

Policy 127CSR2 Athletics, Provisions Governing Eligibility

Comment Log

May 2, 2012 – June 11, 2012

Action
 N: No Response
 NA: Not Accepted
 A: Accepted

Type
 - Negative
 + Positive
 o Neutral

Date	Individual/Organization	Comments	Action/ Type	Rationale
5/16/12	C. David Morrison	<p>127-2-7.1 and 127-2-7.2 Residence-Transfer</p> <p>After reviewing the proposed transfer rule, I do not believe it will withstand judicial scrutiny. This memo explains my opinion.</p> <p>As you know, the proposed transfer rule, as applied to private schools, would only permit students who live in the private school attendance zone to transfer to that school. The private school attendance zone is defined by the SSAC as being the same attendance zone as the zone for the geographically closest public school.</p> <p>However, the public schools set their own attendance zones, not the SSAC. The SSAC, by this rule would not permit the private schools to set their own attendance zones. Thus by defining the attendance zones for the private schools, but not for the public schools, the SSAC is treating the two differently in direct violation of the statute that provides that the SSAC is to treat them the same.</p> <p>Moreover, with five public school zones in</p>	N -	

		<p>Harrison County, I believe that a court here would hold the rule as being arbitrary, capricious and unenforceable. Let me explain.</p> <p>Notre Dame HS is situate in downtown Clarksburg, and almost in the middle of the five public school districts. The closest public school to Notre Dame is Robert C Byrd HS, which is approximately 4 miles from Notre Dame. However, Liberty HS is approximately 5 miles from Notre Dame. Bridgeport HS is also approximately 5 miles from Notre Dame. Lincoln HS is approximately 8 miles from Notre Dame, while South Harrison HS is the farthest, being approximately 14 miles from Notre Dame.</p> <p>In the event, students living in all five of those zones, as well as students living in Fairmont, Buckhannon and Weston, attend Notre Dame.</p> <p>As you know, Fairmont has a Catholic school that goes through the 8th grade, and is considered a feeder school for Notre Dame, the closest Catholic high school. There is a Catholic school in Weston that goes through the 5th grade and is also considered a feeder school for Notre Dame.</p> <p>There are no Catholic institutions in Buckhannon. Downtown Weston is approximately 23 miles from Notre Dame, and downtown Buckhannon is approximately 25 miles from Notre Dame.</p> <p>Scenario 1</p> <p>A student lives in the Bridgeport district and goes to St. Marys and Notre Dame through the 8th grade. The student decides to transfer to Bridgeport in the 9th grade, and the student is</p>		
--	--	--	--	--

		<p>eligible for sports. After a semester, the student does not like Bridgeport and decides to return to Notre Dame. He is ineligible for 365 days at Notre Dame. Because of the way the district school zone lines are drawn, this student may very well live significantly closer to Notre Dame than students who attend Robert C Byrd HS, the only school from which students will be able to transfer to Notre Dame and be eligible. You can substitute "Liberty" and "Lincoln" for "Bridgeport" and have the exact same outcome.</p> <p>Scenario 2</p> <p>A student lives in the RCB/Notre Dame district and attends Bridgeport Schools from kindergarten through the 9th grade. He transfers to Notre Dame in the 10th grade, and is eligible to play sports immediately. Alternatively, he transfers to RCB in the 10th grade and is eligible to play sports immediately. This student has two options for transfer in the 10th grade, and can actually play sports at three different schools. Once again, you can substitute "Lincoln" and "Liberty" for "Bridgeport" and get the same result.</p> <p>Scenario 3</p> <p>This scenario is similar to that of scenario 2, in that the student lives in the RCB/Notre Dame district and attends the RCB feeder schools through the 8th grade. The student transfers to Bridgeport in the 9th grade and is eligible to play sports. He also can transfer back to either Notre Dame or RCB and be eligible. This student has</p>		
--	--	---	--	--

		<p>never attended Notre Dame, but will be eligible for sports there immediately.</p> <p>Scenario 4</p> <p>A student lives in the Fairmont Senior HS district, but attends the Fairmont Catholic School through the 8th grade. He attends Fairmont Senior for a semester, does not like it and wants to transfer back to a Catholic school. Even though Fairmont Catholic is a feeder school for Notre Dame, he is ineligible to participate in sports if he transfers to Notre Dame at that point. Notre Dame is the closest Catholic school for that student and is but 23 miles from Fairmont Catholic.</p> <p>Scenario 5</p> <p>A student lives in the Fairmont Sr. district and attends Fairmont Catholic through the 8th grade. He goes to East Fairmont in the 9th grade and is eligible to participate. He is also eligible to transfer back to Fairmont Sr. and participate. However, he cannot transfer to Notre Dame in order to continue his education at a Catholic school and be eligible to participate in sports.</p> <p>This proposed rule simply does not work in Harrison County because there are five public schools here, four of which are only a few miles apart. Even within the private school context there is a matter of fairness. For example, the SSAC's definition of Wheeling Central's attendance zone, by contrast, would be all of Ohio County because Wheeling Park is the only public school there. Accordingly, there would be</p>		
--	--	---	--	--

