

## POLICIES IN CONFLICT: OPEN ENROLLMENT AND STUDENT ATHLETES

UHSAA policies conflict in letter and in spirit with Utah’s open-enrollment law. It’s time to correct this inconsistency.

THERE ARE MANY  
REASONABLE ARGUMENTS  
TO STANDARDIZE EDUCATION  
PRACTICES AND PROCESSES  
BUT VERY FEW GOOD  
REASONS TO STANDARDIZE  
CHILDREN

### EXECUTIVE SUMMARY

The Utah High School Activities Association (UHSAA) is a legal and administrative enigma – it is a private organization with governmental powers. As a private entity, the UHSAA is obligated to serve its dues-paying member schools, and as a “state actor,” as the United States Supreme Court has defined such associations, it also has a duty to serve the people, particularly student-athletes and their families.

Both the Utah State Legislature, through its Office of the Legislative Auditor General, and the Sutherland Institute have highlighted problems resulting from the UHSAA’s contradictory roles and have offered solutions to resolve them. This Sutherland analysis is one more attempt to bring understanding to an issue that generates unnecessary conflict for schools, parents, and student-athletes.

Sutherland encourages the State Legislature to correct one of many unintended consequences of this inconsistency in the law – conflict between Utah’s “open enrollment” statute and subjective administrative rules governing the transfers and eligibility of student-athletes.

Open enrollment gives parents the opportunity to enroll their children in any of Utah’s public schools that have space available. This law gives parents flexibility to choose a school that provides what the parents regard as experience best suited to their children’s unique needs and interests.

Under current UHSAA rules, when a student-athlete transfers from one high school to another, he or she loses twelve months of athletic eligibility if

the UHSAA understands that the student intends to participate in athletics at the new school. This policy discourages parents from transferring their children to the school that will provide them the best overall high school experience available.

The process used to determine a student's athletic eligibility is unfair to students and parents because it is subjective, inconsistent, and complex. In trying to promote its brand of fairness, the UHSAA pits students and parents against coaches and school administrators, creating a culture of mistrust, and producing outcomes more favorable to schools than to student-athletes and their families. The UHSAA should abandon attempts to discover intent, simplify the transfer process, and provide parents with more avenues to influence transfer and eligibility rules.

For immediate action by the State Legislature, Sutherland recommends a new statutory "transfer window" with mid-year and exigent-circumstance exceptions. This change is necessary to conform student-athlete transfer policy with state open-enrollment law. Sutherland recommends creating:

- a. **A transfer window.** Any student can transfer for any reason to any open-enrollment school from June 15 to August 15 each year without losing athletic eligibility. This recognizes the uniqueness of each student and family and permits parents to transfer their student to the school that provides the best overall educational experience for their children.
- b. **A mid-year transfer exception.** Normal family circumstances may require a student to move from one school boundary to another in the middle of a school year (e.g., families move, parents separate or divorce, legal guardians are ap-

pointed). A mid-year transfer exception takes into consideration normal family circumstances without jeopardizing a student-athlete. This exception is subject to approval of the UHSAA based on *prima facie* application information (i.e., without questioning the circumstances described in the application, but with authority to verify those circumstances).

- c. **An exigent circumstances exception.** When exigent circumstances require a mid-year transfer, the UHSAA can grant continued eligibility at the new school. Circumstances that may qualify are already defined in state policy. For instance, if there is a "persistently dangerous school," a "safety emergency," or if a coach uses alcohol, tobacco, violence, improper touching, or profane language.<sup>1</sup> Again, the UHSAA would review an application under these circumstances, considering first the welfare of a student and not prejudicing the transfer because the student is also an athlete.

Under this policy recommendation, other rules would not change. Students remain tied to eligibility requirements, including good behavior and meeting physical and academic requirements. Also, anti-recruiting rules remain intact.

These Sutherland recommendations make the transfer policy consistent with open enrollment, recognize the uniqueness of each student's circumstances, restore a culture of trust between parents, students, and public schools, and are objective in their administration. Admittedly, the UHSAA would still need to approve exceptions. Even so, we would expect this new policy to trigger fewer cases and, therefore, less administrative time spent by the UHSAA on transfers. Finally, this policy also recognizes the stability needed for school administra-

tors and coaches to manage their programs and serve their students effectively.

## INTRODUCTION

High school is a period of unparalleled change and growth for youth. Knowledge acquired and experience gained during these four defining years help shape the future, for better or for worse, of every young Utahn. Every parent hopes that their children's high school experience helps prepare them to become responsible, productive members of their communities.

Extracurricular activities can contribute greatly to this preparation. Students who participate in activities outside of the classroom, such as music, sports, drama, and student government, often develop valuable skills and attributes. For example, they are more likely to learn to cooperate with their peers, respect authority, develop responsibility, work hard, and become leaders.

For youth to gain the full benefits of general education, academics and extracurricular activities need to be tailored to their unique needs and interests. Students, under the direction of their parents, should have every opportunity possible to determine which activities and level of participation will best prepare them for adult life. In all aspects of education, parents should be free to act in the best interest of their children.

In Utah, this is not always the case. One glaring example is the conflict between Utah's open-enrollment law and how the Utah High School Activities Association (UHSAA) treats student-athletes. Specifically, the UHSAA has created rules and procedures for athletic transfers and eligibility that discourage parents from making choices that would benefit their children.

Utah needs to fine-tune its approach to regulating high school athletics in order to transform this dissonance between open enrollment law and UHSAA policies into harmony. This common-sense objective has been difficult to achieve because of the ambiguous nature and role of the UHSAA.

During their high school experience, most of Utah's children have benefited from participation in extracurricular activities – everything from basketball to jazz band to debate club to drama. In 1927, local school officials formed the UHSAA to help coordinate these activities among member high schools and to establish rules and regulations for participation.<sup>2</sup> Today, the UHSAA, a private, non-profit organization, governs 132 member high schools that participate in 25 UHSAA-regulated activities.

Since its founding, the UHSAA has played an important role in coordinating events, establishing rules of play, and encouraging sportsmanship in high school athletics, although its influence extends far beyond these roles. The UHSAA also establishes and enforces eligibility rules, such as requiring students to maintain a minimum grade point average and good behavior. In addition, the State Board of Education has authorized the UHSAA to determine athletic eligibility for students who do not attend the high school assigned to their area of residence or who transfer from one high school to another.<sup>3</sup>

Since 2001, the State Legislature has considered many bills that have addressed issues such as online, charter, and home school student participation in extracurricular activities; transfers; and UHSAA hearings appeal panels. With the opposition of the teachers union and

their colleagues, as well as UHSAA attorneys and lobbyists, only one bill has passed allowing charter and online students to participate in extracurricular activities at traditional public schools.<sup>4</sup>

Meanwhile, the source of this unnecessary discord – the conflict between the state open-enrollment law and UHSAA rules that prohibit student-athlete transfers – continues to foment public distrust and lack of confidence in the broader public school system.

