

SDHSAA Interim Committee Final Report

Study Assignment

Study the history, authority, make-up, and oversight of the South Dakota High School Activities Association (SDHSAA).

- How is the SDHSAA accountable to the legislative and/or the executive branch (DOE)?
- Does the SDHSAA exceed rule making authority and do they provide adequate public notice?
- Are there other associations with similar issues?
- Should schools be required to pay dues to this organization?
- What is their relationship and responsibility to the National Federation of High School Activities?
- What is their status under South Dakota laws?
- Are they subject to open meeting laws?
- Is the one school/one vote policy of the organization valid?

Summary of Interim:

At the committee's first meeting, Ms. Roxanne Hammond, Legislative Attorney, distributed a document that included a listing of statutes regarding SDHSAA, judicial precedents, and information regarding surrounding states' activities associations. SDCL 13-36-4 gives the authority for high schools to belong to a voluntary and nonprofit association, such as SDHSAA. SDCL 13-36-4 does give SDHSAA rule making authority and those rules are subject to approval by their board of directors, but not under chapter 1-26. SDHSAA has a contractual relationship with the state but is not a state agency. They are subject to open meeting laws. Ms. Hammond then explained some court cases and opinions that apply to the SDHSAA, and answered questions about the scope of the committee.

Mr. John Krogstrand, Assistant Executive Director of the SDHSAA, explained that the Board of Education has no direct oversight regarding any of the activities. The SDHSAA Board is made up of representation selected by the member schools and the activities policies go through the SDHSAA Board.

Mr. Wayne Carney, Executive Director, SDHSAA, said the SDHSAA is a membership-driven association open to any accredited high school in the state. There are currently 181 schools that are members and each school is given one vote at the annual meeting. The association's board is made up of nine members: four elected school administrators, two active school board members, two at-large school administrators, and one school administrator from a school whose population is a minimum of 50% Native American. The association is also a member of the National Federation of High School Activities, and while it can deviate from the national rules, there are many benefits to being a member.

When asked what precipitated the need to implement a policy regarding transgender students, Mr. Krogstrand said he had received a phone call from a member school that had an individual competing in junior high level track and needed guidance for future participation. Mr. Krogstrand said that the liability comes in anytime special accommodations are made for a student during the school day, those accommodations need to carry over into the activities the student participates after the school day is over. He continued saying that they are not concerned about being sued by an individual student, but that they have to be sure they are in compliance with the U.S. Office of Civil Rights.

The SDHSAA Interim Committee met again in August. Ms. Roxanne Hammond presented on the judicial opinions, past and present, regarding transgender discrimination in schools and the work place. Since schools have been considered government entities, the equal protection clause is probably the greatest tool a transgender student would have when suing a school.

Mr. John Krogstrand gave an informational PowerPoint presentation regarding the SDHSAA's transgender policy. The Chair and Vice Chair of the SDHSAA asked the staff to study the topic and make a presentation of their findings at the August 2013 Board of Directors meeting. At the June 11, 2014, SDHSAA Board of Directors meeting, the policy allowing for a student to file an eligibility request for consideration to the Gender Identification Committee comprised of healthcare officials with training in transgender health was adopted.

Mr. Steve Morford, President of the SD Principal's Association, Vice Chair of the SD School Administrators Association, and Vice Chair of the SDHSAA, Spearfish, talked to the committee about this issue from a principal's viewpoint. Mr. Morford said that it is a top priority to make sure every student feels safe when they enter the school doors.

Ms. Julie Hewitt, Rapid City Christian School, said that the Rapid City Christian School is the reason there is a religious exemption with SDHSAA. The school will play against schools with transgender students but will not allow a transgender student from their school to participate in school activities. Ms. Hewitt asked for the committee's help in addressing what is for her a moral issue; she does not want her daughter in a locker room with a transgender student. Ms. Lindsey Riter-Rapp, Legal Counsel for the SDHSAA, said that the board had addressed the locker room issue but then decided to remove it from the policy and allow those types of decisions to be made on the local level. The competitive advantages/disadvantages are addressed in the policy. A new policy is in process of being drafted and that will include an independent officer who would look into each request made on behalf of a transgender student.

