

Board of Control Minutes - September Meeting

President Kathy Johnston convened the regular meeting of the Board of Control on Thursday, September 20, 2001 at 2:00 p.m. All Board members were present except Cynthia Elliott. Also present were Commissioner Louis Stout, Executive Assistant Commissioner Brigid DeVries, Assistant Commissioners Larry Boucher and Julian Tackett, Sports Information Director Butch Cope, Fundraising Consultant Ken Tippet and Office Manager Darlene Koszenski. Debbie Hendricks, Department of Education liaison and Danny Reeves, Counsel for KH-SAA were also present.

Roland Williams was called on for the invocation.

Betsy Glover made a motion, seconded by Jerry Taylor, to approve the minutes of

the July 26, 2001 regular meeting. The motion passed unanimously.

Eddie Saylor made a motion, seconded by Sally Haeberle, to approve the minutes of the August 27, 2001 special meeting. The motion passed unanimously.

Sally Haeberle made a motion, seconded by Paul Dotson, that all bills of the Association for the period July 1, 2001 through August 31, 2001 be approved. The motion passed unanimously.

The next item on the agenda was consideration of the Hearing Officer's Recommendations (Cases in which the student was recommended to be eligible). Sally Haeberle made a motion, seconded by Jerry Taylor, to uphold the Hearing

Officer's recommendation on the following appeal. The motion passed 12-2 with one (Betsy Glover) recusal:
No., Bylaw, Student, School, Findings #602, 6, Sarah Fogelman, Bellevue (Newport Central Catholic), Eligible

Sally Haeberle made a motion, seconded by Steve Parker, to uphold the Hearing Officer's recommendation on the following appeal. The motion failed 0-14 with one (Jim Sexton) recusal. After discussion, Betsy Glover made a motion, seconded by Roland Williams to reverse the Hearing Officer's recommendation. The motion passed 13-1 with one (Jim Sexton) recusal:
No., Bylaw, Student, School, Findings #603, 6, Melinda Varner, Eastern

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(Christian Academy-Louisville), Ineligible
Findings of Fact

1. Melinda Varner ("Melinda") transferred to Eastern High School on June 2, 2001 after having attended Christian Academy High School ("CAHS") during her freshman and sophomore years. Melinda participated in varsity athletics, including basketball, while at CAHS.

2. The only reason advanced for the transfer was financial hardship. Melinda's mother, Jean, was terminated from her employment at Brown-Forman Corporation on December 8, 2000. Melinda's father, Russell, works for Ford Motor Company. Including overtime pay, he earned in excess of \$120,000 during the year 2000 and has earned in excess of \$79,000 through July, 2001. Melinda's older sister, age 23, is dependent upon Melinda's parents due to multiple learning disabilities. Melinda's older brother is a freshman at the University of Kentucky. Her younger sister is in the seventh grade at St. Margaret Mary - a tuition based school - and the family plans to keep her there at least through the eighth grade. No evidence was introduced regarding efforts to qualify Melinda for financial assistance at CAHS.

Conclusions

1. There is no constitutionally protected right to participate in interscholastic athletics; rather, participation is a privilege.

2. Melinda's transfer is subject to Bylaw 6, Section 1 ("Bylaw 6").

3. Melinda's transfer did not meet a specific, enumerated exception to Bylaw 6.

4. Melinda's transfer did not satisfy the discretionary Due Process Procedure waiver provision because:

a. strict application of Bylaw 6 is not unfair to Melinda because: (1) she is only ineligible for a one-year period from the date of her enrollment at CAHS, and may be eligible to participate in interscholastic athletics at CAHS during her senior year; (2) she can still attend the school she and her parents desire; and (3) she may participate in any other activity related to her education;

b. the circumstances creating the ineligibility are not clearly beyond the control of all the parties involved because: (1) although Melinda's mother was terminated from her employment, the Varner family has a substantial income from Melinda's father, who earned in excess of \$120,000 during 2000 and has already earned in excess of \$79,000 through July, 2001 (in-

cluding overtime); (2) the Varner family has voluntarily chosen to continue providing tuition for Melinda's brother and younger sister; and (3) the Varner family did not attempt to inquire into the option of financial assistance from CAHS before deciding that transferring to a public school was a preferable option;

c. approving this transfer would undermine the effectiveness of Bylaw 6 in preventing and deterring school-shopping by high school students and their parents and recruitment by coaches, fans, and faculty members.

