

ARTICLES

HOW MUCH DOES A PRIVATE SCHOOL STUDENT COUNT? A CRITICAL ANALYSIS OF THE ATHLETIC MULTIPLIER

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As Catholic high schools continue to experience success in interscholastic athletic leagues, state associations have repeatedly contemplated ways to thwart the perceived Catholic school advantage. One such effort, the multiplier, receives critical assessment in this article.

INTRODUCTION

In a number of states, the athletic associations have responded to the success of private schools in interscholastic competition by applying a multiplier to the private school's enrollment. The multiplier artificially inflates private school enrollment so that when schools are divided into separate classifications based on enrollment, private schools are grouped with public schools that have larger enrollments and presumably better teams. The underlying assumption is that private schools have an unfair advantage that requires such an adjustment. The states of Alabama, Arkansas, and Missouri have a 1.35 multiplier; Arkansas recently raised its multiplier from 1.35 to 1.75; Georgia has a 1.5 multiplier which it has repealed; Illinois has a 1.65 multiplier; Tennessee recently adopted a 1.8 multiplier; and Texas has a *de facto* multiplier. Wisconsin is looking at multiplier options beyond the familiar public-private school divide. Arizona, Minnesota, Ohio, Pennsylvania, and South Carolina have explored a multiplier, but found limited support for it. Indiana and Nebraska have rejected a multiplier by votes of the athletic association board and by members of the athletic association respectively. Kentucky and Louisiana pursued segregation of private schools and are included in this analysis because these cases share many of the same themes found in states that examined the multiplier. New York has taken a unique approach that defies an easy explanation.

This article will take a case-study methodological approach, examining those states that have considered enacting a multiplier. The case study approach will inform a critical analysis regarding the multiplier and the rationale for its use.

THE ORIGIN OF THE MULTIPLIER: ALABAMA, GEORGIA, ARKANSAS, AND MISSOURI

The first state to adopt a multiplier was Alabama. The Alabama Athletic Association (AAA) had two proposals from the membership that sought to eliminate private schools from the association or to create a separate association. After considering the matter, the AAA developed a 1.35 multiplier, which had at its source, a statistic gleaned from the differential between the eligible athletic rolls and the enrollment rolls. The rolls indicated that the athletic participation rate among private schools was 35% higher than that in public schools. The rationale for the 1.35 multiplier was articulated in Appendix A of the 1999-2000 handbook of the AAA, and took effect in the 2000-2001 school year (*Brentwood v. Tennessee Secondary School Athletic Association*, 2001; Johnston, 2000).

A less rational approach was taken by the State of Georgia. Georgia's legislature stepped into the fray in 1999, when Tom Murphy, the Speaker of the House, was upset that his daughter-in-law's debate team at small-school Bremen kept losing in debate to nationally ranked Atlanta Pace Academy (Trowbridge, 2004). The Georgia High School Association (GHSAA) responded to Murphy's request that all private schools be bumped up a classification by offering to enact a 1.35 multiplier, but it was not enough; Murphy asked for 2.0, and the executive committee of the GHSAA settled on 1.5 (Trowbridge, 2004). After Murphy's retirement, and presumably after his daughter-in-law graduated from Bremen, the multiplier was repealed by the Georgia Legislature (Georgia General Assembly, 2005).

The Arkansas High School Activities Association (AHSAA) board of directors' summer of 2000 workshop contained several public-private school legislative items including a 1.35 multiplier (AHSAA, 2000a). All of the public-private school legislative items received the board's recommendation for passage and were subsequently passed (AHSAA, 2000b). The same cycle repeated itself 5 years later when the board, which has no private school representation, recommended by a 14 to 5 vote to increase the multiplier from 1.35 to 1.75. Lance Taylor, director of AHSAA, stated "[public schools] take everybody up to 21 years old. Privates screen them out. It's not the same type of kid. There's really not a good answer for it" (as cited in Gokavi, 2005, p. C8). The board took no action on a preemptive proposal by the Arkansas Nonpublic School Accrediting Association that suggested a 1.50 multiplier if a new multiplier were to be authorized (AHSAA, 2005). The new 1.75 multiplier was passed by a vote of 178 to 30, and took effect in 2006 (Sadler, 2005).

The multiplier entered Missouri through a last-minute, surreptitious ballot initiative that was not supported by the Missouri State High School

Athletic Association (MSHSAA), and was passed by a minority of the member schools in the summer of 2002. Proposition #9, which sought to establish a 1.35 multiplier on private school enrollments, was placed on MSHSAA's spring ballot by a member school through the petition process. The executive director of MSHSAA was quoted as saying "The petition didn't get circulated statewide, which it doesn't have to be. There were areas of the state that had no idea this was even coming" (as cited in Baer, 2002a, ¶27). Prior to the balloting, MSHSAA requested that its member schools vote against the proposal to provide the Association with more time to investigate its implications (Baer, 2002b). Nevertheless on May 9, 2002, the MSHSAA announced that Proposal #9 had passed on a vote of 286 to 186 with at least 113 schools not bothering to vote (Crone, 2002).

MISSOURI AND ARKANSAS: MULTIPLIER LITIGATION

The parents of five Catholic high school students from two different Catholic high schools in the state of Missouri sued MSHSAA, claiming in their brief that the multiplier was arbitrary, capricious, and without a reasonable basis. The brief stated among other things, "MSHSAA cannot provide a rational basis for the 1.35 multiplier rule. MSHSAA has presented no evidence that the rule is based on any objective evidence" (Ludwig, 2002b, p. 3). The brief stated further:

The proponent of the multiplier feels that this [inordinate athletic success] is based upon the public schools having more students that are ineligible. However, the private schools also have ineligible students. The data could be easily compiled and provided to MSHSAA and classifications based accordingly. This would "level the playing field" if the success of the non-public schools is actually because of these enrollment differences. However, success on the playing field by the non-public schools very well could be based on other, intangible factors, such as tradition, coaching, family involvement, discipline, or many other intangibles. (Ludwig, 2002b, p. 3)

MSHSAA responded in its brief with 10 possible advantages: private schools have higher percentages of athletic participation, larger attendance areas, are in more densely populated regions, have greater opportunities for skill development, have the opportunity for students to selectively attend their schools, control enrollments, have selective admissions, do not admit 21-year-olds, do not have alternative education students, and have lower drop-out rates (Mayse, 2002). The plaintiffs responded in their supplemental trial brief "MSHSAA's factual defense has been to throw everything against the wall

and see what sticks...However, MSHSAA has presented no objective evidence to support these concerns or assumptions” (Ludwig, 2002a, pp. 2-3). The plaintiffs included a study done by a professor at the University of Missouri that found “no statistically significant correlation between the rate of participation in a school and its success on the field” (M. Ludwig, personal communication, October 30, 2003).

