

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

Jerry Snodgrass
218 Glendale Ave.
Findlay, Ohio 45840

Plaintiff,

v.

Ohio High School Athletic Association
c/o
Dr. Kimberlee Kiehl, statutory agent
4080 Roselea Place
Columbus, OH 43214,

Defendant.

) Case No. _____

) Judge _____

) **COMPLAINT WITH JURY**
) **DEMAND**

) Roman Arce (0059887)
) James H. Irmen (0033697)
) Anthony L. Hunter (0090729)
) MARSHALL & MELHORN, LLC
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) Attorneys for Plaintiff
)

Plaintiff, Jerry Snodgrass, by and through his attorneys at Marshall & Melhorn, LLC, hereby states for his Complaint against Defendant, the Ohio High School Athletic Association ("OHSAA"), the following:

1. At all relevant times, Plaintiff resided in Hancock County, Ohio.
2. Defendant, OHSAA, is corporate entity registered with the Ohio Secretary of State, and its principal place of business is located in Franklin County, Ohio.

3. This is a breach of contract case, i.e., breach of written Employment Agreement; attached **Exhibit "A"** is a true copy of the signed Employment Agreement at issue. The parties to the attached Employment Agreement are Jerry Snodgrass and "the Board of Directors of the Ohio High School Athletic Association ("Board")."

4. Before Mr. Snodgrass accepted the Executive Director position in 2018, he worked for OHSAA as an Assistant Commissioner and as Assistant Director for ten years, i.e., from 2008 to 2018. During those years, Mr. Snodgrass received annual, written performance evaluations. Each of the performance evaluations he received concluded with an above average overall performance rating.

5. From 2008 to 2018, Mr. Snodgrass received numerous awards, commendations, and honors for his exceptional work and service he provided as an Assistant Commissioner and as Assistant Director for OHSAA. During those ten years, Mr. Snodgrass received not only local honors, but he also received multiple national awards and public recognition for his hard work and dedication to OHSAA's mission.

6. Mr. Snodgrass was employed by OHSAA for 12 consecutive years, 2008 to 2020, and he never received a single disciplinary action of any kind.

7. In 2018, OHSAA's Board of Directors launched a nationwide search for a new Executive Director. The search narrowed down to just a handful of candidates. After multiple interviews with the final leading candidates, OHSAA selected Mr. Snodgrass as its first choice. OHSAA offered the position to Mr. Snodgrass, and he accepted. However, Mr. Snodgrass also informed OHSAA that he required an employment agreement terminable only for just cause. OHSAA agreed; OHSAA's attorney then prepared and sent the attached three-year Employment

Agreement to Mr. Snodgrass. The parties executed the attached Employment Agreement on June 28, 2018.

8. Section 1 of the attached Employment Agreement specifies that Mr. Snodgrass agreed to serve as OHSAA's Executive Director for a term of three years, i.e., from July 1, 2018 to July 31, 2021.

9. Section 2 of the attached Employment Agreement specifies the scope of services to be provided by Mr. Snodgrass and the duties, responsibilities, and authority conferred upon Mr. Snodgrass as Executive Director.

10. Section 3 of the attached Employment Agreement specifies Mr. Snodgrass's annual salary to be \$170,000.

11. Section 12 of the attached Employment Agreement specifies that it may be terminated for one of three reasons – "(a) Mutual agreement of the parties upon thirty (30) day written notice; (b) Retirement, disability or death of Snodgrass; (c) Termination by the Board for cause including, but not limited to, violations of Board policies and provisions in the personnel Policy Handbook as adopted and amended from time to time."

12. OHSAA terminated the attached Employment Agreement effective July 6, 2020, nearly 13 months before its July 31, 2021 expiration date.

13. OSHAA did not terminate the attached Employment Agreement for any of the following reasons: "(a) Mutual agreement of the parties upon thirty (30) day written notice; (b) Retirement, disability or death of Snodgrass; (c) Termination by the Board for cause including, but not limited to, violations of Board policies and provisions in the personnel Policy Handbook as adopted and amended from time to time."

14. With the exception of his final year of employment, July 2019 to July 2020, Mr. Snodgrass otherwise received annual, written performance evaluations during each year of his employment with OHSAA. Each of the performance evaluations Mr. Snodgrass received concluded with a positive performance rating.

15. During his two-year tenure as OHSAA's Executive Director, Mr. Snodgrass informed OHSAA's Board of a number of unethical, damaging and highly improper practices in effect at OHSAA. These were not one-time isolated instances; Mr. Snodgrass informed OHSAA's Board of a number of improprieties he discovered and worked diligently to rectify them.

