

Board of Control Meeting Minutes - November 2004

President Jim Sexton convened the regular meeting of the Board of Control on Thursday, November 18, 2004 at 9:30 a.m. All Board members were present. 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. KHSAA legal counsel, Phil Scott was also present.

Gary Dearborn provided the reflection.

Assistant Commissioner Larry Boucher led the Pledge of Allegiance.

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

Chuck Broughton made a motion, seconded by Lonnie Burgett, to amend the agenda and convene the Basketball Committee at 10:00 a.m. The motion passed unanimously.

Sally Haeberle made a motion, seconded by Donna Wear, to accept the minutes of the September 16, 2004 regular meeting and the October 21, 2004 special meeting. The motion passed unanimously.

L.V. McGinty made a motion, seconded by Sally Haeberle, to approve the bills of the Association from September 1, 2004 through October 31, 2004. The motion passed unanimously.

Sally Haeberle made a motion, seconded by Paul Dotson, to go into Executive Session to discuss pending litigation. The motion passed unanimously. Lonnie Burgett made a motion, seconded by Ozz Jackson, to come out of Executive Session. The motion passed unanimously. No action was taken during Executive Session.

Commissioner DeVries was requested to speak at the Superintendents meeting in December regarding the "No Child Left Behind" act.

Mike Fields, reporter for the Herald Leader joined the meeting.

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

893, 6, ELIGIBLE
Overturn (Stewart), Burgett, 9-7-1 (Hardin) Ineligible-A

894, 6, ELIGIBLE
Uphold (Dearborn), Deaton, 15-1-1 (Sexton)
Eligible

407, 6, ELIGIBLE
Overturn (Dearborn), Deaton, 17-0
Ineligible-B

891, 6, INELIGIBLE
Uphold (Dotson), Parker, 17-0
Ineligible

892, 6, INELIGIBLE
Uphold (McGinty), Hardin, 17-0
Ineligible

896, 6, INELIGIBLE
Uphold (Dotson), Perkins, 16-0-1 (Jackson)
Ineligible

897, 6, INELIGIBLE
Uphold (Deaton), Perkins, 17-0
Ineligible

900, 5, INELIGIBLE
Uphold (Dotson), Parker, 17-0
Ineligible

890, 6, INELIGIBLE
Uphold (Hardin), Dotson, 16-0-1 (Dearborn)
Ineligible

895, 4, INELIGIBLE (EXCEPTIONS)
Uphold (Perkins), Wear, 17-0
Ineligible

898, 6, INELIGIBLE (EXCEPTIONS)
Uphold (Taylor), Dodson, 17-0
Ineligible

899, 6, INELIGIBLE (EXCEPTIONS)
Uphold (Parker), Haeberle, 17-0
Ineligible

889, 6, INELIGIBLE (EXCEPTIONS)
Uphold (McGinty), Parker, 17-0
Ineligible

A-Findings of Fact-#893

1. Student participated in varsity athletics at the sending school during his freshman, sophomore and junior years of high school.
2. On August 1, 2004, the student enrolled at the receiving school.
3. The sending school's wrestling coach had a strong, positive influence on the stu-

dent. The coach died in January, 2004. His death was very upsetting to the student. 4. Wrestling is important to the student. He maintains that participation in wrestling helps him focus and helps him with his ADHD.

5. The sending school had advertised for a new wrestling coach as of July 2, 2004, but one had not been hired as of August 9, 2004. The sending school hired a wrestling coach sometime after the first day of 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. 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 basis 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. The coach's death and the lack of a wrestling coach at the sending school prior to August 9, 2004 were circumstances beyond the student's control. However, there was no evidence that the student could not continue to attend the sending school. Rather, the student made a voluntary decision to attend the receiving school for his twelfth grade year in order to participate in athletics. Further, Bylaw 6 provides that a waiver will not be granted "[i]f the change in schools is motivated in whole or part by a desire to participate in athletics at the new school." Here, the student's transfer was wholly motivated by a desire to participate in athletics at the receiving school. Thus, a waiver is inappropriate.
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

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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, since the student's transfer was athletically motivated, as evidenced by the record of the hearing, Bylaw 6 applies to his transfer, and the ineligibility period should not be waived.

