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## Michigan High Schools Now in Sync

Adam Epstein, *Central Michigan University*



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the CAS to be broad covering all activities that pertain to sports; further explaining that the CAS "does not resolve technical questions, such as the particular rules of the game, scheduling of competition, or authorization of equipment and clothing by athletes."

136. See Beloff, *supra* note 87, at 43. "[I]t should be noted that several courts have held that tribunals constituted under the CAS Code for Sports-related Arbitration are true arbitral tribunals, unlike the internal tribunals of sports federations." GABRIELLE KAUFMANN-KOHLER, *ARBITRATION AT THE OLYMPICS: ISSUES OF FAST-TRACK DISPUTE RESOLUTION AND SPORTS LAW* 3 (2001).

137. *Futile Exercise*, *supra* note 92.

138. See Cotten & Wolchan, *supra* note 43, at 48 (describing the significance of arbitration over standard legal litigation and the example of CAS arbitration No. CAS OG 02/003, Salt Lake City, Feb. 12, 2002).

139. Tyler Hamilton's case is a perfect example where he appealed the decision, maintaining that he was innocent, but to no avail, the suspension stood. See Tyler Hamilton Journal, Feb. 11, 2006, <http://www.tylerhamilton.com/febmay2006239.html> (last visited July 5, 2007).

140. *Id.* ("Athletes have no right to appeal an adverse arbitration ruling to courts.")

141. *Id.*

142. *Id.*

143. See *Unbeatable Fo*, *supra* note 30.

144. Jerome Pugmire, *Landis Insists Lab Got Test Results Wrong*, USA TODAY, Nov. 12, 2006. Landis insists he was drug-free when he won the Tour de France in July 2006. *Id.*; see also *Floyd Fairness Fund*, <http://www.floyd-fairnessfund.org/> (last visited July 5, 2007).

fairnessfund.org/ (last visited July 5, 2007) (describing the legal battle of Floyd Landis to clear his name of doping allegations) [hereinafter *Floyd Fairness Fund*].

145. *Doping—Landis Slams WADA's Pound, Says Remarks Are Absurd*, REUTERS, Jan. 8, 2007, [http://today.reuters.com/news/articlenews.aspx?type=domesticNews&storyid=2007-01-09T035350Z\\_01\\_B857009\\_RTRUKOC\\_0\\_US-DOPING-LANDIS.xml&src=rss&rpc=22](http://today.reuters.com/news/articlenews.aspx?type=domesticNews&storyid=2007-01-09T035350Z_01_B857009_RTRUKOC_0_US-DOPING-LANDIS.xml&src=rss&rpc=22).

146. See *Unbeatable Fo*, *supra* note 30; see *Futile Exercise*, *supra* note 92.

147. Landis is the first to invoke the clause asking for a public hearing. Bonnie DeSimone, *Landis Doesn't Expect to Race This Season*, ESPN, Jan. 30, 2007, <http://sports.espn.go.com/oly/cycling/news/story?id=2748021> (describing the length of time the legal case for Floyd Landis will take).

148. See *Floyd Fairness Fund: The Case*, <http://www.floydfairnessfund.org/the-case.htm> (last visited Mar. 6, 2007) [hereinafter *The Case*].

149. See DeSimone, *supra* note 147; see also *Floyd Fairness Fund*, *supra* note 144.

150. *Floyd Landis Letter*, [http://www.floyd-fairnessfund.org/resources/Thank\\_you.pdf](http://www.floyd-fairnessfund.org/resources/Thank_you.pdf) (last visited July 8, 2007).

151. See *Landis Innocent*, *supra* note 91.

152. See *Futile Exercise*, *supra* note 92. In the arbitration provision it states that "their tests are presumed to be scientifically valid. It's assumed that their labs did everything perfectly. And they have no obligation to provide . . . documentation to rebut these presumptions." *Id.*

153. *Id.*

154. *Id.*

155. See DeSimone, *supra* note 147 (noting how much more limited and restrictive the discovery rules are for anti-doping arbitration).

