

Homeschooler Participation in High School Sports by Linda J. Conrad Jansen, Esq.

Participation in high school sports was the least of my concerns when I started homeschooling ten years ago. Some form of physical activity for my children was an important part of their curriculum and they started swim team, tennis lessons, soccer, softball and baseball. All of these sports were available through the community and the availability of school sports was irrelevant. However, when Kristina reached high school age she was interested in the high school tennis team experience and we explored her alternatives. The Redding school district required enrollment in the school or the district independent study program, which was set up for high school dropouts and mandated several hours of busy-work weekly. So we were faced with choices: The prison of school vs. ISP busy work vs. freedom. Kristina really wanted to play high school tennis and was willing to make the sacrifice. Even as the school added more and more onerous enrollment requirements she was willing to comply. She changed her mind when the high school tennis coach stated she could no longer train with her private coach in Sacramento during the season. The reality of the inflexibility of the program and the hostility to homeschoolers finally sunk in, and she decided that the negligible benefits of school sports were outweighed by the infringement on her freedoms.

Two years later, after we moved to Davis, Kristina reached the opposite conclusion. After encouragement from a local tennis coach and other homeschoolers who had participated in high school sports, we contacted the high school tennis coach and school counselor, Paul Oaks. He was very supportive of Kristina's choice to homeschool and her desire to play high school sports, and put her in touch with the Davis School for Independent Study (DSIS). She submitted a homeschool high school transcript to DSIS, explained her reasons for joining the program, and Kristina's high school tennis team experience began. DSIS understood homeschooling and unschooling, gave Kristina the flexibility to follow her own educational course within minimal guidelines, allowed her to continue to be in control of her education by taking DSIS, homeschool and community college courses, introduced her to a wonderful mentor, gave her the social experience of a team, and gave her the opportunity to play her last two years before college on a top-level high school tennis team. She ultimately graduated from our home-based private school and

now attends the University of California, San Diego, where she plays college tennis. Derek is in his third year of swimming and Monika started her first year of water polo and swimming for Davis High School while attending DSIS during the sports season. They both take the minimum courses required, continue with their homeschool and community college classes, and will graduate from our home-based private school.

California Interscholastic Federation

Although we got radically different treatment from the Redding and Davis school districts, they were following the same rules. In order to compete in high school sports at a public or private high school, the student must fit into the eligibility requirements of the California Interscholastic Federation (CIF). High school sports programs are governed by CIF, a private nonprofit, voluntary association of public and private high schools organized under the direction of local school boards of education with the sanction of the California Education Code. Although each public school district governing board has general control over interscholastic athletic programs, California Education Code section 35179 provides that the governing boards may "enter into a voluntary association with other schools for the purpose of enacting and enforcing rules relating to eligibility for, and participation in, interscholastic athletic programs among and between schools." This provision gives schools the authority to join CIF, and conversely, gives CIF the authority over interscholastic athletic programs. California Education Code section 33353 describes the CIF as "a voluntary organization consisting of school and school related personnel with responsibility for administering interscholastic athletic activities in secondary schools." The CIF Bylaws, which are the rules that the schools must follow to remain eligible to compete in high school sports, specifically state: "Only students regularly enrolled in public and private CIF member schools, grades 9-12, shall be permitted to participate in the California Interscholastic Federation..." Since 1,265 California High Schools are members of CIF, the result is that homeschoolers must follow those rules in order to compete at the high school level.

CIF rules, called bylaws, can be found online at www.cifstate.org. These rules include several pages of eligibility requirements ranging from when boys can compete on girl's teams and vice-versa, to competing under an assumed name, to academic requirements, to discipline, to independent study, home study and home schooling. Section 227, which was added in February, 2000, states that: "Students who are not enrolled in programs under the jurisdiction of a member school's governing body are not eligible to participate in CIF competition. Such programs would include,

but not be limited to, home schooling or home study wherein parents, or other persons, are responsible for instruction and evaluation. Home study, home schooling students may become eligible to participate in CIF competition provided they meet all requirements of bylaw 226." This section also applies to homeschool students using the private school option and private school programs that do not have CIF athletic programs. Bylaw 226 provides that an independent study student can be eligible for sports teams as long as: "A. The student's registration is accepted by the local school board AND; B. The courses taken by the student meet the standards adopted by the local school board and Education Code Sections 51745, et. Seq. AND; C. The administrative responsibility for the student involved in athletics shall rest with the principal of the school for which the student is competing, AND; D. The student meets all other eligibility requirements of the CIF and its member sections."

