



Minnesota State High School League

2017
EVALUATION REPORT

Program Evaluation Division

OFFICE OF THE LEGISLATIVE AUDITOR

STATE OF MINNESOTA

Program Evaluation Division

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OFFICE OF THE LEGISLATIVE AUDITOR

STATE OF MINNESOTA • James Nobles, Legislative Auditor

April 2017

Members of the Legislative Audit Commission:

At your request, we evaluated the Minnesota State High School League (League).

We found deficiencies in how the League establishes eligibility criteria for students who transfer schools and want to participate in extracurricular athletic programs. The League's process lacks transparency, sufficient public notice, and external review. We also found deficiencies in how the League makes individual eligibility decisions. Finally, the League's Board of Directors does not provide sufficient oversight of the administration of student eligibility.

We recommend that the Legislature require the League to have a more transparent and open process for establishing student eligibility criteria. We also recommend more oversight of individual eligibility decisions by the League's Board, and an increased role for the Legislative Coordinating Commission and Minnesota Department of Education. Finally, we recommend more openness from the League in its communications with students, their families, and the League's member schools.

Our evaluation was conducted by Valerie Bombach (project manager), with assistance by Carrie Meyerhoff. The Minnesota State High School League and the Minnesota Department of Education cooperated fully with our evaluation.

Sincerely,

Handwritten signature of James Nobles in black ink.

James Nobles
Legislative Auditor

Handwritten signature of Judy Randall in black ink.

Judy Randall
Deputy Legislative Auditor



Summary

Key Facts and Findings:

- The Minnesota State High School League is a nonprofit organization that controls and administers interscholastic activities on behalf of 630 member high schools. (pp. 3-6)
- In Minnesota, a student who transfers between schools is ineligible to participate in varsity athletic competition at the new school for one year, with some exceptions. (p. 19)
- Among students who recently transferred between Minnesota schools or from another state, about 53 percent were granted eligibility to compete in varsity athletics. (p. 27)
- Among cases we reviewed, most final eligibility decisions by the League aligned with League regulations and goals; however, the League's appeal and fair hearing processes lack transparency. (pp. 29-38)
- Many League eligibility decisions took more time due to (1) deficiencies in League transfer regulations, or (2) inconsistent and inadequate League guidance. (pp. 31-35)
- The League Board of Directors and Eligibility Committee provide insufficient oversight of transfer student eligibility decisions. (pp. 39-42)
- The League is exempt from rulemaking requirements that apply to state agencies. Some of the League's eligibility rules are poorly worded, unclear, or unreasonable. (pp. 52-56)
- The Minnesota Department of Education (MDE) does not provide sufficient oversight of League reporting and eligibility regulations. (pp. 64-66)

- High school activities administrators are mostly satisfied with the League's approach for handling transfer student eligibility; however, about one-fourth of survey respondents want the Board of Directors to be more directly involved. (pp. 41, 56-59)

Key Recommendations:

- The Legislature should amend state statutes to: (1) require the League to establish a fair hearing process, and (2) improve the League's rulemaking processes. (pp. 37, 63)
- The Legislature should amend *Minnesota Statutes* 2016, 3.842, to provide for discretionary review of League eligibility regulations by the Legislative Coordinating Commission. (p. 66)
- The Legislature should amend state statutes to require MDE to: (1) review the League's transfer eligibility bylaws, policies, and procedures for compliance with MDE programs and related state and federal law; and (2) monitor certain transfer student cases. (pp. 66, 35)
- The League should improve its correspondence and website to better inform schools and parents about requirements for transfer student eligibility, appeals, and requests for independent hearings. (p. 45)
- To improve consistency and compliance with League goals and regulations, members of the League Board of Directors should improve its review of League staff decisions regarding transfer student eligibility appeals and fair hearing requests. (p. 42)

The Minnesota State High School League has a complex process to regulate the athletic eligibility of transfer students.

The League's handling of some transfer student eligibility appeals was inconsistent and lacked clear rationale.

Report Summary

The Minnesota State High School League is a nonprofit organization that is a voluntary association of high schools.¹ The League is authorized and funded through its member schools “to establish uniform and equitable rules” for youth in interscholastic events, such as state tournaments for sports and fine arts programs. These rules address student conduct and other eligibility standards for all students, including those who transfer between high schools.

In 2016, the League had 630 member high schools, including public, private, home, and other special schools. For purposes of administering student eligibility, member schools report information about incoming transfer students to the League Office. During the 2015-2016 school year, member schools reported about 2,400 student transfers to the League Office.

In Minnesota, a student who transfers between schools is ineligible to participate in varsity athletic competitions at the new school for one year, unless exempted by the League.

To facilitate fair and equitable competition, the League has created eligibility criteria for students who transfer between schools. The League criteria are intended to deter students and others who may seek to have a student attend a particular school for the purpose of building athletic strength in a program.

Transfer students are considered ineligible at the new school unless they meet 1 of 11 criteria—for example, moving to a new school district or entering 9th grade for the first time.

¹ *Minnesota Statutes* 2016, 123B.49, subd. 4; and 128C.01, subds. 1-3.

League bylaws also allow for non-varsity and other participation options during periods when the students are ineligible to compete in varsity events. The League's transfer restrictions do not apply to fine arts programs, such as speech, debate, music, and visual arts.

Among cases we reviewed, most final eligibility decisions aligned with League regulations and goals; however, the League's appeal and fair hearing processes lack transparency.

Through League bylaws, policies, and procedures, the League has a complicated process to determine the eligibility of a transfer student. This process begins at the local school level and involves League staff and, in some cases, the League Board of Directors. Although the board of directors has authority to handle all eligibility matters, the board has largely delegated the administration of transfer student eligibility to League staff.

During a recent two-year period, about 53 percent of students who transferred between Minnesota schools or from another state were granted eligibility; most transfer cases were resolved without extended controversy. However, some eligibility decisions are elevated to the League staff and board, and may result in an independent hearing. Nevertheless, the League does not have written criteria for obtaining an independent hearing to review the League's eligibility decisions.

Among 40 cases we reviewed, we found that League final eligibility decisions for most cases were consistent with League transfer student bylaws, policies, procedures, or goals. On the other hand, we found that the League's handling of a sample of appeal and fair hearing requests was not consistent and lacked clear guidance and rationale, in part due to poorly worded bylaws, policies, and

procedures. In some cases, League staff were inconsistent when granting or denying eligibility, when compared with similar cases.

The League Board of Directors provides insufficient oversight of transfer student eligibility.

The board of directors has assigned responsibility for reviewing eligibility matters to the League Eligibility Committee. Composed of five board members, the Eligibility Committee meets about six times a year—sometimes more often—to: review contested eligibility decisions; impose penalties and sanctions on schools that do not comply with League rules; and review and suggest changes to eligibility bylaws, policies, and procedures.

During its meetings, the Eligibility Committee does not review transfer eligibility case files unless the case was heard by an independent hearing officer; rather, committee members review summarized information that is limited to requests for a fair hearing that were denied by League staff. The Eligibility Committee’s current oversight practices do not reveal instances when the League handles eligibility decisions inconsistently—a concern we have based on our file reviews.

The League’s processes for creating bylaws, policies, and procedures differ from those for state rulemaking.

In 1997, the Legislature fully exempted League rules from the Administrative Procedures Act (APA), including review by an administrative law judge. State statutes also do not explicitly provide for review of League rules by the Legislative Coordinating Commission’s Subcommittee on Administrative Rules, a committee that can refer state agency rules to an administrative law judge for review.

The League has created two different rulemaking processes that overlap in purpose related to eligibility. The League process for “bylaws” includes some important elements found within the APA; for example, advance public notice, and review, comment, and approval by the League’s 48-member Representative Assembly. League bylaws were approved by a two-thirds majority of designated school representatives. The League Board of Directors also creates “policies” and “procedures” to supplement League bylaws and administer student eligibility determinations; these requirements do not undergo a formal rulemaking process and include neither a mandatory public notice and review period nor judicial review of the proposal.

The League does not ensure sufficient public notice and external review of proposed policies and procedures.

The Board of Directors often does not make public its final versions of proposed changes to policies and procedures until the morning of a board meeting. These changes typically are set for final vote at a later board meeting, but they are not published on the League’s website for public notice and external review. State statutes require that the League have a process for public notice of proposed eligibility rules and policies to allow for independent public hearings; however, League staff said that this requirement does not apply to transfer eligibility policies and procedures. In contrast, state agencies must follow a formal process when creating rules that affect procedures available to the public.

The League’s practices for cataloging and publishing eligibility requirements also create potential confusion for athletic administrators and families seeking to understand League rules. The Board of Directors often makes

Changes are needed to improve the transparency and results of the League’s rulemaking.

High school activities administrators largely support the League's approach to handling transfer student eligibility.

changes to transfer student eligibility policies and procedures throughout a school year, and the League publishes the new language in undated versions of its *Official Handbook*. Over time, the board has created duplicate versions of eligibility appeal procedures that are codified in different sections of the League handbook.

In our review of eligibility case files, we found that some League procedures: (1) impose unreasonable requirements on transfer students who allege intolerable conditions at their former school; (2) do not sufficiently disclose transfer student reporting requirements; or (3) do not disclose how transfer students may qualify for an independent, fair hearing.

MDE's oversight of the League's reporting and eligibility regulations is insufficient.

The League is required to report an evaluation of proposed policies to the Minnesota Department of Education (MDE) for the department to review and include in an annual report. However, the annual process does not provide for meaningful review of proposed policies prior to adoption, and MDE does not conduct a comprehensive review of the League's transfer eligibility bylaws, policies, and procedures.

League staff said that they do not report all proposed eligibility regulations to MDE, and that state statutes do not require them to do so. Based on the League's current transfer appeal and fair

hearing procedures, we think this is a technical distinction and recommend that the Legislature amend statutes so that all eligibility proposals are reported to and reviewed by MDE. MDE also should monitor student transfer cases appealed to the League due to intolerable conditions. We also think that the Legislative Coordinating Commission Subcommittee on Administrative Rules should play a discretionary role in reviewing League rulemaking.

Most high school activities administrators said that the League makes the right decisions about student eligibility.

Among activities administrators with experience handling transfer student eligibility, about 89 percent said that League staff make the right decisions about student eligibility.

About 90 percent of survey respondents with experience handling student transfers said the League's definition of a transfer student is "about right" and about 75 percent said that the provisions and exceptions to allow a transfer student to be eligible for interscholastic events are "about right."

Meanwhile, 26 percent of survey respondents said that the board of directors should be more directly involved in transfer student eligibility decisions. We make recommendations for more involvement by the Eligibility Committee in its review and consideration of eligibility decisions.

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Introduction

The Minnesota State High School League is a “nonprofit corporation that is a voluntary association” of public and private high schools.¹ Member schools delegate control of certain extracurricular activities to the League. In return, the League is responsible for, among other items: (1) administering a program of competitive activities in athletics and fine arts; (2) establishing uniform and equitable rules for student participation; and (3) providing coordinated activities statewide that individual schools could not organize on their own.

The Legislature has granted the League broad authority to carry out its duties and functions. The League and its member schools create their own rules and processes to control student eligibility. Historically, the League and its member schools have imposed restrictions on students’ eligibility to participate in athletics, including students who transfer between schools. These restrictions are in place in part to limit the development of athletic teams that dominate a particular high school sport and interscholastic competition. Such transfers also can displace students who would otherwise participate on their local school teams. However, in recent years, several of the League’s student eligibility decisions have raised concerns among legislators, students, and families.

In March 2016, the Legislative Audit Commission directed the Office of the Legislative Auditor to evaluate the Minnesota State High School League. Our evaluation addressed the following questions:

- **Has the League appropriately exercised its rulemaking authority regarding student eligibility to participate in extracurricular activities? Are there sufficient opportunities for public input in its bylaws, policies, procedures, and administrative activities?**
- **To what extent have League bylaws, policies, and procedures been appropriately applied in student transfer eligibility decisions? Do appeals processes provide adequate recourse for individuals affected by League decisions?**
- **Are changes needed to make the League more accountable to the Legislature, students, parents, member schools, and the public?**

To help answer these questions, we surveyed high school activities administrators who are responsible for tracking, reporting, and certifying the eligibility of students to participate in League-sponsored events. They also play a key role in determining the eligibility of transfer students. We sent surveys to 479 activities administrators who reported their information to the League; we received responses from 340 high schools for an overall response rate of 71 percent. We also interviewed representatives from the Minnesota Interscholastic Activities Administrators Association, and attended workshops and training provided to its members.

To understand the League’s eligibility and rulemaking processes, we interviewed League Office staff and current and former members of the League Board of Directors and

¹ *Minnesota Statutes* 2016, 128C.01, subd. 1.

Eligibility Committee. We also attended League board and regional staff meetings and reviewed historical documents, including board minutes, bylaws, policies, and procedures; Minnesota statutes; and laws related to the League and its authority. The Minnesota Department of Education is charged with overseeing the League, and we interviewed individuals with the department about its involvement in League activities and reviewed department documents. We also interviewed other individuals who expressed interest in this topic.

To understand the frequency and nature of student transfers, we obtained and analyzed data from the League about incoming students as reported by member schools in recent years. To assess how the League administers its determination of transfer student eligibility and fair hearing processes, we reviewed 40 case files in which transfer students requested an independent hearing from the League.

Our report contains findings and recommendations to the League, the Minnesota Department of Education, and the Legislature. In general, we think that the changes are needed to bring more clarity and transparency to the work of the League and its member schools regarding transfer student eligibility and rulemaking.

Chapter 1: Background

First organized in 1916, the Minnesota State High School League (League) was formed to regulate interscholastic events and activities, such as state high school sports championships.¹ Today, the League is a nonprofit organization, funded and authorized through its member schools to control athletic and fine arts contests involving pupils of Minnesota high schools.²

The League and its member schools also create eligibility rules for students, including students who transfer between schools.³ During the 2015-2016 school year, about 2,380 students transferred into a League member school.⁴ According to League staff, high schools and their school communities have an interest in controlling how often students transfer between schools and for what purposes. In this chapter, we describe League governance and its organization. We also provide background information on League services, finances, and student transfers in Minnesota.

League Governance

The League is a long-standing organization in Minnesota whose purpose began with promoting amateur sports and establishing uniform eligibility rules for interscholastic contests.⁵ The organization evolved and expanded over the years, as did its involvement with member high schools. During its early decades, the League was not formally established in Minnesota statutes.

The Minnesota State High School League is a nonprofit organization that controls and administers interscholastic events and activities on behalf of Minnesota high schools.

In 1973, the Legislature formalized the League and its relationship with Minnesota schools.⁶ The Legislature also authorized Minnesota high schools to formally delegate their control of extracurricular activities and contests, as defined under state statutes, to the Minnesota State High School League.⁷ Currently, Minnesota statutes: (1) authorize the League's

¹ Minnesota State High School League, *2016-2017 Official Handbook* (Brooklyn Center, MN; undated hardcopy), 125. The Minnesota State High School League was first organized in 1916 as the State High School Athletic Association, a nonprofit voluntary association of the public high schools. In 1929, it broadened its scope by including all interscholastic athletic activities and adding speech and debate; its name was also changed to the Minnesota State High School League. In 1960, it was officially incorporated under Minnesota laws as a nonprofit corporation.

² *Minnesota Statutes* 2016, 128C.01, subs. 1-3; Minnesota State High School League, *2016-2017 Official Handbook*, 125.

³ *Minnesota Statutes* 2016, 128C.02, subd. 5; and 128C.03.

⁴ Total represents the number of incoming transfer students reported by member schools to League staff.

⁵ Minnesota State High School League, *2016-2017 Official Handbook*, 125.

⁶ *Laws of Minnesota* 1973, chapter 738, sec. 1, codified as *Minnesota Statutes* 2016, 128C.01.

⁷ *Laws of Minnesota* 1973, chapter 738, sec. 1, codified as *Minnesota Statutes* 2016, 128C.01, subs. 1-2. See also *Minnesota Statutes* 2016, 123B.49, subd. 4.

involvement in interscholastic competitions; and (2) require the League to have a 20-member governing Board of Directors to establish and adopt policies, make decisions on behalf of the League, and establish advisory committees necessary to carry out board functions, among other duties and responsibilities.⁸

The League’s mission is framed and guided by its member schools. The League promotes education above athletics and asserts that participation in interscholastic activities is a privilege and not a right, as shown in Exhibit 1.1.⁹

Although the League is not a state agency, the Legislature imposes some requirements on the League that apply to government entities. State statutes require the League to comply with open meeting laws and the Minnesota Data Practices Act.¹⁰ The Minnesota State Auditor annually must audit the League’s finances.¹¹ On the other hand, the Legislature exempted League rules from the Minnesota Administrative Procedure Act (APA), an act that establishes requirements for state agencies and boards when creating rules.¹²

The League’s exemption from the APA and its rulemaking requirements is noteworthy because the League itself is organized “to establish uniform and equitable rules for youth in interschool activities.”¹³ Although state statutes impose some requirements on the League, member schools have played a large role in forming the administrative and regulatory structure of the League through its own rulemaking process.

Specifically, the League is governed by its articles of incorporation, constitution, and League rules. The League’s “rules” include: (1) general and activity-specific bylaws that are applicable to all member schools; (2) League Board of Directors’ policies and procedures that are used to supplement and help administer League bylaws; and (3) rules that are specific to each athletic, fine arts, or other program. We examine the League’s rulemaking processes in Chapter 3 in this report.

As part of the League’s authorizing legislation, the Legislature imposed some responsibilities on the Minnesota Department of Education (MDE) to oversee certain aspects of the League. The League is required to annually provide to MDE, and MDE is required to review, certain information about the League.¹⁴ In addition, the MDE commissioner has statutory authority to examine any League activities or League-related issues and recommend to the Legislature whether legislation is made necessary by League activities.¹⁵ In general, MDE has limited or no involvement in most League activities—including transfer student eligibility. We address some issues regarding MDE’s oversight in Chapter 3.

⁸ *Minnesota Statutes* 2016, 128C.01 and 128C.02.

⁹ League representatives emphasize that students must be in academic “good standing” to be eligible to represent their school in League-sponsored events. Among the League’s beliefs, the organization states that (1) academic priorities must come before participation in athletic or fine arts activities; (2) compliance with school, community, and League rules is essential for all participants; and (3) ethical behavior, dignity, and respect are non-negotiable.

¹⁰ *Minnesota Statutes* 2016, 128C.17 and 128C.22.

¹¹ *Minnesota Statutes* 2016, 128C.12.

¹² *Minnesota Statutes* 2016, 128C.02, subd. 4.

¹³ Minnesota State High School League, *2016-2017 Official Handbook*, 129.

¹⁴ *Minnesota Statutes* 2016, 128C.20.

¹⁵ *Ibid.*

Exhibit 1.1: Minnesota State High School League Key Facts, Mission, Purposes, and Beliefs, 2016

Key Facts

- First founded in 1916 with a primary purpose to (1) promote amateur sports and (2) establish uniform eligibility rules for interscholastic contests.
- In school year 2015-2016:
 - 630 member schools: 429 public (including 52 charter), 66 nonpublic, and 135 home schools.
 - 316,718 participants in League-sponsored athletic and fine arts programs.^a
 - 38 state tournaments.

Mission Statement

The Minnesota State High School League provides educational opportunities for students through interscholastic athletic and fine arts programs and provides leadership and support for member schools. *Education and Leadership for a Lifetime.*

Founding Purposes

- To provide, promote, extend, manage, and administer a program of activities for youth of the schools of the state on subsection, section, and state levels in the fields of athletics, speech, music, and dramatics on a competitive basis, as well as such other curricular and extracurricular activities as may from time to time be sponsored by the schools of Minnesota.
- To establish uniform and equitable rules for youth in inter-school activities.
- To elevate standards of sportsmanship and to encourage the growth of responsible citizenship among the students, member schools, and their personnel.
- To protect youth, member schools, and their personnel from exploitation by special interest groups.
- To provide mutual benefit and relief plans for the assistance of school students injured in athletic events or supervised school activities in meeting medical and hospital expenses incurred by reason of such injuries.
- To serve the best interests of member schools and their students by providing a medium of cooperation and coordination in educational fields of endeavor and a series of related activities on a state-wide basis, which they individually could not achieve or accomplish for their students and which aid and assist the schools in maintaining a constantly improved program.

Beliefs

- Participation in school activity programs is a privilege and not a right.
- Sportsmanship needs to have a constant presence in all school-based activity programs.
- Students should have an equal opportunity to participate in all activities offered by their school.
- Ethical behavior, dignity, and respect are non-negotiable.
- Student participants who choose to be chemically free must be supported.
- Collaborative relationships with parents enhance a school's opportunity to positively impact student success.
- Academic priorities must come before participation in athletic or fine arts activities.
- Positive role models and an active involvement in a student's life by parents and others are critical to student success.
- High school activity programs are designed for student participants, and adults must serve in a supportive role.
- The success of the team is more important than individual honors.
- Compliance with school, community, and League rules is essential for all activity participants.
- Participation in school-sponsored activities must be inclusive, not exclusive.
- Ethical behavior, fairness, and embracing diversity best serve students and school communities.

^a Total participants (1) represents a duplicated count of students, where some students participate in more than one program; and (2) includes anyone in grades 7 through 12 on a high school team. The League was unable to provide the total unduplicated count of students who participated in League-sponsored events during school year 2015-2016; however, the League estimates that there were about 95,500 individual students in grades 10-12 who participated in high school athletics.

High schools' participation in the League is voluntary; however, there are few other opportunities for state-level, interscholastic high school competitions in Minnesota.

High schools may, but are not required to, participate in the League. In the 2016-2017 school year, the League had about 630 member schools that included: 429 public (including 52 charter), 66 nonpublic, and 135 home schools, as indicated in Exhibit 1.1. According to League data, nearly every public high school in Minnesota (including charter schools) was a member of the League in school year 2015-2016.

Member schools must abide by all League bylaws, rules, articles of incorporation, constitution, and regulations, for any and all participation in League-sponsored activities. These activities are summarized in Exhibit 1.2. Member schools must report to the League all athletic and fine arts programs that they choose to offer. For the League to sponsor a state tournament, there must be at least 32 teams supported by member schools. Each year, parents and students who wish to participate in any League-sponsored programs must sign a consent form in which they agree to abide by League eligibility rules, student conduct standards, and other requirements. The League's requirements extend beyond interscholastic, League-sponsored high school events, and impose requirements regarding student participation in other, off-season competition, such as club team events.

For high schools that do not participate in the League, there are few other options for state-level competitions for students. For some activities—such as badminton—the coach's association for the sport has sponsored state-level tournaments. Some schools have chosen to not participate in the League for particular sports and instead operate athletic programs that compete at the national level; for example, junior hockey.¹⁶

On behalf of its member schools, the League provides a broad range of activities and services. As shown in Exhibit 1.2, the League: controls contests between students of member schools; determines sports conferences; administers grants; handles state championships; provides training to high schools; and maintains an up-to-date understanding of state and national requirements and standards for high school extracurricular activities. The League central office and member schools also are involved in overseeing the eligibility of students who transfer between schools.

¹⁶ For example, Shattuck-St. Mary's School is a member school for some activities but not hockey; rather, the school has nationally competitive hockey teams.

Exhibit 1.2: Minnesota State High School League Key Services and Activities, School Year 2016-2017

Key Services

- Establish, conduct, and regulate championship high school tournament activities
- Develop criteria and arrange for membership in interscholastic conferences
- Determine the number of classes in all interscholastic athletic activities under its jurisdiction
- Adopt League rules and regulations governing students and school eligibility and participation
- Regulate the eligibility of transfer students
- Administer grants to fund, assist, recognize, or promote high school students' participation in extracurricular activities
- Provide information or training to member school administrators, activities directors, and coaches
- Maintain awareness of national and state standards and requirements for high school extracurricular activities and safety concerns

Activities

Athletics

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> • Adapted Bowling • Adapted Floor Hockey • Adapted Soccer • Adapted Softball • Alpine Skiing • Baseball • Basketball • Cross Country Running • Football • Golf • Hockey • Lacrosse • Nordic Ski Racing Soccer | <ul style="list-style-type: none"> • Swimming and Diving • Tennis • Track and Field • Wrestling |
| | <h4>Girls' Sports, Only</h4> <hr/> <ul style="list-style-type: none"> • Badminton^a • Cheerleading^b • Dance Team • Gymnastics • Softball • Synchronized Swimming^a • Volleyball |

Fine Arts

- Debate
- Music
- One-Act Play
- Speech
- Visual Arts

Other

- Clay Target Shooting^c
- Robotics^c

NOTES: The League organizes competitions by boys and girls teams, as sponsored by a school. However, the League does not have exclusively boys' sports, as girls may try out to participate on any sport traditionally considered a boys' sport. The League does sponsor four athletic competitions that are exclusive to girls.

^a The League does not sponsor a state tournament for this activity as it does not meet the mandatory minimum number of 32 teams among member schools. The state tournaments for these activities are sponsored by the respective coaches' associations.

^b The League classifies cheerleading as a non-competitive sport and does not sponsor tournaments.

^c The League does not sponsor this activity but is a partner in presenting the state tournament.

SOURCES: *Minnesota Statutes* 2016, 128C.02 and 128C.05; Minnesota State High School League, 2016-2017 *Official Handbook* (Brooklyn Center, MN; undated hardcopy), 21-26, 129, and 131-133; Minnesota State High School League website, <http://www.mshsl.org/mshsl/aboutmshsl.asp?page=1>, accessed December 19, 2016.

