Board of Control Meeting Minutes - July 2004

President Jim Sexton convened the regular meeting of the Board of Control on Friday, July 16, 2004 at 8:30 a.m. All Board members were present except Sally Haeberle. 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. KHSAA legal counsel, Ted Martin, was also present.

Mr. Sexton had a moment of reflection, followed by the Pledge of Allegiance.

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

Chuck Broughton made a motion, seconded by Robert Stewart, to approve the minutes of the May 17-18, 2004 regular meeting. The motion passed unanimously.

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
Status

0154, 6, Eligible
Overturn (Dotson), Parker, 17-0
Ineligible-A

0156, 6, Eligible
Overturn (Deaton), Elliott, 17-0,
Ineligible-B

0157, 6, Eligible
Overturn (McGinty), Wear, 17-0
Ineligible-C

0159, 6, Eligible
Overturn (Dearborn), Broughton, 17-0
Ineligible-D

0160, 6, Eligible
Accept (Elliott), McGinty, 12-5
Eligible

0161, 6, Eligible
Accept (Elliott), Taylor, 13-4
Eligible

835, 6, Eligible
Overturn (Stewart), Elliott, 17-0
Ineligible-E

839, 4, Eligible
Overturn (McGinty), Parker, 15-2
Ineligible-F

840, 6, Eligible
Overturn (Deaton), Perkins, 15-1*
Ineligible-G

841, 6, Eligible
Overturn (Parker), Hardin, 15-1
Ineligible-H

842, 4, Eligible
Accept (Elliott), Schneider, 15-1
Eligible

837, 10, Eligible
(Remand to BOC), Overturn (McGinty), Taylor, 14-2, Ineligible-I

0155, 6, Ineligible
Accept (Stewart), Broughton, 16-0
Ineligible

0158, 6, Ineligible (Exceptions)
Accept (Perkins), Broughton, 16-0
Ineligible**

834, 6, Ineligible (Exceptions)
Accept (Elliott), Dearborn, 16-0
Ineligible

836, 6, Ineligible (Exceptions)
Accept (Stewart), Hardin, 13-3
Ineligible

838, 6, Ineligible (Exceptions)
Accept (Perkins), Deaton, 15-0-1
Ineligible

*Let the record show that Paul Dotson left the meeting at 9:40 a.m.

**The Board requested that KHSAA staff make an inquiry to one of the schools regarding potential illegal contact referred to in the Findings of Fact in Case #0158.

A-Findings of Fact-Case #0154
1. The Board adopts the Findings of Fact in the Hearing Officer's Recommended Order, except disagrees with any finding that strict application of Bylaw 6, Section 1 ("Bylaw 6) is unfair to student and that the transfer was clearly beyond the control of all involved parties.

Conclusions of Law
Based on the record, the Board concludes as follows:
1. Student's transfer is subject to Bylaw 6 because they participated in varsity sports at sending school after enrolling in grade nine and transferred to receiving school.
2. As concluded by the Hearing Officer, student's transfer does not meet a specific, enumerated exception to Bylaw 6.
3. Contrary to the Hearing Officer's conclusion, student did not establish that strict application of Bylaw 6 was unfair to them and that the transfer was clearly beyond the control of all involved parties. While student may have made a legitimate decision to change schools for personal reasons, this decision was not beyond the control of all the involved parties. In this regard, student had control over their academic and behavioral problems while at sending school. Further, student's psychologist, in his letter dated February 27, 2004, stated that "[t]he prospect of playing football at receiving school was a key motivator for the school transfer that has proven so successful . . . ." Thus, while the Board will not prevent student from transferring to receiving school, they cannot participate in interscholastic athletics for one year from their date of enrollment.

B-Findings of Fact-Case #0156
1. The Board adopts the Findings of Fact in the Hearing Officer's Recommended Order, except reaches a different conclusion from those facts.

Conclusions of Law

Based on the whole record, the Board concludes that the application of Bylaw 6 should not be waived for the following reasons:

1. Student's transfer is subject to Bylaw 6, Section 1 ("Bylaw 6") because they participated in varsity sports at sending school after enrolling in grade nine and then transferred to receiving school.
2. Contrary to the Hearing Officer's conclusion, the evidence does not show that student's transfer met the DIVORCE exception to Bylaw 6. The DIVORCE exception provides that: *DIVORCE – The KHSAA will not recognize a legal separation as grounds for waiver of the provisions of this bylaw. The Commissioner may waive the provisions of this bylaw in the event of a dissolution of marriage (i.e. a final and legally binding divorce decree from a court of competent jurisdiction) of the parents and a change in the residence of the student pursuant to a court order granting custody of the child to one of the parents*

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with whom the student shall reside. In the event joint custody is awarded to both parents, for purposes of this bylaw, the student shall be deemed to reside at his or her previous residence if one parent retains this residence. If neither parent retains the former residence, the parents shall designate one of their new residences (mother or father) for purpose of this bylaw, such designation to be reviewed and approved by the Commissioner.

