

## NCS ELIGIBILITY COMMITTEE MINUTES

**DATE:** TUESDAY, DECEMBER 9, 2008

**Facilitator:** Jerome Wiggins, Chair

**LOCATION:** NORTH COAST SECTION OFFICE – UPSTAIRS MEETING ROOM

12925 Alcosta Blvd., Suite 8

San Ramon, CA 94583

925.866.8400

**TIME:** 9:30 AM

TIME	Consent Item	AGENDA TOPIC	PURPOSE	DISCUSSION LEADER	ACTION
9:30 (5)		<b>I. ROLL CALL AND INTRODUCTIONS</b>	I	Jerome Wiggins	Roll Call and Introductions conducted
9:40 (5)	Consent	<b>III. MINUTES OF THE SEPTEMBER 9, 2008 MEETING</b>	C (D, A)	Jerome Wiggins	Approved 10-0 M – Cuddeback M – Sharafinski
9:45 (5)		<b>IV. PUBLIC COMMENTS</b> Pursuant to Education Code 33353.2 (C), any person wishing to speak on any item on the agenda, or comment on the policies and practices of the North Coast Section, CIF, will be heard at this time.	I	Jerome Wiggins	None
		<b>V. NEW BUSINESS</b>			
		<b>1. CIF</b>			
		A. No proposals at this time			No Action
		<b>2. NCS</b>			
9:50 (10)		A. Re-establishment of the Date of Determination	R, D, A	Gil Lemmon	Passed 10-0 M – Kinser S – Panas
10:00 (10)		B. Review of NCS Report of Waivers and Appeals for the 2008-09 school year – Attachment B (Will be handed out at meeting)	I	Gil Lemmon	Information
10:10 (10)		C. The Committee will review two hardship cases – one denial and one approval	I	Gil Lemmon	Information
10:20 (15)		D. Physical Assault	R, D, A	Jerome Wiggins	No Action – direction for staff to place on next agenda
10:35 (15)		E. Review of off-campus Physical Education classes	I	Chairperson	No Action – direction for staff to place on the next agenda
10:50 (15)		F. Review of Novato Unified School District’s Multi-School Agreement with Novato Oaks	R, D, A	Gil Lemmon	No Action – Discussion
11:05 (10)		G. Southern Section rule concerning administrative error and students who would have received immediate eligibility with no restrictions	R, D, A	Gil Lemmon	Passed 10-0 M – Cuddeback M – Kinser
11:15 (5)		H. Suspension from School	R, D, A	Gil Lemmon	No Action – direction for staff to place on the next agenda
11:20 (10)		Review of the Interpretations of Undue Influence (will be presented at the NCS Sports Advisory Committee December 8 <sup>th</sup> ) <b>ATTACHMENT E</b> (will be presented at meeting)	I	Gil Lemmon	No Action – Discussion

TIME	Consent Item	AGENDA TOPIC	PURPOSE	DISCUSSION LEADER	ACTION
		<b>VI. OLD BUSINESS</b>			
11:30 (5)		A. Report on the Bentley Hearing ATTACHMENT F	I	Gil Lemmon	Information – Discussion
11:35 (10)		B. Review of CIF/NCS Bylaw 205 – Progress towards graduation	R, D, A	Gil Lemmon	No Action – input needed from member schools
11:45 (5)		C. Development of the NCS Eligibility Poster ATTACHMENT G	I	Gil Lemmon	Information
11:50 (15)		D. Independent Study Programs and CIF Bylaw 306 ATTACHMENT H	I	Gil Lemmon	Information
12:05 (5)		E. Summertime Dead Period	I	Gil Lemmon	Passes at September meeting and will be forwarded to the January Board of Managers
12:10 (10)		<b>VII. REPORTS FROM ATTENDING LEAGUES AND NCS STAFF</b>	I	Chairperson	No Reports
12:20		<b>IX. ADJOURNMENT</b>	P	Chairperson	Passed 9-0 M – Sharafinski S - Booker

D = Discussion, P = Participation, A = Action, I = Information only, R = Review/prior topic, C = Consent

NORTH COAST SECTION  
12925 Alcosta Blvd., Suite 8  
San Ramon, CA 94583  
(925) 866-8400 Fax (925) 866-7100

TO: Members of the Eligibility Committee and League Commissioners (FYI)  
FROM: Gil Lemmon, Commissioner of Athletics  
DATE: December 31, 2008  
SUBJECT: **Eligibility Committee Meeting Minutes**

**NEW BYLAW LANGUAGE IS BOLD, ITALIC AND UNDERLINED.**  
~~OLD BYLAW LANGUAGE IS STRUCK THROUGH.~~

In Attendance: Jerome Wiggins, Chair; Randy Booker, BSAL; Bill Branca, DFAL; Gordon Sharafinski, BAC; Sam Cuddeback, BAC-W; Craig Kinser, CMC; Troy Ghisetti, HDNL; Mark Corti, EBAL; Mike Panas, NBL; Bob Vieth, MCAL and Gil Lemmon, NCS.

Absent: Frank Anderson, SCL; Terry Lee, HAAL and Connie Spinnato, MVAL.

**I. Roll Call  
INFORMATION**

Each committee member will state his/her name, school and league and share any eligibility questions and/or identify any eligibility issues that he/she would like addressed under "other topics"

**II. Approval of Minutes of September 9, 2008 meeting (Attachment A)  
PASSED 10-0**

M – Cuddeback S - Sharafinski

**IV. Public Comment  
NO PUBLIC COMMENT**

Pursuant to Education Code 33353.2 (C), any person wishing to speak on any item on the agenda, or comment on the policies and practices of the North Coast Section, CIF, will be heard at this time.

**V. NEW BUSINESS**

**1. CIF**

A. No proposals at this time

**2. NCS**

A. Re-establishment of the Date of Determination

**PASSED 10-0**

Motion to re-establishment the Date of Determination language in the NCS General Bylaws, under Bylaw 205.B.3 – Grading Period

**3. Grading Period**

The grading period is that time when all students in a school are graded. If two grades are given at the end of a grading period, scholastic eligibility shall be established according to the grade issued for credit.