Organizational Structure

The League's organizational structure is set up to ensure local representation, as described in Exhibit 1.3.¹⁷

The League has a unique organizational structure established to serve and meet the needs of its member schools.

The League must have a 20-member governing board, with 4 members appointed by the governor; each of these appointees must be a parent and at least one must be an American Indian, Asian, Black, or Hispanic.¹⁸ Two of the board members must be appointed by the Minnesota Association of Secondary School Principals.¹⁹ The remaining members are appointed according to League bylaws, and include representatives from member schools and two representatives from the Minnesota School Boards Association, shown in Exhibit 1.3. The Board of Directors also must appoint an executive director, who serves as secretary to the board.

The League constitution provides for member school representation through the League's Representative Assembly. The Representative Assembly is composed of 48 member school representatives, each of whom is from 1 of 16 administrative regions that cover the state, and the president of the Board of Directors. To create the 16 regions, the League divides high schools into 8 Class A and 8 Class AA groups, based on school size and area of the state.²⁰ The League considers the Representative Assembly to be its legislative body, and the assembly is charged with making and changing League bylaws through the League's rulemaking process.²¹

The League also has 16 region committees with representatives from the Class A and Class AA regions. Each region committee has a minimum of 12 representatives, elects its own officers, and is responsible for administering League-sponsored state tournaments and regional events as assigned by the Board of Directors.

Lastly, the governing board of each member school must have two representatives authorized to vote on behalf of the school on League-related matters. Each school also must have designated school representatives who act as liaisons to the League for boys' sports, girls' sports, music, and speech. To help advise these designated representatives, the League urges each school to form a local advisory committee for League activities, and committee members should include a school board member, a student, a parent, and a faculty member.

¹⁷ The League's organizational structure is defined by *Minnesota Statutes* 2016, 128C.01, and its articles of incorporation and constitution.

¹⁸ *Minnesota Statutes* 2016, 128C.01, subd. 4.

¹⁹ *Ibid.*

²⁰ *Minnesota Statutes* 2016, 128C.02, subd. 3. Class AA members include high schools with larger student populations and Class A members include high schools with smaller student populations, including home schools. At the beginning of the 2016-2017 school year, there were 128 Class AA member schools and 502 Class A member schools.

²¹ Minnesota State High School League, *2016-2017 Official Handbook*, 131.

Exhibit 1.3: Minnesota State High School League Organization, 2016

| State Level | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Board of Directors | Representative Assembly |
| 20 members total: <ul style="list-style-type: none"> • 4 appointed by the governor • 4 from Class AA regions • 4 from Class A regions • 4 activity representatives • 2 from the Minnesota Association of Secondary School Principals • 2 appointed by the Minnesota School Boards Association | 49 members total: ^a <ul style="list-style-type: none"> • 48 school representatives (3 from each of 16 regions) • The president of the Board of Directors |
| Central Office | |
| <ul style="list-style-type: none"> • 1 executive director • 4 associate directors • 2 assistant directors • 17 staff | |
| Region Level | |
| 16 Region Committees (8 Class AA regions and 8 Class A regions) | |
| 12 members minimum (each region committee): <ul style="list-style-type: none"> • 2 from local boards of education • 2 superintendents • 2 principals • 2 athletic directors • 1 representing coaches of boys' sports • 1 representing coaches of girls' sports • 1 representing music • 1 representing speech, debate, or one-act play | |
| Local Level | |
| Local School Designated Representatives | Local Advisory Committee |
| 6 members total (each school): <ul style="list-style-type: none"> • 1 school board member • 1 administrator or faculty member • 1 representing boys' sports • 1 representing girls' sports • 1 representing music • 1 representing speech | 4 members minimum (each school): <ul style="list-style-type: none"> • 1 school board member • 1 student • 1 parent • 1 faculty member |

NOTES: Class AA members include high schools with larger student populations and Class A members include high schools with smaller student populations, including home schools. At the beginning of the 2016-2017 school year, there were 128 Class AA member schools and 502 Class A member schools.

^a Members of the Board of Directors are advisory members of the Representative Assembly and are not eligible to vote.

SOURCE: Minnesota State High School League, *2016-2017 Official Handbook* (Brooklyn Center, MN; undated hardcopy), 9 and 130-133.

The League also has various activity advisory committees with representatives from the 16 regions to provide activity-specific input and recommendations to the Board of Directors on such items as tournament dates, sites, awards, and other matters. For example, representatives from the athletic directors or fine arts committees meet seasonally to provide input to the board regarding upcoming activities.

Finances

The League does not receive any funding from the state to support the League's operations. Rather, the League relies on revenues from League programs, member schools, and other sources to cover its expenses.

Revenues

The League and its activities are primarily funded by revenue from tournaments, such as ticket sales, as shown in Exhibit 1.4.²² These include state-level events sponsored by the League central office and region and section competitions administered by the League's 16 region committee offices.

Exhibit 1.4: Minnesota State High School League Operating Revenues, Fiscal Years 2012-2016

| Operating Revenue Category | 2012 (1000's) | 2016 (1000's) | Percentage Change 2012-2016 | Average Annual 2012-2016 (1000's) | Percentage of Total 2012-2016 |
|-------------------------------------------------|------------------|------------------|-----------------------------------|--------------------------------------------|-------------------------------------|
| Tournaments | \$12,274 | \$13,265 | 8.1% | \$12,566 | 82.7% |
| Membership Services Fee | 953 | 991 | 4.0 | 968 | 6.4 |
| Television | 850 | 964 | 13.4 | 904 | 6.0 |
| Contest Officials Registration | 344 | 315 | -8.4 | 333 | 2.2 |
| Other ^a | 188 | 258 | 37.0 | 236 | 1.6 |
| Sales of Handbooks, Rule Books, and Supplies | 207 | 196 | 5.1 | 180 | 1.2 |
| Total Operating Revenue | \$14,816 | \$15,989 | 7.9% | \$15,188 | 100.0% |
| Total Central Office | \$ 8,916 | \$ 9,158 | 2.7% | \$ 8,989 | 59.2% |
| Total Regional Offices | \$ 5,900 | \$ 6,831 | 15.8% | \$ 6,199 | 40.8% |

NOTES: The Minnesota State High School League's financial information is reported for the year ending July 31. Revenues from corporate partnerships (totaling about \$664,000 in Fiscal Year 2012 and \$834,000 in Fiscal Year 2016) are recorded as non-operating revenues and are not included in this table.

^a "Other" revenue includes regional webcast fees, medal and certificate sales, award banquet ticket sales, regional programs sales, and other miscellaneous revenues.

SOURCE: Office of the Legislative Auditor, analysis of the Minnesota State High School League's published annual financial reports for 2012 through 2016 and the League's 2016 Statement of Revenues, Expenses, and Changes in Net Position by Location.

²² Most tournament revenues are derived from ticket sales, but other revenue sources include program, t-shirt, and souvenir sales.

Between fiscal years 2012 through 2016, the League’s operating revenues averaged about \$15 million annually, with 83 percent coming from tournaments.

During this five-year period, the League’s total operating revenues increased about 8 percent, from \$14.8 million in 2012 to \$16 million in 2016.²³ Similarly, tournament revenue increased about 8 percent, from \$12.3 million to \$13.3 million.

Member schools also pay fees to participate in the League. In 2016, each school paid an annual membership fee of \$100 plus a \$90 activity fee for each program a school sponsors—or, offers to students—at the high school level. Between fiscal years 2012 through 2016, membership revenue averaged nearly \$1 million annually.

Over this five-year period, League central office operating revenues from state-level competitions accounted for about 59 percent of all League operating revenues, also shown in Exhibit 1.4. Operating revenues from activities administered by the 16 region committees—such as region tournaments—accounted for about 41 percent of all League revenues.

From fiscal years 2007 through 2015, the League received a statutory exemption of the sales tax on tournament tickets; in Fiscal Year 2015, this amount totaled \$810,000.²⁴ During the 2015 and 2016 legislative sessions, this exemption was not renewed.²⁵

Expenditures

Similar to League revenues, tournaments comprise the largest share of League spending. However, the League constitution requires that the League return excess revenues to member schools under certain circumstances, and the League does so based on their participation in League events.²⁶

Between fiscal years 2012 and 2016, League expenditures averaged about \$16 million annually, with 54 percent due to tournaments.

During this five-year period, League total expenditures increased about 12 percent, from about \$15.4 million in 2012 to \$17.2 million in 2016, as shown in Exhibit 1.5. Tournament expenses increased about 12 percent, from \$8 million in 2012 to \$9 million in 2016. For

²³ Total operating revenues excludes non-operating revenues from corporate partnerships (totaling about \$664,000 in Fiscal Year 2012 and \$834,000 in Fiscal Year 2016).

²⁴ *Laws of Minnesota* 2006, chapter 257, sec. 2, as amended by *Laws of Minnesota* 2011, First Special Session, chapter 7, art. 3, sec. 17. Although the Legislature did not renew the exemption for fiscal years 2016-2017, *Minnesota Statutes* 2016, 128C.24, still requires the League to annually determine the sales tax savings attributable to this exemption and transfer the amount to its charitable foundation created for the purpose of promoting high school extracurricular activities.

²⁵ During the 2017 legislative session, House File 300 and Senate File 164 were introduced as bills to reinstate this exemption for the League. The Minnesota Department of Revenue estimated that the tax exemptions for the League, if signed into law, would total \$1.76 million for fiscal years 2018-2019.

²⁶ Minnesota State High School League, *2016-2017 Official Handbook*, 129. The League must return any surplus funds that exceed 50 percent of the average total disbursements for the three previous years to the respective member schools on a pro rata basis, using a formula tied to League dues.

fiscal years 2012 and 2016, operating expenditures exceeded operating revenues in part because (1) a portion of reimbursements to schools in Fiscal Year 2016 came from the League's reserve funds, and (2) monies from corporate partnerships (totaling about \$664,000 in Fiscal Year 2012 and \$834,000 in Fiscal Year 2016) are reported as non-operating revenues.

Between fiscal years 2012 and 2016, League reimbursements to member schools for tournament monies averaged about \$1.2 million annually. Operating expenses by the League central office accounted for about 61 percent of all League expenses, while spending by regional offices accounted for about 39 percent.

Exhibit 1.5: Minnesota State High School League Operating Expenditures and School Reimbursements, Fiscal Years 2012-2016

| Operating Expense Category | 2012 (1000's) | 2016 (1000's) | Percentage Change 2012-2016 | Average Annual 2012-2016 (1000's) | Percentage of Total 2012-2016 |
|----------------------------------|------------------|------------------|-----------------------------------|--------------------------------------------|-------------------------------------|
| Tournaments | \$ 8,096 | \$ 9,034 | 11.6% | \$ 8,588 | 53.5% |
| Salaries and Benefits | 3,450 | 3,944 | 14.3 | 3,698 | 23.0 |
| School Tournament Reimbursements | 1,526 | 1,524 | -0.1 | 1,178 | 7.3 |
| Membership Services | 705 | 826 | 17.1 | 785 | 4.9 |
| Other ^a | 605 | 778 | 28.5 | 722 | 4.5 |
| Office Maintenance | 380 | 392 | 3.3 | 426 | 2.7 |
| Professional Services | 404 | 461 | 14.1 | 406 | 2.5 |
| Officials Program | 228 | 290 | 26.9 | 246 | 1.5 |
| Total Operating Expenditures | \$15,393 | \$17,248 | 12.1% | \$16,049 | 100.0% |
| Total Central Office | \$ 9,491 | \$10,408 | 9.7% | \$ 9,821 | 61.2% |
| Total Regional Offices | \$ 5,902 | \$ 6,840 | 15.9% | \$ 6,228 | 38.8% |

NOTES: The Minnesota State High School League's financial information is reported for the year ending July 31. For fiscal years 2012 and 2016, operating expenditures exceeded operating revenues in part because (1) a portion of tournament reimbursements to schools came from the League's reserve funds, and (2) revenues from corporate partnerships (totaling about \$664,000 in Fiscal Year 2012 and \$834,000 in Fiscal Year 2016) are reported as non-operating revenues.

^a "Other" includes expenses associated with fine arts programs, committees, Board of Directors, corporate sponsor commission, television consulting, and public relations.

SOURCE: Office of the Legislative Auditor, analysis of the Minnesota State High School League's published annual financial reports for 2012 through 2016 and the League's 2016 Statement of Revenues, Expenses, and Changes in Net Position by Location.

Student Transfers

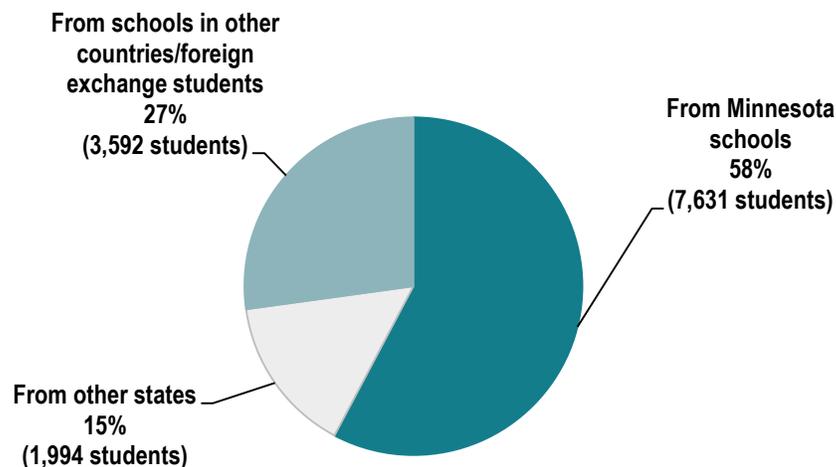
Our evaluation focused on the eligibility of transfer students to participate in League-sponsored events and the League rules and processes for determining their eligibility. League policies define a transfer student as one who discontinues enrollment and attendance in any high school, public or private, located in a public school district attendance area and enrolls in any high school in or outside of Minnesota.

The League has bylaws and policies to inhibit and control student transfers for athletic reasons, along with reporting and eligibility certification requirements for member schools. Each member school must report to League staff students who transfer *into* their school, and League staff maintain these reports for purposes of eligibility determinations. However, some students transfer to non-member schools, or to schools outside of Minnesota. In these instances, the League would not have information about the transfer student.

Most transfers reported by member schools involved students moving between Minnesota schools.

We obtained League data to gain insight into how often students transfer schools. We present information here and in later sections of the report regarding student transfers. As shown in Exhibit 1.6, about 13,200 students transferred into a League school between school years 2011-2012 through 2015-2016. About 58 percent of these transfers were from another Minnesota school, 27 percent were from another country, and 15 percent were from a different U.S. state.

Exhibit 1.6: Percentage of Reported Student Transfers, by Resident Type, School Years 2011-2012 through 2015-2016



NOTE: Student transfers reported by member schools totaled 13,217 during this five-year period.

SOURCE: Minnesota State High School League data on student transfers.

During the 2015-2016 school year, a relatively small share of League member schools accounted for a relatively larger share of incoming student transfers.

Exhibit 1.7 shows the 25 member schools that reported the most *incoming* student transfers during the 2015-2016 school year. It also shows the total transfers reported for that year and the number of schools reporting at least one transfer. Overall, these 25 schools reported 645 student transfers, or about 27 percent of all student transfers reported to the League.

Most of the high schools in Exhibit 1.7 have relatively large student populations overall, and their reported student transfers represented a small percentage—2 percent or less—of their overall student populations in school year 2015-2016.²⁷ For example, St. Paul Central reported 42 incoming transfers, Hopkins reported 32 transfers, and Irondale reported 29 transfers; in each of these schools, 2015-2016 transfers accounted for 2 percent of the student populations. Most, but not all, of the 25 schools listed in Exhibit 1.7 are public schools. However, some are private schools, including Cretin-Derham Hall (29 transfers) and Hill-Murray (21 transfers). Hillcrest Lutheran Academy reported the most transfers (68 transfers), largely due to its status as a boarding and day school.

²⁷ We considered schools with 1,000 students or more to be “large” schools.

Exhibit 1.7: Member High Schools Reporting the Most Incoming Student Transfers and Percentage of School Population, School Year 2015-2016

| Member High Schools Reporting the Most Transfers | Reported Incoming Student Transfers School Year 2015-2016 | Transfers as Percentage of School's 2015-2016 Grade 9-12 Student Population |
|-----------------------------------------------------------------------|-----------------------------------------------------------|-----------------------------------------------------------------------------|
| Hillcrest Lutheran Academy (Fergus Falls) ^a | 68 | 36% |
| St. Paul Central High School | 42 | 2 |
| Hopkins High School | 32 | 2 |
| Irondale High School (Mounds View Area) | 29 | 2 |
| Cretin-Derham Hall High School (St. Paul) | 29 | 2 |
| Eagan High School | 27 | 1 |
| Robbinsdale Armstrong High School | 27 | 1 |
| Wayzata High School | 27 | 1 |
| Minneapolis Patrick Henry High School | 25 | 2 |
| Alexandria Area High School | 24 | 2 |
| Sartell-Saint Stephen High School | 24 | 2 |
| Wadena-Deer Creek High School | 23 | 9 |
| East Ridge High School (Woodbury Area) | 22 | 1 |
| Edina High School | 22 | 1 |
| Minnetonka High School | 22 | 1 |
| Robbinsdale Cooper High School | 22 | 1 |
| Grand Rapids High School | 21 | 2 |
| Hill-Murray School (Maplewood Area) | 21 | 4 |
| Rochester Century High School | 21 | 2 |
| Apple Valley High School | 20 | 1 |
| Burnsville High School | 20 | 1 |
| White Bear Lake Area High School | 20 | 1 |
| Minneapolis Washburn High School | 19 | 1 |
| Park Center High School (Osseo Area) | 19 | 1 |
| St. Cloud Technical High School | 19 | 1 |
| | Transfers | Percentage of Transfers |
| Top 25 schools | 645 | 27% |
| Other 326 member schools reporting at least one transfer in 2015-2016 | <u>1,757</u> | <u>73</u> |
| Total | 2,402 | 100% |

NOTE: A school's single-year incoming transfer number might not be representative of the school's usual transfer activity.

^a Hillcrest Lutheran Academy is a boarding and day school located in Fergus Falls, MN, that enrolls local, domestic, and international students.

SOURCE: Minnesota State High School League data of member schools reporting incoming transfer students.



Chapter 2: Transfer Student Eligibility

One of the goals of the Minnesota State High School League is to provide fair and equitable competition for students, schools, and school communities throughout the state. In working towards this goal, the League, board members, and member schools expend considerable time and resources to review and determine the eligibility of a relatively small number of transfer students. In this chapter, we examine the League's administration of transfer student eligibility processes and its outcomes. We found that the League applies its eligibility criteria inconsistently, the League's fair hearing process is not transparent, and there is insufficient oversight of transfer eligibility decisions. We make recommendations to address these concerns.

Background

In Chapter 1, we explained that the League strives to ensure competitive, equitable, and uniform opportunities for high school students to participate in athletics and fine arts. The League's authority to control students' participation in interscholastic activities is derived from state statutes and the delegation of control by each member school.¹ The delegation is by a resolution by the school governing board that it:

...delegates the control, supervision and regulation of interscholastic athletic and fine arts events...to the Minnesota State High School League...and that the administration and responsibility for determining student eligibility and for the supervision of such activities are assigned to the official representatives identified by the Governing Board.²

State statutes impose some limited directives to the League regarding the eligibility of transfer students; for example, the League must adopt eligibility rules and regulations governing the athletic participation of students who, under Minnesota's open enrollment options program, enroll into a school district in which the student does not reside.³

The League has formal processes and requirements to address the eligibility of students who participate in member schools' extracurricular activities; for example, the League has age

¹ *Minnesota Statutes* 2016, 123B.49, subd. 4; 128C.01, subds. 1-3; and 128C.02, subd. 5.

² Minnesota State High School League, "2016-2017 Resolution for Membership in the Minnesota State High School League" (Brooklyn Center, MN), 1-2.

³ *Minnesota Statutes* 2016, 128C.02, subd. 5; and 128C.03, require the League to adopt (1) eligibility rules and regulations governing athletic participation of students who "open enroll" in a school district in which the pupil does not reside; (2) rules that reduce barriers and accommodate transfer students with an individualized education program so that they are deemed eligible on the same basis as other students in the school to which the student transfers; and (3) public notice procedures for proposed eligibility rules and policies.

limit and conduct standards that apply to all students.⁴ The League also has unique processes and criteria for students who transfer between schools, and member schools and League staff have roles in this process.

The League's efforts to control the eligibility of transfer students focus mostly on students who seek to participate in varsity athletics; it does not have the same requirements for transfer students involved in other League-sponsored activities—such as speech, drama, music, or debate. Exhibit 2.1 provides key terms and definitions related to student transfers.

Exhibit 2.1: Key Transfer Student Eligibility Terms and Definitions, Fall 2016

| Terms | Definitions |
|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Athletics | Exercises, sports, or games engaged in by students; in the case of the League, each member high school must report to the League Office all athletic programs that the school offers to its students. |
| Bylaws | Bylaws are League rules that are adopted and amended by the League Representative Assembly. |
| Fine Arts | Music, debate, speech, one-act play, and visual arts programs. |
| Good Standing | The term "good standing" means that on the official date of withdrawal from the last school attended by the student was fully eligible at that school under all of the conditions and all of the eligibility requirements of that school as well as the eligibility requirements of the state activity association of which that school is a member. |
| High School | A high school includes grades 9 through 12. |
| Non-Varsity | In comparison to varsity level, non-varsity is a secondary level of team skill and athletic competition offered by a school. |
| Policies/Procedures | Policies and procedures are created and amended by the League Board of Directors and are to supplement and assist with interpretation of bylaws. |
| Receiving School | The high school now attended by the student is the "receiving school." |
| Residence | For purposes of eligibility, a student may only have one residence. To determine residence for eligibility purposes, the public school district attendance area in which the home last occupied by both parents is located shall be considered as the family's residence. |
| Seasons of Participation | Students are eligible for participation in League-sponsored activities for 12 consecutive semesters (six years). The calculation of seasons of participation begins when a student enrolls in the 7 th grade, beginning with students who first enter the 7 th grade in 2011-2012. |
| Sending School | The high school last attended by the student is the "sending school." |
| Transfer Student | A transfer student is one who discontinues enrollment and attendance in any high school, public or non-public, located in a public school district attendance area and enrolls in any high school in Minnesota, or outside of the state. Essentially, a transfer occurs anytime the school of record changes. A transfer is considered complete when the student attends school at the new school or participates with an athletic program. This also includes home schools and online schools. |
| Varsity | The highest level of team skill and athletic competition offered by a school; the principal team. |

SOURCES: Minnesota State High School League, *2016-2017 Official Handbook* (Brooklyn Center, MN; undated hardcopy), 21-24; Minnesota State High School League, *2015-2016 Annual Report* (Brooklyn Center, MN), 18-19; and other sources.

⁴ League bylaws allow for some limited variance from overall eligibility requirements: (1) member schools from cities of the first class (Minneapolis, St. Paul, Rochester, and Duluth) may be governed by their own eligibility bylaws when competing against schools from their own district, but League bylaws still govern all interscholastic events outside of the city district and at section and state tournaments; and (2) member schools can adopt additional or more stringent student conduct requirements or penalties, as long as the school does not lessen the League's prescribed penalties. Minnesota State High School League, *2016-2017 Official Handbook* (Brooklyn Center, MN; undated hardcopy), 18, 33-36, and 55.

Eligibility Criteria

League *Bylaw 111 (Transfer and Residence)* lays out eligibility conditions for students who transfer between Minnesota schools or from a different state or country. *Bylaw 111* is the primary authority for the League to make transfer eligibility determinations, although other bylaws play a role.⁵ The League eligibility criteria are intended to reduce athletically motivated student transfers but also allow some accommodation of families' and students' personal interests and educational desires.

In Minnesota, students who transfer between schools are ineligible to participate in varsity athletic competitions at their new schools for one year unless they meet certain League criteria.

The League automatically presumes transfer students are ineligible and limits their ability to participate in varsity athletic competitions.⁶ The League also imposes a participation penalty against students who transfer to a different school and do not meet certain criteria. Since 2007, the League and its member schools have required that an ineligible transfer student be suspended from varsity competition for one year *for each transfer* not approved by the League.⁷

Generally, to be eligible for varsity competition at a new school, transfer students must be in “good standing” and making satisfactory academic progress with no outstanding chemical or other types of violations at the previous school. Additionally, the League may consider transfer students to be eligible if their transfers are due to specific circumstances defined by the League.⁸ Exhibit 2.2 shows 5 of the 11 specific circumstances under which a transfer student could be deemed eligible at the beginning of school year 2016-2017.⁹ (The Appendix at the end of this report includes the full language of the League's eligibility criteria as published in the League's *Official Handbook*.)

Specifically, member schools review and may approve the eligibility of transfer students when the transfers are due to a student's: (1) first-time enrollment in ninth grade; (2) family residence change; (3) residence change due to a child protection or juvenile court order; (4) residence change between divorced parents; or (5) move to Minnesota from out of state. Transfer students who do not meet these criteria may still participate in non-varsity competition (if the new school offers non-varsity teams), compete on behalf of the former school during the one-year suspension, or return to the former school within 15 days of transferring to the new school.¹⁰

⁵ For example, *Bylaw 111* requires that a student must be in “good standing” upon transfer, while *Bylaw 200* addresses student conduct and behavior expectations.

