

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

CYNTHIA MILLER and KEVIN MILLER,
on behalf of their minor child, TERIK MILLER,

Plaintiff,

EXPEDITED DISPOSITION REQUESTED

v.

CASE NO.: 2014-CA-001741

ESCAMBIA COUNTY SCHOOL BOARD;
MALCOM THOMAS, as Superintendent of Schools;
MICHAEL SHERRILL, as Principal of Escambia High School;
ESCAMBIA COUNTY SCHOOL DISTRICT; and
FLORIDA HIGH SCHOOL ATHLETIC ASSOCIATION, INC.

Defendants.

AMENDED AND RESTATED
EMERGENCY COMPLAINT FOR INJUNCTION AND DECLARATORY RELIEF

Plaintiffs, CYNTHIA MILLER (hereinafter "Mrs. Miller") and KEVIN MILLER (hereinafter "Mr. Miller"), on behalf of their minor child, TERIK MILLER (hereinafter "Terik") (hereinafter Mrs. Miller, Mr. Miller and Terik may be referred to as Plaintiffs), by and through their undersigned attorneys, sue Defendants, ESCAMBIA COUNTY SCHOOL BOARD (hereinafter the "School Board"); MALCOM THOMAS, as Superintendent of Schools (hereinafter "Mr. Thomas"); MICHAEL SHERRILL, as Principal of Escambia High School (hereinafter "Principal Sherrill"); ESCAMBIA COUNTY SCHOOL DISTRICT (hereinafter the "School District") and FLORIDA HIGH SCHOOL ATHLETIC ASSOCIATION, INC. (hereinafter the "FHSAA") (hereinafter the School Board, Mr. Thomas, Principal Sherrill, the School District, and the FHSAA may be referred to as Defendants).

Plaintiffs originally filed the first Emergency Complaint for Injunction and Declaratory Relief on Friday, September 12, 2014 (the "Original Complaint"). At the emergency hearing, counsel for the original defendants disclosed that she had in her possession an FHSAA report

that deemed Terik Miller ineligible. At the Judge's instructions, that report was sent to the Court and counsel for Plaintiffs. Due to that report, Plaintiffs have now amended the Original Complaint to add the FHSA and the School District as parties, and to address various issues subsequently disclosed in the Pensacola News Journal, over the weekend. Accordingly, Plaintiffs now allege the following:

JURISDICTION AND VENUE

1. Mrs. Miller, Mr. Miller, and Terik are Florida residents who reside in Escambia County, Florida, and therefore are subject to the venue and jurisdiction of this Court.

2. The School Board maintains its offices in Escambia County, Florida, and therefore is subject to the venue and jurisdiction of this Court.

3. The School District maintains its offices in Escambia County, Florida, and therefore is subject to the venue and jurisdiction of this Court.

4. Mr. Thomas is the Superintendent of Schools of Escambia County, Florida, and therefore is subject to the venue and jurisdiction of this Court.

5. Principal Sherrill is an employee the School District, and therefore is subject to the venue and jurisdiction of this Court.

6. The FHSA is a Florida non-profit corporation that is are subject to the venue and jurisdiction of this Court.

7. The action set forth in the Original Complaint all occurred prior to any pronouncement or decision by the FHSA. As more fully described below, Plaintiffs have been denied their due process rights, and any remedy available in an administrative proceeding would be inadequate and futile. Furthermore, the egregious and devastating actions that have been all prospectively imposed upon Terik, and the purposeful delay and anticipated delay require the intervention of this Court.

8. Based upon the above, the jurisdiction of this Court is proper and warranted.

STATEMENT OF FACTS

Introduction

9. Terik is a 17 year old African American male student athlete who attends Escambia High School ("EHS").

10. Terik began attending EHS in January, 2014 as a junior and is now a senior who attends EHS.

11. Terik has already received a football scholarship offer to the University of Louisiana, Lafayette.

12. Terik has received letters and interest from multiple major college football programs, including without limitation Wake Forest University, North Carolina State, University of South Carolina, University of Kentucky and University of South Florida.

13. At the commencement of this school year, Terik anticipated receiving additional scholarship opportunities, contingent upon his performance and participation in EHS varsity football related activities and games. These opportunities will enable Terik to maximize his academic skills along with his athletic skills, which could result in academic and employment opportunities that would otherwise not be available.

14. Terik is one of the football players at EHS who was declared ineligible to participate prior to EHS's first football game, held on August 30, 2014.

15. After the filing of the Original Complaint, the FHSAA also declared Terik ineligible from playing on the EHS varsity football team, based upon

a) alleged improper recruiting allegations that have been lodged against the football coach at EHS; and

b) the falsification of records and information by Plaintiffs.

A copy of the FHSAA report dated September 12, 2014 (the "FHSAA Report") is attached hereto and incorporated herein as Exhibit "A".

16. The FHSAA report that deems Terik ineligible to play football on the EHS varsity football team was based upon an investigation report dated May 28, 2014 (the "Investigative Report") that EHS completed and delivered to the FHSAA, the School District, the School Board, Principal Sherrill and/or Mr. Thomas.

17. More than five (5) months ago, EHS, the School District, the School Board, Principal Sherrill and/or Mr. Thomas commenced the investigation in March, 2014, due to a request by Jeff Oliver, the track coach at West Florida High School and Eric Smith, the principal at West Florida High School¹.

18. The arbitrary and capricious decision to rule Terik ineligible to play football, more than 5 months after the investigation had commenced and after the beginning of a new academic school year, is not supported by clear and convincing evidence and totally ignored Terik's due process rights.

19. Moreover, the FHSAA report and the Investigative Report was finalized without giving any written notice to Terik, Mr. Miller or Ms. Miller of the concerns and allegations, and without providing them any opportunity to correct the erroneous information set forth in the Report, to present any evidence, or to explain any questions in connection with his transfer and desire to play football.

20. Plaintiffs learned about the contents of the Report only after reviewing it on the website of the Pensacola News Journal.

21. The arbitrary and capricious decision to prevent Terik from playing football has been made without any consideration of the effect the decision has on Terik's future college opportunities, and it has been made without providing Terik with his basic rights and opportunity to explain the underlying facts and issues that are set forth in the Report.

¹ Jeff Oliver originally lodged a complaint via email to the FHSAA. He however withdrew his complaint after the FHSAA requested additional information and asked him if his principal supported him filing the complaint with the FHSAA.

22. The arbitrary decision to prevent Terik from playing football is causing irreparable harm, is depriving him of future academic and sports opportunities, and has all been decided without his involvement or other basic constitutional rights – such as the right of due process.

23. Terik did not engage in any wrongful conduct, but he is the one being “punished” for alleged violations by the coach, and purported “falsified” reports.

24. The FHSAA, EHS, the School District, the School Board, Principal Sherrill and/or Mr. Thomas have maligned Terik in the public by delivering the EHS report to the FHSAA, without affording Terik with an opportunity to contest the initial findings.

25. Due to the failure of EHS, the School District, the School Board, Principal Sherrill and/or Mr. Thomas to provide Terik with his due process rights, the report was then delivered to the FHSAA, and the FHSAA proceeded without giving Terik any notice of the investigation and it issued the Investigative Report.

26. Due to the release of the Investigative Report to the Pensacola News Journal, on Saturday, Plaintiffs discovered that the Investigative Report concluded that Terik had been wrongfully recruited by the EHS Coach, and for falsifying information.