		<p>no prohibition in Ohio County for the students to transfer back and forth between the private and public schools.</p> <p>Additionally, I believe that each and every private school within the SSAC is a religious-based institution. As a discrimination lawyer, it is my opinion that this proposed rule has an illegal disparate impact on students wishing to attend a private, religious-based institution and participate in sports.</p> <p>Finally, Notre Dame is the only Catholic high school in North Centrl WV, where there is a large Catholic population in all of the counties. If parents are willing to transport their children from another county to Clarksburg to attend Notre Dame for religious reasons, why shouldn't they be able to do so without punishing their children by depriving them of extra curricular activities? Everyone agrees that extra curricular activities help round out the high school education of students. Often, parents do not know until their children attend a public school in the 9th grade that they wish for their child to continue with the Catholic school education that they have enjoyed thorough the 8th grade. We have had a number of students transfer to Notre Dame after experiencing public school life in the 9th grade and not liking it. As Joe Manchin once told me, there is a need for private, religious-based schools to give parents an option (a) because not all children are cut out for public schools, and (b) because parents have the right to raise their children in a Christ-centered</p>		
--	--	--	--	--

		<p>environment.</p> <p>It is my understanding that Debra Sullivan has recommended a "one free transfer" rule for everyone. In other words, after the 9th grade, every student in WV gets to transfer one time without being required to sit out 365 days. That rule makes sense to me. It is neutral, and would not have a discriminatory impact on religious-based institutions.</p> <p>Our firm has represented the SSAC and I would not be in a position to challenge this rule.</p> <p>Moreover, my wife is the Principal at Notre Dame HS and I would never personally be adverse to the SSAC. Nonetheless, there are a number of lawyers who could easily make the arguments that I have set forth herein.</p> <p>Thank you for giving my comments your attention. Please call me if you have any questions.</p>		
6/11/12	Colleen Hoyer	<p>I encourage rejection of 127-2-7.1a because of the unequal treatment of public and nonpublic schools. It is not equal treatment to allow county boards of education to establish attendance zones for their schools, but to remove that authority from the governing boards of nonpublic schools. I encourage rejection of 127-2-7.2g because it prohibits children from returning to the comfort of their peer groups at their "home" school as established by their middle school attendance.</p>	N -	
		I hope Mrs. Sullivan's (Charleston Catholic High		

6/08/12	David Sadd	<p>School) comments in reference to the transfer rule will be considered. I have read the narrative whereby she clearly outlines the effect those changes could impact students wishing to transfer back to CCHS. While the word "recruiting" tends to often surface in the private school sector, it's quite rare that a student wants to transfer to a smaller school to play any sport. Not to mention the expense of the private school. Typically student athletes who feel as though the "single A" environment doesn't give them enough competition, tend to want to leave the smaller school for a chance to play on a bigger stage. I hope you will find she has written with a sense of reason which keeps the students academic career as the most important and biggest concern.</p>	N -	
6/08/12	Debra Sullivan	<p>I recommend that the West Virginia Board of Education reject 127-2-7.1.a.mrn1) There was no court mandate to change this rule. Apparently the WVSSAC saw the Court's ruling as an opportunity to change and add rules in accordance with its own liking instead of following the spirit of the Circuit Court of Monongalia County's order. mrmThe Circuit Court of Monongalia County [Konchesky] declared section 127-2-7.2.7 (now 127-2-7.2.g), the "transfer back" rule, of the WVSSAC Rules and Regulations to be invalid because it was in violation of section 18-2-25 of the West Virginia Code. mrmThe Circuit Court of Monongalia</p>	N-	

		<p>County held in February 2012 that the “transfer back” rule (section 127-2-7.2.7 (now 127-2-7.2.g)), was the only part of the WVSSAC rules that was found to be invalid because it was in violation of section 18-2-25 of the West Virginia Code: rrrn “There were no issues before the court regarding the remaining portions of the Residence-Transfer Rule (WVSSAC Rule 1271</p> <p>-2-7). Accordingly, excepting Section 127-27.2.7 [the transfer back rule], the remaining portions of the WVSSAC Residence-Transfer Rule are not affected by the Orders of the Court entered on November 9, 2011, and December 8, 2011.” rrrn Even though the WVSSAC has stated that its policy rationale stems from the court’s order, the WVSSAC has mistakenly broadened legal language as a means to change its rules in the shadow of a court order. A proposed rule change based on the holding in the Circuit Court of Monongalia County [Konchesky] was expected, but a rule change based on policy masquerading as compliance was not. The WVSSAC has the ability to use policy to change its rules. The WVSSAC should not, however, hide behind a court order to change a rule. rrrn2) The Court ruling, along with provisions of W. Va. Code § 18-2-25 and W. Va. Code § 18-28-1, requires equal treatment of public and nonpublic schools. rrrna. It is not equal treatment to award different levels of jurisdiction for setting attendance zones. The WVSSAC recognizes! the authority of county boards of education to</p>		
--	--	---	--	--

	<p>establish attendance zones for their schools but has removed this authority from the hands of nonpublic schools' governing boards. It is not equal treatment to restrict nonpublic schools to attendance zones tailored to the very different needs of other institutions. Public school attendance zones are naturally tailored to the public school in question, which typically is located at or near the center of its zone. Yet under the new rule, a nonpublic school located anywhere within the zone is restricted to the attendance zone. Because of their widespread locations, nonpublic schools serve students from broad geographic areas within the state. Nonpublic schools are located in the southern, western, central, and northern panhandle sections of West Virginia. The southern schools (Greater Beckley Christian and Charleston Catholic) are located 56 miles from each other. The westernmost nonpublic school (Huntington St. Joseph) is located 50 miles from its closest neighbor nonpublic school (Charleston Catholic). The central schools (Trinity, Clarksburg Notre Dame, and Parkersburg Catholic) range in distance from 40 to 112 miles from one another. Two nonpublic schools in the northern panhandle (Bishop Donahue and Wheeling Central) are located 5 miles from each other while the other nonpublic school in the panhandle (Weirton Madonna) is approximately 31 miles from other panhandle nonpublic schools.</p>		
--	--	--	--