The DIVORCE exception does not apply to a student's change in residence by virtue of a subsequent change in the custodial or residential parent after the parents have divorced, the student has gone to live with one of the parents and the student has participated in varsity athletics while living with that one parent. (Bylaw 6 is inapplicable to transfers before a student has participated at the varsity level). As set forth in the exception, in the event of joint custody, if neither parent retains the former residence, the parents shall designate one of their "new" residences for purposes of Bylaw 6. Thus, this exception only applies at the initial designation of the custodial or residential parent.

3. Changes in custody are governed by the GUARDIANSHIP/CHANGE OF CUSTODY exception. It only applies, however, when custody is taken from one or both parents and given to a third person under certain circumstances.

The Kentucky courts have approved Bylaw 6's application to these situations. See Kentucky High School Athletic Ass'n v. Hopkins Co. Bd. Of Educ., Ky.App., 552 S.W.2d 685 (1977). In Hopkins Co. Bd. Of Educ., a student whose parents had divorced three years earlier transferred schools after moving his residence from his mother to that of his father for personal reasons unrelated to athletics, *i.e.*, a conflict with his mother over whether he could marry. See id. at 687. The student's mother had initially been given legal custody and he had moved in with her at that time; custody was changed to the father at the time of the transfer by agreement of the parties. See id. at 686. The Court of Appeals upheld the application of Bylaw 6 to these facts:

The Association did not act arbitrarily in applying the same rule to parents who were divorced and separated even if there was a change in legal custody. If there is no change in the residence of either parent, there is always a real question regarding the motive for the change in custody. In the present case, Shadowen was not compelled to change his residence from Union County to Hopkins County because of some reason beyond his control. The change of custody was the result of Shadowen's own wishes. There was nothing involuntary in Shadowen's change of residence from Union County to Hopkins County. Therefore, the Association did not act arbitrarily in applying the transfer rule to Shadowen. Id. at 688.

Student's parents divorced when they were in grade school, and the parents were awarded joint custody. Neither party remained at the former residence, and student went to live with their mother at a new residence in the sending school school district. Their father went to live in a new residence in the receiving school district. Neither parent has changed school districts since that time. Because student participated in varsity athletics at sending school while living with their mother, the parents designated mother's residence for purposes of Bylaw 6. Thus, student moving to live with their father does not satisfy the DIVORCE exception. Neither does student's transfer satisfy the GUARDIANSHIP/CHANGE IN CUSTODY exception because their mother did not give custody to a third person.

4. Although the primary purposes of Bylaw 6 are to prevent and deter recruiting and athletically motivated transfers, lack of evidence of these dangers is not a ground to waive the application of Bylaw 6. The KHSAA member schools have adopted and the Kentucky courts have approved an objective standard to govern transfers in Kentucky. See Hopkins Co. Bd of Educ., 552 S.W.2d at 687-688 (upholding application of Bylaw 6 to a transfer despite finding that there was no recruiting and the transfer was not athletically motivated). An objective standard is necessary because the inherent administrative and other difficulties make it often impossible to make a subjective determination in the numerous transfers processed each year. If transfers were only precluded if evidence of recruiting or athletic-motivation was proved, then Bylaw 6 would be subject to abuse and students would be transferring anytime and anywhere. For example, if Bylaw 6 was waived after a student has established eligibility while living with one of his divorced parents because that student subsequently changes which parent that student lives with and neither parent has changed which school district they live in, then students would be able to jump back and forth between schools due to recruiting or for athletic reasons by claiming that the transfer is unrelated to athletics, such as a desire to live with a different parent. While the member schools of the KHSAA are not preventing a transfer for subjective personal reasons, they have decided that the student should sit out one year of interscholastic athletics. Thus, although there is no evidence that student transferred due to recruiting or was otherwise athletically motivated, Bylaw 6 still applies to this transfer.

5. The evidence does not support a finding that the strict application of Bylaw 6 is unfair to student and that the transfer was for reasons beyond the control of all involved parties. First, the application of Bylaw 6 is not unfair because student may receive their education at receiving school and only has to sit out for one year of interscholastic athletics. Second, the transfer was not for reasons beyond the control of all involved parties because student was not forced to transfer from sending school. Rather, the student and parents made a voluntary decision for personal reasons that student should transfer to receiving school. Indeed, at the time of the transfer, student's mother had not had a change in jobs and she had not moved. They just thought it would be better if student transferred schools. While this may be a legitimate personal reason for the transfer, it does not satisfy any exception.

