



Minnesota State High School League

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

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.
- 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.
- Among students who recently transferred between Minnesota schools or from another state, about 53 percent were granted eligibility to compete in varsity athletics.
- 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.
- Many League eligibility decisions took more time due to (1) deficiencies in League transfer regulations, or (2) inconsistent and inadequate League guidance.
- The League Board of Directors and Eligibility Committee provide insufficient oversight of transfer student eligibility decisions.
- 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.
- The Minnesota Department of Education (MDE) does not provide sufficient oversight of League reporting and eligibility regulations.

- 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.

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.
- The Legislature should amend *Minnesota Statutes* 2016, 3.842, to provide for discretionary review of League eligibility regulations by the Legislative Coordinating Commission.
- 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.
- 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.
- 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.

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. 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.

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

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

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

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 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

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

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 also said that they do not report all 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 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.

Summary of Agencies' Responses

In a letter received March 28, 2017, the Minnesota State High School League Executive Director (League) David Stead said that "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." On behalf of the League, he expressed concern that legislatively enacting a fair hearing review process for eligibility decisions "could have significant unintended consequences" without clarifying that "participation in extracurricular activities is a privilege and not a right." He also respectfully requested that the Legislature not implement the recommendation to allow for discretionary review by the Legislative Coordinating Commission of complaints about League eligibility regulations. In a letter dated March 28, 2017, the Minnesota Department of Education (MDE) Commissioner Brenda Cassellius generally supported most recommendations in the report, noting that several recommendations will assist MDE in carrying out its oversight responsibilities regarding the League or "provide more transparency for member schools, students, and their families." She also stated that the Legislature should consider the costs associated with some of the recommendations and noted that MDE does not "currently have the staff capacity or resources to fully implement these changes."

The full evaluation report, *Minnesota State High School League*, is available at 651-296-4708 or:
www.auditor.leg.state.mn.us/ped/2017/mshsl.htm