SENATE EDUCATION COMMITTEE

Minutes of Meeting - May 5, 1975

The fifteenth meeting of the Senate Education Committee was held on May 5, 1975 at 3:50 p.m. in Room 323.

COMMITTEE MEMBERS PRESENT: Chairman Richard H. Bryan
Senator Schofield
Senator Blakemore
Senator Foote
Senator Neal
Senator Sheerin

OTHERS PRESENT: See Exhibit A

A.B. 547 - Makes changes in provisions relating to educational personnel.

Mr. Dick Morgan advised that the bill is supported by the Teacher's Association, Clark and Washoe School Districts and the School Trustee's Association. In effect, what they have said is that school boards should not be holding hearings on termination cases. The school board presently has the option to hearing cases; however, in the bill they have taken out school board and indicated that the hearing officer shall hear cases. Mr. Morgan referred to the italicized wording on page 1 and advised that each year the school districts file in budget form the next year's estimates -- they are asking that that same form be send to the Nevada Tax Commission where all other records are sent. With reference to changes on page 2, Mr. Morgan advised that last session the Legislature approved a mandatory evaluation system of all personnel; the librarians and counselors were being evaluated on the same form as the teachers and they asked for an evaluation form that would pertain to what they were doing. Line 40 of page 2 provides that an individual being terminated or non-renewed have a hearing.

Senator Bryan asked why records were sent to the Nevada Tax Commission. Mr. Morgan stated that it relates to the negotiation law and economic data that is available to negotiating parties. This will put data in front of parties that would resolve problems regarding whether money is available. Mr. Petroni advised that they are having this problem in Clark County because they make the budget available to the Association as well as filing it with the state department. Apparently they are having some problem statewide getting the budgets from the state department.

Senator Blakemore moved "Do Pass"; seconded by Senator Schofield; motion carried unanimously.

A.B. 359 - Establishes policymaking boards within association for interscholastic activities.

Assemblyman Craddock spoke in favor of this bill which he has sponsored (See Exhibit B for copy of Mr. Craddock's testimony). Also provided by Mr. Craddock were copies of Chapter 7, 8 and 15 of the NIAA Handbook

(copies of aforementioned chapters are attached hereto and marked as Exhibit C and Exhibit D). Mr. Craddock presented the committee with copies of NIAA organizational chart in its present form (Exhibit E) and his proposed reorganization (Exhibit F). Also provided were: copy of case regarding Cleveland vs. Lyon County School District (Exhibit G); copy of letter from Roy W. Martin Junior High to Robert Lund of Clark County School District (Exhibit H); and copy of NIAA's Executive Secretary's contract (Exhibit I).

Senator Bryan asked if this proposal would require compliance with the Administrative Procedures Act; Mr. Craddock advised that he does not think this would require anything other than taking a good look at what they have. Senator Bryan then asked if regulations adopted by this board would be approved by the legislative commission and board of control. Mr. Craddock replied no, this is policy only. The rules, procedures and regulations could be adopted by the executive secretary.

Marvin Picollo, Washoe Co. School District, advised that both Washoe County and the NIAA would like to go on record as having the opinion that they should stay as they are because it has grown in a manner of natural progression. Since this was changed in the last session, they have not had enough time to get the bugs out; however, they do feel it is working. With reference to Mr. Craddock's feeling that it is not possible to obtain a speedy decision, Mr. Picollo advised that when necessary they are able to take poll votes and have been able to get decisions in one day. Mr. Picollo feels that the speed would not be increased if they had to poll 17 county superintendents and then poll seven board members -- this process would slow it down. Mr. Picollo feels that the system is working and they would like to leave it in its present form.

Senator Neal asked if Mr. Picollo feels there is anything wrong with vesting the executive secretary with the authority to interpret policy. Mr. Picollo replied that the board realizes that they have got to give more authority to the executive secretary. He is taking on authority as fast as he can.

Senator Sheerin commented that he feels the basic difference is that the present proposal is vertical decision making, while Mr. Craddock proposes a horizontal decision making process. Senator Sheerin suggested that principals and vice principals be added to Mr. Craddock's measure. Mr. Picollo replied that he has no objection -- he believes the key difference is that you are replacing the high school principal with people being one step further removed. If it is to be changed, Mr. Picollo feels that this would be a better situation than Mr. Craddock proposes. Senator Sheerin asked Mr. Picollo what his feelings would be if the executive secretary were put between the two boards. Mr. Picollo replied that he should still work for the NIAA control board.

Senator Bryan asked who, under the present organization, promulgates the regulations which have the force of law under the administrative procedures act. Mr. Picollo replied that the NIAA board establishes rules and regulations for zoning, etc. Those rules must be approved by the superintendents. In the final analysis, the final authority rests with the legislative commission.

Mr. Angelo Collis, So. Nevada Zone Conference, advised that it was voted upon last week at the So. Nevada Conference that he be sent by them to discuss this bill. Mr. Collis further stated that the So. Nevada Conference represents class B, A, AA, and AAA schools and they would like him to present their opposition to the bill. Mr. Collis commented that he is vice principal of Clark High and deals every day with the people that make up the NIAA. Mr. Collis advised that they are opposed to the idea of one student - one vote. They feel that a school with 50 students should be able to participate. This bill is creating two boards in the place of one; if an additional board is added, it will increase the difficulty in getting problems solved. They have been striving to effect improvements in the NIAA. Two years ago they went before the Legislature to incorporate the IAA under state statutes because they were informed that they should have state statutes that would enable them to function. They do want to increase the authority vested in the executive secretary. When the NIAA board was changed to 12 members, they added 3 members of the Board of Trustees. Out of three meetings that have been held, there has not been one where all three members were in attendance at the same time. They don't seem to have the time to spend on the everyday problems that come up. Of the 54 schools involved in the NIAA, 39 are outside of Clark County. With respect to the raising of money for the organization, $12,600 came from dues from Clark County out of the $35,600 that was taken in dues. The Southern zone tournament this year grossed $7,004, while the Northern tournament grossed $29,443. Mr. Collis feels that there is a definite need to keep people in the field who have expertise in the activities that the students participate in.

Mr. Larry Olsen, Principal of Chapparal High School and representing the Secondary School Principal's Assn. of Nevada, advised that they are in opposition to this bill. They would like to see the current organization of NIAA continue and be given an opportunity to try to succeed the way it is. They feel that if they had two groups (the legislative commission and the board of control) it would create problems. The guidelines are designed for the state as a whole axd not for one county over another. When a student enters the ninth grade, the NIAA eligibility for that student would start.

Senator Sheerin asked what the policy decision was behind the board of control coming into existence. Mr. Picollo advised that they were told by other associations throughout the country that that decisions of those groups would be challenged unless they were given legal authority. It was at their request upon recommendation from groups around the country

Mr. Bob Best, Nevada State School Board Assn., advised that the school boards concur in their opposition to this bill. At the spring meeting of the school board, the board reasserted their stand in opposition to changing the law. The new organization with an executive secretary has only been in operation since July 1, 1974, and they would like to give it a chance to work.

Mr. John Hawkins, Superintendent of Carson City Schools, recommended that the organization of the NIAA remain as it is since it has had only one year to operate with an executive secretary. Mr. Hawkins further commented that every state out of 48 have secondary people on the board of control, and about 90% of the work is done by that board.

Mr. Mike Horan, Sparks High School, advised that he is representing the Washoe County Administrative Assn. of Vice Principals and the athletic directors of Washoe county. Mr. Horan stated that the amended version of the bill does not guarantee input from secondary school principals who are responsible for running these programs. Mr. Horan recommended that the committee not vote this bill out of committee.

Maurice Moyle, Yerington High School, advised that he was directed by the following schools to request that this bill be defeated: Carson City, Proctor Hug, Edward Reed, Reno, Sparks, Wooster, Fallon, Douglas, Elko, Lowrey, Hawthorne, Manogue, Stewart, White Pine, Yerington, Fernley, Gabbs, Incline, Lovelock, Sun Valley and Virginia City. Mr. Moyle further stated that the dual policy-making board would be cumbersome; there would be no source of appeal beyond this other than the court. Mr. Moyle has found the executive secretary to be accessible and he can render decisions.

Father George Wolf, Manogue High School, advised that when he has a problem, he phones the principal in Lovelock and feels confident in that he knows he will understand his problems and will listen to him. He feels that if this bill were passed, he would then have to communicate with Clark County where they do not know him and are not aware of his problems and, therefore, he would lose his representation. Father Wolf feels that this is an honest attempt of one parent to change something but feels that perhaps the principals should have been contacted. Father Wolf feels the system is working as it is.

Mr. Bert Cooper, Executive Secretary of NIAA, referred to the speed in which matters could be solved and advised that they have a few problems that go to the legislative commission which are outlined in Chapter 8 of the NIAA handbook. These procedures can be appealed to the legislative commission. Mr. Cooper gave the following example of what might happen if they had two boards: if the legislative commission would vote 6-1 in favor of a policy, and it were then taken to the board of control, which would be made up of 17 county superintendents, and they might vote

in opposition by 15-2, then there would be no negotiations and it would be defeated. The way it is operating now, where most matters are debated and discussed from the schools up through the board of control and then recommended as policy matters that have to be ratified by the legislation commission. Those members on the board are elected by their member schools.

