

**IN RE APPEAL OF INTERIM RULING OF
THE COMMISSIONER OF THE KENTUCKY HIGH SCHOOL ATHLETIC ASSOCIATION**

BY

BOWLING GREEN INDEPENDENT SCHOOLS

PROPOSED AGREED ORDER

The parties to this appeal: (1) the Commissioner of the Kentucky High School Athletic Association ("the KHSAA") and (2) Bowling Green High School and Bowling Green Independent Schools (collectively, "BGIS"), hereby tender this PROPOSED AGREED ORDER for consideration by the Kentucky High School Athletic Association Board of Control ("the Board"). This PROPOSED AGREED ORDER is tendered as a full resolution of the matters set forth in this appeal, subject to successful completion by all required enforcement actions set forth herein.

PROCEDURAL HISTORY AND BACKGROUND

1. Case History

In January 2017, the KHSAA received notice of a video made by an eighth grade 14-year old enrolled student-athlete in Bowling Green ("ZH") in which he stated that he had been recruited to Bowling Green High School. Following that receipt, the KHSAA received a written request from the District Athletic Director ("Wilson") at the Warren County Public Schools ("WCPS") for review and further investigation of the matter. BGIS was contacted and asked to submit a response to the video.

On January 13, 2017, BGIS submitted an initial response to the video and allegations. Subsequently, during Spring 2017, KHSAA Assistant Commissioner Darren Bilberry worked with a third party investigator to collect additional information. The KHSAA also received statements and allegations from individuals without written details or individuals willing to go on the record, which cannot be considered in this matter. In accord with the anonymous report requirements set forth in KHSAA policies and 702 KAR 7:065, these have not been considered. Further, the investigation was limited by the statutory and regulatory restrictions placed on the KHSAA and the practical limitations of the scope of the KHSAA's operations.

2. KHSAA Investigation

As set forth in the request for investigation from WCPS, Wilson stated that he had been contacted by several people inside and outside of the Bowling Green community with compelling information suggesting that BGIS had recruited ZH as well as others to play basketball. Wilson also stated that an AAU basketball program based out of Nashville, Tennessee, known as We All Can Go, has a direct connection to BGIS through We All Can Go's head coach, Carlos Williams.

In addition to the letter received from Wilson, the KHSAA began receiving information that ZH and his father ("ZHSr") were living with Anthony Hickey Sr. ("Hickey"), who had been hired as an Assistant Girls' Basketball Coach at BGIS. It was alleged that Hickey was brought to BGIS from Hopkinsville to facilitate the process of finding suitable housing for the family of ZHSr and that they (Hickey and ZHSr) were sharing a residence at 1107 Baldwin Drive, Bowling Green, Kentucky.

The KHSAA retained outside assistance for additional on-site review, including verifying the living arrangements for ZH and ZHSr. Several field observations were made that verified that ZHSr, ZH and Hickey were sharing the residence as alleged. Further, the third party investigator obtained verification of the living arrangement from the land-owner/landlord of the property that and confirmation of the financial arrangements. The KHSAA concluded that this evidence would clearly show that this student and his parent were receiving impermissible benefits regarding housing. Further, the KHSAA concluded that BGIS knew or should have known of the living arrangement. This is further demonstrated by the fact, as verified by the property owner, Hickey was at least partially responsible for assisting ZHSr and ZH in locating and occupying this residence. ZHSr, ZH and Hickey were identified on the lease documents as co-tenants.

On March 6, 2017, Assistant Commissioner Bilberry provided the Commissioner with his investigation summary concluding that BGIS appeared to be in direct violation of Bylaw 16. Consistent with the preliminary nature of the conclusion and the investigation, the investigation summary was not shared with BGIS at the time. The KHSAA also received multiple requests from a former coach at BGIS (hereinafter "Coach LJ") for the opportunity to provide additional information regarding the recruiting allegations against BGIS. Coach LJ initially claimed they did not want to be named but could be a resource for gathering information. Coach LJ had contemporaneously filed a federal civil action, No: 1:17-cv-175-DJH-HBB, regarding matters outside the scope of control of the KHSAA. Coach LJ stated that she believed that the information in on-the-record depositions and pleadings in the unrelated matter would provide tangible evidence as to violations of Bylaw 16 as well as other bylaws. As such, the administrative investigation was appropriately held in abeyance until the resolution of that matter. Unfortunately, relative to the timing of this review, the shutdown of the Federal Court System during the COVID-19 pandemic delayed any consideration of the matter. Records indicate the case was finally concluded in May of 2021, which the KHSAA did not receive notice of until after the end of the 2020-21 school year. Thereafter, the KHSAA was provided with additional evidence from that matter that was pertinent to the allegations discussed herein.

During the course of the KHSAA's review, Coach LJ became more willing to provide information on the record, as is stipulated by the procedures in KRS Chapter 13B, which guide the Due Process for KHSAA members. However, no additional information under the jurisdiction of the KHSAA supporting a violation by BGIS has come from Coach LJ.

