

Board of Control Meeting Minutes - December 2004

President Jim Sexton convened the special meeting of the Board of Control on Thursday, December 16, 2004 at 8:40 a.m. All Board members were present except L.V. McGinty. Also present were Commissioners Brigid DeVries, Assistant Commissioners Larry Boucher, Julian Tackett and Roland Williams, Director of Promotions & Media Relations Butch Cope, Fundraising Consultant Ken Tippet and Office Manager Darlene Koszenski. Ted Martin, KHSAA Legal Counsel was also present.

Chuck Broughton provided a moment of reflection.

Butch Cope led the Pledge of Allegiance.

President Sexton stated for the record that sixteen 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 Status

904, 6, ELIGIBLE
Overturn (Dearborn), Dotson, 14-2
Ineligible - A

906, 4, ELIGIBLE
Overturn (Dotson), Dearborn, 16-0
Ineligible - B

907, 6, ELIGIBLE
Overturn (Dearborn), Parker, 16-0
Ineligible - C

901/902/903, 6, INELIGIBLE
Uphold (Perkins), Parker, 16-0
Ineligible

908, 6, INELIGIBLE-EXCEPTIONS
FILED
Uphold (Parker), Deaton, 13-2-1
(Burgett)
Ineligible

A-Findings of Fact-Case #904

1. Students attended the sending school, a private school, during their freshman, sophomore and junior years. They participated in varsity swimming while enrolled there. On August 16, 2004, they enrolled at the receiving school. Their transfer was not precipitated by a change of residence. Before and after the transfer, they lived in

the school district for Atherton High School.

2. Students asserted that the reason for the transfer was the inability to pay the tuition to attend the sending school. Prior to high school, they moved to Louisville because their stepfather had lost his job in Delaware and a job opportunity existed in Louisville. Their mother obtained a job in Louisville making approximately \$40,000.00 per year. Subsequently, their mother changed jobs and only made \$26,000.00 per year. Their stepfather, at the time of the hearing, was seeking employment. They have never received regular support from their father. Their mother testified she knew that paying tuition to attend the sending school would be financially difficult. Despite this knowledge and the history of their stepfather's employment, the students attended the sending school and voluntarily participated in varsity athletics there.

3. There was no evidence that the students had applied for financial aid at the sending school or been denied financial aid there.

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. Students 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, the students 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 students did not present sufficient evidence to justify a waiver under this standard. Although the Hearing Officer put great reliance on the students lack of control over their mother and stepfather's financial situation, this is not the standard for a waiver of Bylaw 6. The standard requires the circumstances to be "beyond the control of all involved parties." The students mother and stepfather are "involved parties." Further, minors are subject to the control of their parents. If waivers were granted because a parent made the decision rather than the minor, then Bylaw 6 would be meaningless.

Moreover, the circumstances that the students father does not regularly contribute to their support, their stepfather lost his job in Delaware and their mother took a lower paying position all occurred while they attended the sending school. Indeed, their mother indicated she knew that paying the tuition at the sending school would be financially difficult. In addition, there is no evidence that the students applied for or were denied financial aid at. Lastly, the students voluntarily attended the sending school and participated in varsity athletics while they were there. Thus, they did not present sufficient evidence to justify a waiver under the discretionary 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 the students transferred due to recruiting or were otherwise athletically motivated, Bylaw 6 still applies to their transfers.

B-Findings of Fact-Case #906

1. The Board adopts only the Findings of Fact in the Hearing Officer's Recommended Order. The Board reaches a different conclusion from the Findings of Fact because they do not establish grounds for a waiver of Bylaw 4, Section 1 ("Bylaw 4").

Conclusions of Law

Based on the record, the Board concludes as follows:



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1. The student is ineligible under Bylaw 4 because he wants to participate in a fifth consecutive calendar year of high school following promotion from grade eight.

2. Under Bylaw 4, eligibility after the fourth consecutive calendar year of high school following promotion from grade eight is only allowed "in the case were i[t] has been documented by the attending physician, Principal and Superintendent that severe illness or injury has prevented the student from receiving necessary education services and the right to an education has therefore been impacted rather than simply the loss of athletic privilege." The rationales for this limited exception are set forth in Case Situation BL-4-1. It provides that:

Case BL-4-1- Is there a basic philosophy and reason for Bylaw 4 and a limit on semesters?