Senator Bryan asked Mr. Cooper how a problem would reach him. Mr. Cooper replied that a principal has to submit to him an appeal or protest before it would go to the board. Senator Neal asked how Mr. Cooper would be effected if Mr. Craddock's changes were adopted. Mr. Cooper replied that instead of the board of control being made up of elected representatives, a trustee would be involved in hiring and the salary for the executive secretary.

Mr. Tod Carlini, Lyon County School, commented that Nevada has gone from 39 schools to 54 schools and hopes that the legislature will allow them to continue their present operation and give them an opportunity to fulfill the things that have to be done -- they can't do this in just one year.

Senator Sheerin feels that perhaps there should be some changes made but does not think that Mr. Craddock's proposal is the way to go. The NRS provides that the Trustees can form an association; the association is to adopt rules and there should be a procedure for appealing those rules. Senator Sheerin further advised that we should go back and look at the incorporation - it provides for the Board of Directors to be known as the legislative commission and it also provides for a governing body which is the board of control. Therefore, there are two groups in the incorporation, and Senator Sheerin feels that the only thing they need is one group. The persons to decide who that one group is is the Board of Trustees -- that is what the statutes say. They should create 1 group; and that board of control should have all the rule making power and decision making power. The only power that should be vested in anyone else should be a separate group set up for the appeal power. Senator Sheerin also feels there are changes to be made in their appeal procedure, in that Chapter 14 says that students may appeal to the board of control. The board of control should make the initial decision and if that decision is not accepted, it is appealed to the appeal body that is created for the final decision. The appeal procedure in Chapter 10 should also be looked at -- this indicates that the school may appeal, so apparently the students can't appeal. Senator Sheerin stated that for the above reasons, he is not going to support this bill, and feels that they need to look at their present structure and talk to their attorney about it.

Mr. Craddock suggested that the operation be turned over to the executive secretary and agrees that we should provide more authority to him.

A.C.R. 56 - Urges the board of regents of the University of Nevada to continue to explore requirements, possible funding sources and related matters concerning establishment of a law school at the University of Nevada, Las Vegas.

Senator Blakemore moved "Do Pass"; seconded by Senator Schofield; motion carried unanimously.

S.C.R. 43 - Urges the board of regents of the University of Nevada to continue to explore requirements, possible funding sources and related matters concerning establishment of a law school at the University of Nevada, Las Vegas.

Because the committee has processed A.C.R. 56, which is identical to S.C.R. 43, Senator Bryan moved that we indefinitely postpone S.C.R. 43; seconded by Senator Blakemore; motion carried unanimously.

Being no further business at this time, the meeting was adjourned at 6:00 p.m.

Respectfully submitted,

Sharon W. Maher

Sharon W. Maher, Secretary

SENATE Education COMMITTEE

ROOM # 323

Monday DATE 5-5-75

NAME	ORGANIZATION	ADDRESS
Fr. George Wolf	Manogue High School	Reno, Nev
Maurice L. Moyle	Yerington High School	Yerington
MIKE HORAN	NO NEV AAA CONF SPARKS H. S.	SPARKS, NV
JOHN HAWKINS	CARSON CITY SCHOOL	CARSON CITY
W. J. Wright	Whittell High School	Zephyr Cove
Morse R. Burley	Carson City H.S.	Carson City
Bob Best	Nev. State School Boards Assn	Carson City
Marvin Picollo	Washoe Co. School Dist	Reno Nevada
Larry Olsen	Secondary School Principals Ass'n of Nev.	Las Vegas
Kurt L. Cooper	Exec Sec. NIAA	Carson City
Angelo Collier	So. Nevada Zone Conference	Las Vegas

EXHIBIT A

ORGANIZATIONAL STRUCTURE

My first interest in the Nevada Interscholastic Activities Association (NIAA) resulted from supporting my own son's participation in these activities. Your time and patience could not be expected to endure the details as I know and can provide them. Briefly, on May 7, 1974, I filed a complaint for injunctive relief in behalf of my son and his team mates. A Temporary Restraining Order was issued and subsequently vacated with certain conditions being agreed upon by the parties involved. I caused the case to be dismissed on May 30, 1974, when the conditions agreed upon had been met. A quote from that Notice of Dismissal, "Whereas, the defendants have made due apologies to plaintiffs for the errors caused by Defendants' actions,..."

The Vice Principal of the school involved, Eldorado, was the Vice President of the NIAA Board of control at that time. Eldorado was a new school, in its first year of operation. The student body was 8th through 11th inclusive. Several 9th grade students were permitted, with the full knowledge of the staff and NIAA officials, to compete in High School and Junior High Track and Field events, until they won the eastern zone finals. The Eldorado 9th grade students were precluded from competing in the Finals while other 9th grade students from Jr.-Sr. High schools were allowed to continue. The end result was 19 pages of legal documentation and two court hearings involving several hundred dollars just to have the school officials say sorry kids, we were wrong!

Subsequent to the litigation referenced above, I attended two meetings

of the NIAA Board of Control and one meeting of their Legislative Commission (the 17 County Superintendents) wherein the so-called reorganization of the NIAA took place. No significant improvement has been made over the immediate past. A full time Executive Secretary has been employed, but he is helpless to do anything, because the Board of Control and the principals are charged with the administration of the program. See Chapters 8 and 15 of the NIAA Handbook.

They also increased the Board of Control from 7 to 12 members which only added difficulties to an almost impossible situation. Try to get an immediate or expeditious interpretation of a rule from a 12-member board that is scattered throughout the state when you have a week to spare.

Last week I received a copy of a case which originated between the Lyon County School District and a student by the name of Chester Cleveland, Jr. That case was commenced on October 29, 1974, and is now in the State Supreme Court. I have 166 pages of documentation which includes a 22-page Memorandum of Decision and Orders. Page 5, lines 18 through 21, "Both Plaintiffs (in their pleadings) as well as all Defendants (in open Court) have requested that this Court deal with the Lyon County School District athletic code on its merits for guidance and promulgation of rules by proper authority."

The above quote is particularly interesting when the case generally involves the school's attempt at enforcing its rules and regulations off the school grounds during the weekend. Denial of due process is the specific charged.

Goss et al vs. Lopez et al was decided by the U. S. Supreme Court on January 22, 1975. That decision holds that notice and a public

hearing is required when a student is suspended from General Curriculum for 10 days or less.

The National Federation of State High School Association's Official Handbook 1974-75 (Nevada is a member) Page 67 under Legal Status of State Association: Quote "The structure establishing and governing state associations should be clearly separated from the rules and means to alter the structure should not necessarily be the same as for altering the rules;..."

In our State they are not separated. The policymaking board consists of the 17 County Superintendents. The president of the Control Board is a Superintendent and a member of the policymaking board.

Mr. Chairman and Members, the Lyon County School District is now under court order dated December 3, 1974, to file with the Clerk of the First Judicial District Court a full text of a new proposed code or set of rules and regulations governing athletes and athletics at Fernly High School, Lyon County, Nevada, but not necessarily limited thereto, or a resolution dealing with that same matter. The portion underlined is quoted from Case No. 5716, Page 21, lines 15 through 19.

I submit to you that the entire NIAA is in jeopardy for at least two reasons:

1. The inability of the organization to effectively operate as structured. Explanation: the Superintendent and Board members protect their authority so jealously that a decision cannot be made in a timely fashion.
2. The complete absence of student representation at the policymaking level. Explanation: One Superintendent represents 58% of the student population while one Superintendent with an equal vote has no student

My oldest son is a 16-year-old sophomore. He has played one year of Junior Varsity and one year of Varsity football. He has lettered two years in wrestling and this year won 3rd in State AAA at 168 lbs. My only other child is 10 years old. He holds the Southwest Conference, United States Judo Association Title. Their involvement in sports has kept them too busy to throw rocks at the neighbors' windows or any other malicious mischief that I know of. I'm personally and selfishly interested in the welfare of the NIAA, in the interest of my own and 62,613 other high school students in Nevada.

Of the 17 letters that I have received from principals regarding A.B.359, one logical and reasonable exception has been taken to A.B. 359 if words were amended out. Those two words are Page 2, line 8 [whenever practical]. This suggested amendment would put the principals in charge of the administration of the program while the policy would be set by the Superintendents and the School Boards. This bill would also provide the safeguards of separation suggested by the National Federation referred to hereinabove. It would also force the dual majority into placing some responsibility into the hands of the Executive Secretary, thereby streamlining the entire operation by bringing the interpretation of rules, and such other routine matters, to rest where they are accessible when needed.

Any questions you may have I'll be happy to try to answer.

CHAPTER 7

Powers and Duties of Officers

Section 1: President

It shall be the duty of the president to preside at all meetings of the Board of Control and the member schools of the Association. He may call such special meetings of the Board of Control as he may deem necessary in accordance with Chapter 5, Section 2. He shall act as the official spokesman for the Association and shall perform such duties as are generally required of his office.

Section 2: Vice-President

It shall be the duty of the vice-president to perform all the duties of the president when the latter is unable to perform these duties.

Section 3: Executive Secretary

The Executive Secretary of the Association shall be the chief administrative officer of the Association and shall perform such duties as are required by these rules and regulations and as provided in his contract.