⁶ Minnesota State High School League, *2016-2017 Official Handbook*, 20-22. The League's presumption of ineligibility and varsity participation penalty is intended to deter students and others who may seek to have a student attend a particular school for the purpose of building athletic strength in a sport program. See Minnesota State High School League, Representative Assembly meeting minutes, March 16, 2007, 8.

⁷ Minnesota State High School League, Representative Assembly meeting minutes, March 16, 2007, 7. The League exempted transfer students who participate in fine arts from eligibility suspensions.

⁸ These criteria do not address requirements for certain international or foreign exchange students.

⁹ Minnesota State High School League, *2016-2017 Official Handbook*, 21-23.

¹⁰ *Ibid.*

Exhibit 2.2: League Exceptions to Ineligibility of Transfer Students, Fall 2016

Minnesota State High School League *Bylaw 111.00*

For each transfer, a student is presumed ineligible for varsity competition for a period of one calendar year beginning with the first day of attendance at the new school. Students are immediately eligible for competition at the non-varsity level.

Exceptions to presumed ineligibility for students transferring from a U.S. school to a League-member school:

A transfer student is eligible for varsity competition provided the student was in "good standing" on the date of withdrawal from the last school the student attended **and** one of the provisions below is met:

- (1) **9th Grade Option:**
The student is enrolling in 9th grade for the first time.
- (2) **Family Residence Change:**
The student and parents change residence and public school district attendance area. The student is eligible at either the new public school, any nonpublic school, or at the former school if student elects to not transfer schools.
- (3) **Court Ordered Residence Change for Child Protection:**
The student's residence is changed pursuant to a child protection order for placement in a foster home or a juvenile court disposition order.
- (4) **Divorced Parents:**
A student of divorced parents who have joint, legal physical custody of the student, as indicated in the divorce decree, may move one time from one custodial parent to the other custodial parent and be eligible in the new public school attendance area or at any nonpublic school.
- (5) **Move from Out of State:**
If a student's parents move to Minnesota from a state or country outside of Minnesota and if the student moves at the same time the parent establishes a residence in a Minnesota public school district attendance area, the student is eligible at the first school the student attends in Minnesota.

NOTE: League *Bylaw 111* and transfer eligibility suspensions do not apply to transfer students who participate in fine arts.

SOURCE: Office of the Legislative Auditor, summary of Minnesota State High School League, *2016-2017 Official Handbook* (Brooklyn Center, MN; undated hardcopy), 21-22.

The League also allows for other reasons that could lead to a transfer student's eligibility, shown in Exhibit 2.3. Upon receiving a request for appeal, staff in the League Office may further review and approve the eligibility of transfer students under any of the following circumstances: (1) compliance with documented school board policies regarding student movement within the district; (2) adoption, abandonment, or death of a parent; (3) a substantial negative change in the economic status of a student's parents; (4) intolerable conditions at the former school; (5) administrative error in the initial determination; and (6) completion of a licensed treatment program for chemical dependency, mental illness, or emotional disturbance. The League also may make transfer students eligible upon a showing of "special and unusual circumstances."¹¹ The further review of transfer students' eligibility by League staff occurs under its appeal procedures and fair hearing process, which we discuss in more detail below.

¹¹ Minnesota State High School League, *2016-2017 Official Handbook*, 25 and 133.

Exhibit 2.3: Circumstances for Appeal and Further Review of Transfer Student Ineligibility, Fall 2016

Board of Directors *Bylaw 111.00* Policy Procedures, Transfer Student Eligibility Appeal Circumstances

All Transfer Students are deemed presumptively ineligible for varsity athletics unless they meet one of the exceptions listed in *Bylaw 111* (shown previously in Exhibit 2.2) or are determined by the League Office to satisfy one of the appeal circumstances below.

- (1) Documented internal Board of Education policies regarding the movement of students within the school district. (This provision applies to cities of the first class. Transfer students may compete among districts within these cities.)
- (2) Adoption, abandonment, or death of a parent.
- (3) A documented substantial negative change in the economic status of the student's parents which requires the student to withdraw from their current school and enroll in the public school located in the public school district attendance area where the student's parents reside.
- (4) Intolerable conditions at the sending school. The student must obtain an affirmation in writing from the former school that intolerable conditions existed. The student must have reported all alleged incidents and identified the perpetrators to school administrators. The student or family must submit to League staff any documentation of medical or psychological professional care or police investigations. In general, allegations alone are not sufficient and there must be some reasonable and believable substantiation presented to the League to indicate an incident or incidents actually occurred.
- (5) Administrative error in addressing a student's initial eligibility.
- (6) Completion of a licensed program for treatment of alcohol or substance abuse, mental illness, or emotional disturbance, provided all other eligibility rules are followed.

Minnesota State High School League, Constitution 211.02(6)

Special and Unusual Circumstances:

Upon a showing of special and unusual circumstances that warrant an exception, the board shall have discretion to limit, modify, or waive the application of the penalty for the violation of any bylaw. It shall also exercise authority over all eligibility problems and cases which are not specifically provided for.

NOTE: The League has adopted separate policies and an eligibility appeal process for transfer students who have an individualized education program.

SOURCE: Office of the Legislative Auditor, summary of Minnesota State High School League, *2016-2017 Official Handbook* (Brooklyn Center, MN; undated hardcopy), 25, 51-52, and 133.

Under League bylaws and policies, students who transfer and do not meet any of these criteria are deemed to have violated League bylaws. Depending on how many times a particular student transfers between schools, these students are ineligible for one (or more) years of varsity competition.

The League's transfer eligibility criteria are intended to improve consistency in administrative decisions; however, League bylaws, policies, and procedures impose other restrictions and exceptions that may complicate transfer student eligibility. These provisions relate to student conduct, foreign exchange or international student status, open enrollment in a non-resident district, and participation in online curricula, for example.¹² Member schools may form cooperative sponsorships to offer specific athletic programs, and these arrangements can affect transfer student eligibility, too. Eligibility decisions based on change of residency also could differ if a student transfers to a private or to a public school. Unlike public schools, private schools' service areas are not restricted to a particular district.

¹² For example, if a student violated student conduct bylaws at the previous school but did not yet serve the related penalty, League staff must wait to determine if and when the transfer student will be eligible.

Transfer Eligibility Procedures

The League uses the eligibility conditions listed in Exhibits 2.2 and 2.3 as part of its formal process to assess why students transferred and either grant or deny them eligibility.

The League has a complicated framework for determining transfer student eligibility.

The League articles of incorporation and constitution assign to the League Board of Directors authority over student eligibility matters, and allow the board to delegate its authority to the League executive director to administer bylaws and policies, subject to board review.¹³ Through its bylaws and policies, the League also allocates responsibility for transfer eligibility decisions to member schools, League staff, and independent hearing officers.¹⁴ In particular, member schools are responsible for reviewing and reporting transfers to the League Office, and League staff conduct more in-depth reviews of some transfers upon request. The board Eligibility Committee—composed of five board members—also plays a role, as do students and their families.¹⁵ As shown in Exhibit 2.4, the transfer eligibility process involves the following steps:

Schools report transfer students and determine initial eligibility. Member high schools must identify and report incoming transfer students and have a designated liaison responsible for certifying student eligibility for League-sponsored activities.¹⁶ Most often, the school liaison is an activities administrator. As shown in Exhibit 2.4, the new (or “receiving”) school makes the initial determination of eligibility in accordance with five criteria in League *Bylaw 111*. For example, the administrator will review information to determine if both the student and the student’s family have moved into the new school district. The new school reports this information to League staff using an online form.

League staff then review and either affirm, modify, or reverse the school determination. For example, League staff may correct an activities administrator’s interpretation of *Bylaw 111* or may increase the one-year ineligibility suspension if a student has transferred more than once.

Under League *Bylaw 111*, transfer students are eligible at a new school if:

1. The student enrolls in ninth grade for the first time.
2. The student and family change residence to the new school district.
3. The student changed residence due to a child protection or juvenile court order.
4. The student’s residence changed due to a move between divorced parents.
5. The student and family moved to Minnesota from out of state.

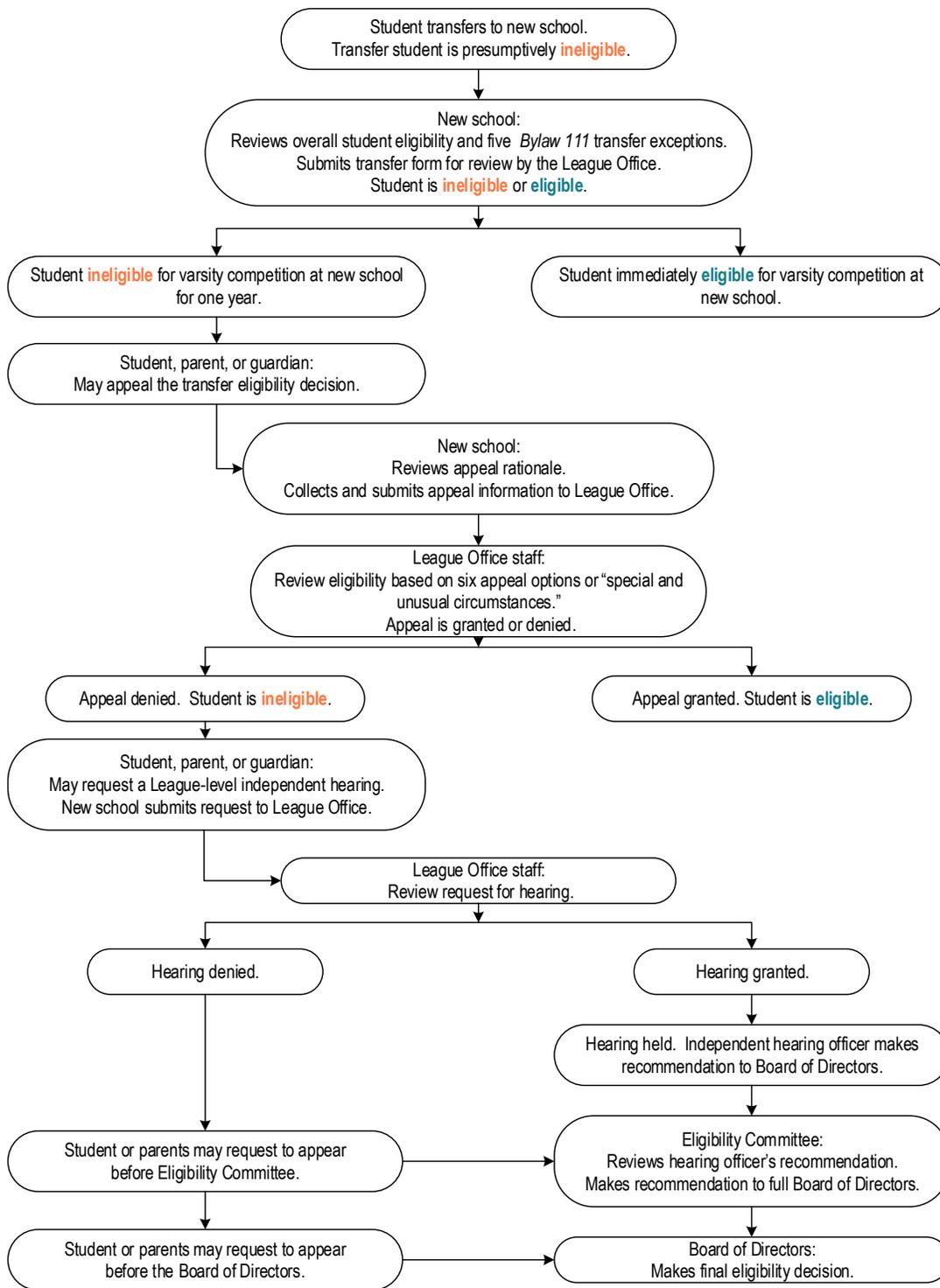
¹³ Minnesota State High School League, *2016-2017 Official Handbook*, 133-134.

¹⁴ Minnesota State High School League, *2016-2017 Official Handbook*, 21-26, 50-53, and 56-57. The League has a separate eligibility process for transfer students with an individualized education plan (IEP/504); appeals for these types of cases also are handled by a League independent hearing officer.

¹⁵ *Minnesota Statutes* 2016, 128C.02, subd. 1, requires the Board of Directors to establish advisory committees necessary to carry out board functions.

¹⁶ Minnesota State High School League, *2016-2017 Official Handbook*, 21-25 and 56-57.

Exhibit 2.4: League Transfer Student Eligibility Process, 2016



NOTE: Exhibit represents general process for determining eligibility for transfer students, and does not depict all outcomes. For example, students who transfer more than once may be suspended from varsity competition for more than one year.

SOURCE: Office of the Legislative Auditor, summary of League documents, bylaws, policies, and procedures.

League Office reviews student transfers “appeals.” If the new school made an initial decision to deny eligibility, transfer students and their families may ask League staff to grant their eligibility if they changed schools for certain *other* reasons and appeal to the League. Each of the Board of Directors’ appeal options are an “appeal” of the presumption of ineligibility under *Bylaw 111*. League staff also can grant eligibility to those students who transfer due to “special and unusual circumstances.” The new school is responsible for submitting such an appeal to League staff on behalf of the transfer student. Students who appeal based on these circumstances, however, lose the option to return to and compete in varsity athletics at their former school during the one-year suspension.

Appeals – League office staff may grant eligibility to students who transfer due to:

1. Documented school board policies regarding student movement within the district.
2. Adoption, abandonment, or death of a parent.
3. Substantial negative change in economic status of parents.
4. Intolerable conditions at the former school.
5. Completion of a licensed treatment program for chemical dependency, mental illness, or emotional disturbance.
6. Administrative error in initial determination.

*Board of Directors option: special and unusual circumstances.

Student/family requests League independent hearing. As shown in Exhibit 2.4, a transfer student whose eligibility is still denied following appeal may request from the League a further review by an independent hearing officer. The League contracts with several qualified individuals for this purpose. However, League staff are not required to grant an independent hearing and League bylaws or policies do not lay out criteria for doing so; we discuss this issue later in this chapter.¹⁷

For those appeals that League staff allow to proceed to a hearing, League staff select an independent hearing officer from its preapproved list of contractors and schedule a date for the hearing. League staff also act in an advisory role in the hearing and explain why the initial appeal was denied. The independent hearing officer makes a recommendation to the board to either grant or deny eligibility; the recommendation may include modifying the length of suspension from varsity play.¹⁸ In general, the role of the hearing officer is to provide an independent opinion and rationale to board members. The hearing officer’s recommendation is effective until the next regularly scheduled meeting.

If League staff do not grant an independent hearing to the transfer student, the student or parent may request to appear before the League Eligibility Committee or Board of Directors at their next scheduled meeting.

Review by Eligibility Committee. As shown in Exhibit 2.4, the Eligibility Committee reviews all decisions by the independent hearing officers. The committee also may hear comments from families and transfer students who were denied eligibility and wish to contest the suspension from varsity competition. The committee then recommends to the

¹⁷ Minnesota State High School League, *2016-2017 Official Handbook*, 25-26.

¹⁸ For example, if a student received two one-year suspensions, the independent hearing officer could recommend that the student be ineligible for only one, one-year suspension.

full board to either accept or reverse the hearing officer recommendations; that is, either grant or deny eligibility.

Review by Board of Directors. The Board of Directors has final authority over all eligibility determinations, and its decisions may or may not align with earlier decisions by schools, League staff, the independent hearing officers, or the Eligibility Committee. Again, families also may appear before the full board to appeal the ineligibility of their student or the length of suspension.

Transfers and Process Outcomes

League bylaws, policies, and procedures are in place to restrict athletically motivated transfers. We did not evaluate the extent to which League transfer requirements and eligibility suspensions deter student movement between schools, mostly because it is difficult to know whether a transfer is athletically motivated. However, we did examine how often student transfers occur and how often eligibility was denied or granted to transfer students.

Student Transfers

We obtained League data on student transfers reported by member schools during school years 2011-2012 through 2015-2016 to determine how many students transferred into a League member school each year.

During a recent five-year period, the number of reported transfer students decreased about 18 percent, and nearly all students who transferred between schools did so only once during a school year.

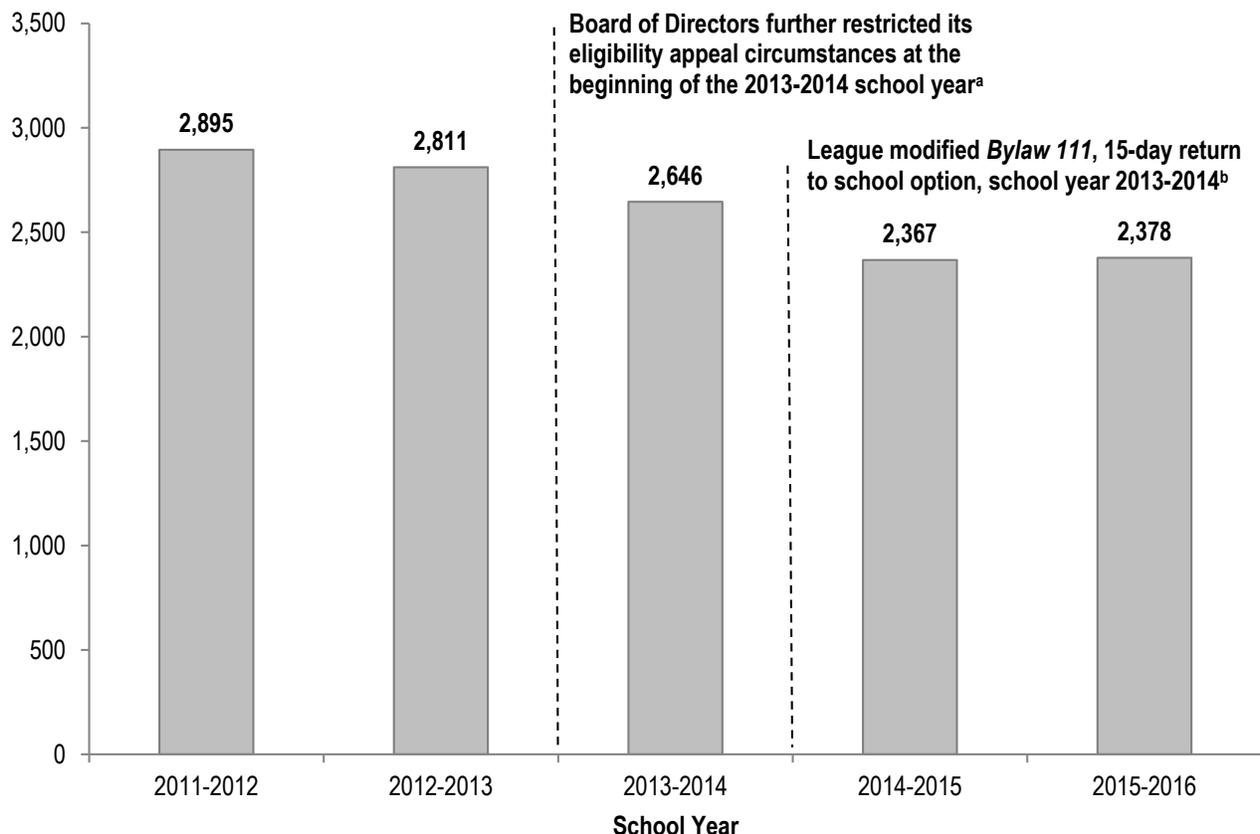
As shown in Exhibit 2.5, reports of students who transferred into a member school decreased from about 2,900 during school year 2011-2012 to about 2,380 in school year 2015-2016. These totals include reports of all students who transferred into a League school from another Minnesota school, a different state, or another country.

Some of the decline in transfer reports may be due to the League's elimination of some appeal circumstances to obtain eligibility, including transfers due to: (1) a "broken home" or other circumstances beyond the control of the student; (2) enrollment in an Advanced Placement program; and (3) other conditions that may be agreed to by both the sending and receiving schools. Additionally, the League imposed a stricter standard on students to substantiate "intolerable conditions" at their former school. The League also added a bylaw provision that allows transfer students to return to their former school within 15 days without receiving a one-year suspension from varsity competition. Under this scenario, some students may have returned to their former school before the new school submitted a transfer form.

Some individuals told us that the League has strict transfer policies in place because students transfer frequently for athletic purposes. Based on our analysis of League transfer data, we found that nearly all students who transferred between 2011 and 2016 did so only one time during any given year. We estimated that a very small number of students (between 18 and 28 students) may have transferred more than once *within* each year, as

Exhibit 2.5: Number of Transfer Students Reported to the League, School Years 2011-2012 through 2015-2016

Number of Transfer Students



NOTE: Number of transfer students represents an unduplicated count of all transfer students reported to the League Office by a member school receiving a new student, and includes student transfers from other states or countries.

^a The Board of Directors eliminated several options to appeal a determination of ineligibility: (1) enrollment in Advanced Placement program, (2) other conditions not covered above but which may be agreed to by both the sending and receiving schools, and (3) a broken home or other circumstances beyond the control of the student. The League also imposed a stricter standard on students to substantiate "intolerable conditions" at their former school.

^b The Representative Assembly approved an option for a student to return to the former school within 15 days of transfer to the new school and retain eligibility, subject to certain conditions.

SOURCES: Minnesota State High School League, Board of Directors meeting minutes, October 3, 2013, 2; and Minnesota State High School League, Representative Assembly meeting minutes, May 12, 2014, 3-5.

reported by member schools.¹⁹ However, due to limitations in the League data, we did not further analyze how often students transferred or why they transferred.²⁰

¹⁹ The numbers reported here represent a lower bound estimate.

²⁰ Due to the complexity of many student transfer scenarios, we do not report data on student transfers, by League bylaw or appeal option. However, as an example, according to League data, member schools reported that about 476 transfers in 2016 involved students who open enrolled into a district in which they did not reside.

Eligibility Results

The League process for determining transfer student eligibility involves input from several individuals and has multiple decision points, beginning with member schools and ending with the League Board of Directors. We analyzed League data to evaluate the outcomes of the League's transfer eligibility process for students who transfer from another Minnesota school or another state. We excluded from our analysis certain international and foreign exchange students who transferred to a member school; the League has different criteria for these students, and they cannot appeal eligibility decisions.

During a recent two-year period, a slight majority of transfer students were granted eligibility to compete in varsity athletics, and most transfer cases were resolved at the school level.

We evaluated the eligibility outcomes of students who transferred into a League member school from another Minnesota school or another state during school years 2014-2015 and 2015-2016. We estimated that about 1,747 students transferred under these circumstances each year, on average. Overall, about 53 percent of these transfer students were eventually granted eligibility, shown in Exhibit 2.6.

Most of these transfer cases were resolved at the school level and did not proceed to either an appeal or to an independent hearing. About 50 percent of these students were deemed eligible following initial determination by member schools and review by League staff.

On average, about 132 cases in which transfer students were initially denied eligibility were appealed to League staff each year. League staff approved eligibility in nearly one-half of these appeal cases and denied eligibility in the remaining appeals.

Some students for whom League staff denied their appeal also requested an independent hearing under the League's fair hearing process. We calculated about 53 students requested a hearing each year, on average. Among these requests, League staff granted a hearing for 19 percent of students (about 10 hearings per year). League staff denied a hearing for about 44 percent (about 23 requests) and granted eligibility for the remaining 38 percent (about 20 requests). Generally, League staff grant eligibility, rather than granting an independent hearing, to students because (1) League staff received more supporting documentation from the families, students, or schools, or (2) League staff determined that the case involved "special and unusual circumstances."

On average, a very small number of cases (about ten per year) advanced to an independent hearing and a subsequent review by the Board of Directors. In most of these cases (seven cases, on average), the independent hearing officer and board agreed with the earlier determination of ineligibility. However, in about one-third of these cases, either the hearing officer or the board reversed League staff decisions and granted eligibility to the student.

Exhibit 2.6: Results of League Transfer Student Eligibility Processes, School Years 2014-2015 and 2015-2016

| | Students Who Transferred into a Member School from Another Minnesota School or Other State | | | |
|------------------------------------------------------------|-----------------------------------------------------------------------------------------------|--------------------------|--------------------------------------------|-------------------------------------|
| | 2014-2015 School Year | 2015-2016 School Year | Two-Year Annual Average ^a | Two-Year Percentage ^a |
| Initial Transfer Decisions at School Level | 1,747 | 1,747 | 1,747 | |
| Eligibility granted | 878 | 856 | 867 | 50% |
| Eligibility denied | 833 | 850 | 842 | 48 |
| Other ^b | 36 | 41 | 39 | 2 |
| Appeals to League Office | 135 | 129 | 132 | |
| Eligibility granted | 62 | 66 | 64 | 48% |
| Eligibility denied | 73 | 63 | 68 | 52 |
| Hearing Requests | 54 | 51 | 53 | |
| Hearing Request Denied and Appeal Denied | 29 | 17 | 23 | 44% |
| Eligibility Granted w/o Hearing ^c | 17 | 22 | 20 | 38 |
| Hearing Granted | 8 | 12 | 10 | 19 |
| Independent Hearings/Board of Directors^d | 8 | 12 | 10 | |
| Eligibility granted | 1 | 5 | 3 | 30% |
| Eligibility denied | 7 | 7 | 7 | 70 |
| Overall Transfer Student Eligibility Outcomes | | | | |
| Transfers | 1,747 | 1,747 | 1,747 | |
| Granted | 941 | 922 | 932 | 53% |
| Denied | 770 | 783 | 777 | 44 |
| Other ^b | 36 | 41 | 39 | 2 |

NOTES: Exhibit includes only transfers involving students transferring to a Minnesota State High School League school from within Minnesota or another state. The League has different transfer procedures for students transferring from outside the United States.