mm In a few words,

	<p>nonpublic schools in West Virginia are few and far between. In serving the many families who choose a nonpublic education for their children, such schools necessarily serve county-wide areas and larger. WVSSAC rules should not discriminate against nonpublic schools as they work to serve their widespread constituents. Case in point: Students attending Charleston Catholic High School live in 28 zip codes. Charleston Catholic students live in 21 Kanawha County zip codes and 1 in 7 non-Kanawha County zip codes. Similarly, 44% of West Virginia counties are served by single, county-wide public high schools. (i.e., 9 A, 9 AA and 6 AAA schools) which have one school attendance zone for the entire county. Families have chosen to send their children to nonpublic schools for as long as our state has existed and longer. The West Virginia State Code includes protections for families sending their children to nonpublic schools. Families continue to make this choice. Furthermore, at least with regard to Catholic schools in West Virginia, the majority of students attending Catholic schools in West Virginia tend to enroll in elementary school and then continue on through their middle and high school years in the Catholic school system. Case in point: Charleston Catholic High School enrolls students in the middle school (grades 6 through 8) and the high school (grades 9 through 12). Of the 216 students currently enrolled at the</p>	
--	--	--

		<p>high school level, 202 or 94% attended middle school at Charleston Catholic. Of the 14 remaining high school students, 10 enrolled at Charleston Catholic in their freshman year, with 3 entering from nonpublic local schools, 3 coming from area public schools, 2 entering from out-of-state nonpublic schools, and 2 entering from out-of-state public schools. Similarly, 4 entered in 10th grade with 2 students moving in from out-of-state. Clearly Charleston Catholic serves a stable, enduring, and coherent constituency, which happens to occupy a geographic area as large as and indeed larger than the county in which the school is located. All WVSSAC nonpublic member schools are religious in nature. None of them are nonsectarian, namely, private schools that are officially independent of religious orientation and influence. Under provisions regarding religious freedom (W. Va. Code § 18-28-1), parents are supported in their decision to send their children to faith-based schools for the religious and moral development of their children as well as for the academic, social-emotional, and co-curricular offerings available in such schools. Summary: 127-2-7.1.a should be rejected by the State Board of Education. This rule does not have the effect of treating public and nonpublic schools equally. The rule adds validity to the false impression that suggests that nonpublic school recruit students. According to transfer rules, any student can go ANYWHERE in 9th</p>		
--	--	---	--	--

		<p>grade. They can cross county lines. They can go from one public school to another public school. They can go from a nonpublic school to a public school and vice versa. They can go from a nonpublic school to another nonpublic school. By allowing students to go wherever they want in 9th grade no school – public or nonpublic – has an advantage. If recruiting is a concern AT ANY MEMBER SCHOOL, the WVSSAC has procedures to investigate specific athletes and situations. This investigatory function of the WVSSAC should be invoked, as appropriate. I recommend that the West Virginia Board of Education reject 127-2-7.2.g.m In submitting 127-2-7.2.g, the WVSSAC has not met the mandate of the Court to write a transfer back rule that treats public and nonpublic schools “the same” [Circuit Court of Monongalia County].m1) 127-2-7.2.g [Transfer back] has the effect of discriminating against students attending nonpublic schools. Under the original rule, students attending nonpublic schools in middle school, who chose to transfer to a public school for 9th grade, would be able to transfer back to the nonpublic school they had attended in 8th grade. Under the new scenario, students would be eligible only if they lived in the newly established attendance zone (namely, the same zone as the public school in the same zip code) for the nonpublic school. Furthermore, the proposed rule upends an established practice that has been well understood and implemented. Rmrm Case in point: A student attends Catholic schools</p>		
--	--	---	--	--

		<p>in Charleston! for kindergarten through 8th grade. Under the rule change regarding attendance zones, Charleston Catholic would have the same attendance zone as the Capital High School attendance zone. The student happens to live in the South Hills neighborhood of Charleston which, according to Kanawha County attendance zoning, is the George Washington High School district. For 9th grade, the student chooses to transfer to GW, perfectly allowable under transfer rules for students in public and nonpublic member schools, and the student is eligible to play sports. The student decides to return to Charleston Catholic for 10th grade (remember, the student had attended Catholic schools from kindergarten through grade 8) but, under the new transfer-back policy, is now ineligible to play sports for one year because he does not live in the newly established "Capital High School" attendance zone now assigned to Charleston Catholic. Prior to the proposed rule change, section 127-2-7.2.7 is clear that the student can return to Charleston Catholic for this 10th grade year without losing athletic eligibility. As proposed, the student would actually have to transfer to Capital High School in order to be eligible, a school that the student has never set foot in, that offers no established peer group, and that is farther from his home than either George Washington or Charleston Catholic.</p> <p>Nonsense! Public school attendance zones are naturally tailored to the public school in question, which typically is located at or near the center of</p>		
--	--	---	--	--

