

Board of Control Minutes - July 2005

President Jerry Taylor convened the regular meeting of the Board of Control on Tuesday, July 12, 2005 at 8:30 a.m. All Board members were present except Paul Dotson and Jeff Schlosser. 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. Taylor announced that this Board meeting would not be videotaped, and that further guidance regarding this issue will be reviewed by the Association staff and counsel from Kevin Noland, Kentucky Department of Education.

Donna Wear provided a moment of reflection, followed by the Pledge of Allegiance led by Commissioner DeVries.

President Taylor asked the record to show that sixteen out of eighteen Board members were present, and that ten votes were needed to pass any eligibility motions.

L.V. McGinty made a motion, seconded by Donna Wear, to approve the minutes of the May 16-17, 2005 regular meeting. The motion passed unanimously.

North Oldham High School Principal Shelly LaGrange and Assistant Principal Tom Clemens presented testimony appealing the Bylaw 33 fines imposed by Commissioner DeVries.

Sally Haeberle made a motion, seconded by L.V. McGinty, to go into Executive Session to discuss pending litigation. The motion passed unanimously. Lonnie Burgett made a motion, seconded by Donna Wear to come out of Executive Session. The motion passed unanimously. No action was taken during the Executive Session.

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

943, 6, Eligible
Uphold (Jackson), Stewart, 13-3, Eligible
948, 6, Eligible
Uphold (McGinty), Perkins, 14-2 Eligible
951, 6, Eligible,
Overturn (Sexton) McGinty,

15-0-1, (Jackson)
Ineligible-A
952, 6, Eligible
Overturn (Dearborn), Parker, 13-3
Ineligible-B
944, 6, Ineligible
Uphold (McGinty), Stewart, 16-0,
Ineligible
945, 6, Ineligible,
Uphold (Perkins), Broughton, 16-0
Ineligible
947, 6, Ineligible,
Uphold (McGinty), (Parker),
15-0-1, (Broughton), Ineligible
949, 6, Ineligible,
Uphold (Perkins), Haeberle, 16-0,
Ineligible
950, 6, Ineligible,
Uphold (Dearborn), Parker, 16-0
Ineligible
946, 4, Ineligible-Exceptions,
Uphold (Dearborn), Wear, 16-0,
Ineligible
North Oldham, 33, N/A,
Uphold & amend*
(McGinty), Haeberle, 14-2, Final
*Gary Dearborn made a motion, seconded by Steve Parker, to amend North Oldham's penalty from the Commissioner as follows: The new Athletic Director is required to attend the Athletic Administrator's Workshop at the KHSAA on August 12, 2005. The motion passed unanimously.

A-Findings of Fact-Case #951

1. The Board incorporates by reference the Findings of Fact as contained in the Hearing Officer's Recommended Order. The Board reaches Different Conclusions of Law, however, from those same Findings of Fact.

Conclusions of Law

Based on the whole record, the Board concludes that the application of Bylaw 6, Section 1 (Bylaw 6") should not be waived for the following reasons:

1. The student's transfer is subject to Bylaw 6 because they participated in varsity sports at the sending school after enrolling in grade nine and then transferred to the receiving school.

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

3. The only other ground for a waiver of Bylaw 6 is set forth in the KHSAA Due Process Procedure. Under this provision,

the Board has limited discretion to waive Bylaw 6 if strict application of Bylaw 6 is unfair to the student and the circumstances creating the ineligibility were clearly beyond the control of all involved parties. The evidence does not support a finding that the strict application of Bylaw 6 is unfair to the student and that the transfer was for reasons beyond the control of all involved parties.

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 Kentucky High School Athletic Ass'n v. Hopkins Co. Bd of Educ., Ky.App., 552 S.W.2d 685, 687 (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 the student transferred due to recruiting or was otherwise athletically motivated, Bylaw 6 still applies to this transfer.

B-Findings of Fact-Case #952

1. The Board incorporates by reference the Findings of Fact as contained in the Hearing Officer's Recommended Order. The Board reaches Different Conclusions of Law, however, from those same Findings of Fact.