^a Rows may not sum to average totals and column percentages may not sum to 100 percent due to rounding.

^b Eligibility for these students was not clear based on the League's data. For example, if the League disagreed with a school determination that a student would be 100 percent ineligible for one year, it could mean the student should be immediately eligible or ineligible for more than one year.

^c The League executive director granted or partially granted eligibility without a hearing following further review. In one case, the family withdrew the appeal.

^d The League did not accept the recommendation of the independent hearing officer in two cases in 2015-2016. The hearing officer recommended denying eligibility for two students but the Board of Directors reversed the independent hearing officer recommendations and found the students eligible for varsity competition. These cases are reflected as "Eligibility granted" in the table.

SOURCE: Office of the Legislative Auditor, analysis of Minnesota State High School League data of transfers reported by member schools, appeals, and requests for hearings.

Administration of Transfer Student Eligibility

The League Office staff, Eligibility Committee, and Board of Directors are involved in determining the eligibility of transfer students for athletic competition; most of this work is handled by League staff. Although member schools also play a role, we focused our evaluation mostly on activities of League staff, the Eligibility Committee, and the Board of Directors.

To do this, we reviewed 40 case files to gain insight into how bylaws, policies, and procedures were implemented, and we interviewed individuals who had experience with transfer student eligibility issues. We also surveyed 479 member school activities administrators—that is, member school liaisons to the League—for their opinions of the League’s administration of transfer student eligibility.²¹ We received responses from 340 of 479 activities administrators, for a response rate of 71 percent. We present some of their responses later in this report.²²

Eligibility File Reviews

To assess how the League handles transfer student eligibility, we reviewed 40 cases in which League staff determined that the transfer student was ineligible and the student requested an independent hearing during school years 2014-2015 or 2015-2016.²³ The cases we reviewed included all cases (20) in which the League granted the transfer student’s request for an independent hearing, 12 cases in which the League executive director granted eligibility to the transfer student without a hearing, and 8 cases in which the League did not grant eligibility and did not provide a hearing.

The League’s final decisions in most transfer eligibility cases we reviewed clearly aligned with League bylaws, policies, procedures, or goals.

League staff have responsibility for administering appeals and requests for hearings. For 35 of the 40 cases we reviewed, we found that League documentation generally supported the final eligibility decisions made by either League staff or the Board of Directors, and these decisions were consistent with League bylaws, policies, procedures, or goals.

For example, League transfer eligibility requirements are in place to control student movement between schools for athletic purposes. As evidenced in file documents, some transfers we reviewed were clearly athletically motivated and the League denied eligibility with a one-year (or more) suspension from varsity athletics. In one case:

- A student transferred into a new school and the student’s family told the activities administrator that they had moved to a new residence in the district. The parent advised the activities administrator that he needed to expedite the transfer approval because a hockey scout was scheduled to be at the new school in the coming days;

²¹ We surveyed activities administrators who had reported their contact information to the League.

²² The responses to the full survey are available at <http://www.auditor.leg.state.mn.us/>.

²³ Among the cases we reviewed, 13 involved appeals due to “intolerable conditions,” 8 involved appeals due to substantial negative change in economic status of the student’s parents, 3 involved issues of guardianship, and the remaining cases involved other or a combination of issues.

the parent also retained an attorney to move the process along. Upon further review, League staff and the activities administrator learned that the family did *not* move to the new school district as required by the bylaws, and the League denied the appeal for eligibility.

Among the remaining five case files that we reviewed, we did not find sufficient evidence to support the League's eligibility decisions and determine that they were consistent with League regulations or goals. We further discuss some of these cases below.

The League made inconsistent eligibility determinations among some cases involving similar transfer situations.

The League has adopted transfer student eligibility bylaws, policies, and procedural criteria for the “universal and consistent application of eligibility rules.”²⁴ Nevertheless, the League constitution allows the Board of Directors to approve eligibility of students due to “special and unusual circumstances” not otherwise addressed by bylaws. The League does not have published criteria regarding special and unusual circumstances; however, League staff told us that when reviewing appeal cases not addressed by bylaws, they consider whether (1) the transfer was beyond the control of the student, and (2) the student's movement between two schools involved a “there and back” to the same school. (Under the “there and back” criteria, the transfer student is not considered new to the community and, thus, does not displace another student in their home district.)

In 3 of 40 cases we reviewed, League staff granted eligibility to the students and, in doing so, considered their transfers to involve special and unusual circumstances. However, we think League staff were not consistent in applying its own criteria, when comparing these three cases with two other cases with similar transfer scenarios. For example, League staff approved eligibility in one case that, in our opinion, did not meet the League's criteria because the transfer was not beyond the control of the student, based on the documentation in the file:

- A student transferred from Minnesota to another state to live with the student's other parent. About one month later, the student transferred back to live with the student's custodial parent and re-enrolled at the former school. The League imposed a one-year varsity suspension for the two transfers. In the student's appeal, the student stated that leaving Minnesota was wrong and running away was not the way to fix problems. League staff waived the suspension and granted varsity eligibility due to “special and unusual circumstances” and because the student returned to the former school.

Similarly, two other students were *granted* eligibility and their transfers involved a return to their former schools, shown in Exhibit 2.7. In contrast, the League *denied* eligibility to two students who transferred back to their previous schools, even though their transfers involved situations that were beyond their control, also shown in Exhibit 2.7. In one of these cases, the League denied eligibility, stating that moving to be with friends was not an appealable option. Yet, as shown in Exhibit 2.7, the League granted eligibility to two students who either moved in with friends or returned to their former school to be with their former school community.

²⁴ Minnesota State High School League, Representative Assembly meeting minutes, March 16, 2007, 8.

Exhibit 2.7: Comparison of League Eligibility Decisions for a Sample of Transfer Students, School Years 2014-2015 and 2015-2016

League Granted Eligibility

Example: A student and family moved out of Minnesota due to financial hardship. Two years later, the student moved back to Minnesota to live with a friend and attend the student's former school. The student returned to the former school because the student missed living in Minnesota. League staff **granted** eligibility for varsity competition due to special and unusual circumstances and did not impose any suspensions.

Example: A student and family moved from one school district to another school district; the move was due to interest in living in a safer community. About four months later, the former school activities administrator asked the League to approve the student's transfer back to the former school because the student was hanging around the former school community and school events. League staff **granted** eligibility for varsity competition due to special and unusual circumstances and did not impose any suspensions.

League Denied Eligibility

Example: A student and family moved to a different school district three times over three years due to the custodial parent's actions to find better paying employment. For the last move, the student moved back to the original school district to avoid further moves and live with friends. League staff **denied** eligibility and imposed a one-year suspension from varsity competition.

Example: A student transferred and attended three different schools during the first month of ninth grade due to decisions by the custodial parent. The last transfer was a return to a school that the student had previously attended for many years. The League **denied** eligibility and imposed two one-year suspensions; one of the one-year suspensions was because the student attended one school for one day.

SOURCE: Office of the Legislative Auditor, summary of League transfer eligibility case files.

Based on the review of the case files and the League's final determinations, we think the League was inconsistent in its eligibility decisions for these five cases. We also cannot conclude whether the League's determinations were consistent with League criteria for some, all, or none of these transfers.

In one-half of files we reviewed, League transfer eligibility decisions took more time due to (1) deficiencies in League regulations and (2) inconsistent or inadequate guidance to school administrators or families.

In 22 of the 40 cases we reviewed, we found that League staff required activities administrators or families to submit documentation that was not specified in League bylaws, policies, procedures, or published guidance. For example, League staff required permanent court orders to address child custody or guardianship issues not covered by League regulations; temporary court orders were considered insufficient for this purpose. In other cases, League staff required letters from a health professional to be on letterhead paper or required families to submit particular tax forms. In some cases, students and activities administrators needed to revise or seek out and obtain such information after they submitted their appeal, and this added time to the appeal process. Examples of cases in which League staff required documents not specified in League regulations or guidance were:

- A student who lived with one parent transferred residence to live with the other parent; however, the student's parents had never married and did not have a court order establishing paternity or custody. Although the parents submitted a copy of a birth certificate as evidence of paternity and an agreement between the parents regarding the move by the student, the League and independent hearing officer denied varsity eligibility at the new school because they did not have a court order,

the circumstances were not covered by the League member school bylaws, and the League did not consider the circumstances to be special and unusual.

- One student transferred schools to live with the student's grandparents due to reported domestic violence at home. The new school accepted the student for enrollment purposes and the new school activities administrator submitted police reports and other documentation as evidence to explain why the student transferred. However, League staff denied eligibility because they did not consider the documentation to be sufficient or the circumstances to be special and unusual.

In this latter example, League staff told us that the League needed documentation from a county social services agency or a court order that substantiated the problem in order to approve eligibility; such requirements are not contained in League bylaws or appeal procedures or other published guidance.

In 16 of the 40 cases we reviewed, League staff provided an inadequate response to the activities administrator or the family about why the eligibility appeal was denied. These cases involved appeals in which the transfer student was alleging: intolerable conditions at the former school; a substantial negative change in economic status; a change of residence among family members; or conditions that were not addressed in bylaws. For example:

- A family appealed the transfer student's ineligibility due to one parent's loss and change of employment. Following appeal, League staff said that the family must provide three years of tax returns for review. League staff denied the student eligibility as not meeting the League appeal criteria. After two requests, League staff granted the family an independent hearing, and the hearing officer recommended that the student be eligible. In his recommendation, the hearing officer said that the League's limited use of tax documents in this case was not sufficient for determining a substantial negative change in economic status.

In other cases, League staff in their correspondence denied eligibility because the family did not show a substantial negative change in financial income, a standard different than the League appeal procedure that specifies a showing of "a substantial negative change in economic status."

RECOMMENDATION

The League Office should improve its online transfer forms and correspondence to (1) fully describe transfer student appeal documentation requirements; and (2) fully explain League rationale for denying eligibility and appeals.

Among the 40 transfer student cases that we reviewed, we found that League staff sometimes imposed document requirements that were not disclosed upfront to either member schools or families. These requirements were not described in online transfer forms, published guidance, or within bylaws, policies, or procedures. Furthermore, the League Office does not have a training manual for activities administrators to use when processing student transfers. League staff also did not provide a clear rationale for its denial of some transfer appeals. The League's lack of clear guidelines and communication contributed to inefficient processes and unnecessary delays; it also contributes to public frustration with the League's processes.

Board members create the League’s appeal policies and procedures, with assistance from League staff, and League staff are primarily responsible for administering this process and either granting or denying appeals. The League imposes some responsibility on member schools to handle transfer appeals and, thus, League staff should improve the administrative forms and correspondence to clearly disclose document requirements upfront to school activities administrators. For example, the League should publish what is needed to demonstrate a substantial negative change in economic status or to authenticate certain documents, such as a notarization or paper with formal letterhead. In cases where the League Office does not grant eligibility appeals, the League Office should document in its correspondence to member schools and families the precise reasons why eligibility is not granted and the automatic one-year suspension is not waived.

Lastly, the inconsistent communication and lack of published guidelines is notable because League staff repeatedly told us that, among high schools, there is a high turnover rate of activities administrators. In our opinion, more written guidance and clearer communications would benefit new activities administrators, as well as League staff.

Intolerable Conditions

Earlier in Exhibit 2.3, we identified circumstances in which transfer students may appeal their ineligibility status. One such circumstance is if “intolerable conditions” exist at the former school. The policy states, in part, that a student may appeal their ineligibility under the following circumstance:

Intolerable conditions at the Sending School as affirmed in writing by the Sending School. When situations arise that the student or parents believe have created an intolerable condition, the acts complained of must first be reported to the appropriate administrators at the school so they have the opportunity to investigate and take any action they deem necessary to resolve the problem....²⁵

Generally, the “intolerable conditions” appeal provision is intended to be responsive to bullying and racial or other harassment. About one-third of the 40 cases we reviewed were appealed due to alleged “intolerable conditions” at the former school.

The League has an inadequate eligibility appeal process for students who transfer due to intolerable conditions.

In particular, the League’s appeal processes related to intolerable conditions involved poorly worded policies; unreasonable requirements; and a lack of responsiveness by member schools, the League Office, and in some cases, the families and students. These factors contributed to unnecessary delays, inconsistent outcomes, and dissatisfaction with the League processes.

The League appeal option does not define what actions or circumstances represent “intolerable conditions,” or whether the conditions must be intolerable for only the

²⁵ Minnesota State High School League, *2016-2017 Official Handbook*, 25.

appealing student or for the entire school.²⁶ For some cases we reviewed, we found disagreement among school administrators, League staff, and independent hearing officers regarding what constitutes “intolerable conditions.” In two cases, the independent hearing officer and League Board of Directors reversed the initial League staff decisions and granted eligibility to the student. For example:

- A student transferred to a different school following general harassment and abuse by another student over a lengthy period of time. The events occurred during the school day and after-school practice and competition. League staff did not consider the events to meet the conditions of the transfer policy and denied eligibility. Following a fair hearing, the independent hearing officer reversed the League staff decision and recommended eligibility because the standards for intolerable conditions were met. The Board of Directors granted eligibility for the student.

Also, the League requires that League staff must receive an *affirmation in writing from the sending school* [emphasis added] that intolerable conditions exist at the school; this is a challenging requirement for a family and transfer student. A sending school may be unwilling to admit that intolerable conditions exist. In one case we reviewed, the appeal process and determination of eligibility status was delayed due to this requirement:²⁷

- A student transferred to a different school because the student was subject to derogatory racial comments during school and after-school athletic practice. School administrators were made aware of these incidents; however, the administrator at the former school did not affirm in writing to League staff whether intolerable conditions existed at the school. League staff did not grant eligibility; rather, the case proceeded to an independent hearing held about five months after the student transferred. The hearing officer recommended and the Board of Directors determined that the student be granted eligibility.

Among the cases we reviewed, we agreed with the League’s decision in some cases because the transfer was clearly athletically motivated, or the events in question involved conflict between parents and coaches and not the students. On the other hand, we think other students should have been granted eligibility much sooner, and it was unclear why their cases needed to go to an independent hearing for resolution.

We noted other concerns about how these types of cases are handled. In particular, students who are experiencing health issues because of harassment must obtain written documentation from a mental health or other professional, and may be expected to describe openly in a hearing how the alleged acts affected them emotionally. League staff also have stated during a hearing that transfer students are expected to report *and stay* at the sending school until the sending school has had an opportunity to resolve the intolerable conditions; this requirement is not explicit in League appeal procedures.

²⁶ *Minnesota Statutes* 2016, 121A.031, subd. 2, defines acts that constitute bullying and threatening actions. The League references this statute and school obligations elsewhere in its bylaws; it also defines and prescribes penalties for violations related to sexual, racial, and religious harassment, violence, and hazing in League sponsored events. See *Minnesota State High School League, 2016-2017 Official Handbook*, 43-45.

²⁷ *Minnesota Statutes* 2016, 121A.03 and 121A.031, require schools to have a policy to address bullying and harassment. Under the Minnesota Department of Education’s Model Harassment and Violence Prohibition Policy, a school must complete investigations of reported incidents of bullying, harassment, and intimidation within 30 days of receiving the incident report, unless impracticable. We did not evaluate the extent to which schools adopted this policy or complied with this requirement.

Lastly, several of the contested cases we reviewed involved allegations of intolerable conditions and events that *occurred within the daily school environment* (as opposed to during extracurricular activities). Under these circumstances, League staff involvement extended beyond the control, supervision, and regulation of interscholastic athletic events as described in member schools' certificate of delegation to the League. Generally, the Minnesota Department of Education (MDE) is responsible for general supervision over public schools and for overseeing school district policies regarding bullying and harassment under the *Safe and Supportive Minnesota School Act*.²⁸ MDE is required to investigate complaints about non-compliance with these statutory requirements.²⁹ MDE also maintains a school safety technical center equipped to provide advice and assistance on these issues.³⁰

RECOMMENDATION

The Legislature should amend Minnesota statutes to require the Minnesota Department of Education to monitor transfer student eligibility cases appealed to the League due to “intolerable conditions.”

The League's transfer student appeal procedure regarding intolerable conditions imposes an unreasonable burden on students and families in order to gain eligibility for varsity competition. The League's appeal instructions do not define a standard for “intolerable conditions,” and we found from our file reviews that the League has not always handled these cases consistently. League staff granted eligibility to students in some cases. In other cases, League staff either denied eligibility or required students to proceed to a full hearing; in some cases, the independent hearing officer and Eligibility Committee reversed the decision by League staff and granted eligibility.

We think that the Legislature should amend Minnesota statutes to improve oversight of student transfer cases appealed due to intolerable conditions. Specifically, the League should notify MDE when these types of transfer cases are appealed to the League, and MDE should monitor such cases when a hearing is requested and for schools' noncompliance with state law. Specifically, schools are responsible for preventing, intervening, and investigating reports of incidents of bullying, harassment, and intimidation.³¹ MDE already has a School Safety Technical Assistance Center, which is supposed to help address concerns related to bullying and harassment.³² Lastly, the Legislature has identified MDE as the state agency with certain review and oversight responsibilities for the League.³³ Therefore, it makes sense to combine MDE's responsibilities for safe schools and the League, and have the department monitor student transfers related to intolerable conditions, including how well schools respond to League requirements and how League staff administer these cases.

²⁸ *Minnesota Statutes* 2016, 121A.031; 127A.05, subd. 3; and 127A.052.

²⁹ *Minnesota Statutes* 2016, 121A.031, subd. 6.

³⁰ *Minnesota Statutes* 2016, 127A.052. See Minnesota Department of Education, School Safety Technical Assistance Center, <http://education.state.mn.us/MDE/dse/safe/>.

³¹ *Minnesota Statutes* 2016, 121A.03 and 121A.031.

³² *Minnesota Statutes* 2016, 127A.05, subd. 3.

³³ *Minnesota Statutes* 2016, 128C.20, states that the commissioner of Education may examine any league activities or league-related issues when the commissioner believes this review is warranted.

Fair Hearing Procedures

State statutes do not require the League to have a fair hearing process for transfer students.³⁴ However, the League constitution requires the Board of Directors to establish a due process procedure when a school fails to certify a student's eligibility.³⁵ Since 1973, the League has had a "fair hearing procedure" that allows families and students to request a hearing before an independent hearing officer, shown previously in Exhibit 2.4.³⁶ The League also hires and pays the hearing officer for the time and expenses related to each hearing.

League staff have broad authority to either grant or deny a fair hearing, and the League does not publish criteria for doing so.³⁷ League staff also have said that they have concerns about providing hearings when the League has received testimony or evidence that the student transferred for athletic purposes.

The League's fair hearing process is not transparent, and the League has not been consistent in granting hearings.

In our review of case files, we found that League staff did not provide some families and member schools with sufficient rationale for denying hearing requests. The League fair hearing process also does not lay out criteria or timelines for families, students, schools, or the League to submit and respond to documentation, or to schedule a hearing date.³⁸ We heard different explanations from League representatives regarding the League's process to grant or deny hearings. Specifically, the League denies hearings when there are no grounds for appeal and will grant a fair hearing request if: (1) the League's initial determination was incorrect, (2) the family provides new or additional information relevant to the case, or (3) the information that was considered during the appeal was inaccurate.³⁹ However, the absence of *published* administrative procedures, combined with unclear responses from League staff, creates the impression of arbitrary decisions and contributes to an inefficient and more costly process for the League, member schools, families, and students.

Member school representatives and the public have expressed an interest in outcomes from the League's fair hearing process to better understand the scenarios in which League staff

³⁴ *Minnesota Statutes* 2016, Chapter 128C.

³⁵ Minnesota State High School League, *2016-2017 Official Handbook*, 134.

³⁶ The League first implemented a fair hearing process in 1973. The fair hearing procedure was revised in 1989 and again in 2007; the board has adopted some additional changes since 2007. For current procedures, see Minnesota State High School League, *2016-2017 Official Handbook*, 25 and 50-53. The League has a separate eligibility process for transfer students with an individualized education plan (IEP/504); appeals for these types of cases also are handled by an independent hearing officer.

³⁷ Minnesota State High School League, *2016-2017 Official Handbook*, 25-26 and 50-53. During a recent two-year period, the League received 105 requests for hearings. Among these hearing requests, the League executive director granted and scheduled a hearing in 20 cases and denied a hearing in 46 cases. In the remaining 39 cases, the executive director approved or partially approved eligibility to 38 transfer students without a hearing; in one case, the family withdrew the appeal.

³⁸ In comparison, *Minnesota Statutes* 2016, 121A.40 to 121A.49, lay out criteria, processes, timelines, and appeal requirements for excluding, suspending, or expelling a student under the Pupil Fair Dismissal Act.

³⁹ A League representative said that League staff also may approve a request for a hearing if (1) the circumstances are unique and not covered by the bylaws or policies, (2) the League has received other requests with similar scenarios, or (3) the issue has not previously been addressed by a hearing officer and League staff would like the hearing officer to set case precedent for the League.

grant eligibility or allow a matter to proceed to a hearing, but the League makes available very limited information about hearing requests and decisions by hearing officers. We spoke with some individuals who have experience with the League appeal process and they said more information about transfer scenarios and fair hearing decisions would help activities administrators in their role working with families and students in the appeal and fair hearing process.

League staff also have been inconsistent in granting hearing requests to transfer students. For example, in 3 of the 40 cases we reviewed, League staff initially denied requests for independent hearings, but then later approved their requests for a hearing. It was not clear to us why the League did not allow for hearings in five other cases we reviewed, particularly when compared with similar cases.

Some individuals we spoke with question whether the League's fair hearing procedures provide due process and a truly independent fair hearing. Under the League's process, League staff hire, select, and pay for the independent hearing officers.⁴⁰ League staff also participate in the hearings, and the hearing officers review League staff decisions. Lastly, the League Office asserts that it represents member schools' interests and not students; rather, schools are responsible for their students.

From our review of case files, we found that independent hearing officers do not always agree with League staff decisions and, thus, we cannot definitively conclude that the League does not provide "fair" hearings. The League's use of independent hearing officers also is similar to that used by school boards when disciplining students, for example. However, we think that the League's fair hearing process creates the *appearance* of a conflict of interest.

RECOMMENDATIONS

The Legislature should amend Minnesota statutes to:

- **Require the Minnesota State High School League to (1) establish a fair hearing process for transfer student eligibility decisions, and (2) utilize independent hearing officers selected from a list maintained by the Minnesota Department of Education.**
- **Require the Minnesota Department of Education to maintain a list of independent hearing officers for purposes of the League's fair hearings.**
- **Provide for random assignment of independent hearing officers to hear transfer student eligibility appeals.**

The League fair hearing process is important because state statutes do not require the League to have a fair hearing process or independent review of its decisions. The League has created its own eligibility appeal and fair hearing procedures; these procedures have been modified over the years and were not subject to legal review under the APA or systematically reviewed by the commissioner of Education.⁴¹ The League publishes in its annual official handbook the availability of a fair hearing procedure for transfer students to

⁴⁰ In 2016, the League contracted with three retired judges and one arbitrator for this purpose.

⁴¹ *Minnesota Statutes* 2016, 128C.02, subd. 4, states that the rules of the League are exempt from Chapter 14.

appeal ineligibility; however, the League does not publish criteria to qualify for an independent hearing. League staff also have been inconsistent in granting hearings and have not provided sufficient rationale for denying some requests. In this context, the League's publicized option for transfer students to appeal eligibility decisions to an independent hearing officer is misleading.

To improve transparency and accountability of the League, we think the Legislature should amend *Minnesota Statutes* 2016, Chapter 128C, to require the League to establish a process for independent review of League eligibility determinations of transfer students. This process should provide students and parents with a reasonable opportunity to present information regarding eligibility disputes. The League's process for independent review should include: published criteria for qualifying for an independent review; the conditions, timelines, and procedures for administering the process; and, for cases in which the League denies an independent review, explicit rationale by the League for denying the hearing. These fair hearing elements are common to any traditional dispute resolution or judicial process.⁴² If the Legislature implements this recommendation, the Legislature should include explicit language that the League independent hearing and review process does not create a constitutionally protected property right or liberty interest to participate in extracurricular varsity athletic competition.⁴³ The League should continue to pay for the costs of the independent review; however, the Legislature could consider assigning the independent hearing officer the authority to assign costs to the losing party.

To help address concerns about independence and conflict of interest, we think the Minnesota Department of Education (MDE) should play a role in this process. Currently, the department is required to maintain a list of independent hearing officers for purposes of holding public hearings for proposed League eligibility rules, if a hearing is requested.⁴⁴ We think the Legislature should amend *Minnesota Statutes* 2016, Chapter 128C, to require MDE to also maintain a list of independent hearing officers for purposes of the League conducting fair hearings of contested transfer student eligibility cases, too. In creating this list, the League may recommend, and MDE may consider, individuals who are qualified to conduct the independent reviews. MDE also should ensure random assignment of hearing officers to hear League cases.

If implemented, our recommendations may improve public perception about the League's fair hearing procedures; however, we advise that these changes would not ensure different, better outcomes for all families and students. As we noted earlier in our review of cases, the League's independent hearing officers did not always agree with decisions by League staff regarding the eligibility of transfer students. On the other hand, a hearing officer's recommendation is advisory only, and the Eligibility Committee and full Board of Directors make their own decisions on each case.

⁴² The League could adopt processes similar to those required under the Pupil Fair Dismissal Act.

⁴³ In a recent federal lawsuit involving the League, a U.S. District Court concluded that the right to a public education under Minnesota law does not include eligibility for interscholastic varsity athletic competition. *DeLaTorre v. MSHSL*, F.Supp.3d (D. Minn. August 16, 2016).