A. *For playing contests, one grading period does not end until the next one begins.*

*Note: This day is identified as the "date of determination".*

B. *Each member school must file its "dates of determination" for scholastic eligibility for each regular grading period with its league or conference. All students shall be declared eligible or ineligible for athletics for the following grading period on the respective dates.*

M – Kinser S - Panas

B. Review of NCS Report of Waivers and Appeals for the 2008-09 School Year

## **INFORMATION**

Attachment B

### C. Review of Two Hardship Cases

#### **INFORMATION**

The Committee reviewed two hardship cases, one denial and one approval.

### D. Physical Assault

#### **NO ACTION - INSTRUCTION**

The language was adjusted and the committee instructed the Commissioner to bring the item back in March.

#### **Physical Assault**

Any student who physical assaults the person of a game or event official shall be banned from interscholastic athletics for the remainder of the student's eligibility. A game or event official is defined as a referee, umpire or any other official assigned to interpret or enforce rules of competition at an event or contest. A student may, after a lapse of ~~18 calendar months~~ **120 days** from the date of incident, apply for reinstatement of eligibility to the State Executive Director.

#### *Definition of Assault*

*A physical assault is the intentional infliction of, or an attempt to inflict a harmful or offensive touching or contact upon the person of an official. Note that the rule is violated even if no contact is made with the person of the official. All that is required is the "attempt". However, the act constituting the attempt must be accompanied by a specific intent, which may be inferred from the circumstances and nature of the act, to inflict a harmful or offensive touching contact of the official's person.*

### E. Review of off-campus Physical Education classes

#### **NO ACTION - INSTRUCTION**

The committee reviewed the off-campus physical education program at Cardinal Newman High School as an example of possible programs offered at NCS member schools. Concern was expressed about the structure of Cardinal Newman High School's program and the potential for other schools to offer such a program. After a great deal of discussion the committee instructed Commissioner Lemmon to review the bylaws of the other sections and bring potential bylaw language to the next meeting.

### F. Review of Novato Unified School District's Multi-School Agreement with Novato Oaks

#### **INFORMATION AND DISCUSSION**

Continuation schools are not allowed to apply for multi-school team status as provided for under CIF Bylaw 303. A school district may declare a Continuation school as an alternative school and apply for multi-school status. However, the CIF Multi-school application does allow local governing boards to determine if a continuation is an alternative. When Commissioner Lemmon reviews on a yearly basis these Multi-school applications there will be close review of these arrangements. Under no circumstances will agreements be approved where students are transferred to these alternative programs for disciplinary issues.

### G. Southern Section Administrative Error Rule

#### **PASSED 10-0**

Motion to adopt language that will allow the NCS Commissioner the authority to review cases where school administrative error would only forfeit the first game won or tied.

#### *NCS Constitution and General Bylaws 219.B.3*

*In the case where it is determined that an ineligible player competed due to the failure of the school administration to submit the proper paper work which would have granted immediate unlimited eligibility, the school would only be forced to forfeit the initial game won or tied that the student in question played.*

H. Suspension from School

**NO ACTION - INSTRUCTION**

Motion to adopt language stating that any student suspended from school is ineligible during the period of the suspension.

Members of the committee were fairly certain that language already exists in the California Education Code that prohibits students from participation in extracurricular activities if they have been suspended. Commissioner Lemmon was instructed to review the CA Education Code and bring similar language back for consideration.

**Proposed Language**

***NCS Constitution and General Bylaws 219.B.4 - Suspension***

***If a student is suspended from high school, the student is ineligible during the period of suspension.***

***When the student returns to the school, the period of ineligibility is determined by the principal.***

I. Review of the Interpretations of Undue Influence

**INFORMATION**

Commissioner Lemmon presented a document that is being written to provide guidance to school administrations, coaches, parents and students regarding undue influence. Commissioner Lemmon will continue to work on this document, adding additional information. The Eligibility Committee asked that the document be shared with league commissioners so that leagues could review the interpretations. A more complete document will be presented in March.

**VII. OLD BUSINESS**

1. Report on the Bentley School Hearing

**INFORMATION**

A short report was made concerning the Bentley School hearing concerning undue influence. A NCS Eligibility Hearing Panel ruled that Bentley should be placed on probation and take steps to correct procedures at their school that allows administrative staff to approve all school promotional materials making sure that all materials adhere to CIF and NCS guidelines.

2. Review of CIF/NCS Bylaw 205 – Progress towards graduation

**NO ACTION**

Commissioner Lemmon has not had time to pursue procedures schools have put in place to track the progress of students, making sure that all students participating on high school athletic teams are making progress towards graduation according to guidelines enacted by NCS member schools last year. Commissioner Lemmon will report back in March.

3. Development of the NCS Eligibility Poster

**INFORMATION**

A NCS Eligibility Poster was presented. The poster is detailed and will be made available to all schools to post in their gyms, locker rooms and administrative offices. Copies of the poster will be given to league commissioners at their August Workshop for distribution to schools for the 2009-10 school year. Staff will make a Word document available online so schools may want to utilize the information for handbooks or newsletters.

Attachment G

4. Independent Study Programs and CIF Bylaw 306

**INFORMATION**

Commissioner Lemmon shared the letter from State Superintendent Jack O’Connell’s general counsel and assistant general counsel regarding home schooling and “independent study”. The letter states that

it is the opinion of legal counsel that a private school may not offer instruction through “independent study”. The concern by Commissioner Lemmon is the possibility of operation of an independent study program through a school that is really a program designed to allow parents to home school their children, receive credit through a school as independent study, and then participate on the school athletic team. Unless the independent study program meets the parameters of CIF Bylaw 306 students in these programs are not eligible for participation. More information will be available as CIF legal counsel and section commissioner discuss this issue.

Attachment H

5. Summertime Dead Period

**FORWARD TO JANUARY BOARD OF MANAGERS**

At the last meeting the committee approved the creation of a summertime dead period for submission of eligibility applications. This item will be forwarded to the NCS Executive Committee and then the NCS Board of Managers.

Motion to establish a summertime dead period for submission of eligibility applications from June 15 to July 31 each year. Passed 7-0 at the September 11, 2008 Eligibility Committee meeting.

**VIII. REPORT FROM ATTENDING LEAGUES AND NCS STAFF**

1. League Reports – No reports given by individual leagues
2. NCS Report – Information was shared during the course of the meeting.

