

PIAA Passes New Mixed-Gender Participation Bylaws

by Christian D. Bareford, Esq.



Christian D. Bareford

At its meeting on June 19, 2014, the Pennsylvania Interscholastic Athletic Association (PIAA) Board of Directors unanimously passed a mixed-gender participation bylaw that went into effect on July 1, 2014.

The new rule will limit participation on mixed-gender teams, making it much harder for boys to play on girls' teams. Girls will still be allowed to participate in boys sports, such as football or wrestling, when schools have no comparable option for them. The change comes after two years of study, surveys of the PIAA membership, legal challenges and judicial review. In a press release, PIAA Executive Director, Dr. Robert Lombardi, stated, "This is a watershed day in the history of the PIAA. With the unanimous support of the Board of Directors, we believe we have crafted a bylaw that will expand opportunity for female athletes, protect the ideals of fair competition and conserve the health and safety of our female participants."

The new bylaw is designed to balance the real and demonstrable physical and competitive differences between similarly aged and trained high school boys and girls, with the need to promote participation by female student athletes, who as a group have been historically underrepresented in interscholastic athletics. The PIAA classifies sports by gender. If a school has a boys' team in a sport, boys at the school are not eligible to play on the school's girls' team in that sport, and vice versa. Mixed gender participation is limited to certain circumstances, including:

- Girls may play on a boys' team if the school does not sponsor a comparable girls' team in that sport. Interestingly, PIAA does not view softball and baseball as being comparable sports. It does, however, consider boys volleyball and girls volleyball, as well as boys lacrosse and girls lacrosse, to be

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Transportation Hot Topics

by Nicole Wingard Williams, Esq.



Nicole Wingard Williams

With school back in session, transportation issues can once again be a concern for school districts. Here are a few quick reminders:

Earlier this year, a new bill was passed permitting school districts to audiotape on school vehicles and buses. By now, all districts wishing to audiotape should have adopted a policy permitting audiotaping on school vehicles and buses for purposes of security and discipline. Districts also should have sent home a notice to parents and students of the practice.

According to the ruling *Watts v. Manheim Township School District*, school districts are required to transport pupils to and from two different legal residences within the same school district. In *Watts*, a custody court order provided that C.W., a student in the Manheim Township School District, would spend alternating weeks with each parent. Both parents resided in the District but lived on different bus routes. Although the District provided transportation to and from both parents' homes prior, it advised the parents of C.W. at the start of the 2012-13 school year that it would no longer provide transportation to and from both homes. The Court found that a child can have more than one legal residence under the School Code and that where a child has two legal residences within a school district, the school district must provide transportation services that accommodate both residences. In finding that the District was required to provide transportation to and from both residences, the Court noted that the disposition of this and similar disputes must be driven by the needs of the school children. In *Watts*, the student had two residences within the District due to a court order and if the District were to designate one parent's residence as the sole bus stop, it would deprive the child of free transportation during alternative periods of custody.

Under the McKinney-Vento Homeless Assistance Act, transportation must be provided for homeless students to and from their school of origin, the school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled. This requirement can present a difficult issue for districts, particularly when a homeless student is no longer living within the district. However, it is important to note that where a student is no longer living within the district, costs and responsibility of transporting the homeless student must be agreed upon between both the school of origin and the school of residency. In situations where an agreement cannot be reached, the McKinney-Vento Homeless Assistance Act requires that responsibility and cost be shared equally.

For assistance with any transportation-related questions, including those on the issues discussed above, please do not hesitate to contact Weiss Burkardt Kramer!

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comparable sports with one another despite the differences in rules between the boys' version and the girls' version.

- Boys may play on a girls' team if the school does not sponsor a boys' team in that sport, and if:
 1. The overall boys' athletic program at the school provides fewer opportunities for boys to participate than for girls;
 2. The boy would not displace any girl from the team's roster;
 3. The boy would likely not pose an increased risk of harm to opponents (due to size, strength, or other characteristic) beyond that which would be posed by an average-sized and skilled participating girl; and,
 4. The boy would not provide his team with a "significant competitive advantage", which means that the boy's participation would likely not cause the team to be noticeably more competitive than it would be without the boy's participation.)

Because PIAA does not have a mixed gender classification for its sports, the bylaw further specifies that, for postseason purposes, mixed gender teams (other than a Spirit Team) will compete only in sport classifications designated for boys.

A school's principal plays an important role in the application of the bylaw, and is given considerable discretion by the PIAA. For example, the principal has the ability to waive limitation that a girl cannot play on a boys' team even if the school has a girls' team in a comparable sport, if the principal believes that the girl's skill level is such that participation on the girls' team would not provide meaningful competition for the girl. Likewise, in the case of determining whether to allow a boy to participate on the girls' team, it is the principal who determines factors 3 and 4, giving due regard to considerations of the health and safety of opponents (particularly in direct contact sports). Where a student's gender is questioned or uncertain, the PIAA will accept the principal's decision as to the student's gender. At the same time, the outer limits of the discretion is not completely defined. For example, it remains to be seen (and the bylaw is silent as to) whether, in view of the postseason provision for mixed gender teams, a principal can deny a boy student's participation on a girls' team on the basis that granting the permission would preclude the team from the postseason in the girls' classification.

In addition to shifting responsibility to the principals and school districts, the bylaw also passes all liability regarding decisions made by principal to the school district. This can be especially important in cases of transgender students' participation in interscholastic athletics. As such, school districts may be well served to develop formal guidelines for making decisions regarding transgender students, and relieve the principal from making individual, case-by-case basis decisions regarding a transgender student's participation. As with any issue that carries potential legal consequences, administrations are also reminded to work with their solicitors to ensure that decisions made regarding mixed gender participation in sports are done so by meeting the needs of the school without running afoul of state and federal anti-discrimination laws.

Recent Charter School Decision

by *Nicole Wingard Williams, Esq.*

In May, the Commonwealth Court affirmed the School District of Pittsburgh's decision not to renew the Career Connections Charter High School's charter.

In obtaining this victory, Weiss Burkardt Kramer attorneys Ira Weiss and Christian Bareford successfully argued that on behalf of the District that the charter renewal could be denied because the charter school failed to meet student performance requirements and committed material violations of its charter. Specifically, the District demonstrated that students at the charter did not perform as well as students at its feeder schools in the District on the PSSA and that the charter school failed not only to make AYP but to show sustained progress in improving student performance/student learning.

The Charter Appeal Board (CAB) found, and the Court held that there was no error in determining, that the charter school had "continuously failed to meet the State's standards of proficiency." The Court also agreed with the District that when the charter school changed its academic calendar and daily schedule without prior District approval, it materially violated its charter since those terms became legally binding when the District granted the initial charter. In order to change those terms, the charter school was required to amend its charter and because it made the changes without doing so, it was subject to closure under the Charter School Law whether or not the District knew of the changes. Finally, the Court found that the charter school failed to provide the interdisciplinary curriculum which was promised by the charter school in its charter application. The Court held that CAB did not err in finding that the charter school's isolated interdisciplinary activities were not sufficient to constitute an interdisciplinary curriculum.

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