

October Meeting - Board of Control Minutes

President Kathy Johnston convened the special meeting of the Board of Control on Monday, October, 2001 at 8:30 a.m. All Board members were present except Cynthia Elliott and Sally Haeberle. Also present were Executive Assistant Commissioner Brigid DeVries, Assistant Commissioner Larry Boucher, Sports Information Director Butch Cope, Fundraising Consultant Ken Tippett and Office Manager Darlene Koszenski. Ted Martin, Attorney with Greenebaum, Doll & McDonald, joined the meeting in progress.

Roland Williams was called on for the invocation.

The first item on the agenda was consideration of the Hearing Officer's Recommendations (Cases in which the student was recommended to be eligible). Paul Dotson made a motion, seconded by Jeff Perkins, to REVERSE the Hearing Officer's Recommendation on the following appeal. The motion passed unanimously:

No., Bylaw, Student, School, Findings #617, 4 Cody Gene Crady Bath County, Ineligible

Findings of Fact

1. Cody Gene Crady ("Cody") enrolled at Bath County High School ("Bath County") for his 9th grade year in the fall of 1997.
2. Cody failed his sophomore year at Bath County. He retook his sophomore year, and is now in his fifth year of high school.
3. Cody testified that he failed his sophomore year of high school because he hung around the wrong crowd. He further testified that participating in sports at Bath County has helped him improve his grades and attitude. Ginnie McKenzie, the librarian at Bath County, testified that Cody helps in the library as part of a career exploration program and believed a waiver was deserving under the circumstances. Tim Bailey, the soccer coach at Bath County, testified that Cody was not an all-star player. Cody benefited by playing sports, and the Bath County soccer team was short on players.
4. Cody only participated in varsity athletics at Bath County during his junior year.

Conclusions

1. There is no constitutionally protected right to participate in interscholastic athletics; rather, participation is a privilege.
2. Cody is permanently ineligible under Bylaw 4, Section 1 ("Bylaw 4") because he is in his fifth year of high school.
3. Cody is not entitled to a waiver of the

application of Bylaw 4 because his right to basic education services at Bath County were not impacted due to illness or injury. Rather, Cody failed his sophomore year at high school because he was hanging out with the wrong crowd. Moreover, while participation in athletics may benefit Cody, the circumstances creating the ineligibility were clearly within his control.

4. Bylaw 4 is a necessary and essential tool for maintaining the integrity of interscholastic athletics in Kentucky. Indeed, as stated in Q/A 1 to Bylaw 4:

A maximum participation requirement promotes timely progress toward graduation by discouraging students from delaying or interrupting their high school education; disallows students to enroll for one semester each school year to increase athletic ability and skill; promotes equality of competition, diminishes risks stemming from unequal competition, and places emphasis on the academic mission of the school. A maximum participation requirement promotes harmony and fair competition among member schools by maintaining equality of eligibility. Each student is afforded the same number of semesters of athletic eligibility that increases the number of students who will have an opportunity to participate in interscholastic athletics. A maximum participation requirement is conducive to the prevention of red-shirting; 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 prevents displacement of younger student-athletes by older students wishing to protract unfairly their high school careers.

Moreover, a semester limit protects younger athletes from the harm of more physically mature students.

Dale Stewart made a motion, seconded by Eddie Saylor, to REVERSE the Hearing Officer's Recommendation on the following appeal. The motion passed 13-0 with one (Jim Sexton) recusal: The Board asked that a copy of Jeff Edward's letter be sent to Jim Watkins to investigate as a possible violation of Bylaw 10, Recruitment.

No., Bylaw, Student, School, Findings #618, 6, Tasha White, Ballard, (Jeffersontown) Ineligible

Findings of Fact

1. Tasha White ("Tasha") transferred to Ballard High School ("Ballard") on August 2, 2001 after having attended Jeffersontown High School ("Jeffersontown") during her freshman and sophomore years. Tasha participated in varsity athletics, including basketball, volleyball, and track, while at Jeffersontown.

2. Tasha has lived in the Moore High School ("Moore") district since she enrolled at Jeffersontown. Her transfer to Ballard was not precipitated by a change in residence.

3. Tasha attended Jeffersontown on a hardship transfer because she lived in the Moore district.

4. Tasha is also attending Ballard on a hardship transfer because she still lives in the Moore district.

5. The only reason advanced for Tasha's transfer was the difficulty incurred by her mother, Jo Ellen White ("Jo Ellen"), in arranging transportation for Tasha to and from Jeffersontown and related activities at the school due to Jo Ellen suffering from a medical condition known as sarcoidosis. According to letters from several physicians, Jo Ellen has severe sarcoidosis with multi-system involvement, has been on a very high dose of steroids causing extensive side effects, and was on oxygen therapy at home during the month of August. Moreover, one letter states that she is doing well overall, but is often very tired and incapable of doing more than the basic activities of daily living. The letters also state that Jo Ellen sometimes has trouble getting her daughter transportation to and from activities at Jeffersontown, and that Jo Ellen's next door neighbor has a daughter at Ballard and could help her with this problem. One letter requests that Tasha not be bused long distances because Jo Ellen's medical condition makes it difficult to transport her long distances.