27. Therefore, without having had any opportunity to review the allegations or to accurately present the facts, the FHSAA, EHS, the School District, the School Board, Principal Sherrill and/or Mr. Thomas have “told the world” that Terik and/or his parents have falsified school registration documents to gain athletic eligibility and that they also received impermissible benefits.

28. The FHSAA, EHS, the School District, the School Board, Principal Sherrill and/or Mr. Thomas have damaged Plaintiffs’ good name, reputation, honor and integrity, without providing even the minimal requirements of due process.

Background

29. During 2013, Terik and his father, Mr. Miller, relocated to 5119 West Jackson Street, while the rest of the family remained at another address.

30. Terik and his father relocated to 5119 West Jackson Street, while their home at 5127 West Jackson Street was being renovated.

31. Once the renovation was completed, Terik and his father relocated to 5127 West Jackson Street.

32. At all times relevant hereto, Terik and his father have resided within the EHS district.

33. Terik's father is the pastor at a church located near both residences on Jackson Street.

34. As part of his duties as pastor of his church, to be closer to his church and congregation, and for Terik's academic reasons, he decided to move to 5119 West Jackson Street and subsequently 5127 West Jackson Street, both of which are connected with his church.

35. Terik's mother and sister remain at another residence for personal reasons.

36. During Terik's junior year at Washington High School, Terik and his family decided it would be best for him to transfer to EHS – which is where Terik and his father were residing.

37. Terik wanted to be in the business academy offered at EHS. When Mr. Miller spoke with Assistant Principal Esi Shannon regarding the business academy they learned it may be too late to be part of the business academy but he could still focus his studies on business classes.

38. During January, 2014, the proper and necessary documents for Terik to transfer to EHS and withdraw from Washington High School were completed and submitted to EHS, the School District, the School Board, Principal Sherrill and/or the office of Mr. Thomas.

39. Terik's transfer to EHS was approved and he started school at EHS in January, 2014 and no one has ever advised Terik, Mr. Miller or Ms. Miller of any issues with his transfer until they read the Investigative Report in the Pensacola News Journal.

40. To this day, not a single defendant or person connected in any way with any of the defendants has ever contacted Terik, Mr. Miller or Ms. Miller to inform them that any paperwork was inadequate or false. In fact, as this date, Terik remain enrolled and taking business classes at EHS, the very reason he transferred to EHS.

41. Terik transferred to EHS for several reasons, but none of which were because he was enticed, urged or pressured to transfer to play football at EHS. A copy of Terik's GA4 form is attached hereto and incorporated herein as Exhibit "B".

42. Subsequent to his transfer, Terik signed up to participate on the EHS varsity football team.

43. Terik signed up to play football at EHS because he wanted to play football, not because he was pressured, urged or enticed in any way to play football or because he received any kind of impermissible benefit.

44. Terik participated in spring football and practices for EHS.

45. Terik was ready to participate in the spring football game, when on the day of the Spring Game, held in May, 2014, Terik was told that he was not eligible to play in the game.

46. Terik was given no details other than verbally told he could not play.

47. Terik, Mr. Miller, and Mrs. Miller were never provided with any findings of fact, written explanation, or afforded an opportunity to provide any evidence or information contradicting the decision to declare Terik ineligible and prospectively punish him.

48. Terik was extremely disappointed because college recruiters who attended the game to watch Terik were unable to observe him for future academic and athletic scholarship opportunities.

49. Principal Sherrill promised Terik, through the football coach at EHS, that he would be eligible to play in football games when the regular season began in August, 2014.

50. Had Terik, Mr. Miller and Ms. Miller been informed of the allegations/inquiry of Jeff Oliver, the track coach at West Florida High School, the investigation by EHS, the School District, the School Board, Principal Sherrill and/or the office of Mr. Thomas, then Terik, Mr. Miller and Ms. Miller would not have simply relied to their detriment upon the "word" of Principal Sherrill.

51. Relying upon the assurances of Principal Sherrill, Terik continued to participate on the EHS varsity football team and practice, based upon Principal Sherrill's promise he would play when the season began in August, 2014.

52. Even though EHS, the School District, the School Board, Principal Sherrill and/or the office of Mr. Thomas specifically approved Terik's transfer to EHS and allowed Terik to begin a new academic school year, they continued the investigation into Terik's eligibility and transfer to EHS 5 months after the investigation, and after Terik signed up to participate on the EHS varsity football team. Yet, still no one had provided Terik, Mr. Miller or Ms. Miller with any findings, evidence, written reports or even that they were conducting an investigation.

53. Principal Sherrill, Mr. Thomas, the School District and/or the School Board (hereinafter the "Administrators") decision to "investigate" Terik's transfer to EHS, along with five other students who transferred to EHS has been secretive, and in violation of due process rights and other statutory rights.

54. The Administrators have taken the following actions to purportedly investigate the basis for Terik transferring to EHS:

- a. On May 8, 2014, a social worker visited the Miller residence. Mrs. Miller explained to that social worker that Terik and his father previously resided at two locations at different times on West Jackson Street because they resided at 5119 West Jackson Street, while their home at 5127 West Jackson Street was being

renovated. Terik and his father subsequently relocated to 5127 West Jackson Street, after the renovation. The Investigation Report notes that 5119 West Jackson Street had a white Escalade in the driveway when the social worker visited the residence. Mrs. Miller drives that white Escalade.

- b. On May 16, 2014, two white School Board investigators, G. Marsh and Brian Johnson removed Terik from his class at EHS to interrogate him in a secluded room. Terik was never informed the reasons for the questioning. The Millers were never asked to give their consent to this interrogation, and they never did consent to the interrogation.² The investigators never showed Terik any identification, and Terik believed the men were undercover police officers. Based on Terik's explanation of the interrogation to his mother, she believes that the two white investigators were using coercive tactics on an unsuspecting, vulnerable young, unrepresented African American male student. The two investigators told Terik he was not permitted to tell his parents that they talked to him. A copy of the report by G. Marsh is attached hereto and incorporated herein as Exhibit "C". Terik, Mr. Miller and Ms. Miller never received Mr. Marsh's version of the interrogation. In fact, the first time they saw the report by Mr. Marsh was Saturday, September 13, 2014 in the Pensacola News Journal.
- c. Immediately after the interrogation, Terik sent a text to his mother, and she immediately went to EHS to determine why she had not been notified of the interrogation. After waiting 4 hours for Principal Sherrill, she was told she would have to return at another time. On the morning of May 17, 2014, Mrs. Miller telephoned Principal Sherrill, and he stated "he was not aware of the investigators coming to the school until after they arrived, and he was not sure

² Upon information and belief, none of the parents of the other five students were asked to give their consent prior to the students being interrogated.

what this interrogation was about” and he referred Mrs. Miller to the investigators’ office.

- d. The week of May 23, 2014, Mrs. Miller met with G. Marsh of the School District. Mr. Marsh was very hostile to Mrs. Miller and when she asked him for explanations, he instructed her to “read your handbook”. Mr. Marsh also advised Mrs. Miller that he had the right to remove any child from class because he was an employee of the School District.
- e. On or about June 1, 2014, Mrs. Miller spoke with Mr. Thomas for additional information on the investigation of her son. Mr. Thomas acknowledged that the investigators, Mr. Marsh and Mr. Johnson acted improperly. Upon information and belief, Mr. Marsh and Mr. Johnson have not been reprimanded and/or punished in any way for their behavior.
- f. Terik has been accused of falsely providing information regarding his address, to obtain the transfer, and was told that he could not play any additional games until the FSHAA was notified. The false information apparently pertains to the fact that at one point in time, Terik and his father were living in one house on West Jackson Street, and then another house on West Jackson Street after its renovation. This information is not false, but Terik has never had the opportunity to demonstrate that his relocation from one house to another on West Jackson Street was simply due to renovation. Regardless, both addresses are in the EHS District.
- g. Administrators submitted an inquiry to Gulf Power to obtain specific information regarding utility services pertaining to the residence being occupied by Terik and Mr. Miller. Gulf Power’s records would have shown that the utilities were in the name of Mr. Miller.

