

State Capitol
201 W. Capitol Avenue
Jefferson City, MO 65101



(573) 751-4213
www.auditor.mo.gov

SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

November 14, 2025

The Honorable Catherine L. Hanaway
Attorney General
Supreme Court Building
207 W. High St.
Jefferson City, MO 65102

Dear Attorney General:

Over the last seven months, my office has corresponded with the Missouri State High School Activities Association (MSHSAA) and the lawyers representing them regarding an allegation of race and sex based discrimination received from a whistleblower.

As you can see in the attached documents, the whistleblower was told they were not eligible for an at-large position on MSHSAA's board because of their gender and race. MSHSAA cited Article IV, Section 2.b.2 of their constitution, which states, "Each of two At-Large positions shall be filled by a candidate representing the under-represented gender of the current board, or an under-represented ethnicity."

This discrimination is extremely troubling in any setting, but is of even greater concern in this case because MSHSAA derives much of its funding from public sources and plays an important role in the extracurricular life of Missouri's children.

In the enclosures to this letter, you can see MSHSAA admits the whistleblower was barred from consideration because of their gender and race. Instead of acknowledging the obvious problems with this approach, MSHSAA goes on to defend the practice. They claim that because their rules only discriminate for "specific board positions" and not "in general", they are appropriate and legal.

The fact is the whistleblower was barred from applying for an at-large position because of their race and their gender. It's clear in the MSHSAA constitution, it's clear in the email received by the whistleblower, and it's clear in MSHSAA's subsequent response to the allegation.

Missouri students deserve to have the most qualified, most committed individuals working on their behalf rather than the correct mix of genders and ethnicities as prescribed by MSHSAA.

When we choose our student's representatives based on their gender or race, or other immutable characteristics, rather than their ability to help our kids and keep them safe - we all lose.

I urge you to use all of the resources at your disposal to right this wrong and ensure the people who plan our kids' extracurricular activities are there for one reason only - they are the best and most qualified people we can find to do the job.

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott Fitzpatrick". The signature is fluid and cursive, with a large initial "S" and a stylized "F".

Scott Fitzpatrick
State Auditor

Enclosures

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SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

April 16, 2025

Dr. Jennifer Rukstad
Executive Director
PO BOX 1328
Columbia, MO 65205-1328

Director Rukstad,

It has come to my attention that the constitution of the Missouri State High School Activities Association (MSHSAA) may contain discriminatory provisions. Specifically, Article IV, Section 2.b.2 states "Each of two At-Large positions shall be filled by a candidate representing the under-represented gender of the current Board, or an under-represented ethnicity."

Given that MSHSAA receives significant revenue from Missouri taxpayers through membership fees collected from member schools and event costs charged to students and parents, I am concerned board members tasked with oversight of the operations of the association are being chosen, or excluded, based on their gender and/or ethnicity, rather than their qualifications.

In hopes of alleviating these concerns, I am requesting your response to the following questions:

- Is the provision quoted above current and accurate? (Please submit a current copy of the MSHSAA constitution)
- Please provide an explanation of how the provision above does not constitute discrimination based on sex and/or race, given that it requires at-large members to be of a certain gender or ethnicity.
- Has anyone ever been excluded from being considered for board membership based on their gender or ethnicity? If so, please provide the names of the individuals who were nominated for or were seeking membership on the board and the date their nomination or candidacy was denied.

Please provide your response to our office by April 30th, 2025.

Sincerely,

A handwritten signature in black ink that reads "Scott Fitzpatrick". The signature is written in a cursive style with a large, stylized "S" and "F".

Scott Fitzpatrick

April 30, 2025

VIA EMAIL AND U.S. MAIL

Scott Fitzpatrick
Missouri State Auditor
State Capitol
201 W. Capitol Avenue
Jefferson City, MO 65101
moaudit@auditor.mo.gov

Re: April 16, 2025 Letter

Dear Mr. Fitzpatrick:

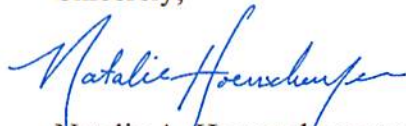
Please be advised that the Missouri State High School Activities Association ("MSHSAA") is represented by our firm, Mickes O'Toole, and I am responding on its behalf.

We are in receipt of your letter dated April 16, 2025, and received on April 23, 2025. Please know that we are diligently working to compile the information responsive to your request. However, due to the nature and breadth of the request, and in light of MSHSAA's extensive history spanning nearly 100 years, additional time will be necessary to provide a full and complete response.