**X. ADJOURNMENT**

**PASSED 9-0**

Motion by Sharafinski and Second by Booker to adjourn.

**NORTH COAST SECTION, CIF**  
*12925 Alcosta Blvd., Suite 8, San Ramon, CA 94583*  
*Phone: 925-866-8400 // Fax: 925-866-7100*  
*Website: [www.cifncs.org](http://www.cifncs.org)*

**UNDUE INFLUENCE RULE INTERPRETATIONS**

Last updated Friday, January 2, 2009.

The review of the meaning and interpretation of the CIF Undue Influence rule below is meant to give schools a guide to determining what is, and is not, a violation of the CIF Bylaw 510 concerning undue influence; pre-enrollment contact and failure to disclose pre-enrollment contact. The NCS Commissioner of Athletics has the responsibility of determining if and when a violation of this rule has taken place. It is very important that each NCS member school review with coaches, athletes, parents and other individuals associated with the school this rule, the interpretations and the results of failure to adhere to the spirit of the rule. When there is a violation of CIF Bylaw 510 an athlete can be ineligible for two calendar years and a school's athletic program can be sanctioned. Questions and possible violations regarding undue influence and pre-enrollment rules should be directed to appropriate school personnel.

**General Outline of the Undue Influence Rule:**

Undue Influence – Pre-Enrollment Contact – The concept of undue influence – pre-enrollment contact is still new and not always understood. The purpose of the 510 form is for parents, students and school administrations and coaches to acknowledge **any** pre-enrollment contact. It does not mean that the pre-enrollment contact is recruitment, or a student is transferring based on athletic motivation. However, it is a violation when the contact is not reported. Not reporting the contact may result in up to a two-year suspension of athletic eligibility for an athlete and removal of a school from CIF membership depending on the severity of the violation. Undue Influence and Pre-Enrollment contact apply at all times prior to enrollment at a school regardless of the age of the student (pre-high school or high school age)

Examples of Undue Influence and Pre-Enrollment Contact (These examples would require acknowledge by the school, athlete and parent that there was pre-enrollment contact prior to enrollment using the 510 Pre-Enrollment Contact form.)

Examples of Pre-Enrollment Contact

1. Potential athlete visits a school prior to enrollment.
2. A student returns to a school of attendance after transferring away from the school.
3. Potential athlete attends open gym or open field and then transfers to the school hosting the open gym or open field.
4. Student shows up at a school that the student is interested in attending and speaks to a coach, athlete, athletic director or administrator.
5. Prior to enrollment at School A the student plays in athletic contests with students at School A.
6. Prior to enrollment at School A the student is coached by a parent, coach, teacher or any other person connected with School A.
7. A potential athlete communicates with the coach of a school prior to enrollment.

Examples of Undue Influence

Below are examples of undue influence by a person or school to influence the enrollment of a student at a school. These examples do not encompass all examples. Each section commissioner is given the responsibility to evaluate what is and is not undue influence.

These examples offer some guidelines to potential violations.

1. Members of a school booster club talk to a potential athlete who may attend their school and tell the athlete he or she would be welcome at the school.
2. A school invites a junior high or middle school student to attend a school function.
3. A school invites junior high or middle school student(s) to attend a high school game.
4. A school offers a discounted ticket price or a free ticket to a home game to a potential student.
5. A school invites any non-school team to play at half-time where the members of the non-school have the potential to attend the school.
6. A coach tries to convince a current athlete to not transfer to another school.
7. School uses athletic team/competition pictures, team/coach accomplishments, etc. to advertise their school for purposes of visitation and/or enrollment.

*Note: Such advertisements may use athletic pictures if the advertisement uses at least the same number or more pictures of other non-athletic activities at the school.*

### Prima Facie Evidence

Prima facie evidence is “sufficient evidence” of undue influence or recruiting by a school to which the student transfers or that the student enrolled in that school in whole or in part for athletic reasons. Examples are listed below. When prima facie evidence exists the student is ineligible but has the opportunity to present sufficient proof to the satisfaction of the section commissioner that rebuts or disproves the prima facie evidence.

#### Examples of Prima Facie Evidence

1. A student transfers to School B where the School B coach is also the coach of the new student’s club team.
2. A student transfers to School B where there was pre-enrollment contact. The contact is reported on the CIF 510 form. The student is ineligible for one calendar year unless the student and family can disprove or rebut the prima facie evidence.
3. A student transfers to School B and plays on a club team where some or all of the members of the club team also attend School B.
4. A student transfers to School B where the coach of school B has given private or group lessons to the student prior to actual attendance to the school.
- 5.

### Pre-High School Visitation

Each year personnel from schools visit their feeder schools to share information regarding their high school programs. These visits have taken place for years in an effort to prepare incoming freshman for the start of high school. During these visits it is not uncommon to discuss a school’s athletic program. As part of the comprehensive education program of the high school this is expected. However, care must be taken to not recruit students to your school. This time prior to actual attendance to a high school is a time where parents and students should have no pressure to make decisions regarding where they will attend high school. Incoming students must always have the opportunity to select a high school with no influence from high school coaches, parents, students, booster club members, etc. Below are some examples of parameters that a school should follow concerning pre-high school contact and/or visitation.

#### Examples of good practices when doing feeder school visits

1. Arrangements to share information about your school with potential students should be made by the principal of the high school with the principal of the feeder school.

2. It is legal for the visit to only discuss athletics, but only general information regarding the athletic program, such as physicals, open gyms, open weight rooms, starting dates for fall, winter and spring programs, what sports the school offers, etc.
3. Visits should be made by a person selected by the principal who will share information about the school and not information about a single program, such as the football program, or the volleyball program.
4. Sign-ups may be taken and information shared with coaches at your school. If contact is made with potential students the coach must be very careful not to encourage a student to attend their school. Until a student actually attends practice on the first official date, or attends the first day of school, they may still be weighing their options as to what school they attend.

## **CIF Constitution and General Bylaws**

### **510. UNDUE INFLUENCE; PRE-ENROLLMENT CONTACT; AND FAILURE TO DISCLOSE PRE-ENROLLMENT CONTACT**

The use of undue influence by any person or persons to secure or retain a student or to secure or retain one or both parent(s)/legal guardian(s)/caregivers of a student as residents may cause the student to be ineligible for high school athletics for a period of one year and shall jeopardize the standing of the high school in the California Interscholastic Federation.