The Boone County Circuit Court employed the rational basis test, a standard of review for enactments challenged on equal protection grounds. The court used the Missouri Federal District Court precedent found in *Beck v. MSHSAA* (1993) that a regulation that treats non-public students differently is not unconstitutional if it “addresses a legitimate state purpose and is rationally related to serving that legitimate purpose” (p. 1005). The court then put forth a two-part argument that “Where there is room for two opinions on the matter, such action is not arbitrary and capricious” (*Bax v. MSHSAA*, 2003, p. 18) and that since the schools that voted in favor of the policy “could have reasonably concluded from all the information provided and adduced here that nonpublic member schools have displayed a long term, continuing and increasingly statistical success in MSHSAA District and State Championships which substantially exceeded their membership ratio in the Association” (*Bax v. MSHSAA*, 2003, p. 19), MSHSAA has not acted arbitrarily and capriciously. The court paradoxically held that even though the statistical analysis provided by the plaintiffs refuted the alleged advantage of private schools, the belief that private schools have an advantage was sufficient to pass the rational basis test. It further stated that by-laws do not require mathematical precision; therefore “MSHSAA is not required to engage in mathematical nicety and precision with use of its multiplier nor sustain additional administrative burdens with more counting suggested by Plaintiffs” (*Bax v. MSHSAA*, 2003, p. 20).

A concern over the lack of a rational basis for the Missouri multiplier was expressed recently by Dale Pleimann, assistant executive director of MSHSAA, noting that some have contacted MSHSAA regarding their multiplier after sustaining the legal challenge: “One of the big concerns with our multiplier is how did you come up with that number (1.35). Since it came in by petition, we don’t have an exact answer” (Gokavi, 2005, p. C8).

Gary Holt, an attorney and parent of an Arkansas Baptist High School senior filed a lawsuit challenging the Arkansas multiplier. The motion requested a preliminary injunction to change the Arkansas high school football schedules for the 2006-2008 classification cycle. The Arkansas Baptist football team won only three games in 2005, has only 25 players—most playing offense, defense, and special teams—and would move up two classifications playing teams with more than twice as many players (Moritz, 2006).

Lance Taylor, executive director of AHSAA, testified that the 1.75 multiplier was based upon recommendations by public high school coaches and administrators rather than any studies or reports (Moritz, 2006).

The Pulaski County Circuit Court denied the motion after citing 12 differences between public and private schools in its findings of fact: private schools have higher participation rates (citing the Alabama study), are not required to educate handicapped and developmentally disabled students, have higher parental involvement rates, have the ability to attract foreign students under different conditions, are not required to limit extracurricular activities to only one period per day, do not have boundaries, do not have salary limits on coaches and are not required to publish the salaries, have no budget restraints on facilities, have won state championships at a higher percentage rate, do not have English as a second language students who are less likely to participate, have the ability to cap enrollment, and have the ability of their students to practice at summer workouts while public schools could not because they have jobs (Associated Press, 2006). The court used the rational basis test and, like the Missouri decision, found that “any reasonably conceived state of facts. . . could provide a rational basis for classification” (Associated Press, 2006, ¶34). Again like Missouri, the court found that “the classification system does not offend the constitution simply because classification is not made with mathematical nicety or because it results in some inequity” (Associated Press, 2006, ¶34).

LOUISIANA AND KENTUCKY: ATTEMPTS AT SEGREGATION

Two principals in north Louisiana proposed to split the Louisiana High School Athletic Association (LHSAA) into two separate classifications: one for public schools and one for private schools (Strom, 2004). The authors of the proposal claimed that private schools have numerous advantages including opportunities to accept students outside their attendance zones, to control their enrollment, and to operate under different academic guidelines (Strom, 2004). Tommy Henry, the LHSAA commissioner, observed that the proposal was gaining support from public school principals irate over the dominance of Curtis and Evangel (Strom, 2004). Two small schools, John Curtis Christian and Evangel Academy, dominated the state’s top two divisions, regularly defeating opponents in football with much larger enrollments (Longman, 2004). The LHSAA avoided segregation by approving an alternative plan proposed by the LHSAA executive committee, by a vote of 256-71, to study complaints that private schools have an unfair advantage (Brocato, 2004a). In October 2004, Louisiana’s high school principals voted to require all schools to play in a class determined solely by their enrollment

with an appeal process that allowed schools to petition to play up a class (Longman, 2004). This curious action, the opposite of what other states had done using a multiplier, prevented small schools with great success from playing larger and presumably more competitive schools. Twenty-two appeals requesting to play up a class were made and only three were granted; John Curtis Christian and Evangel Academy were not among the three (McCallum, 2004). The LHSAA also shot down appeals by Archbishop Shaw to continue to be a member of the Catholic League which it had been in for 34 years, and denied the Academy of the Sacred Heart, De La Salle, and Archbishop Hannan to continue to play in the 3A division (Brocato, 2004b). Brocato (2004b) added that the appeals were denied “with a snickering purpose” (§3).

In Kentucky, after Catholic schools won 8 of the past 10 state championships in football in the largest classification, the association’s delegate membership voted 195 to 78 to separate public and private schools for the state tournament (Cohen, 2006). After the Kentucky High School Athletic Association’s (KHSAA) Board of Control chose not to recommend the initiative’s passage to the State Board of Education, it was sent back for mediation (Cohen, 2006). The KHSAA Board of Control recommended rules governing feeder patterns for private schools including 2 years of ineligibility for students going from a public grade school to a private high school, but these rules were sent back by the State Board of Education on concerns of their legality (Hall, 2006).