C-Findings of Fact-Case #0157

1. The Board adopts the Findings of Fact in the Hearing Officer's Recommended Order, except reaches a different conclusion from those facts.

Conclusions of Law

Based on the whole record, the Board concludes that the application of Bylaw 6 should not be waived for the following reasons:

1. Student's transfer is subject to Bylaw 6, Section 1 ("Bylaw 6") because they participated in varsity sports at sending school after enrolling in grade nine and then transferred to receiving school.

2. As concluded by the Hearing Officer, student's transfer does not meet a specific, enumerated exception to Bylaw 6.

3. Contrary to the Hearing Officer's conclusion, there is insufficient evidence show-

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ing that strict application of Bylaw 6 is unfair and the circumstances creating the ineligibility are clearly beyond the control of all involved parties. While student may have made a legitimate decision to change schools for subjective, personal reasons, this decision was not beyond the control of all the involved parties. In this regard, student was not expelled, suspended or otherwise precluded from attending Berea. Rather, the student and parents made a decision to transfer to receiving school. Further, there is no evidence that criminal or other legal action was taken against the person with whom student had been in a conflict with since the beginning of student's eighth grade year. Lastly, student's decision to not attend the high school where she lived, and instead move to live with an aunt who is the soccer coach at receiving school raises concerns that the choice of school was athletically motivated. In any event, although the primary purposes of Bylaw 6 are to prevent and deter recruiting and athletically motivated transfers, lack of evidence of these dangers is not a ground to waive the application of Bylaw 6. The KHSAA member schools have adopted and the Kentucky courts have approved an objective standard to govern transfers in Kentucky. See Hopkins Co. Bd of Educ., 552 S.W.2d at 687-688 (upholding application of Bylaw 6 to a transfer despite finding that there was no recruiting and the transfer was not athletically motivated). Thus, while the Board will not prevent student from transferring to receiving school, they cannot participate in interscholastic athletics there for one year from her date of enrollment.

D-Findings of Fact-Case #0159

1. The Board adopts the Findings of Fact in the Hearing Officer's Recommended Order, except reaches a different conclusion from those facts.

Conclusions of Law

Based on the whole record, the Board concludes that the application of Bylaw 6 should not be waived for the following reasons:

1. Student's transfer is subject to Bylaw 6, Section 1 ("Bylaw 6") because they participated in varsity sports at sending school after enrolling in grade nine and then transferred to receiving school.

2. Contrary to the Hearing Officer's conclusion, the evidence does not show that student's transfer met the DIVORCE exception to Bylaw 6. The DIVORCE exception provides that: DIVORCE – The KHSAA will not recognize a legal separation as grounds for waiver of the provisions of this bylaw. The Commissioner may waive the provisions of this bylaw in the event of a dissolution of marriage (i.e. a final and legally binding divorce decree from a court of competent jurisdiction) of the parents and a change in the residence of the student pursuant to a court order granting custody of the child to one of the parents with whom the student shall reside. In the event joint custody is awarded to both parents, for purposes of this bylaw, the student shall be deemed to reside at his or her previous residence if one parent retains this residence. If neither parent retains the former residence, the parents shall designate one of their new residences (mother or father) for purpose of this bylaw, such designation to be reviewed and approved by the Commissioner.

3. The DIVORCE exception does not apply to a student's change in residence by virtue of a subsequent change in the custodial or residential parent after the parents have divorced, the student has gone to live with one of the parents and the student has participated in varsity athletics while living with that one parent. (Bylaw 6 is inapplicable to transfers before a student has participated at the varsity level). As set forth in the exception, in the event of joint custody, if neither parent retains the former residence, the parents shall designate one of their "new" residences for purposes of Bylaw 6.This exception was designed for the situation where a student has participated in varsity athletics after enrolling in grade nine and is thus subject to Bylaw 6, but whose parents subsequently divorce and he or she must change residences into a different school district because of the custody change resulting from the divorce. Thus, this exception only applies at the initial designation of the custodial or residential parent after a student has participated in varsity athletics at or above the ninth grade level.

4. Changes in custody are governed by the GUARDIANSHIP/CHANGE OF CUSTODY exception. It only applies, however, when custody is taken from one or both parents and given to a third person under certain circumstances.

The Kentucky courts have approved Bylaw 6's application to these situations. See Kentucky High School Athletic Ass'n v. Hopkins Co. Bd. Of Educ., Ky.App., 552 S.W.2d 685 (1977). In Hopkins Co. Bd. Of Educ., a student whose parents had divorced three years earlier transferred schools after moving his residence from his mother to that of his father for personal reasons unrelated to athletics, *i.e.*, a conflict with his mother over whether he could marry. See id. at 687. The student's mother had initially been given legal custody and he had moved in with her at that time; custody was changed to the father at the time of the transfer by agreement of the parties. See id. at 686. The Court of Appeals upheld the application of Bylaw 6 to these facts:

The Association did not act arbitrarily in applying the same rule to parents who were divorced and separated even if there was a change in legal custody. If there is no change in the residence of either parent, there is always a real question regarding the motive for the change in custody. In the present case, Shadowen was not compelled to change his residence from Union County to Hopkins County because of some reason beyond his control. The change of custody was the result of Shadowen's own wishes. There was nothing involuntary in Shadowen's change of residence from Union County to Hopkins County. Therefore, the Association did not act arbitrarily in applying the transfer rule to Shadowen.