**NOTE:** Undue influence is any act, gesture or communication (including accepting material or financial inducement to attend a CIF member school for the purpose of engaging in CIF competition regardless of the source) which is performed personally, or through another, which may be objectively seen as an inducement, or part of a process of inducing a student, or his or her parent or guardian, by or on behalf of, a member school, to enroll in, transfer to, or remain in, a particular school for athletic purposes.

#### **A. Pre-enrollment Contact**

Any and all pre-enrollment contact of any kind whatsoever with a student must be disclosed by the student, parent(s)/legal guardian(s)/caregiver(s) and the schools to the Section office on a completed CIF Pre-enrollment Contact Affidavit (CIF Form 510). Pre-enrollment contact may include, but is not limited to: any communication of any kind, directly or indirectly, with the student, parent(s)/legal guardian(s)/caregiver(s), relatives, or friends of the student about the athletic programs at a school; orientation/information programs, shadowing programs; attendance at outside athletic events or the like by anyone associated\* with the school to observe the student; participation by the student in programs supervised by the school or its associates before enrollment in the school. Pre-enrollment contact may be considered prima facie evidence (“sufficient evidence”) that the student enrolled in that school in whole or in part for athletic reasons (See Bylaw 200) and cause the student to be ineligible for participation in high school athletics for a period of one year from the date of enrollment at the new school in all those sports in which the student participated at the former school.

Athletically motivated pre-enrollment contact of any kind by anyone from, or associated\* with, a school or its athletic programs to which a student may transfer or move into the attendance area is not permitted.

When a prima facie case (“sufficient evidence”) of an athletically motivated move exists, the student shall be ineligible to represent the new school in interscholastic athletic competition for a period of one calendar year from the

date of the student's enrollment in the new school in all those sports in which the student participated at the former school (See also "C." and "D.") unless sufficient proof is presented to the satisfaction of the Section Commissioner that rebuts or disproves the presumption that the move was athletically motivated.

*\* Defined as: Persons "associated" with a school include, but are not limited to, parents of current or former student/athletes, booster club members, alumni, spouses or relatives of coaches, teachers and other employees, former coaches, active applicants for coaching positions, and persons who are employed by companies or organizations that have donated athletic supplies, equipment or apparel to that school.*

**B. Failure to disclose Pre-enrollment Contact**

A failure to disclose pre-enrollment contact may be considered prima facie evidence ("sufficient evidence") of recruiting or undue influence to attend the school and may cause the student to be ineligible for high school athletics and shall jeopardize the standing of the high school in the California Interscholastic Federation.

When there is failure to disclose pre-enrollment contact, the student shall be ineligible under the provisions of CIF Bylaw 202 to represent the new school in interscholastic athletic competition for a period of one calendar year from the date of the student's enrollment in the new school unless sufficient proof is presented to the satisfaction of the Section Commissioner that rebuts or disproves the evidence of undue influence/recruiting for athletic reasons.

**C. Transferring to a School after Participating on a Non-School Athletic Team Associated with the School**

A transfer of a student from his or her current school of attendance with or without a corresponding change of residence to any high school where the student participates or participated, during the previous 24 months, on a non-school athletic team, (i.e. AAU, American Legion, club team, etc.) that is associated\* with (see also definition in part A) the new school in the sports previously participated in shall be considered prima facie\* evidence ("sufficient evidence") of undue influence/recruiting by the school to which the student transfers. Such transfers may be considered prima facie evidence that the student enrolled in that school in whole or in part for athletic reasons.

A team associated with a school is one that is organized by and/or coached by any member of the coaching staff at, or any other person associated\* with (see also definition in part A), that school; and/or, on which the majority of the members of the team (Participants in practice and/or competition) are students who attend that school.

When a prima facie case of undue influence/recruiting exists, the student shall be ineligible to represent the new school in interscholastic athletic competition for a period of one calendar year from the date of the student's enrollment in the new school unless sufficient proof is presented to the satisfaction of the Section Commissioner that rebuts or disproves the evidence of undue influence/recruiting for athletic reasons.

**Note:** This shall apply to the sport(s) played at the previous school coached by the new coach in the previous 24 months.

**D. Transferring to a School Where a Former High School Coach has Relocated**

A student at any grade level who transfers to a new school within one calendar year of the relocation of his/her high school coach to that school with or without a corresponding change in residence shall be considered prima facie evidence ("sufficient evidence") of undue influence/recruiting by the school to which the

student transfers or may be considered prima facie evidence that the student enrolled in that school in whole or in part for athletic reasons. The student shall not be eligible to participate in interscholastic competition for one calendar year from the date of enrollment in the new school in all sports in which the student participated at the former school.

When a prima facie case of undue influence/recruiting exists, the student shall be ineligible to represent the new school in interscholastic athletic competition for a period of one calendar year from the date of the student's enrollment in the new school in all sports in which the student participated at the former school unless sufficient proof is presented to the satisfaction of the Section Commissioner that rebuts or disproves the evidence of undue influence/recruiting for athletic reasons.

- E. A student shall become ineligible for CIF competition and shall be penalized according to Bylaw 213 for accepting material or financial inducement to attend a CIF member school for the purpose of engaging in CIF competition, regardless of the source.
- F. All transfer students shall submit a completed CIF Pre-enrollment Contract Affidavit (CIF Form 510) with the appropriate transfer application(s) as required by the Section under Bylaw 207 and/or Bylaw 209.

**NOTE:** CIF Form 510 is available through the local CIF Section Office.



# NORTH COAST SECTION, CIF

Gil Lemmon, Commissioner of Athletics

12925 Alcosta Blvd., Suite 8, San Ramon, CA 94583 Tel.: (925) 866-8400, Fax: (925) 866-7100,  
Web: [www.cifm\ncs.org](http://www.cifm\ncs.org)

October 14, 2008

Mr. Brian Thomas, Principal  
Bentley Upper School  
1000 Upper Happy Valley Rd.  
Lafayette, CA 94549

**ATTACHMENT F**

Dear Mr. Thomas:

The Eligibility Committee Hearing Panel of the North Coast Section, CIF met October 8, 2008 to review the circumstances surrounding Bentley School's violation of the NCS/CIF Bylaw 510, that occurred in April of 2008.