MSHSAA is committed to addressing your concerns thoroughly and to alleviating any misinformation that may exist regarding its operations. To be clear, MSHSAA does not discriminate. Members of the Board of Directors are selected based on their qualifications, experience, and commitment to the mission of the organization. No individual is excluded from the opportunity to be on the Board of Directors.

We appreciate your understanding and patience as we work to ensure an accurate and comprehensive response.

Sincerely,


Natalie A. Hoernschemeyer

cc: Dr. Jennifer Rukstad, Executive Director, MSHSAA

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SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

June 4, 2025

Natalie A. Hoernschemeyer
12412 Powerscourt Dr., Suite 200,
St. Louis, MO 63131
natalie@mickesotoole.com

Ms. Hoernschemeyer:

We are in receipt of your letter dated April 30, 2025, in which you request additional time to determine how many potential board members the Missouri State High School Activities Association (MSHSAA) has discriminated against in its august history spanning nearly 100 years.

To clarify, and potentially aid your research, the State Auditor's Office request concerns only MSHSAA Board of Directors candidates who were discriminated against pursuant to the provisions of Article IV, Section 2.b.2 of the MSHSAA constitution. Any Board of Directors candidates who were discriminated against prior to the addition of Article IV, Section 2.b.2 to the MSHSAA constitution are not part of this review. Likewise, any Board of Directors candidates who MSHSAA has discriminated against for reasons other than the provisions of Article IV, Section 2.b.2 are also not part of the current review.

We hope this clarifies the limited nature and breadth of our request.

Additionally, our original request, dated April 16, 2025, asked two questions for which minimal research should be necessary. First, is the provision we quoted in our April 15, 2025 letter accurate? Second, please provide an explanation of how the referenced provision is not discriminatory, given that it requires at-large members to be of a certain gender or ethnicity. Your April 30, 2025 response indicates "MSHSAA does not discriminate". If this is correct, then clearly you already possess an explanation for why the referenced provision is not discriminatory.

Please provide all requested information by June 18, 2025 or advise our office exactly how much time will be necessary to determine the scope of MSHSAA's discrimination.

Sincerely,

A handwritten signature in blue ink that reads "Scott Fitzpatrick". The signature is stylized with a large, sweeping "S" and a cursive "Fitzpatrick".

Scott Fitzpatrick

cc: Dr. Jennifer Rukstad, Executive Director, MSHSAA

June 18, 2025

The Honorable Scott Fitzpatrick
Office of the Missouri State Auditor
P.O. Box 869
Jefferson City, MO 65102

Dear Auditor Fitzpatrick:

I write on behalf of the Missouri State High School Activities Association (MSHSAA) to respectfully clarify the nature of my April 30, 2025, letter, which your office referenced in your June 4, 2025, correspondence.

Your letter suggests that MSHSAA sought additional time to determine how many individuals were discriminated against in its 100-year history. That is not an accurate characterization of the content or purpose of my prior communication. The letter simply noted that, due to the scope of the inquiry and MSHSAA's extensive historical record, additional time would be necessary to collect and review relevant materials to provide a complete and factual response. No investigation into claims of past discrimination was stated or implied, nor are we aware of any such past or current claims involving the nomination or election of board members.

In response to your substantive inquiry contained in your correspondence dated April 16, 2025, concerning the provision in the MSHSAA Constitution related to the selection of the two at-large positions on the Association's Board of Directors, please allow me to offer the following information.

MSHSAA is a voluntary association of public and private secondary schools and is governed by a Constitution and By-Laws adopted by its member institutions. These governing documents, including the Association's 96th Annual Official Handbook for the 2024–2025 school year, are publicly available on the MSHSAA website.¹ Member schools voluntarily choose to affiliate with MSHSAA each year, and in doing so, commit to upholding the standards adopted by the Association, including those governing student eligibility, competition standards, and governance structure. The Association currently serves 720 junior and senior high schools and administers programs affecting more than 200,000 Missouri students in interscholastic athletics and activities such as speech, debate, cheerleading, academic competitions, and music.