16. Mr. Snodgrass also identified a number of employment policies that were not being enforced, and a number of employment practices that were unfavorable to OHSAA. He informed the Board of these employment matters and took steps to correct these problems.

17. Throughout his employment with OHSAA, Mr. Snodgrass carried out his duties and responsibilities as Executive Director in accordance with the requirements specified in Section 2 of the attached Employment Agreement, and he did so in a faithful, diligent, and effective manner. Mr. Snodgrass also worked long hours, often outside of normal business hours, including weekends, as contemplated by Section 2 of the attached Employment Agreement, and he did so without complaint.

18. OHSAA did not place Mr. Snodgrass on a performance improvement plan at any time prior to his termination. In addition, prior to termination, OHSAA did not provide any notice of any kind to Mr. Snodgrass that his work performance was lacking or unacceptable for any reason. In addition, just a few days before termination, members of OHSAA's Board sent

email messages to Mr. Snodgrass praising him for his hard work and overall job performance as Executive Director.

19. In addition, OHSAA violated its own constitution, bylaws and established past practice by deciding to terminate Mr. Snodgrass without a majority vote of its Board members, and by doing so outside of a Board meeting.

20. From July 6, 2020 to the present, OHSAA and its agents articulated (orally and in writing) conflicting and inconsistent reasons for terminating Mr. Snodgrass as Executive Director. The reasons articulated by OHSAA and its agents have no factual support.

COUNT ONE -- Breach of Employment Agreement

21. Mr. Snodgrass hereby incorporates the above paragraphs one through twenty (20), as if fully rewritten herein.

22. OHSAA breached the attached Employment Agreement by terminating Mr. Snodgrass effective July 6, 2020, nearly 13 months before its expiration date.

23. As a direct result, Mr. Snodgrass is entitled to recover damages, i.e., lost wages, lost benefits, including recovery of out of pocket medical expenses, and recovery of the costs and attorneys' fees he incurred because of OHSAA's breach.

24. In accordance with paragraph 4(A) of the attached Employment Agreement, upon termination of employment, Mr. Snodgrass was entitled to be paid "one-fourth (1/4) of his accrued but unused sick days up to a maximum of 60 days at the per diem rate set forth below." OHSAA, however, failed and refused to pay Mr. Snodgrass for one-fourth of the total number of accrued but unused sick days he earned, in breach of the attached Employment Agreement and in violation of applicable law.

25. In accordance with paragraph 4(B) of the attached Employment Agreement, Mr. Snodgrass was entitled to payment for his accrued but unused vacation days. OHSAA, however, failed and refused to pay Mr. Snodgrass for his unused vacation days he earned, in breach of the attached Employment Agreement and in violation of applicable law.

26. Mr. Snodgrass incurred out of pocket medical expenses that would have been paid by the group health insurance plan sponsored by OHSAA, but for OHSAA's wrongful termination of the attached Employment Agreement nearly 13 months before its expiration date. The total dollar amount of out of pocket medical expenses Mr. Snodgrass incurred as a direct result of OHSAA's breach is \$11,685.75.

27. Mr. Snodgrass seeks a remedy in excess of \$25,000.

WHEREFORE, Mr. Snodgrass requests judgment against OHSAA for breach of the attached Employment Agreement and resulting damages, including, but not limited to:

- lost salary from July 6, 2020 to July 31, 2020,
- lost benefits,
- recovery of accrued but unused vacation time,
- recovery of accrued but unused sick time,
- recovery of out of pocket medical expenses (\$11,685.75) Mr. Snodgrass incurred as a direct result of OHSAA's breach of the attached Employment Agreement, and
- recovery of costs and attorneys' fees Mr. Snodgrass incurred as a direct result of OHSAA's breach of the attached Employment Agreement.

Mr. Snodgrass is entitled to a total remedy in excess of \$25,000.