Under the policy of the North Coast Section, this hearing was conducted using a two member-hearing panel. The individuals on the panel were:

- Mr. Randy Booker, Principal – Piedmont High School
- Mr. Bill Branca, Vice-Principal – Dublin High School
- Mr. Frank Anderson, Co-Principal- El Molino High School-(was unable to attend due to illness)

During the hearing the following facts relevant to this case were presented:

- Bentley Upper School did violate the NCS/CIF Bylaw 510 (Undue influence) by placing an advertisement in the April issue of *Diablo Magazine*. Bylaw 510 states: "*Undue influence is any act, gesture or communication (including accepting material or financial inducement to attend a CIF member school for the purpose of engaging in CIF competition regardless of the source) which is performed personally, or through another, which may be objectively seen as an inducement, or part of a process of inducing a student, or his or her parent or guardian, by or on behalf of, a member school, to enroll in, transfer to, or remain in, a particular school for athletic purposes.*"
- Bentley Upper School administration acknowledged violating NCS/CIF Bylaw 510 Undue influence. Once the Bylaw 510 violation was discovered, NCS/CIF Bylaw 219C, listed below, should have been applied. It was found that this bylaw was not appropriately addressed.

**Penalty for Violations of NCS and/or CIF Bylaws OTHER THAN Use of an Ineligible Participant**

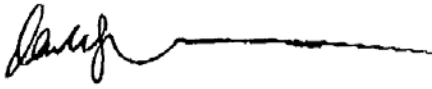
1. When a school violates NCS and/or CIF Bylaws, the school shall immediately:
  - a. Report the violation to:
    - 1) Its league
    - 2) Schools against which the violation occurred
    - 3) And the NCS Commissioner
  - b. Send written notice of the violation(s) to:
    - 1) Its league
    - 2) Schools against which the violation occurred
    - 3) And the NCS Commissioner
  - c. Recommend to its league one or more of the penalties/remedies listed in 219.D.

As a result of the above findings, the panel voted 2-0 to have Bentley School complete the following:

- Bentley School shall conduct a self-evaluation of its procedures; recommend appropriate improvements in those procedures specifically related to internal communications, orientation of staff and training of its employees regarding NCS Bylaws, specifically NCS Bylaw 510. Bentley shall then implement the suggested improvements and submit a written report to the Bay Area Conference and the NCS Eligibility Committee by December 1, 2008.
- Any further violation of NCS/CIF Bylaw 510 may result in additional penalties outlined in NCS Bylaw 219D.

This action represents the final step of the North Coast Section, CIF. A review of this decision may be requested from Marie Ishida, Executive Director, California Interscholastic Federation, 1320 Harbor Bay Parkway, Suite 140, Alameda, CA 94502-6578.

Yours truly,

A handwritten signature in black ink, appearing to read "Randy Booker", followed by a long horizontal line extending to the right.

Randy Booker  
NCS Hearing Panelist Chairperson  
Principal Piedmont High School

Cc: Gil Lemmon, NCS Commissioner of Athletics  
Mr. Tom Welsh, Bay Area Conference Commissioner  
Mr. Bill Branca, NCS Hearing Panelist, Vice-Principal Dublin HS  
Rick Fitzgerald, Superintendent Bentley Upper School  
Karen Smith, NCS Associate Commissioner



# CIF and NCS Eligibility Rules



## A Summary of Eligibility and Transfer Rules

The California Interscholastic Federation (CIF), as the governing body of high school athletics, affirms that athletic competition is an important part of the high school experience and that participation in interscholastic athletics is a privilege. The privilege of participation in interscholastic athletics is available to students in public or private schools who meet the democratically established standards of qualification as set forth by the CIF Federated Council.

Please review these rules carefully. Questions can be directed to your principal or athletic director.

- **Accurate Information**

The CIF requires that all information provided in regard to any aspect of the eligibility of a student must be true, correct, accurate and complete.

- **Age Requirement**

No student, whose 19th birthday is attained prior to June 15, shall participate or practice on any team in the following school year. A student, whose 19th birthday is on or before June 14, is ineligible.

- **Eight Consecutive Semester Rule**

A student who first enters the ninth grade of any school following the student's completion of the eighth grade in any school may be eligible for athletic competition during a maximum period of time that is not to exceed eight consecutive semesters following the initial enrollment in the ninth grade of any school, and said eligibility must be used during the student's first eight consecutive semesters of enrollment at that school or any other school.

- **Scholastic Eligibility**

In order to be eligible, any student entering from the eighth grade into a CIF four-year high school, a junior high or a junior high must have achieved a 2.0 grade-point average on a 4.0 scale in enrolled courses at the conclusion of the previous grading period. The governing board of each school district, private school, or parochial school may adopt, as part of its policy, provisions that would allow a student who does not achieve the above requirement in the previous grading period to remain eligible to participate in interscholastic athletics during a probationary period.

### Minimum Requirements

A student is scholastically eligible if:

- a. The student is currently enrolled in at least 20 semester credits of work;
- b. The student was passing in the equivalent of at least 20 semester credits of work at the completion of the most recent grading period;
- c. The student is maintaining minimum progress, as determined by the principal, toward meeting the governing board prescribed high school graduation requirements.

In the North Coast Section, minimum progress toward graduation is defined as:

- 1) The student has earned credits at a rate of no less than the equivalent of 20 semester credits of work behind normal progress at any time prior to graduation, AND
  - 2) The student is no more than two courses behind normal progress in successfully completing specific courses required for HS graduation as prescribed by the governing board.
- d. The student has maintained during the previous grading period a minimum 2.0 grade-point average, on a 4.0 scale, in all enrolled courses.