¹ The MSHSAA 2024-2025 Official Handbook which includes the Association's Constitution and By-Laws is publicly available at <https://www.mshsaa.org/resources/pdf/Official%20Handbook.pdf>

Through athletics and student activities, MSHSAA strives to promote educational values, establish equitable eligibility standards, and advance sportsmanship and cooperation across the state's school communities. Authority to administer these programs and resolve related disputes is vested in a ten-member Board of Directors composed of school administrators elected by the member schools. Eight of the board members are elected from designated regions, called board districts, ensuring geographic representation, while the remaining two members are elected at-large, each representing multiple designated board districts. The at-large positions serve a distinct and important purpose: they provide an opportunity to ensure that voices not otherwise represented in the regional structure—including those from demographics underrepresented by the other board members—can be included in the Association's leadership.

The constitutional language related to at-large board positions is deliberately designed to promote inclusivity while avoiding any form of exclusion or rigid identity-based quotas. **It expands access, rather than restricts it.**

Specifically, Article IV, Section 2.b.2 of the MSHSAA Constitution states:

At Large Members: Each of two At-Large positions shall be filled by a candidate representing the under-represented gender of the *current Board*, or an under-represented ethnicity. At-Large members of the Board of Directors shall meet the same qualifications as described in number 1 above.² (emphasis added)

This provision neither imposes a quota nor prevents an individual from running for or serving on the board based on their race or gender. Rather, it is carefully considered and permissive in nature, acknowledging the importance of including perspectives from groups that are underrepresented in the current board. In other words, the provision is fluid in its implementation, changing in application based on the changing demographics of the board. Its purpose is to enhance—not limit—participation in the board's work. In many ways, it operates similarly to longstanding geographic representation practices, which ensure that every region of the state has a voice in governance—an approach broadly recognized and accepted both in Missouri and nationwide.

First, the language in question is not exclusionary and does not create any bar to participation. It does not mandate who may or may not serve, nor does it create preferences for females or minorities. Rather, it offers a pathway to ensure that voices not currently represented at the table can be considered for leadership. Any individual, regardless of gender or ethnicity, is free to run for a seat on the board from their respective board district. The regional structure of MSHSAA's governance ensures that all areas of the state are represented, and the at-large seats provide an additional opportunity to make certain the board is not missing perspectives critical to the mission

² Article IV, Section 2.b.1 of the MSHSAA Constitution states, "District Members: Principals and superintendents must meet the standards set by the State Department of Elementary and Secondary Education for principals and superintendents. Activities administrators must hold a professional teacher's certificate and/or a degree in educational administration, be currently serving as an active activities director with responsibilities for both athletics and activities, and be credentialed as a certified Athletic Administrator (CAA) through the National Interscholastic Athletic Administrators Associations (NIAAA)."

of serving a diverse statewide student population. **No one is excluded from running for a seat on the Board.** The at-large positions are intentionally fluid, allowing for broader participation and ensuring that voices not currently reflected in the Board’s composition have the opportunity to be heard in its deliberations.

Moreover, the provision does not operate in conflict with federal or state law. The U.S. Supreme Court and lower federal courts have recognized that affirmative efforts to foster diversity—especially when not implemented as strict quotas—are legally permissible under certain circumstances. This provision satisfies that framework for several reasons:

- **Compelling Interest:** Ensuring inclusive representation on a statewide regulatory board that impacts 720 public and private school communities is a legitimate and compelling interest.
- **Narrow Tailoring:** The provision applies to only two seats out of ten and does not preclude any qualified candidate from seeking or serving. Additionally, these seats are an addition to the regional structure. It simply ensures that when significant and meaningful disparities in representation exist, deliberate but measured steps may be taken to address them.
- **No Quota or Barrier:** The at-large provision does not operate as a quota or barrier to any qualified member because it does not exclude anyone from candidacy or impose prerequisites. Rather, it invites broader, more intentional consideration of candidate diversity and promotes the inclusion of perspectives that may otherwise go unheard.

We are mindful of decisions such as *Students for Fair Admissions v. Harvard*, which cautions against rigid racial preferences in higher education. That case, however, does not prohibit race- or gender-conscious policies altogether—especially when crafted as flexible guidelines in governance, not as exclusionary mandates.

The provision is legally and constitutionally sound. Courts have repeatedly affirmed that bodies may adopt policies to promote diversity and inclusion, provided those policies are not rigid quotas and do not operate to categorically exclude individuals based on race or gender. The MSHSAA provision is neither. It applies only to two seats, which are added to a structure that ensures regional representation and does not guarantee selection based on identity. Candidates for at-large seats must meet qualifications and must be selected by the member schools. The process remains democratic and merit-based. The provision allows for individuals who can bring perspectives missing from the current leadership makeup, to strengthen the legitimacy and integrity of MSHSAA’s work across more than 700 member schools.