TENNESSEE AND TEXAS: SEGREGATION AND MULTIPLICATION

In 1997, Tennessee split its athletic association into two divisions, one for public schools (division I) and one for private schools that gave need-based financial aid (division II), mostly in response to one school in one sport: Brentwood Academy in football (Fair, 2004). This meant 18 football-playing private schools were segregated into division II and 15 football-playing private schools were left in division I. In 2003, at a Tennessee Secondary School Athletic Association (TSSAA) regional meeting, Herb Luker, the principal at Collinwood High School, proposed that all private schools be moved into division II (Williams, 2004). The rationale cited for the move was that private schools were able to draw students from a wide geographical area, while public schools draw students only from within their districts’ boundaries (Williams, 2004). While the proposal passed by a vote of 71 to 25, the TSSAA board of control (comprised of nine public school administrators), defeated the proposal by a 5 to 4 decision in December 2003 (Williams, 2004). In February 2004, the TSSAA board of control, decided to multiply the enrollments of

those private schools that remained in division I by 1.8 for purposes of classification beginning with the 2005-2006 school year (Williams, 2004).

While open enrollment was the rationale cited in the proposal to move all private schools into division II, apparently participation was the rationale cited for the 1.8 multiplier. TSSAA chose not to apply the multiplier based upon the issue of open enrollment, which would presumably require that it be applied to public schools as well as to private schools. Ronnie Carter, the Executive Director of TSSAA stated “We are seeing more urban school systems with open enrollment, and even if they don’t have open enrollment, the students have options to go to different schools in the town” (as cited in “Public-private divide deepens,” 2004, ¶17). Carter added that the TSSAA board “looked at adding multipliers for public schools in metropolitan areas as well as the private schools this year” (as cited in “Public-private divide deepens,” 2004, ¶18). Since the rationale for the 1.8 multiplier was participation rates, its application to public schools was deemed unnecessary. Bob Baldrige, the assistant executive director of TSSAA stated “Take two schools, side-by-side, public and private with the same number of kids, and you’ll get 80 percent more out for athletics at a private school” (as cited in Trowbridge, 2004, ¶30).

Texas has two separate divisions for public and private schools: the University Interscholastic League (UIL), and the Texas Association of Private and Parochial Schools (TAPPS). Two private schools, Dallas Jesuit and Strake Jesuit, were members of a third organization, the Texas Christian Interscholastic League (TCIL) that folded in the 1999-2000 school year (Cantu, 2006). TAPPS accepts only schools with enrollments less than 725 students, and the UIL was unwilling to accept private schools (Cantu, 2006). This prevented Strake Jesuit (836 students) and Dallas Jesuit (999 students) from joining either league (Cantu, 2006).

State Senator Armbrister, D-Victoria, introduced SB 524 that dictated that the UIL may not deny admission to private schools. It allowed private schools with as few as 500 students to join, it prohibited the league from imposing eligibility requirements for private schools that exceed the proof required of public schools, required single-sex schools to have their enrollment doubled and placed in an appropriate league district based on that enrollment number (i.e., no further multipliers), and fixed the attendance zone for private schools to be identical to that of the local public school (Texas Senate, 2001b). The bill passed the senate by a vote of 22 to 7 (Texas Senate, 2001a) and was sent to the House. Simultaneously, Dallas Jesuit and Charles Gonzales, the father of a student at Dallas Jesuit, filed a lawsuit against the UIL. The lawsuit claimed the denial of admission interferes with a fundamental right of parents to educate their children, it claimed discrimi-

nation against private schools by a state agency, and claimed denial of protection under the Texas Religious Restoration Act.

After several legal battles and looming legislation, the UIL agreed to accept Strake Jesuit and Dallas Jesuit on the condition that all private schools compete in the state's largest classification: 5A (Cantu, 2006). Since Strake Jesuit's all male enrollment is approximately 836 (1,760 if doubled), and the school with the smallest enrollment of a public school in 5A is 1,960, Strake Jesuit effectively has its enrollment doubled and then multiplied by 1.17. Besides Strake Jesuit and Dallas Jesuit, all the private schools in the state are segregated into TAPPS unless they wish to have their enrollment multiplied by a number larger than 1.17 as a condition of entry.

THE ILLINOIS BATTLE

Illinois formed a 21-member task force in the Spring of 2004 to study the issue of private schools winning an inordinate number of class A state titles (Trowbridge, 2004). The particular success of football powers Joliet Catholic, Providence, Mount Carmel, and Driscoll were the primary targets (Maciaszek, 2005). In January 2005, the task force voted to forward several recommendations on to the Illinois High School Association (IHSA) board of directors, but rejected the recommendation of the multiplier sub-committee for a tiered multiplier (Maciaszek, 2005). The task force asked that the committee re-examine the issues involved

with an eye toward additional factors, including the size of the IHSA-established radius, the actual impact of population density on a school's enrollment as opposed to the potential impact, the effects of enrollment on IHSA tournament success, and the effects of special student populations on a school's enrollment. (IHSA, 2005e, ¶5)

The IHSA board heard reports from the task force and the task force sub-committees at its February 2005 meeting, and asked that the IHSA staff review the work and make its own recommendations to the IHSA board (IHSA, 2005b). In its March 2005 meeting, against the recommendations of the task force, the IHSA board adopted a 1.65 multiplier to be applied to all "non-boundaried" schools with an enrollment of 450 or more students (IHSA, 2005a). The multiplier policy contained an exclusionary waiver for schools with a sub-average record. Marty Hickman, the IHSA executive director, stated "This was a data-based proposal....After enrollment of near 450, schools without boundaries win two to four times as much as boundaried schools" (as cited in Tucker, 2005, p. 93).

In September 2005, 37 members of the IHSA filed suit in Cook County

over the multiplier, and quickly reached an agreement with IHSA that the multiplier would prevail through the fall season, but would be resolved through the association's normal legislative process (IHSA, 2005c). In December 2005, by a vote of 450 to 143, the membership approved a 1.65 multiplier to be applied to all non-boundaried schools, both those above and below 450 students (IHSA, 2005d). Furthermore, the new multiplier contained no waiver for schools with sub-average records.