Therefore under CIF rules homeschoolers participating in interscholastic sports must enroll in a public or private high school, independent study program, or charter school. Not only are California homeschoolers required to follow these provisions, but also homeschooling is now defined in a quasi-legislative forum: "home schooling or home study wherein parents, or other persons, are responsible for instruction and evaluation." This requirement raises three significant questions: 1) Do our children have the fundamental constitutional right to participate in high school sports? 2) Can these bylaws/rules be challenged? 3) What is the legal significance of the definition of homeschooling found in the CIF bylaws?

Is Participation in High School Interscholastic Athletics a Fundamental Constitutional Right?

Apparently not, according to a 1986 appellate court decision. In *Steffes v. California Interscholastic Federation*, the court addressed the issue of "whether, under the California Constitution, the right to participate in interscholastic athletics is a 'fundamental right'." (*Steffes v. California Interscholastic Federation* (1986) 176 Cal.App.3d 739.) For a comprehensive discussion of the significance of "fundamental rights" see Stephen Greenberg's essay: [The Legality of Private-School Homeschooling in California](#). Basically, when examining the constitutionality of a law infringing on a fundamental constitutional right, the higher standard of "strict scrutiny" is used. If the right infringed upon is not fundamental, the court uses the "rational basis" test to evaluate its constitutionality. In *Steffes*, a Los Angeles area student, Kent Steffes, appealed CIF Rule 214 that made him ineligible to participate in varsity

high school sports because he transferred from a CIF member private school to a CIF member public school.

Kent Steffes' contention that participation in high school athletics is a fundamental right is relevant to homeschoolers interested in challenging Rule 227. He argued that the fundamental right to a public school education included the right to participate in interscholastic athletics and the imposition of Rule 214 deprived him of his fundamental right to participate in extracurricular activities offered by a public school. He further contended that this deprivation of a fundamental right required the court to apply a "strict scrutiny" test, rather than a "rational basis" test in considering the constitutionality of Rule 214. The Second District Court of Appeals did not agree with this argument.

The court noted that, "inasmuch as CIF is an organization with responsibility for administering interscholastic athletics in all California secondary schools (see Ed. Code, section 33353), the enforcement of its rules constitutes 'state action' for purposes of constitutional analysis." (Id. at 746. See also *Jones v. California Interscholastic Federation* (1980) 197 Cal.App.3d 751, 757.) Although acknowledging that under the California Constitution, public education is a fundamental right (*Hartzell v. Connell* (1984) 35 Cal.3d 899; *Serrano v. Priest* (1971) 5 Cal.3d 584) and that the Supreme Court in *Serrano* stated that extracurricular activities are a fundamental part of public education, the Steffes court refused to extend that same fundamental right status to the right to participate in interscholastic athletics. They pointed out that since *Serrano* had not specifically stated that interscholastic athletics were a fundamental right, they were not compelled to make such a finding. "[T]he fact that public education is a fundamental right under the California Constitution does not compel a finding that in California the right to participate in interscholastic athletics is also a fundamental right entitled to the highest degree of constitutional protection. Therefore, we hold that an equal protection challenge involving that right is properly tested by the rational basis standard, rather than by the strict scrutiny standard of judicial review." (Steffes, *supra*, at 748.) Thus, the court based its decision that interscholastic athletics is not a fundamental right on the thin grounds that the Supreme Court in *Serrano* did not take the next step and specifically state that extracurricular activities are fundamental rights subject to constitutional protection.

The court applied the "rational bases" test to determine if the rule was constitutional, and determined that Rule 214 is rationally related to the

State's "valid and legitimate interest in eliminating or minimizing athletic recruitment problems in secondary schools." (Id.) This finding is significant to a homeschooler challenging Rules 227 because the school only needs to show that the rules are rationally related to some perceived legitimate interest, such as overseeing the student's education or prevention of recruitment. The Steffes court stated (quoting *In re U.S. ex rel. Missouri State High Sch. Etc.* 8th Cir. 1982) 682 R.2d 147): "If the classification has some 'reasonable' basis, it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality. Once a rational relationship exists, and it exists here, judicial scrutiny must cease. Whether the rule is wise or creates undue individual hardship are policy decisions better left to legislative and administrative bodies. Schools themselves are by far the better agencies to devise rules and restrictions governing extracurricular activities. Judicial intervention in school policy should always be reduced to a minimum." (Steffes, *supra*, at 749.) In *Jones* the same appellate court applied the same principles and upheld the school's interpretation of another eligibility rule, which denied a fifth year high school student the right to play varsity football. It reiterated the Steffes findings, and added that: "Education Code section 35179 authorizes voluntary associations such as the CIF to enact and enforce rules relating to eligibility for, and participation in, interscholastic athletics." The court noted: "The rationale behind the CIF's interpretation is the rule's promotion of a high school education over high school athletics."

