

Board of Control Meeting Minutes - September

President Jerry Taylor convened the regular meeting of the Board of Control on Thursday, September 15, 2005 at 3:15 p.m. All Board members were present except Sally Haerberle and Bob Schneider. 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.

Steve Parker had a moment of reflection, followed by the Pledge of Allegiance, led by Paula Goodin.

President Taylor requested the record show that sixteen out of eighteen Board members were present, and that ten votes were needed to pass any eligibility motions.

L.V. McGinty made a motion to approve the minutes of the July 12, 2005 and August 22, 2005 Board of Control meetings. The motion was seconded by Stan Hardin, and passed unanimously.

Gary Dearborn made a motion, seconded by Donna Wear, to go into Executive Session to discuss pending legal cases with Ted Martin. The motion passed unanimously. Paul Dotson made a motion, seconded by Chuck Broughton, to come out of Executive Session. The motion passed unanimously. No action was taken during Executive Session.

Let the record show that Lonnie Burgett left the meeting at 3:35 p.m.

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
- #959, 6, Eligible
- Remand (Dearborn), Parker, 13-1 Eligible-A
- #966, 6, Eligible
- Overturn (Dearborn), Dotson, 12-2-1 (Sexton) Ineligible-B
- #967, 6, Eligible
- Accept (McGinty), Schlosser, 12-3 Eligible
- #960, 6, Ineligible
- Accept (Dearborn), Parker 15-0 Ineligible
- #961, 6, Ineligible
- Accept (Perkins), Dotson, 14-0-1 (Jackson), Ineligible
- #962, 6, Ineligible

- Accept (Dotson), Broughton, 15-0 Ineligible
- #963, 6, Ineligible
- Accept (McGinty), Parker, 15-0 Ineligible
- #964, 6, Ineligible
- Accept (Schlosser), Wear, 12-2 Ineligible
- #965, 6, Ineligible
- Accept (McGinty), Parker, 14-0 Ineligible

Let the record show that Bob Schneider left the meeting at 4:00 p.m.

A - Remand - Case #959

After considering the written record, the KHSAA Board voted 13-1 to remand the case back to the Hearing Officer for the following documentation and, if necessary, an additional hearing to obtain this documentation:

1. Documentation evidencing the student's father's diagnosis of Bells Palsy in December 2004;
2. Documentation evidencing the custodial arrangement between the student's parents since 2001 including any subsequent changes in the custodial arrangement;
3. Documentation evidencing the amount of child support paid by the student's father since January 2004;
4. Documentation evidencing the income of the student's father and mother since January 2004, such as income tax records or wage statements;
5. Documentation evidencing any and all applications for financial aid at the sending school for the 2005-2006 school year by the student or on his behalf

This student remains ELIGIBLE to participate in interscholastic athletics at the receiving school until a final determination is made by the Board.

B- Findings of Fact-Case #966

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 not be waived for the following reasons:

1. The student's transfer is subject to Bylaw 6 because they participated in varsity sports at the sending school after enroll-

ing in grade nine and then transferred to the receiving school.

2. As concluded by the Hearing Officer, the student's transfer did not meet any enumerated exception to Bylaw 6.

3. Contrary to the Hearing Officer's conclusion, the student did not show that they should be granted a waiver under the Due Process Procedure. The standard for a waiver under the Due Process Procedure is strict application of Bylaw 6 must be unfair to the student-athlete and the circumstances creating the ineligibility must be clearly beyond the control of the parties involved. Here, the Hearing Officer merely concluded that the situation was "unfortunate" and required "considerable sacrifice." Thus, the Hearing Officer applied an improper standard in concluding that a waiver was appropriate.

Further, strict application of Bylaw 6 is not unfair to the student. They may receive their education services at the receiving school and, provided they complete the one-year period of ineligibility under Bylaw 6 and is eligible under all other Bylaws, they will be eligible to participate during their junior and senior years of high school.

Finally, the student did not show that the circumstances creating the ineligibility were clearly beyond the control of the parties involved. In transferring from the sending school, the student did not go to the high school in their home's school district. Further, there is no documentation evidencing a change in the tuition at the sending school or showing the tuition being charged to her sister at college. In addition, there was no indication whether her sister had paid tuition to attend high school and, if so, the difference between the college and high school tuitions. Moreover, there was no testimony or documentation that the student's family had suffered any loss of job or other circumstance substantially and negatively affecting her family's income. Lastly, the student's family was aware that, in choosing to attend a private high school, tuition was required and that her sister would likely be attending college.

4. While the Hearing Officer found that there was no apparent attempt to circumvent the rules and gain any athletic advantage, proof of these things are not grounds for a waiver of Bylaw 6. Although the primary purposes of Bylaw 6 are to



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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., 552 S.W.2d 685, 687 (Ky. App. 1977) (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. Indeed, around 1,000 transfers are processed by the Commissioner each year. If transfers were only precluded when there was evidence of recruiting or athletic-motivation, 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.