- h. The Administrators subsequently advised the Millers that they had “violated” the rules because they failed to update their records when Mr. Miller and Terik moved from 5119 West Jackson Street to 5127 West Jackson Street. Therefore, Mr. Miller took leave from work and went to change his address with the Administrators. However, when he attempted to change his address, he was told that he did not have to change their address, since they remained in the EHS district. He was instructed to take his Gulf Power bill to the administration office, which he did.
- i. During August, 2014, after “pushing” from Principal Sherrill, Mrs. Miller did sign a document that was presented to her as to the different addresses when Terik and Mr. Miller moved from 5119 West Jackson Street to 5127 West Jackson Street, but she disputed all of Principal Sherrill’s “findings” of alleged violations. Principal Sherrill refused to provide her with a copy of that document.

In fact, Terik, Mr. Miller and Ms. Miller have only received the FHSAA report through their counsel and the Investigative Report through public access on the Pensacola News Journal.

55. Upon information and belief, approximately 24 student athletes transferred within the Escambia County School District, yet the Administrators did not conduct similar investigations for other students transferring within the school district.

56. The Administrators’ investigation has focused on the transfer of Terik (and the five other students) to EHS. In fact, the only investigations appear to be limited to Terik and his five teammates.

57. The FHSAA and the Administrators have concluded that the coach of EHS wrongfully recruited students, and due to the coach’s actions, the students are now being penalized and prevented from maximizing their potential talent.

58. The FHSAA or the Administrators have not provided Terik, or his parents, with due process prior to reaching the decision to prevent him from participating in EHS football.

59. The Administrators' investigation and decisions also did not follow principles of equity or due process or Florida law or the bylaws and policies of the FHSAA.

60. On the contrary, the Administrators' actions specifically ignore the mandate set forth by Florida Statutes § 1006.20, the legislative intent behind Florida Statutes § 1006.20, the bylaws of the Florida High School Activities Association ("FHSAA") (of which EHS is a member school), and the Rules and Procedures of the School Board.

61. The Administrators have set forth no reasons as to why they would ignore the procedures and requirements of Florida Statutes § 1006.20, the FHSAA and the Rules and Procedures of the School Board.

62. Yet, Terik (as well as the other five students) is being penalized and irreparably harmed due to the Administrators arbitrary decision that the students should be held responsible for the alleged wrongdoing of the coach.

APPLICABLE LAW

63. Florida Statutes § 1002.20(17) under Chapter 1002 titled Student and Parental Rights and Educational Choices provides that the student has the right to be eligible in the high school athletic competition in the school in which he enrolls each school year.

64. Florida Statutes § 1006.20(1) provides that the FHSAA is designated the governing organization of athletics in Florida public schools.

65. According to Chapter 3 of the Rules and Procedures of the District School Board of Escambia County, Florida § 3.04(1), all high school athletic programs shall be operated according to the rules and regulations of the FHSAA, a copy is attached hereto and incorporated herein as Exhibit "D".

66. Florida Statutes § 1006.20(2) provides that FHSAA shall adopt bylaws that establish eligibility requirements for all students who participate in high school athletic competition in its member schools and eligibility shall be enforced through FHSAA's bylaws.

67. As a member school, EHS is required to comply with all bylaws, policies, and procedures of the FHSAA.

68. Florida Statutes § 1006.20(2)(g) states:

The FHSAA shall adopt bylaws establishing the process and standards by which FHSAA determinations of eligibility are made. Such bylaws shall provide that:

- 1. Ineligibility must be established by clear and convincing evidence;*
- 2. Student athletes, parents, and schools must have notice of the initiation of any investigation or other inquiry into eligibility and may present, to the investigator and to the individual making the eligibility determination, any information or evidence that is credible, persuasive, and of a kind reasonably prudent persons rely upon in the conduct of serious affairs;*
- 3. An investigator may not determine matters of eligibility but must submit information and evidence to the executive director or a person designated by the executive director or by the board of directors for an unbiased and objective determination of eligibility; and*
- 4. A determination of ineligibility must be made in writing, setting forth the findings of fact and specific violation upon which the decision is based.*

69. In Terik's case, the FHSAA's ruling of ineligibility as to Terik is not in accordance with Florida Statutes § 1006.20(2)(g) and the investigation by the Administrators was not in accordance with Florida Statutes § 1006.20(2)(g) or the policies and bylaws of the FHSAA. The FHSAA report or any subsequent report is based upon the investigation of the Administrators, which was conducted contrary to Florida law, and the policies and bylaws of the FHSAA and thus is invalid as to Terik.

70. The Administrators unilaterally decided to prospectively punish Terik (and his 5 teammates) for alleged rule violations by their coach, and now the FHSAA has ruled them ineligible without following their own due process requirements.

71. The Administrators' actions specifically violate the legislative intent behind the 2012 revisions to Florida Statutes § 1006.20(2)(i) - which is to prevent unfair punishment of students for the violations of adults and strengthen the due process requirements.

72. Florida Statutes § 1006.20(2)(i) specifically provides:

The FHSAA bylaws may not limit the competition of student athletes prospectively for rule violations of their school or its coaches or their adult representatives. The FHSAA bylaws may not unfairly punish student athletes for eligibility or recruiting violations perpetrated by a teammate, coach, or administrator.

73. Florida Statutes § 1006.20 was amended in 2012 by House Bill 1403. The legislative intent behind House Bill 1403 was specifically aimed to prevent the situation in this case - i.e. to prevent unfair punishment of students for violations of adults and to prevent student ineligibility for violation of recruiting rules.

74. House Bill 1403 shifted the focus of sanctions for recruiting and eligibility violations away from students to coaches and responsible adults by requiring the FHSAA to adopt bylaws establishing sanctions for coaches.

75. Additionally, House Bill 1403 now codified by Florida Statutes § 1006.20, strengthened the due process protections of students involved in initial eligibility determinations as set forth above in Florida Statutes § 1006.20(2)(g).

76. Finally, House Bill 1403 as codified by Florida Statutes § 1006.20(2)(i) prohibits prospective punishment, which is exactly the circumstances surrounding Terik.

77. On June 28, 2012, the FHSAA sent a memorandum outlining the impact of House Bill 1403 to its member schools including EHS, a copy of which is attached hereto and incorporated herein as Exhibit "E".

78. Specifically, the FHSAA memorandum stated:

The FHSAA will investigate allegations of violations of its Policy on Recruiting. HB1403 requires that no student be ruled "ineligible" as a result of being recruited; instead, sanctions may be assessed directly against the school's coach involved in the recruiting violation AND sanctions may be placed upon the school, including but not limited to requiring the school to play in a different classification.

79. The Administrators are aware of these requirements of Florida Statutes § 1006.20 and received the memorandum dated June 28, 2012, from the FHSAA.