		<p>its zone. Yet under the new rule, a nonpublic school located anywhere within the zone is restricted to the attendance zone. In the case above, Charleston Catholic is located on the very edge of the Capital High zone and literally within sight of the George Washington zone from which it has traditionally drawn a large number of its students.mnm2) 127-2-7.2.g will act as a deterrent for students who wish to change schools for social and academic reasons rather than act as a deterrent for students who wish to change for athletic ones. Students who wish to change schools for athletic reasons have an idea of what level of competition a school can offer. However, students are not able to determine if they will prosper in a school's academic and social atmosphere until attending the school for some time.mnm3) 127-2-7.2.g serves to the detriment of children attending both public and nonpublic schools. Children should not be deprived of returning to the comfort of their peer group.mnm Case in point using a public school example: A Putnam County student who lives in Poca has attended elementary schools in the Winfield attendance zone. For 9th grade, the student chooses to enroll in Buffalo High School. The situation is not what the student had expected so he wants to "transfer back" to Winfield High School where his friends attend. Under the new rule he will be unable to do so. It has been a fairly common practice for students to be allowed to attend the middle school of their choosing, provided that students made the choice</p>		
--	--	---	--	--

		<p>based on non-athletic reasons. The amendment of 127-2-7 by adding section h actually formalizes this practice, sanctioning students' attendance at the middle school of their choosing. However, under the newly proposed "transfer back" rule, students may very well unwittingly jeopardize their high school eligibility by following the provisions of 127-2-7.2.h.</p>		
5/27/12	Rex Young	Yes	N+	
5/17/12	James Hopkins	<p>This is essential to all schools being on an even playing field. This should be implemented and enforced regardless of financial status. Private schools should have boundaries like those in the public school and should be enforced. This rule should be so tight that no Lawyer or Judge can over rule the transfer.</p>	N+	

Policy 127CSR2 Athletics, Provisions Governing Eligibility

Comment Log

May 2, 2012 – June 11, 2012

Action Type
 N: No Response - Negative
 NA: Not Accepted + Positive
 A: Accepted o Neutral

Date	Individual/Organization	Comments	Action/ Type	Rationale
5/27/12	Rex young	127-2-13 Practice Yes	N+	

West Virginia Secondary School Activities Commission (WVSSAC)
Series 2: Athletics, Provisions Governing Eligibility

MAY 16 2012

COMMENT PERIOD ENDS: June 11, 2012

COMMENT RESPONSE FORM

NOTICE: Comments, as submitted, shall be filed with the West Virginia Secretary of State's Office and open to public inspection and copying for a period of not less than five years.

The following form is provided to assist those who choose to comment on WVSSAC Series 2: Athletics, Provisions Governing Eligibility. Additional sheets may be attached, if necessary.

Name: C. DAVID MORRISON Organization: STEPTOE & JOHNSON PLLC

Title: Attorney

City: Bridgeport State: WV

Please check the box below that best describes your role.

- | | | |
|---|--|---|
| <input type="checkbox"/> School System Superintendent | <input type="checkbox"/> School System Staff | <input checked="" type="checkbox"/> Parent/Family |
| <input type="checkbox"/> Principal | <input type="checkbox"/> Teacher | <input checked="" type="checkbox"/> Business/Industry |
| <input type="checkbox"/> Professional Support Staff | <input type="checkbox"/> Service Personnel | <input checked="" type="checkbox"/> Community Member |

COMMENTS/SUGGESTIONS

§127-2-7.1.a, 7.2.g and 7.2.h. Residence-Transfer.

7.1.a.

See the attached memo

7.2.g.

7.2.h.

§127-2-13. 1. Practice

Please direct all comments to:

Mr. Gary Ray
Executive Director
West Virginia Secondary School Activities Commission
2875 Staunton Turnpike
Parkersburg, West Virginia 26104
Telephone No.: (304) 485-5494
Fax No.: (304) 428-5431



400 White Oaks Boulevard
Bridgeport, WV 26330
(304) 933-8000 (304) 933-8183 Fax
www.stepToe-johnson.com

Writer's Contact Information

MEMORANDUM

MAY 16 2012

TO: WVSSAC

FROM: C. David Morrison

DATE: May 15, 2012

RE: **SERIES 2: ATHLETICS, PROVISIONS GOVERNING ELIGIBILITY**

After reviewing the proposed transfer rule, I do not believe it will withstand judicial scrutiny. This memo explains my opinion.

As you know, the proposed transfer rule, as applied to private schools, would only permit students who live in the private school attendance zone to transfer to that school. The private school attendance zone is defined by the SSAC as being the same attendance zone as the zone for the geographically closest public school. However, the public schools set their own attendance zones, not the SSAC. The SSAC, by this rule, would not permit the private schools to set their own attendance zones. Thus, by defining the attendance zones for the private schools, but not for the public schools, the SSAC is treating the two differently in direct violation of the statute that provides that the SSAC is to treat them the same.¹

Moreover, with five public school zones in Harrison County, I believe that a court here would hold the rule as being arbitrary, capricious and unenforceable. Let me explain.

Notre Dame High School is situated in downtown Clarksburg, and almost in the middle of the five public school districts. The closest public school to Notre Dame is Robert C. Byrd High School, which is approximately 4 miles from Notre Dame. However, Liberty High School is approximately 5 miles from Notre Dame. Bridgeport High School is also approximately 5 miles from Notre Dame. Lincoln High School is approximately 8 miles from Notre Dame, while South Harrison High School is the farthest, being approximately 14 miles from Notre Dame.

¹ Of course, the reason that the public schools have attendance zones is to define who may go to each school to get a free education. In private schools, there is no free education because parents are paying tuition for their children to get an education founded in Christian principles. By necessity, a private school's attendance zone must be broader than a public school's attendance zone. The public schools have a ready-made population of students within their geographic area; private schools do not and must draw from a wider area in order to survive.