6. Jo Ellen and Tasha's aunt, Rachel White ("Rachel"), stated that the transportation difficulties included problems with finding a way for Tasha to get home when Tasha both missed the school activities bus and had away games (because the school activities bus only brought the students back to the school for away games). Tasha did testify that the school activities bus brought her home on practice days. Jo Ellen also stated that the former girls' basketball coach at Jeffersontown, Stacy

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Pendleton, helped out with transportation. 7. Rachel also stated that she was previously able to help with Tasha's transportation to and from Jeffersontown. However, due to her daughter having a baby, she would not be able to help with transportation as much anymore.

8. Jo Ellen stated that no other student on their street attends Jeffersontown or the school in their district, Moore. Rather, those students attend Southern, Central, Manual, and Ballard. Jo Ellen further stated that Tasha chose to go to Ballard because Jo Ellen was good friends with the mother of the student who attends Ballard and that student's mother agreed to help with transportation to and from Ballard. Jo Ellen mentioned that Tasha went to a summer basketball camp, the Blue Chip camp, with that student's father.

9. Jeffersontown, Manual, Southern, Male, and Moore are closer to Tasha and Jo Ellen's residence than Ballard.

10. Jeff Edwards, Athletic Director at Jeffersontown, testified that he had a problem with the school chosen by Tasha for several reasons. First, he stated that there were other schools closer to Tasha's residence than Ballard, including Southern and Moore, and Ballard was 20 to 25 minutes from Jeffersontown. Second, Tasha was able to get to and from Jeffersontown for the past two years. Third, prior to her transfer to Ballard, Tasha had been playing basketball with Ballard high school students during open gym at that school. Moreover, according to a letter from Jeff Edwards, Tasha had told him that, *prior to the transfer from*



South Oldham celebrates its fourth consecutive Girls' State Soccer Championship, sixth in the last seven years.

Jeffersontown to Ballard, the Ballard girls' basketball coach told her that he would love to have her play for Ballard and had other conversations with Tasha on this subject.

11. Jo Ellen admitted that Tasha had participated in the open gym at Ballard prior to Tasha's transfer. She claimed, however, that it only occurred one time and that Jeffersontown did not have an open gym that summer. In addition, Jo Ellen admitted that she spoke with the wife of Ballard's girls' basketball coach during the open gym session. She denied that the wife was employed by Ballard.

12. No documentation or evidence was introduced regarding attempts by Tasha or Jo Ellen to discuss their transportation problems with anyone at Jeffersontown.

Conclusions

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

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

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

4. Tasha's transfer did not deserve a waiver of Bylaw 6 under the discretionary Due Process Procedure waiver provision because strict application of Bylaw 6 is not unfair to Tasha and the circumstances creating the ineligibility are not *clearly* beyond the control of all the parties involved.

The asserted reason for the transfer was transportation difficulties at Jeffersontown. Admittedly, Jo Ellen's medical condition prevents her from assisting with Tasha's transportation sometimes (especially for long distances). Ballard is, however, just as far away from the White's residence as Jeffersontown. In addition, Tasha can take the regular school bus to Jeffersontown in the morning and from Jeffersontown in the afternoon when she does not have after school activities. Tasha can also take the school activities bus home from activities, including athletics, at Jeffersontown. The only real transportation problem was, therefore, finding rides home from Jeffersontown when Tasha was brought back to Jeffersontown from away games. Tasha and Jo Ellen failed to show, however, that they requested that Jeffersontown address these special situations or that Jeffersontown was un-

willing to help with those special situations. Indeed, the former girls' basketball coach at Jeffersontown had helped with this same problem in the past. Moreover, Rachel was still able to help with transportation on a limited basis.

Tasha's choice of Ballard for her new school also dictates against a waiver. In addition to Ballard being about the same distance away from the White's residence as Jeffersontown, at least five other public schools are closer to the White's residence than Ballard. Further, even though Jo Ellen has a neighbor with a daughter who attends Ballard, she also has neighbors whose children attend schools closer to the White's residence than Ballard - Southern, Central, and Manual. Lastly, Tasha's playing basketball with Ballard high school students during open gym at Ballard, *prior to her transfer*, suggests that she chose Ballard at least in part for athletic reasons. Indeed, as support for this proposition, Jeff Edwards claimed that Tasha had told him that, *prior to her transfer*, she had been asked by Ballard's girls' basketball coach to come and play for Ballard.