In November 2021, following the conclusion of the aforementioned investigation by Assistant Commissioner Bilberry and the federal case brought by Coach LJ, the KHSAA submitted a letter of inquiry with the administrative findings to BGIS. The school was allowed to review the situation per the provisions of Bylaw 1 and was told to complete this review no later than December 18, 2021. BGIS contacted the KHSAA by telephone but did not provide a written response to the November 2021 letter.

On January 18, 2022, the KHSAA issued an interim determination dated January 12, 2022. Thereafter, BGIS reached out to the KHSAA through counsel to exchange information and explore possible resolutions of the matter. The KHSAA provided BGIS with its records compiled as part of its investigation, and it provided additional information to counsel for Bowling Green Independent Schools through its outside counsel.

Following the issuance of the interim letter in January 2022 and the KHSAA's provision of its records, BGIS provided a written response to the KHSAA which included additional facts and information

regarding the video referred to above; the intent and timing of the hire of Hickey; and the living arrangement between Hickey, ZH and ZHSr. Specifically, on March 4, 2022, BGIS provided a written response which referenced its self-reporting letter dated January 13, 2017 concerning the student video in which the student's father indicated he was unsure why his 14-year-old son would say he was recruited as it was untrue. Moreover, through the March 4, 2022 letter and at the conference on May 3, 2022, referenced below, BGIS also provided new information from its records confirming that ZHSr was required to submit proof of residence within BGIS's boundaries prior to ZH's enrollment and participation on the basketball team. In regard to Hickey, BGIS supplied new information indicating that BGIS hired Hickey as an assistant girls' basketball coach on June 8, 2016 after he interviewed for the position in May 2016. At the time of his hire, Hickey lived in Christian County and was driving between Christian County and Bowling Green during the summer of 2016 to help with the girls' basketball team and look for a place to live. BGIS advised that Hickey met ZHSr after the Harmon family decided to move to Bowling Green, and they decided to share the rental home located at 1107 Baldwin Drive without any involvement of other BGIS employees because they both needed a place to live. The lease was in the name of ZHSr, and Hickey paid a portion of the rent to him. Hickey was not involved in the boys' basketball program and did not coach ZH.

Following the aforementioned exchanges of information and records, the parties participated in a conference conducted at the office of outside counsel for the KHSAA on May 3, 2022.

3. Bylaws and Regulations at Issue

KHSAA Bylaws are incorporated by reference as state regulation in 702 KAR 7:065. This matter is subject to the Bylaws as they were formulated for the 2016-2017 school year. The relevant bylaws (and policies) to this matter include:

Bylaw 1 (Responsibility for Eligibility) states that the Principal is ultimately responsible for all matters at the school that concern interscholastic athletic eligibility; [Bylaw 1 applies to all potential infractions of any Bylaw, including the ones addressed here]

Bylaw 16 (Recruitment / Undue Influence) which restricts students from being recruited to a member school of the KHSAA to participate in athletics as defined within that bylaw, including but not limited to: impermissible contacts and improper benefits;

Bylaw 18 (Supplying Information and Reports) which compels the Designated Representative, upon request, supply the Commissioner with accurate information related to the athletic program at a member school;

Bylaw 26 (Rulings, Reporting of Violations) which specify a requirement that the KHSAA must report any investigative findings to the member school;

Bylaw 27 (Penalties) specifies the range of penalties when such are imposed for violations, including the applicable section related to the adopted fine schedule for violations; and

KHSAA Due Process Procedure under KRS Chapter 13B

KHSAA Board Policy (adopted by reference in 702 KAR 7:065) – Penalties-Board of Control Fine Schedule

4. Membership Expectations

The expectations for institutional control as expected of the member school principal are best illustrated in case situation 1 (BL-1-1) of Bylaw 1, which states:

Case BL-1-1- What role does the Principal play in the management of the Association and the regulation of eligibility in the member school, and what level of institutional control is the Principal of each member school expected to maintain?

The member school principal is ultimately responsible for all aspects of the athletic program, whether it is rules enforcement and reporting or eligibility certification. It is important that each member school through its Principal exercise the principles of institutional control in order for the Association to continue as a fully functioning membership organization and in order for the school to remain a member.

There are several principles that go into the concept of maintaining institutional control. Control shall first be defined in common sense terms and is best summarized by the school having in place the proper policies to ensure that violations do not occur, and if they do occur, the Principal exhibiting the leadership and duty to correct the problems and prevent recurrence. In general, violations do not result from a lack of institutional control if there are adequate preventive measures in place that are properly monitored and followed, and if swift action is taken.

