



John E. Roberts, Executive Director

1661 Ramblewood Drive • East Lansing, MI 48823-7392 • 517-332-5046 • Fax 517-332-4071 • Web mhsaa.com

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Senator Phil Pavlov, Chair
Senate Education Committee
PO Box 30036
Lansing, MI 48909-7536

Dear Senator Pavlov:

We invite you to share this information as your colleagues consider a resolution urging a maximum age rule waiver for the athletic eligibility of students with disabilities.

The MHSAA consists of approximately 1,530 junior high/middle schools and senior high schools, both public and private. No tax dollars support the organization. The MHSAA is a private association which provides funding to local schools through sharing of revenue from postseason tournament gate receipts and non-tournament sources such as royalties, broadcasting and sponsorships.

Under rules which have been adopted by the local boards of education of MHSAA member schools, a student who turns 19 prior to Sept. 1 of a school year is not eligible for interscholastic athletics. Michigan is one of approximately 40 states which use this maximum or have a younger age limit.

Under a 1979 change in the MHSAA's Constitution, which can only be modified by a two-thirds vote of the superintendents and principals of MHSAA member schools, the maximum age limit cannot be waived. Michigan is in the majority of states which do not allow exceptions to the maximum age; and among those fewer states that do allow waiver, many have never actually done so.

Any member school can initiate a change to the MHSAA Constitution by petitioning the Representative Council or going directly to other member schools and gathering signatures from one-third of the members.

The maximum age rule has a year of grace built into it: a student who starts school one year late, or who starts kindergarten on time but is delayed a year during early schooling, will not be over-age in 12th grade.

Furthermore, when students are overage by more than this one year, there is a provision which allows students who are too old for 7th and 8th grade competition to begin playing with their age group in the high school program. Thus, no student need be denied four full years of high school participation. An average of 40 students have utilized this eligibility advancement provision each year since the 1987-88 school year.

You can see that the MHSAA is hardly as out of step or inflexible as some media are portraying the organization. The MHSAA actually was among the first to provide the eligibility advancement provision. And maximum age rules, without waiver, are prevalent in all forms of youth sports, from Youth baseball and football to the age groupings of US National Sports Governing Bodies for basketball, gymnastics, ice hockey, soccer, swimming & diving, track & field, wrestling, volleyball and other sports.

Any characterization that the MHSAA's recent age rule review processes have been superficial or slanted is misinformed and can be refuted by hundreds of individuals who actually participated in the process, including 17 meetings at 12 sites across Michigan between May and October of 2011.

We are aware that there will always be students with exceptional circumstances that do not appear to fit the important reasons for an essential rule, and we are aware of the responsibility to balance the needs of an increasingly diverse student population where the diagnoses of disabilities are exploding as the definitions of disabilities are expanding. We believe these trends explain why local school administrators have continued to request a bright line with respect to the maximum age rule.

Nevertheless, we are guiding the Representative Council through a comprehensive review of this topic that will resume next week, and we will keep you informed of that process.

Respectfully,



JOHN E. ROBERTS
Executive Director

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Enclosures

TIMELINE OF MAXIMUM AGE RULE

1. For the first 30 years, the regulation stipulated that students could participate until their 19th birthday but not on or after the day they turned 19. This led to disruption of teams, so in 1953, the schools adopted a regulation that stipulated that students would be eligible for none or all of the school year, not part. Students who turn 19 before Sept. 1 are ineligible for the full school year, while students who turn 19 on or after Sept. 1 are eligible for the full school year.
2. At the Annual Meeting of the MHSAA on Nov. 29, 1979, member schools adopted an amendment to the MHSAA Constitution that prohibited waiver of the eligibility rule with respect to the maximum age and adopted an extensive due process procedure to govern all alleged violations of rules.
3. During 1986-87, the age rule was studied in light of the increasing frequency of early elementary screening and retention that was occurring with more frequency than before or in recent years. The study group – consisting of a representative of the Michigan Association of Secondary School Principals, the Michigan Association of School Administrators and the MHSAA – concluded that no change should be made in the 19 year old limitation or its application. The study group focused instead on Regulation III, Section 2 – the junior high/middle school age standard – and recommended that 8th graders who become 15 years old before Sept. 1 have the opportunity to participate in the 9-12 grade program under certain circumstances. The recommendation was accepted by the MHSAA Junior High/Middle School Committee and the MHSAA Executive Committee, and adopted by the Representative Council in May of 1987.

The 1987 rule has evolved to this: "If the local school administration and parents can agree and arrange, 7th and 8th grade students who are eligible for junior high/middle school in all respects except that they become 15 years old before Sept. 1 may participate in a 9-12 grade program, even if it is in a separate building. Those students would be limited to four years of high school eligibility and all other regulations would apply (including the requirement to be doing passing work in at least four full-credit junior high/middle school courses). Ninth grade students of a 10-12 grade high school system who are eligible in all respects except that they became 16 years of age before Sept. 1, may participate in the 10-12 grade program. Application for these options must be made and approved on MHSAA "Eligibility Advancement Applications."