The next item on the agenda was consideration of the Hearing Officer's Recommendations (Cases in which the student was recommended to be ineligible). Eddie Saylor made a motion, seconded by Roland Williams, to uphold the Hearing Officer's Recommendation on the following appeal. The motion passed unanimously:

No., Bylaw, Student, School, Findings #608, 4, Aaron Bailey, Russell, Ineligible

Gary Dearborn made a motion, seconded by Eddie Saylor to uphold the Hearing Officer's Recommendation on the following appeal. The motion passed unanimously: The Board asked staff to look into the Ohio Valley Volleyball Association for a possible violation of Bylaw 10, Recruitment.

No., Bylaw, Student, School, Findings #609, 6, Amy Johnson, Assumption

(Presentation Academy), Ineligible Paul Dotson made a motion, seconded by Roland Williams, to uphold the Hearing Officer's Recommendation on the following appeal. The motion passed unanimously:

No., Bylaw, Student, School, Findings #610, 6, Tammy King, Conner

(St. Henry District), Ineligible Jeff Perkins made a motion, seconded by Gary Dearborn, to uphold the

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Hearing Officer's Recommendation on the following appeal. The motion passed 13-0 with one (Jim Sexton) recusal:
 No., Bylaw, Student, School, Findings #611A, 6, Andrew Araque, Eastern, (Walden,), Ineligible

L.V. McGinty made a motion, seconded by Eddie Saylor, to uphold the Hearing Officer's Recommendation on the following appeal. The motion passed 13-0 with one (Jim Sexton) recusal:
 No., Bylaw, Student, School, Findings #611B, 6, Abdi Ali, Eastern, (Walden), Ineligible

Dale Stewart 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 #612, 6, Dustin Dorsey, Greenup County, (Hazel Green, AL), Ineligible

Eddie Saylor made a motion, seconded by Gary Dearborn, to uphold the Hearing Officer's Recommendation on the following appeal. The motion passed 12-1 (Jim Sexton) with one (Dale Stewart) recusal:
 No., Bylaw, Student, School, Findings #613, 6, Ashley Fechter, Daviess (Althoff Catholic, OH), Ineligible

The next item on the agenda was consideration of the Hearing Officer's Recommendations (Cases in which the student was recommended to be ineligible and exceptions were filed). Gary Dearborn made a motion, seconded by Dale Stewart, to uphold the Hearing Officer's Recommendation after notation and consideration of the exceptions filed on the following appeal. The motion

passed 13-0 with one (Jim Sexton) recusal:

No., Bylaw, Student, School, Findings #615, 6, Scooter Downey, Ballard (Kentucky Country Day), Ineligible

L.V. McGinty made a motion, seconded by Lonnie Burgett, to uphold the Hearing Officer's Recommendation after notation and consideration of the exceptions filed on the following appeal. The motion passed unanimously:

No., Bylaw, Student, School, Findings #616, 6, Ryan Howard Smith, North Laurel (All Saints), Ineligible

Dale Stewart made a motion, seconded by L.V. McGinty, to REVERSE the Hearing Officer's Recommendation after notation and consideration of the exceptions filed on the following appeal. The motion passed 12-1 with one (Betsy Glover) recusal:

No., Bylaw, Student, School, Findings #614, 6(2), Jonatan Jacobsen, Hancock County, Eligible

Findings of Fact

1. Jonatan Jacobsen ("Jonatan") enrolled at Hancock County High School ("Hancock County") on August 7, 2001. He is a foreign exchange student from Denmark living with the Bolen family. Pam Bolen is his legal guardian during his stay in the United States.
2. Jonatan has a visa issued by the United States Immigration and Naturalization Service.
3. No member of the Bolen family is on the coaching staff at Hancock County.
4. A letter from AFS-USA Interkultur, a non-profit exchange organization, indicated that Jonatan is a fully paying member of the organization.

5. Jonatan stated that he will only be at Hancock County for one school year because he intends on taking an electrician apprenticeship after this current school year.

Conclusions

1. Jonatan's transfer is subject to Bylaw 6, Section 2 ("Bylaw 6").
2. Jonatan is entitled to a waiver of the initial one-year period of ineligibility under Bylaw 6 because he is in compliance with all United States Immigration and Naturalization Service regulations, is in his first and only year as an exchange student, did not graduate from the 12th or terminating grade in the United States or Denmark, has a valid visa from the United States Immigration and Naturalization Service, no one in the Bolen family is a member of the coaching staff at Hancock County, and has come through a KHSAA approved program for foreign exchange students.

Ted Martin updated the Board on current litigation.

Jim Sexton stated that recusing from any case in a Board member's school system is unfair and he would like to see an additional written interpretation from the Department of Education at the next Board meeting to clarify the procedure once and for all.

There being no further business to come before the Board, Eddie Saylor made a motion to adjourn. The motion was seconded by Jerry Taylor, and passed unanimously. The meeting adjourned at 10:00 a.m.

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