In any event, students living in all five of those zones, as well as students living in Fairmont, Buckhannon and Weston, attend Notre Dame. As you know, Fairmont has a Catholic school that goes through the 8th grade, and is considered a feeder school for Notre Dame, the closest Catholic high school. There is a Catholic school in Weston that goes through the 5th grade and is also considered a feeder school for Notre Dame. There are no Catholic institutions in Buckhannon. Downtown Weston is approximately 23 miles from Notre Dame, and downtown Buckhannon is approximately 25 miles from Notre Dame.

What this rule does is set up the following scenarios, all of which will likely happen.

Scenario 1

A student lives in the Bridgeport district, and goes to St. Mary's and Notre Dame through the 8th grade. The student decides to transfer to Bridgeport in the 9th grade, and the student is eligible for sports. After a semester, the student does not like Bridgeport and decides to return to Notre Dame. He is ineligible for 365 days at Notre Dame. Because of the way the district school zone lines are drawn, this student may very well live significantly closer to Notre Dame than students who attend Robert C. Byrd High School, the only school from which students will be able to transfer to Notre Dame and be eligible. You can substitute "Liberty" and "Lincoln" for "Bridgeport" and have the exact same outcome.

Scenario 2

A student lives in the RCB / Notre Dame district and attends Bridgeport Schools from kindergarten through the 9th grade. He transfers to Notre Dame in the 10th grade, and is eligible to play sports immediately. Alternatively, he transfers to RCB in the 10th grade and is eligible to play sports immediately. This student has two options for transfer in the 10th grade, and can actually play sports at three different schools. Once again, you can substitute "Lincoln" and "Liberty" for "Bridgeport" and get the same result.

Scenario 3

This scenario is similar to that of scenario 2, in that the student lives in the RCB / Notre Dame district and attends the RCB feeder schools through the 8th grade. The student transfers to Bridgeport in the 9th grade and is eligible to play sports. He also can transfer back to either Notre Dame or RCB and be eligible. This student has never attended Notre Dame, but will be eligible for sports there immediately.

Scenario 4

A student lives in the Fairmont Senior High School district, but attends the Fairmont Catholic School through the 8th grade. He attends Fairmont Senior for a semester, does not like it and wants to transfer back to a Catholic school. Even though Fairmont Catholic is a feeder school for Notre Dame, he is ineligible to participate in sports if he transfers to Notre Dame at that point. Notre Dame is the closest Catholic school for that student, and is but 23 miles from Fairmont Catholic.

Scenario 5

A student lives in the Fairmont Senior district and attends Fairmont Catholic through the 8th grade. He goes to East Fairmont in the 9th grade, and is eligible to participate. He is also eligible to transfer back to Fairmont Senior and participate. However, he cannot transfer to Notre Dame in order to continue his education at a Catholic school and be eligible to participate in sports.

This proposed rule simply does not work in Harrison County because there are five public schools here, four of which are only a few miles apart. Even within the private school context there is a matter of fairness. For example, the SSAC's definition of Wheeling Central's attendance zone, by contrast, would be all of Ohio County because Wheeling Park is the only public school there. Accordingly, there would be no prohibition in Ohio County for the students to transfer back and forth between the private and public schools.

Additionally, I believe that each and every private school within the SSAC is a religious-based institution. As a discrimination lawyer, it is my opinion that this proposed rule has an illegal disparate impact on students wishing to attend a private, religious-based institution and participate in sports.

Finally, Notre Dame is the only Catholic high school in North Central West Virginia, where there is a large Catholic population in all of the counties. If parents are willing to transport their children from another county to Clarksburg to attend Notre Dame for religious reasons, why shouldn't they be able to do so without punishing their children by depriving them of extra curricular activities? Everyone agrees that extra curricular activities help round out the high school education of students. Often, parents do not know until their children attend a public school in the 9th grade that they wish for their child to continue with the Catholic school education that they have enjoyed through the 8th grade. We have had a number of students transfer to Notre Dame after experiencing public school life in the 9th grade and not liking it. As Joe Manchin once told me, there is a need for private, religious-based schools to give parents an option (a) because not all children are cut out for public schools, and (b) because parents have the right to raise their children in a Christ-centered environment.

It is my understanding that Debra Sullivan has recommended a "one free transfer" rule for everyone. In other words, after the 9th grade, every student in West Virginia gets to transfer one time without being required to sit out 365 days. That rule makes sense to me. It is neutral, and would not have a discriminatory impact on religious-based institutions.

Our firm has represented the SSAC, and I would not be in a position to challenge this rule. Moreover, my wife is the Principal at Notre Dame High School, and I would never personally be adverse to the SSAC. Nonetheless, there are a number of lawyers who could easily make the arguments that I have set forth herein.

Thank you for giving my comments your attention. Please call me if you have any questions.

CRM

Virginia Harris

From: Gary Ray <Gary.Ray@wvssac.org>
Sent: Monday, June 11, 2012 5:03 PM
To: Regina M. Kerby
Subject: FW: Comment Received for Policy WVSSAC (2012-06-11 12:17:32)

-----Original Message-----

From: Nobody [mailto:nobody@kryten.wvnet.edu]
Sent: Monday, June 11, 2012 12:18 PM
To: gary.ray@wvssac.org
Subject: Comment Received for Policy WVSSAC (2012-06-11 12:17:32)

fibanez@wvde.state.wv.us

Please save this email in a "Comments Received Online" folder.
Your folder will be a backup. All comments are saved in our database.
The Complete Comments Report from the database can be found here:
<http://wvde.state.wv.us/r.html?id=4d712ced7739f36754d8750fd4b3d759>
This is an encrypted URL. Please Bookmark it.