Conclusions of Law

Based on the whole record, the Board concludes that the application of Bylaw 6, Section 1 (Bylaw 6") should not be waived for the following reasons:

1. The student's transfer is subject to Bylaw 6 because they participated in varsity sports at the sending school after en-

Board of Control Minutes - July 2005

rolling in grade nine and then transferred to the receiving school.

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

3. The only other ground for a waiver of Bylaw 6 is set forth in the KHSAA Due Process Procedure. Under this provision, the Board has limited discretion to waive Bylaw 6 if strict application of Bylaw 6 is unfair to the student and the circumstances creating the ineligibility were clearly beyond the control of all involved parties. The evidence does not support a finding that the strict application of Bylaw 6 is unfair to the student and that the transfer was for reasons beyond the control of all involved parties.

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 Kentucky High School Athletic Ass'n v. Hopkins Co. Bd of Educ., Ky.App., 552 S.W.2d 685, 687 (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 the student transferred due to recruiting or was otherwise athletically motivated, Bylaw 6 still applies to this transfer.

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

1. The 2004-2005 KU/KHSAA Radio Network report was deferred to the September meeting.

2. A thorough review of insurance costs and a clearer list of what is and isn't covered was requested to be sent to school in the August *Commissioner's Notes*.

3. Tickets for all events are to have printed that: "A portion of the funds collected are used to pay catastrophic insurance premiums."

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

1. Since no action was taken in Executive Session, Gary Dearborn made a motion, seconded by Ozz Jackson, to permit the Commissioner to pursue specified eligibility matters through the circuit and appeals courts and expend the necessary funds while regularly updating the Board of Control on progress. The motion passed unanimously.

2. Gary Dearborn made a motion, seconded by Bob Stewart, to approve the appointment of 2005-2006 standing committees as presented. The motion passed unanimously.

3. Sally Haeberle made a motion, seconded by L.V. McGinty, to approve the bills of the Association from May 1, 2005 through June 30, 2005. The motion passed unanimously.

4. Donna Wear made a motion, seconded by Chuck Broughton, to approve the 2005-2006 membership applications and have the Member Services Committee (Chaired by Jeff Perkins) research insurance coverage and criteria in conjunction with the Audit and Finance Committee. The motion passed unanimously.

5. Sally Haeberle made a motion, seconded by Steve Parker, authorizing the Commissioner to negotiate a renewal of the National City Bank partnership for boys' basketball. The motion passed unanimously.

6. Sally Haeberle made a motion, seconded by Donna Wear, to approve General Liability, Officer's and Director's insurance for 2005-2006. The motion passed unanimously. They also requested that the Finance Committee review the lifetime payout option for future renewals of the catastrophic insurance plan.

7. Bob Stewart made a motion, seconded by Bob Schneider, to approve the final FY2006 budget. The motion passed unanimously.

8. Lonnie Burgett made a motion, sec-

onded by Steve Parker, to enter into a lease agreement, with funds provided by Cook Tire Partnership to ensure the Executive Staff auto fleet is complete. The motion passed unanimously.

9. L.V. McGinty made a motion, seconded by Donna Wear, to approve the policy manual section covering Board Meetings. The motion passed unanimously.

10. Sally Haeberle made a motion, seconded by Bob Schneider, to approve the policy manual section covering Personnel. The motion passed unanimously.

11. Sally Haeberle made a motion, seconded by Lonnie Burgett, to award the 2005-2006 Novelty contract to Team I.P. The motion passed unanimously.

Donna Wear, substituting for Chairperson Paul Dotson, **Constitution & Bylaws Committee**, asked the Board to approve motions regarding discussion and second reading on the following proposals to be submitted to the membership at the Annual Meeting:

1. Bylaw 25, Counting of games revision to 23 basketball games and change the method of counting tournaments. The motion was seconded by Sally Haeberle, and passed 13-3.

