

Board of Control Meeting Minutes - September 2004

President Jim Sexton convened the regular meeting of the Board of Control on Thursday, September 16, 2004 at 2:00 p.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 Tippet and Office Manager Darlene Koszenski. KHSAA legal counsel, Ted Martin, was also present.

Gary Dearborn had a moment of reflection, followed by the Pledge of Allegiance, led by Assistant Commissioner Larry Boucher.

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

L.V. McGinty made a motion, seconded by Lonnie Burgett, to go into Executive Session to discuss pending legal cases with Ted Martin. The motion passed unanimously. L.V. McGinty made a motion, seconded by Chuck Broughton, to come out of Executive Session. The motion passed unanimously. No action was taken during 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

#853, 6, Eligible
Overturn (McGinty), Parker, 14-1-1 (Jackson) Ineligible-A

#854, 6, Eligible
Overturn (Dotson), Stewart, 15-0-1 (Broughton)
Ineligible-B

#849, 6, Ineligible
Accept, 16-0
Ineligible

#850, 6, Ineligible
Accept, 16-0
Ineligible

#851, 6, Ineligible
Accept, 16-0
Ineligible

#852, 6, Ineligible
Accept, 16-0
Ineligible

#855, 6, Ineligible (Exceptions)
Accept, 16-0
Ineligible

#856, 6, Ineligible (Exceptions)
Accept, 16-0
Ineligible

#844, 6, Reconsider Final Order & Present Oral Argument
Overturn (McGinty), Parker, 11-3-1 (Deaton)
Eligible-C

A-Findings of Fact-Case #853
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 the 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, the 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 the 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, the student had control over their academic and behavioral problems while at the sending school. Further, the student's psychologist, in his letter dated February 27, 2004, stated that "[t]he prospect of playing football at the receiving school was a key motivator for the school transfer that has proven so successful . . ." Thus, while the Board will not prevent the 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 #854

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. The Board does note that the finding of fact by the Hearing Officer that "The student was diagnosed with attention deficit disorder prior to moving into his father's home" cannot be reconciled with the letter from the student's mother, contained in the record which states that "soon after he moved in with his father, student was diagnosed with ADD and possible Bipolar Disorder."

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. Student's transfer is subject to Bylaw 6 because he 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. Indeed, the student did not satisfy the ACADEMIC CONCERNS exception at Bylaw 6(f) because the sending school was not in the lowest category as determined by the Kentucky Board of Education under KRS 158.6455.

The only other grounds for a waiver of Bylaw 6 are 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 student and that the transfer was for reasons beyond the control of all involved parties. First, if academics is the real motivation for the transfer, the application of Bylaw 6 is not unfair because the student may receive his education at receiving school. Second, there was insufficient evidence presented by the student that the transfer was not for reasons beyond the control of all involved parties. The record contains: (1) no documentation to support the student's allegations that the sending school refused to offer him federally mandated education services after he was diagnosed with a

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qualified learning disability; (2) no documentation to support a diagnosis of a qualified learning disability and there was no testimony by a physician or other professional to this effect; and (3) no documentation showing the federally mandated services the student claims to be receiving at the receiving school which were not given or offered by the sending school.

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 grounds 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 the 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 his transfer.

L.V. McGinty made a motion, seconded by Steve Parker, to go into Executive Session. The motion passed unanimously. L.V. McGinty made a motion, seconded by Steve Parker, to come out of Executive Session. The motion passed unanimously. No action was taken during Executive Session.

C-Findings & Conclusion-Case #844

The record, including the recommended order along with any exceptions duly filed, was distributed to the members of the KHSAA Board in advance of the meeting. After viewing the videotape of the administrative hearing, listening to oral argument and reconsidering the record, the KHSAA Board voted to UPHOLD the Hearing

Officer's recommended order and overturn the Board of Control's prior ruling issued on August 30, 2004. Thus, the student is immediately ELIGIBLE to participate in interscholastic athletics at the receiving school. Present for the proceedings were: Jamie Hargrove, Stoll, Keenon & Park; Greg Thornton, Clark & Ward; Lance & Monique Hayden, Parents; Paul Rains & Brad Walls, Lexington Christian Academy. Mr. Seaton asked that the record show that there was no "closed door" meeting with Montgomery County school personnel and Ken Tippett during the process.

President Sexton, **Executive Committee** Chairperson, then asked the Board to approve the following motions:

1. Lonnie Burgett made a motion, seconded by Ozz Jackson, to approve the Association bills for July 1, 2004 through August 31, 2004. The motion passed unanimously.
2. Stan Hardin made a motion, seconded by Jeff Perkins, to reverse the dates for the Boys' and Girls' Basketball State Championships in 2007, due to a conflict with Rupp Arena and the NCAA. The motion passed unanimously.
3. Donna Wear made a motion, seconded by L.V. McGinty, for staff to proceed with carpet and interior proposals for the office. The motion passed unanimously.

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

1. The President's goals and objectives were reviewed.
2. Staff reported on the Annual Meeting voting procedure.
3. Commissioner DeVries updated the Board on the Section II meeting, to be held in Louisville on September 26-28, 2004. All Board members are invited to attend.

Paula Goodin, acting Chairperson, **Title IX Committee**, noted that items from the Committee were discussed with no action taken.

Steve Parker, Chairperson, **Museum/Hall of Fame Development Committee**, noted that items from the Committee were discussed with no action taken.