## WHAT'S AT ISSUE?

There are three primary problems associated with the UHSAA's transfer policy:

1. UHSAA transfer and eligibility rules conflict with state law
2. UHSAA transfer and eligibility rules interfere with parents' discretion in meeting the unique needs of their children
3. UHSAA transfer procedures are unfair to students and parents

### 1. UHSAA transfer and eligibility rules conflict with state law

Utah's open enrollment law gives parents opportunities to choose the public school and type of education that is best for their children. Unfortunately, if a child is a student-athlete, then UHSAA transfer and eligibility rules discourage parents from taking advantage of those opportunities.

In 2001, the United States Supreme Court ruled that the Tennessee Secondary School Athletics Association (TSSAA) is a "state actor" because of its "pervasive entwinement" with Tennessee state government.<sup>5</sup> Like

the TSSAA, the UHSAA is a private institution with governmental powers. The UHSAA has public officials involved in its administration and receives dues from member schools, 88 percent of which are public schools. According to a report written for the Utah State Office of Education by Luke Peterson, a graduate of the Kennedy School of Government at Harvard University, "UHSAA is most likely a state actor and is therefore bound by state and federal statute – including the open enrollment law."<sup>6</sup>

### Open enrollment

Open enrollment gives parents the opportunity to send their children to any of Utah's 115 public high schools, including 25 charter schools. Students can transfer once a year<sup>7</sup> to any school, provided that 1) the school has space for additional students,<sup>8</sup> 2) the student does not have chronic behavioral problems, and 3) the student has not committed serious infractions of the law or school rules.<sup>9</sup> This law gives parents flexibility to choose a school that best enhances their children's intellectual, physical, and social well-being, and it also makes schools accountable to parents.

### The transfer rule

Under current UHSAA rules, students establish eligibility to participate in high school athletics in the ninth grade.<sup>10</sup> After establishing initial eligibility, a student who transfers to another high school under the open-enrollment law maintains full eligibility, unless the UHSAA decides that "the transfer resulted from the student's intent or purpose to participate in athletics at the transferee school" or "the transfer was mandated by a school district for disciplinary reasons."<sup>11</sup> In these two instances, the student typically loses eligibility for all UHSAA-sponsored athletic activities for twelve months.<sup>12</sup>

From academic year 2005-2006 to 2007-2008, 1,489 student-athletes requested to have their eligibility transferred to a UHSAA member high school. Of the 1,489 who requested, 98 students were denied athletic eligibility by the UHSAA. Sixty-four of the 98 denied eligibility requested that a UHSAA hearing panel review their case, and of those, seven were restricted to sub-varsity athletics and 22 were still denied twelve months of eligibility.<sup>13</sup> In other words, all were allowed to transfer, but 54 were not allowed to continue participating in athletics for a full year. Of course, for juniors in high school, this would mean that their athletic participation is finished.

### Conflict with open enrollment

UHSAA's transfer rule conflicts in letter and in spirit with Utah's open-enrollment law. A 2003 legislative audit of the UHSAA transfer process concluded that "the transfer rule seems to be an impediment to open enrollment because it restricts eligibility."<sup>14</sup> According to a 2005 legislative audit, "The UHSAA policy is often at odds with the open-enrollment policy. When a transfer request is made for an academic reason, the UHSAA finds it difficult to rule against such a transfer because of open enrollment."<sup>15</sup>

Open enrollment gives parents the option to transfer their children to another school for any reason. The UHSAA cannot prevent any transfer, but it does discourage transfers that would benefit students by restricting their eligibility to participate in athletics. Some parents may choose not to transfer a child to a school with a more favorable academic or social atmosphere because they would also like the child to continue to his or her participation in athletics. This friction between open enrollment and the transfer rule puts parents in the difficult

situation of choosing between a better overall school experience and athletics.

## 2. UHSAA transfer and eligibility rules conflict with parents' discretion in meeting the unique needs of their children

UHSAA transfer and eligibility rules do not recognize the unique needs and interests of each student. They deny parental opportunity to tailor educational options to each child. UHSAA rules offer a one-size-fits-all approach for a student population of great diversity.

### The UHSAA assumes it knows best

In the words of UHSAA officials, "What is good for one student is good for another."<sup>16</sup> This declaration reveals the prevailing attitude that undergirds the UHSAA's philosophy and policies.

One of the UHSAA's two main purposes is to "promote the generally accepted objectives of education."<sup>17</sup> These objectives are defined in a joint statement with the State Board of Education which declares that "the central purpose of schooling is the academic program of studies for students" and "excesses and abuses in student activities detract from the central purpose of schooling."<sup>18</sup>

The problem, it seems, is that the UHSAA is defining what degree of participation in activities is appropriate for all students, without knowing their individual abilities and limitations. It assumes that all children are alike and that a system that serves most students is effective. This egalitarian approach, common in public education, denies opportunities to students with unique needs and abilities. The assumption is that the UHSAA, with

governmental authority, knows better than parents what is best for their children.

### **One-size-fits-all does not work**

Of course, common sense reveals that what is good for one student is not necessarily good for all students. Every child has a unique learning style, talents, and dreams – precisely the reason for individualized learning plans. A one-size-fits-all system limits opportunities for students to excel to their greatest potential and inhibits parents, who are most familiar with their children, from determining what type of education will best benefit their children.

There are many reasonable arguments to standardize education practices and processes but very few good reasons to standardize children. Parents should be able to choose which schools, teachers, courses, extracurricular activities, and social atmosphere meet their children's needs and develop their interests. The more options available to parents, the more they are empowered to act in the best interest of their children, which in turn benefits all of society. Current UHSAA policy conflicts with this standard.

### **Parents should play a primary role in education**

Parents have the right and responsibility, and indeed ought to be encouraged, to direct the education of their children. According to Utah law, "a parent has the right, obligation, responsibility, and authority to...educate...the parent's children; and the state's role is secondary and supportive to the primary role of a parent."<sup>19</sup> UHSAA policy conflicts with this standard.

### **Education is more than academics**

The high school experience is a mix of mental, social, physical, emotional, and many other human experiences.

Parents consider innumerable variables when shaping the education of their children, just as they do in any other familial responsibility. Parents who decide to transfer a child to another high school might prefer a different location, academic focus, or social atmosphere. They might want better teachers, school staff, or a drama program. They might also happen to believe that another athletic program, including coaches, facilities, and team philosophy, might enhance their child's overall school experience. UHSAA policy conflicts with this standard.

### **Athletics and academics are interrelated**

The role of athletics in the overall educational experience varies for each student. Athletics only enhance the academic experience of some students whereas they keep others interested in academics. Consider the experience of Simi Fili at Cottonwood High School.