Betsy Glover made a motion, seconded by L.V. McGinty, to uphold the Hearing Officer's recommendation on the following appeal. It was noted in the finding of facts that Mrs. Hascal was incorrectly mentioned as "Mrs. Walden". The motion passed 11-3 with one (Jim Sexton) recusal:

No., Bylaw, Student, School, Findings #604, 6, Erik Hascal, Eastern (Walden), Eligible

Paul Dotson made a motion, seconded by Eddie Saylor, to uphold the Hearing Officer's recommendation on the following appeal. The motion failed 0-14 with one (Lonnie Burgett) recusal. After discussion, Sally Haerberle made a motion, seconded by Dale Stewart to reverse the Hearing Officer's recommendation. The motion passed 14-0 with one (Lonnie Burgett) recusal:

No., Bylaw, Student, School, Findings #605, 6, Samantha Wilber, Mayfield (Graves County), Ineligible

Findings of Fact

1. Samantha Wilber ("Samantha") transferred to Mayfield High School ("Mayfield") on June 20, 2001 after having attended Graves County High School ("GCHS") during her freshman and sophomore years. Samantha participated in varsity athletics, including soccer, while at GCHS.

2. Samantha previously attended a Mayfield school in kindergarten through seventh grade. After her mother remarried, Samantha moved to Graves County, and has attended Graves County schools through her sophomore year. Samantha, however, "did not want to transfer to the county schools . . ." (See July 16, 2001 letter from Kathy Jackson to the KHSAA (the "July 16 letter")).

3. Samantha must pay tuition to attend

Mayfield because she and her family have not moved from their residence in Graves County. (See July 26, 2001 letter from Kathy Jackson to Commissioner Louis Stout (the "July 26 letter")).

4. According to the July 16 letter, July 26 letter, and Hearing Officer's Recommendation, athletics was the sole reason Samantha transferred from GCHS to Mayfield. In the July 16 letter, Samantha's mother makes the following claims:

a. At the onset of Samantha's freshman soccer season at GCHS, her father (due to his background in playing and coaching soccer) offered to help GCHS's team and provide names of other soccer coaches who would help because Samantha's parents believed the coach and assistant coach "knew little about soccer." The GCHS's girls' soccer coaches refused their offer, and the team only won three games that year. As a result, Samantha and her parents were very dissatisfied with the girls' soccer program at GCHS during her freshman year;

b. GCHS hired a new girls' soccer coach for Samantha's sophomore year. Samantha's parents again offered to help with the program, including arranging for assistance from local college players, but were again rejected. The team did not win a game during her sophomore year. At the end of the season, Samantha's parents brought their concerns to GCHS but no changes were made to the program. Samantha, therefore, "was disgusted with the soccer program as well as the school system and wanted to go back to Mayfield";

c. During Samantha's sophomore year, Samantha's father (after coaching Mayfield's recreational team during the spring of her freshman year) was a volunteer coach for Mayfield. Mayfield's soccer team won nine of nineteen games and improved significantly. He has been asked to return in the 2001 fall season as a paid coach for Mayfield's girls' soccer team;

d. As a result of her disgust with the girls' soccer program at GCHS and her desire to play for her father at Mayfield, Samantha has transferred to Mayfield and "refuses to go to Graves County again"; and

e. Samantha's parents have been unsuccessful in attempts to sell their home due to a soft housing market in the area. The purported attempt to change residences, however, was an effort to satisfy the bona fide change in residence exception to By-

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law 6. Indeed, in the July 26 letter, Samantha's mother states that: "We cannot afford to make the house payment on two houses or to rent another one in town so she can play."

Conclusions

1. There is no constitutionally protected right to participate in interscholastic athletics; rather, participation is a privilege.
2. Samantha's transfer is subject to Bylaw 6, Section 1 ("Bylaw 6").
3. Samantha's transfer did not meet a specific, enumerated exception to Bylaw 6.
4. Samantha's transfer did not satisfy the discretionary Due Process Procedure waiver provision because:
 - a. strict application of Bylaw 6 is not unfair to Samantha because the exclusive reason Samantha transferred from GCHS to Mayfield was her and her parents' desire for her to participate in girls' soccer at Mayfield. The evidence clearly shows that: (1) Samantha and her parents were extremely dissatisfied with the girls' soccer program (specifically, the coaches) at GCHS; (2) believed Mayfield, as opposed to GCHS, had a girls' soccer program that was improving; (3) Samantha wanted to play for her father at Mayfield; and (4) the attempted change in residence was predominantly motivated by the desire to gain athletic eligibility and participate in athletics at Mayfield;
 - b. the circumstances creating the ineligibility are not clearly beyond the control of all the parties involved because Samantha and her parents voluntarily chose to transfer from GCHS to Mayfield.



