

BOARD OF CONTROL MINUTES - MAY 2003

President Eddie Saylor convened the regular meeting of the Board of Control on Thursday, May 22, 2003 at 8:30 a.m. All Board members were present except Lonnie Burgett, Ken Hurt, L.V. McGinty and Jeff Perkins. 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. Kentucky Department of Education liaison, Michael Dailey and KHSAA legal counsel, Ted Martin, were also present. Guests included new Board members Stan Hardin and Robert Schneider, who will begin serving their terms in July, 2003.

Gary Dearborn was called on for the invocation.

President Saylor asked the record to show that twelve Board members were present, and that nine votes were needed to pass any eligibility motions.

The next item on the agenda was consideration of the Hearing Officer's Recommendations (Cases in which the student was recommended to be eligible). Gary Dearborn made a motion, seconded by Paul Dotson, to uphold the Hearing Officer's Recommendation on the following appeal. After some discussion, the motion and second were withdrawn, and another motion was made to remand the case back to the Hearing Officer for further clarification on the timeline and dates of the lease agreement and purchase of the lot. The motion failed 5-7. Cynthia Elliott then made a motion, seconded by Gary Dearborn to overturn the Hearing Officer's Recommendation, based on the date of enrollment. The motion failed 8-4. After more discussion, Cynthia Elliott made a motion, seconded by Gary Dearborn to overturn the Hearing Officer's Recommendation on the following appeal. The motion passed 10-2: No., Bylaw, Findings

#728, 6, Ineligible Findings of Fact

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

- a., the finding there was a bona fide change in residence by the student and his parents;
 - b., any findings regarding facts subsequent to the date of enrollment at the receiving school on January 6, 2003, because, under Bylaw 6, Section 1 ("Bylaw 6"), "determinations of whether a student shall be granted a waiver...shall be based on the circumstances existing as of the date of enrollment at the new school."
2. The KHSAA Board further finds that:
- a. Eric participated for the sending school in varsity basketball on January 4, 2003, three days after the date of the "Residential Lease Agreement" and, ac-

ording to the letter dated March 3, 2003 from counsel for the student, he and his parents have been living at the address since January 1, 2003;

b. the "Residential Lease Agreement" omits the date it was signed by the parents and the owner or designated building manager;

c. The student transferred on Monday, January 6, 2003, merely two days after last participating in varsity basketball at the sending school;

d. even though the "Residential Lease Agreement" for the residence allegedly commenced on January 1, 2003, the receiving school Entry Form" is dated January 6, 2003 but lists the old address and the "Student Profile" at the receiving school is dated April 14, 2003 but lists the old address.

Conclusions of Law

1. This 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. This transfer does not meet a specific, enumerated exception to Bylaw 6. The only exception at issue was the bona fide change in residence exception. Contrary to the Hearing Officer's conclusion, there was not a bona fide change in residence by the student and his parents. The Hearing Officer found that:

The evidence presented at the hearing was not convincing. Inferences from some of the evidence presented at the hearing could have led to a conclusion that there had not been a bona fide change of residence but that the family had simply rented an apartment for six months in order to avoid the impact of the transfer rule.

Based on a contract for sale dated April 18, 2003 and a survivorship deed dated April 23, 2003, the Hearing Officer found a bona fide change in residence. Under Bylaw 6, however, circumstances occurring after the date of enrollment are not to be considered. Because the contract for sale and deed are dated nearly three months after the date of enrollment in this case, it should not have been considered by the Hearing Officer. The KHSAA Board thus finds that there was not a bona fide change in residence based on the Hearing Officer's findings absent the consideration of circumstances occurring after the date of enrollment, the other findings by the KHSAA Board, and the whole record.

3. This transfer does not merit a waiver of Bylaw 6 under the discretionary Due Process Procedure waiver provision because strict application of Bylaw 6 is not unfair to him and the circumstances creating the ineligibility are not *clearly* beyond the control of all the parties involved. There is no other evidence in the record sufficient to support a waiver. Further, a waiver would be contrary to past case situation rulings, have

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a depreciative value on future enforcement of Bylaw 6, and set an undesirable precedent.

Kathy Johnston made a motion, seconded by Steve Parker, to uphold the Hearing Officer's recommendation on the following appeal. The motion passed 9-3:

No., Bylaw, Findings
#729, 6, Eligible

Jerry Taylor made a motion, seconded by Kathy Johnston, to overturn the Hearing Officer's recommendation on the following appeal. The motion passed 11-1:

No., Bylaw, Findings
#730, 4, Ineligible

Findings of Fact

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

Conclusions of Law

2. This student is permanently ineligible under Bylaw 4, Section 1 ("Bylaw 4") because he has exhausted his eight (8) semesters of eligibility as defined in Bylaw 4 and is in his fifth year of high school.