Three years ago, Simi Fili, a football player, transferred to Cottonwood High School. Le'ó Fili, Simi's mother, was considering transferring her son because his grades had been "atrocious" at previous schools. She said that of the three schools she was considering, "Cottonwood was the only school talking about Fili's grades and education." "I knew that I needed help with him," she said. "Cottonwood already had the program in place. It felt like a good fit for Simi." Cottonwood's program includes a strong emphasis on academics; even the weight room has a "study table" and coaches track academic progress reports. According to a news article, Cottonwood's assistant coach, Scott Cate, said, "Some of Cottonwood's transfers have gone from failing grades to A- students, from would-be gang bangers to good citizens." The article continues to say that Coach Cate, "demands they study and go to class. With head coach Jones' blessing, he benches players for being late to meetings or missing study hall."<sup>20</sup>

Cottonwood High School's football program has helped many students succeed on and off the field. Just like Mrs. Fili, many parents view athletics as an opportunity to help their children excel in all aspects of life.

Skyline High School's football program is another that does much more than teach football skills. Roger Dupaix, Skyline's football coach, Utah's winningest high school football coach ever, has won eight state championships. As reported by *Deseret News* columnist, Doug Robinson, Coach Dupaix not only teaches his players how to win football games, he also helps build their character.<sup>21</sup> He asks his players to say "positive things" to classmates, greet people they don't know, and stay after lunch to help clean up the cafeteria. He prohibits swearing. Encouraged by Coach Dupaix, the team set a goal for a team grade point average of 3.2, far above the 2.0 required for eligibility, and the team's best students tutor other teammates to help them achieve that goal.

"He tells his players to be on time to class, be a good citizen, don't trash talk, turn off the lights at 10, be a good sport and, of course, no alcohol and drugs," Robinson noted. Dupaix has involved his players in charitable causes such as raising money to help "families affected by the Crandall Mine disaster" and "toward replacing equipment that was lost in a fire at Wasatch Junior High." Coach Dupaix said, "Hopefully, these things help the kids to be unselfish, to put families and religion first and to set goals and work hard to obtain them."

A comment in the same article from one of Dupaix's former players sums it up well: "I was bused from West Valley City up to Skyline. My first year playing football was at Skyline. They didn't need me but I needed them. I can honestly say that Coach Dupaix changed my life. My grades were low when I arrived at Skyline. I was pres-

sured by other players to improve my grades and I did... I am one who is better off due to open enrollment."<sup>22</sup>

Skyline's football or academic programs might not be best for every child, but it is easy to understand why many parents would want their children to play for and be influenced by Roger Dupaix. Athletic programs like Skyline's and Cottonwood's help student-athletes improve their physical fitness, academic progress, social life, and character. Their distinctive approaches help shape boys into young men who succeed in many aspects of life. Students and parents should be able to decide which program is best for them without penalty. UHSAA policy conflicts with this standard.

In the words of Bob Tebow, father of home-schooled, Heisman Trophy winner, and current University of Florida quarterback, Tim Tebow:

People ought to be able to choose to go where they want to go for whatever reason...We're talking about the basic freedom to pursue happiness and succeed...

Nobody would put restrictions on a tuba player finding the best tuba program that matches up with their child or finding the best piano program for their daughter.

People are not dumb; they know that if they find the right place with the right coach, their kids have a better chance at succeeding and learning what they need to learn to advance instead of being married to a program that doesn't fit them.<sup>23</sup>

And yet, under UHSAA rules, a student who transfers to Cottonwood, Skyline, or any other high school they

prefer, with the intent to participate in athletics, loses twelve months of eligibility – one-quarter of their high school experience. The current eligibility-transfer rule discourages parents from putting their children in the school that they believe provides them the best overall environment. Ironically, special rules for student-athlete transfers create the impression that athletics are indeed more important than academics, which contradicts the UHSAA's goal not to let athletics "take a dominant role over academics."<sup>24</sup>

### **Do parents go too far?**

The UHSAA is determined "to protect individual students from the effects of over-emphasis on activities and athletic competition."<sup>25</sup> UHSAA officials worry that some parents push their children too hard to succeed in high school athletics because they have unrealistic expectations that their children will earn a scholarship to play college sports.<sup>26</sup>

According to a recent news story, the UHSAA's recently retired executive director thinks the number one problem with high school sports is parents. He said, "If parents would stay out of it kids would play where they live. Every kid wants to play with his peers and for his community."<sup>27</sup> Even this very highly-regarded UHSAA administrator blames parents for problems with high school athletics and seems to believe that if parents would just leave their kids in the hands of the "experts," then all such problems would vanish.

Let's set aside, for the moment, the disrespect to parents that those sorts of comments display. Certainly, some parents are overzealous about their children's participation in athletics. And, certainly, the best parents do what they can to get their children into a good athletic program. There is no controversy there. Some par-

ents will push their children hard to succeed in athletics, while others push hard in academics, music, or drama.

There are also overzealous principals, teachers, coaches, and administrators – all of whom believe they are doing their job with due diligence. The UHSAA treats parents like they are school officials, when they are not. Parents and their children are the reason schools even exist – they are prior to the school and any of its systems. Great care ought to be exercised in attempting to codify, even by UHSAA rule, the idea that "parents are out of control." And, frankly, when parents express great frustration with the system, it should be a clear indicator that something is amiss in the rules or the system, not necessarily the parents. The current mindset within the UHSAA seems to be to fix the parents first when, perhaps, the more prudent application of time and resources would be to fix the UHSAA's rules to comply with state law and thereby resolve and prevent the many conflicts they now create for parents and student-athletes.

### **What is fairness?**

Many people view the transfer-eligibility question as a conflict between fairness and choice.<sup>28</sup> The UHSAA has designed its rules to try to maintain "a level playing field," to allow as many students as possible to participate, and to maintain parity among teams for healthy competition.<sup>29</sup>

Fairness and choice, however, can co-exist, depending on one's definition of fairness. A "level playing field" in which every student who wishes to participate can and in which teams are equally matched may be desirable but is impossible to create. By nature, competition creates winners and losers. Some teams will excel for many consecutive years while others will struggle. In a true

system of fairness, every student will have equal opportunity to compete for any spot on any team.

Interestingly, more choice leads to greater competition. As parents have more freedom to transfer their children without penalty, both academic and athletic programs will have incentives to improve. Schools try to improve their programs to attract good students, which is hardly a form of inappropriate recruiting. It is a myth, or at least a gross oversight, to believe that schools don't want to be the best at what they do. Can we imagine a school, administrator, or teacher who would say publicly and proudly that he loves to be known for mediocrity? Students and parents empowered with freedom to choose will only encourage efforts to excel, which would naturally facilitate relative parity and equilibrium of competition.