ARIZONA, MINNESOTA, OHIO, PENNSYLVANIA, AND SOUTH CAROLINA: NOT MUCH SUPPORT FOR A MULTIPLIER

Arizona decided to shelve the idea of using a 1.5 multiplier for private schools. The move for a multiplier came from a number of public schools, primarily at the 2A level, where private schools have dominated the state playoffs in recent years (Falduto, 2006). Harold Slemmer, Executive Director of the Arizona Interscholastic Association (AIA), stated that a recent survey showed the plan does not have strong overall support from schools statewide (Falduto, 2006). Slemmer is quoted as saying "Only 56.3 percent of schools supported it" (as cited in Falduto, 2006, ¶3). The plan had come under fire from Representative Steven Yarbrough, a former Valley Christian board member, who introduced Arizona HB 2772 which would "prohibit any public or charter school in Arizona from contracting with any organization that does not count each student equally" (Falduto, 2006, ¶5). The Arizona Bill after receiving both majority and minority caucus support, was passed by the House by a vote of 22 to 16 (Arizona House of Representatives, 2006). Slemmer called the bill "an overreaction to an event that has not taken place" (as cited in Falduto, 2006, ¶11) and stated that the bill had no bearing on AIA's decision to not explore the 1.5 multiplier.

Minnesota was looking at the multiplier but is apparently framing the competitiveness question more broadly than merely a public-private school issue. The October 2005 delegate minutes stated,

There are changes in the making and there are numerous factors that are being reviewed to determine school enrollment in terms of the count used to determine class. Free and reduced lunch counts are one of many factors being considered as well as the amount of diversity that may exist in certain schools. The multiplier that was being considered for private schools is no longer on the discussion table. (Minnesota State High School Coaches Association, 2005, ¶4)

During the mid-1990s, the Ohio High School Athletic Association (OHSAA) held a referendum on creating a separate playoff for public and

private schools; it was soundly defeated (Eigelbach, 2006). However, the OHSAA put together a committee to study the multiplier because “a lot of coaches feel [Ohio’s system] is not fair” (Gokavi, 2005, p. C8). Assistant Commissioner, Duane Warns, cited selective admission as an advantage for private schools; “[Private schools] can control how many students they want to admit to their school, where public schools do not have that luxury” (as cited in Gokavi, 2005, p. C8). Assistant Commissioner, Bob Goldring, a few months later stated that the problem is recruiting athletes and that “It’s not a problem just related to Catholic schools” (as cited in Eigelbach, 2006). The association, seemingly taking a cue from Illinois, looked at the issue from a “boundaried school” versus “non-boundaried school” perspective, since many large urban schools allow students to transfer within the district. Goldring admitted that “a lot of what we have in place [regarding recruiting] is kind of a gray area” (as cited in Eigelbach, 2006, ¶9). Ultimately, the OHSAA abandoned the idea of the multiplier and created new smaller division I classes. Duane Warns, an assistant commissioner at the OHSAA and committee chairman stated that the multiplier concept never got a foothold in the discussion (Gokavi, 2006).

In 2003, Brad Cashman, the executive director of the Pennsylvania Interscholastic Athletic Association (PIAA) asked that the policy review committee examine possible changes in the way it deals with private schools (Associated Press, 2003). The review was prompted by complaints following the basketball championships the previous 2 years. “We have received—and we receive them every year after the basketball playoffs—numerous complaints by either telephone or e-mail about the private schools playing the public schools” (Associated Press, 2003, ¶3). Cashman asked the committee to review three options: a separate basketball tournament for public and private schools, the institution of a multiplier, or to leave the system as is (Associated Press, 2003). Cashman stated that his preference was to keep it the way it is; “There is also the equal treatment issue” (as cited in Associated Press, 2003, ¶8). The multiplier did not gain much support in Pennsylvania. Tim O’Malley, a member of the PIAA Board of Control stated “It’s [the multiplier] been brought up before, and I’m sure it will be brought up routinely in the future.” Echoing Cashman’s analysis, O’Malley remarked “It’s usually brought up every year after the basketball championships. But it only gets discussed and doesn’t go any further” (as cited in White, 2006, p. D4).

The target of the multiplier was even more obvious in South Carolina. Emerald High School, which lost four head-to-head state-championship competitions in boys’ golf, girls’ track, baseball, and boys’ soccer in a span of 5 days with Bishop England, asked the South Carolina High School League to reconsider allowing private schools to participate in the league or

to apply a 1.5 multiplier to private schools (Bowman, 2006). Emerald officials contend that Bishop England and other private schools “keep enrollment down to play at a lower classification” (Bowman, 2006, p. A1). Bishop England’s athletic director, Paul Runey, found the rationale laughable; “We could easily add at least 50 students without having to add any new classes or teachers. The low end [of tuition] is \$6,000 a student. Do you really think we could afford to turn down an extra \$300,000 in tuition?” (as cited in Bowman, 2006, p. A1). The realignment of schools for 2006-2008 shows both Emerald and Bishop England in Class AA indicating that the South Carolina High School League did not grant the requests by Emerald to either segregate the private schools or multiply private school enrollment by 1.5 (South Carolina High School League, 2006).

WISCONSIN: LOOKING BEYOND THE PUBLIC-PRIVATE SCHOOL DIVIDE

In 2000, the Wisconsin Independent Schools Athletic Association dissolved, and its 56 members joined the Wisconsin Interscholastic Athletic Association (WIAA; Temkin, 2005). However, the success of private schools in boys’ basketball and girls’ volleyball in the smaller-school divisions raised the ire of some public schools. Doug Chickering, the executive director of WIAA, announced “From within the ranks of our membership, and some public perceptions, indicate that by placing all of the schools into divisions for tournament play based on a face-value enrollment that the smaller, non-public schools have an advantage” (as cited in Roquemore, 2005, ¶4). Chickering called for a state-wide survey of the number of student athletes coming into a school (public or private) from outside the local public school district. Chickering observed that since Wisconsin is an open enrollment state, it is not as simple as saying private schools draw players from larger geographic areas; “That’s why I keep telling members we can’t look at it as a public vs. non-public school issue. We have to look at open enrollment too” (as cited in Temkin, 2005, p. 12).

