

## Board of Control Meeting Minutes - October 2005

President Jerry Taylor convened the special meeting of the Board of Control on Friday, October 21, 2005 at 11:00 a.m. All Board members were present except Sally Haeblerle. 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. Ted Martin, KHSAA Legal Counsel was also present.

Jeff Perkins provided a moment of reflection.

L.V. McGinty led the Pledge of Allegiance.

President Taylor stated for the record that seventeen out of eighteen Board members were present, and that ten votes were needed to pass any eligibility motions. He then asked to suspend the order of the agenda, and go to the Executive Committee items and vote on the action related to proposals first. The order was suspended without objection.

A motion was made by Gary Dearborn, seconded by Steve Parker, to send Proposal 20 to the Kentucky Board of Education without being endorsed for implementation at this time. The motion passed 9-7 with one recusal.

Steve Parker made a motion, seconded by Gary Dearborn, for the staff to develop a full impact review prior to the November 16-17, 2005 Board meeting on why Proposal 20 was not endorsed. The motion failed 7-8 with two recusals.

It was suggested that a group of public and non-public administrators meet before the November Board meeting to continue working on a resolution regarding territory, financial aid and below grade nine participation. The Commissioner indicated she would follow up on this request.

A motion was made by Paul Dotson, seconded by Jeff Schlosser, to table Pro-

posal 3 until legal ramifications can be clarified, including grandfathering students already in the system. The motion passed 10-6 with one recusal.

A motion was made by Lonnie Burgett, seconded by Paul Dotson, to endorse Proposal 13 for implementation by the KDE. The motion passed unanimously.

A motion was made by Paul Dotson, seconded by Donna Wear, to endorse Proposal 14 for implementation by the KDE. The motion passed unanimously.

A motion was made by Bob Stewart, seconded by Jim Sexton, to endorse Proposal 17 for implementation by the KDE with a 2006-07 implementation date. The motion passed unanimously.

A motion was made by Ozz Jackson, seconded by L.V. McGinty, to endorse Proposal 18 for implementation by the KDE. The motion passed unanimously.

A motion was made by Chuck Broughton, seconded by L.V. McGinty, to endorse Proposal 19 for implementation by the KDE. 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 Y/N/R, Status

968, 6, ELIGIBLE  
Uphold (Perkins), Schneider, 16-1 Eligible  
970, 4, ELIGIBLE  
Overturn (McGinty), Perkins, 15-2 Ineligible-A  
974, 6, ELIGIBLE  
Uphold (Perkins), Schneider, 16-1 Eligible  
989, 6, ELIGIBLE  
Overturn (Dotson), Dearborn, 16-1 Ineligible-B  
971, 6, INELIGIBLE  
Uphold (McGinty), Dotson, 15-0-2 (Perkins-Wear), Ineligible  
972, 6, INELIGIBLE

Uphold (Dotson), Burgett, 10-5-1 (Barren), Ineligible  
975, 6, INELIGIBLE  
Uphold (Dearborn), Dotson, 17-0 Ineligible  
978, 6, INELIGIBLE  
Uphold (McGinty), Stewart, 16-1 Ineligible  
980, 6, INELIGIBLE  
Overturn (McGinty), Dotson, 15-1-1 (Jackson), Eligible-C  
981, 6, INELIGIBLE  
Uphold (Dearborn), Hardin, 16-0-1 (Perkins), Ineligible  
988, 6, INELIGIBLE  
Uphold (Jackson), Burgett, 16-0-1 (Dotson) Ineligible  
969, 6, INELIGIBLE (EXCEPTIONS)  
Uphold (Dearborn), Dotson, 17-0 Ineligible  
976, 6, INELIGIBLE (EXCEPTIONS)  
Uphold (Jackson), Burgett, 16-0-1 (Dotson), Ineligible  
979, 6, INELIGIBLE (EXCEPTIONS)  
Uphold (Taylor), Broughton, 17-0 Ineligible  
990, 6, INELIGIBLE (EXCEPTIONS)  
Uphold (Dearborn), Dotson, 17-0 Ineligible  
A-Findings of Fact-Case #970  
1. The Board adopts only the Findings of Fact in the Hearing Officer's Recommended Order. The Board reaches a different conclusion from the Findings of Fact because they do 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. The student is ineligible under Bylaw 4 because he has had a potential of four consecutive calendar years of eligibility after being promoted from grade eight to grade nine.  
2. Under Bylaw 4, Section 1(b), eligibility after the fourth consecutive calendar year of high school may be allowed "in



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the case were it has been 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: promotes timely progress toward graduation by discouraging students from delaying or interrupting their high school education;
- disallows students to enroll for one semester each school year to increase athletic ability and skill;
- diminishes risks stemming from unequal competition;
- places emphasis on the academic mission of the school;
- promotes harmony and fair competition among member schools by maintaining equality of eligibility affording each student the same number of semesters of athletic eligibility;
- increases the number of students who will have an opportunity to participate in interscholastic athletics;
- is conducive to the prevention of red-shirting;
- 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
- 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.