⁴⁴ *Minnesota Statutes* 2016, 128C.03. MDE staff advised us that they have never received a request for a hearing officer under this process; however, they would use an administrative law judge from the Office of Administrative Hearings if they received such a request in the future.

Oversight of Eligibility Decisions

State statutes and the League constitution assign powers and duties to the League Board of Directors.⁴⁵ The board has largely assigned the administration of transfer student eligibility to the Eligibility Committee and League staff, although the board is ultimately responsible for these functions.⁴⁶

The work of the Eligibility Committee—composed of five board members—includes:

- Reviewing eligibility decisions by League staff and bylaw violations.
- Imposing penalties and sanctions.
- Considering and suggesting changes to bylaws and policies.

The committee meets about six times a year for this purpose, and at other times when League staff indicate eligibility issues need more immediate attention. Based on its review, the Eligibility Committee makes recommendations to the full board for its final approval.

The League Board of Directors and Eligibility Committee provide insufficient oversight of transfer student eligibility.

The Board of Directors has delegated responsibility for overseeing transfer student eligibility and administering appeals and fair hearings to the League executive director. In turn, the executive director has assigned the majority of this work to an assistant director (although certain types of cases are handled by other League staff). With respect to transfer student eligibility, the executive director and assistant director:

- Provide training to member school activities administrators.
- Oversee school decisions.
- Interpret League student eligibility bylaws and policies.
- Review and either grant or deny transfer appeals.
- Review and either grant or deny requests for independent hearings.
- Select and contract with independent hearing officers.
- Schedule and participate in fair hearings.

Board members are rarely involved in individual transfer student eligibility cases (1) until after a contested case has been heard by an independent hearing officer or (2) unless a family or student asks to appear before the Eligibility Committee or full board at a scheduled hearing.

Among the 40 cases we reviewed, the League denied eligibility in 21 cases and granted eligibility in 19 cases. We interviewed several current and previous Eligibility Committee members to understand their role in transfer student determinations. For its meetings, committee members rely significantly on League staff to advise them of League Office eligibility decisions. League staff prepare materials for consideration by committee members; however, the information regarding transfer students is limited to requests for a

⁴⁵ *Minnesota Statutes* 2016, 128C.02; and Minnesota State High School League, *2016-2017 Official Handbook*, 133-134.

⁴⁶ *Minnesota Statutes* 2016, 128C.02, subd. 1.

fair hearing. Eligibility Committee members told us that League staff make available *all* documentation for cases heard by independent hearing officers, but provide only *summarized information* of *denied* requests for hearings.⁴⁷ With rare exception, the Eligibility Committee does not review actual case files for denied appeals in which a hearing is *not* requested; the committee also does not review transfer student eligibility appeals that are *granted*.

| Eligibility Committee Review of League Decisions for Transfer Student Eligibility | |
|---------------------------------------------------------------------------------------------------|----------------------------------|
| Reviewed | Not Reviewed |
| Hearing Request Denied—reviews summary | Appeal Denied—No hearing request |
| Hearing Granted and Held—reviews summary and the complete file is available to members for review | Appeal Granted |

The current review by the Eligibility Committee and Board of Directors of League staff decisions does not detect instances when League staff make inconsistent determinations. Consistency in eligibility decisions is advocated by the League, but we found in our file reviews that League staff strictly enforced requirements related to student eligibility in some cases but were less stringent in others. Additionally, League staff imposed documentation and other requirements not specified in League policies or procedures in some cases but not others. In some cases, the lack of consistency was due to poor communication among member schools and the League; in some cases, families and students contributed to this issue.

We also found that decisions among League staff, hearing officers, and the Eligibility Committee were not consistent in some cases, an indication that the process would benefit from additional administrative review. The League granted an independent hearing in 20 of the 40 cases we reviewed. In four of these cases, the hearing officer reversed the League’s appeal decision and recommended that the student be eligible.⁴⁸ In two other cases, the hearing officer said that the student should be ineligible, but the Eligibility Committee ultimately granted eligibility.

Activities administrators play a large role in handling transfer student eligibility. We surveyed activities administrators for their opinions about decisions made by the League Office.

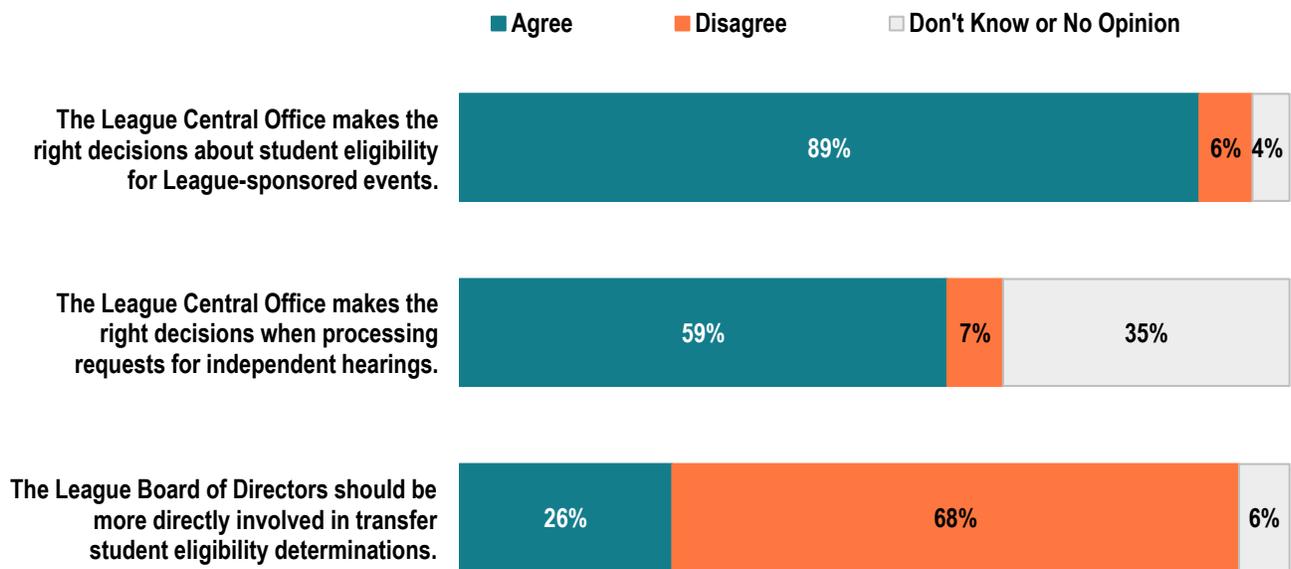
⁴⁷ We attended several Eligibility Committee meetings and reviewed minutes from other meetings to verify the scope and nature of this documentation.

⁴⁸ We also learned of other cases in which the hearing officer reversed the League staff determination and recommended that the student be granted eligibility.

Most activities administrators said the League Office makes the right decisions about student eligibility; however, many want the Board of Directors to be more directly involved in transfer student eligibility decisions.

Among activities administrators who had handled at least one transfer eligibility case in the past three years, about 89 percent agreed that the League Office makes the right decisions about student eligibility for League-sponsored events, as shown in Exhibit 2.8.⁴⁹ About 59 percent of those respondents agreed that the League Central Office makes the right decisions when processing requests for independent hearings. The Board of Directors has largely delegated responsibility for administering student eligibility to League staff. However, about 26 percent of those respondents (80 activities administrators) agreed that the Board of Directors should be more directly involved in transfer student eligibility determinations.⁵⁰

Exhibit 2.8: Survey Opinions of League Office Eligibility Decisions and Board Involvement, 2016



NOTES: The Office of the Legislative Auditor surveyed 479 high school activities administrators and received responses from 340 administrators for an overall response rate of 71 percent. The exhibit shows only the responses of activities administrators who indicated that they had handled a transfer student eligibility determination in the last three years. The question about the League Central Office read: “To what extent do you agree or disagree with the following statements about League governance and administration?” (N=313) The question about the League Board of Directors read: “To what extent do you agree or disagree with the following statements?” (N=312) Respondents who indicated “strongly agree” or “somewhat agree” are reflected in the “agree” category. Similarly, respondents who indicated “somewhat disagree” or “strongly disagree” are reflected in the “disagree” category.

SOURCE: Office of the Legislative Auditor, survey of League member high school activities administrators, 2016.

⁴⁹ Complete responses to the Office of the Legislative Auditor’s survey of high school activities administrators are located at www.auditor.leg.state.mn.us.

⁵⁰ Among all activities administrators who responded to this survey question, 89 activities administrators said the board should be more directly involved in transfer determinations.

RECOMMENDATION

The Minnesota State High School League Eligibility Committee should improve its review of League staff decisions regarding appeal and hearing requests; for cases not explicitly addressed in League bylaws, policies, or procedures, League staff should consult with the Eligibility Committee.

The League constitution allows the board to delegate responsibility for interpreting all League bylaws, constitutional provisions, and regulations to the executive director for periods between meetings, but it also states that the executive director's interpretations must be subject to review by the board at its next meeting.⁵¹ The Eligibility Committee reviews summary information about hearing requests that are denied, but members do not conduct comprehensive or sample file reviews of League decisions regarding appeals and hearing requests.

We recommend that members of the Board of Directors, through its Eligibility Committee, provide a more in-depth review of transfer student eligibility decisions (particularly, appeal and fair hearing requests) to assess whether the application of transfer bylaws and policies meets the League's goal of uniformity in eligibility decisions. At a minimum, committee members should conduct full file reviews of a random sample of appeal cases, all cases involving special and unusual circumstances, and all requests for hearings. Ideally, such file reviews would provide useful information for improving the League's administration of transfer student eligibility. File reviews of administrative decisions are a common practice of other state boards. For transfer eligibility appeals involving circumstances not explicitly addressed by League bylaws, policies, and procedures, League staff should consult with Eligibility Committee members for their input.

Access to Eligibility Information

League bylaws state that the designated administrator of a member school shall be held completely and solely responsible for reporting student transfers to the League and for certifying the eligibility of students representing their school in League-sponsored activities.⁵² Bylaws further state that it is not the responsibility of League officials to certify the eligibility status of such students.⁵³ League staff also told us that member schools are responsible for informing parents about student participation and obtaining from students and parents a signed League eligibility consent form each year. In this context, activities administrators need information to comply with League standards. They also are the liaison to the League for families who appeal the ineligibility of their student, and League staff refer families back to their school representative when they need assistance on a transfer.

⁵¹ Minnesota State High School League, *2016-2017 Official Handbook*, 133.

⁵² Minnesota State High School League, *2016-2017 Official Handbook*, 56-57.

⁵³ *Ibid.*

Most activities administrators who responded to our survey were generally satisfied with League training and access to information about student eligibility requirements.

The League publishes its transfer student eligibility criteria and procedures in its annual official handbook, and posts the most recent version of the handbook on the League website. The bylaws, policies, and procedures related to transfer student eligibility are quite technical, and the League expects new high school activities administrators to participate in training on these and other eligibility issues. The League also provides some written guidance on its internal administrative website and in quarterly bulletins for member schools, and conducts other training throughout the year.

According to our survey of activities administrators, 93 percent of respondents were satisfied with training and reference materials the League provides.⁵⁴ About 89 percent were satisfied with the League's online system for reporting student transfers.⁵⁵ However, some survey respondents commented on the quality or scope of information and training made available by the League Office to activities administrators. Some of their comments pertained to: more area meetings, more clearly written transfer policies and helpful responses, more explicit document and procedural requirements for completing transfer appeals, guidelines for obtaining an independent hearing, more information about appeal cases and outcomes, and more documentation explaining eligibility processes.

While the League website contains information about League activities and events, it is difficult to navigate and contains insufficient information about transfer student eligibility requirements.

The League maintains a website with extensive information about the League and member school activities, requirements for League-sponsored events, calendars of competitions and results, awards, Board of Directors meeting minutes, and other information. We searched the League website for information about transfer student eligibility, including: past and current board activities and decisions; League bylaws, policies, and procedures; and training guidelines and examples for considering student eligibility. We found that information about transfer student eligibility was scattered on the League website and the website's search function was difficult to use. Most transfer information was contained within the League's *Official Handbook* in the form of bylaws, policies, and procedures. Some League information was only accessible through a password-protected portal and not available to the public.

We also found a lack of examples that could help explain when a transfer student would or would not be considered eligible. The omission from the League's website of documents

⁵⁴ Among the remaining responses, 4 percent of survey respondents were somewhat or very dissatisfied and 3 percent indicated "don't know or no opinion."

⁵⁵ Among the remaining responses, 6 percent of survey respondents were somewhat or very dissatisfied and 5 percent indicated "don't know or no opinion."

regarding previous cases and hearing decisions might be partly due to not public information they may contain.⁵⁶

In our survey, about 85 percent of activities administrators said they were satisfied with the ease of use of the League’s website when seeking information about student eligibility and transfer requirements.⁵⁷ Activities administrators, who are responsible for working with families on transfer issues, also said that the most significant challenges in determining eligibility of transfer students pertained to families’ understanding of the League policies and requirements. Many survey respondents commented that the League website should be improved to provide better information about transfer student eligibility requirements to parents. As shown in Exhibit 2.9, 29 percent of survey respondents said “Families do not understand the League bylaws and process,” and 18 percent said “most initial documentation from families is insufficient and requires follow up.”

Exhibit 2.9: Survey Opinions Regarding Most Significant Challenge to Determining Transfer Student Eligibility, 2016

| Which of the following, if any, is the most significant challenge to determining eligibility of transfer students: | Percentage Response |
|--------------------------------------------------------------------------------------------------------------------------|---------------------|
| Families do not understand the League bylaws and processes | 29% |
| I do not experience challenges determining eligibility of transfer students | 19 |
| Most initial documentation from families is insufficient and requires follow up | 18 |
| Students enrolled in online school courses involve additional complications | 8 |
| League bylaws and policies are difficult to interpret and administer | 8 |
| My school rarely handles transfer students or I am unfamiliar with the process | 6 |
| Other ^a | 4 |
| Activities administrators and coaches are not provided sufficient advance notice of students transferring into my school | 4 |
| Most initial documentation from sending school is insufficient and requires follow up | 3 |
| League staff do not provide timely responses to my questions or transfer form | <1 |
| Total | 100% |

NOTE: Total does not sum to 100 percent due to rounding. We received responses from 340 of 479 activities administrators.

^a Examples of “other” include: League bylaws are “black and white” and do not address special family situations, such as parents who were never married; League bylaws do not appropriately address transfer scenarios involving schools that do not have a varsity or any athletic program.

SOURCE: Office of the Legislative Auditor, survey of League member high school activities administrators, 2016.

⁵⁶ *Minnesota Statutes* 2016, 128C.17, makes the League subject to the Minnesota Government Data Practices Act (*Minnesota Statutes* 2016, Chapter 13).

⁵⁷ About 12 percent were either somewhat or very dissatisfied, and 3 percent responded “don’t know or no opinion.”

RECOMMENDATION

The League should modify its website to improve its content and access to transfer student eligibility information for the public and member schools.

Member schools, families, and students have an interest in complying with League transfer eligibility bylaws, policies, and procedures. A more coordinated and complete presentation of transfer eligibility information posted to a single location on the League website would benefit member schools, families, and students who are seeking to understand eligibility requirements.

More extensive information about transfer appeals and document requirements also would help. This should be presented in a simple, user-friendly format, including scenarios under which a student may or may not be eligible. Such scenarios could provide insight for member schools about how League staff and hearing officers have historically interpreted League regulations and would help them prepare for transfer appeals. These improvements could facilitate the appeal process by disclosing to students how their transfer could affect eligibility. Although the League transfer bylaws, policies, and procedures are compiled within the League's official handbook and posted to the League website, the handbook is very technical and difficult to navigate; we also have other concerns about this publication, as we discuss in Chapter 3.



Chapter 3: Rulemaking and Oversight

The Legislature authorized the Minnesota State High School League and member schools to create eligibility rules and requirements for competing in extracurricular activities and interscholastic sports. In this chapter, we examine the League’s processes to create bylaws, policies, and procedures; we refer to these processes as “rulemaking.” The Legislature imposed few parameters on the League’s rulemaking, and we identified deficiencies in the League’s processes, including a lack of advance notice and external review by others. We also found that some of the League’s eligibility-related appeal procedures are unclear and impose unreasonable requirements on students. We make recommendations to the League, the Minnesota Department of Education, and the Legislature to address these concerns.

Background

Minnesota has standardized processes for state agencies and boards to develop regulations for state programs; these processes are codified in the state’s Administrative Procedure Act (APA).¹ The APA is intended to: increase public accountability of agencies; increase public participation in the formulation of administrative rules; and ensure a uniform, minimum rulemaking procedure, among other purposes.² State agencies are not required to use a formal rulemaking process for rules concerning only the internal management of the agency, but must do so for rules that directly affect the rights of or procedures available to the public.³

Unlike requirements for most state agencies and boards, the Legislature fully exempted the League rules from the APA.⁴ Concurrent with this exemption, the Legislature required the

¹ *Minnesota Statutes* 2016, Chapter 14.

² *Minnesota Statutes* 2016, 14.001, states that the purposes of the APA are to: (1) provide oversight of powers and duties delegated to administrative agencies; (2) increase public accountability of administrative agencies; (3) ensure a uniform minimum procedure; (4) increase public access to governmental information; (5) increase public participation in the formulation of administrative rules; (6) increase the fairness of agencies in their conduct of contested case proceedings; and (7) simplify the process of judicial review of agency action as well as increase its ease and availability. The intent of the APA is to “strike a fair balance between these purposes and the need for efficient, economical, and effective government administration.”

³ *Minnesota Statutes* 2016, 14.03, subd. 3; and 14.06.

⁴ The Legislature exempted the League rules from certain provisions of the Administrative Procedure Act in 1973. See *Laws of Minnesota* 1973, chapter 738, sec. 1. In 1997, the Legislature fully exempted the League rules from all aspects of the Act. See *Laws of Minnesota* 1997, chapter 187, art. 4, sec. 5, codified as *Minnesota Statutes* 2016, 128C.02, subd. 4.

League to adopt procedures to ensure public notice of all eligibility rules and policies in order to provide an opportunity for public hearings on proposed eligibility rules.⁵

The League processes to create bylaws, policies, and procedures differ from those for state agency rulemaking.

In the absence of the APA, League rulemaking has been guided by other state statutes and its constitution. For example, statutes require the League Board of Directors to establish and adopt policies necessary to carry out board functions, and adopt League rules and regulations governing the athletic participation of certain pupils.⁶ The League’s articles of incorporation state that the nonprofit entity is organized for the educational purpose “to establish uniform and equitable rules for youth in inter-school activities.”⁷ The League constitution requires the Board of Directors to adopt policies and procedures related to student eligibility.⁸

The League has different processes for developing its bylaws, policies and procedures, and rules. In the next sections, we focus on the League’s rulemaking and identify deficiencies in its bylaws, policies, and procedures; we do not address the League’s process to create “rules” for particular activities, such as the allowed number of wrestling matches in a season. We then compare the League’s processes to certain aspects of the APA.

Types of League Regulations

Bylaws

According to League staff, League *bylaws* have greater authority than League policies, procedures, and rules, and all member schools must comply with League bylaws.

Policies and Procedures

Board of Directors’ *policies* and *procedures* are generally applicable to League activities and are used to clarify and support the administration of League bylaws.

Rules

League *rules* are specific to a sport or program and provide the framework for participation and administration of games and tournaments.

⁵ *Laws of Minnesota* 1997, chapter 187, art. 4, sec. 6, codified as *Minnesota Statutes* 2016, 128C.03. If requested by 100 or more parents or guardians of students, the public hearing must be conducted by an administrative law judge from the Office of Administrative Hearings, by a person hired under contract by the Office of Administrative Hearings, or by an independent hearing officer appointed by the commissioner of Education from a list maintained for that purpose. At the conclusion of such a hearing, the person conducting the hearing shall write a report evaluating the extent to which the League has shown that the proposed rule is needed and reasonable and the legality of the proposed rule. The League also shall pay for such hearings.

⁶ *Minnesota Statutes* 2016, 128C.02, subs. 1 and 5.

⁷ Minnesota State High School League, *2016-2017 Official Handbook* (Brooklyn Center, MN; undated hardcopy), 127.

⁸ Minnesota State High School League, *2016-2017 Official Handbook*, 133-134.

Bylaw Process

The League constitution defines an annual process for adopting and amending bylaws that requires review and approval by member schools; this process is summarized in Exhibit 3.1.⁹ The annual process includes an October deadline for proposals, and it prescribes proposal requirements, a timeline for decisions, and a review period with opportunity for input from member schools. The process concludes each spring with an open meeting before the League Representative Assembly. This meeting provides an opportunity for public comment, and concludes with a final vote. The League refers to its Representative Assembly as its “legislative body,” and a two-thirds favorable vote by a quorum of representative members is required for changes to bylaws. Unless otherwise specified, new bylaw language is effective August 1 in the year it was approved by the Representative Assembly. The revised bylaw language is then published in the League annual *Official Handbook* and on the League website.

At its discretion, the League Board of Directors may initiate an “emergency amendment procedure” by submitting a proposed bylaw amendment to the Representative Assembly members for approval by mail.¹⁰ If passed, the amendment is effective immediately but only until action is taken at the next scheduled meeting of the Representative Assembly.

Policy and Procedure Process

Unlike the rulemaking process for League bylaws, there is no defined process in the League constitution for the Board of Directors to adopt policies and procedures, such as the League’s transfer appeal and fair hearing procedure.¹¹ Rather, the Board of Directors allows for the initiation and consideration of policy proposals and changes throughout the year, as shown in Exhibit 3.1. Proposed changes can originate from any source and do not have to be vetted by the member schools or the Representative Assembly.

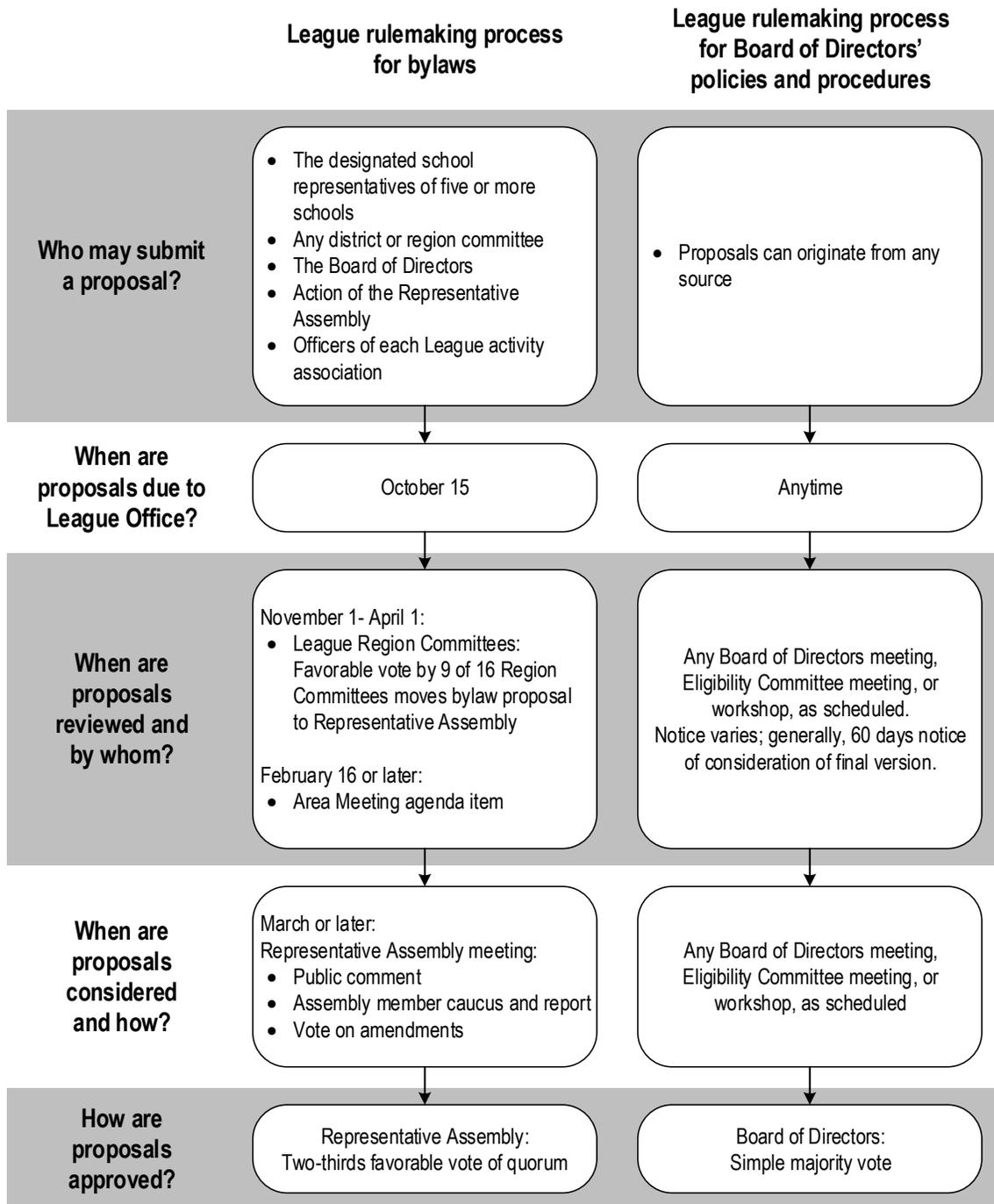
For proposed policies and procedures related to student eligibility, the board refers proposals to the Eligibility Committee for initial review and consideration. The League considers the Eligibility Committee meetings to be closed to the public, due to the committee’s discussion of student-specific matters. Unless otherwise directed by the board, the Eligibility Committee determines the schedule to evaluate a proposal and subsequently recommend—or not recommend—that the board schedule the proposal for final approval at a subsequent board meeting. The board can, however, adopt eligibility policy and procedural changes without a recommendation of the Eligibility Committee. Unlike the two-thirds majority vote required for bylaw changes, only a simple majority vote by board members is required to adopt policies and procedures.