The WIAA, at its 2006 annual meeting, directed Chickering to make the private-public school multiplier issue its top priority: “They told us that the time for talk is over, that the public vs. private schools issue has to be resolved” (as cited in Semrau, 2006a, p. E6). He admitted to have received considerable criticism after Racine St. Catherine’s 37-point win over Westby in the Division 3 state boys’ basketball title game (Hernandez, 2006). Among the ideas he has proposed: apply an enrollment multiplier for the open enrollment student counts for both public and private schools, require all private schools within a Division 1 school district to play up one division, let schools play up a division in any sport they choose (and not replace it in the lower

division), do not allow a school that has won a state tournament to move down a division even if its enrollment declines, apply a multiplier to the number of students that receive tuition assistance (private schools), establish a higher initial placement for new member schools (in response to an inner-city charter school sponsoring only a boys' and girls' basketball program; Hernandez, 2006). Chickering stated "We're going to develop a plan to finally address the public-private issue." (as cited in Semrau, 2006b, p. D4). His goal is to have a proposal to vote on at the 2007 WIAA annual meeting, and if passed, to be implemented in the 2007-2008 school year (Semrau, 2006b). Semrau (2006b) reports "It also shouldn't surprise anyone that any points that will eventually be adopted in terms of the public-private issue would be applied to basketball first, before being applied to other sports" (p. D4).

NEBRASKA AND INDIANA: THE MULTIPLIER REJECTED

The push for the multiplier originated in the East Central Nebraska Conference, a conference comprised exclusively of public schools (Reutter, 2002, ¶6). The rationale for the initiative was that "the makeup of the student body [in private schools] is very different" (Cunningham, 2002, ¶7). Public schools presumably enroll special education students, part-time students, academically ineligible students, culturally different students, at-risk, and alternative students that artificially inflate their eligible athletic rolls. "Typically these special students are not enrolled in non-public schools and typically these special students do not participate in extra-curricular activities" (Cunningham, 2002, ¶8). The multiplier was soundly defeated in all four of the six districts in which it was introduced by votes of 49 to 0, 44 to 0, 55 to 24, and in one district it was amended to call for a study committee on the issue. The 1.35 multiplier was re-introduced in 2005 in two NSAA districts, and it was again soundly defeated in both districts by votes of 35 to 12 and 44 to 25 (Pospisil, 2005).

One proposal that did pass recently in one district was a sliding adjustment scale based upon the number of students in special education, English language learning, and those receiving free or reduced lunch. The proposal would decrease overall school enrollments by 5% for every 10% that a school has in these three categories. Dan Polk, the proposal's author, stated "This opens a different debate. Instead of public versus private, it's public versus public" (as cited in Arneal, 2005, ¶4). The proposal was received more warmly than the 1.35 multiplier, but it still raised concerns. Gary Puetz, athletic director at Scotus Central Catholic stated "a lot of kids that fall into the three programs [of Polk's plan] have been successful athletes" (as cited in Arneal, 2005, ¶19). Terri Wilshusan, athletic director at Saint Francis called it "a bad

idea” in part because of “this focuses on marquee sports. Just because somebody can’t play football doesn’t mean they can’t participate in speech or music” (as cited in Arneal, 2005, ¶14). While private schools claimed five of six football championships, and 12 of the 37 athletic team titles during the 2004-2005 season, public schools claimed all 18 championships in the non-athletic activities. The proposal was soundly defeated in the January 2006 balloting by all five other districts by votes of 43 to 1, 43 to 0, 44 to 3, 17 to 0, 25 to 1 (Nebraska State Activities Association Bulletin, 2006).

In 2003, Mount Vernon principal Joe Loomis, on behalf of the Hoosier Heritage Conference (HHC), an Indiana conference made up exclusively of public schools, proposed a separate playoff for non-boundaried schools; the initiative was defeated. Undeterred, the HHC put together a committee of coaches that proposed a 1.5 multiplier be applied to all private schools. John Broughton, the chairman of the coaches committee stated “We don’t have a vendetta, and we don’t want to destroy the private schools. We just feel that there needs to be a leveling of the playing field” (as cited in Cohen, 2006, ¶9). While recruiting was the often mentioned advantage, Broughton has “steered coaches away from making that a part of the debate” (as cited in Cohen, 2006, ¶14) since the Indiana High School Athletic Association (IHSAA) has rules against recruiting; he reasons that private schools gain an advantage because “they pick their students and control the size of their schools, and that’s an unfair advantage” (as cited in Cohen, 2006, ¶16).

Three Catholic schools that have had tremendous success in football appeared to be at the center of the multiplier controversy: Cathedral, Roncalli, and Bishop Chatard. Jim Martin, athletic director at Ritter, a private school of 370 students remarked, “It seems to me the main people pushing for this are aiming at the Cathedrals and Roncallis, there’s no question about that” (as cited in Cohen, 2006, ¶53). Bobby Cox, IHSAA assistant commissioner, is not convinced that a multiplier would result in fewer state titles for private schools. He contends that the successful programs could likewise be successful in the higher classification: “Instead of [public schools] getting beat by Cathedral and Roncalli, now you’re going to get beat by Roncalli and Chatard” (as cited in Cohen, 2006, ¶30).

Two multiplier proposals were presented to the IHSAA Board. The 1.5 multiplier proposal would impact only private schools and had the support of the HHC principals; it avoided the question of boundaries which became a sticking point with the IHSAA Board (Cohen, 2006). Another proposal was a sliding multiplier from .70 to 1.3 based upon the percentage of students on free and reduced lunches, a proposal that would impact all schools (IHSAA, 2006). The sliding multiplier was rejected by a 15 to 0 vote with one abstention; the 1.5 multiplier was rejected by a 16 to 0 vote. Blake Ress, the

IHSAA commissioner stated “Nobody on the board spoke that we were for it, necessarily, but they spoke of concern of having a basis upon which to make this kind of a change” (as cited in Tucker, 2005, p. 93).

NEW YORK: A UNIQUE APPROACH, BUT NO STATEWIDE MULTIPLIER

In 1997, the New York State Public High School Athletic Association (NYSPHSAA) adopted a resolution that allowed each section to reclassify schools the way it saw fit (Witt, 2006). Section 6 (Buffalo area) does not allow non-public schools to compete in its championships. Sections 2, 3, and 4 (Albany, Syracuse, and Binghamton areas respectively) all developed a system to reclassify the non-public schools. A few years back, the NYSPHSAA looked at the use of a multiplier, but according to executive director Nina Van Erk, “Our representatives felt that where it was good for schools with all strong programs, it didn’t work with weak programs” (as cited in Witt, 2006, ¶27).

