

1999

President Saylor convened the meeting of the Board of Control on Wednesday, November 17th at 9:00 a.m. All Board members were present except Lois Adams-Rodgers, Cynthia Elliott and Jim Sexton. Also present were Commissioner Louis Stout, Executive Assistant Commissioner Brigid DeVries, Assistant Commissioners Larry Boucher and Julian Tackett, SID Butch Cope, Fundraising Consultant Ken Tippett and Office Manager Darlene Koszanski. Kevin Mason was also present. Danny Reeves arrived later.

Roland Williams was called on for the invocation.

Kathy Johnston made a motion, seconded by Gary Kidwell, to approve the minutes of the September 29-30, 1999, regular meeting. The motion passed unanimously.

Betsy Glover made a motion, seconded by Gary Dearborn, to approve the minutes of the Special Meeting held on October 20, 1999. The motion passed unanimously.

Betsy Glover made a motion that all bills of the Association for the period September 1 - October 31, 1999, be approved. Roland Williams seconded the motion which passed unanimously.

The next item on the agenda was consideration of the Hearing Officer's Recommendations (Cases in which the student was recommended to be eligible). Bill Beasley made a motion, seconded by Kathy Johnston, to accept the Hearing Officer's Recommendation on the following appeal. The motion passed 12-1.

No.	Bylaw	Student	School	Findings
#470	6	William D. Kinkead, II	Mercer County HS (Burgin HS)	Eligible

Ken Cox made a motion, seconded by Betsy Glover, to accept the Hearing Officer's Recommendation on the following appeal. The motion passed unanimously.

No.	Bylaw	Student	School	Findings
#473	6	Fallon Rachelle Sparks	Pike County Central HS (Shelby Valley HS)	Eligible

Betsy Glover made a motion, seconded by Roland Williams, to accept the Hearing Officer's Recommendation on the following appeal. The motion passed unanimously.

No.	Bylaw	Student	School	Findings
#475	6	Bryan Kennedy, III	Cordia HS (June Buchanan HS)	Eligible

Following deliberations, Bob Rogers made a motion, seconded by Bill Beasley, to declare the Hearing Officer's Recommendation as premature on Appeal No. 476. The motion passed by a vote of 13-0. After more deliberations, Bob Rogers made a motion, seconded by Roland Williams to set aside the Hearing Officer's Recommendation. The motion passed 12-0 with one (Betsy Glover) abstention. In accordance with Paragraph 14 of the KHSAA Due Process Procedures, the Board of Control makes the following Findings of Fact and Conclusions of Law in support of its decision to set aside the Hearing Officer's Recommended Order:

**Findings of Fact**

- Ashley Daigle-Souden successfully completed the 9<sup>th</sup> and 10<sup>th</sup> grades while enrolled in the West Ottawa, Michigan school system for the 1997-1998 and 1998-1999 school years.
- Ashley Daigle-Souden enrolled in Bowling Green High School for the 1999-2000 school year following the relocation of her family to the Bowling Green area. Based upon a voluntary decision on the part of her parents, Daigle-Souden was re-enrolled as a sophomore at Bowling Green as opposed to advancing to the 11<sup>th</sup> grade with her academic peer group.
- The student had used four of her allotted eight semesters of eligibility prior to the 1999-2000 school year. The student was making normal progress toward graduation at the beginning of the current school year with 13 credits to start the year.