⁹ Minnesota State High School League, *2016-2017 Official Handbook*, 4, 131-132, and 134-135.

¹⁰ Minnesota State High School League, *2016-2017 Official Handbook*, 135.

¹¹ In contrast, the APA requires state agencies to follow a formal process for rules that directly affect the procedures available to the public. *Minnesota Statutes* 2016, 14.03, subd. 3; 14.06, and 14.08.

Exhibit 3.1: League Process to Create Eligibility Bylaws, Policies, and Procedures, 2016



NOTE: The League Board of Directors may initiate an emergency amendment to bylaws and submit a proposal to Representative Assembly members for approval by mail. If passed, the amendment is effective immediately, but only until action at the next scheduled meeting of the Representative Assembly.

SOURCE: Office of the Legislative Auditor, summary of League documents and constitution.

Overlapping Purpose

The League has two very different processes for adopting bylaws and for adopting policies and procedures; however, the distinction between bylaws, policies, and procedures is not always apparent. Specifically, League policies and procedures are not limited to the internal management of the League, but rather include requirements that affect transfer student eligibility and the fair hearing procedures available to students.

League representatives assert that the bylaw and policy and procedural processes are set up to be responsive to member school needs and interests and provide checks on the League's actions. For example, if member schools do not like a League policy or rule, they could go through the bylaw process to adopt a bylaw that would nullify the board policy. Alternatively, member schools could work with the board to amend the policy. The League also uses policies and procedures to respond to requirements in state statutes. When statutes change, it is easier for the board to respond quickly and make a policy change rather than have to go through the full bylaw process. The League can then later formalize the policy as a bylaw through the Representative Assembly process.

Some board eligibility procedures have the same effect as League bylaws because they both involve determining whether transfer students meet certain criteria to be eligible for varsity athletic competitions. For example, League *Bylaw 111* defines some exceptions to the presumption of ineligibility of transfer students, such as a family and student changing residence to a new school district. On the other hand, board appeal policies and procedures define other circumstances to gain eligibility—such as adoption or abandonment of a child—that were not approved by a two-thirds majority of member schools present at an annual meeting of the Representative Assembly.

We asked League representatives to explain why some student transfer circumstances are codified as bylaw eligibility exceptions for review by schools, and some were adopted as board appeal procedures for review by League staff. They said that the board transfer eligibility appeal options involve more complicated situations and require more knowledge and expertise to evaluate. Further, the board's appeal procedures are not "eligibility" criteria; rather, they are circumstances in which the board may waive the one-year ineligibility penalty for a violation of the League's transfer bylaws. Nonetheless, both League bylaws and procedures can be used to determine whether a student is eligible for varsity competition.

Results of League Rulemaking

The League has been responsible for its own rulemaking for several decades, and its bylaws, policies, and procedures are catalogued in its annual *Official Handbook*.¹² Since the League first adopted *Bylaw 111 (Transfer and Residence)* in 2007, the League has modified the provisions related to transfer student eligibility, suspensions, and participation options for varsity and non-varsity athletic competition. It has also made numerous changes to transfer student eligibility policies and fair hearing procedures. However, in a recent

¹² Within the League *Official Handbook*, bylaws—adopted by the Representative Assembly—appear in regular, non-italicized font. Board policies and procedures appear in an italicized font.

lawsuit involving the League and a transfer student, a U.S. District Court judge noted “the [League] bylaws are not a model of clarity.”¹³

We identified similar concerns about the League’s eligibility requirements for transfer students in our review of League case files. We consider certain deficiencies in the League’s rulemaking process—such as a lack of external review of proposed changes by the public, an administrative law judge, or the Minnesota Department of Education—as contributing to these concerns.

Issues with Bylaws, Policies, and Procedures

From our review of transfer student eligibility case files and interviews, we found that some League transfer eligibility bylaws, policies, and procedures lack clarity and transparency, do not sufficiently address certain transfer situations, and impose unreasonable requirements on some students.

Lack of Clear Criteria

When determining the eligibility of transfer students, school activities administrators must refer to and follow League eligibility bylaws, policies, and procedures. Students also must sign a form indicating that they agree to abide by the League’s eligibility requirements for participating in extracurricular activities.

Some League bylaws, policies, and procedures lack clear criteria for determining the eligibility of transfer students.

The League’s *Bylaw 111* appeal procedures provide unclear criteria and lack published guidelines for evaluating certain types of appeals.¹⁴ Instead, League staff decide what information must be provided and in what format.¹⁵ For example, League bylaws allow staff to waive an eligibility suspension if there is “a documented substantial negative change in the economic status of the student’s parents which requires the student to withdraw from their current school and enroll in the public school...”¹⁶ We found from our review of case files that sometimes transfer students are informed by activities administrators *after* they appeal that the family must submit three years of tax returns to substantiate the negative change. But, they are not advised of any particular benchmark for meeting the League standard of “substantial negative change in economic status.” In fact, the League Office does not publish that it typically bases its decision on trends in a family’s adjusted gross

¹³ The entire statement is “Although the bylaws are not a model of clarity, and [plaintiff] was understandably confused as to the availability of an appeals process, the bylaws are not so vague or complex as to violate due process.” United States District Court, District of Minnesota, *Z.T., et al. v. Minnesota State High School League, et al.*, Civil Case: 16-CV-03821, Order, filed November 18, 2016, 6.

¹⁴ Minnesota State High School League, *2016-2017 Official Handbook*, undated hardcopy, 25.

¹⁵ League staff told us that some document requirements are based on previous case decisions by independent hearing officers.

¹⁶ Minnesota State High School League, *2016-2017 Official Handbook*, 25.

income reported on three years of tax forms, or other information *as determined by the League Office*.¹⁷

From our review of case files, we also learned that League staff require transfer students who allege “intolerable conditions” to report and obtain supporting documentation from either the school superintendent, school principal, or activities administrator from their former school; however, League policies do not specify this requirement. League procedures state only that “the acts complained of must first be reported to the *appropriate administrators* at the school...”¹⁸ Thus, if a student reported an incident to the dean of students, the League Office would reject the appeal as “not meeting the requirements of the appeal policy” because the dean of students is not an “appropriate administrator.”¹⁹ This appeal option also does not: explicitly impose an obligation or a timeline upon the sending school, student, or League Office to respond; define when the school has had sufficient opportunity to address the alleged conditions; or lay out what actions the school must take to address the student’s concern and satisfy the League’s criteria to make the transfer student eligible.

The League’s transfer eligibility appeal procedure also states that “the application to appeal a transfer eligibility determination is limited to the following circumstances,” followed by a list of acceptable transfer situations. However, the list of allowable circumstances does *not* disclose or define the option to appeal based on “special and unusual circumstances.” Nevertheless, the League constitution states:

Upon a showing of special and unusual circumstances that warrant an exception, the Board shall have discretion to limit, modify or waive the application of the penalty for the violation of any bylaw. It shall also exercise authority over all eligibility problems and cases which are not specifically provided for.²⁰

In the past, League staff and the board of directors have waived the one-year penalty and granted transfer students eligibility based on “special and unusual circumstances.” On the other hand, League staff have not disclosed this appeal option to some students who were denied eligibility; rather, they rely on activities administrators to advocate for students.

The omission of published League guidance regarding special and unusual circumstances contributes to an inefficient and confusing appeal process for transfer students seeking eligibility in situations not covered by League bylaws, policies, and procedures. For example, the League does not publicize scenarios that staff do *not* consider to be special and unusual circumstances, such as moving in with a friend’s family to return to a particular school district or leaving a particular school because it is not “a good fit” for the student.

¹⁷ League staff said that their use of three years of adjusted gross income is based on previous analysis by an independent hearing officer; however, the same hearing officer also noted in a separate hearing that sometimes additional information and analysis is needed to fully assess whether a family has experienced a substantial negative change in economic status.

¹⁸ Minnesota State High School League, *2016-2017 Official Handbook*, 25.

¹⁹ Minnesota Department of Education (MDE) staff advised us that, under the MDE Model Harassment and Violence Prohibition Policy, the dean of students could be a designated report taker for a school for incidents of alleged bullying or harassment.

²⁰ Minnesota State High School League, *2016-2017 Official Handbook*, 133.

Lastly, the League constitution requires the board to “establish a due process procedure for a student, parent, or guardian who wishes to contest a school’s failure to certify the eligibility of a student.”²¹ Accordingly, the board has established a process with procedures to appeal and request a fair hearing by the League.²² However, there are no written, published criteria identifying when a transfer student may be eligible for a fair hearing before a League independent hearing officer, and the League has denied some students a fair hearing without citing specific criteria that the student did not meet. The lack of published criteria contributes to confusion and questions about the availability of the League’s fair hearing process.

Gaps in Eligibility Circumstances

The League has created eligibility requirements for students that have been approved by at least two-thirds majority vote of member school representatives.²³ However, the Legislature has directed the League to adopt some specific procedures regarding eligibility, including certain rules for transfer students.²⁴

League eligibility requirements do not adequately address some student transfer situations.

Among the League’s founding purposes and beliefs, the League seeks to “establish uniform and equitable rules for youth in inter-school activities” and it asserts that “students should have an equal opportunity to participate in all activities offered by their school.”²⁵ Some activities administrators who we surveyed or spoke with said that League bylaws do not adequately address certain situations that are becoming more common among transfer students. For example, many students have parents who never married and did not formalize the student’s relationship with the father through a court order, and these students sometimes transfer their residence between parents. Other students transfer out of their home—and school district—due to domestic violence between other family members in the home. Students who transfer under these scenarios would not find published guidance from the League. In our review of case files, following a long appeal process, League staff did not view these scenarios as special and unusual or grant these students eligibility without a court order.

During its February 2017 Board of Directors meeting, the board adopted a final version of one additional appeal option that is intended to address circumstances under which students may transfer. Specifically, a transfer student may be deemed eligible at the new school if the League receives approval of the transfer from both the principal and athletic director at

²¹ Minnesota State High School League, *2016-2017 Official Handbook*, 54 and 134.

²² Minnesota State High School League, *2016-2017 Official Handbook*, 25-26 and 50-53.

²³ Minnesota State High School League, *2016-2017 Official Handbook*, 134. Bylaw proposals must be approved by at least two-thirds of designated representatives present at the Representative Assembly meeting.

²⁴ *Minnesota Statutes* 2016, 128C.02, subd. 5; and 128C.03, require the League to adopt (1) eligibility rules and regulations governing athletic participation of students who “open enroll” in a school district in which the pupil does not reside; (2) rules that reduce barriers and accommodate transfer students with an individualized education program so that they are deemed eligible on the same basis as other students in the school to which the student transfers; and (3) public notice procedures for proposed eligibility rules and policies.

²⁵ Minnesota State High School League, *2016-2017 Official Handbook*, 2.

both the former and new school. The Board of Directors scheduled the new appeal procedures language for final approval at its April 2017 board meeting.

Unreasonable Requirements

As we described in Chapter 2, the League has established appeal procedures for students who transfer schools due to “intolerable conditions.” This appeal option is intended to allow for eligibility of students who experienced bullying or harassment at their former school.

League policies and procedures impose unreasonable requirements on students who transfer due to intolerable conditions and appeal their ineligibility for varsity competition.

Based on review of case files and League independent hearings, we think that this appeal option is poorly worded and easily misconstrued.²⁶ The League’s transfer appeal procedure requires that a student obtains certain information for League staff; in particular, that there are “Intolerable conditions at the Sending School as affirmed in writing by the Sending School.”²⁷ This requirement sets up an adversarial relationship between the student and school administrators. Although the transfer appeal language does not assign a timeline and standard for determining “intolerable conditions,” the transfer student and family—in practice—bear the burden of obtaining such an affirmation. The League language also does not define “intolerable conditions,” a term that is open to interpretation.²⁸

We also learned that League staff interpret the appeal language regarding intolerable conditions to mean that students must stay at their school until school administrators have had the “opportunity to investigate and take any action they deem necessary to resolve the problem.”²⁹ This “stay put” interpretation is not explicit in the League’s *Bylaw III* transfer procedures. We think the League’s interpretation of its appeal language is unreasonable because it restricts students from transferring before a school admits to and tries to resolve a problematic situation.

Similarly, the League procedure states that “perpetrators must be identified” in the student’s report to administrators, even though statutes allow for “anonymous reporting” of incidents.³⁰ In our opinion, the League’s requirements are unclear, do not lay out the former school’s responsibilities, and impose onerous expectations on a student who may be experiencing intolerable conditions.

²⁶ For example, the “intolerable conditions” appeal language does not require that students must have received treatment by a psychological or medical professional, unless the parents assert the student suffered adverse mental or physical effects from the intolerable conditions. Yet, in some cases in which the family *did* forward such documentation to support the claim of “intolerable conditions,” the League denied the student eligibility.

²⁷ Minnesota State High School League, *2016-2017 Official Handbook*, 25.

²⁸ As we noted in Chapter 2, *Minnesota Statutes* 2016, 121A.031, subd. 2, defines actions that constitute bullying and threatening actions. The League references this statute and school obligations elsewhere in its bylaws; it also defines and prescribes penalties for violations related to sexual, racial, and religious harassment, violence, and hazing in League sponsored events. See Minnesota State High School League, *2016-2017 Official Handbook*, 43-45.

²⁹ Minnesota State High School League, *2016-2017 Official Handbook*, 25.

³⁰ Minnesota State High School League, *2016-2017 Official Handbook*, 25; and *Minnesota Statutes* 2016, 121A.031, subd. 4.

League *Official Handbook*

The League catalogues its bylaws, policies, and procedures in its annual *Official Handbook*, which also contains other information about the League, such as contact information, organization, history of the League, board resolutions, and the League constitution.

The League’s *Official Handbook* is a confusing resource; it contains needless duplication and does not clarify the effective dates of transfer student policies and procedures.

Organizationally, the League’s *Official Handbook* presents some challenges for readers to find and interpret current League requirements. For example, procedures and criteria for appealing a transfer eligibility decision and requesting a fair hearing are duplicated in two sections—*Bylaw 111* and *Bylaw 300*. The League also uses the same number series (200) in its handbook for both its constitution (corporate bylaws) and student eligibility bylaws.

The League publishes an annual hardcopy of its *Official Handbook* each fall, which says that the most recent version of the handbook is posted to the League website. However, the hardcopy and online versions are both *undated*, and the League does not include an effective date of bylaws, policies, and procedures, a practice that makes it difficult to identify which requirements were applicable at the time a student transferred. The League also allows policy changes throughout the year; for example, the board revised the definition of “transfer student” at about the same time the hardcopy version of the *Official Handbook* was released in fall 2015. Unless informed by a League or school representative, the average reader may not know that there could be more than one version of a policy or procedure during any given school year.

Survey Opinions of Clarity of Eligibility Requirements

We surveyed member schools’ activities administrators about the League’s rulemaking processes and transfer student eligibility requirements. We received responses from 340 of 479 activities administrators, for a 71 percent response rate. Our concerns about the League’s rulemaking activities differ from the opinions of most high school activities administrators and others with whom we spoke.

High school activities administrators largely support the League’s rulemaking process and current transfer student eligibility requirements.

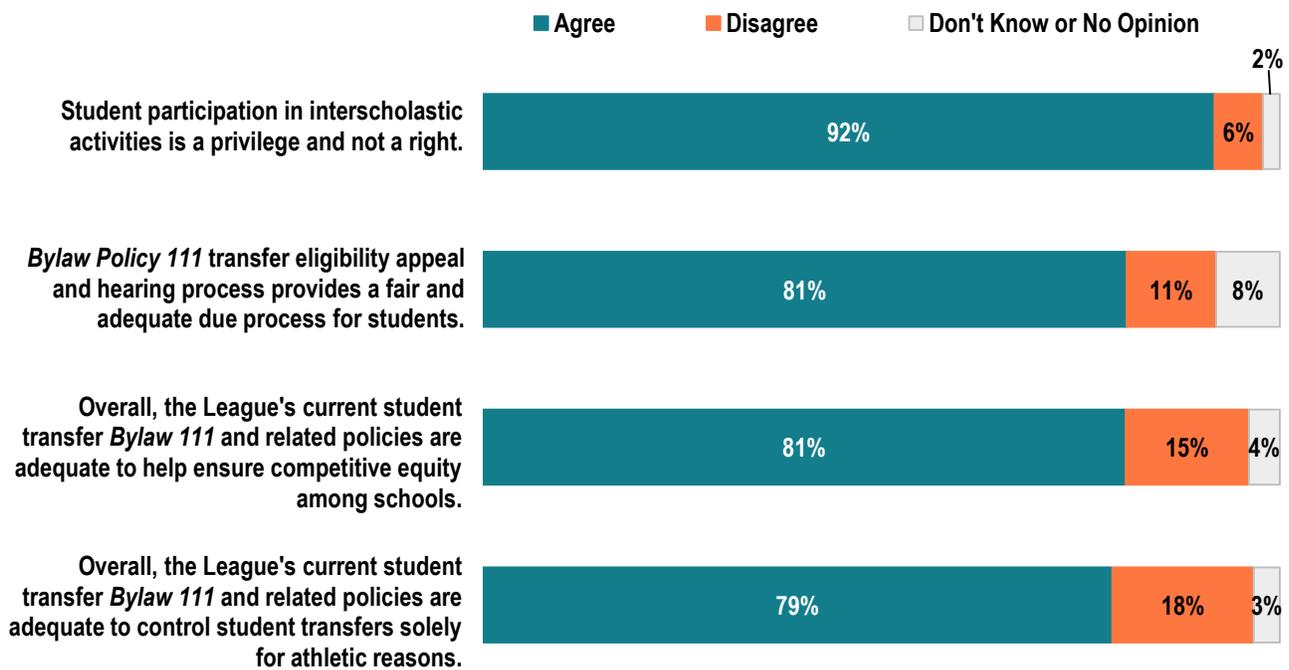
According to our survey, nearly 80 percent of activities administrators were satisfied with opportunities for member school input into League policies and procedures and the League’s process for creating, adopting, and amending its bylaws.³¹ Among activities administrators who had handled a student transfer in the last three years, about 90 percent said the League’s

³¹ Among all survey respondents, 41 percent were very satisfied with opportunities for member school input into League policies and procedures, 37 percent were somewhat satisfied, 10 percent were somewhat dissatisfied, 5 percent were very dissatisfied, and 7 percent indicated “don’t know or no opinion.” Similarly, 46 percent of survey respondents were very satisfied with the League processes for creating, adopting, and amending League bylaws; 33 percent were somewhat satisfied; 8 percent were somewhat dissatisfied; 3 percent were very dissatisfied, and 9 percent responded “don’t know or no opinion.”

definition of a transfer student is “about right.”³² About three-fourths of these survey respondents said the provisions to allow a transfer student to be eligible for interscholastic events are “about right.”³³ Finally, for transfer students determined to be ineligible for varsity competition, 79 percent of these survey respondents said that options in League *Bylaw 111* to play non-varsity, or participate or return to a student’s former school, are “about right.”³⁴

As shown in Exhibit 3.2, about 81 percent of survey respondents agreed that League transfer eligibility appeal and hearing processes provide a fair and adequate due process for students.

Exhibit 3.2: Survey Opinions about Adequacy of League Requirements to Control Transfer Student Eligibility, 2016



NOTES: The Office of the Legislative Auditor surveyed 479 high school activities administrators and received responses from 340 administrators for an overall response rate of 71 percent. The question about student participation in activities read: “To what extent do you agree or disagree with the following statements about student eligibility at your school for League-sponsored events?” (N=330) The question about *Bylaw 111* read: “To what extent do you agree or disagree with the following statements?” (N=338, N=336, and N=338) Respondents who indicated “strongly agree” or “somewhat agree” are reflected in the “agree” category. Similarly, respondents who indicated “somewhat disagree” or “strongly disagree” are reflected in the “disagree” category.

SOURCE: Office of the Legislative Auditor, survey of League member high school activities administrators, 2016.

³² Among the remaining survey respondents, 6 percent said the League definition of a “transfer” student is too limited, 1 percent said it was too permissive, and 4 percent indicated “don’t know or no opinion.”

³³ Among the remaining survey respondents, 21 percent said the *Bylaw 111* provisions to allow eligibility for transfer students were too limited, 1 percent said that they were too permissive, and 3 percent indicated “don’t know or no opinion.” When asked about the Board of Directors’ circumstances under which students can appeal a transfer eligibility decision, 73 percent of survey respondents who had handled a transfer in the past three years said that the options were “about right,” 22 percent said that they were too limited, 1 percent said that they were too permissive, and 5 percent indicated “don’t know or no opinion.”

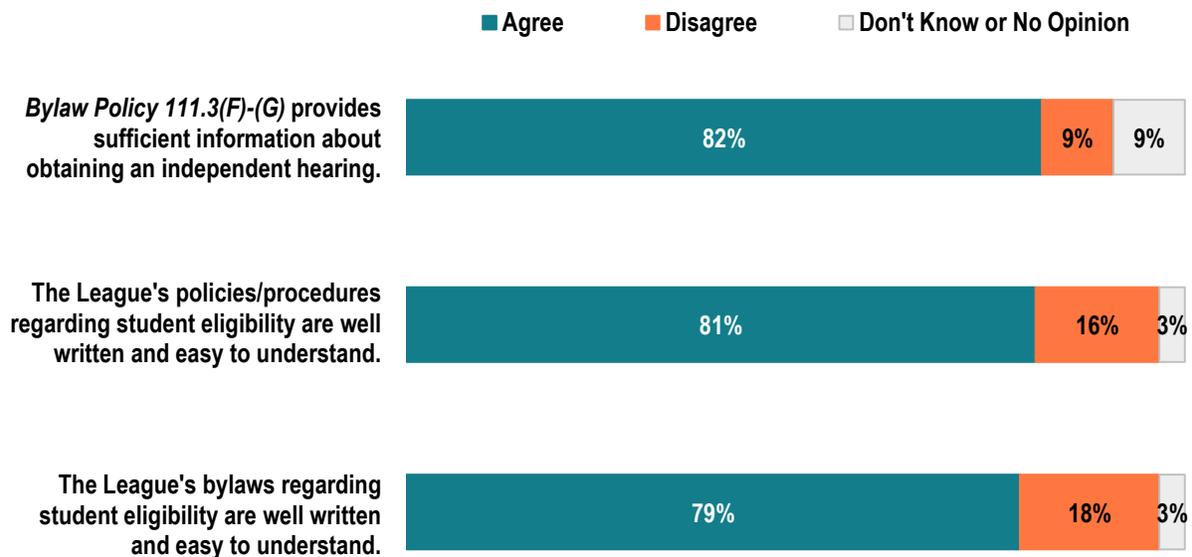
³⁴ Among the remaining respondents, 8 percent said these participation options were too limited, 9 percent said the participation options were too permissive, and 4 percent indicated “don’t know or no opinion.”

Similarly, about 80 percent of respondents agreed that bylaws and policies for student transfers are (1) adequate to help ensure competitive equity among schools and (2) control student transfers solely for athletic reasons.

Member school activities administrators generally said that League student eligibility bylaws, policies, and procedures are clear.

As shown in Exhibit 3.3, about 79 percent of activities administrators agreed that League eligibility bylaws were well written and easy to understand. Similarly, about 81 percent agreed that League policies and procedures were well written and easy to understand. About 82 percent of activities directors agreed that League policies provide sufficient information about obtaining an independent hearing.

Exhibit 3.3: Survey Opinions about Clarity of League Eligibility Bylaws, Policies, and Procedures, 2016



NOTES: The Office of the Legislative Auditor surveyed 479 high school activities administrators and received responses from 340 administrators for an overall response rate of 71 percent. The question about *Bylaw Policy 111.3* read: "To what extent do you agree or disagree with the following statements?" (N=337) The question about the Leagues policies, procedures, and bylaws read: "To what extent do you agree or disagree with the following statements about League governance and administration?" (N=333 and N=335) Respondents who indicated "strongly agree" or "somewhat agree" are reflected in the "agree" category. Similarly, respondents who indicated "somewhat disagree" or "strongly disagree" are reflected in the "disagree" category.

SOURCE: Office of the Legislative Auditor, survey of League member high school activities administrators, 2016.

On the other hand, in response to our survey, some comments of activities administrators included:

Most significant challenge is that the League bylaws are difficult to interpret and administer, and when asking the League for clarification the responses from the League are vague and not very helpful.

The reason that Bylaw 111 is so hard is because so many cases have unique situations that aren't addressed by the criteria.

There are no written, objective criteria used by the League to determine when a student is eligible for a hearing.

