

## Board of Control Minutes - December 2003

President Paul Dotson convened the special meeting of the Board of Control on Thursday, December 18, 2003 at 8:10 a.m. All Board members were present except Sally Haeberle, Stan Hardin, Jeff Perkins and Donna Wear. Also present were Commissioner Brigid DeVries, Assistant Commissioners Larry Boucher, Julian Tackett and Roland Williams, Fundraising Consultant Ken Tippet and Office Manager Darlene Koszenski. Guests included KHSAA legal counsel, Ted Martin, Greenebaum, Doll & McDonald; Athletic Director Greg Todd, Lexington Catholic High School; Tony Talbott, Assistant Athletic Director, Lexington Catholic High School; Charles Grundy, Legal Counsel for the Azubuikes; Mr. & Mrs. Azubuike; Evelyn, Sarah and Maggie McKemie.

Gary Dearborn was called on for the invocation.

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

The Board of Control then considered the following appeals in compliance with the KHSAA Due Process Procedure:

Case #	Bylaw	H. O. Recommend
	Motion/Second/Vote	Y-N-R/Status
792	6	ELIGIBLE
Remand/(Dearborn)/Parker/12-3/Eligible-A		
793	6	ELIGIBLE
Uphold/(Elliott)/McGinty/10-4/Eligible		
799	6	ELIGIBLE
Overturn/(Elliott)/Stewart/12-2/Ineligible-B		
800	6	ELIGIBLE
Uphold/(Saylor)/Parker/12-2/Eligible*		
802	6	ELIGIBLE
Remand/(Dearborn)/Sexton/14-1/Eligible-C**		
803	6	ELIGIBLE
Overturn/(Sexton)/Parker/15-0/Ineligible-D***		
806	6	ELIGIBLE
Uphold/(Saylor)/Taylor/15-0/Eligible		
798	6	INELIGIBLE
Uphold/(Dearborn)/Parker/14-0-1/Ineligible		

804	6	INELIGIBLE
Uphold/(Elliott)/McGinty/14-0-1/Ineligible		
794	6	EXCEPTIONS
Overturn/(Elliott)/Stewart/12-3/Ineligible-E		
795	6	EXCEPTIONS
Uphold/(Dearborn)/Parker/15-0/Ineligible		
796	6	EXCEPTIONS
Uphold/(Parker)/Broughton/15-0/Ineligible		
797	6	EXCEPTIONS
Uphold/(Saylor)/Burgett/14-0-1/Ineligible		
801	6	EXCEPTIONS
Uphold/(Dearborn)/Taylor/12-3/Ineligible****		
805	6	EXCEPTIONS
Uphold/(Dearborn)/Broughton/14-0-1 Ineligible		

\*The Board requested an official court document follow-up, since it was not provided in the written record.

\*\*Let the record show that Stan Hardin joined the meeting at 8:40 a.m.

\*\*\*Let the record show that Michael Dailey, KDE liaison, joined the meeting at 8:45 a.m.

\*\*\*\*Let the record show that Jeff Imlay, Athletic Director at Christian Academy-Louisville, joined the meeting at 9:15 a.m.

### (A) - Remand request related to Case #792

Remand the case back to the Hearing Officer for additional information regarding the financial hardship.

### (B) - Findings of Fact related to Case #799

The KHSAA Board incorporates by reference the Findings of Fact in the Hearing Officer's recommended order.

### 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 they participated in varsity sports at sending school and transferred to receiving school.
2. Student's transfer does not meet a specific, enumerated exception to Bylaw 6.

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3. 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. The KHSAA does not recognize as grounds for a waiver that the educational needs of the transferring student would be better served through a transfer. Further, the evidence does not show that the sending school was in crisis under the guidelines used by the Kentucky Board of Education.

(C) - Remand request related to Case #802

Remand the case back to the Hearing Officer for transcripts from Heath High School and St. Mary High School from grades 9-11 to clarify certain eligibility issues and for confirmation that the student resides in the correct public school district.

(D) - Findings of Fact related to Case #803

The KHSAA Board incorporates by reference the Findings of Fact in the Hearing Officer's recommended order.

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 they participated in varsity sports at sending school and transferred to receiving school.
2. Student's transfer does not meet a specific, enumerated exception to Bylaw 6.
3. 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. The evidence in the record does not support the conclusion that transportation was not available for Jayme to continue to attend sending school.

(E) - Findings of Fact related to Case #794

The KHSAA Board incorporates by reference the Findings of Fact in the Hearing Officer's recommended order.

Conclusions of Law

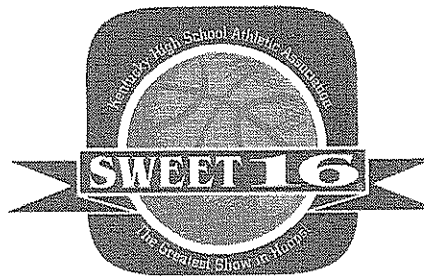
Based on the whole record, the KHSAA Board concludes as follows:

1. Student's transfer is subject to Bylaw 6, Section 1 ("Bylaw 6") because they participated in varsity sports at sending school and transferred to receiving school.
2. Student's transfer does not meet a specific, enumerated exception to Bylaw 6.
3. 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. The Board bases this conclusion on and incorporates by reference the Exceptions to the Recommended Order filed by Commissioner Brigid L. DeVries.

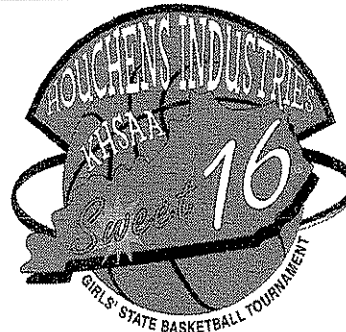
The date for the next regular Board of Control meeting was reviewed. The Board will meet on Friday, January 16, 2004 in conjunction with the Annual Delegate Assembly on January 15<sup>th</sup> and the Student HYPE Conference on January 14<sup>th</sup>.

There being no further business to come before the Board, Eddie Saylor made a motion to adjourn. The motion was seconded by Chuck Broughton, and passed unanimously. The meeting adjourned at 10:40 a.m.

National City.



*Paul [unclear]  
Brigid L. DeVries*



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