Respectfully submitted,

/s/ Roman Arce

Roman Arce

James H. Irmen

Anthony L. Hunter

Attorneys for Plaintiff

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

/s/ Roman Arce

Roman Arce

James H. Irmen

Eli D. Bolt

Attorneys for Plaintiff

EXHIBIT A

AGREEMENT

This agreement entered into this day of June 28, 2018, by and between the Board of Directors of the Ohio High School Athletic Association ("Board") and Jerry Snodgrass ("Snodgrass" or "Executive Director") upon the following considerations:

Whereas, the Board is charged under the *Constitution* of the member schools of the Ohio High School Athletic Association ("OHSAA") with, among other things, employing the Executive Director to serve as the chief executive officer of the OHSAA; and

Whereas, the current executive director of the OHSAA, Dr. Daniel B. Ross, announced in January his resignation as executive director effective September 15, 2018; subsequently, the Board undertook to fill this anticipated vacancy by publicly posting the position, receiving applications, reviewing the applicants for qualifications, interviewing and selecting the next executive director of the OHSAA; and

Whereas, as a result of the foregoing process, the Board has selected and desires to employ Snodgrass as its tenth Executive Director in the history of the OHSAA; and

Whereas the Board and Snodgrass further believe that the purposes and philosophies of the OHSAA will benefit directly from a Board-Executive Director relationship in which the respective roles of the parties are clearly defined and in which the Executive Director is provided the resources necessary for the effective administration and implementation of Board policies;

Now therefore, in consideration of the foregoing, the Board and Executive Director do hereby mutually agree as follows:

Section 1. TERM OF AGREEMENT

The Board, in accordance with its action taken at the Special Meeting of the Board on May 3, 2018, hereby employs, and Snodgrass hereby accepts employment for a period of three (3) years commencing July 1, 2018 and continuing thereafter until July 31, 2021 unless otherwise extended or terminated in accordance with the terms set forth herein or otherwise in accordance with the hiring and employment practices of the Board in effect at the time of this contract is scheduled to expire.

Section 2. SCOPE OF SERVICES

Executive Director shall be the Chief Executive Officer of the OHSAA and shall have, under the direction of the Board, general supervision and management of all of the affairs of the OHSAA and all the personnel employed and/or engaged by the OHSAA. Executive Director shall perform those duties as set forth in the *Constitution, Bylaws and Regulations and Business Rules* of the OHSAA, the written policy of the Board including but not limited to the *Personnel Handbook* approved and amended from time to time by the Board. In furtherance and not in limitation of the authority granted by this Scope of Services, Executive Director shall direct and assign all employees of the OHSAA under his/her supervision, shall organize, reorganize, and arrange the administrative and support staff, as best serves the Board, shall select all personnel for initial employment and make recommendations with respect to the re-employment, non-reemployment, layoff, and termination of existing employees, shall serve as the primary spokesperson for the OHSAA in dealing with the public and the news media, shall have the initial authority to receive and respond to complaints regarding the Executive

Director's Office and/or the Board or operations, shall from time to time suggest referendum items, changes to regulations, rules and procedures deemed necessary for the effective and efficient operations of the OHSAA and, in general, perform all duties incident to the office of executive director and such other duties as may be prescribed by Board from time to time. In performing these duties on behalf of the Board, Executive Director shall have the authority to consult with legal counsel or other professional advisors as may be reasonably necessary, subject to any limitations imposed by the Board.

It is expressly understood and agreed that the performance of the duties of executive director may require Executive Director to work outside normal business hours including weekends. Executive Director shall have the right to attend all Board meetings and meetings of District Athletic Boards, and provide administrative recommendations on each item of business considered by each of these groups. Executive Director, in his/her discretion, may delegate to other OHSAA staff/ personnel the exercise of any powers and the discharge of any duties imposed upon Executive Director. The delegation of any power or duty, shall not, however, relieve Executive Director of responsibility for the action taken under such delegation.

Section 3. COMPENSATION

During the OHSAA fiscal year 2018-2019, the Board shall pay Snodgrass an annual salary of One hundred Seventy thousand and 00/100 Dollars (\$170,000.00), said salary to be paid in accordance with OHSAA policy through regular payroll services used by OHSAA. Snodgrass' compensation for each remaining year of this Agreement shall be adjusted annually by the Board in accordance with policies and practices of the Board following the Board's annual review of the Executive Director's performance.

Section 4. OTHER COMPENSATION/BENEFITS

Unless otherwise set forth in this Agreement or any amendment thereof, Executive Director shall be entitled to the same benefits and additional compensation as set forth in the Personnel Policy Handbook approved and adopted by the Board. The terms and conditions of this Personnel Policy Handbook shall be applicable to Executive Director's employment unless specifically addressed in a signed written agreement between the Board and Executive Director.