The Executive Secretary shall be bonded in an amount not less than $20,000, the premium for which shall be paid by the Association. He shall make a complete financial statement to the Association annually following an audit by a certified public accountant. All expenses of the audit shall be paid by the Association.

EXHIBIT C

CHAPTER 8

Powers and Duties of the Board of Control

Section 1

The Board of Control shall have the authority to exercise all the powers expressed or implied in these Rules and Regulations, and to act as an administrative board in the interpretation of all questions arising from the directing of interscholastic activities of the member schools as provided in the Rules and Regulations. Where there is no rule or precedent the decision of the Board shall prevail.

Section 2

The Board of Control shall:

(a) exercise general control over all activities in which member schools participate as provided in the Rules and Regulations.

(b) provide necessary facilities, equipment, and personnel to conduct the business of the Association.

(c) give interpretations of the rules of the Association and clarify application of the rules and regulations.

(d) authorize the executive secretary to conduct investigations relative to violations of the rules and regulations of the Association as provided in the Violation and Appeal Chapter 10.

(e) adopt an annual budget for the operation of the business affairs of the Association and set dues in conformance with the formula adopted by the Association.

(f) employ an Executive Secretary, set his or her salary, and provide payment thereof.

(g) assign member schools to the necessary classifications, zones or divisions to better achieve the objects of the Association, and for the efficient and effective conduct of interscholastic activities.

(h) provide for the organization, supervision, and certification of officials for all interscholastic activities under its jurisdiction as provided in the Rules and Regulations.

(i) make such other regulations not inconsistent with the Articles of Incorporation and Rules and Regulations.

Section 3

All actions of the Board of Control under Chapter 8 may be appealed to the Legislative Commission by a member school, through the Superintendent, within ten (10) calendar days.

EXHIBIT D

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CHAPTER 15

Rules Governing Member Schools

Section 1 RESPONSIBILITY OF PRINCIPAL:

The principal of each member school is responsible to the Association in all matters pertaining to interscholastic activities, including the eligibility of students. In case of delegated authority to other eligible and regular staff members, the principal is not relived of the responsibility in case of infraction or violation of rules of the Association. No interscholastic athletic activities may be scheduled or performed without the approval of the principal.

Section 2 RESPONSIBILITY FOR REGISTRATION OF PLAYERS:

The principal shall be directly responsible for the registration of all students. He shall not delegate this responsibility to any other person.

Section 3 SUPERVISION OF TEAMS:

The principal or his authorized representative shall accompany all teams or school groups participating in any interscholastic activity as a school representative. He shall ultimately be responsible for all matters affecting the team and the school. The school shall be considered as responsible for all acts of the participating team, or for school groups sponsored by the school while on athletic trips. The principal or his authorized representative accompanying the team or school sponsored group to a meet, game, contest or tournament shall exercise the utmost care in the supervision of said team or school sponsored group.

Section 4 SPORTSMANSHIP OF SCHOOL REPRESENTATIVES:

It shall be the responsibility and duty of principals, coaches, faculty members, and all other official representatives of member schools in all interscholastic relations to practice the highest principles of sportsmanship and ethics of competition. The Board of Control shall have authority to penalize any member school whose representatives may be adjudged upon competent evidence to have violated this obligation.

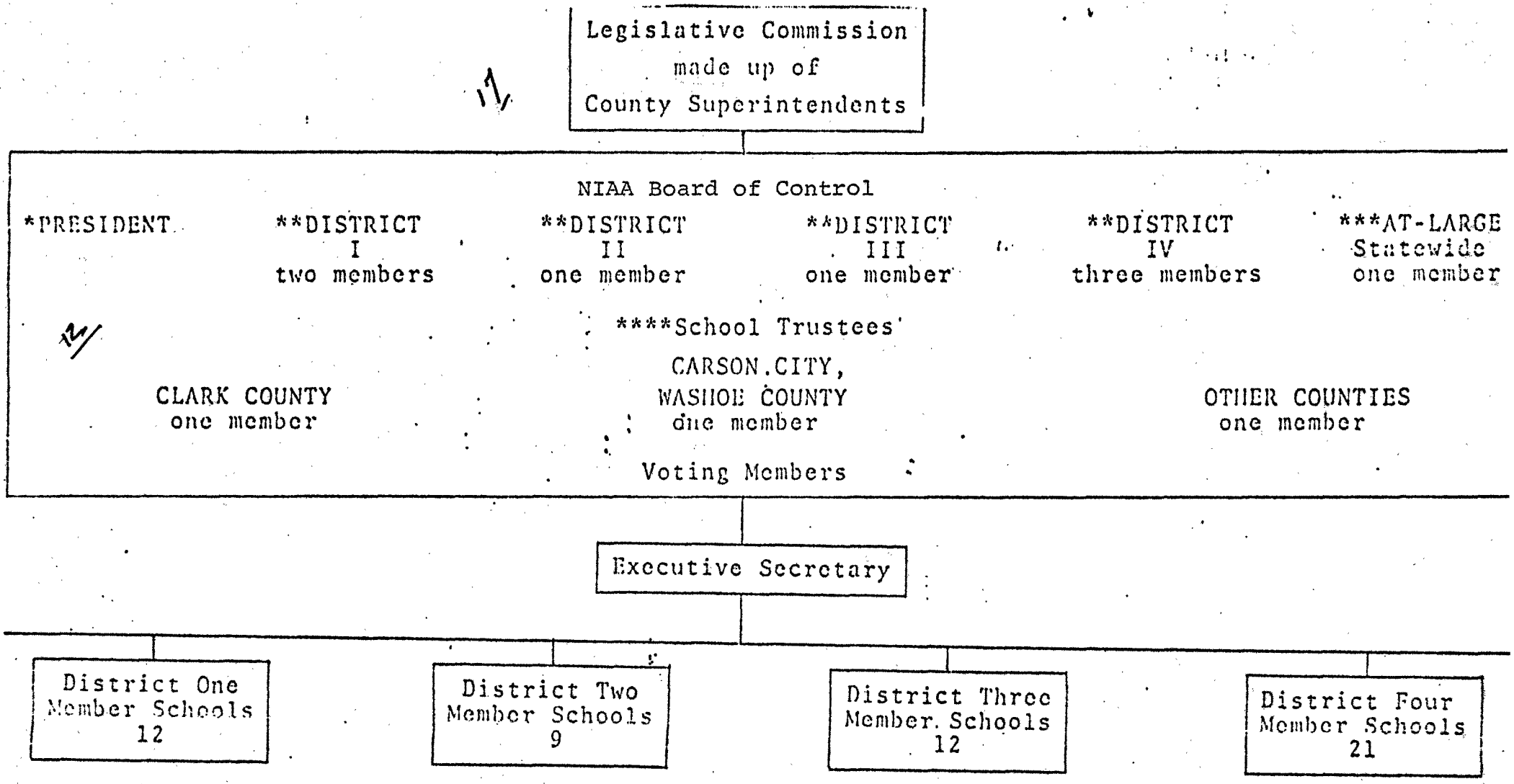
Section 5 POLICY ON UNSPORTSMANLIKE CONDUCT AGAINST AN OFFICIAL:

(a) Conduct of Contestants *(Against an Official):* A contestant who is disqualified by a game official because of a flagrant or unsportsmanlike conduct in connection with any interscholastic contest, shall be ineligible until reinstatement by the Principal and written report of the details of the incident and action taken has been filed with the Executive Secretary for review by the Board of Control.

(b) Officials to Give Explanation: If the act is against the official the incident must be referred in writing through the Commissioner of the zone to the Executive Secretary.

(c) Respect for Authority: Authority vested in the contest officials must be respected and upheld. If an act of violence is committed against the person of a game official by a fan, student, player or faculty member of the school, during any interscholastic activity, the Principal of the school shall make a report within twenty-four (24) hours to the Executive Secretary giving complete details of the incident, the name of the parties involved and what corrective action has been taken.

