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March 19, 2019

Mr. Eric C. Davis, Chairman
North Carolina State Board of Education
6302 Mail Service Center
Raleigh, NC 27699

Mr. Mark Johnson, Superintendent
North Carolina Department of Public Instruction
6301 Mail Service Center
Raleigh, NC 27699

RE: Tuscola High School Athletic Reclassification/NCHSAA

Dear Chairman Davis and Superintendent Johnson:

I am writing as attorney for the Haywood County School System Board of Education (Haywood County Schools). The purpose of this letter is to address an issue with the North Carolina High School Athletic Association (NCHSAA) in regard to its policies, procedures and decision making in classifying and reclassifying high school athletic teams. The reason for addressing this letter to each of you is that pursuant to N.C.G.S. 115C-12(23), The State Board of Education "shall adopt rules governing interscholastic athletic activities conducted by local Boards of Education", and "may authorize a designated organization to apply and enforce the Board's rules governing participation in interscholastic athletic activities at the high school level". My understanding is the Department of Public Instruction is responsible for implementing The State Board of Education's decisions and policies. My further understanding is the NCHSAA is the entity appointed for the purposes of the statute regarding high school level activities. For your quick reference, I am enclosing a copy of the statute. If the NCHSAA is not the entity appointed by The State Board, please advise me immediately of the entity which is otherwise responsible for enforcing The State Board's rules.

As the appointing authority, it is the position of Haywood County Schools that The State Board of Education should be made aware of our concerns regarding the Association's process in classifying and reclassifying high school athletic teams for competition. Specifically, our concern is that the manner, policies, and procedures of the NCHSAA are having an adverse effect upon Tuscola High School in Haywood County, and in all probability, other schools across the State. We not only believe you should be made aware of our concern, but pursuant to the statute, you have authority to address the problem. If the NCHSAA has not been appointed by The State Board, then we request that pursuant to your authority that you appoint an entity for the purpose of the statute, and possibly an entity other than NCHSAA, unless significant changes are made within that Association.

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For context purposes, Haywood County School System operates both Pisgah and Tuscola High Schools. Pisgah High School serves the eastern portion of the County and Tuscola High School serves the western portion. Both schools enjoy very strong community support with high standards and are high performing "B" high schools on the State School Report Card. The Haywood County School System is currently ranked 14th of 115 in the State's overall Performance Composite score. Pisgah High School has a student population of 990 and classified 2A for athletic competition. It is a member of the Mountain Six Conference. Tuscola High School has a student population of 974 and classified 3A for athletic competition. It is a member of the Mountain Athletic Conference (MAC). The following chart shows a listing of the schools and student population which currently make up the Mountain Six and Mountain Athletic Conference.

CHART 1

School	***Conference***	***Student Population***
Pisgah	Mountain Six	990
Franklin	Mountain Six	933
East Henderson	Mountain Six	901
Smoky Mountain	Mountain Six	864
Brevard	Mountain Six	789
Hendersonville	Mountain Six	766
TC Roberson	MAC	1644
AC Reynolds	MAC	1372
Erwin	MAC	1335
Asheville	MAC	1332
Enka	MAC	1191
North Buncombe	MAC	1155
West Henderson	MAC	1121
North Henderson	MAC	1066
Tuscola	MAC	974

There is a difference of 244 students from the largest to the smallest schools in the Mountain Six Conference. There is a difference of 670 students from the largest to the smallest in the MAC.
Geographically, the Mountain Six encompasses 1 of 2 schools in Haywood County, 1 in Macon County, 2 of 4 in Henderson County, 1 in Jackson County, and 1 of 2 in Transylvania County. The MAC encompasses 6 of 6 schools from Buncombe County, 2 of 4 in Henderson, and 1 of 2 in Haywood.

The unfairness of the current alignment for competition is "self-evident" as shown in Chart 1. Regionally, not only must Tuscola High School compete in a classification and conference in which the pool of athletes is much larger, but the 3A designation is not equitable when you consider that statewide there are 13 other 2A schools larger than Tuscola. See Chart 2 below. Clearly, past decisions and actions of the NCHSAA are creating unfairness, not only regionally, but statewide in athletic competition.

CHART 2

School	*Enrollment*	*Classification*
TC Roberson	**1,644**	**3A**
Knightdale	1,622	4A
Seventy-First	1,568	4A
High Point Central	1,565	4A
South Central	1,550	4A
Ragsdale	1,548	4A
West Charlotte	1,531	4A
Corinth Holders	1.509	4A
Scotland	1,506	4A
Purnell Swett	1,503	4A
Glenn	1,484	4A
West Mecklenburg	1,484	4A
North Davidson	1,144	2A
Durham School of the Arts	1,107	2A
Hibriten	1,034	2A
St. Pauls	1,027	2A
Ledford	1,023	2A
Atkins	1,019	2A
North Forsyth	1,014	2A
South Point	999	2A
Nash Central	990	2A
Pisgah	990	2A
North Lincoln	988	2A
Currituck County	983	2A
Forest Hills	980	2A
Tuscola	**974**	**3A**

As shown in Chart 2, further evidence of inequity is having TC Roberson with 1644 students classified as 3A, but which is larger than eleven (11) 4A high schools. As previously stated, we do not believe this to be just an issue in Western North Carolina, but throughout the State.