A maximum participation requirement:

- 1. promotes timely progress toward graduation by discouraging students from delaying or interrupting their high school education;
2. disallows students to enroll for one semester each school year to increase athletic ability and skill;
3. diminishes risks stemming from unequal competition;
4. places emphasis on the academic mission of the school;
5. promotes harmony and fair competition among member schools by maintaining equality of eligibility affording each student the same number of semesters of athletic eligibility;
6. increases the number of students who will have an opportunity to participate in interscholastic athletics;
7. is conducive to the prevention of red-shirting;
8. helps avoid exploitation by coaches or boosters who otherwise might seek to obtain transfers or to delay a student's normal progress through school; and
9. prevents displacement of younger student-athletes by older students wishing to extend unfairly their high school careers.

Without a clearly defined limit, avenues remain open for red-shirting, deception, legal maneuvering, and other athletics-driven motivations for a student to remain in school rather than proceeding on into college or into the work force thereby denying the participation of a student who is otherwise "next in line" to play.

3. The student did not present sufficient documentation to support a waiver under

this exception because there was no documentation from the Superintendent "that severe illness or injury has prevented him from receiving necessary education services and the right to an education has therefore been impacted rather than simply the loss of athletic privilege."

C-Findings of Fact-Case #907

1. The Board adopts the Findings of Fact in the Hearing Officer's Recommended Order, except finds that the student did not establish grounds for a waiver of Bylaw 5, Section 1 ("Bylaw 5").

Conclusions of Law

Based on the record, the Board concludes as follows:

1. The student is subject to Bylaw 5 and its period of ineligibility, as he did not meet the required number of credits prior to the first day of school.

2. Under Bylaw 5 on the first day of each school year, a student must be at his/her proper grade level. To be considered to be at the proper grade level, a student must have been enrolled during the previous grading period, and must be on schedule to graduate on the first day of school. For the verification of this provision, all course work, including summer and correspondence work, must be complete by the first day of the school year for the student body.

3. Case BL-5-5 asks: If a student is ineligible at the beginning of the school year according to Bylaw 5, Section 1, can this student become eligible during the school year? No. These provisions state that in order to be eligible during that school year, a student must be eligible on the first day of school for the student body. A student athlete who is ineligible due to failing to maintain normal progress as defined in Section 1 and remains ineligible an entire year may have eligibility reinstated for the following and subsequent years providing he/she meets all provisions for reinstatement in Bylaw 5.

4. The only other ground for a waiver of Bylaw 5 is set forth in the KHSAA Due Process Procedure. Under this provision, the Board has limited discretion to waive Bylaw 5 if strict application of Bylaw 5 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 5 is unfair to the student and that the transfer was for reasons beyond the control of all involved parties.

Let the record show that Steve Parker left the meeting at 10:00 a.m.

Sally Haeberle made a motion, seconded by Donna Wear, to go into Executive Session to discuss legal cases. The motion passed unanimously. Jerry Taylor made a motion, seconded by Gary Dearborn, to come out of Executive Session. The motion passed unanimously. No action was taken during Executive Session.

The date for the next Board meeting is Friday, January 14, 2005, in conjunction with the HYPE Conference on January 12, 2005, and the Delegate Assembly on January 13, 2005, in Lexington, KY.

Ozz Jackson made a motion, seconded by Bob Schneider, to approve the employment and training of an additional hearing officer, John Adams, Lexington, and when utilized, to be reimbursed at the state Attorney General pay scale. (NOTE: this does not affect the current hearing officer's compensation this year) The motion passed unanimously.

Commissioner DeVries reviewed Bylaw 33 and the current administrative penalty policies and procedures.

The Commissioner's goals were reviewed by the Board, and will remain as published in the 2004-05 KHSAA handbook. She will present additional goals for the future for review by the Board at the April meeting.

Jerry Taylor requested that the Football Committee meet at the January meeting to discuss specific alignment issues.

Mr. Deaton asked the Basketball Committee to discuss the Casey County alignment request and concerns in January.

It was also noted that the Baseball and Softball alignment would be discussed at the January meeting, as per the revised basketball alignment.

KHSAA staff stressed the importance of all member high schools following proper sanctioning procedures regarding tournaments held at Kentucky High Schools. The Board requested the sanctioning information be put in the next Commissioner's Notes, with emphasis on reminding schools about lack of insurance coverage on non-sanctioned events and other liability issues.

Since there was no other business to come before the Board, a motion was made by Paul Dotson, seconded by Jerry Taylor to adjourn. The motion passed unanimously, and the meeting was adjourned at 11:00 a.m.

Handwritten signature/initials



Handwritten signature: Paul Dotson