NEVADA INTERSCHOLASTIC ACTIVITIES ASSOCIATION
ORGANIZATION CHART



*Elected by Legislative Commission
**Administrative District Representatives elected by the member schools (each school has one vote)

***Elected by the Board of Control
****Elected by the Trustees of the district or districts

EXHIBIT E

NIAA Board of Administrators

*PRESIDENT	**DISTRICT I two members	**DISTRICT II one member	**DISTRICT III one member	**DISTRICT IV three members	***AT-LARG Statewide one membe

****School Trustees'

CLARK COUNTY one member

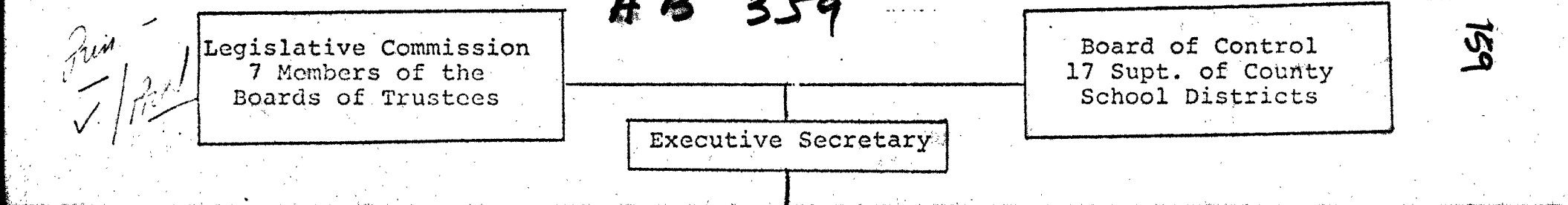
CARSON CITY, WASHOE COUNTY one member

OTHER COUNTIES one member

Voting Members

Craddock

AB 359



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AB 359

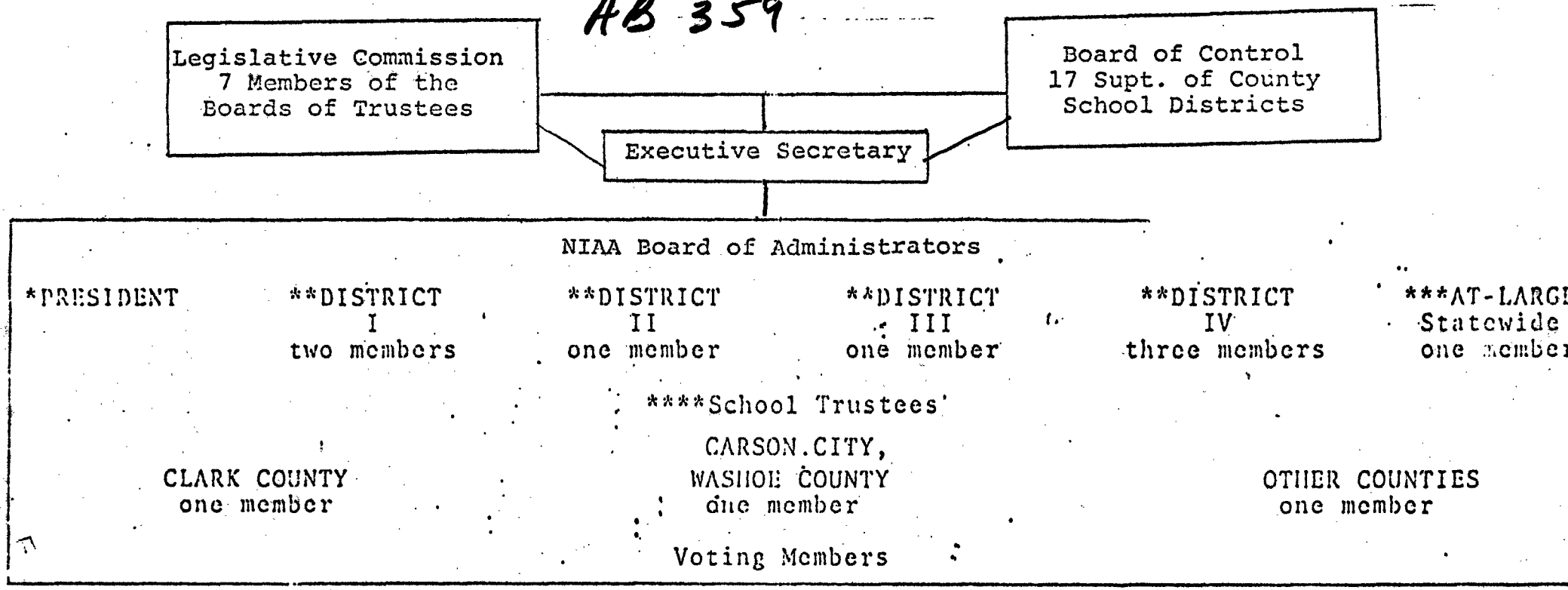

EXHIBIT F

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF LYON

CHESTER CLEVELAND, JUNIOR by LOUINDA CLEVELAND, his mother and guardian ad litem,

Plaintiffs,

vs.

ROBERT SHIPLEY, individually and in his capacity as principal of Fernley High School; TODD CARLINI, individually and in his capacity as Superintendent of Schools of the Lyon County School District; DR. LEONARD RIPE, individually and in his capacity as President of the Board of Trustees of the Lyon County School District; EDDIE SNYDER, MILDRED SCIARANI, GENE MINOR, JACK MARCY, RICHARD FULSTONE, and GRANT ANDERSON, individually and in their capacities as members of the Board of Trustees of the Lyon County School District,

Defendants.

No. 5716

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FILED

1974

W. J. PARR

Lyon County Clerk

Deputy

MEMORANDUM OF DECISION AND ORDERS

THE LEGAL PROCEEDINGS

THIS CAUSE was commenced October 29, 1974, by Plaintiffs' filing of a Complaint for Declaratory and Injunctive Relief, with Plaintiffs being represented by the Nevada Indian Legal Services, through Attorney DONALD K. POPE, ESQ., (specially admitted to practice in Nevada) and this Court, after an in camera conference in its Douglas County Chambers with Attorney POPE and Lyon County District Attorney RONALD T. BANTA, ESQ., (representing all Defendants), determined not to execute a Temporary Restraining Order, the execution of which would have allowed Plaintiff CHESTER CLEVELAND to play in the last Fernley High School varsity football game of this 1974 season. The Motion for a Preliminary Injunction was set for hearing on the merits

EXHIBIT G

to commence at 1:30 o'clock, p.m., Thursday, November 14, 1974, in the above-entitled Court. The Motion was heard that date and the matter was submitted for decision, subject to Defendants being allowed to file additional Points and Authorities in response to Plaintiffs' Supplemental Authority in Support of Motion for a Preliminary Injunction, and Plaintiffs' request for leave of Court to file a reply thereto. Procedurally this case is properly before the Court even though injunctive relief is being requested in addition to declaratory relief. (See Kress v. Corey, 65 Nev. 1; Sullivan v. Houston Independent School Dist., 307 F. Supp. 1328). Nor can there be any challenge respecting Plaintiffs' standing to sue in this matter. Kelley v. Metropolitan County Brd. of Ed., 293 F. Supp. 485 at 489.

On conclusion of the hearing in this matter, the Court requested that counsel for Plaintiffs file an appropriate petition for appointment of a guardian ad litem, and that has been accomplished and the Court has by Order appointed LOUINDA CLEVELAND, the natural mother of CHESTER CLEVELAND, JUNIOR, guardian ad litem in these proceedings. All Points and Authorities have been filed and received by the Court, and this case is ready for decision concerning the Motion for Preliminary Injunction.

THE FACTS

The Defendants are the Principal (ROBERT SHIPLEY) of the Fernley High School, Fernley, Lyon County, Nevada, the Superintendent (TODD CARLINI) of the Lyon County School District, and the several members of the Lyon County School District Board of Trustees. CHESTER CLEVELAND, JUNIOR, at the time of this controversy, is a sixteen year old student at Fernley High School, residing in Fernley, Lyon County, Nevada, and he and his guardian ad litem bring this action for himself individually as one who has been removed from an athletic team for violation of

the existing athletic code. The evidence shows that at some time prior to September 22, 1974, the Lyon County School District Board of Trustees adopted a revised athletic code entitled "Uniform School District Responsibilities and Regulations Relating to Athletics and Athletes", which code provides in its relevant part as follows:

"1. Training and curfew regulations of the school must be obeyed.

a. TRAINING RULES

1. No drinking of alcoholic beverages.
2. No smoking.
3. Obey the curfew time set by the coach and school.
4. Obey the specific training rules of the coach.

Any team member observed breaking drinking and/or smoking regulations shall be removed from the team for the duration of that sport. Any team member observed drinking and/or smoking a second time during the same school year shall not be allowed to participate in any sport for 12 calendar months dated from the second offense. (Emphasis contained in the original code).

Violations of training regulations, if valid, regardless of person supplying the information, will be accepted by the school. . . . . .

6. Any behavior contrary to that which has been stated, is a direct reflection on the school, team and coaches and will not be tolerated. Violations of a minor nature will result in suspension and possible expulsion from the team, or from athletics for the year.

I have read and agree to abide by the above responsibilities and regulations.

_____ _____"
Parent or Guardian Athlete

On the morning of September 22, 1974, at the approximate hour of 2:00 o'clock, a.m., Lyon County Deputy Sheriff ARTHUR LOHR stopped Plaintiff, CHESTER CLEVELAND, JUNIOR, on Main Street in Fernley, Lyon County, Nevada. When Deputy LOHR approached the Plaintiff's vehicle, it is undisputed that there was present in the vehicle (though not really material herein) a six-pack of beer which is in evidence, and there is but little

question that Plaintiff had been drinking beer prior to being stopped. At this time the Deputy arrested Plaintiff CLEVELAND and later issued a citation to him for violation of NRS 484.379, driving under the influence of intoxicating liquor.

