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# Alternative Structures

## CHAPTER 3

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In previous chapters, we discussed various laws that the Legislature has adopted to increase the Minnesota State High School League's accountability to the public. We also reviewed subsequent changes in the League's practices. In this chapter, we discuss whether additional reforms are needed in the League's overall structure. We address the following questions:

- **Are changes needed to make the League more accountable to the Legislature, students, parents, member schools, and the public?**
- **Should some or all League functions be incorporated into the activities of existing state agencies?**
- **What alternatives exist to the League's current status as a nonprofit corporation and voluntary association of high schools?**

To answer these questions, we obtained data from four main sources. First, we reviewed how other states have organized similar activities. Second, we talked with staff from state agencies that have some oversight responsibilities regarding the League's operations. Third, we contacted representatives from 24 educational organizations to learn about the League's relationship with students, parents, schools, and the general public. Finally, we reviewed data on contested case hearings held by schools and the League's board of directors.

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**Major changes to the League's structure are not needed.**

Overall, we do not think that major changes are needed to make the League more accountable to the public. The Legislature has enacted significant reforms over the last 10 years and several League practices have changed. However, because the League's main responsibilities are governmental in nature--regulating student participation in certain extracurricular activities--we think that the state has an obligation to provide strong public oversight. The Department of Children, Families & Learning must improve its monitoring of League activities, and we recommend that the Legislature consider strengthening the department's role. We recommend that the League more clearly define the roles and responsibilities of their recently appointed ombudspersons and publicize their availability. To increase their independence, we think that the League should also have the Representative Assembly appoint or elect the ombudspersons.

## ALTERNATIVE ORGANIZATIONAL APPROACHES

To help us understand the League's relationship with its constituents, we examined how high school leagues are organized in 21 other states, focusing on the relationship between the association and the state. Usually, the association is a nonprofit, voluntary association of schools, although in Vermont and Maine the principals' associations run the athletics programs. In Texas, the association is administratively part of the University of Texas and has a board of directors that is appointed by the state's education department.

As shown in Figure 3.1, we found that:

- **Seventeen states out of the 22 that we examined have little or no direct relationship between their athletic associations and state government.**

At most, someone from the state's education department or a member of the state legislature is a member of the association's governing board. On the other hand, we identified four states with substantial, direct oversight of their associations: Texas, Iowa, Washington, and Florida. Minnesota is between these two groups.

### Figure 3.1: State Oversight of Athletic or Activity Associations

<u>States with Little or No Oversight</u>	<u>States with Limited Oversight</u>	<u>States with Substantial Oversight</u>
California	Minnesota	Florida
Colorado		Iowa
Illinois		Texas
Maine		Washington
Massachusetts		
Michigan		
Nebraska		
New Hampshire		
New Mexico		
North Carolina		
Ohio		
Oregon		
Pennsylvania		
Tennessee		
Vermont		
Wisconsin		
Wyoming		

NOTE: "Little oversight" means that, at most, a member of the state's education department or the state legislature is on the association's governing board. "Limited oversight" means that, while some of the association's activities are limited by state law, its eligibility rules are not. "Substantial oversight" means that most of the association's activities and rules are subject to state review and, in some instances, state approval.

SOURCE: Office of the Legislative Auditor, 1998.

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**Most states provide little or no oversight of their athletic associations.**

Iowa has a free-standing, nonprofit athletics association, but its activities are subject to review by the state's education department. The association must provide the education department with its bylaws, membership lists, policies, minutes of all meetings, proposed changes to bylaws, detailed reports of salaries and expenses of all employees, and other materials related to the association's operation. A student who has a complaint about a rule can appeal to an executive committee of the athletic association and, finally, to the state education director. A student or parent can also ask for the services of the state's ombudsperson to help with a complaint.

All rules on interscholastic activities and student eligibility in Iowa are promulgated by the state's education department through the normal rulemaking process. The high school athletics association administers the rules and programs under an agreement with the education department. This arrangement is the result of a 1972 court case in which the Iowa Supreme Court ruled that the state athletics association lacked the authority to adopt student eligibility rules and that school boards and the State Board of Education could not delegate their rulemaking responsibilities to another organization.<sup>1</sup> The court made this finding despite the fact that a member of the State Board of Education served on the board of the athletic association and that state law gave permission for school boards to join the athletics association.