In an effort to bring some uniformity to the process, the New York State Public High School Athletic Association (NYSPHSAA) mandated that each of the state’s 11 sections evaluate its non-public high school programs in accordance with certain state-wide requirements and certain placement criteria (Witt, 2006). The statewide requirements include: the evaluation process must be done every 2 years, must be sport specific and season specific, must be approved by the section’s athletic council, and must have an appeal process (Witt, 2006). The placement criteria may include, but are not limited to, enrollment figures, level of competition during the regular season, and level of success over 5 years at the league and state level (Witt, 2006).

MULTIPLIER THEMES

A common theme behind the multiplier and segregation movements is a perception that private schools have an unfair advantage in competitive activities. It is often a reactionary initiative originating from a particular aggrieved public school or small group of public schools wishing to “level the playing field” against a rival or small group of rival private schools. This was clearly the case in Georgia, South Carolina, Louisiana, and Tennessee, but also in evidence in Illinois, Indiana, Nebraska, and Wisconsin. In Georgia, it was Tom Murphy’s daughter-in-law’s debate team that lost to Atlanta Pace Academy (Trowbridge, 2004). In South Carolina, it was Emerald losing four state championships in 5 days to Bishop England (Bowman, 2006). In Louisiana, it was the success of two football powers: Evangel Christian

Academy and John Curtis Christian, that led to an “un-multiplier” and a movement to eliminate all private schools from the LHSAA (Daigle, 2004). In Tennessee, it was the success of Brentwood Academy in football (Fair, 2004). In Illinois, it was the success of Joliet Catholic, Providence, Mount Carmel, and Driscoll in football (Maciaszek, 2005). In Indiana, it was the success of three Catholic schools: Cathedral, Roncalli, and Chatard (Cohen, 2006). In Wisconsin, it was the success of Whitefish Bay Dominican in boys’ basketball and Kettle Moraine Lutheran girls’ volleyball (Roquemore, 2005), and most recently Racine St. Catherine’s in boys’ basketball (Hernandez, 2006). In Nebraska, it was the East Central Nebraska conference that comprised the small group of aggrieved public schools (Reutter, 2002). In Texas, it was Dallas Jesuit and Strake Jesuit (Cantu, 2006).

As a reactionary initiative without a clear articulation of the alleged advantage, the multiplier (or segregation) becomes the panacea in search of a rational basis as a pretext for its adoption. This was most clearly the case in Georgia, Indiana, South Carolina, Louisiana, and Ohio while also is evidenced in Missouri, Arkansas, Illinois, Alabama, and Tennessee. In Georgia, the success of one school in debate raised the ire of Tom Murphy and resulted in a 1.5 multiplier for the purpose of removing Atlanta Pace Academy from competition with Bremen (Trowbridge, 2004). In Indiana, a committee of public school coaches arrived at a 1.5 multiplier after the chairman “steered coaches away” from the recruitment rationale, but instead articulated an untested hypothesis that “they [private schools] pick their students and control the size of their schools” (Cohen, 2006, ¶14-16). A single school, Emerald, relied on the same rationale in its push to enact a 1.5 multiplier in South Carolina (Bowman, 2006). In Louisiana, the un-multiplier was used to eliminate Evangel Academy and John Curtis Christian from the highest classification, which resulted in a reaction among the state’s lowest classifications that looked for ways to create a rule to avoid competition with the same two schools (Daigle, 2004; Longman, 2004). In Ohio, the rational basis for the multiplier changed from selective admission to the recruiting of athletes (Eigelbach, 2006; Gokavi, 2005); Ohio looked at boundaried versus non-boundaried distinctions before dropping the whole matter (Gokavi, 2006). In Missouri, the lack of a rational basis required MSHSAA in defense of the 1.35 multiplier to “throw everything against the wall and see what sticks” (Ludwig, 2002a, pp. 2-3). Arkansas similarly did not have any studies or reports to justify increasing the multiplier from 1.35 to 1.75, and like Missouri, when challenged in court, identified 12 differences as pretext in support of the multiplier (Moritz, 2006).

In Illinois, after the rejection of the IHSA task force’s recommendations, and after warding off litigation as a consequence of the IHSA decision to

enact a 1.65 multiplier, a 1.65 multiplier for all non-boundaried schools with no waiver for schools with sub-average records was adopted by vote of the membership (IHSA, 2005d). In Alabama and Tennessee, a rational basis for the multiplier was found as a compromise to tossing out the private schools (Fair, 2004).

Southern states have framed the issue as a private school advantage and have turned to a multiplier that impacts all private schools as a class or have attempted outright segregation. The list includes Alabama, Arkansas, Georgia, Kentucky, Louisiana, Missouri, Tennessee, and Texas. States in the North and Midwest have framed the issue around school characteristics that might provide an advantage (boundaried versus non-boundaried schools), explored options that would impact both public and private schools on an individual basis, or have rejected statewide multipliers outright. The list includes Minnesota, Nebraska, New York, Ohio, Pennsylvania, Wisconsin, and the anomalous inclusion of South Carolina. Illinois does not appear on either list because it contains elements of both groups; while it examined the multiplier from the boundaried versus non-boundaried perspective and even examined a waiver for schools smaller than 450 and those with losing records (indicating membership in the latter), a multiplier was ultimately enacted by the membership that contained only the boundaried versus non-boundaried nuance (membership in the former).

Some state officials have seen the multiplier as an unfair attack on private schools. Ronnie Carter, the Executive Director of TSSAA stated

The saddest part to me is how people put all the public schools in one group and all the private schools in another and by the nature of those two words assume that all the people in those two groups are the same. They're not. (as cited in "Public-private divide deepens," 2004, ¶15)

LHSAA commissioner, Tommy Henry, was more outspoken on the issue when an initiative was circulated in Louisiana to kick the private schools out of the association: "This [proposal] is about segregation and discrimination [against private schools], and I hate to see this high school athletic association create something like this" (as cited in Strom, 2004, p. 11). Brad Cashman, Executive Director of the PIAA, who is on record as opposed to any athletic multiplier, stated "There is also the equal treatment issue.... Will we create an opportunity for someone to challenge us on the equal protection basis if we go this way?" (as cited in Associated Press, 2003, ¶8). In surveying the national multiplier landscape, columnist Trowbridge observed "The common thread is a vocal minority wants to divide public and private schools, while each state organization tries to keep them united" (2004, ¶12).