On September 27, 1974, Deputy LOHR advised Defendant, ROBERT SHIPLEY, of the facts as set forth above, emphasizing in addition that there was also an uncited curfew violation. Defendant SHIPLEY thereafter summoned Plaintiff, CHESTER CLEVELAND, to come to the Principal's office. Upon Plaintiff, CHESTER CLEVELAND's arrival, Defendant, ROBERT SHIPLEY, confronted him with the facts as related by Deputy LOHR, which Plaintiff, CHESTER CLEVELAND, first admitted, then subsequently denied. The admission followed MR. SHIPLEY's stating to Plaintiff words to the following effect, "since you were cited for DUI, you must have been drinking". Plaintiff, CHESTER CLEVELAND, then told Defendant, ROBERT SHIPLEY, that a hearing was to be held on October 3, 1974, on both the DUI citation and a speeding citation issued to Plaintiff. Based upon the information obtained from the Deputy Sheriff, as well as Plaintiff, CHESTER CLEVELAND's, initial admission, Defendant, ROBERT SHIPLEY, suspended the Plaintiff from the Fernley High School football team pending the outcome of the hearing, or trial, on the citation. The evidence shows that Plaintiff is a student in his junior year in good standing at Fernley High School and was, until September 27, 1974, a member in good standing of the varsity football athletic team of said school. The evidence is not clear with reference to the number of games missed by Plaintiff, but, the result of his being suspended, following his claimed violation of the non-drinking rule contained in the code, he was not permitted to participate in the last several games of the 1974 varsity football season. It is significant that at the time of the suspension no NRS 62 proceedings were pending nor had he enjoyed the benefits of a hearing or trial by the civil authorities in Justice Court, and there is no evidence that either had occurred at the time of this hearing. Had there been either, a determination of guilt or innocence might have been determinative of the suspension question.

The facts are substantially without dispute except Plaintiffs have put in dispute whether there were several empty beer cans in the vehicle September 22, 1974, and whether Plaintiff had in fact been drinking, and whether the Deputy could have detected the odor of alcohol on the person of Plaintiff. The evidence may tend to support these disputed facts to the detriment of Plaintiff, but the questions before this Court, at this stage of the proceedings, do not call upon the Court to make a determination on the merits of Plaintiff's activities, but rather as to the constitutionality and/or legality of the then and presently existing athletic code of said School District.

DETERMINATION RE RULES SUBSTANCE

Though the 1974 football season is over, the fact of a potential "double-discipline" (should there be a second "violation" by Plaintiff) causes this matter not to be moot as to Plaintiff, as do the considerations concerning the substance of the code and the issue as to claimed requirements of procedural due process relative to the code.

Both Plaintiffs (in their pleadings) as well as all Defendants (in open Court) have requested that this Court deal with the Lyon County School District athletic code on its merits for guidance and promulgation of rules by proper authority. This involves CLEVELAND's challenge of the code on its merits, together with the claim that due process procedural requirements apply in these matters. In approaching this responsibility, I emphasize that this Court has no intention of eroding the statutory powers of duly-constituted local school authorities. The autonomy of local school authority has been established by a declaration of legislative intent. See NRS 385.005(1) and (3). This Court is hesitant to interfere with regularly constituted school authorities in their management and discipline of students (athletic or non-athletic) who are placed under their supervision. The Legislature is expressly authorized to provide for the

educational interests of the State, in such manner as shall seem most appropriate. Art. 11, sections 1 and 2, of the Nevada Constitution. In the exercise of this power, school districts have been created and authorized to have substantially exclusive jurisdiction in all school matters over their respective geographic areas, through their elected Boards of Trustees. And the Trustees are, as already mentioned, authorized to make and enforce rules. NRS 392.030. It was clearly intended, therefore, that the management of school affairs should be left to the discretion of the Board of Trustees and school administrators, and not to the Courts, and Courts should not interfere with the exercise of discretion on the part of a School Board as to what is a reasonable and necessary rule, except in a plain case of exceeding the power conferred.

The first main principle involved in considering the validity of a school code is that the rule must pertain to conduct "which directly relates to and affects management of the school and its efficiency". Board of Directors of Indep. School Dist. of Waterloo v. Green, 147 N.W.2d 854, 858. Conduct outside of school hours and school property may subject a pupil to school discipline if it directly affects the good order and welfare of the school, 47 Am. Jur. Schools, Sec. 173 at 426, and the connection between the prohibited acts and the discipline and welfare of the school must be direct and immediate, not remote or indirect. 79 CJS, Schools and School Districts, Sec. 496 at page 445, and Annotations, 27 ALR 1074, 41 ALR 1312. In each case, the particular circumstances must be examined. The case at bar involves the advantages of an extracurricular activity provided by the Lyon County School District, a consideration which this Court believes extends the authority of a School Board somewhat as to participation in that activity. This is so notwithstanding NRS 389.050 which requires that public schools

provide general physical training for students. The influence of the students involved is an additional consideration. Stand-out students, whether in athletics, forensics, dramatics, or other interscholastic activities, play a somewhat different role from the rank and file. Leadership brings additional responsibility. These student leaders are looked up to and emulated. They represent the school and depict its character. I cannot complain against a School Board for expecting somewhat more of these types of students as to eligibility for their particular extracurricular activities. Bunger v. Iowa High School Athletic Asso., 197 N.W.2d 555, 53 ALR.3d 1110.

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There is no question but that school authorities may make a football player ineligible if he drinks beer during football season. There is no question either that such authorities may do likewise if the player drinks beer at other times during the school year, or if he then possesses, acquires, delivers or transports beer, see O'Connor v. Board of Ed. of Central School Dist. No. 1, 316 NYS.2d 799, with guilty knowledge (Court's emphasis). Undoubtedly, an athlete shown to have actually violated a non-drinking rule during summer vacation, whether convicted in criminal court or not, can be rendered ineligible by school rule or code. All of these situations have direct bearing on the operation of the school, although the bearing becomes progressively less direct. The same would apply too, as well, to for example, curfew and smoking prohibitions. The scope and duration of any resulting school sanctions for such violations will be hereinafter discussed. In reviewing the "Uniform School District Responsibilities and Regulations Relating to Athletics and Athletes", cited above, there is certainly no vagueness or over-breath, for example, concerning the no drinking and no smoking prohibitions, this from a substantive point of view. Nor are the concomitant penalty, or

penalties, vague from a due process point of view, though they might have been more efficiently drawn concerning provision number six (6). It is, for example, the act of drinking of alcoholic beverages that results in a violation of a training rule, and, the emphasized means of proving such violation, namely, by being "observed" is not exclusive, but apparently cumulative. The due process clause of the Fourteenth Amendment of the United Stated Constitution condemns an enactment for vagueness or overbreath only "if its prohibitions are not clearly defined". Grayned v. City of Rockford, 408 U.S. at 227. The requirement is only that there be a warning as to what is unlawful, that there be no arbitrariness or discrimination, and that there be no violation of a constitutionally protected right. An athlete has volunteered to a special categorization thereby distinguishing himself from non-athlete students so none of the referred to requirements are violated in terms of the no drinking and no smoking prohibitions. I hold that these two training rules are valid and within the permissible scope of school rules governing athletes. The provisions requiring the obeyance of "the curfew time set by the coach and school" and "the specific training rules of the coach" trouble me in that they are indefinite, and specific curfew times and specific training rules should be adopted by the Lyon County School District's Board of Trustees so that the athlete will have a "warning as to what is unlawful". Certainly, internal training rules, the violation or violations of which would not be disruptive to the squad and/or school, and which will not result in suspension or removal for any extended period of time will not require this type formality.

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The other main principle involved in considering the validity of a school rule is reasonableness. The general requirement that a rule promulgated by a governmental subdivision or unit be reasonable applies to School Board rules. Board of

Directors of Indep. School Dist. of Waterloo v. Green, 147 N.W.2d at 858. The task then is to determine whether it is so unreasonable and arbitrary as to be illegal. In dealing with ineligibility for extracurricular activities as contrasted to expulsion from school altogether, and with students who represent the school in interscholastic activities as contrasted to less active students, school rules may be broader and still be reasonable. A rule does not require violation of the criminal law for an infraction to occur, but school rules need not be confined to crimes. To some extent at least, school authorities may base disciplinary measures on immoral acts or on acts definitely contrary to current mores or social standards. 47 Am. Jur., Schools, Sec. 186 at 433; 79 CJS, Schools and School Districts, Sec. 503(b) at 450; 41 ALR 1312. For example, the no-drinking and no-smoking rules contained in the Lyon County School Districts code are limited to actual drinking and actual smoking by an athlete, and this is not a case of imposition of ineligibility for mere occupation of a car containing beer with knowledge of the presence of the beer, when the beer is discovered by an officer. Bunger v. Iowa High School Athletic Asso., 197 N.W.2d 555. The no-smoking and no-drinking rules in question are reasonable as they require a close relationship between the athlete and the prohibited beverage or substance than mere knowledge that the substances are nearby.

In addition to NRS 392.030 concerning the authority of Boards of Trustees of School Districts and Principals and other administrators to suspend students who will not submit to reasonable and ordinary rules of order and discipline, is NRS 392.460 which places the same school officials, including teachers, on a parity with peace officers "for the protection of children in school and on the way to and from school". This

as well as non-athletes) for infractions of reasonable rules for protection of children enroute to and from school. The statutes did not give consideration to property lines, but more appropriately to the school's basic interest in discipline. Where not otherwise inconsistent herewith, the Lyon County School District's Board of Trustees may promulgate rules and regulations concerning conduct of athletes both on and off the school property (impliedly), so long as such rules and regulations directly concern order and discipline for legitimate extracurricular activities. In modifying or re-enacting the code, the Board of Trustees must narrowly draw the same so that they do not attempt to regulate an athlete's conduct while he is under the control of his parent or guardian unless his conduct has a reasonably direct effect on the school's authority and responsibility for discipline. NRS 62.010, et seq, but not necessarily limited thereto, will generally comprehend the parent and guardian situations which should generally be handled by civil authorities.