### TRANSFER STUDENTS

- A student has residential eligibility upon initial enrollment in the ninth grade.
- A student in grades 9 through 12 who participates in an interscholastic athletic contest or is enrolled in and/or attends a school for 15 school days or more shall be considered to have been "enrolled" in that school and shall be classified as a transfer student if the student changes/enrolls in another school. There are several classifications of transfer students (CIF Bylaw 207).
  - **Valid change of residence** – When a student and the entire family changes residence, the student may be granted unlimited eligibility allowing him/her to play all sports at any level at the new school. Other rules do apply; consult your principal or athletic director.
  - **Transfer without a valid change of residence** – A 9<sup>th</sup> grade student who is transferring for the 2<sup>nd</sup> time or any 10<sup>th</sup>, 11<sup>th</sup> or 12<sup>th</sup> grade student who transfers without a valid change of residence may or may not be granted "Limited Eligibility." Students granted "Limited Eligibility" are limited for one year (from the date of transfer) to non-varsity competition in CIF sports they participated in during the previous 12 calendar months but may participate in the varsity competition in all other CIF sports (CIF Bylaw 207).
  - **One transfer before 10<sup>th</sup> grade** – Students are allowed to transfer one time without a valid change of residence and retain varsity eligibility. This transfer must occur BEFORE the first day of the student's third consecutive semester (typically the first day of the 10<sup>th</sup> grade). Other rules do apply; consult with your principal or athletic director.
    - **Who qualifies?** Any first time 9<sup>th</sup> grade student, who has not attended more than two consecutive semesters since first enrolling in the 9<sup>th</sup> grade, may change school and maintain varsity eligibility before the first day of the student's third consecutive semester (typically the first day of 10<sup>th</sup> grade). All other CIF rules apply.
    - **What may keep me from qualifying?** If you transfer to a new school whose coach worked with your club program; or follow a coach from your former school, or transfer to a new school where a booster, parent, friend or staff member encouraged you to attend, you may not be granted transfer eligibility.

- **How do I request a transfer?** First, you must be enrolled in your new school in accordance with its policies. You cannot use false or fraudulent information to get enrolled; if you do, you may be ineligible for up to 24 months. Once you are enrolled, the school will help you fill out the State CIF Transfer Form and the State CIF Undue Influence Statement to be sent to the NCS Office.
- **Can I transfer to/from a private school?** There is no difference between transferring to a private or public school. So long as it is the first and only transfer prior to the first day of your 3<sup>rd</sup> consecutive semester, you may be eligible.

#### **HARDSHIP WAIVERS**

The California Interscholastic Federation recognizes that, in certain circumstances, students may transfer from one school to another due to a compelling need or situation beyond a student's control. In such cases the Section may waive the transfer limitation imposed on a student when the case meets the definition of a hardship. Consideration of any hardship request under this bylaw requires documented proof of the hardship circumstance, and all facts to be considered must be submitted at the time of application. Consideration will be given to those situations in which there is no evidence of athletic motivation, undue influence, pending disciplinary action or falsification of information (See also Bylaw 202).

- A hardship is defined as an unforeseeable, unavoidable and uncorrectable act, condition or event that causes the imposition of a severe and non-athletic burden upon the student or his/her family. Sections may only waive the transfer limitation if the conditions of hardship are met, and there is sufficient documentation to support the hardship claim. Sections may not waive the applicable rule if the conditions of hardship are not met.

#### **QUESTIONS**

You should always talk with the principal or athletic director at your current school first. If you need to talk with the new school, you should only talk with the principal. Talking with a coach at the new school may be considered undue influence or recruiting and prevent you from having eligibility.



CALIFORNIA  
DEPARTMENT OF  
EDUCATION

**JACK O'CONNELL**  
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

Back to Ref #08-68

May 19, 2008

Mr. Joseph A. Lane  
Clerk of the Court/Adm Instrator  
Court of Appeal  
Second Appellate District of California  
300 South Spring Street, 2nd Floor, North Tower  
Los Angeles, California 90013

Re: *In re Rachel L. et al., Persons Coming Under the Juvenile Court Law; Jonathan L. and Mary Grace L., Los Angeles County Department of Children and Family Services et al.*, 2d Civil No. B192878; L.A.S.C. No. JC00773

Dear Mr. Lane and Justices of the Court of Appeal:

In response to your request, dated March 25, 2008, we hereby submit this letter brief on behalf of Superintendent of Public Instruction (SPI) Jack O'Connell and the California Department of Education (CDE or Department). This letter brief responds to the questions posed in your letter in the context of the February 28, 2008 decision of the Second Appellate District in the above-referenced case involving juvenile dependency proceedings and the compulsory school attendance laws discussed therein.

(1) Do California statutes permit home-schooling<sup>1</sup> by the means used by Sunland; that is, by enrolling the children in a private school which apparently exists only to enable parents to home-school their children via independent study?

In our opinion, a private school may *not* offer instruction through "independent study" and a child enrolled in a private school, such as the Sunland Christian School, would *not* qualify for the exemption from public school attendance. No state law expressly authorizes private school-supervised independent study. The statutes and regulations that allow students to enter into specific contracts to receive instruction independent of classroom attendance all refer expressly to *only* public school districts. (*Ed. Code*, §§ 1745, *et seq.* and *Cal. Code of Regs.*, tit 5 § 11700, *et seq.*) The statutes that set forth the content and accountability measures that must be included in every public independent study contract, and the requirement of general supervision by a credentialed teacher, guarantee the quality and adequacy of that mode of instruction.

We see no legal reason to extend the exemption allowed by Section 48222<sup>2</sup> to include supervision of independent study by a school like Sunland, absent an act of the Legislature to that effect.

(2) Do California statutes otherwise permit home-schooling, by means of parents creating their own home-based private schools and, if so, upon what conditions?

*Education Code* section 48200 requires "compulsory full-time education" in the California public school system for all children residing in the state who are between the ages of 6 and 18. The only exceptions to this requirement are those allowed by statute in *Education Code* Sections 48220-48231.<sup>3</sup> The plenary power of a state legislature to provide for the education and welfare of children through compulsory attendance laws has been affirmed repeatedly since the U.S. Supreme Court's decision in *Pierce v. Society of Sisters* (1925) 268 U.S. 510. Section 48200 and its exceptions are a valid exercise of that state legislative power.

The SPI and CDE believe that compulsory public education is a necessary and appropriate act of State legislative authority that has only limited exceptions under current statutes. Those exceptions must be narrowly construed to assure that every child in California has an adequate educational opportunity and that those opportunities are actively protected by the public education and child welfare systems throughout the state. We further believe that, when quality educational opportunities have been so assured, it is legally permissible for a parent to qualify as a private school and teach their children in their own home.

