

**MINUTES OF THE BOARD MEETING**

**OCTOBER 20, 2006**

President Gary Dearborn convened the special meeting of the Board of Control on Friday, October 20, 2006 at 11:15 a.m. All Board members were present except Chuck Broughton. 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. Ted Martin, KHSAA Legal Counsel was also present.

L.V. McGinty provided a moment of reflection.

Larry Boucher led the Pledge of Allegiance.

President Dearborn stated for the record that seventeen out of eighteen Board members were present, and that ten 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
1067	6	ELIGIBLE	Uphold (Jackson)	Schlosser	17-0	Eligible
1068	6	ELIGIBLE	Uphold (McGinty)	Perkins	16-0-1 (Schlosser)	Eligible
1069	6	ELIGIBLE	Uphold (Jackson)	Schlosser	13-3-1 (Barren)	Eligible
1070	6	ELIGIBLE	Uphold (Parker)	Jackson	15-1-1 (Donhoff)	Eligible
1075	6	ELIGIBLE	Uphold (Schlosser)	Wear	12-4-1 (Burgett)	Eligible
1076	6	ELIGIBLE	Uphold (McGinty)	Perkins	17-0	Eligible
1079	6	ELIGIBLE	Uphold (McGinty)	Perkins	17-0	Eligible
1080	6	ELIGIBLE	Overturn (McGinty)	Moore	13-3-1 (Dearborn)	Ineligible-A
1082	6	ELIGIBLE	Uphold (Jackson)	Perkins	17-0	Eligible
1083	6(2)	ELIGIBLE	Uphold (Stewart)	Schlosser	11-6	Eligible
1066	6	INELIGIBLE	Uphold (Perkins)	Stewart	16-1	Ineligible
1078	6	INELIGIBLE	Uphold (Stewart)	Keepers	11-6	Ineligible
1081	6	INELIGIBLE	Overturn (McGinty)	Schlosser	16-1	Eligible-B
1086	6	INELIGIBLE	Uphold (Stewart)	Burgett	17-0	Ineligible
1087	6	INELIGIBLE	Uphold (Weedman)	Keepers	14-3	Ineligible
1073	6	INELIGIBLE (EXCEPTIONS)	Uphold (McGinty)	Burgett	15-2	Ineligible
1074	5	INELIGIBLE (EXCEPTIONS)	Uphold (Burgett)	Wear	14-3	Ineligible
1077	6	INELIGIBLE (EXCEPTIONS)	Uphold (McGinty)	Burgett	14-2-1 (Keepers)	Ineligible
1084	6(2)	INELIGIBLE (EXCEPTIONS)	Overturn (Schlosser)	McGinty	11-6	Eligible-C
1071	4	INELIGIBLE (EXCEPTIONS)	Uphold (McGinty)	Burgett	17-0	Ineligible

A-Findings of Fact – Case #1080

1. The KHSAA Board incorporates by reference the testimony of the parties as reflected in the Hearing Officer's Findings of Fact contained in the Recommended Order. From these Findings of Fact, the KHSAA Board reaches a different Conclusion of Law than the Hearing Officer with respect to the Due Process discretionary waiver provision.

### Conclusions of Law

Based on the whole record, the Board concludes that the application of the period of ineligibility contained in 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 the 9th grade and then transferred to the receiving school.
2. As concluded by the Hearing Officer, the student's transfer does not satisfy any enumerated exception to Bylaw 6.
3. The Due Process Procedure provides for a discretionary waiver if both strict application of the applicable Bylaw is unfair and the circumstances creating the ineligibility are clearly beyond the control of all the parties involved. In his Recommended Order, the Hearing Officer indicated that:

*The hearing officer has recommended waiver under circumstances where the evidence led to the conclusion that a student's personal safety was jeopardized by remaining at the sending school. It is always a matter of determination of whether the evidence supports such a conclusion and the hearing officer in this case concludes that it does.*

As recognized by the Hearing Officer, it is a "matter of determination" as to whether a waiver is appropriate. Contrary to the Hearing Officer, the Board, in its discretion, concludes that the evidence did not show that strict application of Bylaw 6 is unfair to the student and the circumstances resulting in his transfer were clearly beyond the control of all the parties involved. While the student's parents may have expressed concerns for his safety, the record does not reflect that he had to change schools in order to be safe. The altercation at the sending school in February 2006 occurred between students other than the student. The sending school took immediate and stern action against the students involved, including removing one student for the remainder of the school year. As admitted by the student's mother, she had never contacted the sending school principal about a concern for her son's safety. Although the student's mother testified she was referred to the sending school's Dean of Students who could not ensure her son's safety, there is no documentation in the record supporting these conversations. Rather, the principal, in his letter, states that "the sending school is safe for the student" and he "strongly object[s] to any insinuation that the sending school is not a safe place." The principal also indicates that "[t]he victim and one of the perpetrators of last year's incident have both returned to school without incident." For these reasons, the Board disagrees with the Hearing Officer and denies the student's request for a waiver under the discretionary provision contained in the Due Process Procedure.

### B-Findings of Fact-Case #1081

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

### Conclusions of Law

Based on the entire record, the KHSAA Board concludes as follows:

The student's transfer is subject to Bylaw 6, Section 1 because he participated in varsity sports at the sending school and transferred to the receiving school.

