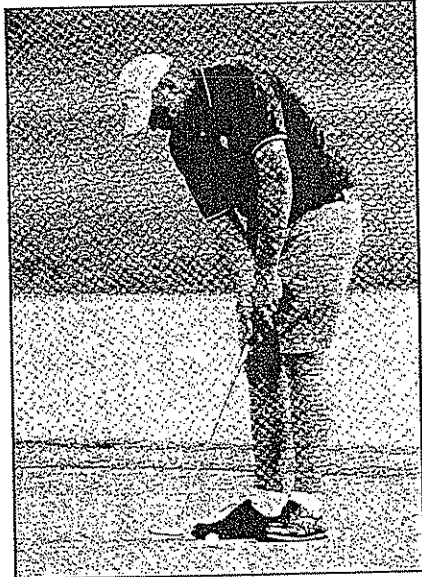


The Board of Control of the Kentucky High School Athletic Association met at the Association Office in Lexington, Kentucky, on Wednesday, September 29, 1999. The meeting was called to order at 8:30 a.m. by President Eddie Saylor. All Board members, with the exception of Bill Beasley, Cynthia Elliott, Betsy Glover and Wendell Thomas were present. Also present were Commissioner Louis Stout, Exec. Asst. Brigid DeVries, Assistant Commissioners Larry Boucher and Julian Tackett, SID Butch Cope, Ken Tippett, Anne Wesley Mays. Ms. Randy Kimbrough and Mr. Kevin Mason were present representing the State Department of Education. Mr. Saylor called on Ms. Mays to

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Robbie Waldrop of St. Xavier captured the boys' individual title at the 1999 Boys' State Golf Tournament. Waldrop's efforts helped St. Xavier win the team title, its 13th State Golf Championship.

introduce Darlene Koszenski, the new Office Manager and Adm. Asst. to the Commissioner. Mr. Saylor recessed the regular meeting until the Committee Meetings were concluded. He then called the Executive Committee into session.

President Saylor reconvened the meeting of the Board of Control on Wednesday afternoon, September 29th at 1:00 p.m. All Board members were present with the exception of Cynthia Elliott. Also present were Commissioner Louis Stout, Executive Assistant Commissioner Brigid DeVries, Assistant Commissioners Larry Boucher and Julian Tackett, SID Butch Cope, Ken Tippett, Anne Wesley Mays, Kevin Mason, Kentucky Department of Education and Danny Reeves, Greenebaum Doll & McDonald.

The first item on the agenda was a de novo hearing in the matter of Jermaine Garrard, Paris High School. Mr. Saylor announced that the hearing would be in Closed Session and then swore in Jermaine's parents, Maurice and Janet Garrard, Principal Darrell Treece, Paris High School and Commissioner Stout, all of whom might be called upon to testify. The Garrards and the Association were represented by legal counsel. Following testimony and questions by the Board members, Wendell Thomas made a motion, seconded by Gary Kidwell, that the Board go into Executive Session. The motion passed. Bill Beasley then made a motion, seconded by Gary Kidwell, to return to Open Session. The motion passed. No action was taken during Executive Session.

Mr. Saylor then recessed the regular meeting until 9:00 a.m., Thursday, September 30, 1999.

President Saylor reconvened the meeting of the Board of Control on Thursday, September 30th at 9:00 a.m. All Board members were present except Cynthia Elliott and Jim Sexton. Also present were Commissioner Louis Stout, Executive Assistant Commissioner Brigid

DeVries, Assistant Commissioners Larry Boucher and Julian Tackett, SID Butch Cope, Ken Tippett and Anne Wesley Mays.

Roland Williams was called on for the Invocation.

In the appeal of Jermaine Garrard, Betsy Glover made a motion to deny the appeal as premature. Kathy Johnston seconded the motion which passed 13-1. (Mr. Saylor disqualified himself from voting.) The Board issued the following Conclusions of Law:

As stated in the motion, the Board of Control believes that the issues raised by this appeal are not ripe for review. In order to consider the arguments presented by the Garrards, the Board must assume either: (a) that Jermaine will not pass his current classes and, therefore, be required to return to Paris High School for an additional school year or (b) receive sufficient credits to graduate but return to Paris in hopes of receiving better grades. Facts have not been presented which would allow the Board of Control to adequately assess either possibility. Further both possibilities assume Jermaine is not the type of student that would be offered a scholarship by an Ivy League school. Such an assumption is contrary to representations made by the Garrards and Paris High School.

While the Board does not wish to preclude the Garrards or Paris High School from raising an appeal if and when it becomes appropriate, the parties should be advised that either possibility outlined above would be subject to the provisions of Bylaw 4, Section 1 (b). At this time, the Board does not believe that the arguments made by the Garrards would support a waiver of this particular provision.

Kathy Johnston made a motion, seconded by Betsy Glover, to approve the minutes of the July 22-23, 1999, meeting. The motion passed unanimously.

Betsy Glover made a motion, seconded by Dale Stewart, to approve the minutes of the Special Meeting held on August 25, 1999. The motion passed unanimously.