B-Findings of Fact-#407

1. The student participated in varsity basketball at the sending school during the 2003-2004 school year, which was her ninth grade year of high school.
2. On August 17, 2004, she enrolled as a sophomore at the receiving school.
3. The student and her parents moved into a rented apartment on April 22, 2004 because severe mold in their home had rendered it "unsafe for occupancy." On August 27, 2004, the student and her parents moved into a new home. Both the old and new homes were in the school district for North Oldham High School. The student's younger sister was diagnosed with diabetes during her ninth grade year at Sacred Heart. The student claimed to have become withdrawn and unhappy because of this diagnosis and the home problems.
4. Around the time that the family moved into their new home, she told her parents that she was unhappy at the sending school, in part because she missed her friends from middle school who had gone to the receiving 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. 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 in his Conclusion of Law No. 7, the student's transfer does not meet a specific, enumerated exception to Bylaw 6. The student did not file any exception to this conclusion.
3. The only other basis 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. The Hearing Officer's Conclusions of Law Nos. 8 and 9 are clearly erroneous in this regard. Indeed, the Hearing Officer based his recommendation on the conclusion that the student "felt no connection to the sending school" and "she wanted to be closer to her friends during an unsettling time in her life." There was no evidence or conclusion that the student could not attend the sending school or that any circumstances forced her to change schools. Rather, the only evidence was that this was a voluntary decision for subjective, personal reasons. While this decision may not have been athletically motivated, the evidence does not support a finding that a waiver should be granted under the KHSAA Due Process Procedure.
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 her transfer.

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

1. Internal and External fundraising reports were presented by Ken Tippett and Sheila Vaughn.
2. Discussion and adoption of the Commissioner's goals was tabled until the December meeting.

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

1. Paul Dotson made a motion, seconded by Sally Haeberle, to add FACTS Financial Aid Agency as an approved agency for the 2005-2006 school year. The motion passed unanimously.

Gary Dearborn, **Basketball Re-Alignment Committee** Chairperson, asked the Board to approve the following motions:

1. Adopt the final draft of the Basketball re-alignment and distribute to the schools and media. The motion was seconded by Sally Haeberle, and passed unanimously.
2. Lonnie Burgett made a motion, seconded by L.V. McGinty, to have the basketball re-alignment become effective with the 2005-2006 school year. The motion passed unanimously.

Sally Haeberle made a motion, seconded by Paul Dotson, to recess the full Board meeting and convene the **Basketball Committee**. The motion passed unanimously. Ozz Jackson made a motion, seconded by Paul Dotson, to end the Basketball Committee. The motion passed unanimously.

Chuck Broughton, **Basketball Committee** Chairperson, then asked the Board to approve the following motions:

1. Paul Dotson made a motion, seconded by Sally Haeberle, that before March 1, 2005, those 51 districts affected by the new alignment must meet to determine a seeding and site selection plan for the 2005-2006 school year and beyond. The meet-

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ing should be conducted by the Principal or Designated Rep only, as defined in the Constitution and Bylaws on page 57 of the 2004-05 KHSAA Handbook. The motion passed unanimously.

2. Chuck Broughton made a motion, seconded by Sally Haeberle, that before March 1, 2005, representatives of sites desiring to host regional tournaments must meet to determine a site selection plan for the 2005-2006 school year and beyond. The meeting should be conducted by the Principal or Designated Rep only, as defined in the Constitution and Bylaws on page 57 of the 2004-05 KHSAA Handbook. The motion passed unanimously.

3. Chuck Broughton made a motion, seconded by Sally Haeberle, to monitor specific issues related to the Basketball alignment on a yearly, individual case by case basis, with a comprehensive review every four years. The motion passed unanimously.

The Board requested that the three approved motions be sent to the schools with the final alignment and staff is to distribute proper forms and reports.

Donna Wear, **Individual Sports Committee** Chairperson, asked the Board to approve the following motions:

1. Accept the Swimming alignment revisions as presented. The motion was seconded by L.V. McGinty, and passed unanimously.
 2. Award the 2005 Leachman Buick & GMC/KHSAA Boys' and Girls' State Golf Tournaments to Paducah. The boys' will be played at Paducah Country Club and the girls' at Rolling Hills Country Club. The motion was seconded by L.V. McGinty, and passed unanimously.

