Board of Control Meeting Minutes - October 2004

President Jim Sexton convened the special meeting of the Board of Control on Thursday, October 21, 2004 at 10:40 a.m. All Board members were present. Also present were Commissioner Brigid DeVries, Assistant Commissioners Larry Boucher, Julian Tackett and Roland Williams, Fundraising Consultant Ken Tippett and Office Manager Darlene Koszenski. Ted Martin, KHSAA Legal Counsel was also present.

Paula Goodin provided a moment of reflection.

Assistant Commissioner Julian Tackett led the Pledge of Allegiance.

President Sexton stated for the record that all seventeen Board members were present, and that nine votes were needed to pass any eligibility motions.

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

862, 6, ELIGIBLE
Overturn (Perkins), Dotson, 17-0
Ineligible - A

865, 6, ELIGIBLE
Overturn (Dearborn), Taylor, 15-2
Ineligible - B

870, 6, ELIGIBLE
Uphold (McGinty), Deaton, 17-0
Eligible

874, 6, ELIGIBLE
Uphold (Stewart), Dotson, 16-1
Eligible

875, 6, ELIGIBLE
Uphold (Dotson), Perkins, 15-2
Eligible

876, 6, ELIGIBLE
Uphold (Stewart), Perkins, 15-1-1
(Sexton)
Eligible

884, 6, ELIGIBLE
Uphold (Dotson), Dearborn, 16-1
Eligible

886, 6, ELIGIBLE
Uphold (Dearborn), Haeberle, 16-1
Eligible

888, 6, ELIGIBLE
Uphold (Jackson), Perkins, 16-1
Eligible

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857, 6, INELIGIBLE
Uphold (Haeberle), Deaton, 11-6
Ineligible

858, 6, INELIGIBLE
Uphold (Stewart), Burgett, 17-0
Ineligible

859, 6, INELIGIBLE
Uphold (Perkins), Haeberle, 17-0
Ineligible

860, 6, INELIGIBLE
Uphold (McGinty), Deaton, 16-0-1 (Jackson)
Ineligible

866, 6, INELIGIBLE
Uphold (Dearborn), Broughton, 17-0
Ineligible

867, 6, INELIGIBLE
Uphold (Deaton), Burgett, 17-0
Ineligible

868, 6, INELIGIBLE
Overturn (McGinty), Parker, 16-1
Eligible - C

873, 6, INELIGIBLE
Uphold (Dearborn), Broughton, 17-0
Ineligible

878, 6, INELIGIBLE
Uphold (Dearborn), Perkins, 17-0
Ineligible

880, 6, INELIGIBLE
Uphold, 16-1
Ineligible

881, 6, INELIGIBLE
Uphold (Deaton), Haeberle, 17-0
Ineligible

882, 6, INELIGIBLE
Uphold (Perkins), Haeberle, 17-0
Ineligible

887, 6, INELIGIBLE
Uphold (Dotson), Stewart, 9-8
Ineligible

877, 4, INELIGIBLE
Uphold (Deaton), Haeberle, 17-0
Ineligible

861, 6, EXCEPTIONS
Uphold (Dotson), Perkins, 17-0
Ineligible

863, 6(2), EXCEPTIONS
Uphold (Dearborn), Broughton, 16-0-1 (Dotson)
Ineligible*

864, 6, EXCEPTIONS
Uphold (Dearborn), Wear, 17-0
Ineligible

869, 6, EXCEPTIONS
Uphold (Perkins), Dotson, 17-0
Ineligible

871, 6, EXCEPTIONS
Uphold (Dearborn), Burgett, 15-1-1 (Schneider), Ineligible

872, 6, EXCEPTIONS
Uphold (Dotson), Deaton, 17-0
Ineligible

879, 6, EXCEPTIONS
Uphold (Dearborn), Haeberle, 14-1-2 (Deaton & Perkins)
Ineligible*

883, 6, EXCEPTIONS
Uphold (Taylor), Perkins, 17-0
Ineligible

885, 6, EXCEPTIONS
Uphold (Perkins), Dotson, 14-3
Ineligible

*The Board asked staff to research possible Bylaw 10 violations in the evidence of these two cases.