Washington also has a free-standing, nonprofit athletics association. All of its rules and policies on student participation in any interschool activity, though, are subject to review and approval by the State Board of Education.<sup>2</sup> The association must also submit an annual report to the board on student appeal determinations, assets, financial receipts, and disbursements.

In 1997, Florida established a new governing board for its athletic association as a result of recommendations from an advisory group and criticism of the association by legislators who believed that a broader base of representation was needed to make the association more responsive to the public.<sup>3</sup> The Florida Legislature adopted the association's bylaws into state law and stipulated that the current athletics association could continue in that role if it agreed to operate under the statutory bylaws. If the association fails to do that, the Commissioner of Education is to designate another nonprofit organization to govern athletics, subject to approval by the State Board of Education. The Legislature divided the association's administrative and legislative functions by requiring the association to have a legislative assembly to consider bylaw changes. The law also requires the association to have a separate public liaison advisory committee with representatives from educational groups, the Legislature, the press, and the public to ensure public input into the decision-making process. The liaison committee must hold public hearings and conduct an annual evaluation of the association as a whole, presenting its findings and recommendations to the Commissioner of Education and legislative committees.

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<sup>1</sup> *Bunger v. Iowa High School Athletic Association*, 197 N.W. 2d, 555 (1972). The Iowa Supreme Court ruling was the opposite of a 1970 Minnesota Supreme Court ruling that held that rule adopted by the Minnesota State High School League was valid because it fostered educational goals and met the standard of not being arbitrary or capricious. *Brown v. Wells*, 181 N.W. 2d, 708 (1970).

<sup>2</sup> *Revised Code of Washington*, 28a.600.200.

<sup>3</sup> *Florida Laws* (1997), ch. 97-53.

In addition to looking at their structure, we examined how other states change their bylaws or rules. We found that:

- **Like Minnesota, associations in most states have a legislative assembly that meets at least once a year to vote on changes to the constitution or bylaws and to elect officers.**

Most often, assembly members are elected by regional, activity, or educational associations. A few states though, including Illinois, Massachusetts, and New Mexico, allow all schools in their association to vote on every change to their constitution or bylaws.

However the bylaws are enacted or modified, executive boards typically have substantial authority to interpret them or to issue additional rules to carry out the bylaws. Boards may also have broad authority to suspend the application of a bylaw or rule in special circumstances, such as on questions of students' eligibility.

In addition to the organizational arrangements that are found in other states, there are various alternative structures that the Minnesota Legislature could impose on the Minnesota State High School League to address issues of public accountability. The least intrusive ways to increase accountability may be for the Legislature to pass laws that simply improve state oversight or that expand the League's Representative Assembly to include student and parent representation. Other, more drastic reforms would alter the structure of the League itself. For example, the Legislature could pass legislation that directs the Department of Children, Families & Learning to staff the League. This would retain the League's grassroots connection to schools, while bringing its internal operations under state control. Legislation could also be passed that would permit the Governor to appoint all board members. Combining this change with the former change would make the League a state agency. All League operations would be subject to legislative review, and funds could be placed in a dedicated fund and appropriated biennially.

## ARE CHANGES NEEDED?

We contacted 24 educational organizations that represent schools, board members, staff, students, and parents to ascertain how satisfied they are with League activities and their opportunities for involvement. We found that:

- **For the most part, League constituents are pleased with the League and its activities.**

Many of the organizations that we talked with are already involved in the League's rulemaking process. We heard only a few complaints about the League or its activities. Almost all of the organizations that had an opinion about the League said that it was doing a good job in organizing events and meeting the needs of schools and students. They also indicated that they had adequate input into rulemaking.