A. Sick Leave. Executive Director shall carryover, in accordance with OHSAA policy, all accrued and unused sick days resulting from his employment with the OHSAA through and including July 1, 2018. Executive Director shall continue to accrue sick leave days in accordance with OHSAA policies and procedures during the term of this Agreement. Upon severance from employment, Executive Director shall be entitled to a buyout of one-fourth (1/4) of his accrued but unused sick days up to the a maximum of 60 days at the per diem rate set forth below.

B. Vacation. Executive Director shall be entitled to four (4) weeks of paid vacation during any fiscal year of the term of this Agreement. Any unused vacation during any fiscal year shall be governed by OHSAA policies for the same for carry-over vacation and cash buyout of unused vacation as said policies are set forth in the OHSAA Personnel Handbook.

Notwithstanding the foregoing, due to the changes in the timeline for commencement of this Agreement resulting from Dr. Ross' surgery and recovery, Executive Director shall be permitted one week of vacation during the summer of 2018 from his bank of vacation from the 2017-2018 fiscal year, leaving Executive Director with four (4) weeks of vacation for the 2018-2019 fiscal year.

C. Personal Days. Executive Director shall accrue personal days at the rate as set forth in the Personnel Policy Handbook. Personal days shall not transfer from year to year nor shall Executive Director be entitled to any buy out of any accrued unused personal days.

D. Trade Days. "Trade days", i.e. work days that are taken off as an exchange for days in which an employee was engaged in OHSAA business even though the day may have been a weekend day, holiday or otherwise "a day off," technically do not exist with the OHSAA. As stated in Section 2 of this Agreement, the Executive Director's duties are such that the Executive Director is expected to work on certain weekends and during such times when his representative capacity is required. This expectation is reflected in the Executive Director's salary. Notwithstanding the fact that "trade days" per se do not exist, the Executive Director is afforded a certain degree of flexibility in his work schedule to fairly adjust his work days to accommodate for this extra time-on-task required of his position so long as these "adjustments" are timely and contemporaneous to event or work for which the adjustment is being made in the first place.

The *per diem* rate for any of the above days for which the Board may be obligated to pay Executive Director as accrued unused days shall be calculated by dividing Executive Director's salary in effect at the time the buyout is to occur by the number 260. *NOTE: this number 260 is to be used solely for the calculation of a per diem rate is not intended to indicate that Executive Director's contract year is a 260 day year.*

Section 5. VEHICLE USE.

The Board shall provide Executive Director with an employer provided vehicle for his use during his employment as executive director. Executive Director shall be responsible for keeping timely and accurate records of his "personal use mileage" of any and all employer provided vehicles and shall timely report both business and personal use mileage to the finance department of the Executive Director's Office on a monthly basis. Board shall be responsible for all insurance premiums covering said vehicle, all maintenance and repair expenses and business related gas charges.

Section 6. BANK CREDIT CARD USAGE.

The Board shall provide Executive Director with an OHSAA credit card for Executive Director's use while incurring OHSAA reasonable and related expenses such as business related meals and entertaining, employment related gasoline/vehicle maintenance charges, overnight expenses and the like. It is expected that whenever Executive Director incurs a business related expense for which he would otherwise expect the Board to reimburse him, the Executive Director shall use the employer provided charge card and that any and all purchase incentives/ purchase incentive programs, whether offered by the seller, bank or a third party program, shall inure to the benefit of the OHSAA. Any request for reimbursement of an expense incurred by Executive Director on a personal account shall be reviewed by the Director of Finance and Accounting with final approval for payment from the Board President.

Section 7. MOBILE COMMUNICATIONS .

The OHSAA shall provide Executive Director with a cellular phone on which Executive Director is expected to use in the conduct of OHSAA business. OHSAA shall be solely responsible for all charges incurred by Executive Director in the use of this cellular phone while conducting OHSAA business.

Section 8. OUTSIDE BOARDS/COMMITTEES/ACTIVITIES.

Executive Director shall devote his time, attention and energy to the business of the OHSAA. However, the Parties recognize and acknowledge that certain outside activities and board memberships may serve to broaden the Executive Director's knowledge and experience and to enhance his effectiveness in his position and therefore may be determined by the Board to be of material value to the OHSAA and the Executive Director.

Executive Director shall be encouraged in becoming actively involved with the National Federation of High School Associations ("NFHS") and its boards and committee work, Section 2 of the NFHS and its boards and committee work, the Buckeye Association of School Administrators, Ohio Association of Secondary School Administrators, the Ohio Interscholastic Athletic Administrators Association and various other legislative liaison groups. Additional outside board, committees and activities should be reviewed on a case-by-case analysis and all outside boards, committees and activities should be timely disclosed in the Executive Director's potential conflict of interests forms.