4. In 1994, several different ideas for waiving the age rule were surveyed at MHSAA Update Meetings. The results showed a lack of support necessary to amend the MHSAA Constitution.
5. In 2002, a diverse task force was convened to consider for students with physical disabilities a waiver procedure for MHSAA eligibility regulations. There was unanimous agreement not to propose changes that would make additional special accommodations for students with physical disabilities.

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6. The current age standard and its predictable application in all cases has survived every legal challenge. For example:
- Twice in 1979, the Michigan Department of Civil Rights issued orders of dismissal that upheld the application of the MHSAA age rule even to handicapped students. Those cases are Stieglitz v. MHSAA (4373-ED/April 6, 1979) and Greider v. MHSAA (44372-EX/April 13, 1979).
 - In 1989, the Michigan Department of Civil Rights dismissed a claim that application of the age rule to a handicapped student violated the Elliott-Larsen Civil Rights Act of 1976 or the Michigan Handicappers Civil Rights of 1976. The case is Gallion v. MHSAA (106087 PA34 June 14, 1989).
 - State courts are unanimous in upholding the age limitation in all situations. For examples, see Cardinal Mooney HS v. MHSAA, 437 Mich 75 (1991) and Battani v. MHSAA (No. 89-3487-CZ).
 - The US Court of Appeals for the Sixth Circuit determined in Sandison v. MHSAA 64 F.3d 1026 (6th Cir. 1995) that neither the age standard nor its non-waivability violates the federal Americans With Disabilities Act or Section 504 of the Rehabilitation Act.

RECENT EFFORTS AT AN AMENDMENT TO MHSAA CONSTITUTION TO PERMIT WAIVER OF THE AGE RULE FOR ONE ADDITIONAL YEAR

Dec. 9, 2010: A late letter from Ishpeming High School was received by MHSAA Staff and presented to the Representative Council proposing an amendment to the MHSAA Constitution to permit the Executive Committee and the Council to approve a waiver of the maximum age limitation for one additional year for students with Down syndrome. Practical and legal issues were discussed at this meeting and the Council voted to not submit the proposed amendment to the MHSAA membership.

March 24, 2011: At the request of Ishpeming High School the MHSAA Executive Committee reviewed materials from the school district on a broader proposal to include students with Down syndrome or other disabilities. The Executive Committee shared concerns, later expressed by many member schools, including the broad and growing definition of disabilities and the "undue burden" (as the courts have so labeled) in determining what individual factors such as height, weight, maturity, etc., would render a student's age as an unfair competitive advantage or safety risk.

May 1, 2011: Ishpeming High School submitted a revised proposal to the Representative Council broader in application to permit waiver of the maximum age limitation in certain circumstances and provided samples of waivers from several other states, including Ohio. The Representative Council discussed and voted to not prepare a proposal for the membership to amend the Constitution. The topic was to be discussed at constituent meetings during the summer and fall of 2012.

2011 Constituent Meetings: The proposal to amend the MHSAA Constitution to permit waiver of the maximum age rule for students with Down syndrome or possibly other disabilities was discussed with approximately 550 administrators at meetings (Athletic Director In-Service and Update Meetings) on the following dates and locations:

May 6, 2011	Gladstone	Oct. 5, 2011	Kalamazoo*
June 28, 2011	Mt. Pleasant	Oct. 10, 2011	Comstock Park*
Aug. 11, 2011	Taylor	Oct. 12, 2011	Frankenmuth*
Aug. 17, 2011	Macomb/ St. Clair	Oct. 17, 2011	Gaylord*
Sept. 7, 2011	Bloomfield Hills	Oct. 19, 2011	Lansing*
Sept. 26, 2011	Warren*	Oct. 28, 2011	Marquette*

In all meetings, materials were distributed which included practical and scientific rationale from Ishpeming High School and statistics on other states: 27 allow no age waiver, 23 permit an age waiver, and 8 of these have specific waivers for students with disabilities.

* The principal point the MHSAA was asked to consider was the opinion of a medical authority that Down syndrome was a unique disability in that it delayed student development both physically and mentally. The MHSAA did not attempt to provide contrary evidence but provided this medical expert's opinion with boldface and underscoring in a document distributed to all 800+ attendees at these seven Update Meetings.

In discussions at all meetings there were some who advocated a compassionate allowance for waiver and in all meetings a greater consensus spoke, and often first, that opposed allowing a waiver of the maximum age rule for students with Down syndrome or other disabilities. The annual Opinion Poll of school personnel in attendance at seven statewide Update Meetings showed that 60% (429 of 715 responding) opposed changing the MHSAA Constitution to allow waivers for students with Down syndrome.

Dec. 11, 2011: The Representative Council reviewed a proposal from Ishpeming High School to waive the maximum age rule for one year for students with Down syndrome or in the alternative, for students with certain "disabling criteria." The Council also reviewed material prepared for the MHSAA Athletic Director In-Service and Update Meetings and the results of the Opinion Poll and discussions with constituents. The Representative Council discussed and voted to not submit the proposed amendment to the MHSAA membership.

May 2012: A proposal and rationale from Ishpeming High School will be presented to the Representative Council to send to the MHSAA membership an amendment to the MHSAA Constitution to permit waiver of the maximum age rule for one year for students with "combinations of certain intellectually- and physically-disabling conditions." Samples of bylaws from several other states are also included and will again be presented.