What is true for academics is true for sports. Disparities, whether in academics or athletics, will always exist in the short-term. In the long-term, greater equilibrium will be achieved through choice than regulation. The UHSAA's obsession with trying to dictate "fairness" by decree is unreasonable and unattainable because it is impractical. In fact, as we learned in 1972,<sup>30</sup> "fairness" in sports comes through an open movement of players – professional athletes call it "free agency." If "fairness," or parity, is the goal, then UHSAA policy conflicts with this standard.

The "fairness" issue culminates in the UHSAA's complaint of last resort that many "regular" kids will be deprived of opportunities to play high school athletics if "superstars" are allowed to transfer to other schools. Not to belabor the point – it is no small irony that UHSAA policies reflect a genuine misunderstanding of "fairness" and the value of competition. The UHSAA has no concern over a drama club "superstar" transferring from one school

to another, thereby displacing the "understudy" for the role. Only a student-athlete is a concern.

The burden should not be on parents or their student-athletes. And the State Legislature should not be content to place the administration of state high school athletics in the hands of private administrators who seem to misunderstand the nature and practicalities of both "fairness" and competition.

High school athletics should be governed by ideas that promote the best opportunities for student-athletes and that safe-guard parents and their children from undo pressures to make decisions that may not be in their best interest. UHSAA policy conflicts, in spirit and in letter, with this standard. While the UHSAA, or any other rulemaking authority, may enforce anti-recruiting rules that govern its member schools, it should let parents decide which athletic programs are the best fit for their children.

### **3. The UHSAA transfer process is unfair to students and parents**

The process used to determine a student's athletic eligibility after transferring from one high school to another is subjective, inconsistent, and complex. These flaws in the system have created a culture of unfairness and mistrust.

#### **Could a reasonable person navigate this process?**

The account of a recent UHSAA transfer hearing will help illustrate how the transfer process works and some of the problems associated with it.

The parents of Tiffany Alldredge, a high school softball player, recently decided to transfer Tiffany from Pinev-

iew High School to Dixie High School because of problems with the Pineview softball coach. They completed the UHSAA's "Transfer of Eligibility" forms<sup>31</sup> that include questions about their motives for the transfer. The principals, athletic administrators, and coaches of both Pineview and Dixie then completed forms that included questions regarding the Alldredges' motives for the transfer. The UHSAA's executive director, Dave Wilkey, then reviewed the forms and determined that the responses suggested an "athletic motivation"; therefore, in order to adhere to the Transfer Rule, he denied Tiffany eligibility for twelve months. The Alldredges then requested a hearing to review their case.

At the hearing on October 30, 2008, a panel comprised of three UHSAA executive committee members, each of whom happened to be high school principals, heard testimony from Tiffany, her parents, Pineview's principal, Mike Mees, and Dixie High's assistant principal, Sharla Campbell. The Alldredges testified that Pineview's softball coach, Kim Hafen, has held a grudge against their family ever since Tiffany was eleven years old when her city league softball team, coached by her father, defeated a team coached by Mr. Hafen. Mr. Alldredge asserts that after the game Hafen pushed some of the girls on his team and became upset when Alldredge confronted him about it. Despite this conflict, when Hafen became the coach at Pineview during his daughter's and Tiffany's freshman year, Tiffany decided to play at Pineview. Last year, however, the Alldredges said that even though Tiffany had more experience and better skills than some players on Pineview's varsity team, Hafen refused to play her or even acknowledge her presence at practice when placing players in positions.

Knowing that Tiffany could lose twelve months of eligibility, the Alldredges decided to transfer Tiffany to Dixie

High. They said, "We'd rather lose eligibility than play for Coach Hafen." Mr. Alldredge said that despite her love for softball, Tiffany would not have tried out again for the Pineview team. The family faced a difficult decision: "Do we choose Pineview or softball?" The Alldredges decided that softball was important enough for Tiffany to transfer, even though she would miss her friends and familiar surroundings at Pineview and possibly lose twelve months of eligibility.

The panel then heard Principal Mees refute many of the Alldredges' statements. He argued that his coach would never discriminate against any player and that if he did he would be fired. The Alldredges tried to defend their story, but the panel seemed unconvinced. Dixie High's assistant principal Campbell said that Tiffany's grades have been stellar at Dixie and that though she cannot promise Tiffany playing time, the softball coach would give her a chance to prove herself on the field. Ms. Campbell suggested that the panel be lenient with Tiffany given her circumstances at Pineview. After reviewing evidence and testimonies in a closed meeting, the panel decided 3-0 to remove Tiffany's eligibility for twelve months because her transfer was related to athletics. The Alldredges' can appeal the decision to one more panel (made up of other UHSAA officials) for review, but they have not decided if an appeal would be worth the effort.<sup>32</sup>

### **Poor outcomes**

Tiffany's story illustrates three important lessons about the transfer process. First, the transfer rule does not necessarily produce the best outcome for the student. Once the panel knew that Tiffany's transfer was related to athletics, it had to restrict her eligibility in order to follow the rule. Her testimony that the coach had mistreated her did not affect the decision. Even though

the Alldredges were honest, forthright, and implicitly trusted that the system would produce a positive outcome for Tiffany, the rule provided no unique solution to address her unique circumstances. Thus, even if Tiffany's and her parents' characterization of their interaction with the coach was accurate, and even though allowing Tiffany to play softball at Dixie probably would not create disparity in competition between Pineview's and Dixie's softball teams, Tiffany is prohibited from participating in softball for one year.

### A subjective process

Second, the transfer process relies on subjective opinions. Coaches and principals must decide whether or not athletic motivation is involved based on conversations with students and parents, personal observations, and, sometimes, rumors. Of course, coaches and principals cannot read the minds of the transferring student or their parents.<sup>33</sup> Furthermore, the coaches and administrators of the "sending" school have a natural bias to say what will help keep good athletes at their school. In contrast, parents and the student (not to mention the coaches and administrators of the "receiving" school) have an incentive to say what they think will preserve the child's eligibility.