With respect to the substantive aspect of the Lyon County School District's code, Defendants have argued that if one section thereof be stricken, the rest of the law remains intact, unless the entire law is unseverable. Evans v. Job, 8 Nev. 322, 342 (1873). This is correct, but for reasons hereinabove expressed by the Court and hereinafter given concerning some substantive aspects of the existing athletic code and the applicability of procedural due process, the code hereinabove referred to must be redrafted.

DETERMINATION RE EVIDENTIARY AND PROCEDURAL DUE PROCESS

Defendants at Page 3 of their opposition Points and Authorities state as follows:

> "The Plaintiffs in their brief cite a variety of United States Supreme Court and various lower federal court decisions which stand for various

general principles to the effect that the protections of the Fourteenth Amendment to the U. S. Constitution are available to every person, including students. To the extent that these protections do not reach the levels afforded to criminals, Defendants have no argument with these holdings."

This Court need not adhere to even "friendly" agreements on the issues by counsel, but at bar it does appear that School Districts, including the Lyon County School District, when enacting athletic codes must abide by procedural due process under the Fourteenth Amendment to the United States Constitution as applies to the States, as qualified hereafter, including, in most cases, the entitlement to notice and hearing.

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The Fourteenth Amendment, which applies to actions of the State agencies such as School Boards, provides that no person may be deprived of life, liberty and property without due process of law. Givens v. Poe, 346 F. Supp. 202; Louisiana High School Athletic Asso. v. St. Augustine High School, 336 F.2d 224 (regarding "state action" under the Fourteenth Amendment). See Hoferer v. Cornella, Civil Action No. R-2905, U. S. District Court for the Northern Division of Nevada, which dealt with the withholding of Hoferer's diploma for "non-academic" reasons, where the U. S. District Court held that the school authorities there have no right to refuse delivery of an academically earned diploma for failure to pay a disputed claim when the merits of the dispute have not been first resolved under the standards of due process. (Court's emphasis). The Hoferer case is the closest Nevada-Federal decision bearing any analogy to the due process issues presented at bar.

The facts here simply demonstrate that Defendant SHIPLEY called the Plaintiff on September 27, 1974, and met with him at the Fernley High School Principal's office outside the presence of any third persons. Upon Plaintiff's arrival, the Defendant, ROBERT SHIPLEY, confronted Plaintiff with the

generally there must be written notice of the specific charge to the student-athlete and his parent or guardian, an "impartial tribunal" (whether it be the Principal, the Superintendent or members of the Board of Trustees, etc.), both sides must be heard, a written report of the facts must be provided to the student and his parent or guardian, along with a notice within a reasonable period of time preceding the hearing, a list of accusing witnesses should be provided in writing and the student-athlete should have the right to put on his defense or his version of the circumstances, and the right to examine the adverse witnesses, and the decision of the authorities should be based upon substantial evidence. Naturally, the athlete should have a reasonable period of time to prepare for the hearing, but it should be held within a reasonable period of time depending upon the prejudice that might befall the athlete in terms of the missing of athletic contests, the effect that it may have upon his lettering, the relationship it may have to the prospect of a university or college scholarship, but not limited thereto. It should be a policy matter as to whether the athlete may or may not be represented by an attorney, but certainly counsel at public expense is not warranted in absence of extenuating circumstances. Nor do I see it necessary or appropriate to have the hearing, which is anticipated to be somewhat informal, to be stenographically reported, though minutes taken by a person uninterested in the outcome of the proceedings, would seem appropriate. I emphasize that the Fifth and Fourteenth Amendments of the United States Constitution do not require a trial-type hearing in every conceivable case of government impairment of private interest. For, though due process of law generally implies regular allegations, the opportunity to answer and a trial according to some settled course of judicial proceedings, this is not universally true. To be more fundamental, the minimum

procedural requirements necessary to satisfy due process depend upon the circumstances and the interests of the parties involved. Dixon, supra, at 155. This principle or philosophy is succinctly and beautifully pronounced in Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 at 163, as follows:

> "Whether the ex parte procedure to which the Petitioners were subjected duly observed the rudiments of fair play; . . . cannot . . . be tested by mere generalities or sentiments abstractly appealing. The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of and good accomplished - these are some of the considerations that must enter into the judicial judgment."

The existing Lyon County School District athletic code is without any of these procedural safeguards since an athlete may be "removed from the team for the duration of that sport" or in the event of a second offense or violation during the same school year "shall not be allowed to participate in any sport for 12 calendar months dated from the second offense", requiring only that one be observed "breaking" a rule, and this is so "regardless of person supplying the information". Fernley High School is a public school and a common or public school, as a general rule, are ones supported by taxation, open to all of suitable age and attainments, free of expense, and under the control of agents appointed by the voters. AGO (9-2-1909); AGO 89 (8-6-1951). A student does not shed his constitutional rights when he enters high school, or indeed even grade school. Givens, supra, 202. In Nevada a student has a constitutional right to a public education. It has been contended in other cases (Kelley, supra, 293 F. Supp. at 491) that the interests a student-athlete such as Plaintiff has in engaging in athletics is a mere privilege and not a constitutional right. This argument was answered by

the United States Supreme Court in Cafeteria v. McElroy, supra, 367 U.S. 886, when it said that the question of whether summarily denying a person access to a governmental cite of her former employment violated the requirements of the due process clause of the Fifth Amendment cannot be answered by easy assertion that, because she had no constitutional right to be there in the first place, she was not deprived of liberty or property by the government's action. At the hearing in this matter, Defendant ROBERT SHIPLEY, acknowledged to the Court, that athletic activities such as football, were an integral part of the educational system and process, qualifying his remark by stating generally as follows: "that it is not as integral as, for example, history and mathematics". Although the right to pursue an academic education is not directly affected, the penalty suffered by Plaintiff CHESTER CLEVELAND, JUNIOR, infringes upon a facet of public school education which has come to be generally recognized as a fundamental ingredient of the educational process. It is obvious that before such a valuable interest is denied, the rudiments of fair play dictate the right to notice and a hearing. In Kelly, supra, 293 F. Supp. 485, the Court held that in view of the lack of pre-existing standards and regulations to structure any disciplinary action taken by the School Board, and in view of the conspicuous absence of a formal charge, followed by a hearing, against any particular school or individual of misconduct, the School Board which suspended the interscholastic program in question for the entire high school for a period of one (1) year denied that school the protection of procedural due process. Admittedly, a great number of the cases involved herein decided by federal courts, involve the classic cases of civil rights, but the case at bar does not differ in kind but perhaps only in degree in terms of the legal and constitutional questions involved, which typically give rise to the invocation of federal jurisdiction.

The Defendants further contend that one week before Plaintiff was suspended from the football team, he executed a document prepared by the Nevada Interscholastic Activities Association entitled "Student Eligibility Certificate", being Exhibit "B" in evidence. That document in its relevant part states as follows:

> "I understand that in order to be eligible for participation in this program I must comply with the requirements listed below . . .
>
> 14. Have maintained satisfactory standards of character and citizenship as established by the Nevada Interscholastic Activities Association."

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The NIAA has defined what "satisfactory standards of character and citizenship" are in Exhibit "C" in evidence (though in a qualified way insofar as Plaintiffs are concerned), and its relevant part provides as follows:

> "14.28 CHARACTER AND CITIZENSHIP REQUIREMENTS:
>
> A student is not eligible to represent his school in any interscholastic program who is under discipline for any act which reflects discredit on his school, or whose character, citizenship or conduct is such as to reflect such discredit.
>
> (a) The Board of Control interprets 'Conduct which reflects discredit on the school' to include violation of accepted training rules, smoking, drinking of alcoholic beverages, stealing, vandalism, and other acts contrary to the laws of the state and the rules of the school."

Defendants now state that they have found no requirements that procedural due process apply to enforce a validly executed agreement and suggest that Plaintiffs have waived such rights. If this contention were to be followed by this Court, I would be subscribing to a doctrine which allows the contracting away of constitutional rights. On these facts, that would violate public policy. In this case there was certainly no waiver of the right to notice and a hearing. In other words neither the Nevada Legislature, the NIAA, nor the Lyon County

facts as related by the Deputy Sheriff, and though there is some dispute as to whether Plaintiff did or did not admit at this time to the September 22, 1974 drinking incident, this Court does find that he admitted to the incident. Even should there have been an unequivocal admission by the Plaintiff, such admission was made without prior notice of the specific charge (namely, violation of the non-drinking rule), without the opportunity of Plaintiff to prepare or to really be heard relative to this matter. Defendants argue that the fifteen to twenty minute meeting between Plaintiff and Defendant SHIPLEY on September 27, 1974, which resulted in the unquestioned suspension of Plaintiff from football play "until the outcome of the criminal traffic proceeding" was not summary in nature. A "summary proceeding" is not determined to be such solely because of its brevity. Here the alleged misconduct and violation of a training rule, if committed at all, was not committed in the immediate view and presence of any Lyon County School District administrators or staff, nor was it committed on the Fernley campus. If it were committed in the immediate view and presence of any such persons, perhaps it is appropriate that it be punished summarily for which specific findings of fact and sanctions in writing should be made available, forthwith, to the athlete as well as his parent or guardian. Even here, should the sanctions be extensive, a hearing is required at which time the athlete may present a defense and, perhaps, mitigating circumstances. If the violation is not committed in the immediate view and presence of any such personnel, and if the discipline or sanctions are beyond, for example, a suspension from one athletic interscholastic contest, then, though, a pretermination hearing need not be a judicial or quasi-judicial trial, it must meet rudimentary due process. Goldberg v. Kelly, 397 U.S. 254. Of course, the nature of the hearing will depend on the circumstances of each case but

School District can condition the granting of even a privilege upon the renunciation of a constitutional right to procedural due process. Dixon, supra, at 156.