3. This student is not entitled to a waiver of the application of Bylaw 4 because the record does not show that his right to basic education services was impacted due to illness or injury, which is the standard for waivers under Bylaw 4. A waiver would be contrary to past case situation rulings, have a depreciative value on future enforcement of Bylaw 4, and set an undesirable precedent.

Cynthia Elliott made a motion, seconded by Robert Stewart, to uphold the Hearing Officer's recommendation on the following appeal. The motion failed 6-6. Robert Stewart then made a motion, seconded by Gary Dearborn to overturn the Hearing Officer's recommendation. After some discussion, they both withdrew their motions. Paul Dotson then made a motion, seconded by Betsy Glover, to uphold the Hearing Officer's recommendation on the following appeal. The motion passed unanimously: The Board requested a letter be sent to the Cabinet for Families and Children, with a copy to Mayfield High School regarding the abuse allegations provided in the file.

No., Bylaw, Findings
#731, 6, Eligible

The next item on the agenda was consideration of the Hearing Officer's Recommendations (Cases in which the student was recommended to be ineligible). Kathy Johnston made a motion, seconded by Chuck Broughton, to uphold the Hearing Officer's recommendation on the following appeal. The motion passed 10-2:

No., Bylaw, Findings
#725, 6, Ineligible

Gary Dearborn made a motion, seconded by Cynthia Elliott, to overturn the Hearing Officer's recommendation on the following appeal. The motion failed 4-8. Paul Dotson then made a motion, seconded by Chuck Broughton, to uphold the Hearing Officer's recommendation on the following appeal. The motion passed 9-3:

No., Bylaw, Findings
#726, 6, Ineligible

Gary Dearborn made a motion, seconded by Kathy Johnston, to uphold the Hearing Officer's recommendation on the following appeal. The motion passed unanimously:

No., Bylaw, Findings
#727, 6, Ineligible

Kathy Johnston made a motion, seconded by Betsy Glover, to go into Executive Session to discuss legal matters pending and personnel issues. The motion passed unanimously. Kathy Johnston made a motion, seconded by Sally Haeberle, to return to open session. The motion passed unanimously. No action was taken during the closed session.

Sally Haeberle made a motion, seconded by Betsy Glover, to approve the minutes of the March 28, 2003 regular meeting and the April 28, 2003 special meeting. The motion passed unanimously.

Gary Dearborn made a motion that all bills of the Association for the period March 1, 2003 through April 30, 2003 be approved. Sally Haeberle seconded the motion, which passed unanimously.

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

1. The Board met with the KHSADA Political Action Committee.
2. The Foreign Student Exchange Program was tabled until the July Board meeting.
3. The discussion on composition, compensation and meetings of Sports Committees was tabled until the July Board meeting.
4. The year end progress report and Commissioner and Office evaluation system discussion was tabled until the July Board meeting.
5. The oral reports on certain review items were tabled until the July Board meeting.
6. Basketball alignment issues will be discussed at the July Board meeting, when an additional map will be distributed to the Board.
7. A review of Internal and External Fundraising to date was presented by Director of Promotions and Media Relations Butch Cope.
8. New formats for periodic financial data review were presented by Assistant Commissioner Julian Tackett and Lonnie Burgett.

President Saylor, Executive Committee Chairperson, then asked the record to show that the following

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motions were voted on:

