

## BOARD OF CONTROL MINUTES - OCTOBER 2003

President Paul Dotson convened the special meeting of the Board of Control on Monday, October 20, 2003 at 8:30 a.m. All Board members were present except Cynthia Elliott, Paula Goodin and Ken Hurt. Also present were Commissioner Brigid DeVries, Assistant Commissioners Larry Boucher, Julian Tackett and Roland Williams, Director of Promotions and Media Relations Butch Cope, Fundraising Consultant Ken Tippett and Office Manager Darlene Koszenski. Guests included KHSAA legal counsel, Ted Martin, Greenebaum, Doll & McDonald; John Plymire and Mike Franklin.

Sally Haeberle was called on for the invocation.

President Dotson requested that the record show fifteen out of eighteen Board members were present, and that ten votes were needed to pass any eligibility motions.

The Board of Control then considered the following appeals in compliance with the KHSAA Due Process Procedure:

Case #,	Bylaw,	H. O. Recommend,	Board Motion
Board Second,	Vote Y/N/R,	Status	
753,	6,	ELIGIBLE,	Accept (McGinty), Burgett
11-3-1,		Eligible	
761,	6,	ELIGIBLE,	Remand (Sexton), Dearborn
10-5,		Eligible-A	
762,	6,	ELIGIBLE,	Overturn (Perkins), Dearborn
15-0,		Ineligible-B	
764,	6,	ELIGIBLE,	Accept (Saylor), McGinty
13-2,		Eligible	
766,	6,	ELIGIBLE,	Overturn (Burgett), Perkins
13-0-2,		Ineligible-C	
751,	6,	INELIGIBLE,	Accept (Saylor), Burgett
13-2,		Ineligible	
754,	6,	INELIGIBLE,	Accept (Perkins), Broughton
15-0,		Ineligible	
756,	6,	INELIGIBLE,	Accept (Saylor), Burgett
10-5,		Ineligible	
765,	6,	INELIGIBLE,	Accept (Perkins), Haeberle
14-1,		Ineligible	

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768, 6, INELIGIBLE, Accept (Burgett), Haeberle  
15-0, Ineligible  
769, 6, INELIGIBLE, Accept (Perkins), Haeberle  
15-0, Ineligible  
772, 6, INELIGIBLE, Accept (Burgett), Saylor  
12-2-1, Ineligible  
752, 6, EXCEPTIONS, Accept (Dearborn), Perkins  
14-1, Eligible  
758, 6, EXCEPTIONS, MOVE TO NOV., N/A  
N/A, N/A  
767, 6, EXCEPTIONS, Overturn (Haeberle), Stewart,  
11-3-1, Ineligible-D  
755, 6, EXCEPTIONS, Accept (Burgett), Perkins  
15-0, Ineligible  
759, 6, EXCEPTIONS, Accept (Burgett), Perkins  
10-5, Ineligible  
760, 6, EXCEPTIONS, Accept (Burgett), Perkins  
15-0, Ineligible  
763, 6, EXCEPTIONS, Accept (Saylor), Parker  
14-0-1, Ineligible  
770, 6, EXCEPTIONS, Accept (Burgett), Haeberle  
15-0, Ineligible  
771, 6, EXCEPTIONS, Accept (Haeberle), Perkins  
15-0, Ineligible

(A) - Remand request related to Case 761

1. Remand the case back to the Hearing Officer for clarification regarding a) enrollment and withdrawal dates at first attempted receiving school; b) withdrawal date from the sending school; c) enrollment date at the second receiving school; and d) clarification of former and alleged new residences [including the sending school city and the two other cities mentioned in the case].

(B) - Findings of Fact related to Case 762

The KHSAA Board incorporates by reference the Findings of Fact in the Hearing Officer's recommended order.

Conclusions of Law

Based on the whole record, the KHSAA Board concludes as follows:

1. Student's transfer is subject to Bylaw 6, Section 1 ("Bylaw 6") because they participated in varsity sports at sending school and transferred to receiving school.
2. Student's transfer does not meet a specific, enumerated exception to Bylaw 6.
3. Student's transfer does not merit a waiver of Bylaw 6 under the discretionary Due Process Procedure waiver provision because strict application of Bylaw 6 is not unfair to them and the circumstances creating the ineligibility are not *clearly* beyond the control of all the parties involved. There is no other evidence in the record sufficient to support a waiver. Further, a waiver would be contrary to past case situation rulings, have a depreciative value on future enforcement of Bylaw 6, and set an undesirable precedent.

(C) - Findings of Fact related to Case 766

The KHSAA Board incorporates by reference the Findings of Fact in the Hearing Officer's recommended order.

Conclusions of Law

Based on the whole record, the KHSAA Board concludes as follows:

1. Student's transfer is subject to Bylaw 6, Section 1 ("Bylaw 6") because they participated in varsity sports at sending school and transferred to receiving school.
2. Student's transfer does not meet a specific, enumerated exception to Bylaw 6.
3. Student's transfer does not merit a waiver of Bylaw 6 under the discretionary Due Process Procedure waiver provision because strict application of Bylaw 6 is not unfair to them and the circumstances creating the ineligibility are not *clearly* beyond the control of all the parties involved. There is no other evidence in the record sufficient to support a waiver. Further, a waiver would be contrary to past case situation rulings, have a depreciative value on future enforcement of Bylaw 6, and set an undesirable precedent.

(D) - Findings of Fact related to Case 767

The KHSAA Board incorporates by reference the Findings of Fact in the Hearing Officer's recommended order.

Conclusions of Law

Based on the whole record, the KHSAA Board concludes as follows:

1. Student's transfer is subject to Bylaw 6, Section 1 ("Bylaw 6") because they participated in varsity sports at sending school and transferred to receiving school.
2. Student's transfer does not meet a specific, enumerated exception to Bylaw 6. The Hearing Officer erroneously concluded that the student had a bona fide change of address when the rule requires the student and family to make the residence change. In this respect, the KHSAA Board adopts KHSAA Commissioner Brigid DeVries' Exceptions to the Recommended Order.
3. Student's transfer does not merit a waiver of Bylaw 6 under the discretionary Due Process Procedure waiver provision because strict application of Bylaw 6 is not unfair to them and the circumstances creating the ineligibility are not *clearly* beyond the control of all the parties involved. There is no other evidence in the record sufficient to support a waiver. Further, a waiver would be contrary to past case situation rulings, have a depreciative value on future enforcement of Bylaw 6, and set an undesirable precedent.

There being no further business to come before the Board, Gary Dearborn made a motion to adjourn. The motion was seconded by Sally Haeberle, and passed unanimously. The meeting adjourned at 11:50 a.m.

*Paul G. Watson*  
*Brigid J. DeVries*