

MINUTES OF THE BOARD MEETING

AUGUST 21, 2006

President Gary Dearborn convened the special meeting of the Board of Control on Monday, August 21, 2006 at 1:50 p.m. All Board members were present except Lonnie Burgett 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. Ted Martin, KHSAA Legal Counsel was also present.

Donna Wear provided a moment of reflection.

Johnny Ginn led the Pledge of Allegiance.

President Dearborn asked for a motion to amend the agenda, and present the Committee Reports first. A motion was made by Dave Weedman, seconded by Jeff Perkins, and passed unanimously.

President Dearborn stated for the record that fifteen out of seventeen Board members were present, and that nine votes were needed to pass any eligibility motions.

Donna Wear, **Constitution and Bylaws Committee** Chairperson, asked the Board to approve the following motions:

1. First reading on clarification of Bylaw 17 – Reports & Obligations: the motion was seconded by Jeff Perkins, and passed unanimously.
2. First reading on clarification of Bylaw 27 – Hiring of Coaches: the motion was seconded by Bob Stewart, and passed unanimously.
3. Second reading on Bylaw 4 – Feeder Pattern Proposal: the motion was seconded by Chuck Broughton, and passed 13-2.
4. Second reading on Bylaw 9 – Add Summer Play Restrictions: the motion was seconded by Chuck Broughton, and passed 12-3.
5. Second reading on Bylaw 25 – Counting of Games Restriction, Fast Pitch Softball: the motion was seconded by Ozz Jackson, and passed unanimously.

Steve Parker, **Museum/Hall of Fame Development Committee** Chairperson, asked the Board to approve the following motions:

1. Approve the revised expenses for the Entrance Phase of the Museum to be funded by prior Board designations for that purpose. A motion was made by Ozz Jackson, seconded by Bob Schneider, and passed unanimously.
2. Authorize staff to solicit proposals for additional screens and audio visual equipment. The motion was seconded by Bob Stewart, and passed unanimously.

Bob Schneider, **Football Committee Chairperson**, asked the Board to approve the following motions:

1. Review the new football alignment in two years, versus four years. The motion was seconded by Ozz Jackson, and passed unanimously.
2. Approve the six class football system as presented. The motion was seconded by Jeff Schlosser, and passed unanimously.
3. Deny enrollment requests for class adjustments, except for Clinton County. The motion was seconded by Bob Stewart, and passed unanimously.
4. Allow six schools to play up due to geographical considerations; deny five others due to those schools leaving a district with less than four teams or requesting for reasons that are not supported geographically. The motion was seconded by Jeff Perkins, and passed unanimously.

5. Adopt the scheduling grid with regard to district games as presented, effective for the 2007-2008 season for all KHSAA football schools. The motion was seconded by Mike Barren, and passed unanimously.
6. Adopt the revised alignment of teams based on the input of the member schools and Board discussion. The motion was seconded by Jeff Schlosser, and passed unanimously.

Mr. Schneider then asked the record to show that:

1. The following media personnel were also present during the Football Committee meeting: Jeff McMurray, Associated Press; Melinda Roeder, WTVQ-36; Mike Fields, Lexington Herald-Leader; C. Ray Hall, Courier-Journal.
2. Bullitt Central representatives addressed the Board regarding their enrollment concerns over the placement of Bullitt Central in the six class alignment (Mark Rogers, Bob Buege and D. Karen Hayden).
3. Twenty schools have four districts; twenty three schools have five districts; and five schools have six districts.
4. The State Football Final Dates will be reviewed at the September meeting.
5. Considerable discussion was held by the Committee regarding the length of the football season. Various regulatory entities have expressed concerns about the mid-August start. Mr. Tackett advised the Board that there are several possible solutions to the early start, including movement of the state finals a week later into December. The season could also be shortened to 10 weeks to play 10 games, but this would require an annual meeting proposal. Ms. DeVries noted that the early season start was not just a football concern and all fall sports should be addressed. Staff is to inform schools not to sign any contracts before October 1, 2006 for the 2007-2008 football season, including the issues that were discussed on the early season start.