She then asked the record to show that Stan Hardin's proposal regarding the state tournament golf format and qualifying standards be referred to the Golf Advisory Committee for their discussion and input. Assistant Commissioner Larry Boucher will report back to the committee after the Golf Advisory Committee has reviewed the proposal.

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

1. A motion was made by Sally Haeberle, and seconded by Bob Schneider, to award Georgetown College the State Soccer Tournament for the years 2005-2008. The motion passed unanimously.
 2. A motion was made by Gary Dearborn, and seconded by L.V. McGinty, to extend

the State Baseball Tournament venue agreement with Applebee's Park, through 2008. The motion passed unanimously.

3. A motion was made by Gary Dearborn, and seconded by L.V. McGinty, to approve staff recommendation that the Soccer disqualification rule be consistent with other team sports (One game suspension for first offense for fighting). The motion passed unanimously.

4. A motion was made by Gary Dearborn, and seconded by L.V. McGinty, to adopt a Soccer mercy rule to 9 goals at half time or later. The motion passed unanimously.

Lonnie Burgett, **Audit and Finance Committee** Chairperson, asked the Board to approve the following motions:

1. A motion was made by Paul Dotson, seconded by Sally Haeberle, and passed unanimously, to approve the 2003-04 fiscal year audit conducted by Miller, Mayer, Sullivan & Stevens. Staff was directed to execute the following transactions and transfers:

a. Transfer the under-funded balance of \$40,597 from the General Fund to the Sick Leave Reserve Account per the auditor's note in the Management Letter;

b. Transfer the over-funded balance of \$7,425 from the Museum Development Fund to the General Fund per the auditor's note in the Management Letter;

c. Transfer the over-funded balance of \$21,543 from the Debt Service Reserve to make a direct payment on the principal of the Association long term debt per the auditor's note in the Management Letter;

d. Transfer the \$5,000 from the Board designated Building pre-payment to make a direct payment on the principal of the Association long-term debt per the auditor's note in the Management Letter.

2. A motion was made by Bob Schneider, and seconded by Bob Stewart, to approve the Board budget status report and comparative month and year to date formats. The motion passed unanimously.

Mr. Burgett then asked the record to show that:

1. Staff was directed to review options and report back to the committee at its April meeting, regarding the re-calculation of the minimum debt service reserve and potential pre-payment decisions.

2. Staff was directed to revise all necessary account titles to clearly delineate between the Museum Development activities, the Dawahares Hall of Fame project activities, and the General Fund.

Paula Goodin, **Title IX Committee** Chairperson, asked the record to show that all schools who were earlier notified of non-compliance were now in compliance regarding the scheduling of prime time boys' and girls' basketball games in 2004-2005, and no penalties were issued.

Steve Parker, **Hall of Fame/Museum Development Committee** Chairperson, asked the Board to approve the following:

1. A motion was made by Bob Schneider, and seconded by Lonnie Burgett, to develop a timetable and explore prospective financing options including grants, for the next phase of development and report at the next meeting. The motion passed unanimously.

President Sexton then called the Board's attention to miscellaneous items listed for their information only. 1) Confirm date for Special Board Meeting on December 16th to consider November appeals; 2) Review dates for the next regular Board of Control Meeting, January 14, 2005, in conjunction with the HYPE Conference (1/12) and Annual Meeting (1/13) in Lexington; 3) Miscellaneous Board and staff items.

Commissioner DeVries will present a recommendation at the December meeting regarding hiring an additional Hearing Officer.

Butch Cope noted that the KHSAA scoreboard site has been viewed by over a million people for the first time for the month of October.

Julian Tackett reported on the Kentucky Medical Association fall meeting, regarding specific issues on Football and Cross Country.

Stan Hardin made a motion, seconded by Sally Haeberle, to extend the Football contract at Papa John's stadium through 2008, pending staff and the venue reaching agreement. The motion passed unanimously.

There being no further business to come before the Board, L.V. McGinty made a motion to adjourn. The motion was seconded by Stan Hardin, and passed unanimously. The meeting adjourned at 11:45 a.m.

[Handwritten signatures and initials]



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