Comment Received for Policy WVSSAC

#####

#

Name: Colleen Hoyer
Organization: Charleston Catholic High School
Title: Assistant Principal
City/State: Charleston, WV
Role: Professional Support
Posted: 2012-06-11 12:17:32
Posted from IP:

Comments for section 127-2-7 1 a Residence-Transfer

I encourage rejection of 127-2-7.1a because of the unequal treatment of public and nonpublic schools. It is not equal treatment to allow county boards of education to establish attendance zones for their schools, but to remove that authority from the governing boards of nonpublic schools.

Comments for section 127-2-7 2 g Residence-Transfer

I encourage rejection of 127-2-7.2g because it prohibits children from returning to the comfort of their peer groups at their "home" school as established by their middle school attendance.

Virginia Harris

From: Gary Ray <Gary.Ray@wvssac.org>
Sent: Monday, June 11, 2012 8:34 AM
To: Regina M. Kerby
Subject: FW: Comment Received for Policy WVSSAC (2012-06-08 19:42:51)

-----Original Message-----

From: Nobody [<mailto:nobody@kryten.wvnet.edu>]
Sent: Friday, June 08, 2012 7:43 PM
To: gary.ray@wvssac.org
Subject: Comment Received for Policy WVSSAC (2012-06-08 19:42:51)

fibanez@wvde.state.wv.us

Please save this email in a "Comments Received Online" folder.
Your folder will be a backup. All comments are saved in our database.
The Complete Comments Report from the database can be found here:
<http://wvde.state.wv.us/r.html?id=4d712ced7739f36754d8750fd4b3d759>
This is an encrypted URL. Please Bookmark it.

Comment Received for Policy WVSSAC

#####

#

Name: David Sadd
Organization: No affiliation
Title:
City/State: Charleston, WV
Role: Parent-Family
Posted: 2012-06-08 19:42:51
Posted from IP:

Comments for section 127-2-7 1 a Residence-Transfer

I hope Mrs. Sullivan's (Charleston Catholic High School) comments in reference to the transfer rule will be considered. I have read the narrative whereby she clearly outlines the effect those changes could impact students wishing to transfer back to CCHS. While the word "recruiting" tends to often surface in the private school sector, it's quite rare that a student wants to transfer to a smaller school to play any sport. Not to mention the expense of the private school. Typically student athletes who feel as though the "single A" environment doesn't give them enough competition, tend to want to leave the smaller school for a chance to play on a bigger stage. I hope you will find she has written with a sense of reason which keeps the students academic career as the most important and biggest concern.

Virginia Harris

From: Gary Ray <Gary.Ray@wvssac.org>
Sent: Monday, June 11, 2012 8:34 AM
To: Regina M. Kerby
Subject: FW: Comment Received for Policy WVSSAC (2012-06-08 11:19:05)

-----Original Message-----

From: Nobody [mailto:nobody@kryten.wvnet.edu]
Sent: Friday, June 08, 2012 11:19 AM
To: gary.ray@wvssac.org
Subject: Comment Received for Policy WVSSAC (2012-06-08 11:19:05)

fibanez@wvde.state.wv.us

Please save this email in a "Comments Received Online" folder.
Your folder will be a backup. All comments are saved in our database.
The Complete Comments Report from the database can be found here:
<http://wvde.state.wv.us/r.html?id=4d712ced7739f36754d8750fd4b3d759>
This is an encrypted URL. Please Bookmark it.

Comment Received for Policy WVSSAC

#####

#

Name: Debra K. Sullivan
Organization: Charleston Catholic High School
Title: Principal
City/State: Charleston, WV
Role: Principal
Posted: 2012-06-08 11:19:05
Posted from IP:

Comments for section 127-2-7 1 a Residence-Transfer

I recommend that the West Virginia Board of Education reject
127-2-7.1.a.rnrn1) There was no court mandate to change this rule.
Apparently the WVSSAC saw the Court's ruling as an opportunity to change and add rules in accordance with its own
liking instead of following the spirit of the Circuit Court of Monongalia County's order. rnrnThe Circuit Court of
Monongalia County [Konchesky] declared section 127-2-7.2.7 (now 127-2-7.2.g), the "transfer back" rule, of the WVSSAC
Rules and Regulations to be invalid because it was in violation of section 18-2-25 of the West Virginia Code. rnrnThe
Circuit Court of Monongalia County held in February
2012 that the "transfer back" rule (section 127-2-7.2.7 (now 127-2-7.2.g)), was the only part of the WVSSAC rules that
was found to be invalid because it was in violation of section 18-2-25 of the West Virginia Code: rnrn"There were no
issues before the court regarding the remaining portions of the Residence-Transfer Rule (WVSSAC Rule 127!
-2-7). Accordingly, excepting Section 127-27.2.7 [the transfer back rule], the remaining portions of the WVSSAC
Residence-Transfer Rule are not affected by the Orders of the Court entered on November 9, 2011, and December 8,
2011."rnrnEven though the WVSSAC has stated that its policy rationale stems from the court's order, the WVSSAC has

mistakenly broadened legal language as a means to change its rules in the shadow of a court order. A proposed rule change based on the holding in the Circuit Court of Monongalia County [Konchesky] was expected, but a rule change based on policy masquerading as compliance was not. The WVSSAC has the ability to use policy to change its rules. The WVSSAC should not, however, hide behind a court order to change a rule. rnrn2) The Court ruling, along with provisions of W. Va. Code § 18-2-25 and W. Va. Code § 18-28-1, requires equal treatment of public and nonpublic schools. rnrna. It is not equal treatment to award different levels of jurisdiction for setting attendance zones. The WVSSAC recognizes!