**Conclusions of Law**

- KHSAA Bylaw 4, § 1(b) provides, in relevant part: *No student enrolled in the fourth (4<sup>th</sup>) grade or in any grade through twelfth (12<sup>th</sup>) shall be eligible for interscholastic athletics for more than a total of one (1) year in each grade. Students repeating a grade*

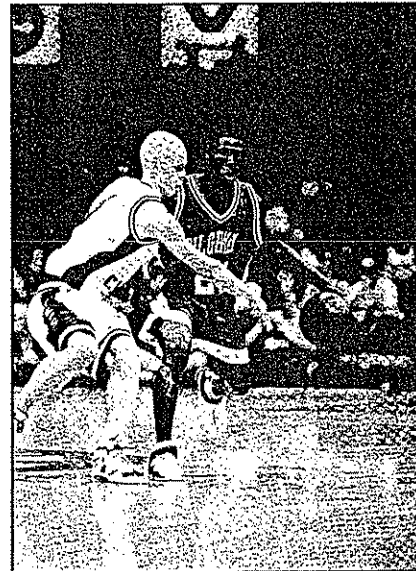
*for any reason are ineligible to participate in interscholastic athletics during the second year in that grade...*

2. KHSAA Bylaw 4, § (1)(b) serves the important purpose of encouraging students to stay on-track with their academic peer group so as to complete high school in the normal course of eight consecutive semesters. The KHSAA believes that it is necessary for its rules to support a policy that students should, if possible, complete high school in the normal course of eight semesters. This policy serves to keep athletics in their proper perspective within the educational process and fully supports the proposition that our children must be students

**NOV. BOARD OF CONTROL**

first and athletes second.

3. It is the conclusion of the Board of Control that discretionary waivers of Bylaw 4 are appropriate only under circumstances where, as a result of severe injury or illness, a student has been forced to withdraw from school for such a length of time that, as a matter of academic necessity, the student is required to repeat a grade. Only under such limited circumstances does the Board find that the strict application of Bylaw 4 to be "unfair" to a student within the meaning of Paragraph 4 of the KHSAA Due Process Procedures. By limiting the exercise of its discretionary waiver authority to such limited circumstances, the KHSAA's policy of encouraging students to complete



Paducah Tilghman's Chris Wilson attempts to drive around Scott County's A.W. Hamilton in last year's Boys' Sweet Sixteen® state semifinal game.

high school in a timely manner is served. The Board, therefore, does not believe that granting of a waiver to Ashley Daigle-Souden would be an appropriate exercise of its discretion.

4. KHSAA Bylaw 9, § 2 provides, in relevant part:

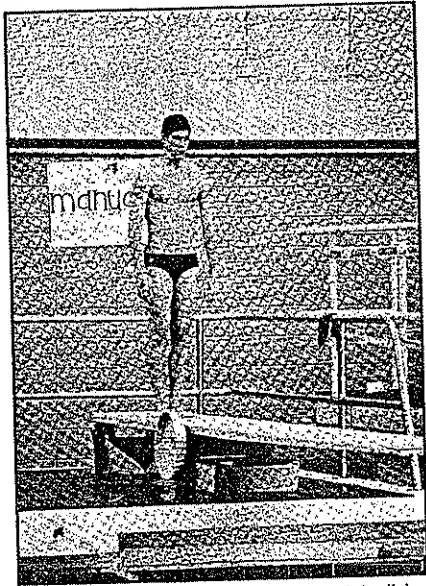
*A cheerleader, student manager or any other student having an official connection with the athletic program of a member school shall be enrolled and in attendance at the school which they represent and shall adhere to all other eligibility regulations. Bylaw 9, § 2 is further interpreted within the Handbook clarifying which eligibility rules are applicable. Q/A 1 - What are the "eligibility regulations" as mentioned in Bylaw 9, Sec. 2? The KHSAA student eligibility regulations are Bylaws 2 (Physician's Certificate), 3 (Age), 4 (Enrollment), 5 (Minimum Academic Requirement), 6 (Transfer Rule), 7 (Conduct), 8 (Contestant on Other Teams, Post Season and All-Star Games), 9 (Other Eligibility Requirements and Regulations), 10 (Recruitment), 11 (Practice of Sportsmanship) and 12 (Awards). Unless otherwise stated in the bylaw, each of these provisions apply to all persons having an official connection with the team including trainers, man-*

1084

agers, cheerleaders and others. The Board of Control has directed that the provisions of Bylaw 6 which call for participation in a varsity sport as a determinant, restrict application to those sports for which the association sponsors a state championship. At press time, the KHSAA does not sponsor state championships in such events as cheerleading (spirit), field hockey, badminton, bowling or others, though they are approved for insurance and other eligibility purposes, and therefore persons whose only participation has been in these activities are not subject to the transfer rule.