The question is whether the exceptions to compulsory public school attendance allow "home schooling" by parents without teaching credentials who declare their homes to be private schools. *Education Code* Section 48222, which exempts a child from public school if he or she attends a private school, does not expressly allow or prohibit parents from establishing private schools in their homes. No state law directly addresses "home schooling" by parents. This uncertainty has existed for many years and the Legislature has chosen not to directly address the issue. However, we submit that Section 48222 may be interpreted to allow parents to declare their homes private schools, subject to responsible regulation by local education and law enforcement officials.

*Education Code* section 48222, in its entirety, states as follows:

Children who are being instructed in a private full-time day school by persons capable of teaching shall be exempted. Such school shall, except under the circumstances described in Section 30, be taught in the English language and shall offer instruction in the several branches of study required to be taught in the public schools of the state. The attendance of the pupils shall be kept by private school authorities in a register, and the record of attendance shall indicate clearly every absence of the pupil from school for a half day or more during each day that school is maintained during the year.

Exemptions under this section shall be valid only after verification by the attendance supervisor of the district, or other person designated by the board of education, that the private school has complied with the provisions of Section 33190 requiring the annual filing by the owner or other head of a private school of an affidavit or statement of prescribed information with the Superintendent of Public Instruction. The verification required by this section shall not be construed as an evaluation, recognition, approval, or endorsement of any private school or course. (Emphasis added.)

Section 48222, then, creates several *substantive* requirements regarding teacher capability and curriculum content, and several *procedural* requirements regarding the verification of private school quality by local education officials and filing of a private school affidavit with the SPI. Local attendance supervisors are also required to verify that a private school affidavit is on file before allowing a child an attendance exemption. *Cal. Ed. Code* Section 33190 requires the Department of Education to accept and file a private school affidavit that describes the courses of instruction and the capabilities of each faculty member.<sup>4</sup> This program also states that acceptance and filing of a complete affidavit does not constitute, and may be not be represented by the private school as constituting, any "evaluation, recognition, approval, or endorsement of the school..." Section 33190 does not require disclosure of whether the "person" filing the affidavit is a parent seeking to home school his or her own students, or whether the person has a teaching credential.

Furthermore, *Cal. Ed. Code* Section 44237, which requires private school employees to be fingerprinted for safety purposes, also states that any "person" may operate a private school. This section does not exclude home schooling parents without credentials from the class of "persons" entitled to form a school. On the contrary, Section 44237(b)(4) expressly exempts parents or guardians working exclusively with their own children from the finger print requirement. If the Legislature intended to prohibit parents from declaring their homes private schools, it could have done so expressly in these sections. Absent an express prohibition, and in light of the protections for children that are now in place, we see no compelling reason to treat parents differently than other private "persons" who are allowed to form private schools. (*Jefferson v. Compton Unified Sch. Dist.* (1993) 14 Cal.App.4th 32, 39 [statutes should not be construed to cause a harsh result].)

State statutes now establish a system to protect children against abuse and neglect because local officials are charged with enforcement of the truancy and child welfare statutes. *Education Code* Section 48240 requires each school district to appoint a "supervisor of attendance" of all students to oversee compliance with "compulsory full-time education." Such attendance supervisors participate in local school attendance review boards (SARBs) that also include law enforcement and child welfare officials. (*Ed. Code*, § 48321.) When a parent asserts that their child is enrolled in private school, a public attendance supervisor is required to verify that assertion and determine whether the child is entitled to the attendance exemption under Section 48222. If not, the child may be declared habitually truant and referred to the SARB and to the district attorney for juvenile court proceedings. (*Ed. Code*, § 48263.5.) After a hearing, a juvenile court judge may order the child placed in a public or proper private school and may make other orders for the welfare of the child. (*Ed. Code*, §§ 48267 and 48268.)

The SPI and CDE support the principle of parental and student choice where it is responsibly exercised, as it is in district-supervised independent study, charter schools, and alternative schools. (e.g., *Cal. Ed. Code* § 51745, et seq.; *Ed. Code*, § 47600, et seq., and *Ec. Code*, § 58500, et seq.). In addition, we believe that current California truancy and child welfare laws, many enacted since the *People v. Turner* (1953) 121 Cal.App.2d Supp. 861 decision, create a reasonable system of private school regulation which, if properly implemented at the local level, will assure that children receive an education.<sup>3</sup>

(3) In light of the answers to the above questions, does the California legislative scheme violate the U.S. Constitution, with respect to the free exercise of religion and parental control rights of parents who desire to home-school their children?

California's compulsory education statutes do not violate the U.S. Constitution because, unlike the statutes at issue in *Pierce v. Society of Sisters* (1925) 268 U.S. 510, they do not compel the attendance of all students at public schools. We do not believe that parents have religious or parental rights to allow their children to be truant as defined by the laws described above. The very narrow exception created by the U.S. Supreme Court in *Wisconsin v. Yoder* (1972) 406 U.S. 205 only applies to families with "deep religious convictions" that home instruction of children after a certain age is vital to the existence of that religious community. In *Yoder*, the Amish families established through expert testimony that compulsory attendance after 8th grade would destroy the Amish community. Every California child has a fundamental right to an education and the State has a compelling interest in safeguarding that right through compulsory attendance statutes.

The question is whether the exceptions to compulsory public school attendance allow "home schooling" by parents without teaching credentials who declare their homes to be private schools. *Education Code* Section 48222, which exempts a child from public school if he or she attends a private school, does not expressly allow or prohibit parents from establishing private schools in their homes. No state law directly addresses "home schooling" by parents. This uncertainty has existed for many years and the Legislature has chosen not to directly address the issue. However, we submit that Section 48222 may be interpreted to allow parents to declare their homes private schools, subject to responsible regulation by local education and law enforcement officials.

*Education Code* section 48222, in its entirety, states as follows:

Children who are being instructed in a private full-time day school by persons capable of teaching shall be exempted. Such school shall, except under the circumstances described in Section 30, be taught in the English language and shall offer instruction in the several branches of study required to be taught in the public schools of the state. The attendance of the pupils shall be kept by private school authorities in a register, and the record of attendance shall indicate clearly every absence of the pupil from school for a half day or more during each day that school is maintained during the year.