This process creates a very awkward situation – almost a criminal-like trial – in which the hearing panel must attempt to make consistent, objective rulings based on subjective opinions.<sup>34</sup> It pits student-athletes and their parents against coaches and principals. When testimonies are inconsistent, the panel has to decide who is telling the truth, and current UHSAA rules place the burden of proof on the family, not the school.<sup>35</sup>

When a coach or principal presents evidence that could indicate athletic motivation, the parents must some-

how prove that their motives had nothing to do with athletics. The 2003 audit reported, "Since it's generally presumed that a student who does have an athletic motivation will lie about it, the reasons a student cites for transferring may be given little credence."<sup>36</sup>

This problem of deciphering intent is the most unfair and ineffective part of the transfer process. In his report, requested by the State of Office of Education, Luke Peterson recommends that the UHSAA "abandon attempts to determine student intent." Peterson asserts that motive is:

**beyond the means of UHSAA to ascertain. In the absence of administrative subpoena power or some other legal mechanism for compelling witness appearance and testimony, UHSAA policy is overly subjective. Even with legal powers, investigations of intent are a suboptimal means of regulation; they destroy institutional trust and fail to aid the educational mission of athletics.<sup>37</sup>**

This subjectivity in determining intent makes it difficult for parents and students to plan an educational experience. Since rules are applied inconsistently and "the UHSAA will not provide advisory opinions regarding potential eligibility," parents must decide whether or not to take a chance on losing eligibility.<sup>38</sup> According to Peterson, "subjectivity should be eliminated to the greatest degree possible so that individuals may know what to expect from violating [transfer policies]."<sup>39</sup> The subjectivity and unpredictability of this process makes it unfair for students and parents.

### A culture of mistrust

The third lesson from Tiffany's story is that the UHSAA's attempts to prevent athletic transfers have led to a cul-

ture of mistrusting parents, and vice-versa. Since the UHSAA is concerned that parents will lie, its policies are designed to limit parental choice rather than give parents every opportunity possible to act in the best interest of their children.

As some parents have tried to use “loopholes” in the transfer process to send their children to a particular school,<sup>40</sup> UHSAA suspicion of parents has escalated, leading to more and more rules, some of which are intrusive and degrading.

In another recent hearing, a UHSAA panel considered the eligibility of a sophomore student-athlete (name withheld because of the personal nature of story), who transferred from Taylorsville High School to Kearns High School. She transferred after moving with her father, who had separated from her step-mother, into Kearns’s boundaries. Her father had provided an affidavit of proof of his residency change, which in previous years sufficed to establish athletic eligibility at a new high school. But out of paranoia that parents will seek to circumvent the system, the UHSAA has created a set of rigid, intrusive rules to try to prevent parents from changing residency with the purpose of transferring their children, and their athletic eligibility, to a new school.

According to UHSAA by-laws, “to qualify as a change of residence, the prior residence must not be currently used as a residence by either parent or any relative under the circumstance in which it could reasonably be inferred that the change of residence was a sham.”<sup>41</sup> To comply with this rule, the UHSAA hearing panel asked the father and Taylorsville staff about his motives for moving. They also asked the father about why and when he moved out, whether or not his wife had come

with him, and who was living in the previous home. He was visibly disturbed by the personal nature of the questions. He testified that the move was for personal reasons and had nothing to do with athletics. Since the Taylorsville staff provided no concrete evidence of athletic motivation, the panel approved the student’s continued eligibility at Kearns, but only after intruding into her family’s private affairs.

The UHSAA’s mistrust of parents has resulted in a draconian set of rules that assumes the worst about parents. Not only are these rules inconsistent with open enrollment, but they are also antithetical to the ideals of liberty and privacy that Americans hold dear. The UHSAA is getting into the details of people’s lives in order to regulate their participation in public programs, even though parents and students are not subject to, and therefore have not broken, any laws regarding athletic eligibility.

### **Making rule breakers of honest people**

Just as unwise laws can create criminals out of otherwise innocent people, UHSAA rules can turn parents who honestly seek their children’s best interest into rule breakers. Evidence demonstrates that this fundamental mistrust of parental motives is unwarranted. The 2005 audit showed that “while a few transfers do appear questionable, overall the problem is often one of perception.” In their analysis, the auditing team determined that “there are few instances where student-athlete transfers appear to significantly differ from general student population transfers for the same high school.”<sup>42</sup> Rules regarding athletic participation should exhibit trust in parents and give them as much freedom to choose as possible. Rules should govern the norm, not punish all students to treat rare exceptions.

## Rules are too complex

The UHSAA's efforts to prevent athletic transfers have created a complex web of rules that is unfair to parents and students. The rules are so complex that the UHSAA is overburdened with hearings and other time commitments necessary to enforce them.<sup>43</sup> More importantly, according to Peterson, complex policies are "inherently unfair" because "complexity produces an intricate maze that is only navigable by those who are truly determined not to play by the rules."<sup>44</sup> Ironically, the rules end up helping parents who have athletic motivation and harming those who do not. Complicated rules discourage parents from transferring their children, even when a transfer might improve their children's educational experience.

Peterson recommends eliminating or simplifying the transfer process "so as to improve the fairness of the transfer process and the experience of those who must pass through it."<sup>45</sup> "Regulations should be clear, concise, and predictable."<sup>46</sup> The transfer process should be simple and should encourage any parent who seeks the best high school experience available for their children to pursue it without penalty.

## Not enough accountability

The transfer process is also unfair because parents have few opportunities to influence UHSAA policies that affect their families.

The UHSAA Board of Trustees and Executive Committee include a state board official and some members of local school boards who are elected, but most UHSAA officials – high school principals, district superintendents, and UHSAA staff – are unelected. And even when there seems to be broad agreement among coaches and school administrators, UHSAA officials sometimes choose not to adapt policies to those preferences.<sup>47</sup>

Parents do have an avenue of influence through the State Legislature, but that body has generally left policy decisions to the Utah State Office of Education (USOE) and the UHSAA. According to state law, the USOE is supposed to set policies "in consultation with the UHSAA," but these roles seem to have reversed as the USOE has given the UHSAA considerable latitude to enact and enforce its own by-laws.

The 2003 legislative audit determined that "UHSAA by-laws...are not consistent with the Utah State Office of Education (USOE) rules established by the State Board of Education."<sup>48</sup> Rather than change UHSAA by-laws to conform to USOE administrative rules, the USOE eliminated many of its rules to allow the UHSAA to regulate competition using its own by-laws exclusively.<sup>49</sup> This altered structure gives the UHSAA broad authority to operate with little public accountability. Parents have few opportunities to influence UHSAA by-laws or to pursue recourse when they feel the system has treated them unjustly.

The UHSAA has an odd, quasi-government role that departs from standard structures of public accountability. The UHSAA is both a private organization, like the Red Cross or the Sutherland Institute, and a "state actor" with authority to create and enforce policies that affect Utah citizens. To construct a similar scenario, the Legislature could give Sutherland authority to create and enforce rules under the jurisdiction of the Utah Transit Authority or the Alcoholic Beverage Control Department. Even with elected representation on Sutherland's board of trustees and legislative oversight, such a scenario would be unacceptable to most Utahns; and yet, the UHSAA, a private organization, has unilateral authority to affect state education policy.

This unusual regulatory structure is designed to serve a “system” instead of parents and students. In other words, the UHSAA seeks to serve its dues-paying member schools instead of tax-paying parents – an inherent dilemma caused by the imprudence of empowering a private organization with governmental powers. Maintenance and preservation of the overall system has become more important than the individual student and the family. UHSAA policy conflicts with traditional standards of good government.