1. Sally Haeberle made a motion, seconded by Kathy Johnston, to approve the Musco Lighting Contract and Extension, effective 3/03 - 2/06. The motion passed unanimously.
2. Sally Haeberle made a motion, seconded by Gary Dearborn, to accept the Rawlings proposal #2, to include "post-season" wording in the contract. The motion passed unanimously.
3. Jim Sexton made a motion, seconded by Robert Stewart, to award the University of Louisville (Papa John's Stadium) the 2003 and 2004 State Football Championships, pending installation of the new playing surface. The motion passed unanimously.
4. Jim Sexton made a motion, seconded by Chuck Broughton, to notify the Kentucky State Fair Board of the decision to move the State Football Championship to Papa John's Stadium. The motion passed unanimously. The Board also requested staff to write a letter of commendation to the KFEC staff and board, thanking them for all their years of service with the KHSAA during past football championships. They also requested a similar letter be sent to Jim Watkins, for all his behind the scene work efforts.
5. A motion was made by Paul Dotson, seconded by Betsy Glover, to award Mutual of Omaha the catastrophic insurance policy for one year at a cost of \$132,200. The Board requested that schools be notified of this benefit through the Commissioner's Notes.
6. Gary Dearborn made a motion, seconded by Sally Haeberle, to approve the Commissioner's recommended personnel actions for one current and one prospective staff member. The motion passed unanimously.
7. Paul Dotson made a motion, seconded by Kathy Johnston, to approve a 2.7% pay raise for the staff salary schedule and a flat increase of \$750/yr. for the part-time custodial position. The motion passed unanimously.
8. Kathy Johnston made a motion, seconded by Sally Haeberle, to approve the draft 2003-2004 budget with the recommended designations being made. The designations included allocating the previous Legal Defense Reserve to current year legal expenses; allocating \$10,000 of the Physical Plant Reserve for current year expenses; liquidating the Sports Information Director Reserve for the Student Leadership Conference; setting aside \$50,000 of prior year carry forward to restore the Physical Plant Reserve and setting aside \$50,000 of the prior year carry forward to restore the legal Defense Reserve. The motion passed unanimously. It was noted during the Budget Presentation that more than \$30,000 is expended annually by the Association to pay the

trophy and medal costs for non-state events during individual sports (i.e. Cross Country Regions, Wrestling Regions, Golf Regions, Swimming Regions, Track Regions and Tennis Regions.)

9. Robert Stewart made a motion, seconded by Cynthia Elliott, to approve the 2003-2004 Board of Control meeting schedule, with the proposed May date change from the 19-20th to the 17-18th. The motion passed unanimously. Gary Dearborn expressed the possibility of the May Board meeting being held in conjunction with the annual Athletic Director's Meeting in Louisville, or more Board members attending this conference.

Jim Sexton, Chairperson, **Constitution & Bylaws Committee**, asked the record to show that:

1. No referendums will be sent by the KHSAA regarding Board composition, Board term limits, out-of-state students participating in athletics or foreign exchange students, but previously submitted proposals would be presented to the Delegate Assembly Meeting in January, 2004.
2. Explain the KDE timeline for approving Bylaw changes in the C-notes, so schools will know why it wouldn't make a difference if a referendum was sent now, or voted on in January for when the change would be implemented.
3. Moving the Annual Delegate Assembly Meeting to the fall was discussed, to help with the timeline issues.
4. Updating Bylaw 25 by calculating the maximum number of contests in each sport was discussed.
5. Making Volleyball and Soccer corresponding dates the same as Wrestling (a fixed date for the start of practice) was discussed.

Gary Dearborn, Chairperson, **Team Sports Committee**, asked the Board to approve the following motion:

1. Chuck Broughton made a motion, seconded by Sally Haeberle, to award the city of Owensboro the site for the 2004 and 2005 Fast Pitch Softball State Championship Tournaments. The motion passed 10-2.

The next item on the agenda was election of officers, effective July 1, 2003. Jerry Taylor made a motion, seconded by Robert Stewart, to elect Jim Sexton as Vice President of the KHSAA Board of Control. The motion passed 11-0 with one (Jim Sexton) recusal. Eddie Saylor made a motion, seconded by Chuck Broughton, to elect Paul Dotson as President of the KHSAA Board of Control. The motion passed 11-0 with one (Paul Dotson) recusal. The Board congratulated both of these gentlemen on their election.

Commissioner DeVries will update the Board on the NFHS legal meeting at the July Board of Control meeting.



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Mr. Saylor then called the Board's attention to miscellaneous items listed for their information only. 1) Set date for Special Board Meeting in June to consider May appeals; 2) Review dates for the next regular Board of Control Meeting, July 14-15th in Lexington; 3) Miscellaneous Board and staff items.

For the record, Football Heat Index Recommendations from the KMA have been distributed to schools and the Board.

All Board of Control members expressed their thanks to outgoing Board member Kathy Johnston for her dedication and commitment during her eight years of service as a Board member, including a year as Vice President and one as President. The Board also expressed their appreciation to past President, Eddie Saylor, for his leadership during his tenure in office.

The Board welcomed new Board of Control members Stan Hardin, Holy Cross-Louisville and Robert Schneider, Newport Central Catholic, who were present, and Paula Goodin, Pineville, who was unable to attend.

There being no further business to come before the Board, Kathy Johnston made a motion to adjourn. The motion was seconded by Betsy Glover, and passed unanimously. The meeting adjourned at 11:30 a.m.

Eddie Saylor
Betsy Glover

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