

Board of Control Minutes - April 2004

President Paul Dotson convened the regular meeting of the Board of Control on Tuesday, April 13, 2004 at 8:50 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 Ted Martin and Michael Dailey, KDE liaison, were also present.

Lonnie Burgett was called on for the invocation.

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

Sally Haeberle made a motion, seconded by Eddie Saylor, to approve the minutes of the January 16, 2004 regular meeting. The motion passed unanimously. Cynthia Elliott made a motion, seconded by Steve Parker, to approve the minutes of the February 16, 2004 special meeting. The motion passed unanimously. Eddie Saylor made a motion, seconded by Jeff Perkins, to approve the minutes of the March 26, 2004 special meeting. The motion passed unanimously.

Gary Dearborn made a motion that all bills of the Association for the period January 1, 2004 through March 31, 2004 be approved. Sally Haeberle seconded the motion, which passed unanimously.

Ted Martin then updated the Board on the status of various legal cases.

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
- 825, 6, ELIGIBLE
- Uphold (Dearborn), Perkins, 11-6-1, ELIGIBLE
- 826, 6, ELIGIBLE
- Uphold (Elliott), McGinty, 15-3, ELIGIBLE
- 824, 6, INELIGIBLE
- Uphold (McGinty), Broughton, 18-0, INELIGIBLE
- 829, 6, INELIGIBLE
- Uphold (Saylor), Broughton, 18-0, INELIGIBLE
- 830, 6, INELIGIBLE
- Uphold (Burgett), Deaton, 18-0, INELIGIBLE
- 831, 6, INELIGIBLE
- Uphold (Saylor), Broughton, 17-0-1, INELIGIBLE
- 832, 6, INELIGIBLE
- Uphold (Deaton), Parker, 18-0, INELIGIBLE
- 833, 6, INELIGIBLE
- Uphold (Perkins), Haeberle, 15-3, INELIGIBLE
- 828, 6, ELIGIBLE (Exceptions)
- Overtum (Burgett), Parker, 13-5, INELIGIBLE-A
- 827, 6, INELIGIBLE (Exceptions)
- Uphold (Saylor) Burgett, 18-0, INELIGIBLE

A- Findings of Facts in Case #828

1. The KHSAA Board adopts the Findings of Fact in the Hearing Officer's Recommended Order, except reaches a different conclusion from those facts.

Conclusions of Law

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

1. Student's transfer is subject to Bylaw 6, Section 1 ("Bylaw 6") because he participated in varsity sports at sending school after enrolling in grade nine and transferred to receiving school.

2. Student's transfer does not meet a specific, enumerated exception to Bylaw 6, including the bona fide change in residence exception, or the discretionary waiver provision in the Due Process Procedure.

Student's parents have owned a home in the sending school district from the time student enrolled at sending school at the beginning of his freshman year until the present. Student enrolled at sending school to begin his freshman year and established his eligibility at sending school when he participated in varsity tennis in the spring of 2003. In June 2003, student and his family moved into a home in South Carolina which his parents owned while he was enrolled at sending school. In December 2003, after attending a high school in South Carolina for the 2003 fall semester, student and his family moved back to Kentucky into the same home they occupied when student enrolled at and attended sending school. The alleged reason student transferred to receiving school when his family moved back into the Kentucky home was because he had friends at receiving school. Nothing prevented student from enrolling at sending school - the high school where he established his eligibility and which is the high school for the school district where he lives.

Not all changes in residence meet the bona fide change in residence exception in Bylaw 6, Section 1(a). Bylaw 6, Section 1(a)(1)(4) provides that a change in residence is not bona fide if it is used or manipulated for the purpose of gaining athletic eligibility, i.e., avoiding the application of Bylaw 6. Allowing a waiver under these circumstances would allow students and/or their parents to manipulate Bylaw 6 by simply moving into a home already owned by the parents, keep-



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ing the old home, and then moving back into the old home a few months later but transferring schools. Because the period of ineligibility under Bylaw 6 is one year from the date of enrollment at the new school, this would allow students to circumvent the application of the normal period of ineligibility without really moving from one school district to another. Indeed, even though student and his parents have always lived at the home in the sending school district while student attended school in Kentucky and they moved back into that home during what would be the normal period of ineligibility if student had enrolled at receiving school when he enrolled at the South Carolina high school, student would nonetheless be able to participate in varsity tennis at receiving school in the spring of 2004 if a waiver were granted. However, if student had enrolled at receiving school at the same time he enrolled at the South Carolina high school, he would not be eligible until the 2004-2005 school year. Further, the change in residence did not cause student's transfer to receiving school. Rather, student voluntarily transferred for personal reasons, i.e., he had friends at receiving school. The KHSAA Bylaws and Due Process Procedure only allow a waiver when the transfer is beyond the control of all the parties involved, including the parents and student. For all these reasons, a waiver is not appropriate.