5. The Board recognizes that the Hearing Officer made specific

## NOV. BOARD OF CONTROL



Tates Creek's Phillip Jones set a new state diving record with a score of 552.70 en route to capturing the boys' state diving title.

Findings of Fact that there was no athletic advantage being sought by Ashley Daigle-Souden, and that no recruiting is involved in this case. While evidence of recruiting or of athletic advantage may serve as additional reasons to deny a student a waiver of Bylaw 4 in a particular case, the Board finds that the absence of such evidence, such as in this case, does not necessarily suggest that the waiver of Bylaw 4 is appropriate for the reasons stated in paragraph 3, Conclusions of Law, set forth above.

6. If this student is placed in grade eleven in 1999-2000, she would be eligible according to Bylaw 4, and such eligibility will expire with the 2000-2001 school year, as the student would have utilized her eight semesters of eligibility. If this student is placed in grade ten in 1999-2000, she would be ineligible according to Bylaw 4 as the student is repeating grade ten. In addition, the student would be eligible in 2000-2001, provided she was eligible according to all other Bylaws, and such eligibility would expire with the 2000-2001 school year as the student would have utilized her eight semesters of eligibility.

7. If this student is placed in grade ten or eleven in 1999-2000; her request for eligibility for 2000-2001 is premature as this student has received enough credits to be on schedule to graduate at the conclusion of the 2000-2001 school year.

### Final Order

Ashley Daigle-Souden is hereby declared ineligible to compete in interscholastic athletics at Bowling Green High School for the 1999-2000 school year. Any request by Ashley Daigle-Souden for consideration of a waiver of Bylaw 4 for the 2001-2002 school year (the year she will presumably be a senior) is premature. This order constitutes the Final Order of the KHSAA in Appeal No. 476. This Final Order is subject to judicial review in accordance with KRS Chapter 13B.

No.	Bylaw Student	School	Findings
#476 4	Ashley Daigle-Souden	Bowling Green	Ineligible

Mr. Jim Sexton joined the meeting. Following deliberations, Gary Dearborn made a motion, seconded by Jerry Taylor, to set aside the Hearing Officer's Recommendation on the following appeal. By a vote of 13-1, the Board of Control ruled that the Recommended Order of the Hearing Officer in Appeal No. 477 be set aside. In accordance with Paragraph 14 of the KHSAA Due Process Procedures, the Board of Control makes the following Findings of Fact and Conclusions of Law in support of its decision to set aside the Hearing Officer's Recommended Order:

### Findings of Fact

1. During the 1998-1999 school year, Brandon Adams was enrolled as a freshman at Paul Dunbar High School. He successfully completed his academic studies at Dunbar and was eligible to advance to the 10<sup>th</sup> grade.

2. Brandon Adams transferred to Sayre High School for the 1999-2000 school year. Based upon a voluntary decision on the part of Adams, which was supported by his mother, he chose to re-enroll as a freshman at Sayre as opposed to advancing to the 10<sup>th</sup> grade with his academic peer group.

3. The student had used two of his allotted eight semesters of eligibility prior to the 1999-2000 school year. The student was making normal progress toward graduation at the beginning of the current school year with six credits to start the year.