Id. at 688.

5. Student's parents divorced nine years prior to the transfer, and they were awarded joint custody. Neither parent remained at the former residence, and student lived with each parent at various times. Because student participated in varsity athletics at sending school while living with their mother, the parents designated the mother's residence for purposes of Bylaw 6. Student's father lived in the receiving school district before and after the transfer. Thus, student moving to live with their father does not satisfy the DIVORCE exception. Neither does student's transfer satisfy the GUARDIANSHIP/CHANGE IN CUSTODY exception because their mother did not give custody to a third person.

6. Although the primary purposes of Bylaw 6 are to prevent and deter recruiting and athletically motivated transfers, lack of evidence of these dangers is not a ground to waive the application of Bylaw 6. The KHSAA member schools have adopted and the Kentucky courts have approved an

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objective standard to govern transfers in Kentucky. See Hopkins Co. Bd of Educ., 552 S.W.2d at 687-688 (upholding application of Bylaw 6 to a transfer despite finding that there was no recruiting and the transfer was not athletically motivated). An objective standard is necessary because the inherent administrative and other difficulties make it often impossible to make a subjective determination in the numerous transfers processed each year. If transfers were only precluded if evidence of recruiting or athletic-motivation was proved, then Bylaw 6 would be subject to abuse and students would be transferring anytime and anywhere. For example, if Bylaw 6 was waived after a student has established eligibility while living with one of his divorced parents because that student subsequently changes which parent that student lives with and neither parent has changed which school district they live in, then students would be able to jump back and forth between schools due to recruiting or for athletic reasons by claiming that the transfer is unrelated to athletics, such as a desire to live with a different parent. While the member schools of the KHSAA are not preventing a transfer for subjective personal reasons, they have decided that the student should sit out one year of interscholastic athletics. Thus, although there is no evidence that student transferred due to recruiting or was otherwise athletically motivated, Bylaw 6 still applies to this transfer.

E-Findings of Fact-Case #835

1. The KHSAA Board adopts the Findings of Fact in the Hearing Officer's Recommended Order, except reaches a different conclusion from those facts.

Conclusions of Law

Based on the whole record, the Board concludes that the application of Bylaw 6 should not be waived for the following reasons:

1. Student's transfer is subject to Bylaw 6, Section 1 ("Bylaw 6") because they participated in varsity sports at sending school after enrolling in grade nine and then transferred to receiving school.
2. Contrary to the Hearing Officer's conclusion, student did not present sufficient evidence to conclude that his transfer satisfied the BONA FIDE CHANGE IN RESIDENCE exception. Although a student may change residences, not every change in residence is "bona fide" under Bylaw 6. For example, within the exception itself, the member schools have specified that a change in residence is not "bona fide" if "the change is motivated in whole or part by a desire to participate in athletics at the new school" or if "the change in residence is used or manipulated for the purpose of gaining athletic eligibility." The Board also has the authority to interpret and apply this exception to other circumstances that do not satisfy the "bona fide" requirement.

Here, the alleged change in residence was not "bona fide." Student and their parents have merely leased an apartment in the receiving school district. They still own their home located in the school district for the sending school, and are allegedly leasing it to their other son and his friend. Further, nothing prevented them from continuing to live in their home. They only alleged that an apartment would allow them to test out a maintenance free living situation and allow student's mother to avoid climbing more stairs after her knee surgery. Moreover, because student attended a private school without a required school district, nothing prevented the student from continuing to attend the sending school, despite the alleged change in residence. According to the testimony, student's parents simply made a voluntary decision to withdraw them from the sending school because they did not want to pay tuition when their child was not, in their opinion, putting forth sufficient academic effort. As stated in the ACADEMIC CONCERNS exception, the argument that the educational needs of the transferring student would be better served through a transfer is not grounds for a waiver of Bylaw 6.

The Board concludes that student did not present sufficient evidence to establish that the change in residence was "bona fide." If a change of residence is found "bona fide" based on these circumstances, Bylaw 6 would be subject to manipulation and abuse. There is simply not a sufficient objective indication that the change in residence was not "motivated in whole or part by a desire to participate in athletics at the new school," "used or manipulated for the purpose of gaining athletic eligibility" or otherwise "bona fide" for purposes of Bylaw 6.