156. *Id.*

157. See *The Case*, *supra* note 148.

158. GRAVIS TYGARF, *USADA RESPONSE LETTER* (2006), <http://www.floydfairnessfund.org/resources/11.03.06%20ltr%20firment%20request.pdf>

159. Associated Press, *Pound Defends Anti-Doping Lab in Landis Probe*, ESPN.com, Nov. 16, 2006, <http://sports.espn.go.com/oly/cycling/news/story?id=2662764>.

160. See generally Coffey, *supra* note 82.

161. Every professional rider was required to sign the anti-doping charter by July 6, 2007. They had to state not only were they not involved in doping, but that they promise to submit DNA samples. Moreover, if a cyclist has signed the statement and is later found guilty, they not only face a two-year ban, but also a fine equivalent to a year's salary.

162. Jerome Pugmire, *Doping Issues Cast Cloud Over Tour de France*, SAN JOSE MERCURY NEWS, July 6, 2007, [http://origin.mercurynews.com/sportsheadlines/ci\\_6311384](http://origin.mercurynews.com/sportsheadlines/ci_6311384).

163. See Beloff, *supra* note 87, at 40.

164. See *Futile Exercise*, *supra* note 92.

165. See generally *Bridge Too Far*, *supra* note 31.

166. Seattle Times News Service, *Tour de France: Doping Scandals Have Left Some U.S. Fans Disenchanted*, THE SEATTLE TIMES, July 6, 2007, [http://seattletimes.nwsource.com/html/sports/2003776835\\_tour06.html](http://seattletimes.nwsource.com/html/sports/2003776835_tour06.html).

## Michigan High Schools Now in Sync

BY ADAM EPSTEIN

On April 2, 2007, the Supreme Court of the United States finally put an end to a decade-long gender-equity dispute involving high school sports seasons in the state of Michigan. At issue was whether the Michigan High School Athletic Association's (MHSAA) refusal to synchronize girls' and boys' sports seasons in certain sports violated federal and state antidiscrimination laws, including Title IX.<sup>1</sup> The answer was "yes" on more than one occasion after

years of appeals by the MHSAA. The final bell rang in late spring 2007, however, when the Sixth Circuit Court of Appeals—yet again—affirmed the decisions of the Western District of Michigan, which had declared Michigan to be unequivocally out of compliance.<sup>2</sup> The MHSAA must now immediately address how to comply with the law beginning this fall 2007.

For years, six girls' sports were scheduled in seasons that did not coincide with boys' sports.<sup>3</sup> While this

might seem a bit odd to most parents, coaches and student-athletes around the country who are used to girls' basketball being played in the same season as men, for example, this separate but equal policy in Michigan actually seemed to work quite well. In fact, many Michiganders had viewed the policy with pride as the arrangement allowed an opportunity to showcase girls' athletic talents in a way that did not compete with the boys, gyms and fields did not have to be shared with the boys, and, in many instances, a single coaching staff could manage both the boys' and girls' teams in an efficient way.

However, that idiosyncratic source of pride began to be noticed at the national level when, in 1998, a Grand Rapids-based organization

known as Communities for Equity (CFE) filed a class-action lawsuit alleging that the separate but equal policy of playing certain girls' sports in nontraditional seasons violated established state and federal civil rights policies. Mothers Diane Madsen and Jay Roberts-Eveland were the two Grand Rapids-based women who initiated the lawsuit through CFE (who took the case without a fee for approximately 10 years). These two mothers were unhappy with the disparity in treatment with their daughters while in high school with regard to the separate but equal sports seasons.

After the case went to trial in 2001, the federal district court decision (authored by Judge Richard Alan Enslen) held that the MHSAA policy did indeed violate the U.S. Constitution, Title IX of the Education Amendments of 1972, and even Michigan state law.<sup>4</sup> After a series of appeals, the MHSAA proposed a plan, but that plan was rejected by the court, who sided with both CFE and the Department of Justice, who had both filed responses to the MHSAA plan. Then three alternate plans were given in August 2002 by the court itself from which MHSAA could choose.<sup>5</sup> In 2004, the Sixth Circuit Court of Appeals unanimously upheld the district court decision (which had been appealed again), holding that the MHSAA violated the 14th Amendment in scheduling high school sports.<sup>6</sup> Then, after yet another appeal, the U.S. Supreme Court ordered the Sixth Circuit to reconsider the case after a 2005 federal decision that affected how remedies are decided under federal law.<sup>7</sup> The district court decision was yet again upheld in 2006.<sup>8</sup>

The pros and cons of the Michigan high school sports setup is interesting. One of the advantages of the previous system was that Michigan girls could actually benefit over all the other states because it gave them more individual exposure to college recruiters. However, is that the purpose of high school sports? One of the disadvantages to the system was that many

girls were given second-class status in terms of practice or competition time, especially in seasons in which outdoor fields were still thawing out from the winter months.