80. The FHSAA affords Terik (and his five teammates) the due process required under Florida Statutes § 1006.20, and unless the FHSAA makes a ruling of ineligibility supported by clear and convincing evidence while providing the required due process, Terik (and his five teammates) is eligible to play football.

81. The FHSAA and the Administrators are now denying due process and ignoring Florida law.

82. The FHSAA and the Administrators have no legal basis to prevent Terik (or his teammates) from playing as he remains eligible until the FHSAA rules by clear and convincing evidence, after the students are afforded basic due process.

83. As is, the FHSAA and the Administrators are violating Florida Statutes § 1006.20 and the due process rights of these students by punishing Terik and his teammates for the alleged violations of adults.

84. Simply put, contrary to applicable governing law, Terik and his teammates are being irreparably harmed by the arbitrary and capricious decision to prevent his participation in EHS varsity football related activities and games without basic due process and findings of clear and convincing evidence.

COUNT 1 - INJUNCTION

85. Terik, Mr. Miller and Mrs. Miller reallege the allegations of paragraphs 1-84, as set forth above.

86. Because of the irreparable harm to Terik and the lack of an adequate remedy at law and the lack of due process, Terik has no choice but to seek an injunction to prevent the Administrators and the FHSAA from suspending him from further participation in EHS varsity football related activities and games.

87. A party requesting an injunction must establish: "(1) the likelihood of irreparable injury, (2) the unavailability of an adequate remedy at law, (3) a substantial likelihood of success on the merits, and (4) that a temporary injunction will serve the public interest." *DePuy*

Orthopaedics, Inc. v. Waxman, 95 So. 3d 928, 938 (Fla. 1st DCA 2012) (internal quotations omitted).

The likelihood of irreparable injury.

88. Missing football is an irreparable injury. *Florida High School AActivities Ass'n v. Aderly*, 574 So. 3d 158 (Fla. 4th DCA 1990). Moreover, in this particular case, Terik is missing potential academic and athletic scholarship and other opportunities by being withheld from playing football. Terik might receive additional scholarship opportunities, contingent upon his performance and participation in EHS varsity football related activities and games. Thus, Terik's not being able to maximize his academic skills along with his athletic skills is irreparable harm.

The unavailability of an adequate remedy at law.

89. Terik has no adequate remedy at law. The Administrators are preventing him from playing football contrary to applicable law, and with no due process. The FHSAA has not issued findings of fact, supported by clear and convincing evidence, to demonstrate that Terik is ineligible. Thus, Terik has had nothing to appeal with FHSAA. If the Administrators were following applicable law, Terik would be playing football. Therefore, Terik is being prospectively punished by the Administrators, which is prohibited.

A substantial likelihood of success on the merits.

90. Terik is likely to prevail on the merits for the reason set forth above. The Administrators can set forth no legal basis for any of the actions they have taken. In fact, a basic reading of the law is clear that Terik will prevail because he cannot be prospectively punished. Moreover he cannot be punished for the actions of adults. Florida Statutes § 1006.20 is crystal clear in this respect. In fact, Terik, Mrs. Miller and Mr. Miller are at a loss as to why the Administrators are ignoring the applicable law.

A temporary injunction will serve the public interest.

91. A temporary injunction will serve the public interest because the public has an interest in due process for all parties, including student athletes. The Florida legislature acknowledged as much when it revised Florida Statutes § 1006.20 in 2012 by House Bill 1403. The legislative intent behind House Bill 1403 was specifically aimed to prevent the situation in this case - i.e. to prevent unfair punishment of students for violations of adults and to prevent student ineligibility for violation of recruiting rules. House Bill 1403 shifted the focus of sanctions for recruiting and eligibility violations away from students to coaches and responsible adults by requiring the FHSAA to adopt bylaws establishing sanctions for coaches. Finally, House Bill 1403 strengthened the due process protections of students involved in initial eligibility determinations as set forth above in Florida Statutes § 1006.20(2)(g). Clearly, the legislature had the public interest in mind with these revisions to prevent the case at bar. Additionally, Florida Statutes § 1002.20(17) provides that students have a statutory right to have their eligibility determined in accordance with due process under applicable law.

Conclusion

92. A permanent injunction or in the alternative a temporary injunction is needed in this case as Terik, Mr. Miller and Mrs. Miller have no other remedy available, and quite frankly are at a loss how to help their child. The FHSAA and Administrators, who should have the student athletes' best interest as their priority have instead focused on the alleged wrongdoing of the coach, and have not focused on the impact that their decisions have on Terik (or his five team members). The FHSAA and Administrators have also ignored basic due process rights afforded by federal and Florida law. In sum, contrary to applicable law, the FHSAA and Administrators have punished Terik (and his five team members) for the alleged wrongdoing of adults and have denied Terik due process.

Wherefore, Terik, Mr. Miller and Mrs. Miller hereby seek a permanent injunction or temporary injunction preventing the FHSAA, Principal Sherrill, Mr. Thomas or the School

Board, or any agent from imposing any further suspension or restriction whatsoever on Terik Miller's participation in EHS varsity football related activities and games, and for any and all other relief this Court deems just and necessary.

COUNT 2 – DECLARATORY JUDGMENT

93. Terik, Mr. Miller and Mrs. Miller reallege the allegations of paragraphs 1-84, as set forth above.

94. This is an action pursuant to Section 86.011, Florida Statutes, for a judgment declaring that Terik remains eligible because of the following independent reasons:

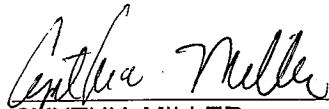
- a. the Administrators and the FHSAA have denied due process to Terik, Mr. Miller and Ms. Miller due to delay, lack of notice of the specific allegations, lack of opportunity to defend and present evidence and information to the contrary; and
- b. the FHSAA report and any subsequent report based upon the investigation by the Administrators is invalid because the investigation and information obtained was conducted contrary to Florida law, the policies and bylaws of the FHSAA;
- c. the Administrators and the FHSAA have ignored basic procedural due process rights in handling the investigation and issuing any reports; and
- d. the Administrators appear to be using the investigation and the FHSAA report to solve an employment problem without any regard to the impact on Terik and the other students; and
- e. based on all applicable evidence, Terik remains eligible to play football

Wherefore, Terik, Mr. Miller and Mrs. Miller hereby seek a judgment declaring Terik eligible, and for any and all other relief this Court deems just and necessary.

95. Terik, Mr. Miller and Mrs. Miller hereby reserve all rights relating to damages resulting from the actions of the FHSAA, EHS, the School District, the School Board, Principal Sherrill and/or Mr. Thomas. This action does not waive Terik, Mr. Miller and Mrs. Miller's rights to seek damages in the future.

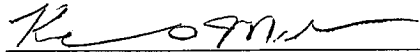
VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Complaint and that the facts alleged therein are true and correct to the best of my knowledge and belief.



CYNTHIA MILLER

Dated the 15th day of September, 2014



KEVIN MILLER

Dated the 15th day of September, 2014

CARVER, DARDEN, KORETZKY, TESSIER, FINN,
BLOSSMAN & AREAUX LLC

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Attorneys for Plaintiffs,

CYNTHIA MILLER and KEVIN MILLER, on
behalf of their minor child, TERIK MILLER



September 12, 2014

Mr. Michael Sherrill, Principal
Escambia High School
1310 North 65th Avenue
Pensacola, Florida 32506

Dear Mr. Sherrill:

Subject: Escambia County School District's Investigative Report – Escambia High School

This communication addresses your July 10, 2014 letter reporting potential violations committed by representatives of Escambia High School's athletic program.

