

## MINUTES OF THE BOARD MEETING

DECEMBER 14, 2006

President Gary Dearborn convened the special meeting of the Board of Control on Thursday, December 14, 2006 at 9:00 a.m. All Board members were present except Michael Barren, Alan Donhoff, Paula Goodin and L.V. McGinty. 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. Phil Scott, KHSAA Legal Counsel and Michael Dailey, KDE liaison, were also present. Guests included Principal Sally Stevens, Lexington Catholic HS; Athletic Director Jon Jones, Gallatin County HS; Principal Roxann Booth, Gallatin County HS; Dot Perkins, Gallatin County HS; Jack and Betty Edmondson, Parents; Malik Stevenson, Lisa Stevenson, William H. Stevenson, III and B. Stevenson.

Assistant Commissioner Roland Williams, who is retiring, provided a moment of reflection.

Larry Boucher led the Pledge of Allegiance.

President Dearborn asked for a motion to amend the agenda to allow consideration of Case #1080. A motion was made by Donna Wear, seconded by Ozz Jackson, and passed unanimously.

Mr. Dearborn then stated for the record that fourteen out of eighteen Board members were present, and that ten votes were needed to pass any eligibility motions.

Assistant Commissioner Larry Boucher noted that 57 schools were not in compliance at this time with the Title IX directive to play 40% of girls' basketball games in prime time. Those who do not revise their schedules and remain out of compliance will be allowed to appeal at the January, 2007 meeting.

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
1101	6	ELIGIBLE	Uphold (Perkins)	Schneider	12-1-1 (Keepers)	Eligible
1104	6	ELIGIBLE	Uphold (Jackson)	Prewitt	13-1	Eligible
1106	6	ELIGIBLE	Overturn (Burgett)	Parker	12-2	Ineligible-A
1102	6	INELIGIBLE	Remand (Weedman)	Prewitt	14-0	Ineligible
1103	6	INELIGIBLE	Uphold (Moore)	Stewart	13-0-1 (Wear)	Ineligible
1105	6	INELIGIBLE (EXCEPTIONS)	Uphold (Stewart)	Broughton	13-1	Ineligible
1065	6	INELIGIBLE (EXCEPTIONS)	Uphold (Weedman)	Keepers	13-0-1 (Burgett)	Ineligible
1080	6	ELIGIBLE (EXCEPTIONS)	Uphold (Schlosser)	Jackson	11-0-3 (Dearborn) (Wear) (Weedman)	Eligible

### A-Findings of Fact – Case #1106

1. The KHSAA Board incorporates by reference the Findings of Fact as contained in the Hearing Officer's Recommended Order. The KHSAA 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 the period of ineligibility contained in Bylaw 6 should not be waived for the following reasons:

1. The student's transfer is subject to Bylaw 6 because she 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 student's transfer does not satisfy any enumerated exception to Bylaw 6.
3. The Due Process Procedure provides for a discretionary waiver if strict application of the applicable Bylaw is unfair *and* the circumstances creating the ineligibility are clearly beyond the control of all the parties involved. The evidence provided does not support a conclusion that the strict application of Bylaw 6 is unfair to the student and the circumstances resulting in the student's transfer were clearly beyond the control of all the parties involved. Specifically, the student did not produce any evidence that her family had encountered some type of financial difficulty beyond their control, such as the loss of a job, death in the family, etc. Rather, the alleged financial difficulty was due to an increase in gasoline prices. When the student and her family initially decided that she would attend a tuition-based school, however, they should have expected that tuition and the prices of items, such as gasoline, would almost certainly increase during her high school years. Further, there was no evidence that the student had applied for financial assistance at the sending school and been denied. Thus, a waiver under these circumstances would set an undesirable precedent and have an adverse impact on future enforcement of Bylaw 6.
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., 552 S.W.2d 685 5(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 through their support of Bylaw 6 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.

Assigned Board of Control groups met to revise the 2007-2011 Strategic Plan. The additions/revisions were discussed, and will be included in the next version, to be included in the January Board of Control packet. The Board will continue work on this project at the January meeting.

Interviews for Assistant Roland Williams' position will be held in the next week. There were 15 applicants, and 5 are being interviewed.

Ozz Jackson requested that the Team Sports Committee meet in January to review a 10-team soccer district.

Attorney Phil Scott updated the Board on various legal situations and reported that the KHSAA received a favorable response from the Attorney General's Office regarding the Hamlin Attorney General Opinion Request.

The date for the next regular Board meeting is Wednesday & Thursday, January 10-11, 2007 at the KHSAA office.

There being no further business, a motion to adjourn was made by Lonnie Burgett, seconded by Ozz Jackson, and passed unanimously. The meeting adjourned at 12:50 p.m., December 14, 2006.

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

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