

BOARD OF CONTROL MINUTES - SEPTEMBER 2003

President Paul Dotson convened the regular meeting of the Board of Control on Thursday, September 18, 2003 at 2:40 p.m. All Board members were present except Chuck Broughton and Robert Schneider. 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 Tippet and Office Manager Darlene Koszenski. KHSAA legal counsel, Ted Martin; Ryan Fischer and Ron Madrick, Holmes High School, were also present.

Lonnie Burgett was called on for the invocation.

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

Eddie Saylor made a motion, seconded by Steve Parker, to approve the minutes of the July 14-15, 2003 regular meeting and the minutes of the August 25, 2003 special meeting. The motion passed unanimously.

Gary Dearborn made a motion that all bills of the Association for the period July 1, 2003 through August 31, 2003 be approved. Donna Wear seconded the motion, which passed unanimously.

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

745, 6, ELIGIBLE, Overturn (Dearborn), Taylor 13-3, INELIGIBLE-A

747, 6, ELIGIBLE, Overturn (Burgett), Haeberle 12-3-1, INELIGIBLE-B

748, 6, ELIGIBLE, Accept (McGinty), Elliott 15-1, ELIGIBLE

749, 6, INELIGIBLE, Accept (Haeberle), McGinty 11-3-2, INELIGIBLE

750, 6, INELIGIBLE, Accept (McGinty), Taylor

11-3-2, INELIGIBLE

A-Findings of Fact Related to Case #745

1. The KHSAA Board incorporates by reference the Findings of Fact in the Hearing Officer's recommended order and the additional information supplied by the Hearing Officer in his letter dated September 10, 2003.

Conclusions of Law

1. Student's transfer is subject to Bylaw 6, Section 1 ("Bylaw 6") because they participated in varsity sports at sending school and transferred to receiving school.
2. Sending school is a member school of the Ohio High School Athletic Association.

3. Student's transfer does not meet a specific, enumerated exception to Bylaw 6. As stated in Case BL-6-7 and Case BL-6-8, students transferring from out of state schools are subject to Bylaw 6 and exception (h) to Bylaw 6 only applies to schools in Kentucky that are not members of the KHSAA.

4. Student's transfer does not merit a waiver of Bylaw 6 under the discretionary Due Process Procedure waiver provision because strict application of Bylaw 6 is not unfair to them and the circumstances creating the ineligibility are not clearly beyond the control of all the parties involved. There is no other evidence in the record sufficient to support a waiver. Further, a waiver would be contrary to past case situation rulings, have a depreciative value on future enforcement of Bylaw 6, and set an undesirable precedent.

B-Findings of Fact Related to Case #747

1. The KHSAA Board incorporates by reference the Findings of Fact in the Hearing Officer's recommended order and duly notes the exceptions to the Hearing Officer's recommended order filed by Brigid DeVries and the Covington Board of Education.

Conclusions of Law

1. Neither the KHSAA Commissioner, Hearing Officer nor Board has the authority to determine whether a school is "in crisis" or in the lowest category under

183

Fall 2003

BOARD OF CONTROL MINUTES - SEPTEMBER 2003

exception (f) to Bylaw 6, Section 1 ("Bylaw 6"). Only the Kentucky Board of Education can make this determination.

2. The KHSAA Hearing Officer was clearly erroneous in his conclusion that the sending school was "in crisis" at the time of student's transfer. The Kentucky Board of Education has not determined the sending school to be "in crisis" or an "Assistance-Level 3" school.

3. Student's transfer is subject to Bylaw 6 because they participated in varsity sports at the sending school and transferred to the receiving school.

4. Student's transfer does not meet a specific, enumerated exception to Bylaw 6.

5. Student's transfer does not merit a waiver of Bylaw 6 under the discretionary Due Process Procedure waiver provision because strict application of Bylaw 6 is not unfair to them and the circumstances creating the ineligibility are not clearly beyond the control of all the parties involved. There is no other evidence in the record sufficient to support a waiver. Further, a waiver would be contrary to past case situation rulings, have a depreciative value on future enforcement of Bylaw 6, and set an undesirable precedent.

Gary Dearborn made a motion, seconded by Cynthia Elliott, to go into Executive Session to discuss appeal cases. The motion passed unanimously. Ken Hurt made a motion, seconded by Sally Haeberle, to return to open session. The motion passed unanimously. No action was taken during the closed session.

President Dotson, **Executive Committee** Chairperson, asked the record to show that:

1. Work continues on the Basketball Realignment Study using available data. No action was taken.
2. Office Evaluation system was discussed with the Commissioner. No action was taken.
3. The 2003-2007 KHSAA Strategic Plan was distributed. No action was taken.

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

1. Ken Hurt made a motion, seconded by Donna Wear, to approve the Title Partnership for the Boys' Sweet 16® Basketball Tournament for a 3-year period. The motion passed 13-2. Let the record show that Lonnie Burgett was not in the room for the vote.
2. Eddie Saylor made a motion to approve all bills of the Association for the period July 1, 2003 through August 31, 2003. The motion was seconded by Robert Stewart, and passed unanimously.
3. Sally Haeberle made a motion, seconded by Eddie Saylor, directing staff to move forward and seek proposals for live television coverage of the boys' and girls' basketball championship games. The motion

passed unanimously.