3. Although the primary purposes of Bylaw 6 are to prevent and deter recruiting and athletically motivated transfers, lack of evidence of these dangers is not a ground to waive the application of Bylaw 6. The KHSAA member schools have adopted and the Kentucky courts have approved an objective standard to govern transfers in Kentucky. See Hopkins Co. Bd of Educ., 552 S.W.2d at 687-688 (upholding application of Bylaw 6 to a transfer despite finding that there was no recruiting and the transfer was not athletically motivated). An objective standard is necessary because the inherent administrative and other difficulties make it often impossible to make a subjective determination in the numerous transfers processed each year. If transfers were only precluded if evidence of recruiting or athletic-motivation was proved, then Bylaw 6 would be subject to abuse and students would be transferring anytime and to anywhere. While the member schools of the KHSAA are not preventing a transfer for subjective personal reasons, they have decided that the student should sit out one year of interscholastic athletics. Thus, although there is no affirmative evidence that student transferred due to recruiting or was otherwise athletically motivated to transfer, Bylaw 6 still applies to this transfer.

F-Findings of Fact-Case #839

1. The Board adopts the Findings of Fact in the Hearing Officer's Recommended Order, except find that student did not establish grounds for a waiver of Bylaw 4, Section 1 ("Bylaw 4").

Conclusions of Law

Based on the record, the Board concludes as follows:

1. Student is subject to Bylaw 4 because they are in their fifth calendar year of high school following grade eight.
2. Under Bylaw 4, eligibility after the fourth calendar year of high school following grade eight is only allowed "in the case were [it] is documented by the attending physician, Principal and Superintendent that severe illness or injury has prevented the student from receiving necessary education services and the right to an education has therefore been impacted rather than simply the loss of athletic privilege." The rationales for this limited exception are set forth in Case Situation BL-4-1. It provides that:

Case BL-4-1- Is there a basic philosophy and reason for Bylaw 4 and a limit on semesters?

A maximum participation requirement:

1. promotes timely progress toward graduation by discouraging students from delaying or interrupting their high school education;

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2. disallows students to enroll for one semester each school year to increase athletic ability and skill;
3. diminishes risks stemming from unequal competition;
4. places emphasis on the academic mission of the school;
5. promotes harmony and fair competition among member schools by maintaining equality of eligibility affording each student the same number of semesters of athletic eligibility;
6. increases the number of students who will have an opportunity to participate in interscholastic athletics;
7. is conductive to the prevention of redshirting;
8. helps avoid exploitation by coaches or boosters who otherwise might seek to obtain transfers or to delay a student's normal progress through school; and
9. prevents displacement of younger student-athletes by older students wishing to extend unfairly their high school careers.

Without a clearly defined limit, avenues remain open for red-shirting, deception, legal maneuvering, and other athletics-driven motivations for a student to remain in school rather than proceeding on into college or into the work force thereby denying the participation of a student who is otherwise "next in line" to play. There is no documentation to support a waiver under this exception. Rather, student voluntarily dropped out of school during their sophomore year because of difficulties at home, not because of injury or illness. For this reason, the evidence does not support the conclusion that the circumstances creating the ineligibility are clearly beyond all of the involved parties. The member schools of the KHSAA have determined that granting a fifth year of interscholastic athletic eligibility under these circumstances is not proper because of the aforementioned rationales.
3. Strict application of the rule is not unfair to the student because student, as with other students, has received four calendar years of high school athletic eligibility and was not precluded from receiving necessary education services because of injury or illness.

G-Findings of Fact-Case #840
1. The Board adopts the Findings of Fact in the Hearing Officer's Recommended Order, except reaches a different conclusion from those facts.

Conclusions of Law

Based on the whole record, the Board concludes that the application of Bylaw 6 should not be waived for the following reasons:
1. Student's transfer is subject to Bylaw 6, Section 1 ("Bylaw 6") because they participated in varsity sports at sending school after enrolling in grade nine and then transferred to receiving school.
2. As concluded by the Hearing Officer, student's transfer does not meet a specific, enumerated exception to Bylaw 6.
3. The evidence does not support a finding that the strict application of Bylaw 6 is unfair to student and that the transfer was for reasons beyond the control of all involved parties. First, the application of Bylaw 6 is not unfair because student may receive their education at receiving school and only has to sit out for one year of interscholastic athletics there. Second, the transfer was not for reasons beyond the control of all involved parties because student was not expelled, suspended or otherwise precluded from attending sending school. Further, there is no evidence that criminal or other legal action was taken against the students alleged to be causing problems for student. Rather, student and parents made a voluntary decision for personal reasons that student should transfer to receiving school. While this may be a legitimate personal reason for the transfer, it does not satisfy any exception.
4. Although the primary purposes of Bylaw 6 are to prevent and deter recruiting and athletically motivated transfers, lack of evidence of these dangers is not a ground to waive the application of Bylaw 6. The KHSAA member schools have adopted and the Kentucky courts have approved an objective standard to govern transfers in Kentucky. See Hopkins Co. Bd of Educ., 552 S.W.2d at 687-688 (upholding application of Bylaw 6 to a transfer despite finding that there was no recruiting and the transfer was not athletically motivated). An objective standard is necessary because the inherent administrative and other difficulties make it often impossible to make a subjective determination in the numerous transfers processed each year. If transfers were only precluded if evidence of recruiting or athletic-motivation was proved, then Bylaw 6 would be subject to abuse and students would be transferring anytime and anywhere. While the member schools of the KHSAA are not preventing a transfer for subjective personal reasons, they have decided that the student should sit out one year of interscholastic athletics. Thus, although there is no evidence that student transferred due to recruiting or was otherwise athletically motivated, Bylaw 6 still applies to this transfer.