Public Notice and External Review

To help identify reasons for deficiencies in the League's transfer student eligibility requirements, we looked at the League's processes for creating bylaws, policies, and procedures. We also compared the League's processes to the rulemaking requirements and goals of the Administrative Procedure Act. To achieve its goals, the APA requires that proposed agency rules undergo public notice and considerable external review by others.³⁵ The purposes of external review of proposed rules are to (1) ensure that rules are clear, unambiguous, understandable, and in the proper form; (2) determine whether the agency acted consistently with its statutory authority; and (3) assess whether the proposed rules are consistent with legislative intent, among other goals.³⁶

For state agencies, the state's revisor of statutes must approve the form of a proposed agency rule, shown in Exhibit 3.4.³⁷ For purposes of reviewing whether a rule legally complies with state and federal law, an administrative law judge must evaluate and approve the agency rule.³⁸ State agencies are required to evaluate the need and reasonableness of a rule and its likely impact of benefits and costs to affected individuals.³⁹ The governor may veto agencies' adopted rules under certain circumstances.⁴⁰ Agencies also must review and follow a process to repeal rules that are obsolete, unnecessary, or duplicative.⁴¹

In contrast, state statutes give the League broad discretion to develop its own rulemaking processes. As shown in Exhibit 3.4, the League's process for adopting *bylaws* involves some important rulemaking elements that are found within the APA, including advance notice and publication; external review and comment (by school representatives and, on occasion, the Minnesota Department of Education); and a public comment opportunity before the League Representative Assembly. League attorneys evaluate the legality of proposed bylaws. The League's process to create bylaws also involves public posting to the League website and input by member schools.

³⁵ *Minnesota Statutes* 2016, 14.05, subd. 6; 14.08; 14.101; 14.116; 14.131; 14.14-14.16; 14.20; 14.22; 14.25; 14.26; 14.28; and 14.366.

³⁶ Office of the Legislative Auditor, Program Evaluation Division, *Administrative Rulemaking* (St. Paul, 1993), 86-87.

³⁷ *Minnesota Statutes* 2016, 14.20 and 14.28.

³⁸ *Minnesota Statutes* 2016, 14.08, 14.15-14.16, and 14.26. Under *Minnesota Statutes* 2016, 14.386, subd. (d); and 84.027, subd. 13, the Minnesota Office of Attorney General (OAG) reviews and approves game and fish rules. The OAG also may provide legal review and feedback to agencies on their rules on a case-by-case basis, if requested.

³⁹ *Minnesota Statutes* 2016, 14.131 and 14.23.

⁴⁰ *Minnesota Statutes* 2016, 14.05, subd. 6.

⁴¹ *Minnesota Statutes* 2016, 14.05, subd. 5.

Exhibit 3.4: Administrative Procedure Act and League Rulemaking Processes, 2016

| Administrative Procedure Act | League Rulemaking | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| State Agency Rules | Student Eligibility Bylaws | Student Eligibility Policies and Procedures |
| Notice and Publication: | Notice and Publication: | |
| <ul style="list-style-type: none"> • 60 days minimum notice of solicitation for comments on draft proposals; must be published in State Register • 30 days notice of hearing and proposal to persons registered with agency • 30 days notice of intent to adopt if no hearing • Each agency must maintain a public rulemaking docket • Statement of need and reasonableness | <ul style="list-style-type: none"> • Three to five months notice • Notice and proposal posted: <ul style="list-style-type: none"> • League website • League region committees • December board meeting minutes/materials • Final notice at spring meeting of Representative Assembly | <ul style="list-style-type: none"> • No minimum notice requirement • Agenda item posted to League website for upcoming Eligibility Committee and Board of Directors meetings |
| External Review Prior to Adoption: | External Review Prior to Adoption: | |
| <ul style="list-style-type: none"> • Governor • Revisor of statutes • Administrative law judge • Legislative committee of jurisdiction • Public has 30 days to submit comments | <ul style="list-style-type: none"> • No statutory requirement for all eligibility bylaws^a <p>League constitution requires review by:</p> <ul style="list-style-type: none"> • Region Committees • Representative Assembly • Board of Directors (emergency) <p>Proposals also reviewed by:</p> <ul style="list-style-type: none"> • League attorneys • Minnesota Department of Education (some bylaws)^b | <ul style="list-style-type: none"> • No statutory requirement for all eligibility policies and procedures^a <p>Proposals reviewed by:</p> <ul style="list-style-type: none"> • Eligibility Committee • League attorneys • Board of Directors • Minnesota Department of Education (some policies and procedures)^b |
| Independent Public Hearing for Rule: | Independent Public Hearing for Rule: | |
| <ul style="list-style-type: none"> • Hearing required if requested by 25 or more persons | <ul style="list-style-type: none"> • Hearing required only if requested by at least 100 parents/guardians^a • League constitution requires hearing by Representative Assembly <p>Disclosure required at meetings of:</p> <ul style="list-style-type: none"> • Board of Directors | <ul style="list-style-type: none"> • Hearing required for eligibility policies only if requested by at least 100 parents/guardians^a <p>Disclosure required at meetings of:</p> <ul style="list-style-type: none"> • Board of Directors |
| Review and Update: | Review and Update: | |
| <ul style="list-style-type: none"> • Must review and repeal obsolete, unnecessary, and duplicative rules | <ul style="list-style-type: none"> • Not required | <ul style="list-style-type: none"> • Not required |

NOTES: Requirements for agency rulemaking vary for some types of rules, such as expedited rules to address public safety emergencies. *Minnesota Statutes* 2016, 128C.02, subd. 5, imposes some requirements on the League regarding the eligibility of certain students.

^a *Minnesota Statutes* 2016, 128C.03, requires the League to adopt procedures to ensure public notice of all eligibility rules and policies. Further, if requested by 100 or more parents or guardians of students, the public hearing must be conducted by an administrative law judge, or by an independent hearing officer appointed by the commissioner of Education.

^b *Minnesota Statutes* 2016, 128C.20, subd. 1, requires the commissioner of Education to each year obtain and review information from the League regarding any proposed changes in League policy.

SOURCE: Office of the Legislative Auditor, summary of *Minnesota Statutes* 2016, chapters 14 and 128C; League constitution; and other documents.

The League does not ensure sufficient notice and review of its policies and procedures prior to board approval.

State law requires the League to ensure public notice of proposed eligibility rules and policies, and the process must allow for public hearings before an administrative law judge, if requested by 100 or more parents or guardians.⁴² However, League staff told us that the League has never held a hearing before an administrative law judge or independent hearing officer. League staff also provided their interpretation of the statutory requirements as it applies to League bylaws, policies, and procedures.

First, the League uses different terminology regarding its “rules” and rulemaking obligations. Specifically, the League and its member schools provide advance notice and allow for input from member schools into *bylaws* through its Representative Assembly process; League staff said this process complies with the statute regarding public notice of “eligibility rules.”⁴³ League staff suggested that they do not provide the same public notice, review, and comment for proposed *policies* and *procedures* because they are not “eligibility” rules, as termed in state statutes.

For example, in 2014, the League Board of Directors adopted a *procedure* for handling eligibility appeals for transgender students. Because this was a procedure and not a bylaw, the League did not hold a public hearing before an administrative law judge, despite significant inquiries and public attendance at earlier board meetings.⁴⁴

Instead of using processes similar to that used for its bylaws or required in law, the Board of Directors’ Eligibility Committee oversees the creation of eligibility policies and procedures, and this process is not published in the League handbook or on the League website. Rather, the committee puts forth proposed changes and recommendations to the full board on a schedule determined by the committee. Sometimes, the committee provides public notice of a final version of a proposal during a full board meeting, and the proposal is scheduled for a final vote at the next board meeting; this practice provides about two months advance notice. However, the proposals are not always posted to the League website, and sometimes the final version of the proposal is not made available until the day of the board meeting.⁴⁵ The League publishes board *agendas* on its website prior to board meetings, but the agendas include very brief descriptions of agenda items, such as proposals.

⁴² *Minnesota Statutes* 2016, 128C.03.

⁴³ *Ibid.*

⁴⁴ Minnesota State High School League, *2016-2017 Official Handbook*, 53; and *Minnesota Statutes* 2016, 128C.03. The statute allows for a hearing by either an administrative law judge with the Office of Administrative Hearings or an independent hearing officer appointed by the commissioner of Education from a list maintained for that purpose. The statute requires the administrative law judge or hearing officer to write a report on the legality of the rule and the extent to which the League has shown that the proposed rule is needed and reasonable. MDE staff said that they have never received a request from the League for such a hearing but would use an administrative law judge from the Office of Administrative Hearings, if needed.

⁴⁵ As one example, the Eligibility Committee during its February 2, 2017, meeting added a proposed change in board transfer student appeal procedures to its agenda. During the full board meeting on the same day, the Eligibility Committee recommended and the full board approved the proposed procedure as an action item for final vote during the April 2017 board meeting. When asked whether the League posted this proposed procedure to the League website, League staff questioned why it would do so.

During board meetings, the board makes available final drafts of substantive changes to policies and procedures, allows for public comment, and holds open discussion as required by open meeting laws; however, we learned of complaints about how the board has not provided enough copies—or any copies—of proposals to public attendees or allowed for everyone present to speak to the board. The League also posts synopses of board meetings, generally within one day of the meeting. But, we found that the League does not post to its website audio tapes or all board documents—including proposed policy or procedure changes—that were distributed at board meetings. Lastly, League staff have stated that new language is effective on the day that the board approves the minutes of the previous meetings. In comparison, state agencies must follow more rigorous rulemaking for rules that directly affect procedures available to the public.

Advance public notice of board procedures is important because the League codifies eligibility appeal options and fair hearings into its procedures and not into its bylaws; the board also makes frequent changes to these procedures. When the League does not post a proposal related to eligibility (or the notice of such a proposal) to the League’s website, it does not realistically provide the public the opportunity to obtain sufficient signatures to request the public hearing by an independent hearing officer. According to state statutes, such a hearing is only required if there are at least 100 signatures to a petition requesting a hearing on a proposed eligibility rule or policy.⁴⁶ In our view, the League’s assertion that it has never held such a hearing is one indicator that the requirements for obtaining a public hearing are unreasonable.

In contrast with the League’s limited approach to provide public notice of proposed policies and procedures, state agencies are required to maintain a current public rulemaking docket on their websites as a way to support transparency in agency activities.⁴⁷ Agencies’ rulemaking dockets must contain a listing of the precise subject matter of each possible proposed rule currently under active consideration; an indication of its present status within the agency; each pending activity; any known timetable for actions or decisions; and the date of resolution and effective date, among other items.⁴⁸ Additionally, state agencies must have a public hearing on a proposed rule before an administrative law judge if requested by 25 or more persons (a lower standard when compared with the 100 signatures required to obtain a hearing for League proposals).

As we discuss later in this chapter, state statutes require the Minnesota Department of Education (MDE) to annually review information reported by the League regarding proposed League policies, but not changes to bylaws and procedures.⁴⁹ MDE staff review the League’s information just once a year—at the end of the calendar year, typically—and often well after changes have been approved by the board. Further, as League staff pointed out to us, the statute only requires reporting of *policies* to MDE. Instead, the League relies on its own contract attorneys to review the legality of these proposals.

⁴⁶ *Minnesota Statutes* 2016, 128C.03.

⁴⁷ *Minnesota Statutes* 2016, 14.366.

⁴⁸ *Ibid.*

⁴⁹ *Minnesota Statutes* 2016, 128C.20.

RECOMMENDATIONS

The Legislature should amend *Minnesota Statutes 2016, 128C.03*, to require the League to:

- **Maintain a public rulemaking docket on the League’s external website that includes historical and proposed changes in eligibility bylaws, policies, and procedures.**
 - **Post notice and final versions of all proposed changes to eligibility policies, procedures, and definitions to the League website at least 30 days prior to board meetings.**
 - **Reduce the required minimum number of requestors for a public hearing on proposed eligibility bylaws, policies, and procedures to 25 parents or guardians of students.**
 - **Include publication dates on all versions of the League’s official handbook (or other advisory documents) regarding League eligibility bylaws, policies, procedures, and definitions.**
 - **Reconcile and remove duplicate, obsolete, or unnecessary eligibility policies and procedures.**
-

We think that improvements are needed in the League’s processes to create bylaws, policies, and procedures related to transfer student eligibility. The Legislature fully exempted League rules from the Administrative Procedure Act, but, in our opinion, has not provided reasonably clear standards to guide their actions. The APA includes important concepts not consistently mirrored in the League’s processes, including advance notice and external review of proposals. The League board makes frequent changes to policies and procedures that do not undergo rigorous external review by MDE or an administrative law judge prior to adoption. The League’s narrow interpretation of its rulemaking obligations represents a lack of transparency, in our opinion, in creating the League’s eligibility appeal and fair hearing procedures for transfer students.

We recommend that the Legislature impose more rigorous rulemaking requirements on the League. Although the League is not a state agency, we think the Legislature should require the League to implement several practices required of state agencies under the APA. To improve transparency in League processes, the Legislature should amend *Minnesota Statutes 2016, 128C.03*, to require the League to provide a public rulemaking docket similar to that required of state agencies. More meaningful advance notice and publication of proposed bylaws, policies, and procedures, and their effective dates, will afford an opportunity to individuals affected by the proposal—in this case, schools, students, and families—to consider and provide feedback on its impact. Further, more scrutiny of the proposals should increase the likelihood of identifying errors, deficiencies in language, or requirements that conflict with other rules or state or federal laws.

State statutes provide parents and guardians concerned about a League-proposed policy the opportunity to obtain an independent hearing before an administrative law judge or other hearing officer. This provision also requires the League to provide a full statement of need and reasonableness of the proposal. However, we think the League requirement to obtain

signatures from 100 individuals for an independent hearing is unreasonable and should be changed to require signatures from 25 parents or guardians, a standard comparable to that required of state agencies. The requirement also should be clarified to include proposed eligibility bylaws and procedures, not just proposed policies.

To increase transparency in rulemaking, the Legislature also should require the League to include publication dates on all versions of the League's official handbook or other reference documents containing bylaws, policies, and procedures. The League also should be required to reconcile and remove the current duplicate transfer eligibility policies and procedures within its official handbook, a process similar to a statutory requirement for state agencies. These changes should reduce confusion about the relevance, application, and effective date of League requirements.

State Oversight

Although the League is not a state board, the Legislature has determined that the League must be subject to oversight by a state entity; in this instance, the Minnesota Department of Education.⁵⁰ MDE plays a role in reviewing League-proposed policies, and the League and MDE have worked together on some League bylaws and transfer policies to ensure that they align with state and federal law, such as requirements related to special education, and students with individualized education plans and other types of education plans. MDE also has developed advisory guides for the League on matters involving gender equity issues and federal Title IX regulations that prohibit discrimination in athletics on the basis of sex, for example.

The Minnesota Department of Education does not provide sufficient oversight of reporting and eligibility regulations created by the League.

The commissioner of Education has statutory authority to examine any League activities or League-related issues and recommend to the Legislature whether any legislation is necessary.⁵¹ Additionally, the commissioner of Education must obtain and review certain information about the League each year.⁵² This information includes: an evaluation of any proposed changes in League policy; a list of all complaints filed with the League, all lawsuits filed against the League, and the dispositions of those complaints and lawsuits; and other items.⁵³ MDE then prepares and submits a report to the Legislature and its education committees (although statutes direct the League board to do so).⁵⁴

Based on our review of League documents and MDE reports covering fiscal years 2012 through 2016, the League did not fully comply with the intent of these reporting

⁵⁰ *Minnesota Statutes* 2016, 128C.01, subd.1; and 128C.20.

⁵¹ *Minnesota Statutes* 2016, 128C.20.

⁵² *Minnesota Statutes* 2016, 128C.02, subd. 6; and 128C.20.

⁵³ *Minnesota Statutes* 2016, 128C.20.

⁵⁴ *Minnesota Statutes* 2016, 128C.02, subd. 6.

requirements.⁵⁵ The League is required to annually provide an evaluation of any proposed policies. However, the League did not report to MDE certain changes in transfer eligibility appeal *procedures* adopted by the board in late 2010, in 2011, and in 2013.⁵⁶ League staff said that they do not report all proposed procedures to MDE.

Although MDE has authority to do so, MDE staff told us that the department does not systematically review and provide feedback to the League on its eligibility bylaws, policies, and procedures before and after they are adopted.⁵⁷ Instead, to develop the annual legislative report, the League provides and MDE reviews the League's information once per year (about November, typically). Meanwhile, the League makes changes to policies and procedures throughout the year, but does not report all changes to MDE. This means that the information provided by the League and the timing for preparing the MDE report in January for the Legislature occurs well after some policies or procedures are adopted.⁵⁸ This process does not ensure meaningful external review and feedback from MDE on proposed changes to League policies and procedures.

MDE's review of League eligibility regulations and their impact on students is important because the Legislature has exempted League rules from the APA and its rulemaking requirements, in part, because of the considerable knowledge of the League and its member schools about high school sports and national athletic program standards. The League also is exempt from other statutory review processes; specifically, the Legislative Coordinating Commission (LCC) may hold public hearings to investigate complaints of agency rules subject to the APA and may request the Office of Administrative Hearings to hold public hearings for rules.⁵⁹ The LCC delegates this responsibility to its LCC Subcommittee on

⁵⁵ For example, the League did not submit to MDE information regarding at least ten lawsuits filed against the League during 2011 through 2016. In two lawsuits, the League entered into settlements that included confidential provisions. We verified that the League did report all independent hearings held by the League during school years 2012 through 2016.

⁵⁶ Minnesota State High School League, Board of Directors meeting minutes, December 2, 2010, 3; Minnesota State High School League, Board of Directors meeting minutes, April 7, 2011, 8; and Minnesota State High School League, Board of Directors meeting minutes, October 3, 2013, 2.

⁵⁷ A 1998 report by the Office of the Legislative Auditor recommended that the Legislature expand the oversight role of MDE (then referred to as The Department of Children, Families, and Learning) with regard to the League, including a non-binding 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 families. In his response letter, Commissioner Robert J. Weil supported the expansion of the department's oversight role to include such a review. Office of the Legislative Auditor, Program Evaluation Division, *Minnesota State High School League* (St. Paul, 1998) 44-45 and 49. The 1999 Legislature subsequently amended state law to expand the department's oversight role. *Laws of Minnesota* 1999, chapter 241, art. 9, sec. 39, codified as *Minnesota Statutes* 2016, 128C.20.

⁵⁸ To illustrate, policy amendments adopted in December may not be forwarded to MDE until nearly one year later. As a current example of the reporting and review process, the board approved a final version of a proposed new transfer eligibility appeal option at its February 2017 meeting. At the February meeting, the board set the proposal for final action at its upcoming April 2017 hearing. Under the current MDE review and reporting cycle, this proposal would not be reported to MDE until November 2017 for inclusion in its January 2018 legislative report.

⁵⁹ *Minnesota Statutes* 2016, 3.842. The commission may hold public hearings to investigate complaints with respect to rules if it considers the complaints meritorious and worthy of attention. If the rules that are the subject of the public hearing were adopted without a rulemaking hearing, it may request the Office of Administrative Hearings to hold the public hearing and prepare a report summarizing the testimony received at the hearing. The Office of Administrative Hearings shall assess the costs of the public hearing to the agency whose rules are the subject of the hearing. This statute also allows the LCC to periodically review statutory exemptions to state agency rulemaking provisions.

Administrative Rules (however, this subcommittee last met to address complaints about agency rules in 2004).

We think that the League's current rulemaking processes suffer from a lack of sufficient state oversight. From our work, we found that the League has made frequent changes to transfer student eligibility procedures, imposed unreasonable requirements on some students, created duplicate and unclear procedures, and has not codified requirements under certain transfer scenarios that would improve the uniformity of eligibility rules and processes. Among the case files we reviewed, these deficiencies impeded a quick resolution of eligibility matters and raised concerns about whether some transfer students received due process and fair hearings. In recent years, the League has been the subject of lawsuits that question the League's approach to student eligibility; some of this litigation focused on the basic language of the League's transfer eligibility appeal and fair hearing procedures. The League is exempt from the APA, and, thus, its procedures do not go through a public notice, review, and comment process before an administrative law judge.⁶⁰

RECOMMENDATIONS

The Legislature should amend:

- ***Minnesota Statutes 2016, Chapter 128C, to require the Minnesota Department of Education to (1) review League transfer eligibility bylaws, policies, procedures, and definitions for compliance with MDE programs and related state and federal laws, and (2) prepare and submit to the Legislature the annual report regarding the Minnesota State High School League.***
- ***Minnesota Statutes 2016, 3.842, subds. 1-3, to provide for discretionary review by the Legislative Coordination Commission of complaints regarding League eligibility bylaws, policies, and procedures.***

The Minnesota Department of Education relies too much on League staff to self-report changes in student eligibility requirements, and MDE does not provide ongoing review of League eligibility bylaws, policies, and procedures. The League is not required to obtain feedback from MDE *prior to* board vote and approval on policies or procedures, and it does not systematically report proposed changes to the department.

We recommend that the Legislature amend *Minnesota Statutes 2016, 128C.20*, to require MDE to review League transfer eligibility bylaws, policies, and procedures for compliance with MDE programs and related state and federal law. In 1999, the Legislature amended state statutes to give MDE non-binding authority to carry out this type of review, but the department does not do so. Additional external legal review of League eligibility requirements should help identify areas of potential conflict in the eligibility processes. In accordance with statutory requirements, the department should recommend to the Legislature whether any legislation is needed to address concerns or deficiencies in League

⁶⁰ In the case of state agencies, most judicial challenges of agency rules are directed at agency policy guidelines that were not the result of formal rulemaking. See Office of the Legislative Auditor (OLA), Program Evaluation Division, *Administrative Rulemaking* (St. Paul, 1993), 83. Further, citing *McKee v. Likens*, 261 N.W.2d 566 (Minn. 1977), the OLA report found that courts have usually held that whenever an agency interprets a statute by applying criteria through written policy statements or directives, it must go through the procedures outlined in the APA.

compliance.⁶¹ State statutes also require the League to prepare the annual legislative report about the League, although, MDE has been performing this task. The Legislature should amend state statutes to align with the department's current practice.

The Legislature authorized Minnesota high schools to delegate their control of extracurricular activities to the League, and granted power to the League to control contests by and between pupils of member schools. Among the League's founding purposes, the League was organized to establish uniform and equitable rules for youth in interschool activities, and to do so on behalf of member schools. The Legislature has directed the League to adopt certain rules and rulemaking procedures governing student's eligibility to participate in League events. We think that the Legislature should do more to ensure that League eligibility regulations are reviewed for clarity and reasonableness and for compliance with state and federal law.

We recommend that the Legislature amend *Minnesota Statutes* 2016, 3.842, to provide for discretionary review by the Legislative Coordinating Commission of complaints regarding League general eligibility and administrative bylaws, policies, or procedures. This recommendation does not include oversight of League bylaws or rules specific to or for the administration of athletic programs or games.⁶² We also do not see a need for legislative review of either the League's or schools' regulations regarding student conduct. This type of legislative review could consider whether the League exceeded its rulemaking authority as delegated by the Legislature or acted consistent with legislative intent, for example. If the complaint involves eligibility requirements that were adopted without a hearing before an administrative law judge, the LCC, through its Subcommittee on Administrative Rules, could refer the League eligibility bylaw, policy, or procedure to the Office of Administrative Hearings for its review. If needed, the Legislature could address any concerns by amending *Minnesota Statutes*, Chapter 128C, or other statutes.

⁶¹ *Minnesota Statutes* 2016, 128C.20, subd. 2.

⁶² For example, we do not think more legislative review is needed regarding the appropriate number of allowed pitches by a pitcher in a baseball game or the allowed number of basketball games in a season.



List of Recommendations

- The League Office should improve its online transfer forms and correspondence to (1) fully describe transfer student appeal documentation requirements; and (2) fully explain League rationale for denying eligibility and appeals. (p. 32)
- The Legislature should amend Minnesota statutes to require the Minnesota Department of Education to monitor transfer student eligibility cases appealed to the League due to “intolerable conditions.” (p. 35)
- The Legislature should amend Minnesota statutes to:
 - Require the Minnesota State High School League to (1) establish a fair hearing process for transfer student eligibility decisions, and (2) utilize independent hearing officers selected from a list maintained by the Minnesota Department of Education.
 - Require the Minnesota Department of Education to maintain a list of independent hearing officers for purposes of the League’s fair hearings.
 - Provide for random assignment of independent hearing officers to hear transfer student eligibility appeals. (p. 37)
- The Minnesota State High School League Eligibility Committee should improve its review of League staff decisions regarding appeal and hearing requests; for cases not explicitly addressed in League bylaws, policies, or procedures, League staff should consult with the Eligibility Committee. (p. 42)
- The League should modify its website to improve its content and access to transfer student eligibility information for the public and member schools. (p. 45)
- The Legislature should amend *Minnesota Statutes* 2016, 128C.03, to require the League to:
 - Maintain a public rulemaking docket on the League’s external website that includes historical and proposed changes in eligibility bylaws, policies, and procedures.
 - Post notice and final versions of all proposed changes to eligibility policies, procedures, and definitions to the League website at least 30 days prior to board meetings.
 - Reduce the required minimum number of requestors for a public hearing on proposed eligibility bylaws, policies, and procedures to 25 parents or guardians of students.
 - Include publication dates on all versions of the League’s official handbook (or other advisory documents) regarding League eligibility bylaws, policies, procedures, and definitions.
 - Reconcile and remove duplicate, obsolete, or unnecessary eligibility policies and procedures. (p. 63)

- The Legislature should amend:
 - *Minnesota Statutes* 2016, Chapter 128C, to require the Minnesota Department of Education to (1) review League transfer eligibility bylaws, policies, procedures, and definitions for compliance with MDE programs and related state and federal laws, and (2) prepare and submit to the Legislature the annual report regarding the Minnesota State High School League.
 - *Minnesota Statutes* 2016, 3.842, subs. 1-3, to provide for discretionary review by the Legislative Coordinating Commission of complaints regarding League eligibility bylaws, policies, and procedures. (p. 66)

Appendix: Transfer Student Ineligibility, Exceptions and Appeals

Bylaw 111 Exceptions to Transfer Student Athletic Ineligibility, Fall 2016

Minnesota State High School League Bylaw 111.00

For each transfer, a student is presumed ineligible for varsity competition for a period of one calendar year beginning with the first day of attendance at the new school. Students are immediately eligible for competition at the non-varsity level.