### Conclusions of Law

1. KHSAA Bylaw 4, § 1(b) provides, in relevant part:

*No student enrolled in the fourth (4<sup>th</sup>) grade or in any grade through twelfth (12<sup>th</sup>) shall be eligible for interscholastic athletics for more than a total of one (1) year in each grade. Students repeating a grade for any reason are ineligible to participate in interscholastic athletics during the second year in that grade...*

2. KHSAA Bylaw 4, § (1)(b) serves the important purpose of encouraging students to stay on-track with their academic peer group so as to complete high school in the normal course of eight consecutive semesters. The KHSAA believes that it is necessary for its rules to support a policy that students should, if possible, complete high school in the normal course of eight semesters. This policy serves to keep athletics in their proper perspective within the educational process and fully supports the proposition that our children must be students first and athletes second.

3. It is the conclusion of the Board of Control that discretionary waivers of Bylaw 4 are appropriate only under circumstances where, as a result of severe injury or illness, a student has been forced to withdraw from school for such a length of time that, as a matter of academic necessity, the student is required to repeat a grade. Only under such limited circumstances does the Board find that the strict application of Bylaw 4 to be "unfair" to a student within the meaning of Paragraph 4 of the KHSAA Due Process Procedures. By limiting the exercise of its discretionary waiver authority to such limited circumstances, the KHSAA's policy of encouraging students to complete high school in a timely manner is served. The Board, therefore, does not believe that granting of a waiver to Brandon Adams would be an appropriate exercise of its discretion.

4. If this student is placed in grade ten in 1999-2000, he would be eligible according to Bylaw 4, and such eligibility will expire with the 2001-2002 school year, as the student would have utilized his eight semesters of eligibility. If this student is placed in grade nine in 1999-2000, he would be ineligible according to Bylaw 4, as the student is repeating grade nine. In addition, the student would be eligible in 2000-2001, provided his is eligible by all other Bylaws, and such eligibility would expire with the 2001-2002 school year, as the student would have utilized his eight semesters of eligibility. If this student is placed in grade nine or ten in 1999-2000, his request for eligibility for 2002-2003 is premature as the student has received enough credits to be on schedule to graduate at the conclusion of the 2001-2002 school year.

5. Finally, the Board recognizes that the Hearing Officer made specific Findings of Fact that there was no athletic advantage being sought by Brandon Adams, and that no recruiting is involved in this case. While evidence of recruiting or of athletic advantage may serve

284

as additional reasons to deny a student a waiver of Bylaw 4 in a particular case, the Board finds that the absence of such evidence, such as in this case, does not necessarily suggest that waiver of Bylaw 4 is appropriate for the reasons stated in paragraph 3, Conclusions of Law, set forth above.

**Final Order**

Brandon Adams is hereby declared ineligible to compete in interscholastic athletics at Sayre High School. Any request by Brandon Adams for consideration of a waiver of Bylaw 4 for the 2002-2003 school year (The year he will presumably be a senior if he is enrolled in grade nine during 1999-2000) is premature. This order constitutes the Final Order of the KHSAA in Appeal No.477. This Final Order is subject to judicial review in accordance with KRS Chapter 13B.

No.	Bylaw	Student	School	Findings
#477	4	Brandon Adams	Sayre HS	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). Roland Williams made a motion, seconded by Dale Stewart, to uphold the Hearing Officer's Recommendation on the following appeal. The motion passed unanimously.

No.	Bylaw	Student	School	Findings
#471	6(2)	Julian Messerschmidt	Oldham County	Ineligible

Ken Cox made a motion, seconded by Jerry Taylor, to uphold the Hearing Officer's Recommendation on the following appeal. The motion passed unanimously.

No.	Bylaw	Student	School	Findings
#472	6	Joshua Griffith	Paul Blazer HS (Rose Hill Christian HS)	Ineligible

Dale Stewart made a motion, seconded by Kathy Johnston, to uphold the Hearing Officer's Recommendation on the following appeal. The motion passed unanimously.

No.	Bylaw	Student	School	Findings
#474	6	Joseph Travis Fitzgerald	Pikeville HS (Piarist HS)	Ineligible

Dale Stewart 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 (Wendell Thomas) abstention.