H-Findings of Fact-Case #841
1. The KHSAA Board adopts the Findings of Fact in the Hearing Officer's Recommended Order, except reaches a different conclusion from those facts.

Conclusions of Law

Based on the whole record, the Board concludes that the application of Bylaw 6 should not be waived for the following reasons:
1. Student's transfer is subject to Bylaw 6, Section 1 ("Bylaw 6") because they participated in varsity sports at sending school after enrolling in grade nine and then transferred to receiving school.
2. Contrary to the Hearing Officer's conclusion, the evidence does not show that student's transfer met the DIVORCE exception to Bylaw 6. The DIVORCE exception provides that:
DIVORCE – The KHSAA will not recognize a legal separation as grounds for waiver of the provisions of this bylaw. The Commissioner may waive the provisions of this bylaw in the event of a dissolution of marriage (i.e. a final and legally binding divorce decree from a court of competent jurisdiction) of the parents and a change in the residence of the student pursuant to a court order granting custody of the child to one of the parents with whom the student shall reside. In the event joint custody is awarded to both parents, for purposes of this bylaw, the student shall be deemed to reside at his or her previous residence if one parent retains this residence. If neither parent retains the former residence, the parents shall designate one of their new residences (mother or father) for purpose of this bylaw, such designation to be reviewed and approved by the Commissioner.
The DIVORCE exception does not apply to a student's change in residence by virtue of a subsequent change in the custodial or residential parent after the parents have divorced, the student has gone to live with one of the parents and the student has participated in varsity athletics while living with that one parent. (Bylaw 6 is inapplicable

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to transfers before a student has participated at the varsity level). As set forth in the exception, in the event of joint custody, if neither parent retains the former residence, the parents shall designate one of their "new" residences for purposes of Bylaw 6. This exception was designed for the situation where a student has participated in varsity athletics after enrolling grade nine and is thus subject to Bylaw 6, but whose parents subsequently divorce and he or she must change residences into a different school district because of the custody change resulting from the divorce. Thus, this exception only applies at the initial designation of the custodial or residential parent after a student has participated in varsity athletics at or above the ninth grade level.

Changes in custody are governed by the GUARDIANSHIP/CHANGE OF CUSTODY exception. It only applies, however, when custody is taken from one or both parents and given to a third person under certain circumstances.

The Kentucky courts have approved Bylaw 6's application to these situations. See Kentucky High School Athletic Ass'n v. Hopkins Co. Bd. Of Educ., Ky.App., 552 S.W.2d 685 (1977). In Hopkins Co. Bd. Of Educ., a student whose parents had divorced three years earlier transferred schools after moving his residence from his mother to that of his father for personal reasons unrelated to athletics, *i.e.*, a conflict with his mother over whether he could marry. See id. at 687. The student's mother had initially been given legal custody and he had moved in with her at that time; custody was changed to the father at the time of the transfer by agreement of the parties. See id. at 686. The Court of Appeals upheld the application of Bylaw 6 to these facts:

The Association did not act arbitrarily in applying the same rule to parents who were divorced and separated even if there was a change in legal custody. If there is no change in the residence of either parent, there is always a real question regarding the motive for the change in custody. In the present case, Shadowen was not compelled to change his residence from Union County to Hopkins County because of some reason beyond his control. The change of custody was the result of Shadowen's own wishes. There was nothing involuntary in Shadowen's change of residence from Union County to Hopkins County. Therefore, the Association did not act arbitrarily in applying the transfer rule to Shadowen. Id. at 688.

Student's parents divorced seventeen years prior to the transfer, and the parents were awarded joint custody. Student has predominantly lived with their mother since that time. Because student participated in varsity athletics at sending school while living with their mother, the parents designated the mother's residence for purposes of Bylaw 6. Student's father lived in the receiving school district before and after the transfer. Thus, student moving to live with their father does not satisfy the DIVORCE exception. Neither does student's transfer satisfy the GUARDIANSHIP/CHANGE IN CUSTODY exception because their mother did not give custody to a third person.