Please review the following information in its entirety for appropriate response to the FHSAA Office.

The following information is organized as follows:

- I. **Background Summary**
- II. **Summary of Violations and FHSAA Actions**

I. Background Summary

Escambia County Schools (herein referred to as District) conducted an investigation of Escambia High School's (herein referred to as EHS) athletic program with regard to potential violations of the FHSAA's bylaws and policies related to athletic recruiting, which is prohibited.

Principal Sherrill submitted a cover letter and the investigative report, requesting FHSAA staff to address the potential violations. The fact that this was an investigation conducted by Escambia County Schools, and not the FHSAA, required some additional responses from EHS. FHSAA staff reviewed all information provided and allowed EHS to respond to each potential violation and respond by indicating if EHS: agrees a violation occurred, disagrees and considers a violation did not occur, agreed (or disagreed) somewhat, with EHS providing further explanation. EHS was allowed to provide additional documents, statements, or facts gathered in support of the responses submitted by EHS.

The District began the investigation process as a result of an allegation of recruiting by an EHS athletic representative (B.1.4.18) from a representative of another member school's athletic program. The initial allegation was submitted to the FHSAA and subsequently withdrawn by the member school's representative and referred to the District by the individual.

The FHSAA is charged with establishing bylaws and policies that prohibit athletic recruiting. Please reference the applicable Florida State Statute(s): 1006.20(2)(b) and 1006.20(2)(f).



II. Summary of Violations and FHSAA Actions

After reviewing the District's investigative report, EHS' letter and supporting information dated September 2, 2014, the following information represents the violations determined by this office, an FHSAA summarized statement regarding the school's position related to the violation, and the actions taken by the FHSAA in accordance with the Association's rules and regulations. To review EHS's full response and supporting documents, refer to EHS letter dated September 2, 2014 and the attachments.

1. **Findings of Fact. Violation.** Mr. Willie Spears, a representative of EHS' athletic program, committed improper contact with students who were not attending EHS at the time of the improper contact. (Reference B.1.4.18, B.6.3, P.36.2, P.36.5.3, P.37.1, P.37.3, P.37.3.2.3 and Items #1, #8, #9 in the District's investigative report).

Note: This is a major violation of the FHSAA Bylaws and Policies on Athletic Recruiting committed by Mr. Willie Spears. Please reference Florida State Statute 1006.20(2)(b).

EHS Response. EHS agrees with the violations specified. On August 29, 2014, Mr. Spears was afforded an opportunity to review the FHSAA violations and respond. However, Mr. Spears declined to review any information or to provide a written response. Mr. Spears also provided promotional materials (brochures) of his athletic program to parents of students who were not enrolled in EHS.

FHSAA Determination. Mr. Spears, a representative of the school's athletic program, committed several violations of FHSAA Bylaws and Policies related to athletic recruiting. The violations, at a minimum, consisted of, communicating with non-EHS students' parents to discuss athletic opportunities at EHS; providing tours of the school and athletic facilities to parents of non-EHS students prior to their students enrolling in EHS.

FHSAA Action. As a result of the aforementioned violated FHSAA Bylaws and Policies committed by Mr. Spears, EHS is fined \$2,500 (P.36.5.3).

2. **Findings of Fact. Violation.** Mr. Willie Spears allowed ineligible students to participate in its spring football contest during the spring of 2013. (Reference B.9.3.2, B.9.10, B.10).

Note: This is a major violation regarding student-athlete eligibility and participation (FHSAA Bylaw 1.4.22). Reference Florida State Statute 1006.20(2)(f).

EHS Response. Initially, EHS disagreed with this finding of fact / violation because FHSAA listed multiple students as potentially violating the FHSAA bylaws and policies by participating while ineligible. EHS verified it was only one student-athlete that participated while ineligible.

FHSAA Determination. Mr. Spears allowed one student to participate in its spring football contest while ineligible. Spring football is a continuation of fall football (P.18.2.1). The student did not make a full-and-complete move as defined in the FHSAA Bylaws and Policies and was therefore ineligible to participate in the spring football contest.

FHSAA Action. As a result of the aforementioned violated FHSAA Bylaws and Policies, EHS is fined \$2,500 (B.10.1.2 and P.44.1.6).

3. **Findings of Fact. Violation.** Mr. Willie Spears provided impermissible benefits to student-athlete(s) by allowing the students to participate without the required eligibility forms on file while representing EHS in interscholastic contests. (Reference B.2.5, B.2.6, B.6.1, B.9.7, B.9.8, P.36.1.6, P.36.2.3, P.36.5, P.37.2, P.37.3 and Items #3, #6, #7, and students' section of the District's investigative report).

EHS Response. EHS agrees with the violations specified. *Student-athlete* did not have a GA4 form and has since left EHS. *Student-athlete* turned in a GA4 form August 29, 2014.

FHSAA Determination. Mr. Spears allowed two students to participate without appropriate forms on file, which require the member school, student-athlete, and parent(s) to declare no violations of the FHSAA's recruiting rules have occurred prior to the student's participation.

FHSAA Action. EHS is fined \$200 (P.36.4.2).

4. **Findings of Fact. Violation.** Mr. Willie Spears provided impermissible benefits to at least eight (8) student-athlete(s) by allowing the students to participate without the required eligibility forms on file. (Reference Florida State Statute 1006.20(2)(c) and 1006.20(2)(k), B.2.5, B.2.6, B.6.1, B.9.7, B.9.8, P.36.1.6, P.36.2.3, P.36.5, P.37.2, P.37.3 and Items #3, #6, #7, and students' section of the District's investigative report).

Note: This is a violation of Florida State Statutes (reference 1006.20(2)(c) and 1006.20(2)(k)).

EHS Response. EHS agrees with the violations specified. However, the eight (8) students are listed separately and referenced in the District's investigation. After a thorough review of its football program, EHS reported changing its procedures to require all "paperwork" to be submitted to its athletic director, who will in turn communicate approval / clearance for the student to participate in its athletic program through the use of a GA7.

FHSAA Determination. EHS provided the names of the eight (8) students voluntarily and in a manner consistent with self-reporting violations. The list of students who participated without an EL2, EL3 and/or EL3CH includes:

- a. (EL2/EL3/EL3CH)
- b. (EL2/EL3)
- c. (EL2)
- d. (EL2/EL3/EL3CH)
- e. (EL2)
- f. (EL3)
- g. (EL2)
- h. (EL2)

Allowing students to participate, without the appropriate FHSAA eligibility forms on file, subjects EHS to penalties consistent with a \$500 penalty for each student and each missing form totaling \$5,000 (P.16.9.1 and P.16.9.2). However, EHS did notify FHSAA of this infraction in a manner consistent with self-reporting the violation.

FHSAA Action. EHS is fined \$800 for a self-reported violation (\$100 per student).

5. **Findings of Fact. Violation.** Mr. Donte Sheppard, a representative of EHS' athletic program, committed improper contact with students who were not attending EHS at the time of the improper contact. (Reference B.1.4.18, B.6.3, P.36.2, P.36.5.3, P.37.1, and P.37.3).

Note: This is a major violation of FHSAA Bylaws and Policies on Athletic Recruiting committed by Mr. Donte Sheppard. Reference Florida State Statute 1006.20(2)(b) and 1006.20(2)(f).