The impact of the decade-long litigation is that some students might have to choose one sport over another since the sports would be in the same season now. While there may have been advantages and disadvantages to having separate but equal sports seasons for girls in Michigan, the fact remains that this policy will have to change and Michigan high schools, coaches, parents, and student-athletes will have to adapt to the realities of the legalities.

## MICHIGAN NOW JOINS THE 49 OTHER STATES WHO HAD ALREADY SYNCHRONIZED THEIR SPORTS SEASONS.

Michigan now joins the 49 other states who had already synchronized their sports seasons.<sup>9</sup> Some of the states such as Alaska, Arizona, Montana, South Dakota, Virginia, and West Virginia modified their separate but equal girls' basketball policies amicably in recent years either voluntarily or after being sued.<sup>10</sup> The MHSAA has to realign its sports seasons effective fall 2007 and it will have to consider various financial issues (such as hiring more coaches and referees) for the nearly 56,000 girls and 16,000 boys affected by the change.<sup>11</sup> Some Michigan communities might even have to build new facilities, which could result in an increase in state or local taxes. Such financial concerns are no laughing matter for a state already in dire financial straits.

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1. *Cmtys. for Equity v. Mich. High Sch. Ath. Ass'n*, 459 F.3d 676 (6th Cir. 2006), *cert. denied*, Mich. High Sch. Ath. Ass'n v. *Cmtys. for Equity*, 2007 U.S. LEXIS 3813 (Apr. 2, 2007). The MHSAA is a private, nonprofit agency that coordinates high school competition, enforces rules, and coordinates post-season tournaments for approximately 762 high schools and 816 junior high and middle schools.

2. On remand, *Cmtys. for Equity v. Mich. High Sch. Ath. Ass'n*, 178 F. Supp. 2d 805, 2001 U.S. Dist. LEXIS 21728 (W.D. Mich. 2001).

3. The sports in question involved a combination of girls' volleyball, girls' basketball, girls' soccer, and boys' and girls' golf and tennis. Volleyball is not a male sport in Michigan.

4. *Cmtys. for Equity*, 178 F. Supp. 2d 805 (citing Michigan's Elliot-Larsen Civil Rights Act, MICH. COMP. LAWS §§ 37.2101-2804).

5. *Cmtys. for Equity*, 459 F.3d at 698.

6. MHSAA was declared a "state actor" and therefore constitutional issues were relevant such as a violation of the Equal Protection Clause. *Cmtys. for Equity*, 178 F. Supp. 2d at 846-48. The court relied heavily on *Brentwood Acad. v. Tennessee Secondary Sch. Ath. Ass'n*, 531 U.S. 288, 290 (2001), in which there was held to be a "pervasive entwinement" of state school officials in the private, nonprofit organization.

7. *Rancho Palos Verdes v. Abrams*, 544 U.S. 113 (2005).

8. *Cmtys. for Equity v. Mich. High Sch. Ath. Ass'n*, 459 F.3d 676 (6th Cir. 2006).

9. Vince Ellis, *Season of Change for Michigan*, DETROIT FREE PRESS.COM, Apr. 3, 2007.

10. Allison Steele, *Michigan Trial Key Test for Girls' Sports*, WOMEN'S E-NEWS.ORG, Oct. 2, 2001, available at <http://www.womensenews.org/article.cfm?d=yn/aid/669/context/archive> (last visited May 29, 2007).

11. Fred Girard, *Huge Change for Girls Sports*, DETNEWS.COM, Apr. 3, 2007, available at <http://www.detnews.com/apps/pbcs.dll/article?AID=2007704030377> (last visited May 29, 2007).