Volleyball team members from Mercy and Assumption prepare to present the American flag during championship game ceremonies.

Indeed, Samantha must pay tuition to attend Mayfield and refuses to return to GCHS;

- c. a party cannot rely upon the bona fide change in residence exception to Bylaw 6 if the change in residence is simply an attempt to become eligible to participate in athletics. This exception is intended to prevent a hardship to students who are required to change schools as a result of a change in residence which is unrelated to athletics. A student's change of residence is not bona fide if the move is motivated by a desire to become eligible at a new school; and
- d. approving this transfer would seriously undermine the effectiveness of Bylaw 6 in preventing and deterring school-shopping by high school students and their parents and recruitment by coaches, fans, and faculty members.

Gary Dearborn made a motion, seconded by Paul Dotson, to uphold the Hearing Officer's recommendation on the following appeal. The motion passed unanimously:
No., Bylaw, Student, School, Findings #607, 6, James Fuller, Jr., Hopkinsville (Haughton, LA), Eligible

The next item on the agenda was consideration of the Hearing Officer's Recommendations (Cases in which the student was recommended to be eligible or ineligible and exceptions were filed). Gary Dearborn made a motion, seconded by L.V. McGinty, to uphold the Hearing Officer's recommendation on the following appeal. The motion passed 14-1:
No., Bylaw, Student, School, Findings #601, 6, Margaret Rowland, Notre Dame Academy (Covington Latin), Eligible

Paul Dotson made a motion, seconded by Jerry Taylor, to uphold the Hearing Officer's recommendation on the following appeal. The motion passed unanimously:
No., Bylaw, Student, School, Findings #606, 6, Tommy Mills, Murray (Calloway County), Ineligible

The Board discussed how to require representatives from both schools to be present for appeals.

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

1. Retain a legislative monitor with a cost not to exceed \$251. The motion was made by Paul Dotson, seconded by Sally Haeberle, and passed unanimously.
2. Conduct the March, 2002 Hall of Fame Banquet similar to the National Federation, with staff to report changes in format at the November, 2001 meeting. The motion was made by Betsy Glover, seconded by Eddie Saylor, and passed unanimously.
3. Confirmed that we will only recognize state championships during years they were KHSAA sanctioned events. The motion was made by Roland Williams, seconded by Sally Haeberle, and passed unanimously.

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

1. Officials pay and non-varsity issues will be left to local policy boards.

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

1. Move Owsley County, currently located in Volleyball Region 8, District 30 to District 31 for geographical alignment, effective this season. The motion was made by Eddie Saylor, seconded by Paul Dotson, and passed unanimously.

Gary Dearborn, Team Sports Committee Chairperson, then asked the record to show that:

1. Betsy Glover discussed moving Trigg County Volleyball alignment for this season. No action was taken by the Board.
2. November agenda will include Soccer venues for 2002-2004.
3. November agenda will include 2003-2004 Baseball sites and format.
4. Assistant Commissioner Larry Boucher will survey schools for interest in sanctioning field hockey as a state event.

Dale Stewart, **Audit and Finance Committee** Chairperson, asked the Board to approve the following motions:

1. Accept the FY2001 audit report, presented by Rick Campbell, auditor with Miller, Mayer, Sullivan & Stevens. The motion was made by Paul Dotson, seconded by Betsy Glover, and passed unanimously.
2. Accept the FY2002 budget, including the report of DORNA, Radio and designated funds. The motion was made by Betsy Glover, seconded by Lonnie Burgett, and passed unanimously.
3. Award the 2001-2002 video services

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contract bid to MEK. The motion was made by Betsy Glover, seconded by Eddie Saylor, and passed unanimously.