EHS Response. EHS agrees with the violations specified. On August 29 and September 1, 2014, Mr. Sheppard was afforded an opportunity to review the FHSAA violations and respond. However, Mr. Sheppard declined to review any information or to provide a written response. (Attachments)

FHSAA Determination. Mr. Sheppard acknowledges communication with non-EHS students and/or parents prior to their enrolling in EHS. Additionally, Mr. Sheppard made assessments of non-EHS students for athletic purposes related to their participation in the EHS football program. These assessments were reported to Mr. Spears. This is a violation of the letter and spirit of the FHSAA bylaws and policies on recruiting.

FHSAA Action. As a result of the aforementioned violated FHSAA Bylaws and Policies committed by Mr. Sheppard EHS is fined \$2,500 (P.36.5.3).

6. **Findings of Fact. Violation.** The following is a list of students deemed ineligible as a result of all information provided to this office for review and EHS response:
- a.
 - b.
 - c.
 - d. Terik Miller
 - e.
 - f.
 - g.

EHS Response. EHS agreed that the aforementioned students either participated while ineligible or are currently ineligible for violations of FHSAA Bylaws and Policies. The bylaws and/or policies rendering the students ineligible, at a minimum, consist of one or more of the following:

- Receiving an impermissible benefit (B.6.3, P.36, and P.37);
- Falsifying information to gain athletic eligibility, which includes school registration documents (B.9.1.2.2).

FHSAA Determination. The aforementioned students have participated while ineligible.

FHSAA Action. FHSAA will communicate individual student ineligibility separately.

7. **Findings of Fact. Violation.** In a letter dated September 3, 2014, EHS reported six (6) ineligible players participated in a football contest against Vidor High School (TX).

FHSAA Determination. EHS self-reported violations committed by its football coach, Mr. Willie Spears, by allowing ineligible students to participate. EHS also reported corrective actions taken as a result of the Mr. Spears allowing the students to participate.

FHSAA Action. Whereas Bylaw 10.2 allows for the Executive Director's office to determine if the students were allowed to participate intentionally or unintentionally, the member school is expected to review the eligibility of each student-athlete prior to participation. For this reason, EHS is held in accordance with the applicable penalties to be assessed as failure to follow policies and procedures (Policy 44). However, the fact that EHS is self-reporting this infraction will be taken into consideration.

EHS is fined in the amount of \$600.00. *The Handbook requires a financial penalty \$2,500 per student per contest, totaling \$15,000 for allowing an ineligible student to participate, but this has been reduced due to EHS' self-reporting its violation. In a teleconference on August 28, 2014, FHSAA Staff witnessed Principal Sherrill directing Mr. Willie Spears to not allow the six students, mentioned in #6, to participate.*

8. **FHSAA Action.** *EHS is reprimanded. A reprimand results in an official letter of censure to the member school regarding the violation(s) becoming a permanent part of the school's membership record.*
9. **FHSAA Action.** *EHS is placed on Administrative Probation, effective immediately and concludes on June 1, 2016. Administrative probation is a period of warning for one or more calendar years during which time any additional violations committed by the school may result in more severe penalties being assessed. This is the least severe of probations that may be issued by this office.*
10. **FHSAA Action.** *EHS is placed on restrictive probation for the 2014-15 and 2015-16 school years. The school or person faces the same penalties as administrative probation, with the additional consequence of restriction from participation in championship competition in one or more sports, or other restrictions deemed appropriate by the Executive Director, for one or more calendar years. The terms of the restrictive probation are:*
 - a. *EHS shall not participate in a spring football contest in May 2015;*
 - b. *EHS shall not participate in a fall football pre-season contest in August 2015.*
11. **FHSAA Action.** *EHS football coaching staff shall complete the FHSAA Recruiting video / certification process. EHS shall provide a roster of all its football coaches, paid and volunteer, to this office. Once the roster is received, FHSAA will provide specific instructions on how to complete this requirement.*
12. **FHSAA Action.** *EHS football coaching staff shall complete the following NFHS Courses:*
 - a. *Engaging Effectively with Parents.*
 - b. *Creating a Safe and Respectful Environment.*

The decision by this office may be appealed to the FHSAA Sectional Appeals Committee as directed under Bylaws 10.4.6 and 10.6.4 – Appeals of Executive Director's Findings. The principal of a member school or his/her designee, or any other individual, who is found to be in violation of the rules of this Association by the Executive Director, whether or not such finding results in the imposition of penalty,

may appeal the finding of the Executive Director if he/she takes issue with it, or may appeal the penalty imposed, if any if he/she, while not disagreeing with the finding, believes the penalty to be too severe. To appeal the finding of the Executive Director, the appeal must be filed so that it is received in the office of the Association within ten (10) business days of the receipt of the Executive Director's finding and/or notification of the imposition of penalty. Failure to file an appeal so that it is received in the office of this Association within the ten (10) business days allowed shall be deemed a waiver of the right to appeal as granted herein.

Sincerely,



Dr. Roger Dearing
Executive Director

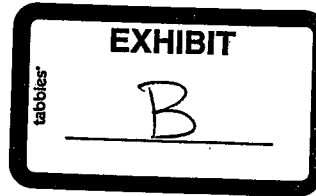
Cc: Mr. M. Denarvise Thornton, Jr. Associate Executive Director for Eligibility and Compliance Services, FHSAA
Mrs. Jamie Rohrer, Assistant Executive Director for Administrative Services, FHSAA
Mr. Corey Sobers, Public Relations Specialist, FHSAA
Mrs. Roxanne Baker, Athletic Director, Escambia County Schools
Mr. Roger Mayo, AD, Escambia High School
FHSAA Finance Department



Florida High School Athletic Association

Affidavit of Compliance with the Policies on Athletic Recruiting & Non-Traditional Student Participation

The student/parent must complete, obtain all applicable signatures before a notary public and submit this form to the school by a date not earlier than the first day of practice of the first sport in which the student wishes to participate, as posted on the FHSA Website. Submission of this form DOES NOT grant eligibility. The student must be ELIGIBLE in all other respects.



GA4
Revised 05/13

We, the undersigned, being sworn, ~~certify~~ that the following statements are true:

1. Student (full legal name) _____ ("THIS STUDENT"), who was born on (date) 12-24, 19 96, and who is currently in the (number) 11 th grade, now attends or wishes to participate for (school now attending/participating for) Escambia High School ("THIS SCHOOL"), commencing on (date) 20 14.

THIS STUDENT has previously attended/participated for (list all previous secondary schools beginning with the most recent and working back in time) Booker T. Washington

2. I have read and understand the definition of athletic recruiting, including the explanation of the terms "representatives of the school's athletic interests", "improper contact" and "impermissible benefit", or I have read and understand the regulations regarding participation as a "Non-Traditional" student.

3. No employee, athletic department staff member, representative of the athletic interests of THIS SCHOOL, any person or organization acting on their behalf or a third party has had communication, directly or indirectly, through intermediaries, or otherwise with THIS STUDENT or any member of his/her family in an attempt to pressure, urge or entice THIS STUDENT to change attendance to THIS SCHOOL for the purpose of participation in interscholastic athletics.

4. No employee, athletic department staff member, representative of the athletic interests of THIS SCHOOL, any person or organization acting on their behalf or a third party is giving, has given, has offered or promised to give, directly or indirectly, through intermediaries, or otherwise any impermissible benefit to THIS STUDENT or any member of his/her family for the purpose of participation in interscholastic athletics.