Exemptions under this section shall be valid only after verification by the attendance supervisor of the district, or other person designated by the board of education, that the private school has complied with the provisions of Section 33190 requiring the annual filing by the owner or other head of a private school of an affidavit or statement of prescribed information with the Superintendent of Public Instruction. The verification required by this section shall not be construed as an evaluation, recognition, approval, or endorsement of any private school or course. (Emphasis added.)

Section 48222, then, creates several substantive requirements regarding teacher capability and curriculum content, and several procedural requirements regarding the verification of private school quality by local education officials and filing of a private school affidavit with the SPI. Local attendance supervisors are also required to verify that a private school affidavit is on file before allowing a child an attendance exemption. *Cal. Ed. Code* Section 33190 requires the Department of Education to accept and file a private school affidavit that describes the courses of instruction and the capabilities of each faculty member.<sup>4</sup> This program also states that acceptance and filing of a complete affidavit does not constitute, and may be not be represented by the private school as constituting, any "evaluation, recognition, approval, or endorsement of the school..." Section 33190 does not require disclosure of whether the "person" filing the affidavit is a parent seeking to home school his or her own students, or whether the person has a teaching credential.

Furthermore, *Cal. Ed. Code* Section 44237, which requires private school employees to be fingerprinted for safety purposes, also states that any "person" may operate a private school. This section does not exclude home schooling parents without credentials from the class of "persons" entitled to form a school. On the contrary, Section 44237(b)(4) expressly exempts parents or guardians working exclusively with their own children from the fingerprint requirement. If the Legislature intended to prohibit parents from declaring their homes private schools, it could have done so expressly in these sections. Absent an express prohibition, and in light of the protections for children that are now in place, we see no compelling reason to treat parents differently than other private "persons" who are allowed to form private schools. (*Jefferson v. Compton Unified Sch. Dist.* (1993) 14 Cal.App.4th 32, 39 [statutes should not be construed to cause a harsh result].)

State statutes now establish a system to protect children against abuse and neglect because local officials are charged with enforcement of the truancy and child welfare statutes. *Education Code* Section 48240 requires each school district to appoint a "supervisor of attendance" of all students to oversee compliance with "compulsory full-time education." Such attendance supervisors participate in local school attendance review boards (SARBs) that also include law enforcement and child welfare officials. (*Ed. Code*, § 48321.) When a parent asserts that their child is enrolled in private school, a public attendance supervisor is required to verify that assertion and determine whether the child is entitled to the attendance exemption under Section 48222. If not, the child may be declared habitually truant and referred to the SARB and to the district attorney for juvenile court proceedings. (*Ed. Code*, § 48263.5.) After a hearing, a juvenile court judge may order the child placed in a public or proper private school and may make other orders for the welfare of the child. (*Ed. Code*, §§ 48267 and 48268.)

The SPI and CDE support the principle of parental and student choice where it is responsibly exercised, as it is in district-supervised independent study, charter schools, and alternative schools. (e.g., *Cal. Ed. Code* § 51745, et seq.; *Ed. Code*, § 47600, et seq., and *Ec. Code*, § 58500, et seq.). In addition, we believe that current California truancy and child welfare laws, many enacted since the *People v. Turner* (1953) 121 Cal.App.2d Supp. 861 decision, create a reasonable system of private school regulation which, if properly implemented at the local level, will assure that children receive an education.<sup>5</sup>

(3) In light of the answers to the above questions, does the California legislative scheme violate the U.S. Constitution, with respect to the free exercise of religion and parental control rights of parents who desire to home-school their children?

California's compulsory education statutes do not violate the U.S. Constitution because, unlike the statutes at issue in *Pierce v. Society of Sisters* (1925) 268 U.S. 510, they do not compel the attendance of all students at public schools. We do not believe that parents have religious or parental rights to allow their children to be truant as defined by the laws described above. The very narrow exception created by the U.S. Supreme Court in *Wisconsin v. Yoder* (1972) 406 U.S. 205 only applies to families with "deep religious convictions" that home instruction of children after a certain age is vital to the existence of that religious community. In *Yoder*, the Amish families established through expert testimony that compulsory attendance after 8th grade would destroy the Amish community. Every California child has a fundamental right to an education and the State has a compelling interest in safeguarding that right through compulsory attendance statutes.

(*Serrano v. Priest* (1975) 18 Cal.3d 728; *Butt v. State of California* (1992) 4 Cal.4th 668.) We believe that the California compulsory education statutes properly balance the rights of parents respecting control of their children's education and religious expression with the right of children to be educated.

Thank you for this opportunity to address the difficult legal and policy questions in this case. Please let us know if there are further questions you would like the Superintendent or Department to address.

Sincerely,

MARSHA A. BEDWELL  
General Counsel

AMY BISSON HOLLO'WAY  
Assistant General Counsel

---

Michael Hersher  
Deputy General Counsel

Counsel for the Superintendent of Public Instruction and  
the California Department of Education

cc: See attached Service List

---

<sup>1</sup> There is no statutory or commonly understood definition of the phrase "homeschooling."

<sup>2</sup> All statutory references are to the California Education Code unless otherwise noted.

<sup>3</sup> We will address the religious exception to compulsory attendance below in response to the Court's third question.

<sup>4</sup> Since 1991, the annual Budget Act has directed CDE to "expend no funds to prepare a compilation of information on private schools with five or fewer students." (See, e.g., *Stats.* 1991, c.118, sec. 2.00, item 6110-001-0001, para. 5; and *Stats.* 2007, c.171, item 6110-001-0001, para. 2.) If a home school had less than five students, it would not appear on CDE's list, but a district attendance supervisor would be required to ask CDE if an affidavit was on file with regard to a particular school.

<sup>5</sup> The decision in *Cassady v. Signorelli* (1996) 49 Cal. App.4th 55 supports such deference to the judgment of local educators and law enforcement in affirming a family court's determination that "home schooling" by the parent could be appropriate for a particular child. Deference to local school district discretion is further required by *Education Code* section 35160 which states that a district may engage in any activity that is not prohibited by law.

Last Reviewed: Wednesday, May 28, 2008