Bill Beasley made a motion that all bills of the Association for the period July 1 - August 31, 1999 be approved. Gary Kidwell seconded the motion which passed unanimously.

The next items on the agenda were consideration of the Hearing Officer's Recommendations which were heard on August 16th. Cookie Henson made a motion, seconded by Bill Beasley, to accept the Hearing Officer's Recommendation on the following appeal. The motion passed unanimously.

No.	Bylaw	Student	School	Findings
#449	6	Aaron M. Troutman	Bullitt Central HS	Eligible

Bill Beasley made a motion, seconded by Cookie Henson, to accept the Hearing Officer's Recommendation on the following appeal. The motion passed unanimously. Mr. Thomas recused himself from voting.

No.	Bylaw	Student	School	Findings
#452	6	Carter Polsgrove	Christian Acad.-Louis.	Eligible

Bob Rogers made a motion, seconded by Jerry Taylor, to accept the Hearing Officer's Recommendation on the following appeal. The motion passed 13-0. Mr. Williams recused himself from voting.

No.	Bylaw	Student	School	Findings
#451	6	Joseph C. Bailey, Jr.	Bardstown	Ineligible

Betsy Glover made a motion, seconded by Kathy Johnston, to accept the Hearing Officer's Recommendation on the following appeal. The motion passed 13-0. Mr. Dearborn recused himself from voting.

No.	Bylaw	Student	School	Findings
#454	6(2)	Matija Bogadi	Franklin County HS	Ineligible

Dale Stewart made a motion, seconded by Roland Williams, to accept the Hearing Officer's Recommendation on the following appeal. The motion passed unanimously.

No.	Bylaw	Student	School	Findings
#455	6	Anthony W. Woodard	Harrodsburg HS	Ineligible

Gary Dearborn made a motion, seconded by Kathy Johnston, to accept the Hearing Officer's Recommendation on the following appeal. The motion passed 10-4.

No.	Bylaw	Student	School	Findings
#450	6(2)	Regina Sertschnigg	Somerset HS	Ineligible

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Cookie Henson made a motion, seconded by Dale Stewart, to set aside the Hearing Officer's Recommendation on Case #453, in the matter of Spencer Lowry, Lexington Catholic HS. Following deliberations, the motion passed 11-3. In support of its decision, the Board of Control issued the following Findings of Fact, Conclusions of Law and Final Order.

Findings of Fact

While the Board of Control concurs with the Hearing Officer's Findings of Fact issued on August 23, 1999, the Board further finds as follows:

1. Spencer Lowry has attended school for eight consecutive semesters following his enrollment in the ninth grade.
2. Spencer Lowry has been physically able to attend high school for each semester following his entry into ninth grade in spite of his documented learning disability.

Conclusions of Law

1. Section (c) of KHSAA Bylaw 4 provides:
(c) Students enrolling in grade nine (9) shall have eight (8) consecutive semesters of eligibility from the date of first such enrollment provided the student is eligible according to all other bylaws.
2. KHSAA Bylaw 4(c) provides students entering the ninth grade with an objective standard by which they can clearly determine the duration of their high school athletic eligibility. While Bylaw 4 is, in part, intended to discourage the practice of holding students back in school for purposes relating to athletics (i.e., "redshirting"), the bylaw also serves other important purposes including encouraging students to complete high school in a timely manner as well as preserving the participation opportunities of students who progress through school in the normal course of eight consecutive semesters.
3. While Spencer Lowry has a documented learning disability, the U.S. Court of Appeals for the Sixth Circuit has held that the Michigan High School Athletic Association's application of its eight semester rule (the equivalent of Bylaw 4) to a student with a learning disability does not violate the Rehabilitation Act or the Americans With Disabilities Act. See McPherson v. Michigan High School Athletic Association, 119 F.3d 453 (6th Cir. 1997). Thus, the only basis for consideration of waiver of Bylaw 4 in this matter is pursuant to Paragraph 4 of the KHSAA Due Process Procedures which allows the KHSAA to restore the eligibility of a student in cases where strict application of the bylaw would be unfair to the student and the circumstances creating the ineligibility are clearly beyond the control of all the parties involved.
4. It is the conclusion of the Board of Control that discretionary waivers of Bylaw 4 are appropriate only under circumstances where, as a result of severe injury or illness, a student has been forced to withdraw from school for such a length of time that it becomes impossible for the student to complete high school in the normal course of eight consecutive semesters. Only under such limited circumstances does the Board find that the strict application of Bylaw 4 to be "unfair" to a student within the meaning of Paragraph 4 of the KHSAA Due Process Procedures. By limiting the exercise of its discretionary waiver authority to such limited circumstances, the participation opportunities of students progressing through school in the normal course are thereby preserved and the KHSAA's policy of encouraging students to complete high school in a timely manner is served.
5. Finally, the Board recognizes that the Hearing Officer made specific Findings of Fact that there was no athletic advantage being sought by Spencer Lowry, and that no recruiting is involved in this case. While evidence of redshirting, recruiting or athletic advantage may serve as additional reasons to deny a student a waiver of Bylaw 4 in a particular case, the Board finds that the absence of such evidence, such as in this case, does not necessarily suggest that waiver of Bylaw 4 is appropriate for the reasons stated in paragraph 3, Conclusions of Law, set forth above.