It respects the constitutional requirement of equal protection while acknowledging that a board governing such a wide array of schools and students is most effective when it reflects the full diversity of the state. Structural mechanisms that allow for greater representation help ensure that MSHSAA’s decisions are informed by a range of lived experiences. This results in more thoughtful policies and in greater trust in the fairness and legitimacy of the organization.

Importantly, MSHSAA, as a non-profit voluntary association is governed by its member schools, and all constitutional provisions are proposed, debated, and adopted by those members through a democratic process. The inclusion of the at-large language was not mandated by any outside body. These are not directives imposed by external interests or elite mandates. It was a decision made by Missouri schools themselves, reflecting shared values around inclusion, fairness, and educational excellence. MSHSAA's governance is, and always has been, subject to the democratic control of its member institutions. The member schools determined that a board reflective of the students and communities it serves is not only appropriate, but necessary.

While older records do not always provide definitive demographic details, a review of MSHSAA's nearly 100-year history reveals a striking pattern: the Association, with the possible exception of one individual, had never had a minority or female board member initially join the Board through the standard nomination and election process prior to the addition of the at-large provision. This pattern is especially notable given that the size of the board has gradually expanded over the years—from five members in 1926 to ten members today—yet these structural changes have not translated into meaningful gains in representational diversity. The enduring underrepresentation highlights the presence of systemic barriers to participation, and the at-large provision aims to address this imbalance—not through exclusion or preference, but by ensuring that voices historically absent from the table have a meaningful opportunity to be heard.

True fairness does not require, nor is it served by, creating board positions that bar qualified MSHSAA members from eligibility to serve based solely on sex or race. MSHSAA's at-large provision avoids that concern entirely. It invites broader participation while ensuring that no one is excluded. It encourages thoughtful balance without imposing a rigid structure. And it offers a modest corrective where persistent gaps exist—not as a matter of identity-based preference, but as a matter of good governance.

Equity is not the enemy of democracy. Representation is not discrimination. The at-large board provision adopted by MSHSAA members promotes representation without exclusion. It reflects a carefully balanced, legally defensible, and democratically chosen policy to ensure inclusive governance and stronger institutional trust. It is consistent with constitutional principles, consistent with Missouri values, and fully aligned with MSHSAA's mission to serve all students with fairness, integrity, and excellence.

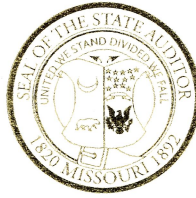
Sincerely,



Natalie Hoernschemeyer

cc: Dr. Jennifer Rukstad, Executive Director MSHSAA

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Jefferson City, MO 65101



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SCOTT FITZPATRICK
MISSOURI STATE AUDITOR

July 23, 2025

Natalie A. Hoernschemeyer
12412 Powerscourt Dr., Suite 200
St. Louis, MO 63131
natalie@mickesotoole.com

Ms. Hoernschemeyer:

We are in receipt of your letter dated June 18, 2025, in which you claim the provision in question "neither imposes a quota nor prevents an individual from running for or serving on the board based on their race and gender." The letter goes on to say "the language in question is not exclusionary and does not create any bar to participation."

Unfortunately, these statements are contradicted by a whistleblower complaint received by this office and included as an enclosure to this letter. As you can see, on March 18, 2025, a representative of MSHSAA emailed a nominee for the MSHSAA Board of Directors to explain he was "not eligible" to be a candidate for a seat on the Board of Directors because of his race and gender.

The email explicitly says "Since you are a male, you do not meet this requirement." It goes on to explain the nominee must be an ethnicity or race other than "white, non-Hispanic" to be an eligible candidate.

These statements from a MSHSAA representative directly conflict with the statements in your letter dated June 18, 2025. Clearly, the effect of these requirements "prevents an individual from running for or serving on the board based on their race and gender." In this case, the whistleblower was literally prevented from running for a seat on the board because of his race and gender.

Please indicate which of these two completely contradictory statements is the official position of MSHSAA. Additionally, given that your previous analysis either failed to uncover this instance of discrimination or failed to identify it as discrimination, please review MSHSAA activity more thoroughly for instances where a nominee was disqualified based on his or her race and/or gender and forward these instances to our office.

Please provide your response to our office by August 20, 2025.

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott Fitzpatrick". The signature is stylized with a large, looping initial "S" and a cursive "Fitzpatrick".

