7.1.4 Authority and Duties of Committee. The committee:

- (a) Hears and acts upon appeals of schools found to have committed major violations; or
- (b) Hears and acts on appeals arising from a situation involving or affecting member schools in more than one administrative section; or
- (c) Hears and acts on requests of waiver of a rule that, if granted, would affect member schools in more than one administrative section; or
- (d) Makes recommendations to the Board of Directors and FHSAA staff relative to the formulation and revision of FHSAA enforcement policies and procedures.

10.5.7.1.5 Committee to Meet as Needed. The committee meets as needed upon call of the chair in consultation with the Executive Director.

10.5.8 Emergency Hearings. The President of the Association may conduct an emergency meeting of the Board of Directors by telephone conference call if, and only if, a decision made by the Executive Director or a Sectional Appeals Committee would eliminate a school, in a team sport, or an individual, in an individual sport, from a State Championship Series contest before the next meeting of the Board of Directors. The President shall not conduct an emergency meeting of the Board of Directors to consider undue hardship cases, or other cases, affecting a student's eligibility unless such student's eligibility would eliminate a school, in a team sport, or the student, in an individual sport, from a State Championship Series contest before the next meeting of the Board of Directors. In the event a member school requests an emergency hearing before the Board of Directors, requesting such hearing the member school consents to the hearing being conducted by telephone conference call and agrees to pay all expense including expenses such as the cost of the telephone conference call and the costs of the stenographic recording of such hearing.

10.5.8.1 Emergency Appeals Committee.

10.5.8.1.1 Purpose of Committee. The Executive Director authorizes an Emergency Appeals Committee solely to decide those issues normally decided by the Sectional Appeals Committee or the Board of Directors in which elimination from a State Championship Series has occurred.

10.5.8.1.2 Composition of Committee. The committee will be composed of five ad hoc members as follows:

- (a) One non-attorney member from each of the four Sectional Appeals Committees; and
- (b) One attorney member from one of the four Sectional Appeals Committees. The attorney member shall chair the Emergency Appeals Committee.

10.5.8.1.3 Selection of Committee Members. When requested by the Executive Director, the Emergency Appeal Committee members will be selected as follows:

- (a) Each non-lawyer member will be designated by the Chairperson of the respective Sectional Appeals Committees; and
- (b) The attorney member, who will serve as the chair of the committee, will be designated by the Executive Director.

10.5.8.1.4 Authority and Duties of Committee. The committee:

- (a) Shall decide those issues normally decided by the Sectional Appeals Committee or the Board of Directors when a school, in team sport, or an individual, in an individual sport, would be eliminated

from a State Championship Series contest before the next meeting of the Sectional Appeals Committee or Board of Directors;

- (b) Shall not be called upon to decide undue hardship cases, or other cases, affecting a student's eligibility unless such student's eligibility would eliminate a school, in a team sport, or the student, in an individual sport, from a State Championship Series contest before the next meeting of the appropriate Sectional Appeals Committee or the Board of Directors.

10.5.8.1.5 Committee to Meet as Needed. The committee meets as needed upon call by the Executive Director.

10.5.8.1.6 Appeal of Decisions. The decision of the Emergency Appeals Committee can be appealed by the member school or the Executive Director at the next meeting of the Board of Directors.

10.6 APPEAL AND REQUEST FOR WAIVER PROCEDURES

10.6.1 Filing an Initial Appeal or Request for Waiver. An appeal or request for waiver must be filed with the Executive Director on the form(s) provided by this Association and must be accompanied by all necessary documentation. The appeal or request, including all required documentation, must be signed by the principal and received in the office of this Association not later than 5 p.m. Eastern Time on the filing dates established by the Board of Directors and printed in the FHSAA Planning Calendar. Appeals and requests received after the deadline date will not be considered at that Sectional Appeals Committee meeting, but will be placed on the agenda for the next regularly scheduled meeting. Incomplete appeals or requests for waiver will be returned to the person or entity making the appeal for an opportunity to resubmit with all the necessary information prior to the deadline, if time allows.

10.6.2 Filing an Appeal or Request for Waiver to the Board of Directors. The request for an appeal hearing before the Board of Directors must be made in writing to the Executive Director, must be signed by the member school principal or his/her designee and must be received in the office of this Association within five (5) business days following the date of the Sectional Appeals Committee meeting or the Infraction Appeals Committee meeting. Failure to file a request for an appeal hearing before the Board of Directors within the five (5) business days following the date of the Sectional Appeals Committee meeting or the Infraction Appeals Committee meeting shall be deemed a waiver of the right of an appeal as granted herein.

10.6.3 Appearances Before Sectional Appeals Committee, Infraction Appeals Committee, Emergency Appeals Committee and/or Board of Directors. The person or entity making the appeal has the opportunity to appear before the Sectional Appeals Committee, Infraction Appeals Committee, Emergency Appeals Committee and/or the Board of Directors if he/she so chooses. The person or entity making the appeal must give notice of their choice to appear at the time the appeal or request for waiver is filed. Appearance by the student and a school representative is mandatory for an appeal or request for undue hardship waiver involving age, limit of eligibility and unsportsmanlike conduct provisions when heard by the Sectional Appeals Committee, and is optional when heard by the Board of Directors.

