

DECISION OF HEARING PANEL IN RE: EAST HIGH SCHOOL

On October 17, 2012, an Panel of five members of the Executive Committee of the Utah High School Activities Association (UHSAA or Association) was convened to review two decisions of the Board of Region Managers of Region Six of the Association. That Region had twice considered evidence that ineligible players had participated as players on the East High School football team during the 2012 regular season. The Region heard the first allegation on October 10, 2012 and the second on October 16, 2012. In both matters, the Region found, as fact, that East had played ineligible players but declined to impose the sanction of forfeiture of contests. Instead, the Region imposed fines, suspensions and letters of reprimand and probation.

The Association's Constitution provides that there be Regions that, under the direction of the Executive Committee and the Executive Director shall "supervise and administer all interscholastic activities." This is to be done "in conformance with the Constitution, By-Laws, rules and regulations of the Association." To insure that conformity, the regions regularly report any disciplinary action to the Executive Committee which has the authority to accept, reject, modify, or otherwise take action on those matters that it deems would bring conformity to the entire Association. This review is done, in part, to assure that there is not disparate treatment from one Region to another.

Because the Region's decision could have impact on the post-season and on many schools and players, including, of course, those at East, the Executive Committee organized this panel before the second Region decision was heard. The Panel was commissioned to review the Region's decision irrespective of the decision's content.

The issue of student eligibility occupies the very first Article of the Association's By-laws. The Rules of that Article proscribe enrollment, age, sports seasons, attendance, playing on higher level teams, remaining an amateur, refusals of awards of value, scholastics, transfers, undue influence and others. While a great deal of the work of the Association lies in the scheduling, promotion, direction and production of hundreds of contests, in both sports and curriculum based activities, the overwhelming burden of the Association's enforcement work relates directly to student eligibility.

The Association lacks a budget for an enforcement division and must, therefore, rely heavily on the cooperation of its member schools in protecting the competition the Association sponsors by assuring that those who participate are eligible so to do. Article 7 sets out these responsibilities.

"It shall be the duty and responsibility of the principal or equivalent executive officer of a member school to determine that participants have met all eligibility requirements, to assure institutional control over all athletic participation

and to maintain an atmosphere of compliance throughout the school and among the parents and those with a particular interest in the athletic programs of the school, i.e. boosters.

This is not, however, a passive responsibility that can be discharged by ignorance. To the contrary, Section 4 B of Article 7 imposes affirmative duties on several members of a school's administration.

It shall be the duty of the principal, athletic director, coach or other person connected with any sanctioned activity affirmatively to determine that all the participants under their jurisdiction who are to participate with and for the school are eligible. Anyone who has knowledge or information that places in question the eligibility of any student who is likely to participate in any contest has a duty to report such knowledge or information immediately to the principal or equivalent executive officer of the participant's school who shall immediately forward the information to the Executive Director. Failure to do so shall be an indication of bad faith, and shall constitute evidence of lack of institutional control.

Section 6 outlines a series of penalties available to the Association for rules infractions. Among those is the penalty of forfeiture. "In cases of the use of an ineligible player, the non-complying school may forfeit any contest, team title or team championship obtained when such an ineligible player competed as part of the team." It is of note the "use of an ineligible player" is the only infraction for which the By-Laws provide forfeiture.

Against this background, the Panel heard evidence and argument regarding four ineligible students that had played in one or more contests for East. It was admitted that the four were, in fact, ineligible and that they participated while ineligible. The question for the Panel was the decisions of Region 6 were in conformity with the Association's prior approved rulings and were consistent with the "Constitution, By-Laws, rules and regulations of the Association," and to determine what penalty was appropriate in light of the facts.

East High School was forthcoming in admitting that its administration made numerous mistakes in failing "affirmatively to determine that all the participants under their jurisdiction who are to participate with and for the school are eligible." East's principal explained that he had personally relieved the football coach of any responsibility to determine eligibility but had, instead, rested that duty solely on the athletic director. For her part, the athletic director explained that she had "misunderstood" the rules and had failed to obtain or file the paperwork that is clearly required for these students. This was not a "clerical error," in which a box was wrongly checked or a name misspelled or even a document wrongly filed. It was a wholesale failure to "to determine that participants have met all eligibility requirements." There were four separate and distinct episodes in which ineligible students were matriculated as if they were, in fact, eligible. It would have been a

simple matter to determine their ineligibility. By removing the coach and himself from the process of assuring eligibility, the principal also removed any possibility that such a mistake made by one person could have been found and corrected by others charged by the Association with that duty. The Panel finds that East's abdication of these responsibilities constituted a severe lack of institutional control.

There is no doubt that forfeiture is a harsh penalty. Nevertheless, the Association has repeatedly affirmed and enforced such a penalty for the use of ineligible players. Indeed, the Association recognizes that most, if not all, governing organizations of sports regularly impose forfeiture of games in which ineligible players participate. While the Region imposed monetary and other sanctions, it did not provide a basis on which to determine why these particular incidents of the use of ineligible players should depart from the regularly imposed penalty of forfeiture. To be sure, the rule itself uses the word "may" but this Panel does not interpret that word to give unlimited discretion to a Region to avoid forfeiture because it might be unpleasant or difficult. Among other things, the region's proposed sanctions ignore the adverse impact that violating the Association's By-laws, rules and regulations by playing ineligible players has on other member schools and on the fair competition that the Association seeks to preserve.

Accordingly, the majority of the Panel determines that East must forfeit any contest in which it used an ineligible player. The Panel upholds the fine of \$1500.00 to the school but vacates the other penalties including the suspension of the head football coach.

/s/ _____
Craig Hammer, for the Panel