Final Order

Spencer Lowry is hereby declared ineligible to compete in interscholastic athletics at Lexington Catholic High School. This order constitutes the Final Order of the KHSAA in Appeal No. 453. This Final Order is subject to judicial review in accordance with KRS Chapter 13B.

No.	Bylaw Student	School	Findings
#453 4	Spencer Lowry	Lexington Catholic HS	Ineligible

Gary Dearborn made a motion, seconded by Bill Beasley, to accept the Hearing Officer's Recommendation on the following appeal. The motion passed 9-4. Mr. Cox recused himself from voting.

No.	Bylaw Student	School	Findings
#448 6	Lisa Fryman	Lafayette HS	Ineligible

President Saylor, Executive Committee Chairperson, then recommended the following items for the Board's approval:

1. Accept the 1998-99 Audit Report and Management Letter as presented by Miller, Mayer Sullivan & Stevens. Roland Williams seconded the recommendation, which passed.

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2. Repay \$75,000 to the Unrestricted Fund which was transferred to the General Fund previously for the purpose of paying legal services. Betsy Glover seconded the motion, which passed.
3. Set aside \$75,000 in the building prepayment reserve. Gary Dearborn seconded the motion, which passed.
4. Transfer a maximum of \$8,000 to Traditional Bank for 1998-99 Accrued Sick Leave per the Auditor. Dale Stewart seconded the motion, which passed.
5. Recommend a one-year waiver for Christian Academy - Louisville to remain in District 26 before being moved to District 28 in basketball for 2000-2001. Gary Kidwell seconded the motion, which passed 12-1 (Wendell Thomas refrained from voting).

Ms. Johnston, Chairperson, Individual Sports Committee, recommended that the Board approve the draft of the cross country and track alignment and send to the schools for response. The committee also recommends that a draft of the swimming revisions be distributed to the schools for feedback.

Team Sports Committee Chairperson Roland Williams, gave his committee's report:

1. State Fast Pitch Host Site Committees will be present at the November meeting to present their bids.
2. Northern Kentucky is the proposed host for the State Slow Pitch Tournament.
3. State Baseball site proposals will be presented at the November Board meeting.
4. Committee will study the current Volleyball Tournament format.

Ad Hoc Committee for Officials Chairperson Ken Cox, led a lengthy discussion regarding 3-person officiating and distributed a handout for the Board's information. He emphasized that the Board is not mandating that 3-person officiating be used in regular season games, but will be mandated during post season play.

Bill Beasley, Chairperson of the Museum Committee, called on Ms. DeVries who showed the final draft of the museum video which Phoenix Presentations is developing.

Bob Rogers, Chairperson of the Finance Committee, stated that the committee was very pleased with the Audit Report and congratulated the staff and Board, including former Board members.

Chairperson Ken Cox, Title IX Committee, gave the following report:

1. Advised the Board of the KSBA, KDE and KHSAA Seminars which were held on September 8th & 9th.
2. Reviewed the Title IX school visit outline.
3. Staff will finalize a checklist for implementation. Information from the seminars will be placed on the November Agenda.

Mr. Rogers, Constitution & Bylaws Committee Chairperson, advised the Board that he had no items which needed action. He stated that the committee would bring proposals for Board's consideration to be submitted to the Delegate Assembly in November. The committee will be looking at Bylaw 4, Enrollment; Bylaw 6, Transfer Rule; Bylaw 9, Other Eligibility Requirements and Regulations; Bylaw 25, Limitation of Seasons; and Bylaw 27, Requirement for Coaches.

Mr. Saylor requested that the Executive Committee meet at 1:00 p.m. on Tuesday, November 16.

Mr. Saylor called the Board's attention to miscellaneous items listed. 1) Eligibility report of rulings, July 1 to August 31, 1999, for their information; 2) Final version of the Host/USA Contract for information only; 3) Kentucky Board of Education Staff Note for their October

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meeting; 4) Ms. DeVries then gave a report on the National Federation Section II meeting which was held in Columbus, Ohio. She reported that it was an excellent opportunity for states to share their current concerns—some of those being 3-person officiating, eligibility problems and legal expenses; 5) Budget Status Report as of September 30, 1999, which was a part of the Audit report; 6) KHSAA Policy & Procedure Manual to be distributed in November; 7) A discussion only was held regarding Open Gym with no revisions to current interpretations.

Betsy Glover made a motion for the Board to go into Executive

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Session to discuss legal matters. Wendell Thomas seconded the motion, which passed. Wendell Thomas then moved to return to Open Session, seconded by Betsy Glover. The motion passed unanimously. No action was taken during Closed Session.

The Board voted to meet in Special Session on Wednesday, October 20th at 3:00 p.m. to consider the Hearing Officer's Recommendations for September. Mr. Saylor announced the next regular meeting of the Board is scheduled for Tuesday and Wednesday, November 16-17, 1999.

There being no further business to come before the Board, Ms. Glover made a motion to adjourn. The meeting adjourned at 12:00 noon.

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