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### MEMORANDUM

#### ATTORNEY-CLIENT PRIVILEGED & CONFIDENTIAL

#### Via Electronic Mail Only

TO: Elizabeth Kyle, Commissioner  
California Interscholastic Federation -  
Northern Section

FROM: Diane Marshall-Freeman

DATE: February 24, 2010

RE: Ejection of Player and Due Process Considerations

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The California Interscholastic Federation-Northern Section (“CIF-NS”) has requested this office’s legal opinion as to whether it would be a denial of due process for the CIF-NS to prohibit a student from participating in interscholastic competition during the pendency of the an ejection appeal hearing.

#### Background Information

The CIF-NS has a tiered process permitting students to appeal an ejection ruling. Pursuant to CIF-NS Constitution Bylaw 302.3 F., the first tier is an appeal to the Commissioner. The Section’s practice has also permitted students to appeal the Commissioner’s decision to a 3-person panel. Currently, when a student athlete in the CIF-NS appeals an ejection ruling in order to retain eligibility, the CIF-NS permits the student to remain eligible to play in competition. It is this office’s understanding that the Section’s practice in this regard is premised upon a belief that it would be a denial of due process not to allow the student to participate in interscholastic competition until a final determination on the ejection has been rendered.

The CIF-NS’s practice contradicts the language in its Constitution and Bylaws regarding ejection appeals. CIF-NS Constitution Bylaw 1100.19 currently provides as follows:

*When appeal concerns a question of athletic eligibility the student is considered ineligible until the final determination is made.*

***Exception:*** *If there exists compelling and extenuating circumstances that warrant an interim eligibility decision, the Section Commissioner shall so inform the Section President and the president-elect. If these three are unanimous in support of granting eligibility, the student may be so declared; but only until such time as the due process decision is reached.*

Due to a concern over the possible denial of due process, the CIF-NS Board of Managers has asked which of the following two procedures the CIF-NS should implement concerning the Section's ejection appeal practice and bylaw:

*When appeal concerns a question of athletic eligibility:*

*A. when a student is trying to gain athletic eligibility, the student is considered ineligible until the final determination is made; or*

*B. when a student is trying to retain athletic eligibility, the student is considered eligible until the appeal hearing and a final determination is made.*

### Discussion

Due process applies to constitutional and vested rights and has been interpreted as “notice and the opportunity to be heard.” (*Goss v. Lopez* (1975) 419 U.S. 564.) Barring a student from participating in athletic competition due to a rule infraction does not constitute a denial of due process. It is well-established that participation in interscholastic competition is not a constitutional right. (*Ryan v. CIF* (2001) 94 Cal.App.4<sup>th</sup> 1048.)

The ejection penalty and appeal process of the ten CIF sections vary. The majority of CIF sections only permit an appeal of an ejection if the appeal is based on a claim of mistaken identity. Some sections do not permit an appeal at all. The CIF-NS is the only section with a tiered appeal process. Finally, no section other than the CIF-NS permits a student athlete to participate in an interscholastic contest during the pendency of an ejection appeal.

### Conclusion

Students have no constitutional entitlement to participate in interscholastic athletics. Instead, when participating in high school athletics, student athletes are required to comply with the rules under which they are governed, including ejection rules. The CIF-NS has afforded student athletes the ability to compete in interscholastic competition during the pendency of an ejection appeal hearing. There is no legal requirement mandating that the student athlete compete during such a time. To draw an analogy, there is no legal requirement that a student, who is suspended from school for violating school rules, is entitled to attend school during the pendency of due process procedures concerning a disciplinary suspension. As such, if the ejection appeal body

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determines that the student athlete did not engage in the conduct for which the student was ejected, the only recourse is to correct the record of the ejection and not have the penalty apply to any future infractions.

#### Recommendation

In order to be consistent with the other CIF Sections and to ensure that the ejection appeal process is not abused by a student prolonging the appeal process and thereby retaining eligibility, this office recommends that the CIF-NS Board of Managers retain its current ejection appeal language and change its current practice of permitting a student to compete during the pendency of an appeal hearing.

cc: Marie M. Ishida

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