In this case, there is no evidence in the record "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." Thus, the student does not meet the exception to Bylaw 4.

3. Contrary to the Hearing Officer's con-

clusion, the evidence did not show that the student should be granted a waiver under the Due Process Procedure. The standard for a waiver under the Due Process Procedure is that strict application of Bylaw 4 must be unfair to the student-athlete and the circumstances creating the ineligibility must be clearly beyond the control of the parties involved. Here, the parties made a voluntary decision to have the student repeat his eighth grade year despite being promoted by the school from grade eight. This decision was based on a subjective belief by the student's mother that he was not ready to be promoted. A waiver under these circumstances would set a dangerous precedent and open the door to the harms that Bylaw 4 is designed to prevent and deter.

B-Findings of Fact-Case #989

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 entire 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 she 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 did not meet any enumerated exception to Bylaw 6.
3. Contrary to the Hearing Officer's conclusion, the evidence did not show that the student should be granted a waiver under the Due Process Procedure. The standard for a waiver under the Due Process Procedure is that strict application of Bylaw 6 must be unfair to the student-athlete and the circumstances creating the ineligibility must be clearly beyond the control of the parties involved. While the incident causing the student to attend the sending school in her ninth grade year may have been beyond the parties' control, the transfer to the receiving school was entirely within the parties' control. Indeed, the evidence shows that the transfer to the receiving school was allegedly made because of a subjective belief that the receiving school is a bet-

ter academic fit for the student than the sending school. Thus, the Hearing Officer applied an improper standard and the evidence does not show that a waiver should be granted.

4. Further, strict application of Bylaw 6 is not unfair to the student. She may receive her education services at the receiving school and, provided she completes the one-year period of ineligibility under Bylaw 6 and is eligible under all other Bylaws, she will be eligible to participate during her junior and senior years of high school.

5. While the Hearing Officer found that there was no apparent attempt to circumvent the rules and gain any athletic advantage, proof of these things are not grounds for a waiver of Bylaw 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 objective standard to govern transfers in Kentucky. See Kentucky High School Athletic Ass'n v. Hopkins Co. Bd of Educ., 552 S.W.2d 685, 687 (Ky. App. 1977) (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. Indeed, around 1,000 transfers are processed by the Commissioner each year. If transfers were only precluded when there was evidence of recruiting or athletic-motivation, 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 her transfer.

C-Findings of Fact-Case #980

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



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Conclusions of Law

Based on the entire record, the KH-SAA Board concludes as follows:

1. The student's transfer is subject to Bylaw 6, Section 1 ("Bylaw 6") because he participated in varsity sports at the sending school and transferred to the receiving school.

2. The evidence shows that the student's transfer meets the Bona Fide Change of Residence exception to Bylaw 6.

A motion was made by Mike Barren, seconded by Jeff Schlosser, to go into

Executive Session to discuss current and pending litigation. The motion passed unanimously. A motion was made by L.V. McGinty, seconded by Gary Dearborn, to come out of Executive Session. The motion passed unanimously. No action was taken during Executive Session.

A motion was made by Gary Dearborn, seconded by Paul Dotson, to approve the dates for the November 16-17, 2005 regular Board of Control meeting. The motion passed 14-3.

Assistant Commissioner Julian Tackett

gave an update on the status of the new carpet, painting and office re-configuration. Everything should be completed by the end of November.

It was decided to leave the Board and Staff mileage reimbursement rate at .37¢ for the time being. The state raised their reimbursement to .42¢ on October 1 through December 31, 2005.

There being no further business, a motion to adjourn was made by L.V. McGinty, seconded by Paul Dotson, and passed unanimously. The meeting adjourned at 1:10 p.m.

3-19-3

Bill DeVries 10-30-05

Jerry Taylor 10-30-05