3. Although the primary purposes of Bylaw 6 are to prevent and deter recruiting and athletically motivated transfers, lack of evidence of these dangers is not a ground to waive the application of Bylaw 6. The KHSAA member schools have adopted and the Kentucky courts have approved an objective standard to govern transfers in Kentucky. See Hopkins Co. Bd of Educ., 552 S.W.2d at 687-688 (upholding application of Bylaw 6 to a transfer despite finding that there was no recruiting and the transfer was not athletically motivated). An objective standard is necessary because the inherent administrative and other difficulties make it often impossible to make a subjective determination in the numerous transfers processed each year. If transfers were only precluded if evidence of recruiting or athletic-motivation was proved, then Bylaw 6 would be subject to abuse and students would be transferring anytime and anywhere. For example, if Bylaw 6 was waived after a student has established eligibility while living with one of his divorced parents and that student subsequently changes which parent that student lives with and neither parent has changed which school district they live in, then students would be able to jump back and forth between schools due to recruiting or for athletic reasons by claiming that the transfer is unrelated to athletics, such as a desire to live with a different parent. While the member schools of the KHSAA are not preventing a transfer for subjective personal reasons, they have decided that the student should sit out one year of interscholastic athletics. Thus, although there is no evidence that student transferred due to recruiting or was otherwise athletically motivated, Bylaw 6 still applies to this transfer.

4. The evidence does not support a finding that the strict application of Bylaw 6 is unfair to student and that the transfer was for reasons beyond the control of all involved parties. First, the application of Bylaw 6 is not unfair because student may live with their father, receive their education at receiving school and only has to sit out for one year of interscholastic athletics. Second, the transfer was not for reasons beyond the control of all involved parties because, when student's mother voluntarily moved back in with student's stepfather, student made a voluntary choice that they did not want to live in their stepfather's residence and instead wanted to live with their father. Bylaw 6 would have be meaningless if waivers were allowed when students made voluntary decisions to live with a different parent or a third party.While this may be a legitimate personal reason for the transfer, it is not a reason beyond the control of all involved parties.

I-Findings of Fact-Case #837

1. The Board adopts the Findings of Fact in the Hearing Officer's Recommended Order, but reaches different Conclusions of Law.

Conclusions of Law

Based on the record, the Board concludes as follows:

1. The Board concludes that it is not inherently wrong for a host family to pay the tuition and book fees for a foreign exchange student. However, because of the potential for manipulation and abuse, the Board concludes that Bylaw 10 precludes a foreign exchange student from participating in interscholastic athletics if the host family pays the tuition and book fees regardless of the host family's relationship to the athletic program at the school. This conclusion comports with Bylaw 10's prohibition against students receiving benefits not generally available to the entire student body. Thus, student is immediately and permanently INELIGIBLE to participate in interscholastic athletics at the host school.

The quarterly Internal and External Fundraising update was presented by Butch Cope, Ken Tippett and Sheila Vaughn respectively. The Board requested that the Finance Committee review iHigh's agreement, which is up for renewal following the 2004-2005 school year, and make a recommendation to the full Board of Con-

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trol.

President Sexton, **Executive Committee** Chairperson, asked the record to show that:

1. Discussion on the results of the non-public school survey was deferred to the September meeting.
2. Commissioner DeVries will have a list of suggested members for the Museum Fundraising Committee at the September meeting.
3. Ted Martin will research and report on what is considered "public record" regarding the annual meeting voting and balloting procedure. More information will be forthcoming.
4. The KU/KHSAA Radio Network for 2003-04 will be reported at the September meeting.
5. A letter from an individual from Indiana with alignment suggestions was reviewed.

President Sexton, Executive Committee Chairperson, then asked the record to show that the following motions were voted on:

1. Jim Sexton made a motion, seconded by L.V. McGinty, to appoint the 2003-2004 Standing Committees as presented. The motion passed unanimously.
2. Chuck Broughton made a motion, seconded by Bob Stewart, to approve the Association bills for May 1, 2004 through June 30, 2004. The motion passed unanimously.
3. Gary Dearborn made a motion, seconded by Lonnie Burgett, to approve the 283 membership applications for the 2004-2005 school year. The motion passed unanimously.
4. Jeff Perkins made a motion, seconded by Stan Hardin, to revise the ex-Board of Control ticket policy, to include two complimentary seats on request for all reserved seating events – Football, Baseball, Boys' & Girls' Basketball. The motion passed unanimously.
5. Stan Hardin made a motion, seconded by Lonnie Burgett, to grant the staff permission to negotiate and finalize a contract with Insight Communications regarding live telecasts of the State Football Championships and the Boys' and Girls' State Basketball Championships. The motion passed unanimously.
6. Bob Stewart made a motion, seconded by Chuck Broughton, to accept the National City Bank partnership report. The motion passed unanimously.
7. L.V. McGinty made a motion, seconded by Jeff Perkins, to approve the Director's & Officer's and General Liability insurance proposals. The motion passed unanimously.
8. Lonnie Burgett made a motion, seconded by Bob Stewart, to approve the final 2005 budget. The motion passed unanimously.