The NIAA, with the Lyon County School District being an active member thereof at all relevant times hereto, was authorized by NRS 386.420 and it is interesting to note that NRS 387.205(1)(g) provides that there may be an imposition of taxes for fees and dues to support the NIAA, further supporting the evident "state action" in this matter. NIAA Regulation Chapter 15.00 provides as follows concerning student appeal procedure:

> "15.01 When not previously provided for, a student, his parent or guardian with the knowledge of his principal, may appeal to the Board of Control any adverse decision by the Executive Secretary concerning the student's eligibility to participate in interscholastic athletics.
>
> (a) President of the Board of Control shall appoint an ad hoc committee of not less than two members to hear the appeal and render a decision. The hearing procedure shall provide for notice to the student of the time and place of said hearing and an opportunity for the student to be represented and heard, and the right to cross examine. . . .
>
> (c) If the above process is not concluded within ten (to be amended to fourteen) calendar days, due to the inaction of the Board of Control, the student shall become eligible until such time as the ad hoc committee renders a decision."

Though the above-cited provision applies to matters typically unrelated to the type discipline in question in these proceedings, it does provide a reasonable analogy and direction to the parties in these proceedings in terms of the adoption of new and modified codes and regulations of conduct concerning extracurricular athletic events through the Lyon County School District. In addition, if the suspension or the removal of the athlete is to be for a period in excess of ten (10) days, for example, notice and a hearing appear appropriate, and in the case

of a material violation committed in the immediate view and presence of school personnel (which discipline exceeds the ten days), an appropriate hearings procedure should be established for the purposes mentioned supra. Certainly, extended suspension or exclusion from the athletic program deprives a student of important rights and liberties. Any such long absences threatens the athlete with the inability to perform and enjoy the certain fruits and benefits that follow such performance, and will necessarily reduce his incentive to continue his educational career. I make this finding and conclusion by taking judicial notice of the social, economic, and psychological value and importance today of receiving a public education through the twelfth (12th) grade. See Breen v. Kahl, 296 F. Supp. 702. Certainly, if it is a critical situation resulting in the strong potential of eminent danger to the athlete himself, other athletes, non-athlete students or, for example, school property, then an immediate suspension would be appropriate with a hearing following due written notice within a reasonable period of time thereafter. Naturally, the hearing process should be arranged so as to avoid any significant cost or expense incidental to the use of a tribunal or hearings officers and particularly in view of the obvious budgetary concerns of all branches of government in Lyon County, including the executive, legislative and judicial. Certainly, reasonable financial considerations should not interfere with nor determine the procedural and substantive constitutional rights of the student.

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I stress, an athlete may not be suspended from an activity until he has received the full benefit of the notice and hearing requirements set forth above, unless his continued participation presents a real or direct threat of physical harm to other students or faculty or school property, or has, or in all probability will continue to more than reasonably disrupt an

activity. Certainly, a pretermination hearing may only be disregarded when there are considerations of immediate danger or aggravated disruption of school curriculums, and even here, minimal standards of procedural due process will apply. Any hearing should be conducted within several days following the notice unless the athlete expressly waives time. This Court has earlier referred to a hearings officer or tribunal and certainly any such person or persons should be impartial. It is sufficient if the hearing and decision is made by the Principal of the school, unless he is otherwise disqualified from participating, in which case, the hearing and decision may be conducted and made by a member or members of the School Board selected by the Superintendent of Schools. Whether or not the hearing is open (to the public, so to speak) is a significant policy consideration that the School District must make, but by analogy to NRS 62.010, et seq, the Juvenile Act of this State, perhaps confidentiality in such hearings would be appropriate. The school's decision may well depend upon the amount of notoriety caused or given in the matter preceding the hearing. There should be appeals remedies in certain cases. A discipline which has the effect of removing or suspending the athlete from the sports activity for its duration or for an extended period of time should entitle the student to notification of his right to appeal and to have a hearing de novo before a two or three member panel selected by the Superintendent of Schools from members of the School Board not previously involved in the case, or constituted of another person or persons whether affiliated with the school or not. Should the Superintendent be disqualified from making the selections, then the Deputy Superintendent or other designee should make them. If through no fault of the student-athlete he is not given his hearing within the prescribed period of time set forth in the new rules or code, he should

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become eligible until such time as the ad hoc committee renders its written findings and decision. Suspensions or removals prior to hearings should be imposed sparingly consistent with this decision.

The Uniform School District Responsibilities and Regulations Relating to Athletics and Athletes enacted by the Lyon County School District's Board of Trustees during the year 1970, are unconstitutional on their face, and, necessarily, in their application in view of their failure to set forth pre-existing standards and regulations to structure any disciplinary action taken, and in view of the clear absence of the requirement of a formal charge, followed by a hearing. The Court was not called upon to make a determination relative to a code of conduct comprehending non-athlete students, but certainly all students are entitled to rudiments of fair play and an abidance to reasonable procedural due process, should they be faced with expulsion or an extended suspension from an interscholastic athletic program.

The athletic code presently in existence within the Lyon County School District on its face, as well as in application, constitutes a denial of Plaintiff's right to due process of law under the Fourteenth and Fifth Amendments to the United States Constitution, and Plaintiff has suffered and may continue to suffer irreparable injury unless the Defendants and all their agents, employees and servants are restrained and enjoined from preventing Plaintiff from participating on athletic teams at Fernley High School and, if applicable, any other public high school within the County of Lyon, State of Nevada. Said Defendants shall be further enjoined from making application of those certain provisions of the athletic code in existence, because of their referenced constitutional infirmities.

This Court determines that Plaintiffs should not

be allowed an attorney's fee, but they are entitled to their taxable costs, if any, incurred in the institution and prosecution of this action.

ORDERS

IT IS HEREBY ORDERED that Plaintiff, CHESTER CLEVELAND, JUNIOR, is entitled to a hearing regarding his "first offense" prior to his purported "first offense" or violation being used against him, if at all. (For purposes of enhancing the penalty or discipline to a potential twelve (12) calendar month suspension on account of any potential "second offense").

IT IS FURTHER ORDERED that the Defendants, and particularly the Board of Trustees of the Lyon County School District, together with Lyon County District Attorney RONALD T. BANTA (pursuant to NRS 386.410) do within forty-five (45) days from the filing of this Decision, file with the Clerk of the above-entitled Court a full text of a new proposed code or set of rules and regulations governing athletes and athletics at Fernley High School, Lyon County, Nevada, but not necessarily limited thereto, or a resolution dealing with that same matter.

IT IS FURTHER ORDERED that there be filed with the Clerk of this Court within forty-five (45) days from the filing date of this Decision, a statement of the manner in which any such new athletic code or set of rules and regulations or resolution is to be communicated to the students, the parents, the teachers, and other administrators within the school system.

IT IS HEREBY FURTHER ORDERED that counsel for Plaintiffs forthwith prepare and submit to the Court an appropriate Judgment consistant herewith, which will make appropriate mention of this Court's findings and conclusions in this Memorandum Decision, inter alia, that procedural and substantive due process be generally followed with respect to the new athletic code.

IT IS FURTHER ORDERED that Plaintiffs shall have their taxable costs incurred in the institution and prosecution of this action, the same to be demonstrated by a duly executed Memorandum of Costs and Disbursements to be filed in this action concurrent with the filing of the proposed Judgment.

IT IS FURTHER ORDERED that upon this Court's receipt of the above-referred to and requested information and materials, this Court will determine (depending upon the acceptability or non-acceptability of the proposed rule or code) if further proceedings or hearings are required, consistent with NRS 30.010 et seq.

DATED this 3rd day of December, 1974.

DISTRICT JUDGE

"E"

ROY W. MARTIN JUNIOR HIGH SCHOOL

2800 East Stewart • Las Vegas, Nevada 89101

D. L. Badger
Principal

May 2, 1974

Mr. Robert Lunt, Director
Student Activities Department
Clark County School District
2832 East Flamingo Road
Las Vegas, Nevada

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Dear Mr. Lunt:

On May 1, 1974, at the Eastern Zone Track Meet, a formal protest was lodged against Eldorado High School by the Roy W. Martin Junior High School girls' track coach, Gail Barnett, on the following basis.