Rep. Hunt presented a letter from Mr. Dale Bartscher, Executive Director, Family Heritage Alliance Action. Rep. Hunt asked if the SDHSAA would consider adopting the statement found in that letter, *"For purposes of participation in athletics sanctioned by the SDHSAA the sole determinant of a student's sexual identity is the student's sex. The student's sex is defined as the physical condition of being male or female, which is determined at conception, identified at birth by a person's anatomy, and recorded on their official birth certificate."*

Mr. Mark Chase, President, SD Family Policy Council, Sioux Falls, testified that the SDHSAA did not act out of their scope but that the council disagrees with the policy regarding transgender students.

Ms. Linda Schauer, Concerned Women for America, Leola, testified that she believes both girls and boys are at risk because of the transgender policy as showering together can be very upsetting, adding that safety and privacy are the real issues.

Mr. Tim Lors, Pierre, distributed a paper he had written titled, "SDHSAA's Gender Equity/ Transgender Policy Remarks". Mr. Lors believes that science should be used in determining gender, not feelings and wishes.

Ms. Laura DeRaad, McPherson County, testified that she is concerned about her daughters' safety because of the SDHSAA transgender policy. She said that she believes her daughters should not have to suffer because of one student who needs help and counseling.

Rep. Hunt presented a letter from Rep. Steven Haugaard expressing Rep. Haugaard's recommendation that the SDHSAA rescind its transgender policy and refrain from instituting any policy concerning this issue.

Mr. John R. Hughes, Attorney, Sioux Falls, submitted a letter, asking the SDHSAA Board of Directors to void the transgender policy and lists several reasons why he believes they should do so.

A motion was passed by the committee that the LRC staff draft legislation based on the Family Heritage Alliance Letter for committee consideration at the next meeting.

Mr. Krogstrand presented information on site selection for activity events. There is not a bid process and SDHSAA pays for use of the facility. SDHSAA's only income from these events is the ticket sales. All other income, such as concessions and merchandising, goes to the host. One big factor when making the selection is South Dakota Public Broadcasting, which provides a service to the whole state by broadcasting many of the events. The site selections are made three years prior to the event.

Ms. Linda Whitney, Superintendent for Sanborn School District, serves as a member of the site selection committee. The committee meets several times and the discussions are quite thorough. Mr. Krogstrand explained that 70% of the SDHSAA operating budget comes from direct ticket sales for these events, but ticket sales is not their primary consideration. The students are always the primary consideration, even if it means costing more to provide better for the participants.

Mr. Doug Decker, Code Counsel, was asked to address the proposal of putting the SDHSAA under the legislative rule making authority. Mr. Decker explained that whether the SDHSAA is a state agency falls under a gray area. The association is recognized in statute but is a voluntary association. In order for the SDHSAA to be considered a state agency, the committee may want to consider legislation that would clearly identify them as such.

A motion was made that the LRC draft legislation that would place the SDHSAA under the legislative rule making authority of 1-26. That motion failed.

The committee met for a final time in October. LRC staff presented on two bills drafted for the committee. The first bill, Draft 94, was drafted using the language provided by the Faith Heritage Family letter, and would specifically bar the SDHSAA from enacting a transgender policy and defines gender by conception, anatomy, and birth certificate. The second bill, Draft 95, is a broad definition that defines gender by conception, anatomy, and birth certificate across the South Dakota code.

Mr. Krogstrand said the association had a final draft of the transgender policy and it would be put to a vote during the board's November meeting. The policy includes an independent hearing officer to make a ruling on whether or not the person is consistently living their life as a transgender and not just applying on a whim or with ulterior motives.

Ms. Libby Skarin, Policy Director for the American Civil Liberties Union, spoke out against the bills, saying they would lead to discrimination against transgender students and emphasizing the importance of participating in activities.

A motion was made to approve and recommend Draft 94 to the Executive Board. That motion failed.

A motion was made to approve and recommend Draft 95 to the Executive Board. That motion failed.

Listing of Legislation Adopted

None.

Summary of Meeting Dates and Places

The committee met in Pierre on June 26, August 20, and October 30, 2015.

Listing of Committee Members

Members of the committee were Senator Craig Tieszen, Chair; Representative Jim Bolin, Vice Chair; Senators Jim Bradford, Larry Tidemann, and Bill Van Gerpen; and Representatives Julie Bartling, Roger Hunt, Kris Langer, Tim Rounds, Tona Rozum, and Kyle Schoenfish.

Listing of Staff Members

Staff members were Roxanne Hammond, Legislative Attorney; Clare Charlson, Principal Research Analyst; Jason Simmons, Senior Fiscal Analyst; and Cindy Tryon, Senior Secretary.