Jerry Taylor, Chairperson, Football Committee, asked the Board to approve the following motions:

1. Paul Dotson made a motion, seconded by Jeff Perkins, to move Johnson Central to Region 4, District 8 in Class 3A Football for the 2005-2006 school year, based on a review of enrollment numbers from 2000-

2001. The motion passed unanimously. 2. Ozz Jackson made a motion, seconded by Robert Stewart, for Letcher County Central to be placed in the proper district when the three area schools consolidate in 2005 and immediately be eligible for playoffs. The motion passed unanimously.

Paul Dotson, Chairperson, **Constitution and Bylaws Committee**, asked the Board to approve the second reading on the following proposals (first reading already considered):

1. Proposals to Amend the Constitution, and Bylaw 23 to clarify KHSAA restrictions for in-state opponents and to codify the Commissioner's ability to handle on a case by case basis, isolated contract issues. A motion was made by Jim Sexton, seconded by Bob Stewart, and passed unanimously.
2. Proposals to Amend the Constitution, and Bylaw 23 to clarify KHSAA restrictions for out of state opponents, codify Commissioner's ability to handle on a case by case basis, isolated contract issues, and restrict play to members of other state associations. A motion was made by Mike Deaton, seconded by Chuck Broughton, and passed unanimously.
3. Proposal to amend Bylaw 6, Section 1, to make minor adjustments to the definition of a bona fide change of address. A motion was made by Jeff Perkins, seconded by Donna Wear, and passed 15-1.
4. Proposal to amend Bylaw 6, Section 1, to eliminate the state testing exception from the transfer rule on advice from counsel and after consultation with Department of Education Officials. A motion was made by Ozz Jackson, seconded by Chuck Broughton, and passed unanimously.
5. Proposal to amend Bylaw 6, Section 1 to allow for a waiver of the period of ineligibility for those students who did not participate in interscholastic athletics during the immediately preceding school year, whether at the sending or receiving school. A motion was made by Chuck Broughton, seconded by Stan Hardin, and passed unanimously.
6. Proposal to amend Bylaw 6, Section 2, to place in the rule the restriction on direct placement of students and restrictions on excessive assistance by host families. A motion was made by Jeff Perkins, seconded by Stan Hardin, and passed 15-1.
7. Proposal to amend Bylaw 16 to require the submission of requests for investigation and violations of rules to be in writing. A motion was made by Lonnie Burgett, sec-

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ended by Donna Wear, and passed unanimously.

8. A motion was made by Ozz Jackson, seconded by Stan Hardin, to send out all the proposals to schools with the October Commissioner's Notes. The motion passed unanimously.

L.V. McGinty, Chairperson, **Officials Policy Committee**, asked the Board to approve the following motions:

1. Lonnie Burgett made a motion, seconded by Jerry Taylor, to set a minimum \$40 fee for Swimming officials effective for the 2005-2006 season. For invitational meets or those with four or more schools entered, the fee shall be \$60 per official. Beginning in 2005-2006, the fee for officiating regional swim meets shall be a minimum of \$65 plus applicable travel for officials. The motion passed unanimously.

2. Lonnie Burgett made a motion, seconded by Mike Deaton, that beginning in 2005-2006, the fee for officiating a standard school day or half-day (3 hours or less) weekend Track meet shall be a minimum of \$45 per division for the two licensed officials (Referee & Starter) For larger meets that require longer than three hours, the fee shall be \$65 per official for the two licensed officials (Referee & Starter). If additional referees are hired at the discretion of the meet management, they shall receive the same fee. Beginning in 2005-2006, Regional Track meet assigned officials shall be paid a minimum fee of \$65 per classification.

Beginning in 2005-2006, the fee for officiating a standard Cross Country meet shall be a minimum of \$30 per race for the Meet Referee, who shall be a licensed Track and Field Official. If additional referees are hired at the discretion of meet management, they shall receive the same fee. Beginning in 2005-2006, Cross Country Regional meet assigned officials shall be paid a minimum fee of \$35 per race. The motion passed unanimously.

3. Bob Stewart made a motion, seconded by Lonnie Burgett, effective with the 2005-2006 season, for Volleyball officials to receive \$37.50 per match during regular season; \$42.50 per match during district competition (in the case where an official is required to travel outside of the local assigning area by virtue of the assignments, the fee shall be increased by \$5 per person, per contest); \$47.50 per match during regional competition (in the case where an official is required to travel outside of the local assigning area by virtue of the assignments, the fee shall be increased by \$5 per person, per contest); and, state tournament officials shall be paid \$52.50 per contest. The motion passed unanimously.

Mr. McGinty, noted for the record that discussing a flat fee for post-season play eliminating mileage reimbursement, would be taken off the agenda as a discussion item.

President Sexton then called the Board's attention to miscellaneous items listed for

their information only. 1) Confirm date for the Special Board Meeting in October to consider August and September appeals; 2) Review dates for the next regular Board of Control Meeting, November 17-18th in Lexington; 3) Miscellaneous Board and staff items.

Since there are 33 appeals to consider, a special called meeting is necessary, and is scheduled for Thursday, October 21st at 8:30 a.m.

Commissioner DeVries reminded the Board that Assistant Commissioner Tackett was compiling the responses and suggestions regarding the draft basketball re-alignment, and that the committee will meet at the November meeting.

She also requested that FACTS be added to the November agenda for consideration as a financial aid agency.

Mike Dailey stated that the Kentucky Board of Education is reviewing nominees for a replacement for Cynthia Elliott.

Assistant Commissioner Roland Williams asked that Boys' and Girls' State Soccer Site Proposals be presented at the November meeting.

There being no further business to come before the Board, Paul Dotson made a motion to adjourn. The motion was seconded by Donna Wear, and passed unanimously. The meeting adjourned at 4:40 p.m.

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