In all such outside professional activities in which the Executive Director is engaged and which relate, either directly or indirectly to the business of the OHSAA, the OHSAA shall reimburse and/or advance Executive Director of his out-of-pocket expenses associated with such engagement.

Section 9. PROFESSIONAL LIABILITY.

The Board will provide liability insurance coverage protecting Executive Director from liability arising from claims, suits, actions, and legal proceedings brought against Executive Director in his official capacity and as an agent or employee of the OHSAA, or brought against Executive Director in his individual capacity whenever such claims, suits, actions, or legal proceedings are based upon the alleged acts or omissions of Executive Director in the course of his employment with the OHSAA. The coverage provided shall apply to all occurrences and not simply to claims made during the period of Executive Director's employment, and shall continue to apply to Executive Director following any separation of employment from the OHSAA.

The Board will defend, indemnify, and hold harmless Executive Director from any and all demands, claims, suits, actions and legal proceedings brought against Executive Director in his individual or official capacity as agent and employee of the OHSAA, arising from (1) acts or omissions of Executive Director occurring while Executive Director was acting within the scope of his employment or (2) Executive Director's legal status as Executive Director of OHSAA, whether or not based upon the acts or omissions of Executive Director. The Board shall defend Executive Director from criminal charges against him if such charges are based on conduct occurring in the scope of employment and in the good-faith belief that the conduct was lawful and in the best interests of the OHSAA.

The obligation of the Board to defend, indemnify, and hold harmless the Executive Director shall extend to the amount of any damages awarded and also to any reasonable expenses,

Including attorney fees, which may have been incurred by Executive Director in the course of his defense. This obligation shall survive this Contract and continue after Executive Director's separation from employment with the OHSAA. The Board will make every good-faith effort and take all lawful measures within its authority to appropriate the funds necessary to meet its obligations as set forth above.

In actions where the Board and Executive Director are co-defendants in any legal proceeding in which the OHSAA's liability carrier is providing a defense, and Executive Director reasonably believes that there may be a divergence of interests with respect to the defense of the claim or charge, the Executive Director may properly request, and the Board will not oppose, the appointment of separate counsel by the liability carrier; provided, however, that such appointment of separate counsel will be upon the approval of, and subject to the requirements of, the liability carrier. Nothing in this paragraph shall be construed to require the Board to appoint or pay for independent counsel not assigned by the liability carrier, or to take any action which would impair or diminish the OHSAA's liability coverage. Likewise, nothing in this paragraph shall be construed to limit the Board's contractual obligation to provide the Executive Director with defense and indemnification as set forth in the paragraph immediately above.

Nothing in this section entitled "Professional Liability" shall be construed so as to create a personal responsibility or liability on the part of any individual member of the Board to defend or indemnify Executive Director against the above-described demands, claims, suits, actions and legal proceedings.

Section 10. REPORTING.

Executive Director shall report directly to the Board through its Board President. With respect to various accounting records such as days out of the office, vacation days, sick days and personal days and outside activities, Executive Director shall complete any and all forms required of all other employees and shall provide these written forms to the Human Resources Department.

Section 11. EVALUATIONS.

The Board of Directors shall conduct an annual performance review of the Executive Director during the spring of each year in which this Agreement, or any extension thereof, is in effect. As part of this performance review, the Executive Director shall be afforded the opportunity to provide the Board a self-evaluation of his performance and to further identify to the Board areas where the Board can assist the Executive Director in improving job performance and/or facilitating the Executive Director and staff in meeting the philosophies, goals and principles of the OHSAA.

Section 12. TERMINATION.

This Agreement may be terminated by:

- a) Mutual agreement of the parties upon thirty (30) day written notice;
- b) Retirement, disability or death of Snodgrass;
- c) Termination by the Board for cause including, but not limited to, violations of Board policies and provisions in the Personnel Policy Handbook as adopted and amended from time to time.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

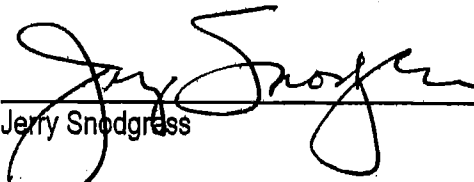
OHIO HIGH SCHOOL ATHLETIC ASSOCIATION
BOARD OF DIRECTORS

By:

 6/28/18
Paul Powers, Board President

JERRY SNODGRASS

By:


Jerry Snodgrass