the authority of county boards of education to establish attendance zones for their schools but has removed this authority from the hands of nonpublic schools' governing boards.rnrnb. It is not equal treatment to restrict nonpublic schools to attendance zones tailored to the very different needs of other institutions.rnrnPublic school attendance zones are naturally tailored to the public school in question, which typically is located at or near the center of its zone. Yet under the new rule, a nonpublic school located anywhere within the zone is restricted to the attendance zone. rnrn Because of their widespread locations, nonpublic schools serve students from broad geographic areas within the state. Nonpublic schools are located in the southern, western, central, and northern panhandle sections of West Virginia. The southern schools (Greater Beckley Christian and Charleston Catholic) are located 56 miles from each other. The westernmost nonpublic school (Huntington St. Joseph) is located 50 miles from its closest neighbor nonpublic school (Charleston Catholic). The central schools (Trinity, Clarksburg Notre Dame, and Parkersburg Catholic) range in distance from 40 to 112 miles from one another. Two nonpublic schools in the northern panhandle (Bishop Donahue and Wheeling Central) are located 5 miles from each other while the other nonpublic school in the panhandle (Weirton Madonna) is approximately 31 miles from other panhandle nonpublic schools. rnrn In a few words, nonpublic schools in West Virginia are few and far between. In serving the many families who choose a nonpublic education for their children, such schools necessarily serve county-wide areas and larger. WVSSAC rules should not discriminate against nonpublic schools as they work to serve their widespread constituents.rnrnCase in point: Students attending Charleston Catholic High School live in 28 zip codes. Charleston Catholic students live in 21 Kanawha County zip codes and 7 non-Kanawha County zip codes. Similarly, 44% of West Virginia counties are served by single, county-wide public high schools. (i.e., 9 A, 9 AA and 6 AAA schools) which have one school attendance zone for the entire county. rnrn3) Families have chosen to send their children to nonpublic schools for as long as our state has existed and longer. The West Virginia State Code includes protections for families sending their children to nonpublic schools. Families continue to make this choice. Furthermore, at least with regard to Catholic schools in West Virginia, the majority of students attending Catholic schools in West Virginia tend to enroll in elementary school and then continue on through their middle and high school years in the Catholic school system. rnrnCase in point: Charleston Catholic High School enrolls students in the middle school (grades 6 through 8) and the high school (grades 9 through 12). Of the 216 students currently enrolled at the high school level, 202 or 94% attended middle school at Charleston Catholic. Of the 14 remaining high school students, 10 enrolled at Charleston Catholic in their freshman year, with 3 entering from nonpublic local schools, 3 coming from area public schools, 2 entering from out-of-state nonpublic schools, and 2 entering from out-of-state public schools. Similarly, 4 entered in 10th grade with 2 students moving in from out-of-state.rnrnClearly Charleston Catholic serves a stable, enduring, and coherent constituency, which happens to occupy a geographic area as large as and indeed larger than the county in which the school is located.rnrn4) All WVSSAC nonpublic member schools are religious in nature. None of them are nonsectarian, namely, private schools that are officially independent of religious orientation and influence. Under provisions regarding religious freedom (W. Va. Code § 18-28-1), parents are supported in their decision to send their children to faith-based schools for the religious and moral development of their children as well as for their academic, social-emotional, and co-curricular offerings available in such schools.rnrnSummary: 127-2-7.1.a should be rejected by the

State Board of Education. This rule does not have the effect of treating public and nonpublic schools equally. The rule adds validity to the false impression that suggests that nonpublic school recruit students. According to transfer rules, any student can go ANYWHERE in 9th grade. They can cross county lines. They can go from one public school to another public school.

They can go from a nonpublic school to a public school and vice versa. They can go from a nonpublic school to another nonpublic school. By allowing students to go wherever they want in 9th grade no school – public or nonpublic – has an advantage. If recruiting is a concern AT ANY MEMBER SCHOOL, the WVSSAC has procedures to investigate specific athletes and situations. This investigatory function of the WVSSAC should be invoked, as appropriate.

Comments for section 127-2-7 2 g Residence-Transfer

I recommend that the West Virginia Board of Education reject 127-2-7.2.g. In submitting 127-2-7.2.g, the WVSSAC has not met the mandate of the Court to write a transfer back rule that treats public and nonpublic schools “the same” [Circuit Court of Monongalia County]. 127-2-7.2.g [Transfer back] has the effect of discriminating against students attending nonpublic schools. Under the original rule, students attending nonpublic schools in middle school, who chose to transfer to a public school for 9th grade, would be able to transfer back to the nonpublic school they had attended in 8th grade. Under the new scenario, students would be eligible only if they lived in the newly established attendance zone (namely, the same zone as the public school in the same zip code) for the nonpublic school. Furthermore, the proposed rule upends an established practice that has been well understood and implemented. Case in point: A student attends Catholic schools in Charleston!

for kindergarten through 8th grade. Under the rule change regarding attendance zones, Charleston Catholic would have the same attendance zone as the Capital High School attendance zone. The student happens to live in the South Hills neighborhood of Charleston which, according to Kanawha County attendance zoning, is the George Washington High School district. For 9th grade, the student chooses to transfer to GW, perfectly allowable under transfer rules for students in public and nonpublic member schools, and the student is eligible to play sports. The student decides to return to Charleston Catholic for 10th grade (remember, the student had attended Catholic schools from kindergarten through grade 8) but, under the new transfer-back policy, is now ineligible to play sports for one year because he does not live in the newly established “Capital High School” attendance zone now assigned to Charleston Catholic. Prior to the proposed rule change, section 127-2-7.2.7 is clear!

that the student can return to Charleston Catholic for this!