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**League constituents are generally satisfied.**

In 1995 the League surveyed a sample of students from around the state who participated in extracurricular activities. Using separate questionnaires for fine arts and athletics, students were asked about the benefits of participating in extracurricular activities; the relationship among coaches, parents, and students; League rules, seasons and the number of contests; sportsmanship; specialization; and chemical health. The surveys revealed little dissatisfaction with League-related issues.<sup>4</sup>

As part of its 1998 strategic planning process, the League has been holding focus groups throughout the state. According to the focus groups' facilitator, the groups, which included students, school board members, coaches, and principals, among others, expressed very little dissatisfaction with how the League was doing its job.

Finally, we found that few students or parents challenge the League's bylaws as they relate to student eligibility. As discussed in Chapter 2, even though about 160,000 students take part in League-regulated activities each year, only 13 contested case hearings regarding student eligibility were held at the school level, and only 6 of these cases were appealed to the League's board of directors during the first 7 months of the 1997-98 school year. The number of cases that were appealed to the board of directors was even lower in previous years. As noted in Chapter 2, board policy previously required that parties appealing eligibility decisions to the board of directors send a check for \$250 with their request for a hearing.

Because there does not appear to be widespread dissatisfaction with the League and because we found no major problems with the League's accountability to the public:

- **We do not think that it is necessary for the Legislature to make major changes in the League's organizational structure at this time.**

The League is already subject to several public accountability laws, and we found only one area of noncompliance. Even though the League's rulemaking process is autonomous, we found that there were ample opportunities for public input.

Nevertheless, because the League's major activities are essentially governmental--regulating student participation in certain extracurricular activities--we think that public oversight, especially in program areas, is warranted. Two state agencies already have some direct oversight responsibilities--the Department of Children, Families & Learning and the State Auditor's Office. Two other groups have some indirect oversight. The League is required to file compensation reports with the Legislative Commission on Employee Relations on July 1 of every odd-numbered year. Beginning in 1998, the League must submit its budget to the Governor and Legislature in the same manner and form as state agencies, as set forth by the Department of Finance.

We noted that the State Auditor's Office has consistently fulfilled its statutory role in overseeing financial matters. However, we found that:

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<sup>4</sup> Minnesota State High School League *Listening to Students* (Brooklyn Center, MN, 1995).

- **There is no record that the Department of Children, Families & Learning has reviewed League activities as required by law.**

Minnesota statutes require that the Commissioner obtain and review each year the following information about the League: a summary of the State Auditor's financial and compliance audit, including information on staff compensation and expenses; a list of complaints filed with and lawsuits filed against the League, and their disposition; an explanation of the executive director's performance review; information on how the League has implemented various personnel policies; and an evaluation of any proposed changes in the League's policies.<sup>5</sup> In addition, the Commissioner may recommend to the Legislature whether any legislation is needed. There is no record that the department has reviewed these data for the last several years. Staff from the Department of Children, Families & Learning told us that the department has just recently begun to develop an oversight activity related to the League within the department's monitoring and compliance unit and is currently reviewing the required information about the League. In the past, the department has worked with the League to jointly develop a manual on Title IX compliance for athletics and to clarify the Title IX status of such activities as dance team.

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**Public oversight is needed because the League's major activities are governmental in nature.**

We think that it would be useful to the League, the Legislature, and the general public if the Department of Children, Families & Learning would exercise its existing oversight responsibilities regarding the League. Not only would this afford the public some degree of assurance that students' well-being, not just schools' extracurricular programs, are being considered, but it could also help improve the League's relationship with the Legislature. In fact, we think that the Legislature should expand the department's role to include written reports to the Legislature that include a thorough review of proposed changes to the League's bylaws and policies to ensure compatibility with the primary focus of schools--education--and their impact on students and their families. Although Minnesota statutes currently require the department to evaluate any proposed changes in League policy, we recommend that:

- **The Legislature should expand the Department of Children, Families & Learning's oversight responsibilities to include an annual, written review of League activities and a nonbinding review of all proposed bylaw and policy changes.**

Copies of the department's reviews should be made available to the Representative Assembly and the board of directors before they change the League's bylaws and policies. This is not a new or unique idea. As noted earlier, we found that at least four other states have their education departments exercising direct oversight over their athletic associations and their rules. Until 1991, state law required that the department prepare written reports annually on the League's activities. The department did not file any written reports in 1988 and 1989, and submitted only a perfunctory one in 1990. The Legislature subsequently reduced the department's responsibilities by no longer requiring an annual written report.<sup>6</sup>

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<sup>5</sup> *Minn. Stat.* §128C.20.