Exceptions to presumed ineligibility for students transferring from a U.S. school to a League-member school:

A transfer student is eligible for varsity competition provided the student was in Good Standing on the date of withdrawal from the last school the student attended **and** one of the provisions below is met:

9th Grade Option:

The student is enrolling in 9th grade for the first time.

Family Residence Change:

The student transfers from one public school district attendance area to another public school district attendance area at any time during the calendar year in which there is a change of residence and occupancy in Minnesota by the student's parents. If the student's parents move from one public school district attendance area to another public school district attendance area, the student will be eligible in the new public school attendance area or a nonpublic school if the student transfers at the same time the student's parents establish a new family residence.

OR

If the parents move from one public school district attendance area to another public school district attendance area, the student shall continue to be fully eligible if the student continues enrollment in the prior school for the balance of the current marking period or for the balance of the academic school year. If the student elects either of the current enrollment options above, the student will be fully eligible upon transfer to the new school in the public school district attendance area where the student's parents reside or a nonpublic school.

A student who elects not to transfer upon a parent's change in residence shall continue to be eligible at the school in which the student is currently enrolled.

Court Ordered Residence Change for Child Protection:

The student's residence is changed pursuant to a child protection order placement in a foster home or a juvenile court disposition order.

Divorced Parents:

A student of divorced parents who have joint, legal physical custody of the student, as indicated in the divorce decree, who moves from one custodial parent to the other custodial parent shall be fully eligible at the time of the move:

- (a) At the public school in the new public school attendance area as determined by the district school board where the new residence is located; or
- (b) At any nonpublic school.

The student may utilize this provision only one time during grades 9-12 inclusive. The new residence cannot be located in the same public school attendance area as the previous residence. The parents must provide proof of joint, legal physical custody as identified in the parents' divorce decree to the activity director in the school the student attends.

Move from Out of State:

If a student's parents move to Minnesota from a state or country outside of Minnesota and if the student moves at the same time the parent establishes a residence in a Minnesota public school district attendance area, the student shall be eligible at the first school the student attends in Minnesota.

NOTE: League *Bylaw 111* and transfer eligibility suspensions do not apply to transfer students who participate in fine arts.

SOURCE: Minnesota State High School League, *2016-2017 Official Handbook* (Brooklyn Center, MN; undated hardcopy), 21-22.

Circumstances for Appealing Transfer Student Ineligibility, Fall 2016

Board of Directors *Bylaw 111* Policy, Transfer Student Eligibility Appeal Procedures

All Transfer Students are deemed presumptively ineligible for varsity athletics unless they meet one of the exceptions listed in *Bylaw 111* or are determined by the League Office to satisfy one of the appeal circumstances below.

- Documented internal Board of Education policies regarding the movement of students within the school district.
- Adoption, abandonment, or death of a parent.
- A documented substantial negative change in the economic status of the student's parents which requires the student to withdraw from their current school and enroll in the public school located in the public school district attendance area where the student's parents reside.
- Intolerable conditions at the Sending School as affirmed in writing by the Sending School. When situations arise that the student or parents believe have created an intolerable condition, the acts complained of must first be reported to the appropriate administrators at the school so they have the opportunity to investigate and take any action they deem necessary to resolve the problem. If the parents believe that actions or situations are occurring that have an adverse impact on the physical or psychological well-being of the student, the student must have been referred to an appropriate medical or psychological professional. That professional must prepare a written report that can be provided, on a confidential basis, to the school, the League office and the independent hearing officer if a hearing is required. If police action has been taken, copies of the reports showing that an investigation was actually conducted and the results of that investigation must be provided. In general, allegations alone are not sufficient. There must be some reasonable and believable substantiation presented to indicate an incident or incidents actually occurred. As well, the perpetrators must be identified.
- Administrative error in addressing a student's initial eligibility.
- Completion of a licensed program for treatment of alcohol or substance abuse, mental illness or emotional disturbance provided all other eligibility rules are followed.

Minnesota State High School League, Constitution 211.02(6)

Special and Unusual Circumstances:

Upon a showing of special and unusual circumstances that warrant an exception, the board shall have discretion to limit, modify or waive the application of the penalty for the violation of any bylaw. It shall also exercise authority over all eligibility problems and cases which are not specifically provided for.

NOTE: The League has adopted separate policies and an eligibility appeal process for transfer students who have an individualized education program.

SOURCE: Minnesota State High School League, *2016-2017 Official Handbook* (Brooklyn Center, MN; undated hardcopy), 25, 51-52, and 133.



Education and Leadership for a Lifetime

2100 Freeway Boulevard, Brooklyn Center, Minnesota 55430-1735 | (763) 560-2262, FAX (763) 569-0499 | www.mshsl.org

Dear Mr. Nobles:

Thank you for the opportunity to respond to the results and recommendations of the Minnesota State High School League legislative audit. We welcome the opportunity to review our processes in an ongoing effort to ensure alignment with best practices and League goals. We view the audit performed by your Office as a valuable opportunity for an independent assessment of our processes, and we appreciate the staff resources and professional analysis you dedicated to this review.

The MSHSL is a non-profit, voluntary association of public, non-public, charter, and online schools, which sponsors one of the most comprehensive programs of interscholastic activities in the United States—activities that involve 500+ member schools, 316,718 students, over 20,000 coaches, and approximately 10,000 contest officials and judges. According to a 2015-16 NFHS national survey of 51 state high school athletic/activity associations, Minnesota ranks 10th in the nation in the total number of student athletes. Each year, over 500,000 people attend ticketed MSHSL state championships. To date in 2016, just under 200,000 people attended five fall state championships.¹

We were pleased with the Report's finding that "The League's final decisions in most transfer eligibility cases we reviewed clearly aligned with League bylaws, policies, procedures, or goals." p. 29. This finding was supported by the Report's survey results which show, among other things, that 89% of responding high school activities administrators agree that the League makes the right decisions about student eligibility and that 80% were satisfied with opportunities for member school input into League policies and procedures. Nevertheless, the MSHSL is committed to continuous improvement in all areas, including the two areas specifically identified in the OLA report—transfer eligibility and rulemaking. We found the information provided helpful and important as we work to fulfill our mission to provide educational opportunities for students through interscholastic athletic and fine arts programs and provide leadership and support for member schools. Again, please extend our appreciation to the audit managers and staff responsible.

In response to the OLA's findings and recommendations, we submit the following.

¹ Soccer, Adapted Soccer, Football, Girls Swimming, and Volleyball.

Recommendation #1

The League Office should improve its online transfer forms and correspondence to (1) fully describe transfer student appeal documentation requirements; and (2) fully explain League rationale for denying eligibility and appeals.

We agree with this recommendation and will take immediate steps to implement it. The League will update its online transfer forms² and communications to more fully describe the documentation and information that it relies upon in eligibility matters. This will allow high school administrators and the public to be better informed at an earlier stage. League staff in coordination with the Eligibility Committee and member schools will identify the types of information and/or documentation that is relevant to a broad range of eligibility determinations so that it will be available to member schools and the public prior to the 2017-18 school year. Throughout the spring of 2017, League staff will meet with activities administrators throughout the state to obtain their input on improving the transfer eligibility process.

In addition, the League will identify the precise reasons for granting/denying appeals and will work with the Eligibility Committee to establish a written policy setting forth the criteria for doing so prior to the start of the 2017-18 school year.

Responsible Staff: David Stead, Executive Director
Anticipated Completion Date: August 1, 2017

Recommendation #2

The Legislature should amend Minnesota statutes to require the Minnesota Department of Education to monitor transfer student eligibility cases appealed to the League due to “intolerable conditions.”

We agree with this recommendation. The League can easily implement this recommendation provided the Legislature gives statutory direction to do so. The League provides MDE with information on every hearing officer recommendation, and could expand this to include appeals based on “intolerable conditions.” For purposes of clarity, we believe a better reference would be to allow for appeals based on bullying as described in Minn. Stat. § 121A.031. Input on amending the “intolerable conditions” appeal provision to “bullying” will be sought from member schools and activities administrators during the Spring 2017 as described in the response to Recommendation #1.

Responsible Staff: David Stead, Executive Director
Anticipated Completion Date: August 1, 2017

² It should be noted that approximately 89% of responding high school activities administrators were satisfied with the League’s online system for reporting student transfers.

Recommendation #3

The Legislature should amend Minnesota statutes to:

- (a) Require the Minnesota State High School League to (1) establish a fair hearing process for transfer student eligibility decisions, and (2) utilize independent hearing officers selected from a list maintained by the Minnesota Department of Education.*
- (b) Require the Minnesota Department of Education to maintain a list of independent hearing officers for purposes of the League's fair hearings.*
- (c) Provide for random assignment of independent hearing officers to hear transfer student eligibility appeals.*

(a)(1) While we have concerns (discussed below), the League would agree to a statutory amendment to require review of eligibility determinations. The League proposes that a statutory requirement state:

The League shall develop and maintain a process to review eligibility determinations that provides students and parents with a reasonable opportunity to present information regarding eligibility disputes.

The League is deeply concerned that legislatively enacting a review process could have significant unintended consequences. The League and Minnesota schools firmly believe that participation in extracurricular activities is a privilege and not a right.³ The significance of this concern is recognized by the OLA in its recommendation on page 38. The MSHSL agrees and proposes language similar to that which is found in Minn. Stat. § 121A.59 with respect to bus transportation:

Participation in extracurricular activities is a privilege and not a right. A student's eligibility to participate in extracurricular activities may be suspended or revoked for a violation of MSHSL bylaws, rules, policies and procedures, or for violation of any other law or policy governing student conduct. Revocation or suspension of a student's extracurricular activity participation privilege is not an exclusion, expulsion, or suspension under the Pupil Fair Dismissal Act. A decision by the MSHSL Board of Directors regarding eligibility is final.

Responsible Staff: David Stead, Executive Director

Anticipated Completion Date: August 1, 2017

(a)(2)-(c) The League does not support the recommendation regarding transfer of independent hearing officer assignment to the Department of Education. The League's current hearing process utilizes three hearings officers—two retired state district court judges and an internationally recognized arbitrator. There is no finding in the Report that the current hearing officers are inadequate or ineffective. To the contrary, the Report “found that independent hearing officers do

³ 92% of responding high school activities directors agree that participation in interscholastic activities is a privilege and not a right.

not always agree with League staff decisions.” Ch. 2, p. 20. A review of ten years of hearing officer decisions demonstrates disagreement with League staff approximately 30% of the time.⁴ Moreover, the Report recognizes that this system is common in the educational setting: “the League’s use of independent hearing officers also is similar to that used by school boards when disciplining students.” p. 37.

The League respectfully requests to maintain its current process of utilizing independent hearing officers while implementing the Report’s recommendation regarding random selection. The League will expand its current roster of hearing officers to include at least five hearing officers who would be assigned at random. The League will publish the roster together with the resumes of the IHO’s. A roster of five hearing officers should be more than sufficient to cover the roughly 10 hearings that occur each year. Adding another bureaucratic layer with the selection going through MDE would undoubtedly slow the entire process down. In addition, the League does not support assigning costs to students and parents.

Responsible Staff: David Stead, Executive Director
Anticipated Completion Date: August 1, 2017

Recommendation #4

The Minnesota State High School League Eligibility Committee should improve its review of League staff decisions regarding appeal and hearing requests; for cases not explicitly addressed in League bylaws, policies or procedures, League staff should consult with the Eligibility Committee.

The League will implement this recommendation prior to the 2017-18 school year. League staff will work with its Board of Directors and Eligibility Committee to develop a procedure for increased review by the Eligibility Committee of League staff decisions regarding appeal and hearing requests. It should be noted, however, that nearly 70% of activities administrators disagree that the Board of Directors should be more directly involved in transfer student eligibility determinations.

Responsible Staff: David Stead, Executive Director
Anticipated Completion Date: August 1, 2017

Recommendation #5

The League should modify its website to improve its content and access to transfer student eligibility information for the public and member schools.

The League will implement this recommendation prior to the 2017-18 school year. The League will work with internal staff, outside consultants, parents, and member schools to improve transfer student eligibility information on its website. For example, the League will identify frequently

⁴ 81% of high school activities administrators agree that the current “transfer eligibility appeal and hearing process provides a fair and adequate due process for students.” Exhibit. 3.2.

relied upon types of documentation/information and will work to publish summaries of eligibility determinations.⁵

Responsible Staff: David Stead, Executive Director
Anticipated Completion Date: August 1, 2017

Recommendation #6

The Legislature should amend Minnesota Statutes 2016, 128C.03, to require the League to:

- (a) Maintain a public rulemaking docket on the League's external website that includes historical and proposed changes in eligibility bylaws, policies, and procedures.*
- (b) Post notice and final versions of all proposed changes to eligibility policies, procedures, and definitions to the League website for at least 30 days prior to board meetings.*
- (c) Reduce the required minimum number of requestors for a public hearing on proposed eligibility bylaws, policies, and procedures to 25 parents or guardians of students.*
- (d) Include publication dates on all versions of the League's official handbook (or other advisory documents) regarding League eligibility bylaws, policies, procedures, and definitions.*
- (e) Reconcile and remove duplicate eligibility policies and procedures.*

The League will implement these recommendations and, as a result, does not believe legislation is necessary. The League is committed to transparency in its rulemaking procedures and will implement all of these recommendations prior to the start of the 2017-18 school year. The League will establish a section of its external website dedicated to Board meetings where it will post agendas and meeting packets in advance of meetings. In addition, the League will create a public rulemaking docket, which would include historical and proposed changes as well as final versions of eligibility bylaws, policies, and procedures. Notice of proposed changes will be posted at least 30 days prior to the meeting.

The League will conduct an internal review of its handbook to reconcile and remove duplicate eligibility policies and procedures and include future publication dates for League eligibility bylaws, policies, procedures, and definitions.

Responsible Staff: David Stead, Executive Director
Anticipated Completion Date: August 1, 2017

⁵ Because the information includes educational data on students, the League's concern would be to remove all personal identifiers in compliance with the Minnesota Government Data Practices Act while maintaining enough information to accurately convey the rationale for the determination.

Recommendation #7

The Legislature should amend:

- (a) Minnesota Statutes 2016, Chapter 128C, to require the Minnesota Department of Education to (1) review League transfer eligibility bylaws, policies, procedures, and definitions for compliance with MDE programs and related state and federal laws, and (2) prepare and submit to the Legislature the annual report regarding the Minnesota State High School League.*
- (b) Minnesota Statutes 2016, 3.842, subds. 1-3, to provide for discretionary review by Legislative Coordinating Commission of complaints regarding League eligibility bylaws, policies, and procedures.*

The League agrees with recommendation (a).

The League respectfully requests that recommendation (b) not be implemented. As noted by the OLA, the League is not a state agency. Unlike a state agency, the League has a Board of Directors that is responsible for overseeing bylaws⁶ and regulations. The Commission's jurisdiction is mainly limited to rules passed by *state agencies* pursuant to Minn. Stat. Ch. 14 (the Administrative Procedure Act). *See* § 3.842, subd 2. The existing structure represents all affected parties in the policy-making process.

The League embraces the opportunity to implement OLA's recommendations and will have most, if not all, in place prior to the 2017-18 school year. The recommendations will serve to strengthen the League's mission to provide educational opportunities for students through interscholastic athletic and fine arts programs and provide leadership and support for member schools. We thank you again for the hard work and diligence that went into the OLA Report and for the opportunity to respond.

Sincerely,



David V. Stead
Executive Director

⁶ Bylaws are proposed and adopted by member schools through the Representative Assembly process.



March 28, 2017

James Nobles, Legislative Auditor
Office of the Legislative Auditor, Room 1
40 Centennial Building
658 Cedar Street
St. Paul, MN 55155

Dear Mr. Nobles,

Thank you for the Office of the Legislative Auditor's (OLA) program report on the Minnesota State High School League (the League). The Minnesota Department of Education (MDE) appreciates your auditors' thorough evaluation of this important agency. I commend your auditors for a fair and comprehensively researched report.

The legislature established the League as an independent, nonprofit organization. The legislature also granted the League significant autonomy in its operations, including the ability to create rules and processes that bypass the Minnesota Administrative Procedures Act. Therefore, MDE's oversight role has traditionally been limited to the specific provisions of Minnesota Statutes § 128C.20. This audit seeks to significantly expand MDE's oversight role of the League.

While MDE was not the direct subject of this audit, I appreciate your office's willingness to communicate with MDE throughout the process and for the ability to present an official response to the recommendations. To that end, I have considered the recommendations and information contained in the report and provide the feedback below:

Recommendation #1:

The League Office should improve its online transfer forms and correspondence to (1) fully describe transfer student appeal documentation requirements; and (2) fully explain League rationale for denying eligibility and appeals.

MDE supports this recommendation. This change will assist MDE in ensuring a more meaningful external review of league activities or league-related issues as provided for in Minnesota Statutes § 128C.20. It will also provide more transparency for member schools, students, and their families.

Recommendation #2:

The Legislature should amend Minnesota statutes to require the Minnesota Department of Education to monitor transfer student eligibility cases appealed to the League due to “intolerable conditions.”

MDE supports the spirit of this recommendation but feels more legislative discussions are needed to ensure the recommendation accomplishes the desired outcomes. MDE would require additional funding to ensure we have the capacity to properly monitor appeals.

The recommendation identifies the School Safety and Technical Assistance Center (SSTAC) in MDE as the recipient of transfer appeals. While the SSTAC provides technical assistance to districts around bullying and school climate, it does not have enforcement authority under the Safe and Supportive Schools Act. As written in this recommendation, the SSTAC may end up monitoring a case of “intolerable conditions” without the ability to make any recommendations or require any corrective action due to non-compliance.

Recommendation #3:

The Legislature should amend Minnesota statutes to:

- *Require the Minnesota State High School League to (1) establish a fair hearing process for transfer student eligibility decisions, and (2) utilize independent hearing officers selected from a list maintained by the Minnesota Department of Education*
- *Require the Minnesota Department of Education to maintain a list of independent hearing officers for purposes of the League’s fair hearings.*
- *Provide for random assignment of independent hearing offers to hear transfer student eligibility appeals.*

MDE supports this recommendation. MDE would utilize the Minnesota Office of Administrative Hearings (OAH), administrative law judges to fulfill the obligation under this recommendation. MDE will work with OAH to ensure random assignment of the independent hearing officers to hear transfer student eligibility appeals. The legislature should be sure to consider the significant costs that can be associated with using independent hearing officers, who should bear the responsibility for those costs, and whether sufficient resources exist to cover those costs.

Recommendation #4:

The Minnesota State High School League Eligibility Committee should improve its review of League staff decisions regarding appeal and hearing requests; for cases not explicitly addressed in League bylaws, policies or procedures, League staff should consult with the Eligibility Committee.

MDE does not take a position on this recommendation because it is specific to the League and does not directly impact MDE.

Recommendation #5:

The League should modify its website to improve its content and access to transfer student eligibility information for the public and member schools.

MDE supports this recommendation. This change will assist MDE in its review of league activities or league-related issues as provided for in Minnesota Statutes § 128C.20.

Recommendation #6:

The Legislature should amend Minnesota Statutes 2016, § 128C.03 to require the League to:

- *Maintain a public rulemaking docket on the League's external website that includes historical and proposed changes in eligibility bylaws, policies, and procedures.*
- *Post notice and final versions of all proposed changes to eligibility policies, procedures, and definitions to the League website at least 30 days prior to board meetings.*
- *Reduce the required minimum number of requestors for a public hearing on proposed eligibility bylaws, policies, and procedures to 25 parents or guardians of students.*
- *Include publication dates on all versions of the League's official handbook (or other advisory documents) regarding League eligibility bylaws, policies, procedures, and definitions.*
- *Reconcile and remove duplicate, obsolete, or unnecessary eligibility policies and procedures.*

MDE supports this recommendation. These changes will ensure a more meaningful external review process and will allow for more feedback on proposed changes in League policies and procedures.

Recommendation #7:

The Legislature should amend:

- *Minnesota Statutes 2016, Chapter 128C, to require the Minnesota Department of Education to (1) review League transfer eligibility bylaws, policies, procedures, and definitions for compliance with MDE programs and related state and federal laws, and (2) prepare and submit to the Legislature the annual report regarding the Minnesota State High School League.*
- *Minnesota Statutes 2016, 3.842, subds. 1-3, to provide for discretionary review by the Legislative Coordinating Commission of complaints regarding League eligibility bylaws, policies, and procedures.*

MDE supports this recommendation. These changes will assist MDE in carrying out its oversight responsibilities under Minnesota Statutes § 128C.20.

MDE and the League have made considerable efforts to ensure League bylaws and policies align with state and federal laws pertaining to special education and discrimination based on

sex. MDE's ability to review additional information will increase MDE's ability to collaborate with the League. This collaboration will result in a more thorough and meaningful examination of League materials and a more complete annual Legislative report under Minnesota Statute § 128C.20. MDE appreciates the clarification that MDE should only review League compliance with state and federal laws that are within MDE's scope of authority.

While MDE supports this recommendation, we do not currently have the staff capacity or resources to fully implement these changes. MDE will need additional funding to implement these changes should the legislature choose to adopt this recommendation.

Again, MDE appreciates the thoughtful and comprehensive review of the Minnesota State High School League. We look forward to working with lawmakers and advocates on these recommendations and will use the audit in our ongoing continuous improvement efforts to ensure a high quality education to every Minnesota student so that all students can reach their highest potential.

Sincerely,

A handwritten signature in black ink that reads "Brenda Cassellius". The signature is written in a cursive, flowing style.

Dr. Brenda Cassellius
Commissioner

Recent OLA Evaluations

Agriculture

Agricultural Utilization Research Institute (AURI),
May 2016

Agricultural Commodity Councils, March 2014
“Green Acres” and Agricultural Land Preservation
Programs, February 2008
Pesticide Regulation, March 2006

Criminal Justice

Mental Health Services in County Jails, March 2016
Health Services in State Correctional Facilities,
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Law Enforcement’s Use of State Databases, February 2013
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MINNCOR Industries, February 2009
Substance Abuse Treatment, February 2006

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Minnesota Research Tax Credit, February 2017
Iron Range Resources and Rehabilitation Board (IRRRB),
March 2016
JOBZ Program, February 2008

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Perpich Center for Arts Education, January 2017
Minnesota Teacher Licensure, March 2016
Special Education, February 2013
K-12 Online Learning, September 2011
Alternative Education Programs, February 2010
Q Comp: Quality Compensation for Teachers,
February 2009
Charter Schools, June 2008

Education, Postsecondary

Preventive Maintenance for University of Minnesota
Buildings, June 2012
MnSCU System Office, February 2010
MnSCU Occupational Programs, March 2009

Energy

Renewable Energy Development Fund, October 2010
Biofuel Policies and Programs, April 2009
Energy Conservation Improvement Program, January 2005

Environment and Natural Resources

Clean Water Fund Outcomes, March 2017
Department of Natural Resources: Deer Population
Management, May 2016
Recycling and Waste Reduction, February 2015
DNR Forest Management, August 2014
Sustainable Forest Incentive Program, November 2013
Conservation Easements, February 2013
Environmental Review and Permitting, March 2011
Natural Resource Land, March 2010

Government Operations

Mineral Taxation, April 2015
Minnesota Board of Nursing: Complaint Resolution
Process, March 2015
Councils on Asian-Pacific Minnesotans, Black
Minnesotans, Chicano/Latino People, and Indian
Affairs, March 2014
Helping Communities Recover from Natural Disasters,
March 2012
Fiscal Notes, February 2012
Capitol Complex Security, May 2009

Health

Minnesota Department of Health Oversight of HMO
Complaint Resolution, February 2016
Minnesota Health Insurance Exchange (MNSure),
February 2015
Financial Management of Health Care Programs,
February 2008
Nursing Home Inspections, February 2005

Human Services

Home- and Community-Based Services: Financial
Oversight, February 2017
Managed Care Organizations’ Administrative Expenses,
March 2015
Medical Assistance Payment Rates for Dental Services,
March 2013
State-Operated Human Services, February 2013
Child Protection Screening, February 2012
Civil Commitment of Sex Offenders, March 2011
Medical Nonemergency Transportation, February 2011
Personal Care Assistance, January 2009

Housing and Local Government

Consolidation of Local Governments, April 2012

Jobs, Training, and Labor

State Protections for Meatpacking Workers, 2015
State Employee Union Fair Share Fee Calculations,
July 2013
Workforce Programs, February 2010
E-Verify, June 2009
Oversight of Workers’ Compensation, February 2009

Miscellaneous

Minnesota Film and TV Board, April 2015
The Legacy Amendment, November 2011
Public Libraries, March 2010
Economic Impact of Immigrants, May 2006
Liquor Regulation, March 2006

Transportation

MnDOT Highway Project Selection, March 2016
MnDOT Selection of Pavement Surface for Road
Preservation, March 2014
MnDOT Noise Barriers, October 2013
Governance of Transit in the Twin Cities Region,
January 2011
State Highways and Bridges, February 2008



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