



# Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

Author: Allison Schoeppner, Research Analyst  
Reviewers: John Rau, Division Chief  
Hannah Wann, Research and Drafting Supervisor

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## Interscholastic Athletics

Nearly 340,000 high school students participate in interscholastic athletics in Ohio, ranking Ohio fourth in the nation in participation.<sup>1</sup>

State law authorizes school districts to implement athletic programs and addresses some aspects of interscholastic athletics, such as the participation of nonenrolled students in district athletic programs, international student participation, and protocols and safeguards for some sports-related injuries. Nevertheless, interscholastic athletics are regulated largely by schools and school districts and the private Ohio High School Athletic Association (OHSAA).

Federal law generally does not regulate interscholastic athletics. However, federal law does address equal access to opportunities for students with disabilities and female students and requires equal treatment in sports.

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<sup>1</sup> National Federation of State High School Associations, “2018-2019 High School Athletics Participation Survey”: <https://www.nfhs.org/sports-resource-content/high-school-participation-survey-archive/>.

## Privilege, not a right

Based on the statutory law and on court decisions, participation in interscholastic athletics is a privilege and not a right. Ohio courts have held that “participation in interscholastic athletics in and of itself has never been held to be a constitutionally protected civil right.”<sup>2</sup> Therefore, school boards and athletic associations have the authority to regulate interscholastic athletics and to establish program and eligibility requirements, so long as the regulations and requirements comply with state and federal law.

## State law

As a general matter, the management and control of each school district is vested in a district board of education, with the superintendent being the executive officer for the board.<sup>3</sup> School boards have the power to regulate athletic programs, including establishing eligibility requirements. On the other hand, the General Assembly has enacted a few state laws regarding interscholastic athletics, such as affording opportunities for nonenrolled students to participate in athletics under certain circumstances and requiring concussion and cardiac arrest protocols for schools, coaches, and sports officials. The extent of the General Assembly’s policymaking is summarized in a table in the **Appendix** below.

## Ohio High School Athletic Association

The Ohio High School Athletic Association (OHSAA) regulates and administers competition for grades 7 through 12. Founded in 1907, it is a voluntary, unincorporated, not-for-profit association of public and private schools that is governed by its own constitution and bylaws. The OHSAA is managed by a Board of Directors and employs a staff for its day-to-day operations.

### Membership in OHSAA

For the 2019-2020 school year, OHSAA had approximately 816 member high schools and 760 member middle schools.<sup>4</sup> Membership is voluntary and “open to any school with any combination of grades seven through twelve” as long as it is chartered by the Department of Education or operates in accordance with the Department’s minimum standards for nonchartered schools. This includes school districts, community schools, STEM schools, and private schools. The school must also have “conformed with all bylaws and regulations of the OHSAA for a minimum period of one year immediately prior to the date of application.” In addition, the school must have “sponsored at least two varsity ‘recognized sports’ . . . per sport season in the school year immediately prior to becoming a member” and must intend to continue at this minimum sponsorship level, including participation in OHSAA tournaments.<sup>5</sup> Membership in the OHSAA must be renewed annually.

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<sup>2</sup> *Menke v. Ohio High School Athletic Association*, 2 Ohio App.3d 244, 245 (1981); see also *Nelson v. Ohio High Sch. Ath. Ass’n*, 2018-Ohio-4169 and *Paige v. Ohio High Sch. Ath. Ass’n*, 2013-Ohio-4713.

<sup>3</sup> R.C. 3313.47 and 3319.01.

<sup>4</sup> OHSAA 2019-2020 Handbook: <https://www.ohsaa.org/Portals/0/SchoolResources/Handbook.pdf>.

<sup>5</sup> OHSAA Constitution, Article 3.

## Student eligibility under OHSAA

One set of OHSAA rules that receives much attention concerns the athletic eligibility of students. Therefore, OHSAA includes an “Eligibility Resource Center” on its website that is available to the public. The resource center includes nine individual resource centers that pertain to aspects of student eligibility: transfers, age limitations, enrollment and attendance, scholarship, conduct/character/discipline, residence, international and exchange students, recruiting, and amateur status.<sup>6</sup>

Generally, the OHSAA rules require that:

1. The student and student’s parent reside in Ohio.
2. The student is enrolled in and attending the school sponsoring the team.
3. A 7<sup>th</sup> or 8<sup>th</sup> grade student may not turn age 15 before August 1 in the ensuing school year.
4. A high school student is under age 20.
5. A 7<sup>th</sup> or 8<sup>th</sup> grade student participates for no more than four semesters at the 7<sup>th</sup> and 8<sup>th</sup> grade levels.
6. A high school student is enrolled in high school for no more than eight semesters.
7. The student receives passing grades in at least five one-credit courses in the immediately preceding grading period.
8. The student maintains amateur status.
9. The student does not participate in mandatory open gyms or conditioning outside of the sport’s prescribed season.
10. The student has a physical examination each year and the examination is on file at the school.
11. If the student transfers schools, the student fulfills the applicable requirements, depending on the type of transfer, which may include not participating in contests for a portion of the season.<sup>7</sup>

**Exceptions and appeals.** The OHSAA website also includes the exceptions to each bylaw. To maintain athletic eligibility under an exception, the student must submit a form or documentation showing compliance with the exception. For many cases, the OHSAA Commissioner’s Office retains the power to grant or deny athletic eligibility, in accordance with OHSAA rules. Decisions by the Commissioner’s Office may be appealed to the OHSAA Appeals Panel.

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<sup>6</sup> The “Eligibility Resource Center” can be accessed through OHSAA’s website at <https://www.ohsaa.org/> under “Eligibility.”

<sup>7</sup> OHSAA Bylaw 4 – Student Eligibility. Also see “Eligibility Guide for Participation in High School Athletics: 2020-2021 Edition,” OHSAA, May 26, 2020: <https://ohsaaweb.blob.core.windows.net/files/Eligibility/OtherEligibilityDocs/EligibilityGuideHS.pdf>.

**Compliance.** All OHSAA rules must comply with state law, including those related to athletic eligibility. OHSAA's constitution and the bylaws themselves specify that they must comply with Ohio law, and the Board has the authority to immediately change a bylaw or part of the constitution as necessary. If there is a discrepancy between state law and OHSAA rules, state law prevails.

### **Transgender athlete policy**

In December 2018, the OHSAA released a policy statement regarding transgender student-athlete participation in interscholastic athletics, establishing the process by which transgender students may participate in events or competition regulated by OHSAA.

First, a transgender student or the parent of a transgender student must contact the school administrator or athletic director indicating that the student has a consistent gender identity different than the gender assigned at birth, listed on the student's school registration records or as listed on the state birth record, and that the student desires to participate in activities in a manner consistent with the student's gender identity.<sup>8</sup>

If the student is a transgender female, OHSAA permits the student to participate on a boys' team at any time. However, in order to participate in a girl's sport or to be on a girls' team, the student must either have completed at least one year of gender-transition related hormone treatment or, using medical evidence, demonstrate that the student does not have physical or physiological advantages over "genetic females of the same age group."

A transgender male may participate on a boys' team under OHSAA policy if the student has not yet begun taking testosterone for purposes of transitioning gender. However, if a transgender male has begun testosterone treatments, he must submit medical evidence that: (1) his muscle mass, developed through testosterone treatment, does not exceed what would be "typical of an adolescent genetic boy," (2) he has not started hormone treatment or, if he has, the testosterone treatment does not cause excess hormone levels, and (3) his hormonal levels are monitored by a physician every three to six months.<sup>9</sup>

The policy also includes a multilayered appeal process.

### **Policy on religious headwear**

In December 2019, OHSAA released guidance regarding religious headwear stating that if a head coach represents to the referee in advance of the start of a competition that a player wishes not to expose his or her uncovered head, the referee must approve a covering or wrap, provided that:

1. It does not "fundamentally alter the sport";
2. It is not abrasive, hard, or dangerous to another participant;
3. It is not attached in such a way that it is likely to come off during play; and

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<sup>8</sup> <https://www.ohsaa.org/Portals/0/Eligibility/OtherEligibilityDocs/TransgenderPolicy.pdf>.

<sup>9</sup> OHSAA Transgender Policy.

4. It is not “deemed” to be unsporting or offensive.<sup>10</sup>

The regulation also states that, for other exceptions not addressed above, school administrators and head coaches must contact the OHSAA sport administrator via email well in advance of the competition date to discuss whether a waiver is available.

### **Cancellation of the 2020 spring athletic season**

On April 21, 2020, OHSAA announced that, due to the declared pandemic and global health emergency related to the outbreak of COVID-19 and the statewide closure of school facilities, the spring athletic season would be canceled for the 2019-2020 school year.

Coaches and school administrators were encouraged to have nonmandatory electronic and online communications with their student athletes. The closure of school facilities includes all athletic facilities for any interscholastic training, practice, or competition.<sup>11</sup>

### **Rights of athletes under federal law**

While participation in interscholastic athletics is a privilege and not a protected right, equal treatment in sports is. Federal legislation addresses equal access to opportunities for students with disabilities and female students.