5. IF THIS STUDENT has participated on a non-school team affiliated with THIS SCHOOL prior to attending THIS SCHOOL that THIS STUDENT has signed a GA6 Form.

6. If THIS STUDENT is a "Non-Traditional" student, THIS STUDENT has submitted to THIS SCHOOL the EL2, EL3, EL3CH forms and, where applicable, the EL7, EL7V, EL12 and EL14 forms prior to a date not earlier than the first day of practice of the first sport in which the student wishes to participate, as posted on the FHSA Website.

7. IF THIS STUDENT is a youth exchange (J-1 and F-1 Visas), international or immigrant student, THIS STUDENT has submitted to THIS SCHOOL the EL2, EL3, EL3CH forms and, where applicable, the EL4 Form.

I understand that I am swearing or affirming under oath to the truthfulness of the statements made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment. I further understand that the penalties for knowingly making a false statement may subject THIS SCHOOL to fines, forfeitures, probations and possible expulsion from membership in the FHSA, and may subject THIS STUDENT to a loss of athletic eligibility.

FOR STUDENT/PARENT(S)/LEGAL GUARDIAN(S):

Signature of Student

Date

STATE OF FLORIDA, COUNTY OF Escambia

Sworn to or affirmed before me on (date) 2/19/14

[Notary Seal:]

Printed Name of Student

Signature of Parent/Legal Guardian

Date

Printed Name of Parent/Legal Guardian

Signature of Parent/Legal Guardian

Date

Printed Name of Parent/Legal Guardian

Signature of Notary

Printed Name of Notary

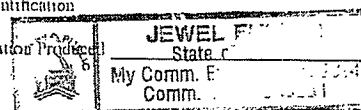
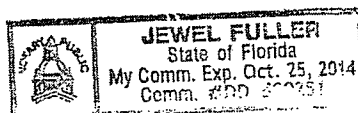
NOTARY PUBLIC

My commission expires: 10/25, 20 14

Personally known to me ☒

OR Produced Identification

Type of Identification Produced



ENCLOSURE # C

Escambia County School District

May 16, 2014

Results of Interview with

1. On this date, _____th grade, Escambia High School (EHS) was interviewed regarding his transfer to EHS. Also present during this interview was Brian Johnson, IT Investigations.
2. _____ acknowledged that he previously attended Washington High School (WHS), where he also played football in the fall of 2013. After the fall season, he stated the program was not improving, and then the coach left. He has two friends (_____ and _____) who also attended EHS, and whom he had play _____ football together over the years. In talking with them, both _____ and _____ told him the team (at EHS) was good and he would play. _____ also felt EHS was a good school, acknowledging it was a good environment and education was important.
3. In discussing football at EHS, _____ stated that prior to his transfer that he did not meet or talk with any coaches. However, _____ stated that he knew that if he came to EHS that he would be recruited and be seen by more colleges than if he stayed at WHS. When asked if he had considered returning to WHS now that a new coach had arrived, _____ stated his mother had asked him the same question but he wanted to stay at EHS. In further discussion, _____ stated his favorite coach was Coach Williams, a defensive coach.
4. When asked about his address, _____ stated that he moved to _____ when he transferred to EHS, and was back to his home on _____ for the weekends. According to _____; he lives at the church because it was closer to EHS. However, in further discussion, _____ recanted and stated he actually resides at the _____ address during the week vice the "church" address on _____. When asked why the _____ address was used, _____ stated he remembered his parents discussed using that address. He did not know who they had talked to about using that address.

G.Marsh

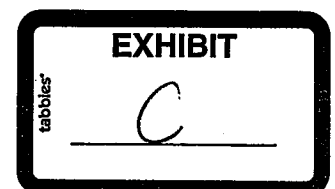
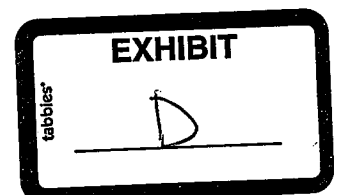


EXHIBIT # 31

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CHAPTER 3 – OPERATIONS

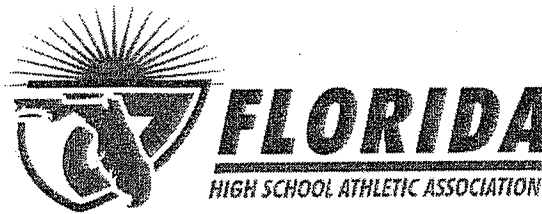
3.04 EXTRA CURRICULAR ACTIVITIES

- (1) All high school athletic programs shall be operated according to the rules and regulations of the Florida High School Athletic Association (FHSAA). High schools are authorized to become members of the FHSAA and to renew such membership annually. Any employee who violates FHSAA rules and regulations is subject to disciplinary action by the Board upon the recommendation of the Superintendent.
- (2) Twenty-five (25) cents from each regular season football ticket (student and adult) sold shall be retained by the school for its band program. To cover this added cost, 25 cents may be added to the price of student and adult tickets.
- (3) The Board shall not provide student transportation in connection with any event or activity that is not sponsored by the District. The Board shall have no liability for damages arising out of any transportation arranged and/or provided by parents or other parties to any event or activity, even those in which the District or school has agreed to participate, cosponsor or require the participation of students.

Rulemaking Authority: Sections 1001.41; 1001.42; 1001.43, F.S.

Law Implemented: Sections 1006.15; 1006.21; 1006.22, F.S.

History: New: 02/25/92. Revised/Amended: 11/21/00; 09/23/03; 10/27/09; 01/19/10; 05/20/14.



June 28, 2012

TO: FHSAA Member Schools

FROM: Roger Dearing, Ed. D., Executive Director
M. Denarvise Thornton, Jr., Associate Executive Director

SUBJECT: New Laws Effective July 1 Impacting 2012-13 FHSAA Bylaws and Policies

House Bill 1403, which directly affects the FHSAA and was the subject of considerable attention during the recent legislative session, takes effect this Sunday, July 1, 2012. The law introduces significant new procedures to interscholastic athletics in Florida. While the FHSAA may not have recommended many of the changes, we are fully committed to implementing the Legislature's intent for the effective administration of high school athletics. The responsibility for applying the new procedures will inevitably fall on our member schools, so we now offer guidance regarding some of the most common questions about this legislation. This memo contains some common questions and answers about HB 1403 and other legislation affecting interscholastic athletics, followed by a brief summary of the key provisions of HB 1403.

The student-athletes who participate in our programs are entitled to know that all rules will be administered fairly and evenly, so we encourage you to become familiar with the new requirements and incorporate them into your programs.

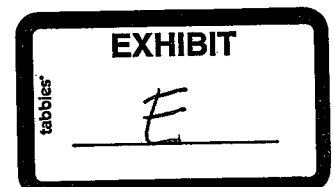
HB1403 – Regarding FHSAA

Question #1: Can my child now play for any school he or she wants, while attending another school? What if my child's current school doesn't offer a particular sport – is he or she allowed to play at another school while attending the current school?

Response: Florida statutes and FHSAA Bylaws and Policies have not changed in this regard. Students may play for a school they are not attending only under the established exceptions: home-educated students, non-member private school students, charter school students and alternative/special school students (reference 2011-12 Bylaw 9.2 and Policy 16).

Question #2: Can coaches now recruit students to attend their school or play for their team?