Some sports columnists have viewed the multiplier as bad policy. Roquemore, a columnist for the *Milwaukee Journal Sentinel*, opined regarding the multiplier, “That’s as absurd as the former laws stating black slaves in America were just three-fifths of a person. Not surprisingly, the thirst to be No. 1 in sports seems to trump all forms of logic” (2005, ¶19). This was also the sentiment of Mellinger of the *Kansas City Star* who wrote

Now, there are a million reasons why this is a bad idea. Here’s two: It’s a bit insulting to tell a public-school kid he’s worth only a fraction of a private-school kid, and it’s a bit condescending to tell public schools, “Hey, don’t worry about it, we’ll just tilt the rules in your favor.” (2006, p. D6)

It struck a similar chord with Tucker of the *Chicago Sun Times* who wrote; “I’m just curious. Are we trying to sell inferiority to pass out more trophies?” (2005, p. 93). Reporting on the Indiana multiplier defeat, Tucker recalled the Illinois drama that played itself out a year earlier: “The settlement resulted in a binding vote, and the IHSA got its multiplier. The private schools, many of which received exemptions before the membership voted for fall sports, got the shaft” (Tucker, 2005, p. 93). Temkin of the *Chicago Tribune*, while criticizing attempts on the part of an Illinois legislator to mount a full scale legislative attack on the IHSA, nevertheless concluded “The IHSA, however, needs to shore up its own credibility by keeping the multiplier issue alive and restoring waivers for non-boundary schools that are average or worse on the playing fields” (2006, p. 10) The *Indianapolis Star* Editorial Board articulated its opposition to the multiplier by stating, “It’s a solution in search of a problem and carries a whiff of sour grapes on the part of the public school principals and athletic directors who are behind it” (*Indianapolis Star* Editorial Board, 2006, ¶4). Indiana sports columnist, Sapper observed:

This practice is just wrong. Our forefathers came here to escape religious persecution, not so that we can perpetuate it. Let’s face it, a majority of schools that would be subject to a multiplier have a religious affiliation and many of those are Catholic or Christian schools. (2006, ¶3)

Some private school officials have labeled the multiplier religious bigotry. In Indiana, Bruce Scifres, Roncalli football coach, called the proposed multiplier “one of the most obvious attempts at religious discrimination I’ve ever seen” (as cited in Cohen, 2006, ¶19). Bishop Luers football coach and athletic director, Matt Lindsay, stated “It’s discriminatory toward Catholic schools. I don’t have anything good to say about it and those who put it together” (as cited in Hartman, 2006, p. 2P). Cunningham of the Nebraska Catholic Conference observed that

given the fact that the overwhelming percentage of private schools in Nebraska are sponsored and operated by religious entities, and the fact that the overwhelming percentage of students who attend these schools are adherents practicing their religious faith, the proposal [multiplier] could be viewed as a form of prejudice-based religious gerrymandering. (2002, ¶12)

MULTIPLIER ANALYSIS

An important first step in finding a resolution to any problem is problem identification. With regard to the multiplier one must ask, for what problem is this the solution? It is not clear what problem the multiplier seeks to redress apart from the *malum in se* of private school success. Consequently, it represents a blunt tool that harms all private schools in an effort to punish the few private schools experiencing great success in a few sports. What is this alleged unfair advantage, and if it really exists, what ought to be done to level this unfair advantage in an equitable fashion? This question is missing from most of the multiplier debates which usually point to statistical over-representation of private schools winning state championships in a few select sports as sufficient justification for a universal private school multiplier.

If statistical over-representation in championships is the criterion for demonstrating an unfair advantage, logic dictates that a corrective such as a multiplier ought to be invoked whenever an individual school or a grouping of schools has inordinate success. Such logic would necessitate a multiplier for urban schools in Tennessee (and possibly many other states) since five metropolitan counties account for 70% of the state titles over the past 40 years while comprising only 25% of the association's membership ("Public-private divide deepens," 2004), and a multiplier for all public schools in Nebraska (and possibly many other states) for non-athletic competitions (Arneal, 2005). Curiously, the inordinate success of a few private schools in a few sports has precipitated multiplier initiatives in several states, while the analogous success of public schools has not. Such a double standard was noted by Milwaukee sports columnist Roquemore (2005) who observed that while private school teams such as Whitefish Bay Dominican boys' basketball team that has won two consecutive titles, and Kettle Moraine Lutheran girls' volleyball team that has won three consecutive titles have precipitated an inquiry into multipliers, public school dominance by Brookfield Central girls' soccer (three consecutive titles) and Randolph boys' basketball (four consecutive titles) have not registered a complaint (Roquemore, 2005).

If illegal recruiting is the alleged advantage that private schools hold, then rules prohibiting such an advantage need to be made and applied to public and private schools on an equal basis. It is noteworthy that rules governing eligibility and prohibiting certain types of transfers are operative in most

states. Illegal recruiting, “selective admission,” and “holding down enrollment” are the red herring excuses used to vilify and taint any and all forms of private school success. They provide the prejudicial rationalizations required to entice a sufficient number of public schools to pass a multiplier. Illegal recruiting, whether done by a private or public school is wrong and ought to be punished.

If there is a private school advantage such as non-boundaried admission, it is clearly not a universal advantage of all non-boundaried schools. Some non-boundaried schools (public and private) have deplorable records, and applying a multiplier to all non-boundaried schools is patently unfair to those that have not fully developed this alleged advantage. The fact that this alleged advantage appears only in a few sports is an added complexity. If private schools have inordinate success in basketball in Pennsylvania, should their enrollments be multiplied for football? If private schools in Nebraska have inordinate success in football, should their enrollments be multiplied for non-athletic endeavors like the one-act play competition? Should there be multiple multipliers (or no multipliers) for each activity similar to the approach advanced in New York (Witt, 2006)? This case study indicates that the inordinate success of private schools that apparently necessitates the multiplier is localized in a handful of schools in either one or a select few sports. Is this a sufficient rationale to enact a blanket policy impacting all private schools in a particular state for all activities?