However, there are several things that demonstrate a lack of institutional control including the failure to implement proper preventive procedures; failure by members of the designated athletic staff to thoroughly investigate and report violations; failure to adequately disseminate and distribute compliance information; failure to adequately distribute compliance duties to allow for effective control; failing to make clear to all coaches and participants that rules violations will not be tolerated; failing to fully investigate and file reports as requested when potential violations are reported; a head coach failing to create a compliant atmosphere with the assistant coaches.

The KHSAA enforces its rules based on the following premises: KHSAA regulations and information are readily available to the member schools and general public; the Principal or Designated Representative properly distributes information, rules manuals, communication, forms, and other needed materials to the members of the athletics staff; that meaningful education programs are conducted within the schools to ensure compliance; student-athletes are properly informed about rules prior to and during participation. Certainly the compliance history of a school and its cooperative spirit during any investigation or inquiry will factor into any penalty decision regarding violations.

Without accurate and complete information and monitoring, all schools within the KHSAA cannot be treated equitably and it becomes impossible to determine athletic eligibility accurately.

STIPULATED FACTS

Any facts and findings set forth in this document, specifically including but not limited to the following facts, are stipulated for purposes of this proposed agreed order only. If this proposed order is not accepted by the KHSAA Board of Control for final approval, then no facts set forth in this section nor

anywhere in the proposed order shall be deemed to be admitted by either party, and any evidentiary effect of this document shall be null and void.

1. That ZH stated in a video recording that he had been recruited to come to Bowling Green Independent Schools;
2. That Hickey's living with and payment of a portion of the rent with ZH and ZHSr was and is a violation of Bylaw 16 which BGIS contends was inadvertent; and
3. That Bowling Green Independent Schools were or should have been aware of the Stipulated Facts set forth herein.

STIPULATED CONCLUSIONS OF LAW, RESOLUTION AND ENFORCEMENT

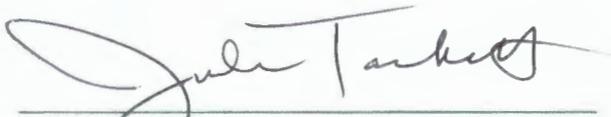
Based on the foregoing, and subject to the terms set forth above, including but not limited to the limitations set forth in the Stipulated Facts, it is HEREBY CONCLUDED AND AFFIRMED that the Stipulated Facts are determined to be true. Further, it is HEREBY CONCLUDED AND RESOLVED that the following enforcement actions are supported by the substantial evidence set forth herein.

1. ENHANCED MONITORING – Enhanced Monitoring of student-athletes participating in Bowling Green High School's athletic program for the 2022-2023, 2023-2024 and 2024-2025 school years will occur as follows:
 - a. Prior to August 1, 2022, Bowling Green High School will form an internal review committee that includes the Principal, District Director of Personnel, High School Athletic Director, an individual from the District who has received training as a Director of Pupil Personnel ("DPP"), and two head coaches who will serve on the committee to provide oversight and review of all student-athlete residency verification.
 - b. During the summer of 2022, Bowling Green High School will engage in training with the KHSAA to review bylaws related to residency of student-athletes and the requirements of all school staff related to residency limitations. The KHSAA will identify the training components and offer assistance as deemed appropriate by both KHSAA and Bowling Green High School.
 - c. Bowling Green High School will provide the KHSAA with a complete list of all head and assistant coaches' home addresses and contact information by August 5 of each school year.
 - d. Bowling Green High School will provide the KHSAA with the names of 8th grade students transferring into the feeder pattern as they become participants on Bowling Green High School varsity teams. Bowling Green High School will also provide the KHSAA with verification of the residency of those players.
 - e. The KHSAA will provide trainings to all Bowling Green High School coaches, athletic staff, and members of the internal review committee in the summers of 2022, 2023, and 2024 as to residency requirements for athletic eligibility.

- f. The KHSAA will be afforded the opportunity to randomly select student-athletes and/or coaches to complete residency verifications. Residency verifications can include lease agreements, proof of home ownership, and Infinite Campus records.
- g. Bowling Green High School will notify the KHSAA any time a new coach is hired, head or assistant, certified or paraprofessional. The notification will include the coach's contact information, home address, and applicable athletic team.
- h. Bowling Green High School's Athletic Director will collaborate with the KHSAA to create a coaching handbook that will be provided to each head and assistant coach at Bowling Green High School that details the bylaws for transfer and residency. The High School Athletic Director will provide training for each coaching staff prior to the start of their season to review residency verification and to clarify all bylaw requirements. Evidence of these internal trainings and review will be provided to the KHSAA.

2. SELF ASSESSMENT – Bowling Green High School will contribute \$5,000 annually to the KHSAA by September 1 during each of the 2022-2023, 2023-2024, and 2024-2025 school years for a total of \$15,000 as reimbursement for the KHSAA costs associated with the Enhanced Monitoring requirements.

Agreement set forth herein on behalf of:



Kentucky High School Athletic Association



Bowling Green Independent Schools