## OPTIONS FOR REFORM

The 50 states use a wide variety of transfer and eligibility policies, which are outlined in Appendix A. The athletic associations of 38 states have a uniform ineligibility rule, which requires varying lengths and types of ineligibility for any transfer. In some states, students who transfer lose eligibility for one year, and in others just 90 days or half a season of play. Some states restrict play to sub-varsity competition, whereas others remove eligibility for all levels, either in all sports or just ones in which the student has recently participated. Uniform ineligibility is simple, but it also often discourages parents from sending their children to the best school possible.

Six states, including Utah, have policies that prohibit transferring for athletic motives. The analysis above highlights the problems that this policy creates for students and parents. Maryland and North Carolina reserve almost all eligibility decisions to local school officials. In most states, students establish initial eligibility at any school in the ninth grade, and most states have exceptions to allow continued eligibility in order to account for residency changes, parental divorce or separation, and undue hardship. Some of these policies provide more flexibility for parents but would still be inconsistent with Utah’s open enrollment law.

Eight state associations have crafted policies that account for open enrollment. For instance, Nebraska has an exception that allows “Enrollment Option” students to transfer without any eligibility restriction. Connecticut allows students in grades 10-12 to transfer once without losing eligibility in order “to participate in any public school open choice plan enacted by the State Legislature or any state authorized charter, regional, cooperative, inter-district satellite, magnet or other public school choice options.”<sup>50</sup> Minnesota rules allow students who participate in the state’s Enrollment Options Program to choose to maintain full athletic eligibility at their previous school or sub-varsity eligibility at the new school for one year until they are fully eligible. In California, students are allowed one unrestricted transfer before the tenth grade, and in Wisconsin students can transfer without restriction until the eleventh grade.

Two states have a transfer window policy which treats transfers during a specific period differently than transfers at other times. For example, in Vermont, a student who transfers before a sport’s season begins maintains full eligibility, whereas students who transfer afterward lose eligibility in that sport for 20 days. Students who transfer twice in a year lose one year of eligibility. Colorado restricts students who transfer during the summer to sub-varsity play in half of the competitions for the remainder of the year, and students who transfer mid-year are restricted to sub-varsity for the rest of the year and fifty percent of the next year’s competitions. Transfer windows give parents more flexibility and also maintain stability for schools’ academic and athletic programs.

Finally, six states have hybrid policies that combine elements of two or more of these policies.

Will any of these policies work for Utah? Experience in other states provides valuable ideas for reform, but the unique population and education system of each state call for unique solutions. Utah's policy should do what is best for Utah's student-athletes and their families.

## SUTHERLAND'S RECOMMENDATIONS

For immediate action by the State Legislature, Sutherland recommends a new statutory "transfer window" with mid-year and exigent circumstance exceptions. This change is necessary to conform student-athlete transfer policy with state open enrollment law. Sutherland recommends creating:

- a. **A transfer window.** Any student can transfer for any reason to any open-enrollment school from June 15 to August 15 each year without losing athletic eligibility. This recognizes the uniqueness of each student and family and permits parents to transfer their student to the school that provides the best overall educational experience for their children.
- b. **A mid-year transfer exception.** Normal family circumstances may require a student to move from one school boundary to another in the middle of a school year (e.g., families move, parents separate or divorce, legal guardians are appointed). A mid-year transfer exception takes into consideration normal family circumstances without jeopardizing a student-athlete. This exception is subject to approval of the UHSAA based on *prima facie* application information (i.e., without questioning the circumstances described in the application, but with authority to verify the circumstances).
- c. **An exigent circumstances exception.** When exigent circumstances require a mid-year transfer, the UHSAA can grant continued eligibility at

the new school. Circumstances that may qualify are already defined in state policy. For instance, if there is a "persistently dangerous school," a "safety emergency," or if a coach uses alcohol, tobacco, violence, improper touching, or profane language.<sup>51</sup> Again, the UHSAA would review an application under these circumstances, considering first the welfare of a student and not prejudicing the transfer because the student is also an athlete.

Under this policy recommendation, other rules would not change. Students remain tied to eligibility requirements, including good behavior and meeting physical and academic requirements. Also, anti-recruiting rules remain intact.

The implementation of these recommendations would make the transfer policy consistent with open enrollment, recognize the uniqueness of each student's circumstances, restore a culture of trust between parents, students, and public schools, and are objective in their administration. Admittedly, the UHSAA would still need to approve exceptions. Even so, we would expect this new policy to trigger fewer cases and, therefore, less administrative time spent by the UHSAA on transfers. Finally, this policy also recognizes the stability needed for school administrators and coaches to manage their programs and serve their students effectively.

For the long-term, to help bring finality to the ambiguous legal and administrative status of UHSAA (or any other entity chosen to oversee extracurricular activities), the Sutherland Institute recommends incorporating the authority and day-to-day oversight of extracurricular activities in Utah's public schools into the State Office of Education.

## CONCLUSION

For the well-being of Utah's children, the conflict between UHSAA transfer-eligibility rules and the state's open-enrollment policy must be resolved. This issue also provides a context for important discussions regarding the general role of the state, or any entity with authority to act for the state, in the education of Utah's children.

The most critical question regarding the UHSAA, along with the State School Board and the Legislature, is this: Who is servant and who is master? Do these entities serve parents and their children who participate in ex-

tracurricular activities or the system they govern? The answer, of course, is that whatever entity regulates high school athletics or any aspect of public education should serve students and their families as the priority, not the system.

Every child is unique. Parents need, and deserve, a system that provides them with every opportunity possible to tailor an educational experience to their children's unique needs and interests. A system that serves individual parents and students will help prepare Utah's youth to become productive members of society, which will mean a more free and prosperous Utah for all.

## APPENDIX A

### Summary of State Transfer Rules

The following table lists the general transfer rule for each state, based on research of each state activities association's by-laws, and, in some cases, contacting their offices for clarification. Many of these by-laws are difficult to locate and incomprehensible to the average person. For instance, the West Virginia Secondary School Activities Commission does not publish its rules and regulations. According to office staff, since "people have been interpreting the rules incorrectly, they are not published. Students and parents must obtain information from the principal of their school." This provides further evidence that state activities associations and their policies need to be more simple and transparent.