Challenging the CIF Bylaws/Rules

Kent Steffes also argued that Rule 214 violates state law because the making and enforcing of rules governing interscholastic athletics is limited to the Department of Education and the Superintendent of Public Instruction.. Again, the Steffes court disagreed and held that "although Education Code section 33352 gives the Department of Education 'general supervision over the courses of physical education,' sections 35179 and 33353 give voluntary associations, such as CIF, authority to enact and enforce rules relating to eligibility for, and participation in, interscholastic athletics." This decision means that any court following the Steffes decision will enforce the CIF bylaws against students wishing to participate in interscholastic athletics.

As an appellate court decision, Steffes does not carry the same weight as a California Supreme Court decision, although courts not following it can be expected to discuss and distinguish it from their facts. Trial court judges in the same district are likely to follow the decision because they

realize that a contrary decision will be appealed to the same court that made the decision. Even though it will be given serious consideration by any trial court judge or appellate judges in other districts, they are not compelled to follow it if they disagree with the basis of the decision. The California Supreme Court, given the right facts, might overrule Steffes. However, the expense, time constraints and burdens of litigation would have to be balanced against the likelihood of success and the risk of setting a bad precedent.

The biggest risk is what happens if a student obtains a court order compelling the school to allow him or her to compete, and then loses the underlying lawsuit. According to CIF rule 228, CIF or one of its sections can, among other things, require that individual and team records be stricken, require that individual and team awards be returned, require that team victories be forfeited, make the team ineligible for future championships or invitationals, and require the school return its share of net receipts from any competition. Because of the length of time for a lawsuit to get heard, a student challenging CIF rules needs to obtain a restraining order requiring the school to allow sports participation while the lawsuit is pending. However, the punishment is so onerous against the school if the student loses, the attitudes of the school, coach and teammates are likely to be less than cordial.

Thus, homeschoolers wishing to participate in high school athletics without enrolling in the school or an acceptable independent study program will not be able to do so. They will need to decide if giving up their homeschooling freedom is outweighed by the benefits of high school sports.

How Significant is the Definition of Homeschool Found in the CIF Bylaws? The Steffes and Jones decisions elevated the CIF bylaws to legislative status for evaluation purposes. The recognition of homeschooling is a double-edged sword. On the one hand, it acknowledges the existence of independent homeschooling. On the other hand, it denies eligibility to independent homeschoolers and is possibly the first step towards a definition of homeschooling in California. The next step could be homeschooling regulations.

Participation in College Sports

Homeschoolers are participating in and getting scholarships for college sports. Kristina is playing tennis at the University of California, San Diego, a National Collegiate Athletic Association (NCAA) Division II school. As a homeschooler, she did not go through the NCAA Clearinghouse, as is required of public and private school students, until after she was accepted at UCSD and on the team. However, the rules

regarding homeschoolers changed recently, and homeschool athletes planning to participate in college sports need to register with the NCAA Clearinghouse to get an initial eligibility report. They are required to meet certain academic requirements, as are all team members. For further information, go to the [NCAA website](#) and review the requirements for homeschoolers.

Weighing the Alternatives

Participation in high school and college sports programs can be a rewarding for homeschool athletes. However, homeschoolers need to carefully consider the alternatives. Sometimes the high school athletic opportunities do not override the joy of homeschooling independently, following your own schedule, and planning your own course in life. One of many reasons for homeschooling through high school is to promote education over the distractions offered in public and private high schools. Often, athletic opportunities available in our communities, particularly in individual sports such as swimming, tennis and gymnastics, are superior to the high school programs. Some sports may only be available through high school programs, such as football and basketball, and high school participation may be required in order to qualify for college team positions and scholarships. Each homeschooler will need to make an informed decision based on his or her particular situation and goals, and the available options.