Girls participating on the Eldorado High School track team were entered in this junior high school zone track meet. Also, ninth grade boys from Eldorado High School were entered. This is clearly in violation of NIAA Regulation 21A, page 21, and Regulation 11, page 26, of the NIAA Handbook.

Clarky not applicable

Also, the name of Terri West was not on the official roster for Eldorado High School's junior high girls track team, and she was allowed to compete.

The above should, according to Regulation 21A, page 21, of the NIAA Handbook, declare these students ineligible for any further participation in track for the remainder of this season.

Thank you for your consideration of this protest.

Sincerely,

H. B. Lamb
Dr. H. B. Lamb
Assistant Principal

Gail Barnett
Gail Barnett
Girls' Track Coach

HBL/lal

Clarky not a problem here Eldorado's 9th grade Charter Article 2 Sec

EXHIBIT H

(2)

NEVADA INTERSCHOLASTIC ACTIVITIES ASSOCIATION

[REG]ISTRATION FROM ELDORADO HIGH SCHOOL FOR THE 1st (2nd) SEMESTER OF 1973-1974 SCHOOL YEAR.
Circle One

[The] following students are eligible to represent this high school in Track and Field (Indicate (Girls) or Boys)
Sport

[Dat]e April 26, 1974 Signature of Principal [signature]

[La]st name, first name [mid]dle name. List names [in alp]habetical order.	Certified Date of Birth Month	Day	Year	Place of Birth	Entrance Date at Your School	Units Passed Last Semester	Date Entered Ninth Grade	Parent's or Guardian's Name and Residence Address
...N ...AINE	6	21	60	Las Vegas	9-5-73	2	9-74	Robert Arrenon-3101 E. Lake Mead North L.V.
...NIE ✓	2	20	60	Las Vegas	9-5-73	2	9-74	Mr. & Mrs. ...inley-2712 N. Cooper Street
...E ✓	3	1	59	Washington, D.C.	9-5-73	2	9-5-73	M.A. Hall-2 Meissner-NAFB
...S ...YNTHIA ✓	3	1	59	Crestview, Florida	9-5-73	2	9-5-73	Mr.&Mrs. Haynes-NAFB
...A ✓	8	5	59	Athens, Greece	9-5-73	2	9-5-73	Mr.&Mrs. Jones-5651 Pec...
...L ...VALARIE	5	25	60	Las Vegas	9-5-73	2	9-74	Gail ...3826 Goldcrest Ave.
...ED ...N, JUANITA ✓	6	13	60	Laurel, Mississippi	9-5-73	2	9-74	Mr&Mrs. Wolverton-20 Landis Dr. -NAFB

TERRY WEST'S NAME
...S NOT ON THE LIST

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ELD.

When entering names of contestants, please print first and last names and list them in order of their best marks.

Girls Division

High Jump

1. Jamie Arneson
2. West, Terri

Shot Put (6 lb.)

1. Eva Jones
2. Sandra Phillips

Long Jump

1. Bonnie Finley
2. Jamie Arneson

50 yard dash

1. Bonnie Finley
2. ~~[illegible]~~ West, Terri

100 yard dash

1. Jamie Arneson
2. ~~Joyce Hall~~ Terri West

220 yard dash

1. Bonnie Finley
2. ~~[illegible]~~ Karen Heyer

880 yard run

1. ~~X~~
2.

880 Medley Relay

1. Jamie Arneson
2. [illegible] Porter
3. Mary [illegible]iskowsky
4. Cindy Callahan

Relay Alternates

1. Cynthia Haynes
2. ~~[illegible]~~ Eva Jones

440 yard run

1. ~~[illegible]~~ Debra Hitchens
2. ~~[illegible]~~ Karen Heyer

440 yard relay

1. Jamie Arneson Terri West
2. Joyce Hall
3. ~~Donnie Porter~~ Diane Whitlock
4. Bonnie Finley

Eldorado

Nevada Interscholastic Activities Assn.

400 WEST KING STREET
CARSON CITY, NEVADA 89701
TELEPHONE: 885-4390

MARVIN PICOLLO, PRESIDENT
BERT L. COOPER, EXECUTIVE SECRETARY

April 10, 19775

MEMORANDUM

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TO: Assemblyman Craddock

FROM: Bert L. Cooper, Executive Secretary

SUBJECT: REQUESTED MATERIAL

As per your request of April 10th I am attaching a copy of the contract between the Nevada Interscholastic Activities Association and myself.

BLC:tm
Attachment

CC: Marvin Picollo

EXHIBIT I

THE EXECUTIVE SECRETARY'S CONTRACT

It is hereby agreed by and between the Nevada Interscholastic Activities Association's Board of Control, located in the State of Nevada (hereinafter called the Board) and Bert L. Cooper, (hereinafter called the Executive Secretary) that the said Board thru its president in accordance with its action outlined in a letter to said Executive Secretary on April 24, 1974, has and does hereby employ the said Bert L. Cooper as Executive Secretary of the Nevada Interscholastic Activities Association for a one year period commencing July 1, 1974. Both parties agree that said employee shall perform the duties of the Executive Secretary in and for the Board of Control in said State as prescribed by the laws of the State of Nevada and by the rules and regulations made thereunder by the Board of Control of said Association.

WITNESSETH:

That, in consideration of a salary of $20,000.00 to be paid the first year, said Executive Secretary agrees to perform faithfully the duties of Executive Secretary of the Board and to serve as Administrative Officer of the Board. The annual salary shall be paid in equal installments in accordance with board policy.

The Board hereby retains the right to adjust the annual salary of the Executive Secretary during the term of his contract, the said salary adjustment not to reduce the annual salary below the figures said stated above. Any adjustment in salary made during the life of this contract shall be in the form of an amendment and shall become a part of this contract. It is provided, however, that by so doing it shall not be considered that the Board has entered into a new contract with the Executive Secretary nor that the termination date of the existing contract has been extended. However, the Board may by specific action extend the termination date of the existing contract.

That throughout the term of this contract the Executive Secretary shall be subject to discharge for good and just causes, provided, however, that the Board does not arbitrarily or capriciously call for his dismissal and that the Executive Secretary shall have the right to services of written charges, notice of hearing, and a fair hearing before the Board. If the Executive Secretary chooses to be accompanied by legal counsel at the hearing, the said legal expenses will be incurred by the Executive Secretary.

That it is agreed that the Executive Secretary will furnish throughout the life of this contract a valid and appropriate certificate in School Administration in the State of Nevada as directed by the Board and that the Executive Secretary hereby agrees to devote his time, skill, labor, and attention to said employment during the term of this contract.

That the Executive Secretary will keep records of the Nevada Interscholastic Activities Association, keep an accounting of the monies provided for the operation of the Nevada Interscholastic Activities Association, disburse monies in compliance with budgetary requirements as directed by the Board, direct the affairs of the Association as provided by the Constitution and By-Laws, prepare forms, distribute reports, conduct tournaments and contests as directed by the Board and provide communication and laison among member schools.

That the Board individually and collectively, will refer promptly all criticism, complaints, and suggestions called to its attention to the Executive Secretary for study and recommendation.

That should the Executive Secretary be unable to perform any or all of his duties by reason of illness, accident, or other cause beyond his control and said disability exists for a period of more than seventy five (75) days during any fiscal year, the Board may at its discretion make a proportionate deduction

from the salary stipulated, or if said disability is permanent, irreparable, or of such nature as to make the performance of his duties impossible, the Board may, at its discretion, terminate this agreement, whereupon the respective duties, rights, and obligations hereof shall terminate.

The Executive Secretary does hereby agree to have a comprehensive medical examination not less than once every two years and not more than once each year; that a statement certifying to the physical competency of the Executive Secretary shall be filed with the President of the Board and treated as confidential information by the Board, the cost of said medical report to be borne by the Nevada Interscholastic Activities Association.

That the Board shall provide the Executive Secretary with transportation required in the performance of his official duties during the employment under this contract.

That the Board shall devote a portion or all of one meeting, at least annually, to a discussion of the working relationship between the Executive Secretary and the Board.

That the Executive Secretary shall receive twenty-two and one-half (22½) days vacation annually, accumulative to forty-five (45) days, exclusive of legal holidays and shall be entitled to fifteen (15) days sick leave annually, accumulative to ninety (90) days. Vacation shall be taken within twelve (12) months of the year in which it is earned and shall not be cumulative beyond forty-five (45) days. Earned sick leave shall be cumulative to a maximum of ninety (90) days or as provided by state law or Board policy.

With Board approval, the Executive Secretary may attend appropriate professional meetings at the local, state, and national level, the expenses of said attendance to be incurred by the Board.

That failure to notify the Executive Secretary in writing, no later than ninety (90) days prior to the termination of the contract, of the Board's intent not to renew the contract will automatically result in a one-year extension of the existing contract.

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That the Executive Secretary shall fulfill all aspects of this contract, any exception thereto being by mutual consent of the Board and the Executive Secretary. Failure to fulfill the obligations agreed to in this contract will be viewed as a violation of the administrators' Code of Ethics and will be reported by the Board to the appropriate Nevada Association of School Administrators and state educational authorities.

Dated this 5th day of June, 1974.

Executive Secretary 6-19-74

Nevada Interscholastic Activities Association

President 6-19-74

Nevada Interscholastic Activities Association