### Definitions

**Uniform ineligibility:** students who transfer for any reason lose athletic eligibility for a specified time period and for specified sports

**Athletic motives:** students who transfer with athletic motives lose athletic eligibility for a specified time period and for specified sports

**Transfer window:** students who transfer during a specified time are treated differently than students who transfer at other times

**Hybrid:** the combination of two or more of the above policies

**Play-where-you-live:** students can play only for the high school assigned to their area of residence

STATE	POLICY TYPE	PERIOD INELIGIBLE	LEVELS RESTRICTED	SPORTS RESTRICTED	OTHER
Alabama	uniform ineligibility	one year	all	all	
Alaska	uniform ineligibility	90 school days	all	all	
Arizona	uniform ineligibility	one year	all	all	
Arkansas	hybrid	one season	all	all	Exception for student with "Legal transfer" (board to board transfer prior to July 1) under Freedom of Choice law
California	uniform ineligibility	one year	varsity	previously played	Before 10th grade, one transfer allowed without restriction
Colorado	transfer window	half season	varsity	previously played	Applies only to summer transfers. Mid-year transfers restrict student to sub-varsity for rest of year and 50% of next year's competitions until anniversary of transfer
Connecticut	uniform ineligibility	one year	all	previously played	Applies only to grades 10-12; one unrestricted transfer allowed during grades 10-12 for "public school open choice plan"
Delaware	uniform ineligibility	90 school days	all	all	Exception for transfer from one "choice school" to another or if superintendent approves intra-district transfer
Florida	uniform ineligibility	rest of school year	all	previously played	
Georgia	uniform ineligibility	one year	varsity	all	
Hawaii	uniform ineligibility	one year	all	all	
Idaho	uniform ineligibility	one year	varsity	all	

STATE	POLICY TYPE	PERIOD INELIGIBLE	LEVELS RESTRICTED	SPORTS RESTRICTED	OTHER
Illinois	uniform ineligibility	rest of school year	all	previously played	Only 30 days of ineligibility for sports not previously played
Indiana	athletic motives	one year	varsity	all	
Iowa	hybrid	90 school days	varsity	all	Changing residency for athletic motives results in loss of eligibility
Kansas	uniform ineligibility	90 school days	all	all	Participation in sub-varsity competition allowed in some circumstances
Kentucky	uniform ineligibility	one year	all	all	
Louisiana	uniform ineligibility	one year	all	all	Play-where-you-live strongly encouraged
Maine	athletic motives	one year	varsity	all	The Maine Principal's Association regulates only varsity athletics
Maryland	local control	N/A	N/A	N/A	Automatic eligibility for residency change; other transfers subject to decision of local school officials
Massachusetts	uniform ineligibility	one year	varsity	all	
Michigan	hybrid	1-2 semesters	all	all	Regular transfer results in one semester of ineligibility; athletically motivated in two semesters
Minnesota	uniform ineligibility	one year	varsity	all	For Enrollment Options program, student can choose to maintain one year full eligibility at prior school or play sub-varsity at new school
Mississippi	uniform ineligibility	one year	all	all	
Missouri	uniform ineligibility	one year	all	all	
Montana	uniform ineligibility	90 school days	varsity	all	
Nebraska	hybrid	90 school days	varsity	all	Exception for Enrollment Options transfers if papers are signed by March 15
Nevada	uniform ineligibility	180 school days	all	all	
New Hampshire	hybrid	one year	all	all	Athletic motives is found when a student transfers to a previous coach's new school within a year without a residency change
New Jersey	hybrid	one year	all	previously played	Applies only to grades 10-12; change in residency for athletic motives results in loss of eligibility; ninth grader who plays varsity and transfers loses 30 days of eligibility.
New Mexico	athletic motives	one year	all	all	
New York	uniform ineligibility	one year	all	previously played	
North Carolina	local control	N/A	N/A	N/A	Transfers in same "administrative unit" governed by local Board of Education; transfers between units automatically eligible if previous unit "releases" and new unit "accepts" student and other eligibility requirements met
North Dakota	uniform ineligibility	one year	all	all	Participation in sub-varsity competition allowed in some circumstances
Ohio	uniform ineligibility	one year	all	all	
Oklahoma	uniform ineligibility	one year	all	all	
Oregon	uniform ineligibility	one year	all	all	Play-where-you-live strongly encouraged
Pennsylvania	athletic motives	one year	all	previously played	
Rhode Island	uniform ineligibility	half season	varsity	previously played	

STATE	POLICY TYPE	PERIOD INELIGIBLE	LEVELS RESTRICTED	SPORTS RESTRICTED	OTHER
South Carolina	uniform ineligibility	one year	all	all	
South Dakota	hybrid	one year	all	all	Exception for open enrollment if enrolled before 1st day of school
Tennessee	uniform ineligibility	one year	all	previously played	Ineligibility begins on day of last participation
Texas	athletic motives	one year	varsity	all	
Utah	athletic motives	one year	all	all	Participation in sub-varsity competition allowed in some circumstances
Vermont	transfer window	20 days	all	previously played	Only if a sport's season has begun, students lose 20 days of eligibility; two transfers in one year result in loss of one year of eligibility
Virginia	uniform ineligibility	one year	all	all	
Washington	uniform ineligibility	one year	varsity	all	
West Virginia	uniform ineligibility	one year	all	all	
Wisconsin	uniform ineligibility	one year	all	all	Applies only to grades 11-12. Students can transfer during grades 9-10 without restriction
Wyoming	uniform ineligibility	one year	varsity	previously played	

## ENDNOTES

1. *Utah Administrative Code*, R277-483-4 and Rule R277-605-4.
2. UHSAA response to *Home School and Extracurricular Amendments*, Third Substitute (SB 81, 2007), provided by State Senator Mark Madsen.
3. State law mandates that the State Board “establish policies regarding nonresident student participation in interscholastic competition”...“in consultation with the Utah High School Activities Association.” *Utah Code* 53A-2-208.
4. *Home School and Extracurricular Activity Amendments*, Third Substitute (SB 81, 2007) (failed); *Charter and Online Schools – Participation in Extracurricular Activities*, Substitute (SB 36, 2008) (passed); *Home School and Extracurricular Activities Amendments* (SB 37, 2008) (failed); *Home School and Dual Enrollment Amendments*, Second Substitute (SB 72, 2006) (failed).
5. *Brentwood Academy v. Tennessee Secondary School Athletics Association*, United States Supreme Court 531 U.S. 288, 2001. In a follow-up case, *Tennessee Secondary School Athletic Association v. Brentwood Academy*, United States Supreme Court 551 U.S. (2007), the same Court ruled that the TSSAA does not violate the First Amendment by enforcing recruiting rules agreed to in a voluntary contract between a member school and the TSSAA.
6. Peterson, Luke, John F. Kennedy School of Government, Harvard University, “Maximizing Choice and Value in Interscholastic Competition,” prepared for Dr. Larry Shumway, Associate Superintendent, Utah State Office of Education, 2008, 14.
7. This rule “does not apply to a student transfer made for health or safety reasons” or if a local school district allows multiple transfers in the same year. *Utah Code* 53A-2-207 10 (b-c).