10.6.3.1 Procedure for Appearance. A person or entity making the appeal who is required, or who chooses, to appear before the Sectional Appeals Committee, Infraction Appeals Committee and/or the Board of Directors will be assigned a time for the appearance. A twenty (20)-minute block will be allotted for each case involving an appearance.

10.6.3.2 Student Appearance. A student who is required, or chooses, to appear before the Sectional Appeals Committee, Infraction Appeals Committee and/or the Board of Directors must be accompanied by a school representative and may be accompanied by his/her parent(s) or other individuals with whom he/she lives. The school representative who is required to accompany the student must be a full-time employee of the school and must be identified on the form at the time of filing. The student may be represented by an attorney. Such representation will not excuse the appearance of a student when that appearance is required.

10.6.4 Appeals of Executive Director's Findings. To appeal the finding of the Executive Director, the appeal must be filed so that it is received in the office of this Association within ten (10) business days of the receipt of the Executive Director's finding and/or notification of the imposition of penalty. Failure to file an appeal so that it is received in the office of this Association within the ten (10) business days allowed shall be deemed a waiver of the right to appeal as granted herein.

10.6.5 Infraction Appeals Committee Appeals Procedure.

10.6.5.1 Written Notice of Appeal. To be considered by the appropriate appeals committee, the school's written notice of appeal of the findings of fact or the penalty imposed, or both, must be received in the FHSAA Office not later than 10 business days from the date that the school receives the FHSAA staff's decision in secondary cases, or confirms its receipt of the infractions report in major cases. The notice of appeal must indicate whether the school will submit its appeal in writing only or whether it will appear before the appeals committee at the time the appeal is considered. The school must submit supporting information for its appeal, if any, to the FHSAA Office by the deadline established by the FHSAA.

10.6.5.1.1 Appeal of Secondary Violations. Sectional Appeals Committees hear and act on appeals of secondary cases.

10.6.5.1.2 Appeal of Major Violations. The Infractions Appeals Committee hears and acts on appeals of major cases.

10.6.5.2 Basis for Granting an Appeal.

10.6.5.2.1 Appeal of Findings. An appeals committee may set aside findings of fact and violations arrived at ONLY if the school shows that:

- (a) The finding of the FHSAA staff is clearly not supported by evidence that is credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs;
- (b) The school's actions do not constitute a violation of FHSAA rules; or
- (c) A procedural error affected the reliability of the information that was used to support the FHSAA staff's finding. In this case, the school must demonstrate how it contends the staff was in error.

10.6.5.2.2 Appeal of Penalties. An appeals committee may set aside a penalty imposed by the FHSAA staff if the appeals committee determines that the penalty is excessive or inappropriate based on all the evidence and circumstances. Only the Board of Directors may modify a penalty imposed by this Association.

10.6.5.2.3 Committee Acts on Basis of Record in Case. An appeals committee can act only on the basis of the record in the case. This record consists of the notice of inquiry and/or allegations to the school, the report of the investigator and the written response by the school. The committee cannot consider information that was not available to the FHSAA staff when issuing its finding and imposing the penalty.

10.6.5.2.3.1 New Evidence. The appeals committee may stay an appeal when new information is introduced and refer the case back to the FHSAA staff for review if the committee concludes that:

- (a) The new information was not available, and through the exercise of reasonable due diligence could not have been available, at the time the FHSAA staff issued its finding; and
- (b) The new information is demonstrably relevant to the findings of the staff.

10.6.5.3 Appeal of Unfavorable Decision by Appeals Committee. A school that is unsuccessful in its appeal to the Sectional Appeals Committee or Infractions Appeals Committee may appeal the committee's decision to the FHSAA Board of Directors. The school's written notice of appeal of the committee's decision must be received in the FHSAA Office not later than five business days from the date of the hearing before the appeals committee. The notice of appeal must indicate whether the school will submit its appeal in writing only, or whether it will appear before the Board of Directors at the time the appeal is considered.

10.6.5.3.1 Board Acts on Basis of Record in Case. The Board of Directors can act only on the basis of the record in the case. This record consists of the information that was available to the appeals committee at the time it rendered its decision. The Board of Directors may stay an appeal when new information is introduced and refer the case back to the FHSAA staff for review per the conditions of paragraph 10.6.5.2.3.1.

10.6.6 Emergency Appeals Committee Appeals Procedures.

10.6.6.1 Request for an Emergency Appeal. A request for an emergency appeal shall be filed with the Executive Director within 48 hours after the member school learns that there is a need for a decision before the matter can be considered at a regularly scheduled meeting of the Sectional Appeals Committee. Failure to file a request within 48 hours shall be deemed a waiver of the right of an emergency appeal.