The inequities shown in Charts 1 and 2 appear to be the result of decisions by the NCHSAA beginning in 2015.

Prior to 2015, there were four classifications: 1A, 2A, 3A and 4A, with each classification containing 25% of member schools. Prior to the 2017 classification cycle, the Association decided to place 20% of member schools in 1A, 30% in 2A, 30% in 3A, and 20% in 4A. This change was made without a formal voting process with recorded written votes by Association members. At local and regional meetings the Association asked for a show of hands. No votes were tabulated. Tuscola and many other schools objected to the unfairness and inequity caused by this arbitrary classification. We question whether the entire membership across the state voted in favor of this change.

To address the issue, Tuscola took the following actions:

a. On April 20, 2016, Haywood County Schools, on behalf of Tuscola High School, joined an appeal of three other school systems (Jackson, Macon and Henderson), requesting a change to eliminate the size disparity caused by the decision. Despite Tuscola's objection and valid reasons for the appeal, the Association created the Mountain Six Conference (6 schools) and the Mountain Athletic Conference (9 schools), with its inherent unfairness to Tuscola reflected in Chart 1. (NOTE: At the time of classification, Tuscola had 1,037 students, but anticipated a significant drop as in fact happened).

b. On November 27, 2018, at the first opportunity to address the inequity, Tuscola High School made an appeal to reclassify Tuscola High School with 974 students to 2A, consistent with other similar sized schools in the area and state. In denying the appeal, Commissioner Que Tucker cited a new rule required for reclassifying which was posted to the Association's website, with no notice being sent to Association members. According to Commissioner Tucker, reclassification would only be allowed if there was a 10% reduction in student population. As a result, Tuscola High School with 974 students was denied reclassification to 2A. However, previous to enforcement of the new rule, and used as part basis for Tuscola's request, JM Robinson High School in Cabarrus County was reclassified from 3A to 2A based upon an 8.2% change in student population. Tuscola had an 8.6% change in population, but was denied. Also, the Association's decision denying Tuscola's request was made simultaneously with a decision to reclassify North Forsyth from 3A to 2A, though it is larger than Tuscola as shown in Chart 2.

c. On November 28, 2018, Tuscola provided further information to Commissioner Tucker in that the new rule allows reclassification for a catastrophic or community based event. It was reiterated that Tuscola should qualify for reclassification due to a feeder elementary school in Tuscola's service area being closed, and its impact on current and future student enrollment at Tuscola. In response, Commissioner Tucker informed Tuscola she would go back to the Board with the information, but the minutes of the Association's November 28, 2018 do not reflect the issue being addressed.

d. In December, 2018, Tuscola requested a face-to-face meeting with Commissioner Tucker which was denied.

e. On January 15, 2019, Tuscola requested the procedure to file a formal grievance regarding the adverse impact of arbitrary rules and regulations, but was advised by the Association there is no procedure for a formal grievance or hearing.

Based upon the foregoing, it is our position that the current classification and/or reclassification procedure, policies, rules and regulations of the Association have been, and are being made in an arbitrary and capricious manner, without due process, resulting in unfair competition in Western North Carolina, and we firmly believe this to be the same throughout the State.

While the NCHSAA may maintain they are a private, nonprofit Association, not held to the same requirements and standards for government entities ensuring that decisions are not made in an arbitrary and capricious manner, and with due process protection; we firmly disagree for two reasons. First, from a policy perspective, we believe The State Board of Education with the mandate to "adopt rules governing interscholastic athletic activities", should require that decisions of the NCHSAA meet the requirements of all other State entities, and not permit decisions to be made in an arbitrary and capricious manner without due process, including a formal grievance procedure. Second, legally, we believe the delegation of authority by The State Board to the NCHSAA requires them to do so as an agent of the State.

As you can see from the attachment, we are forwarding a copy of this letter to our local State Representatives, leaders of the State Legislature, and Governor; and if necessary, ask the Legislature to study and examine the delegation of authority to the NCHSAA, assuming that has occurred, and the manner in which they are making decisions on behalf of the State.

Additionally, on behalf of the Haywood County School Board, this is to request that your respective offices begin an immediate investigation and examination of the procedures and policies of the NCHSAA regarding their decision making and process classifying and reclassifying high schools for athletic competition. As part of this investigation, we request that you investigate the on-going self-appointment of NCHSAA Board members, the lack of formal written voting and record keeping of member high schools, lack of a formal grievance procedure for classification and reclassification to include a hearing, as well as other due process and grievance protections for arbitrary rules and regulations.

Lastly, this is to request you forward any documentation whereby The State Board, Office of State Superintendent, or Department of Public Instruction has appointed the Association as the body to govern high school interscholastic athletic activities, and any studies, guidance, or directives by the State Board, Office of State Superintendent, or Department of Public Instruction to the NCHSAA. Also, please forward a copy of the rules adopted the by State Board governing high school athletics pursuant to the foregoing statute. If the NCHSAA has not been delegated the authority by the statute but is acting as the "default" entity due to there being no other association to apply or be named, we would like that information also.