#### **Students with disabilities**

The federal Individuals with Disabilities Education Act (IDEA) entitles all students with disabilities to a free and appropriate public education.<sup>12</sup> This entitlement also encompasses extracurricular activities. Under IDEA, each public school must “provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.” These “nonacademic and extracurricular services” may include athletics.<sup>13</sup>

Section 504 of the federal Rehabilitation Act of 1973 prohibits the exclusion of an individual with a disability from participation under any federally funded activity.<sup>14</sup> The Act directs school districts to provide students with disabilities access to all opportunities and services available to their nondisabled peers, including extracurricular activities such as athletics. Access to an opportunity, however, does not mean a guarantee for participation in an activity.

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<sup>10</sup> OHSAA. Head Decorations and Headwear Approved by Board of Directors December 5, 2019, as part of General Sports Regulation 17 – Athletic Uniforms.

<sup>11</sup> OHSAA News Release, cancellation of spring season, April 21, 2020: <https://www.ohsaa.org/news-media/articles/ohsaa-cancels-spring-sports-as-school-facilities-to-remain-closed>.

<sup>12</sup> 20 United States Code (U.S.C.) 1400 *et seq.*

<sup>13</sup> 34 Code of Federal Regulations 300.107.

<sup>14</sup> Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

## Female students; Title IX

Title IX of the federal Education Amendments of 1972 protects against gender discrimination under any school program or activity that receives federal assistance.<sup>15</sup> It applies to all schools receiving federal assistance, including public schools, chartered nonpublic schools, and most colleges and universities. It is enforced by the U.S. Department of Education through its Office for Civil Rights (OCR). Two areas are examined to determine compliance with equal access to athletics under Title IX: participation and treatment.

**Participation.** OCR uses three “tests” to determine equality of participation. A school need comply only with one of the three. According to the OCR’s “Title IX Resource Guide,” these tests are:

1. Whether participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments;
2. Where the members of one sex have been and are underrepresented among athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex;
3. Where the members of one sex are underrepresented among athletes, and the institution cannot show a history and continuing practice of program expansion, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.<sup>16</sup>

**Treatment.** Under Title IX, female athletes should receive the same advantages and access provided to male teams. In weighing equal treatment of athletes, the OCR considers several different categories, which include provision of equipment and facilities, interest accommodation, and scheduling of games and practices. However, Title IX does not require a “tit-for-tat” system, but instead a system where an advantage or favorable treatment is not concentrated on boys’ athletics. For example, the amount of funding girls’ sports receive does not necessarily have to equal the amount boys’ sports receive. The Women’s Sports Foundation explains that “the only dollar for dollar expenditure requirement is in the athletic financial assistance area, where schools are required to spend dollars proportional to participation rates.”<sup>17</sup>

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<sup>15</sup> 20 U.S.C. 1681.

<sup>16</sup> “Title IX Resource Guide,” U.S. Department of Education, Office for Civil Rights, April 2015.

<sup>17</sup> “What is Title IX?” Women’s Sports Foundation, September 2019. This article can be accessed at the Women’s Sports Foundation website at <https://www.womenssportsfoundation.org/advocacy/what-is-title-ix/>.

## Appendix

State Statutes Addressing Interscholastic Athletics	
R.C. Section	Description of Authority
3109.78	Prohibits a person from creating a power of attorney or executing a caretaker authorization affidavit for the purpose of enrolling the child in a school or school district so that the child may participate in the school's or district's academic or interscholastic athletics programs.
3301.60	Includes Ohio in the Interstate Compact on Educational Opportunity for Military Children to remove barriers imposed on children of military families by facilitating the qualification and eligibility for enrollment, including participation in interscholastic athletics.
3313.20 and 3313.47	Authorizes boards of education to manage and control district schools and to adopt reasonable rules for their governance.
3313.53	Permits boards of education to establish extracurricular programs, including athletics.
3313.535	Requires boards of education to establish a minimum grade point average (GPA) as a condition for participation in interscholastic athletics. <sup>18</sup>
3313.537	Entitles students who are district residents, but who attend community schools or STEM schools, to participate in interscholastic athletics at the district school to which the student would have been assigned.
3313.538	Prohibits a student who attends school in Ohio from being denied the opportunity to participate in interscholastic athletics solely because the student's parents do not reside in the state, so long as the student resides in Ohio with a specified guardian or relative that has legal or temporary custody.
3313.539, 3707.511, 3707.52, and 3707.521	Requires schools to provide students and parents with information on head injuries; requires coaches and referees of interscholastic athletics at all public and private schools to remove from practice or competition an athlete exhibiting signs, symptoms, or behaviors consistent with a concussion or head injury; and prohibits removed athletes from returning to practice or

<sup>18</sup> OHSAA also imposes academic eligibility standards.