A-Findings of Fact-Case #862

1. Student A attended the sending school during his ninth and tenth grade years. Student B attended the sending school during the fall of his ninth grade year, and Carter Christian Academy during the spring of his ninth grade year. They both participated in varsity soccer at the sending school. On May 21, 2004, Student A withdrew from the sending school, and Student B withdrew from the sending school on January 16, 2004. On July 19, 2004, they enrolled at the receiving school.
2. On the Transfer Forms for both of them, the receiving school Athletic Director and the sending school Athletic Director indicated that the students did not meet an enumerated exception to Bylaw 6, Section 1 ("Bylaw 6"). Neither student had a change in residence.
3. They have three younger siblings. The family decided that these siblings should attend Carter Christian Academy, a private school which charges tuition. The family also decided that Students A & B should attend the receiving school, a public school, in order to help free up money to pay for their siblings' tuition. However, when they were first enrolled at the sending school for high school, the family was aware that the costs of tuition for the younger siblings would have to be paid while Students A & B were at the sending school. They could have enrolled at the receiving school to begin high school. Further, the family has always lived the same distance from the sending school.

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 A & B transfers are 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, their transfers do 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 them and that the transfer was for reasons beyond the control of all involved parties. The decision to transfer was a decision by the family as to which siblings would attend a private school that charges tuition. When they enrolled at the sending school for high school, the family knew that tuition would have to continue to be paid for them to continue at the sending school. The family also knew that tuition would be charged for the other siblings to continue to attend Carter Christian Academy. The family could have decided that they would attend the receiving school to begin high school, but made a voluntary decision for them to attend the sending school. Likewise, the family made a voluntary decision that they would transfer to the receiving school. Further, even

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though insufficient to support a waiver under Bylaw 6 if proven, there was no change in the distance the family had to drive to the sending school. Thus, the transfers do not meet the waiver provision.
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 Students A & B transferred due to recruiting or were otherwise athletically motivated, Bylaw 6 still applies to their transfers.

B-Findings of Fact-Case #865
1. The student attended the receiving school during his ninth grade year. He attended the sending school in Macon, Georgia during his tenth and eleventh grade years, and participated in varsity basketball. On May 30, 2004, he withdrew from the sending school and on June 7, 2004, he enrolled at the receiving school for his twelfth grade year.
2. The student lived with his uncle when he attended high school during his ninth grade year. After his freshman year, the student's mother required him to go to Georgia to live with her. The student has always wanted to return to the receiving school to graduate with his friends, but his mother would not let him return until he turned eighteen. The student turned eighteen midway through his junior year and, although he wanted to return to the receiving school at that time, he was convinced by his uncle and/or receiving school principal to finish out the school year in Georgia.
3. Although there is a July 18, 2004 letter in the record from the student's mother purporting to grant custody and guardianship to his uncle, that grant is ineffective as the student turned eighteen almost six months earlier.
4. Although the student's mother indicated that she intended to move from Georgia to Flordia with her boyfriend, she still lived in Macon, Georgia at the time of the hearing.
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 he participated in varsity sports in Georgia 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. When he turned eighteen, the student made a voluntary decision to return to the receiving school for his twelfth grade year for subjective, personal reasons. In fact, there was no evidence that the student could not have continued to attend high school in Georgia.
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 his transfer.

C-Findings of Fact-Case #868
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 be waived for the following reasons:
1. The 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.
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 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.

At 11:00 a.m., Danville High School representatives appealed the Commissioner's penalty for playing an ineligible player under Bylaw 9 & 33. Present for the appeal were Principal Joseph Payne, Athletic Director & Football Coach Sam Harp, and Superintendent Bob Rowland. After considering the oral testimony and written record,

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Steve Parker made a motion, seconded by Sally Haeberle, to uphold Commissioner's DeVries original penalty. The motion passed unanimously.

Paul Dotson made a motion, seconded by Ozz Jackson, to approve the application for membership from the David School, and waive the post-season probationary period in 2005-06. The motion passed 16-1.

Gary Dearborn, **Team Sports Committee** Chairperson, asked the record to show that no action was taken.

Gary Dearborn, **Basketball Alignment Ad Hoc Committee** Chairperson, asked the record to show that no action was taken. He asked the staff to provide Board members with a copy of all the input received from the schools regarding the realignment.

The date for the next regular Board of Control meeting was reviewed. The Board will meet on Wednesday & Thursday, November 17-18, 2004 in Lexington, KY.

Commissioner DeVries distributed a DRAFT Member Schools Task Force list. She presented the Board with a resume for a prospective alternate Hearing Officer.

President Sexton asked that the final list of schools not in compliance with Title IX be printed in the next issue of the Commissioner's Notes.

There being no further business to come before the Board, Bob Schneider made a motion to adjourn. The motion was seconded by Jerry Taylor, and passed unanimously. The meeting adjourned at 1:20 p.m.