8. A school's enrollment must be below the "open enrollment threshold" to be open for enrollment. *Utah Code* 53A-2-207 2 (a-b).
9. *Utah Code* 53A-2-207.
10. Charter, home, and private school students are eligible to participate at the traditional public high school in their area of residence provided that their own school does not offer a desired athletic program. *UHSAA Interpretations and Guidelines*, 10, Co-op Rule.
11. *UHSAA By-laws*; Article I, Section 8.
12. In some cases, the UHSAA gives the student eligibility to participate in sub-varsity athletics only. Prior to 1995, students were only eligible to play for the high school assigned to their area of residence, commonly known as the "play-where-you-live" rule. Conversation with UHSAA staff, November 2008.
13. UHSAA internal documents, Transfers for School Years 2005-06 to 2007-08.
14. "A Review of the Utah high School Activities Association's Transfer of Athletic Eligibility Process," Office of the Utah Legislative Auditor General, Report Number ILR 2003-B, June 2003, 12.
15. "A Performance Audit of the Utah High School Activities Association," Office of the Utah Legislative Auditor General, Report to the Legislature, Number 2005-02, February 2005, 15-16.
16. UHSAA response to *Home School and Extracurricular Activity Amendments*, Third Substitute (SB 81, 2007), provided by State Senator Mark Madsen.
17. Constitution of the Utah High School Activities Association, 2008-2009, Article II – Purposes.
18. Joint Statement of the UHSAA & Utah State Board of Education, 2008-2009.
19. *Utah Code* 62A-4a-201 (1) (d-e).
20. "Chasing glory: Wealthy booster gives Colts a lift – and raises eyebrows," *Deseret News*, October 31, 2005.
21. "'Dupaix Way' goes deeper than football," *Deseret News*, October 28, 2008.
22. Ibid, online reader comments, Former Player, 3:36 p.m., October 28, 2008.
23. "Parents, high school officials at odds over motivation for athletes' transfers," *USA Today*, November 21, 2006.
24. Statement of Philosophy/Rationale for the Transfer Rule, *UHSAA Interpretations and Guidelines*.
25. The Co-op Rule is another example of a policy that puts athletics above academics. A student that attends a traditional school that lacks the sport in which the student wishes to participate must transfer to another traditional school that has the sport and gain full-time status there. Thus, when a parent wants their child to participate in a sport that is not offered at the student's current high school, and the current high school's academic program is preferable to other high schools in the area, the parent must choose either a superior academic program and no athletics or a lesser academic program with athletics. *UHSAA Interpretations and Guidelines*, 10, Co-op Rule.
26. Some Rationale for Eligibility Rules, *Interpretations and Guidelines*.
27. According to the UHSAA, "The right to and need for an education is paramount and superior to any privilege a student may enjoy to participate in interscholastic activities. Because many activities are high-profile in high school, however, they can become over-emphasized and the target of manipulation by several different interested groups. It is the rare and exceptional athlete, for example, that can move from high school sports to college athletics. Unfortunately, not every student or the student's parents may recognize that fact." Ibid.
28. "Advice to Parents: Take a chill pill," *Deseret News*, March 26, 2008.

29. According to the 2005 audit, the conflict between fairness and choice exists “between individuals who feel that open enrollment should have no limitations on student participation and those who feel open enrollment creates unfair athletic competition” “A Performance Audit of the Utah High School Activities Association,” Office of the Utah Legislative Auditor General, Report to the Legislature, Number 2005-02, February 2005, 6. According to Luke Peterson, “School choice grants primacy to individual preference, while athletic competition regularly inhibits individual preference in the interest of fair play for the whole.” Peterson, 24.
30. “Some Rationale for Eligibility Rules,” *Interpretations and Guidelines*.
31. *Flood v. Kuhn*, United States Supreme Court 407 U.S. 258, 1972.
32. These rules apply only to athletics, not music, drama, or other UHSAA-regulated activities. *UHSAA By-laws*; Article I, Section 8.
33. Transfer of Eligibility Forms, UHSAA Form #4.
34. The appeals panel does not review further evidence or testimonies, it only reviews the panel hearing’s proceedings to see if they were done correctly. Conversation with UHSAA staff, November 2008.
35. According to the 2003 Audit, “The decision-making process seems to generate inconsistency because many different principals are required to make subjective decisions about student’s intent when they transfer.” “In some instances it seems principals apply different standards to evaluate the evidence of intent of the student seeking a transfer.” “A Review of the Utah high School Activities Association’s Transfer of Athletic Eligibility Process,” Office of the Utah Legislative Auditor General, Report Number ILR 2003-B, June 2003, 1, 6. According to the 2005 Audit, “The UHSAA staff are caught in a difficult situation trying to understand the true motives behind a student’s desires to change schools.” “A Performance Audit of the Utah High School Activities Association,” Office of the Utah Legislative Auditor General, Report to the Legislature, Number 2005-02, February 2005, 15.
36. Luke Peterson says that “students should not bear the primary burden of accountability in transfer policy. UHSAA should shift the burden of accountability from students to member schools.” Peterson, 29.
37. “A Review of the Utah high School Activities Association’s Transfer of Athletic Eligibility Process,” Office of the Utah Legislative Auditor General, Report Number ILR 2003-B, June 2003, 15.
38. Peterson, 1, 29.
39. *UHSAA Interpretations and Guidelines*, 30. It further clarifies, “The UHSAA will not review or act on any Transfer Application unless and until the transferring student has enrolled in the transferee school and has attended at least one day of classes.”
40. Peterson, 30.
41. “A Performance Audit of the Utah High School Activities Association,” Office of the Utah Legislative Auditor General, Report to the Legislature, Number 2005-02, February 2005, 3, 15.
42. *UHSAA Interpretations and Guidelines*, 31.
43. “A Performance Audit of the Utah High School Activities Association,” Office of the Utah Legislative Auditor General, Report to the Legislature, Number 2005-02, February 2005, i, ii. See also Peterson, 10-11.
44. *Ibid*, 3. A news article also reported that the UHSAA executive director’s “job has changed over the years. Early in his career, he spent much of his time simply planning activities. Now he spends almost all of his time enforcing the transfer

- rule, in hearings and appeals and in and out of courtrooms, and lobbying state legislators.” Also, “Advice to Parents: Take a chill pill,” *Deseret News*, March 26, 2008.
45. Peterson, 26.
46. *Ibid*, 27.
47. *Ibid*, 30.
48. See “High school sports: UHSAA says no to spring football,” *Deseret News*, November 6, 2008.
49. “A Review of the Utah high School Activities Association’s Transfer of Athletic Eligibility Process,” Office of the Utah Legislative Auditor General, Report Number ILR 2003-B, June 2003, 2-3.
50. Peterson, 10.
51. *Rules of Eligibility and Control for Boys and Girls High School Athletics in Connecticut*, CIAC By-Laws, Article IX.
52. *Utah Administrative Code*, R277-483-4 and Rule R277-605-4.
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