L.V. McGinty, **Official's Review and Policy Committee** Chairperson, then asked the record to show that a possible Soccer Official's fee increase was discussed. The Committee feels the current proposed increase is too high, and requested a 3-year grid for all sports with set raises. Paying a set fee, with no mileage reimbursement for postseason was also discussed and further information will be forthcoming. No action was taken.

Jim Sexton, Chairperson, **Constitution & Bylaws Committee**, asked the record to show that the following motions be made by the Chair on behalf of the Committee:

1) The following are proposals submitted by the membership (second reading) to be placed on the Annual meeting agenda. The motion was seconded by Gary Dearborn, and passed unanimously:

- a) Constitution Proposal from Ron Madrick, Holmes, Board of Control composition
- b) Constitution Proposal from J A Sexton, Eastern, elimination of two-term limit
- c) Bylaw 4 Proposal from Ron Madrick, Holmes and Mark Swift, Ashland Blazer, restriction on out of state students
- d) Bylaw 6, 2 Proposal to Revise Foreign Exchange Rule, J.A. Sexton, Eastern HS, restrict participation to non-varsity level if year 1 is waived.

2) The following proposals are to be submitted on behalf of the Board of Control (second reading) to be placed on the agenda for the Annual Meeting:

- a) Revision of Bylaw 29, Clinic Attendance Requirement, seconded by Lonnie Burgett, passed unanimously)
- b) Bylaw 25 Revisions to start play on fixed Corresponding Weeks in Volleyball, Soccer and Cross Country, seconded by Robert Stewart, passed unanimously)
- c) Bylaw 25 Revisions to start play on fixed Corresponding Weeks in Wrestling, seconded by Robert Stewart, passed unanimously)
- d) Bylaw 6 Technical Amendments, Move Parts under bona fide change to apply to all exceptions, seconded by Lonnie Burgett, passed unanimously)
- e) Bylaw 6, Section 1 (f) - Technical Corrections regarding Kentucky Board of Education and Kentucky Department of Education definitions, seconded by Lonnie Burgett, passed unanimously)
- f) Bylaw 6, Discussion, Add "in Kentucky" to section h) **TRANSFER FROM NON-MEMBER SCHOOL - Any student transferring from a non-member school located in Kentucky whose athletic participation has been limited primarily to other non-member schools may have the period of ineligibility waived**, seconded by Sally Haeberle, passed unanimously)

BOARD OF CONTROL MINUTES - SEPTEMBER 2003

3) Directed staff to further clarify proposals previously submitted by the membership or the Board to consider further and give first reading at the next meeting, seconded by Lonnie Burgett, the motion passed unanimously:

- a) Revision of Bylaw 25, Golf Season Limitation
- b) Revision of Constitution, Deadline for Submitting Proposals (Motion to endorse made by Gary Dearborn, seconded by Robert Stewart, passed 9-4-3 recusals)
- c) Bylaw 6, Discussion, Allow Junior Varsity Play for Ineligible Students – Jim Sexton, Eastern, seconded by Sally Haerberle, passed 14-1 (Paul Dotson). Robert Stewart was not in the room for the vote.

4) Voted to direct staff to further clarify with proposal authors any final language on the following proposals, such proposals to be submitted with the member school representative as the author:

- a) Bylaw 6 Discussion, Period of Ineligibility to begin with last participation, seconded by Eddie Saylor, passed unanimously.
- b) Bylaw 6, Discussion, Return to Home District & Waive Ineligibility, seconded by Lonnie Burgett, passed unanimously.
- c) Bylaw 6, Discussion, Principals of Sending & Receiving Schools Sign Off on Transfer Forms, seconded by Eddie Saylor, passed 15-1 [Gary Dearborn]
- d) Bylaw 6, Discussion, Remove "penalty" and add "suspension or expulsion" under section a-i-1) "...if the student left the sending school under suspension or expulsion, which would have resulted in their ineli-

gibility at the sending school...", seconded by Lonnie Burgett, passed 13-3)

e) Bylaw 26, Dead Period, Postseason Events, seconded by Sally Haerberle, passed 11-4. (Robert Stewart was not in the room for the vote)

5) In addition, Mr. Sexton reported the following discussion items with no committee action taken:

- a) Bylaw 12 Discussion, On Students Participation in Events Awarding Cash Prizes.
- b) Bylaw 25, Open Gym/Field Clarifications (Motion made by Cynthia Elliott to endorse provided interpretation to be distributed, seconded by Lonnie Burgett, passed unanimously)
- c) Bylaw 27 Clarification and Discussion regarding Substitute Teachers and Minimum Academic Requirement.

President Dotson then called the Board's attention to miscellaneous items listed for their information only. 1) Set the date for Special Board Meeting in October to consider August & September appeals; 2) Review dates for the next regular Board of Control Meeting, November 19-20th in Lexington; 3) Miscellaneous Board and staff items.

It was decided a special called meeting was necessary, and is scheduled for October 20th at 8:30 a.m.

There being no further business to come before the Board, Eddie Saylor made a motion to adjourn. The motion was seconded by L.V. McGinty, and passed unanimously. The meeting adjourned at 5:00 p.m.

303

Paul J. Dotson
Bill L. DeVine