It is the opinion of the Haywood County School System that the NCHSAA has created a harmful and detrimental system for high school competition, not only for Tuscola High School, but other schools and school systems throughout the State. As regards to Tuscola, the solution is so simple. Reclassify Tuscola to 2A, remove it from the 9 team Mountain Athletic Conference and place it with the other similar sized schools in the Mountain Six Conference. Thereby, this would create two conferences, one with eight schools, and one with seven schools. Unfortunately, this simple solution seems to be lost in the arbitrary, capricious, and confusing decision making of the NCHSAA which could possibly be resolved if the Association provided adequate due process procedures.

In conclusion, the Board and I want to thank you and your respective offices for all your work and success on behalf of education in North Carolina. We are confident that now having been made aware of the situation, you can effectively address it, not only here in Western North Carolina but throughout the State.

Please contact me if you have any questions or need further information. The Haywood County Schools Board of Education and I look forward to your response.

With best wishes, I am,

Sincerely,

Patrick U. Smathers

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Enclosure

cc: NCHSAA Commissioner Que Tucker
Superintendent Dr. Bill Nolte, Haywood County Schools
Associate Superintendent Dr. Trevor Putnam, Haywood County Schools
Principal Todd Trantham, Tuscola High School
Governor Roy Cooper
Lt. Governor Dan Forest
NC Speaker of the House Phil Berger
Senator Jim Davis
Representative Michele Presnell
Representative Joe Sam Queen
Mike Schoeffel, The Mountaineer Newspaper Sports Editor
Editor, Smoky Mountain News
David Thompson, Asheville Citizen Times Sports Editor
Stan Pamfilis, WLOS TV Sports Director
Steve Ruinsky, Raleigh News and Observer Senior Sports Editor
Vicki Hyatt, The Mountaineer
Cory Vaillancourt, Smoky Mountain News

(23) Power to Adopt Eligibility Rules for Interscholastic Athletic Competition.--The State Board of Education shall adopt rules governing interscholastic athletic activities conducted by local boards of education, including eligibility for student participation. With regard to middle schools and high schools, the rules shall provide for the following:

a. All coaches, school nurses, athletic directors, first responders, volunteers, students who participate in interscholastic athletic activities, and the parents of those students shall receive, on an annual basis, a concussion and head injury information sheet. School employees, first responders, volunteers, and students must sign the sheet and return it to the coach before they can participate in interscholastic athletic activities, including tryouts, practices, or competition. Parents must sign the sheet and return it to the coach before their children can participate in any such interscholastic athletic activities. The signed sheets shall be maintained in accordance with sub-subdivision d. of this subdivision.

For the purpose of this subdivision, a concussion is a traumatic brain injury caused by a direct or indirect impact to the head that results in disruption of normal brain function, which may or may not result in loss of consciousness.

b. If a student participating in an interscholastic athletic activity exhibits signs or symptoms consistent with concussion, the student shall be removed from the activity at that time and shall not be allowed to return to play or practice that day. The student shall not return to play or practice on a subsequent day until the student is evaluated by and receives written clearance for such participation from (i) a physician licensed under Article 1 of Chapter 90 of the General Statutes with training in concussion management, (ii) a neuropsychologist licensed under Article 18A of Chapter 90 of the General Statutes with training in concussion management and working in consultation with a physician licensed under Article 1 of Chapter 90 of the General Statutes, (iii) an athletic trainer licensed under Article 34 of Chapter 90 of the General Statutes, (iv) a physician assistant, consistent with the limitations of G.S. 90-18.1, or (v) a nurse practitioner, consistent with the limitations of G.S. 90-18.2.

c. Each school shall develop a venue specific emergency action plan to deal with serious injuries and acute medical conditions in which the condition of the patient may deteriorate rapidly. The plan shall include a delineation of roles, methods of communication, available emergency equipment, and access to and plan for emergency transport. This plan must be (i) in writing, (ii) reviewed by an athletic trainer licensed in North Carolina, (iii) approved by the principal of the school, (iv) distributed to all appropriate personnel, (v) posted conspicuously at all venues, and (vi) reviewed and rehearsed annually by all licensed athletic trainers, first responders, coaches, school nurses, athletic directors, and volunteers for interscholastic athletic activities.

d. Each school shall maintain complete and accurate records of its compliance with the requirements of this subdivision pertaining to head injuries.

The State Board of Education may authorize a designated organization to apply and enforce the Board's rules governing participation in interscholastic athletic activities at the high school level.

(24) Duty to Develop Standards for Alternative Learning Programs, Provide Technical Assistance on Implementation of Programs, and Evaluate Programs.--The State Board of Education shall adopt standards for assigning students to alternative learning programs. These standards shall include (i) a description of the programs and services that are recommended to be provided in alternative learning programs and (ii) a process for ensuring