2. Bylaw 24, Conflict, forfeiture of postseason games. The motion was seconded by Sally Haeberle, and passed unanimously.

3. Bylaw 25, Conflict, forfeiture of postseason games. The motion was seconded by Chuck Broughton, and passed unanimously.

4. Bylaw 33, Review penalties for revision of fine schedule and other potential revisions. The motion was made by Lonnie Burgett, seconded by Jeff Perkins, and passed unanimously. Ms. Wear requested that the *Commissioner's Notes* include a notice that effective immediately the KHSAA is imposing a \$50 fine to all coaches ejected for Unsportsmanlike Conduct. This fine is already in the fine schedule, but was not generally applied.

Donna Wear, Chairperson, **Individual Sports Committee**, asked the record to show that:

1. Stan Hardin will present concerns with the current Tennis alignment before the Tennis Advisory Committee.

President Taylor then asked the Board to approve the following motions

Board of Control Minutes - July 2005

1. Confirm August 22, 2005 as the date for the Special Board meeting to consider July appeals. The motion as made by Lonnie Burgett, seconded by Stan Hardin, and passed 15-1 (Mr. Sexton opposed).
2. Confirm dates for the next regular Board of Control Meeting, September 15-16th in Lexington. The motion was made by Gary Dearborn, seconded by Lonnie Burgett, and passed 15-1 (Mr. Sexton opposed).
3. Approve the Officials Brochure as presented. The motion was made by L.V. McGinty, seconded by Donna Wear, and passed unanimously.

Commissioner DeVries presented an oral report on the Current Issues Committee meeting held at the KHSAA on July 8, 2005.

Roland Williams updated the Board on the status of Slow Pitch Softball, after his meeting with the Kentucky Department of Education.

He asked the Board to approve the clarification of the Soccer Mercy Rule that was voted on at the November, 2004 meeting as follows: "If one team has a 10 goal lead at the end of the first half or has a 10 goal lead at any point in the second half, the match will be terminated. This rule will also be observed in post-season play." A motion was made by Lonnie Burgett, seconded by Donna

Wear, and approved unanimously. This clarification will appear in the August Commissioner's Notes.

Commissioner DeVries and Butch Cope updated the Board on the status of Public Service Announcements, and "Hold Time" phone recordings while on hold.

Larry Boucher informed the Board that the Leachman Buick & GMC/KHSAA State Boys' and Girls' Golf Tournaments will be held in Paducah in October.

Gary Dearborn requested that Mr. Tackett send a copy of the revised legislative process to Board members.

Mr. Cope updated the Board on the recent press conference in Bowling Green with Houchens and Leachman Buick & GMC announcing sponsorship extensions.

The Board requested a letter be sent to Sheila Vaughn, thanking her for her service to the KHSAA while working at iHigh.

The HYPE/KHSAA Student Leadership Conference will be held on August 31, 2005. It will be advertised in the August Commissioner's Notes.

Due to a conflict with the National Athletic Director's Conference, the December special Board of Control meeting has been moved from December 15th to December 8th.

Mr. Tackett announced that four regional meetings have been planned for

September and October.

Jim Watkins, Director of Athletics Activities and Academics of Jefferson County Schools, is retiring and the Board asked Commissioner DeVries to send him a letter thanking him for his service.

The National Federation Summer Meeting update will be presented at the August meeting.

The NFHS, in cooperation with State Associations, is launching a steroid initiative. The KHSAA is participating and will be mailing posters and CD's to all schools during the month of August.

L.V. McGinty asked the Commissioner to send a thank you note to Bill Beasley and others for providing the Monday night meal for Board and Staff. The Board thanked Mr. McGinty for coordinating the golf outing and summer meeting in western Kentucky.

A Board of Control Orientation was held on Monday morning. All Board members were present except Paul Dotson and Jeff Schlosser. 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, L.V. McGinty made a motion to adjourn. The motion was seconded by Ozz Jackson, and passed unanimously. The meeting adjourned at **11:50 AM**

3 of 3