Mike Barren made a motion, seconded by Donna Wear, to go into Executive Session to discuss pending litigation. The motion passed unanimously. Ozz Jackson made a motion, seconded by Bob Schneider, to come out of Executive Session. The motion passed unanimously. No action was taken during Executive Session.

Principal Sally Stevens was present to discuss Lexington Catholic's revised Policies and Procedures. Alan Donhoff made a motion, seconded by Steve Parker, to approve Lexington Catholic High School as a full member of the KHSAA for the 2006-2007 school year and accept the submitted material as compliant with the Commissioner's directives. The motion passed 14-0 with one recusal (Mike Barren).

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
#1051	6	ELIGIBLE	Jackson (Uphold)	Schlosser	15-0	Eligible
#1052	6	ELIGIBLE	Jackson (Uphold)	Parker	15-0	Eligible
#1054	6	ELIGIBLE	Jackson (Uphold)	Schlosser	15-0	Eligible
#1050	6	INELIGIBLE	Schlosser (Uphold)	Perkins	10-5	Ineligible
#1049	6	ELIGIBLE (EXCEPTIONS)	Stewart (Overturn)	Weedman	14-1	Ineligible-A
#1053	6	ELIGIBLE (EXCEPTIONS)	Perkins (Overturn)	Weedman	11-3-1 (R-Schneider)	Ineligible-B

A-Findings of Fact-Case #1049

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 they participated in varsity sports at the sending school after enrolling in grade nine and then transferred to the receiving school.
2. Contrary to the Hearing Officer's conclusions of law, the student's transfer does not satisfy enumerated exceptions (b) and (c) to Bylaw 6. Since the parents divorced and their mother was granted full custody fifteen years ago, there has been no court ordered change of custody. During this time, the student participated in varsity sports at the sending school in their 9th grade year while living with their mother, receiving school part of their 10th grade year while living with their father and has now moved back to their mother's residence and requested eligibility for their 11th grade year at the receiving school. Neither of their parents have changed residences during this time period. Thus, the student clearly does not satisfy the terms of exceptions (b) and (c). Further, an exception under these circumstances would set a dangerous precedent because, absent a change of residence by both the student and the custodial parent, there is a real uncertainty regarding the motivation for the student's change in residence. There would be nothing to prevent students from repeatedly switching schools for athletic reasons by moving back and forth between their parents. Finally, whether or not the sending school required a court ordered change of custody for the student to attend the school has no bearing on whether they met an exception to Bylaw 6 upon their return to the receiving school.

B-Findings of Fact-Case #1053

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.
2. Bylaw 6, Section 1 ("Bylaw 6") states: "The KHSAA shall not recognize as grounds for a waiver of the period of ineligibility an argument that the educational needs of the transferring student would be better served through a transfer."

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 they 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 their transfer were clearly beyond the control of all the parties involved. Indeed, the evidence shows that the transfer was a personal decision by the student for subjective reasons. 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, 687 (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 this student transferred due to recruiting or was otherwise athletically motivated, Bylaw 6 still applies to their transfer.

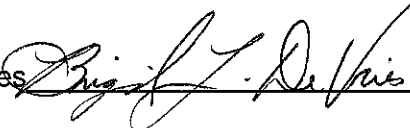
Alan Donhoff made a motion, seconded by Jeff Schlosser, to have Community Christian (Paducah) appear before the Board at the September meeting to present their request to withdraw from Baseball. The motion passed 14-0 with one recusal.

The Member Services Committee will meet in September.

The July, 2007 meeting has been scheduled at Kentucky Dam Village for Thursday-Friday, rather than a Monday-Tuesday. The next regular meeting is scheduled for Thursday & Friday, September 14-15, 2006 at the KHSAA office.

There being no further business to come before the Board, Donna Wear made a motion to adjourn. The motion was seconded by Ozz Jackson, and passed unanimously. The meeting adjourned at 3:30 p.m., August 21, 2006.

President Gary Dearborn  Date Jan-10, 2007

Commissioner Brigid L. DeVries  Date Jan-10, 2007