10.6.6.2 Telephone Conference Call. By requesting a hearing by the Emergency Appeals Committee, the member school consents to such a hearing being conducted by telephone conference call and shall be governed by Bylaw 4.1.3.1.

10.6.6.3 Cost of Emergency Appeal. By requesting a hearing by the Emergency Appeals Committee, the member school agrees to pay all expense including expenses such as the cost of the telephone conference call and the costs of the stenographic recording of such hearing.

10.7 EMPOWERMENT

10.7.1 Sectional Appeals Committee Powers. The Sectional Appeals Committee is empowered to consider a request from member schools seeking exceptions to Bylaws and regulations, to hear undue hardship eligibility cases filed by member schools on behalf of student-athletes, and to hear appeals filed by member schools or other individuals. The decision in each case shall be by majority vote and may be appealed to the Board of Directors.

10.7.1.1 Reliance on a Sectional Appeals Committee Decision. A school that allows a student to participate in accordance with a Sectional Appeals Committee decision that is later reversed by the Board of Directors will not be subject to the penalties normally assessed a school that allows participation by an ineligible student.

10.7.2 Infraction Appeals Committee Powers. The Infraction Appeals Committee is empowered to hear and act upon appeals of schools found to have committed major violations and to make recommendations to the Board of Directors and FHSAA staff relative to the formulation and revision of FHSAA enforcement policies and procedures. The decision in each case shall be by majority vote and may be appealed to the Board of Directors.

10.7.3 Board of Directors Powers. The Board of Directors is empowered to review appeals and requests for waivers and sustain, modify or overturn the decision of the Sectional Appeals Committee, Infraction Appeals Committee and/or the Executive Director in each case that comes before it.

10.7.3.1 Finality of Ruling. The decision of the Board of Directors in each case shall be by majority vote and shall be final.

10.7.4 Executive Director's Powers.

10.7.4.1 Executive Director Initiated Reviews. The Executive Director may refer to the Board of Directors for review a decision of a Sectional Appeals Committee that directly conflicts with decisions of other Sectional Appeals Committees or of the Board of Directors on the same question or rule; or that, in the opinion of the Executive Director, is rendered in conflict with the rules of the Association or will have a great effect on the proper administration of the interscholastic athletic programs throughout the Association. The Executive Director will notify a member school in writing when a decision rendered by Sectional Appeals Committee will be referred to the Board of Directors for review.

10.7.4.2 Appeal of Infraction Appeals Committee Decisions. The Executive Director is empowered to appeal any decisions made by the Infraction Appeals Committee to the Board of Directors.

10.8 PROCEDURE IN CASES OF EXPULSION

10.8.1 Procedures. When the Executive Director believes that his/her findings in any investigation into any violation of any rule of this Association warrants the expulsion of a member school or a restriction of its membership privileges, the following procedure must be followed:

- (a) Notice. The Executive Director will notify in writing the principal of the school of the date, time and site of the Board of Directors meeting at which a hearing on the school's membership status will be conducted. The notice must state the findings of the Executive Director and must advise the principal of his/her obligation to represent his/her school at the hearing. This notice must be received by the principal of the school not fewer than 10 business days in advance of the date of the hearing.
- (b) Hearings. During the hearing before the Board of Directors, the school may have an attorney present, may present witnesses, testimony, and any other relevant evidence or information for consideration by the Board of Directors. The Executive Director may also present witnesses, testimony, and any other relevant evidence or information for consideration by the Board of Directors.
- (c) Final Decision. Following the presentation of evidence and arguments, the Board of Directors will render its decision by majority vote. The Board of Directors is empowered to sustain, modify or reject the findings and recommendation of the Executive Director. The decision of the Board of Directors will be final.

10.8.2 Applying for Reinstatement. A school that has been expelled or has had its membership privileges restricted for a period of one or more calendar years may apply for readmission or reinstatement of its membership privileges after a period of one calendar year and then yearly thereafter. The principal of the school must notify the Executive Director in writing that he/she intends to apply for readmission or reinstatement and request to be placed on the agenda for the next regularly scheduled meeting of the Board of Directors. The principal will make a verbal appeal for readmission or reinstatement before the Board of Directors at that meeting. A school that has been expelled or has had its membership privileges restricted may be readmitted or have its membership privileges reinstated only upon approval by a majority vote of the Board of Directors.

10.9 COMPLIANCE WITH DECISIONS

The administrative decisions of the Board of Directors, Infraction Appeals Committee, Sectional Appeals Committee and Executive Director shall be accepted in good faith by all member schools. The principal of any member school who, by any act or attitude, shall refuse to accept, or shall hold in contempt or derision, or shall permit or acquiesce in such contempt or derision on the part of any group or individual associated with his/her school, shall subject his/her school to expulsion from this Association. These provisions are not to be construed as preventing the principal of a member school from exercising his/her school's right to due process by appealing decisions of the Executive Director to the Sectional Appeals Committee, Infraction Appeals Committee and/or the Board of Directors.