Jim Sexton, **Constitution and Bylaws Committee** Chairperson, asked the Board to approve the following motions:

1. Staff to send a letter to Perry County Central, informing them the Board does not support their proposal to move the Annual Meeting to April, because it would interfere with CATS testing. The motion was made by Roland Williams, seconded by Betsy Glover, and passed unanimously.
2. Staff to send a letter to Perry County Central, informing them the Board does not support their proposal to fine delegates for not attending the Annual Meeting because the KHSAA has a voluntary membership. It was noted item number one and two could be included in the same letter. The motion was made by Jeff Perkins, seconded by Betsy Glover, and passed unanimously.
3. Add yearly membership application approval by the Board of Control to the Constitution. The motion was made by Lonnie Burgett, seconded by Sally Haeberle, and passed unanimously.
4. Incorporate Q/A 13 to Bylaw 6 - the eligibility/ineligibility date is determined by the enrollment date at the receiving school. The motion was made by Roland Williams, seconded by Jerry Taylor, and passed unanimously.
5. Transfer students remain ineligible for junior varsity play. The motion was made by Sally Haeberle, seconded by Dale Stewart, and failed, 7-8. The Board requested staff compile numbers of appeals two years before and two years after Tennessee and other states allowed transfer students to play junior varsity sports. They also requested exact wording for the proposed Bylaw 6 change to be presented at the October special meeting.
6. Urge strict enforcement of Bylaw 10, but make no changes in the bylaw at this time. The motion was made by Sally Haeberle, seconded by Dale Stewart, and passed unanimously.

Jim Sexton, Constitution and Bylaws Committee Chairperson, then asked the record to show that:

1. Revised interpretation of Bylaw 4, Playing of Soccer and Football by below grade 9 students is in effect for the 2002-2003 season, not immediately.
2. November agenda to include potential

summer play restrictions and Dead Period interpretations.

Let the record show that Eddie Saylor left the meeting.

L.V. McGinty, **Museum and Hall of Fame Development Committee** Chairperson, asked the Board to approve the following motion:

1. Approve Phoenix contract and send down payment of \$67,181.50 immediately. The motion was made by Dale Stewart, seconded by Sally Haeberle, and passed unanimously.

The next item on the agenda was a status report on the Title IX project. Executive Assistant Commissioner Brigid DeVries updated the Board on progress to date. At a recent Kentucky Department of Education meeting, Craig True discussed more stringent penalties on schools, not monetary fines from taxpayers dollars. He wants athletic programs suspended so immediate corrective action on deficiencies will be taken. Danny Reeves stated that a deficiency in a school's athletic program does not mean they are in non-compliance with Title IX. The KHSAA has not categorized any school as "non-compliant", that would be an issue where the Office of Civil Rights would have to be called. State Board members are regularly invited to attend an audit visit at a school, so they will get a better idea of all that is involved in the procedure. Title IX updates will remain on the agenda, because it is an ongoing project, and there are always updates and revisions to reports being made.

Assistant Commissioner Julian Tackett noted that the Kentucky Medical Association will be working with the KHSAA to come up with a heat index to determine when outside athletic events should not be conducted due to possible health hazards.

Sports Information Director Butch Cope announced that in conjunction with the National Federation fundraising effort for the Red Cross, all sporting events on September 27-28-29, 2001 will voluntarily provide opportunities for attendees to contribute funds to be donated on behalf of KHSAA member schools to the Red Cross.

Ted Martin, Greenebaum, Doll & McDonald, informed the Board that Bylaw 33 fines from Perry County Central and St. Francis have been received.



Monroe County's Marci Turner finished third at this year's Girls' State Golf Tournament.

The Board requested staff to write a letter of appreciation to Danny Reeves, congratulating him on his impending Federal Judge appointment, and thanking him for his years of service to the KHSAA. They also want to invite him to the May, 2002 dinner for out-going Board members.

Ms. Johnston then called the Board's attention to miscellaneous items listed for their information only. 1) Set date for Special Board Meeting in October to consider September appeals; 2) Review dates for the next regular Board of Control Meeting, November 13-14, 2001 in Lexington, KY; 3) Miscellaneous Board and staff items.

It was decided that a Special Board Meeting to consider September appeals was necessary, and will be held on Monday, October 22nd at 8:30 a.m. at the KHSAA office. The Constitution and Bylaws Committee will also meet. The Board will also discuss Commissioner Stout's mid-year evaluation.

Commissioner Stout announced he is re-structuring investigative committees, and asked Board members to recommend replacements.

There being no further business to come before the Board, Paul Dotson made a motion to adjourn. The motion was seconded by Dale Stewart, and passed unanimously. The meeting adjourned at 4:10 p.m.