The KHSAA Board concludes that a discretionary waiver of the period of ineligibility should be granted in this case, under the KHSAA Due Process Procedure.

### C-Findings of Fact-Case #1084

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

### Conclusions of Law

Based on the entire record, the KHSAA Board concludes as follows:

1. The student's transfer is subject to Bylaw 6, Section 2 ("Bylaw 6").
2. The KHSAA Board concludes that, under the KHSAA Due Process Procedure, a discretionary waiver of the period of ineligibility should be granted in this case because, in addition to satisfying all the requirements under the Section 2 of the KHSAA Due Process Procedure, the student has moved to live with his grandparents and there is no evidence of recruiting or transfer for athletic reason.

A motion was made by Donna Wear, seconded by Mike Barren, to go into Executive Session to discuss current and pending litigation. The motion passed unanimously. A motion was made by L.V. McGinty, seconded by Bob Stewart, to come out of Executive Session. The motion passed unanimously. No action was taken during Executive Session.

Donna Wear, Chairperson, **Constitution and Bylaws Committee**, asked the Board to approve the following motions:

1. Endorse Proposal 1 for implementation by the KDE. The motion was seconded by Ozz Jackson, and passed unanimously.
2. Endorse Proposal 2 for implementation by the KDE, effective with the 2008-09 season. The motion was seconded by Jeff Perkins, and passed 13-4.
3. Endorse Proposal 5 for implementation by the KDE. The motion was seconded by Steve Parker, and passed 13-4.
4. Endorse Proposal 6 for implementation by the KDE. The motion was seconded by Lonnie Burgett, and passed unanimously.
5. Endorse Proposal 7 for implementation by the KDE. The motion was seconded by Ozz Jackson, and passed unanimously.
6. Endorse Proposal 9 for implementation by the KDE. The motion was seconded by Jeff Perkins, and passed 16-0-1 (Bob Stewart was out of the room).
7. Endorse Proposal 10 for implementation by the KDE. The motion was seconded by Lonnie Burgett, and passed unanimously.
8. Endorse Proposal 12 for implementation by the KDE. The motion was seconded by Jeff Perkins, and passed unanimously.
9. Endorse Proposal 13 for implementation by the KDE. The motion was seconded by Lonnie Burgett, and passed unanimously.
10. Endorse Proposal 14 for implementation by the KDE. The motion was seconded by Steve Parker, and passed unanimously.
11. Endorse Proposal 15 for implementation by the KDE. The motion was seconded by Ozz Jackson, and passed unanimously.
12. Endorse Proposal 16 for implementation by the KDE. The motion was seconded by Bob Schneider, and passed unanimously.
13. Endorse Proposal 17 for implementation by the KDE. The motion was seconded by Jerry Keepers, and passed unanimously.
14. Endorse Proposal 18 for implementation by the KDE. The motion was seconded by Jeff Perkins, and passed unanimously.
15. Endorse Proposal 19 for implementation by the KDE, effective beginning with the 2008-09 season. The motion was seconded by Lonnie Burgett, and passed unanimously.
16. Endorse Proposal 20 for implementation by the KDE. The motion was seconded by Mike Barren, and passed unanimously.
17. Table Proposal 21 until financial impact information can be provided at the November 15-16, 2006 Board meeting. The motion was seconded by Jeff Perkins, and passed unanimously.

18. Endorse Referendum Proposal 1 for implementation by the KDE, effective with the 2008-09 season. The motion was seconded by Ozz Jackson, and passed unanimously.
19. Endorse Referendum Proposal 2 for implementation by the KDE, effective with the 2008-09 season. The motion was seconded by Paula Goodin, and passed 16-1.
20. Rescind Referendum Proposal 3 for implementation by the KDE. The motion was seconded by Alan Donhoff, and passed unanimously.
21. A motion was made by Jeff Schlosser to not endorse Referendum Proposal 3, because it is inconsistent with this year's Proposal 2. Unless Proposal 2 is not adopted by the KDE, then send Referendum Proposal 3 back to the Board of Control. Staff is to correspond with the author of Referendum Proposal 3. The motion was seconded by L.V. McGinty, and passed unanimously.

Bob Schneider asked that Proposal 8 – Compliance, be discussed during the upcoming Strategic Planning sessions.

Include Bylaw 25 – Counting of Games, on the November agenda.

Invite the President of KABC and KFCA to the November meeting.

Invite the Butler County Athletic Director to the November meeting to discuss classes in volleyball, soccer, baseball and softball.

It was announced that Assistant Commissioner Roland Williams will be retiring December 31, 2006, after 33 years of service to high school athletes and athletics in Kentucky.

Mr. Boucher will have an update on assigning secretary criteria at the November meeting.

Include the Member Services Committee on the November agenda to discuss the school survey regarding insurance.

There being no further business, a motion to adjourn was made by L.V. McGinty, seconded by Ozz Jackson, and passed unanimously. The meeting adjourned at 1:45 p.m., October 20, 2006.

President Gary Dearborn *Gary Dearborn* Date *Jan. 10, 2007*

Commissioner Brigid L. DeVries *Brigid L. DeVries* Date *Jan. 10, 2007*