Steve Parker, Chairperson, **Museum/Hall of Fame Development Committee**, made a motion to approve completion of the Hall of Fame Plaque Wall for a cost of \$10,614, all of which is contained in the Museum Development Reserve Fund and separate from the KHSAA General Fund. The motion was seconded by Jim Sexton, and passed unanimously.

Jeff Perkins, Chairperson, **Member Schools and Services Committee**, made a motion for staff to survey KHSAA member schools and other states regarding catastrophic insurance coverage, and to have the results on the November BOC agenda. The motion was seconded by Jeff Schlosser, and passed unanimously.

He also asked the record to show that:

1. Russ Day, Athletic Director from Millersburg Military Institute, presented an overview on their school's athletic program.
2. Procedures for reviewing membership applications were discussed. Staff is to

survey other states on membership criteria and procedures for denial of membership.

3. School penalties and fines were reviewed. A cumulative report of school fines and penalties will be included on a regular basis for the Board to review.

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

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

1. Uphold the suspension of Sports Official Gary Teague for conduct detrimental to the Association's officials, until July 1, 2006. The motion was seconded by Paul Dotson, and passed unanimously.
2. Increase the regular season Basketball officiating fee from a minimum of \$45 to \$50, without any offsetting cuts in mileage by local and regional policy boards, effective with the 2006-07 season. The motion was seconded by Stan Hardin, and passed unanimously.
3. Increase the regular season Wrestling officiating fee for 1-day (16 match) from \$150 to \$160; increase the fee for 2-day (24 match) from \$200 to \$220; and increase the fee for 2-day (32 match) from \$225 to \$245. The motion was seconded by Steve Parker, and passed unanimously.
4. Eliminate the receipt of full social security numbers on official registration forms, beginning with the 2006-2007 season and remove unneeded data immediately from the records. The motion was seconded by Donna Wear, and passed unanimously.

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

1. Paul Dotson made a motion, seconded by Mike Barren, to approve the Association bills for July 1, 2005 through August 31, 2005. The motion passed unanimously.
2. Mike Barren made a motion, seconded by Stan Hardin, to accept the Internal Corporate Report as presented. The motion passed unanimously.
3. Donna Wear made a motion, seconded by L.V. McGinty, to accept the External Corporate Report as presented. The motion passed unanimously.
4. Gary Dearborn made a motion, seconded by Stan Hardin, for the Board of

Control to endorse Annual Meeting Proposal #1. The motion passed 13-1.

5. Gary Dearborn made a motion, seconded by Stan Hardin, for the Board of Control to endorse Annual Meeting Proposal #10. The motion passed unanimously.

6. Gary Dearborn made a motion, seconded by Jeff Schlosser, for the Board of Control to endorse Annual Meeting Proposal #5. The motion passed 12-2.

7. Gary Dearborn made a motion, seconded by Stan Hardin, for the Board of Control to endorse Annual Meeting Proposal #4. The motion tied 7-7.

8. Gary Dearborn made a motion, seconded by Mike Barren, for the Board of Control to endorse Annual Meeting Proposal #4. The motion failed 6-8.

9. Gary Dearborn made a motion, seconded by Ozz Jackson, to accept the Radio Network Report as presented. The motion passed 13-1 (Jim Sexton opposed).

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

1. The Commissioner's goals were rescheduled for the January BOC meeting.
2. The 2004-05 Membership Investigation Report was rescheduled for the November BOC meeting. The Board requested findings be issued before the Annual Meeting if possible.
3. Transfers resulting from Hurricane Katrina were reviewed. The Board authorized the Commissioner to consider waiving tuition fees for affected students attending non-public schools as not being a Bylaw 10 violation.
4. A report was presented by Phil Rison, KHSADA.

5. Commissioner DeVries mentioned that Ronnie Carter, Executive Director from the Tennessee Secondary School Athletic Association has been invited to speak at the Current Issues Committee Meeting on Thursday, September 20, 2005 and Board members were encouraged to attend.

President Taylor then called the Board's attention to miscellaneous items listed for their information only. 1) Confirm date for the Special Board Meeting on October 21st to consider August and September appeals; 2) Review dates for the next regular Board of Control Meeting, November 16-17th in Lexington; 3) Miscellaneous Board and staff items.

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Director of Promotions and Media Relations Butch Cope stated that Insight T.V. canceled their contract for Football and Basketball coverage. They agreed to tape the Dawahares/KHSAA Hall of Fame Banquet in 2006. Staff will seek a replacement for these broadcasts.

There being no further business to come before the Board, Ozz Jackson made a motion to adjourn. The motion was seconded by L.V. McGinty, and passed unanimously. The meeting adjourned at 5:40 p.m.

3023

Bill D. [Signature]
Sept. 30, 2005

Jerry Taylor
9-30-2005