Scott Fitzpatrick

cc: Dr. Jennifer Rukstad, Executive Director, MSHSAA

Enclosure

From: **Charla Boggs** <Charla@mshsaa.org>
Date: Tue, Mar 18, 2025 at 2:57 PM
Subject: Nomination for MSHSAA Board of Directors
To: mjohnson@cassville.k12.mo.us <mjohnson@cassville.k12.mo.us>

Merlyn,

You have been nominated as a candidate for the MSHSAA Board of Directors for the At-Large Region 2 position. The MSHSAA Constitution, Article IV, Section 2 is below:

Section 2: COMPOSITION OF AND QUALIFICATIONS FOR BOARD OF DIRECTORS

- a. Composition: The administrative body of this Association shall be a Board of Directors. The Board of Directors shall include ten elected members representing the eight districts of the state and two at-large regions. In the event the elected district and at-large Board membership does not include an active activities director, then an additional (eleventh) member shall be appointed to the Board of Directors by the Missouri Interscholastic Athletic Administrators Association (MIAAA). The Board of Directors shall elect from the Board a President and Vice-President to serve one year.
- b. Qualifications: The members of the Board of Directors shall be active school superintendents, principals, or activities directors of member schools in good standing in their respective districts.
 1. District Members: Principals and superintendents must meet the standards set by the State Department of Elementary and Secondary Education for principals or superintendents. Activities administrators must hold a professional teacher's certificate and/or a degree in educational administration, be currently serving as an active activities director with responsibilities for both athletics and activities, and be credentialed as a Certified Athletic Administrator (CAA) through the National Interscholastic Athletic Administrators Association (NIAAA).
 2. At-Large Members: Each of two At-Large positions shall be filled by a candidate representing the under-represented gender of the current Board, or an under-represented ethnicity. At-Large members of the Board of Directors shall meet the same qualifications as described in number 1 above.
 3. MIAAA Appointee When Necessary: The MIAAA appointee must meet the same qualifications as described for activities administrators in number 1 above.

The current Board of Directors, after taking out members whose terms are up, has a majority of males. Since you are a male, you do not meet this requirement. The ethnicity of the board has a majority of white, non-Hispanic members. Without knowing your ethnicity or race, we ask for you to respond with the minority ethnicity or race group in which you identify, if you applicable.

Unless either of these requirements can be met, you are not eligible to be a candidate for this seat. Please advise if you believe you should qualify for either requirement.



Dr. Jennifer Rukstad

Executive Director

[1 North Keene St](#) | [Columbia](#) | [MO](#) | [65201](#)

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August 20, 2025

The Honorable Scott Fitzpatrick
Office of the Missouri State Auditor
P.O. Box 869
Jefferson City, MO 65102

Dear Auditor Fitzpatrick:

I write on behalf of the Missouri State High School Activities Association (MSHSAA) in response to your July 23, 2025, correspondence.

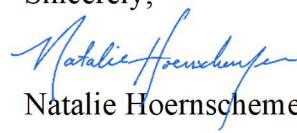
Article IV, Section 2.b.2 of the MSHSAA Constitution does not serve as a blanket disqualification preventing administrators from running for or serving on the Board of Directors. Rather, the eligibility requirements are tied to specific seats, and by design they ensure balanced representation across both geographic regions and demographic groups. By way of example, the MSHSAA Constitution divides board representation by region. A school administrator employed within one region of the state is not eligible to seek election to a seat allocated to a different region. This is not unusual or exclusionary; it is the ordinary and longstanding structure of the Board. Every administrator in Missouri is necessarily prevented from running for multiple board seats based on geography alone.

The individual identified in your correspondence, Mr. Johnson, was not and is presently not precluded from serving on the MSHSAA Board of Directors. Rather, he was unable to run for a particular at-large seat because he did not meet the current qualifications attached to that seat pursuant MSHSAA's Constitution. Mr. Johnson remains eligible to run for election to a seat representing his own region, where his service as an administrator would qualify him under the governing bylaws.

In short, the rules do not impose a prohibition based on race, gender, or geography in general. They define the qualifications attached to specific board positions in order to ensure that representation is not concentrated in one region or demographic group. The fact that a candidate is disqualified from a given seat does not equate to a prohibition on board service altogether, but rather reflects the seat-specific qualifications that all candidates must meet.

I trust this explanation clarifies the distinction between a structural seat requirement and an outright bar to board service.

Sincerely,



Natalie Hoernschemeyer

cc: Dr. Jennifer Rukstad, Executive Director MSHSAA