There may well be differences in the number of eligible students in private and public schools. A careful impartial analysis of data might create an algorithm that equalizes this variance in an equitable manner on a school-by-school basis, a notion that was examined in several Northern and Midwestern states. This raises a further question: should the differences in participation that exist among individual public and private schools be equalized through a multiplier or should they be universally encouraged? Are low participation rates of students in activities something that as a matter of public policy ought to be leveled through a multiplier? Regardless, it is unlikely that such an algorithm will satisfy those whose *prima facie* case is private school success. The algorithm will not be enough because some private schools will still win an inordinate number of championships in marquee sports.

When the real purpose of the multiplier is to reduce the winning of a select number of schools in a few sports, as opposed to the expressed reason of leveling the playing field, the continual success of these schools will necessitate larger multipliers, segregation, or in the case of Tennessee, segregation and multiplication. This is evident in Arkansas where the multiplier was increased without warrant from any study or report (Moritz, 2006), and in Missouri and Illinois where there is presumably a reticence to examine the

issue in the light of research or reason (IHSA, 2005a; Ludwig, 2002a, 2002b; Tucker, 2005). This understanding was tactfully articulated by Indiana High School Athletic Association (IHSAA) assistant commissioner, Bobby Cox, who stated that while the IHSAA had “no stance on the issue,” he noted that after studying what other states have done, he “isn’t convinced that a multiplier would result in fewer state titles for private schools” (as cited in Cohen, 2006, ¶29) and even provided examples. In Alabama and Tennessee the multiplier represented a compromise to tossing out the private schools (Fair, 2004). A proposal for segregation was raised in Kentucky after Catholic schools won 8 of the past 10 state championships in football in the largest classification (Cohen, 2006). Kentucky is now exploring rules on feeder systems (Hall, 2006). Louisiana looked at segregation, but chose instead not to allow private school powerhouses Evangel Christian Academy and John Curtis Christian to play in higher classifications (Daigle, 2004). Tennessee has segregated non-boundaried schools into a separate division and now multiplies the remaining boundaried private schools by 1.8 (Williams, 2004). Texas maintains a mostly segregated system by requiring all private schools who want admission into UIL to compete at the 5A level, a de facto sliding multiplier. Ronnie Carter, the Executive Director of TSSAA stated “I don’t think you could take what we’ve done here and say that it’s solved the problem. It hasn’t” (as cited in “Public-private divide deepens,” 2004, ¶14). Bob Baldrige, the Assistant Executive Director of TSSAA, is in agreement: “This problem existed before I got here 37 years ago and it will still exist when I retire 15 years from now” (as cited in Trowbridge, 2004, ¶8).

The multiplier was held to be constitutional in the states of Missouri and Arkansas, and given the low threshold required to sustain the rational basis test, it is likely that multipliers with a rationale, even if only a pretext, will pass constitutional review. This does not mean that athletic associations receive a free pass on their policies and regulations; the different outcomes in the states of Missouri and Illinois regarding the differential treatment of public and non-public school student transfers provide a case in point. Despite nearly identical facts of the cases and wording of the policies, the United States District Court for the Eastern District of Missouri came to a different conclusion in *Beck v. MSHSAA* (1993) than the 7th Federal Circuit Court of Appeals in *Griffin High School v. Illinois High School Association* (1987). In *Beck v. MSHSAA* (1993), the court opined “because the case at bar lacks comparable evidence as to the existence of a ‘private school advantage’...it is not evident to this court how these ‘differences’ provide non-public schools an advantage over public schools” (p. 1005). The court went on to observe, “This court has searched in vain for an explanation of the ‘advantage’ that nonpublic schools are afforded over public schools which might

justify such an exception to the transfer restriction” (*Beck v. MSHSAA*, 1993, p. 1005). It is possible that a court in another state might come to a similar conclusion about the multiplier. Furthermore, if a group of private schools is able to demonstrate that the multiplier is indeed a pretext for religious discrimination, the legal standard moves from a rational basis test to a strict scrutiny test, a standard that a multiplier is doubtful to withstand.

The final recourse in the multiplier debate is legislative action. While legislation seems to be an extreme measure to overturn the judgment on the part of a state athletic association, it is not without precedent. State athletic associations are not private organizations but are agents of the state. The United States Supreme Court (*Brentwood v. Tennessee Secondary School Athletic Association*, 2001), as well as a variety of other courts, have found state athletic associations to be state actors, and it is the role of the legislature to enact laws regulating state activity. The Pennsylvania legislature mandated the inclusion of private schools into the Pennsylvania Interscholastic Athletic Association in 1972 (Associated Press, 2003). Legislative action was attempted in Missouri and Illinois to overturn the multiplier (Flory, 2003; Temkin, 2006). In Georgia, it was legislation that removed the multiplier (Georgia General Assembly, 2005). In Texas, it was impending litigation and legislation that convinced the University Interscholastic League (the Texas public school athletic association) to include two schools, Strake Jesuit and Dallas Jesuit, into the league and compete with public schools for state championships (Texas Senate, 2001a). In Arizona, preemptive legislation ensured that the Arizona Interscholastic Association would not enact a multiplier (Falduto, 2006).

What is missing in the multiplier debate is the question of what it is that makes successful programs successful, public or private. Jim Place, Chaminade-Julienne football coach in Ohio who has coached at both public and private schools, stated “They don’t get it. We win because of discipline” (as cited in Gokavi, 2005, p. C8). Ben Freeman, Pelion public school athletic director in South Carolina, stated “you always know they’re going to have good teams there....They’ve always been well-coached, and they’re just good programs” (as cited in Emerson, 2006, ¶32). Byron Williams, the principal at Salmen High, a public school in Louisiana, stated “I’m the kind of person, if the bully is whipping my butt on the way to school, take the whipping....Don’t cry and stay home. Get better” (as cited in Longman, 2004, p. D1). Is it possible that intangibles exist in both public and private schools such as tradition, high expectations, effective coaching, discipline, and a strong work ethic that lead to inordinate success? Is it possible that success begets success, and that the key challenge in athletics is to build a tradition of success rather than legislating success through a gerrymandered multiplier?

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