State Statutes Addressing Interscholastic Athletics	
R.C. Section	Description of Authority
	competition until the athlete has been assessed and cleared for return by a statutorily authorized licensed health care professional.
3313.5310, 3314.145, 3326.29, 3707.58, and 3707.59	Requires coaches at public and private schools to remove from participation an athlete exhibiting syncope or fainting; requires coaches to annually complete a sudden cardiac arrest training course; and prohibits students from participating if predisposed, known to have experienced symptoms, or removed from participation due to symptoms until cleared by a statutorily authorized licensed health care professional.
3313.5311	Entitles students who attend a private school to participate in interscholastic athletics at the district school to which the student would have been assigned or, under specified circumstances, the district in which the nonpublic school is located, if the private school does not offer that athletic activity.
3313.5312	Entitles students who are district residents, but who are home schooled, to participate in interscholastic athletics at the district school to which the student would have been assigned.
3313.5314	Prohibits students from being denied participation in interscholastic athletics solely due to the student's participation in the College Credit Plus (CCP) program.
3313.5315	Permits any international student who attends an Ohio elementary or secondary school to participate in interscholastic athletics at that school on the same basis as students who are Ohio residents if the student holds an F-1 U.S. visa. <sup>19</sup> The student cannot be denied the opportunity to participate in interscholastic athletics solely because the student's parents do not reside in this state.
3313.5316	Requires a school district, interscholastic conference, or organization that regulates interscholastic athletics to have the same transfer rules for public and

<sup>19</sup> An F-1 visa or academic student visa is a nonimmigrant visa that permits an individual to enter the U.S. as a full-time student in a degree, diploma, or certificate program at an accredited college, university, seminary, conservatory, elementary or high school, or other academic institution or in a language training program. <https://www.uscis.gov/working-united-states/students-and-exchange-visitors/students-and-employment>.

<b>State Statutes Addressing Interscholastic Athletics</b>	
R.C. Section	Description of Authority
	nonpublic schools and prohibits the creation of rules, bylaws, or other regulations to the contrary.
3313.603(L)	Permits schools to adopt a policy excusing high school students who participate in interscholastic athletics, for at least two full seasons, from the physical education requirement for graduation.
3313.64(F)(6) and (7)	Entitles students to attend a school district other than the one in which the parent resides if the parent is having a home built or is waiting to close a mortgage, and to participate in interscholastic athletics if the board of education of the former district agrees.
3313.64(F)(12)	Permits a student to attend a school district other than the one in which the parent resides if both districts agree that the purpose is to protect the student's physical or mental well-being or to deal with other extenuating circumstances, and requires that the student be allowed to participate in all student activities, including interscholastic athletics.
3313.664	Authorizes boards of education to adopt policies that prohibit a student from participating in any or all extracurricular activities.
3313.752	Requires boards of education to post anabolic steroid warnings in locker rooms of all school buildings with students above grade 6.
3313.97, 3313.98, 3313.983, 3314.06, and 3326.10	Prohibits most school districts for purposes of open enrollment, and all community schools and STEM schools, from limiting admission to students on the basis of athletic ability.
3313.982	Permits a school district to limit admission of open enrollment students on the basis of athletic ability only if (1) the district was operating under that policy before October 1, 1989, or (2) the district submits a plan to the State Board of Education to operate under that policy and receives the State Board's approval.
3315.062	Authorizes district boards to spend up to 0.5% of their annual operating budget for student activities; requires that receipts of a student activity program exceeding \$50 be deposited in a student activity fund; and allows boards to

State Statutes Addressing Interscholastic Athletics	
R.C. Section	Description of Authority
	purchase accident insurance or establish a self-insurance plan for student athletes.
3319.303	Requires individuals to obtain a pupil-activity program permit issued by the State Board in order to coach or supervise interscholastic athletics. In order to obtain or renew a permit, individuals must complete training on head injuries and concussions.
3321.041	Requires school districts to count up to 24 hours of absences as excused absences per school year, if a student is traveling out of the state to participate in interscholastic athletics. Students still must complete classroom assignments that were missed during that period.