Response: No. Coaches (or representatives of a school's athletic interests) may NOT recruit students. In fact, HB1403 increases the FHSAA's authority over adults who violate recruiting policies by authorizing the Association to sanction coaches. These sanctions may include, but are not limited to, suspension of coaches from



interscholastic athletic activities. HB1403 also authorizes member schools to seek reimbursement from coaches who commit major violations that lead to financial penalties against the school. Most varsity head coaches are returning for another year and should be familiar with the Association's policy on recruiting (reference 2011-12 Policy 36).

Question #3: May a student now transfer to whatever school he or she wants to attend and be automatically eligible to participate in interscholastic athletics there?

Response: Students have always been allowed to transfer from one school to another; it is the question of athletic eligibility that must be addressed. HB1403 allows a student to transfer PRIOR to the season and be eligible for athletics at the new school, but only PURSUANT TO THE POLICIES OF THE RECEIVING SCHOOL DISTRICT OR PRIVATE SCHOOL. Students who change (transfer) schools AFTER the season has begun are subject to the provisions of FHSAA bylaws, which among other things limit athletic eligibility to instances involving a full and complete move; a district reassignment (but not for disciplinary reasons, athletic reasons or at the student's request); or a death, imprisonment or similar circumstances affecting the person with whom the student resides. It is important to recognize the definition of a transfer student as applied by FHSAA bylaws and policies: *2011-12 and 2012-13 Transfer defined - A transfer occurs when a student makes any change in schools after he/she establishes residency at a school each year.* (For a full list of provisions, please refer to 2011-12 bylaws 9.3.2.1, 9.3.2.2, 9.3.2.3, 9.3.2.4 and 9.3.2.5.)

Question #4: What is a student-athlete allowed to do during the summer without violating provisions of the new law or other requirements?

Response: A student's ability to change schools during the summer has not changed. The gist of the statutory language and FHSAA bylaws and policies primarily allows students to change schools during the summer period and maintain eligibility at the new school, provided no "improper contact" has taken place during the summer period prior to the school change. Student participation on non-school teams (for example, travel teams, club sports, etc.) affiliated with the school to which the student is enrolling WHILE STILL ATTENDING THE PREVIOUS SCHOOL adversely impacts the student's eligibility at the new school. Under FHSAA Bylaw 1.4.24, *Athletic activities affiliated with a school are any athletic activities not sponsored by the school but are organized, coached and/or supervised by a school employee, athletic department staff member, or representative of the school's athletic interests or in which the majority of participants are students who attend the school.*

Another issue that may arise during the summer period and could adversely impact a student's athletic eligibility involves participation in activities sponsored by a member school – for example, a summer football camp at another school. Possible violations could occur if, AFTER such participation, the student registers for, enrolls in and/or applies to attend the sponsoring school. These steps (registration/enrollment/acceptance) must take place PRIOR to the student's summer participation in activities sponsored by the receiving school.

HB 291 – Concussions

General Provisions:

1. Establishes guidelines for coaches, officials, administrators, youth athletes and their parents/guardians regarding the nature and risk of concussions and head injury
2. Creates new form EL3CH for reporting incidents
3. Requires written medical clearance from an appropriate health care professional before the student-athlete may return to play after a concussion
4. Defines the FHSAA Sports Medicine Advisory Committee and sets out its duties and responsibilities

FHSAA Implementation: The FHSAA has developed new forms required for student-athlete participation. These forms serve to educate students and parents/legal guardians regarding the nature and risk of concussions, head injury and heat-related illness.

HB1403 – Summary of Key Provisions and FHSAA Implementation

1. Allows New Associations / Contests Against Non-member Schools

- a. The FHSAA may not discourage participation by acting against these schools
- b. The FHSAA may not unreasonably withhold recommendation to the National Federation of State High School Associations
- c. Member schools may compete against non-member Florida schools

Implementation: The FHSAA Board of Directors is acting in accordance with these new guidelines, as demonstrated by its approval in June of the request by the Sunshine Independent Athletic Association for endorsement for affiliate membership status with NFHS. Member schools must continue to adhere to all of the Association's bylaws and policies when competing against both FHSAA members and non-FHSAA members.

2. Transfer Rule

- a. Transfers require approval of the receiving district or private school
- b. Transfers must be completed prior to the beginning of the relevant sports season

Implementation: The FHSAA will institute the use of Form EL6, which requires the receiving school's principal to declare the student's eligibility status to the Association. This form will be used to communicate with the student's previous school, allowing the previous school to verify the student's eligibility status at the time the student withdrew (transferred) from the previous school. This process serves to prevent member schools from allowing otherwise ineligible students to participate at the new school.

3. Recruiting Violations

- a. A school that violates recruiting policies may be required to play in a higher classification
- b. Students will remain eligible (unless the student falsified information or accepted a promise of benefits)

Implementation: The FHSAA will investigate allegations of violations of its Policy on Recruiting. HB1403 requires that no student be ruled "ineligible" as a result of being recruited; instead, sanctions may be assessed directly against the school's coach involved in the recruiting violation AND sanctions may be placed upon the school, including but not limited to requiring the school to play in a different classification.

4. Investigations

- a. FHSAA investigative consultants must undergo Level 2 background screening
- b. Investigative consultants must carry photo identification (identifying their association with the FHSAA)
- c. Investigative consultants are authorized to investigate only the alleged violations
- d. Interviews may be conducted only between 9 a.m. and 7 p.m. and with consent
- e. Searches of residences may be conducted only with consent
- f. Parents must be notified
- g. The student's attorney may be present during an investigative interview

Implementation: HB1403 requires the FHSAA to continue various practices of the investigative process and imposes some additional actions and restrictions on the investigative process. Member schools will have a heightened responsibility for notifying parents when their child's eligibility status is the subject of an investigation. Principals of member schools will be notified of procedures regarding the school's responsibilities if the Association conducts an investigation of the school's athletic program.

5. Penalties to Coaches

- a. Adds to definition of Major violations – *knowingly allowing an ineligible student to participate*
- b. Sanctions are to be assessed against and will follow the individual coach
- c. A coach is responsible for reimbursing the member school for penalties
- d. Coaches are ensured due process

Implementation: There should be no mistaken belief that the new legal changes eliminate the need for coaches to comply with the Association's recruiting policies. Coaches must still abide by the FHSAA's bylaws and policies regarding recruitment, and may be individually sanctioned for failure to do so. Coaches must still abide by the FHSAA's bylaws and policies regarding recruitment, and may be individually sanctioned for failure to do so. Sanctions assessed to an individual coach "follow the coach" to other schools, in the event the coach changes schools. In all cases where the coach is assessed a penalty by the FHSAA, the coach is ensured due process.

6. Appeals Process

- a. No forfeitures are imposed for inadvertent eligibility violations
- b. Eligibility/Ineligibility determinations are to be made prior to the end of the sports season
- c. Appeals will be considered "de novo" (a Latin expression meaning "from the beginning"), as if the matter was being considered for the first time

Implementation: HB1403 addresses how forfeits may apply where an ineligible student is allowed to participate. Additionally, it addresses the timeliness of allowing students to appeal their eligibility status. The FHSAA makes every effort to facilitate timely appeals for student-athletes, so member schools should be aware of the scheduled deadlines in order to help provide student-athletes every opportunity to have their case(s) appear before the appropriate appellate body prior to the season's conclusion.

For more information, please visit www.fhsaa.org or submit questions to eligibility@fhsaa.org.