President Dotson, **Executive Committee** Chairperson, asked the record to show that the following motions were voted on:

1. Jim Sexton made a motion, seconded by Chuck Broughton, to grant the Commissioner the option not to use foreign exchange agencies that do not adhere to KHSAA rules and directives, and to deny all direct placements, including the definition of direct placements. The motion passed unanimously.
2. Jim Sexton made a motion, seconded by Eddie Saylor, to suspend the agenda to consider the contractual issue regarding North Laurel and McCreary Central High Schools. The motion passed 17-0 with one (Mike Deaton) recusal.
3. Eddie Saylor made a motion, seconded by Bob Stewart, to deny McCreary Central the remaining \$1,500 contract fee. The motion passed 17-0 with one (Mike Deaton) recusal.
4. Eddie Saylor made a motion, seconded by Jim Sexton, to table any action on the Mayfield/Trigg County Football contract dispute until the May meeting. The Board requested Commissioner DeVries contact both school principals and advise them to try to resolve the issue on their own before the May meeting. The Board also requested that the May *Commissioner's Notes* print a reminder that all contracts, including any changes, need to be in writing for all sports, and that the Board of Control will not

help resolve any issues arising from oral changes/agreements in written contracts.

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

5. Cynthia Elliott made a motion, seconded by Sally Haeberle, to align Community Christian (Paducah) in the 3rd District in Boys' and Girls' Basketball. The motion passed 16-1. For the record, Lonnie Burgett opposed the motion.
6. Jim Sexton made a motion, seconded by Gary Dearborn, not to proceed with the 3-team seeding revision, until the basketball re-alignment is completed. The motion failed 5-12.
7. Eddie Saylor made a motion, seconded by Lonnie Burgett, to change the tournament rules so that 3-team districts are required to seed. Baseball and Softball would begin with the 2004-2005 school year, and Soccer, Volleyball and Basketball would begin with the 2005-2006 school year. The motion passed 12-5.
8. Gary Dearborn made a motion, seconded by Eddie Saylor, for the Commissioner to revise the Bylaw 25-9 interpretation to clarify that KHSAA schools can only play other schools. The Board is adamantly opposed to KHSAA member schools playing independent teams during regular season contests. The motion passed unanimously. The Board requested that Commissioner DeVries correspond with member schools who have already contracted to play independent teams.

Let the record show that Lonnie Burgett left the meeting temporarily.

Jerry Taylor, **Football Committee** Chairperson, asked the Board to approve the following motions:

1. Allow the mercy rule to remain as it is now (-45 points). The motion was seconded by L.V. McGinty, and passed 15-1.
2. Count the first ten games for a tie-breaker. The motion was seconded by Bob Schneider, and passed unanimously.

Let the record show that Lonnie Burgett returned to the meeting.

3. Interrupted games will be re-scheduled following the recommended football policy as presented. The motion was seconded by Sally Haeberle, and passed unanimously.

Cynthia Elliott, **Title IX Committee** Chairperson, requested that the record include the following: The Board reviewed a very thorough Title IX report from staff and wishes to receive a categorization of deficiencies as listed in the report submitted to the Kentucky Board of Education. They will consider administrative penalties for those schools not in compliance.

Commissioner DeVries and Michael Dailey reported on the April Kentucky Board of Education meeting.

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Paul Dotson made a motion, seconded by Eddie Saylor, to add Piarist School to the 58th District in Boys' Basketball to compete in 2004-2005. The motion passed unanimously.

The Board requested that for all future title partnerships the KHSAA logo needs to be displayed prominently on any promotional items, such as signage and banners. They also requested that the media utilize the proper logos and registered trademarks.

The Board requested that the names of the Board members, names be listed on future Hall of Fame Programs, the Athlete magazine and game programs, to make them easily identified to the member schools they represent.

President Dotson then called the Board's attention to miscellaneous items listed for their information only. 1) Review the date for Regular Board Meeting in May to consider April appeals; 2) Review dates for the Regular July Board of Control Meeting, 3) Miscellaneous Board and staff items.

Assistant Commissioner Julian Tackett asked if the Board would consider having the July meeting in western Kentucky if a site can be secured. The dates for the Board Meeting are July 15-16, 2004. Members are to let him know by the end of the week.

Commissioner DeVries invited the President, Vice-President and all third year Board members going into their fourth year on the Board to attend the NFHS summer meeting in San Diego, per Board policy.

Eddie Saylor requested that 3-person officiating in basketball be included on the May agenda.

Ms. DeVries mentioned that on May 12, 2004 there will be a meeting of non-public school representatives at the KHSAA.

There being no further business to come before the Board, Lonnie Burgett made a motion to adjourn. The motion was seconded by Eddie Saylor, and passed unanimously. The meeting adjourned at 12:00 noon.

Paul Dotson
Brink DeVries

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