10th grade

year without losing athletic eligibility. As proposed, the student would actually have to transfer to Capital High School in order to be eligible, a school that the student has never set foot in, that offers no established peer group, and that is farther from his home than either George Washington or Charleston Catholic. Nonsense! Public school attendance zones are naturally tailored to the public school in question, which typically is located at or near the center of its zone. Yet under the new rule, a nonpublic school located anywhere within the zone is restricted to the attendance zone. In the case above, Charleston Catholic is located on the very edge of the Capital High zone and literally within sight of the George Washington zone from which it has traditionally drawn a large number of its students. 127-2-7.2.g will act as a deterrent for students who wish to change schools for social and academic reasons rather than act as a deterrent for students who!

wish to change for athletic ones. Students who wish to change schools for athletic reasons have an idea of what level of competition a school can offer. However, students are not able to determine if they will prosper in a school’s academic and social atmosphere until attending the school for some time. 127-2-7.2.g serves to the detriment of children attending both public and nonpublic schools. Children should not be deprived of returning to the comfort of their peer group. Case in point using a public school example: A Putnam County student who lives in Poca has attended elementary schools in the Winfield attendance zone. For 9th grade, the student chooses to enroll in Buffalo High School. The situation is not what the student had expected so he wants to “transfer back” to Winfield High School where his friends attend. Under the new rule he will be unable to do so.

Comments for section 127-2-7 2 h Residence-Transfer

It has been a fairly common practice for students to be allowed to attend the middle school of their choosing, provided that students made the choice based on non-athletic reasons. The amendment of 127-2-7 by adding section h actually formalizes this practice, sanctioning students' attendance at the middle school of their choosing. However, under the newly proposed "transfer back" rule, students may very well unwittingly jeopardize their high school eligibility by following the provisions of 127-2-7.2.h.

Virginia Harris

From: Gary Ray <Gary.Ray@wvssac.org>
Sent: Tuesday, May 29, 2012 8:10 AM
To: Regina M. Kerby
Subject: FW: Comment Received for Policy WVSSAC (2012-05-27 19:16:18)

-----Original Message-----

From: Nobody [<mailto:nobody@kryten.wvnet.edu>]
Sent: Sunday, May 27, 2012 7:16 PM
To: gary.ray@wvssac.org
Subject: Comment Received for Policy WVSSAC (2012-05-27 19:16:18)

fibanez@wvde.state.wv.us

Please save this email in a "Comments Received Online" folder.
Your folder will be a backup. All comments are saved in our database.
The Complete Comments Report from the database can be found here:
<http://wvde.state.wv.us/r.html?id=4d712ced7739f36754d8750fd4b3d759>
This is an encrypted URL. Please Bookmark it.

Comment Received for Policy WVSSAC

#####

#

Name: Rex A. Young
Organization: Putnam County Schools
Title: Teacher
City/State: Hartford, WV
Role: Teacher
Posted: 2012-05-27 19:16:18
Posted from IP:

Comments for section 127-2-7 1 a Residence-Transfer

Yes.

Comments for section 127-2-7 2 g Residence-Transfer

Yes.

Comments for section 127-2-7 2 h Residence-Transfer

Yes.

Comments for section 127-2-13 1 Practice

Yes.

Virginia Harris

From: Gary Ray <Gary.Ray@wvssac.org>
Sent: Thursday, May 17, 2012 9:14 AM
To: Regina M. Kerby
Subject: FW: Comment Received for Policy WVSSAC (2012-05-17 08:30:31)

-----Original Message-----

From: Gary Ray [<mailto:Gary.Ray@wvssac.org>]
Sent: Thursday, May 17, 2012 8:50 AM
To: Regina M. Kerby
Subject: FW: Comment Received for Policy WVSSAC (2012-05-17 08:30:31)

-----Original Message-----

From: Nobody [<mailto:nobody@kryten.wvnet.edu>]
Sent: Thursday, May 17, 2012 8:31 AM
To: gary.ray@wvssac.org
Subject: Comment Received for Policy WVSSAC (2012-05-17 08:30:31)

fibanez@wvde.state.wv.us

Please save this email in a "Comments Received Online" folder.
Your folder will be a backup. All comments are saved in our database.
The Complete Comments Report from the database can be found here:
<http://wvde.state.wv.us/r.html?id=4d712ced7739f36754d8750fd4b3d759>
This is an encrypted URL. Please Bookmark it.

Comment Received for Policy WVSSAC

#####

#

Name: James Hopkins
Organization: Retires Coach
Title: Coach
City/State: Oceana, wv
Role: Principal
Posted: 2012-05-17 08:30:31
Posted from IP:

Comments for section 127-2-7 1 a Residence-Transfer

This is essential to all schools being on an even playing field. Thos shopuld be implemented and enforced regardles of financial status. Private schools should have boundries like those in the public school and should be enforced. This rule should be so tight that no Lawyer or Judge can over rule the transfer.