<sup>6</sup> *Minn. Laws* (1991), ch. 265, art. 11, sec. 14.

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**The Department of Children, Families & Learning's oversight role should be expanded.**

Also, we recommend that:

- **The Legislature should consider giving the Department of Children, Families & Learning the explicit statutory authority to examine League-related issues when warranted.**

Currently, statutes limit the department's role to reviewing certain information that the department is required to obtain from the League. Although state law permits the department to recommend whether League activities warrant legislation, the department does not have the express authority to initiate its own examinations. Although we do not think that the Department of Children, Families & Learning should investigate individual student complaints, the department should be able to examine issues and trends that affect students' overall education. For example, because no state agency currently reviews the overall impact of current bylaws and policies, the department should be able to periodically review existing bylaws and policies for their impact on students and their education. As noted in Chapters 1 and 2, students and parents have no direct membership in the League's Representative Assembly, and there are currently no avenues available for students and parents to directly object to existing bylaws. Recent legislative and League reforms have focused on *proposed* changes to eligibility bylaws and policies.

Finally, we recommend that:

- **The League should better define the roles and responsibilities of its ombudspersons and publicize their availability.**

Since 1997, the League has retained the services of three individuals to act as ombudspersons for people who have concerns about bylaws, policies, or other issues and who feel that their concerns have not received proper attention from the League's office or staff. However, the ombudsperson's role is limited to advocacy of a person's concerns to the League's executive director and board president.<sup>7</sup> The League does not give specific authority to its ombudsperson to investigate an issue such as a student's eligibility or to advocate on the behalf of parents and students before the Representative Assembly.

Also, to be effective, we think that the ombudsperson should function as independently from the League as possible. To this end, we think that the League should have its Representative Assembly either elect or appoint individuals to this office for a specified period of time (for example, four years).<sup>8</sup> Not only would this give the ombudspersons more independence to investigate League issues, especially those that concern decisions made by League staff or its board of directors, but it would also enhance their level of visibility and importance within the League.

There are nine ombudspersons or offices in state government, including ones for agriculture, crime victims, corrections, taxpayers' rights, small businesses for pollution regulations, mental health and mental retardation, families of color for child protection and out-of-home placement, nursing home residents, and persons

<sup>7</sup> High School League, *Policy Manual and Guidelines*, 9.

<sup>8</sup> This would require changing the League's constitution.

in state-managed health care plans. Almost all of these ombudspersons can investigate citizen complaints and some can initiate an investigation without waiting for a citizen to complain. Most can advocate on behalf of citizens in government proceedings or can try to solve disputes through mediation. Some ombudspersons have subpoena powers and have access to information that might otherwise be confidential.

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**The League should publicize the availability of its ombudspersons.**

Finally, regardless of how the ombudspersons are selected, the League needs to improve how it publicizes their availability. Unlike state agency ombudspersons, the names, addresses, and telephone numbers of the League's ombudspersons are not available on the its Internet web site or in its publications. A person wishing to contact one must call the League's office to get the information. To date, the League has not had anyone inquire about or use its ombudspersons.

## **SUMMARY**

We found that major changes in the League's overall structure are not needed at this time. The League is already subject to many public accountability laws. While the League's rulemaking process remains autonomous, we think that there are ample opportunities for public input. Nevertheless, because public schools have delegated their authority to regulate student participation in extracurricular activities to the League, public oversight is warranted. We found that programmatic oversight of League activities was lacking. We recommend that the Department of Children, Families & Learning improve its oversight and that the Legislature consider strengthening the department's role. Also, we recommend that the League more clearly define the roles and responsibilities of its ombudspersons and make them more accessible to the public. To provide greater independence, the League should have its Representative Assembly appoint or elect the ombudspersons rather than having them hired by League staff.