Donna Wear, substituting for Chairperson Paul Dotson, **Constitution & Bylaws Committee**, asked the Board to approve the following motions:

1. Donna Wear made a motion, seconded by Bob Stewart, to give second reading approval to place the proposed amendment to Bylaw 25 on the Annual Meeting Agenda in January. This proposal would replace the tournament counting exceptions in Baseball, Basketball, Soccer, Softball, Tennis, Volleyball and Wrestling with fixed game limits. The motion passed unanimously.
2. Give first reading approval to the removal of exception (F) related to academic deficiency. The motion was seconded by Jeff Perkins, and passed unanimously.
3. Direct Commissioner DeVries to clarify the definition of "non-school teams", with an amendment to the Constitution and Bylaw 23. The motion was seconded by Jeff Perkins, passed unanimously.

Ms. Wear also noted that other items from the Committee were discussed with no action taken.

Cynthia Elliott, Chairperson, **Title IX Committee**, asked the Board to approve the following motion:

1. Accept the proposed penalties and progressive consequences regarding member schools not in compliance with the prime-time directive. The motion was seconded by Bob Stewart, and passed unanimously.

Donna Wear, Chairperson, **Individual Sports Committee**, asked the Board to approve the following motion:

1. Accept the Tennis re-alignment as proposed by the Tennis Advisory Committee, which includes the state format change. The motion was seconded by L.V. McGinty, and passed 13-3.

Gary Dearborn, Chairperson, **Basketball Re-Alignment Ad Hoc Committee**, asked the record to show that the three main goals of the committee are to: 1) Eliminate 3 and 6 team districts; 2) Align schools geographically; and 3) Respect, where possible, the preservation of historic rivalries and boundaries.

A time-line for implementation will be discussed at the August meeting. Changes will be discussed at the August meeting, and the Board will then decide if a draft is to be sent do the schools for comment.

President Sexton then asked the Board to approve the following motion:

1. Support the Ad Hoc Committee in their realignment efforts in conjunction with the goals listed above. The motion was seconded by Stan Hardin, and passed unanimously.

President Sexton then called the Board's attention to miscellaneous items listed for their information only. 1) Set date for the Special Board Meeting in August to consider July appeals; 2) Review dates for the next regular Board of Control Meeting, September 16-17th in Lexington; 3) Miscellaneous Board and staff items.

It was decided a special called meeting was necessary, and is scheduled for August 23rd at 8:30 a.m.

Commissioner DeVries and Staff informed the Board that Kentucky will be hosting the 2004 National Federation Section II meeting in Louisville, on September 26-28th. Section II is comprised of the following states: Maryland, Ohio, Delaware, Pennsylvania, Virginia, West Virginia, District of Columbia and Kentucky.

She also invited Board members to attend the New Administrator's Workshop on August 13th.

Discussion on the election of Board of Control members at the Annual Meeting, as requested by the KHSADA roundtable, was referred to the Constitution and Bylaws Committee for feasibility, due to the fact that two amendments to the constitution would be necessary.

Stan Hardin made a motion, seconded by Jeff Perkins, to accept the 2004-2005 proposed ticket price report. The motion passed unanimously.

Gary Dearborn reported on the NFHS summer meeting in San Diego. Mike Deaton, Steve Parker and Jim Sexton also attended.

L.V. McGinty asked the Commissioner to send a thank you note to Bill Beasley and others for providing the Thursday night barbeque. The Board thanked Mr. McGinty for coordinating the summer meeting in western Kentucky. Mr. Sexton then requested that the July, 2005 Board of Control meeting be held at Green Turtle Bay, if available. Mr. Tackett announced that the dates would be July 10-12th (Sunday-Monday & Tuesday).

Mr. Cope informed the Board that a long-time friend, supporter and vendor of the Association, Mr. Fletcher Hale passed

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away and will be missed by all.

A Board of Control Orientation was held on Thursday morning. All Board members were present except Sally Haeberle. An agenda, detailing the topics discussed, was directed to be attached to these minutes as part of the official record.

There being no further business to come before the Board, Jim Sexton made a motion to adjourn. The motion was seconded by Ozz Jackson, and passed unanimously. The meeting adjourned at 11:50 a.m.