No.	Bylaw	Student	School	Findings
#478	6	Eric Bitzegaio	St. Francis HS (New Albany HS)	Ineligible

The next item on the agenda was consideration of the Hearing Officer's Recommendations (Cases in which exceptions were filed). Following deliberations, Bob Rogers made a motion, seconded by Gary Dearborn, to set aside the Hearing Officer's Recommendation on Appeal No. 464. The motion passed 12-0 with two (Jim Sexton & Wendell Thomas) abstentions. In accordance with Paragraph 14 of the KHSAA Due Process Procedures, the Board of Control makes the following Findings of Fact and Conclusions of Law in support of its decision to set aside the Hearing Officer's Recommended Order:

**Findings of Fact**

1. Felix James first enrolled in the ninth grade during the 1995-1996 school year. He is now enrolled in his ninth semester of high school.

2. There is no evidence in the record which would support a finding that Felix James has been prohibited by an injury or illness from obtaining necessary educational services and completing high school in the normal course of eight consecutive semesters.

3. The student's eight semesters according to Bylaw 4 have been exhausted. There is no evidence that at any point while enrolled in grades 9-12 has this student been unable to receive the necessary education services due to illness, injury or other circumstances be-

yond his control. The appeal is based solely on the desire for additional athletic participation without regard to academic progress. There is no documentation of any academic reasons for this student to have repeated any grade.

**Conclusions of Law**

1. KHSAA Bylaw 4, § (1)(c) provides:

(c) Students enrolling in grade nine (9) shall have eight (8) consecutive semesters of eligibility from the date of first such enrollment provided the student is eligible according to all other bylaws.

2. KHSAA Bylaw 4(c) provides students entering the ninth grade

**NOV. BOARD OF CONTROL**

with an objective standard by which they can clearly determine the duration of their high school athletic eligibility. While Bylaw 4 is, in part, intended to discourage the practice of holding students back in school for purposes relating to athletics (i.e., "redshirting"), the bylaw also serves other important purposes including encouraging students to complete high school in a timely manner as well as preserving the participation opportunities of students who progress through school in the normal course of eight consecutive semesters. KHSAA Bylaw 4, § (1)(b) serves the important purpose of encouraging students to say on-track with their academic peer group so as to complete high school in the normal course of eight consecutive semesters.

3. The KHSAA believes that it is necessary for its rules to support a policy that students should, if possible, complete high school in the normal course of eight semesters. This policy serves to keep athletics in their proper perspective within the educational process and fully supports the proposition that our children must be students first and athletes second.

4. It is the conclusion of the Board of Control that discretionary waivers of Bylaw 4 are appropriate only under circumstances where, as a result of severe injury or illness, a student has been forced to withdraw from school for such a length of time that it becomes impossible for the student to complete high school in the normal course of eight consecutive semesters. Only under such limited circumstances does the Board find that the strict application of Bylaw 4 to be "unfair" to a student within the meaning of Paragraph 4 of the KHSAA Due Process Procedures. By limiting the exercise of its discretionary waiver authority to such limited circumstances, the participation opportunities of students progressing through school in the normal course are thereby preserved and the KHSAA's policy of encouraging students to complete high school in a timely manner is served. The Board, therefore, does not believe that granting of a waiver to Felix James would be an appropriate exercise of its discretion.

5. Finally, the Board recognizes that the Hearing Officer made specific Findings of Fact that there was no athletic advantage being sought by Felix James, and that no recruiting is involved in this case. While evidence of redshirting, recruiting or of athletic advantage may serve as additional reasons to deny a student a waiver of Bylaw 4 in a particular case, the Board finds that the absence of such evidence, such as in this case, does not necessarily suggest that waiver of Bylaw 4 is appropriate for the reasons stated in paragraph 4, Conclusions of Law, set forth above.

**Final Order**

Felix James is hereby declared ineligible to compete in interscholastic athletics at Eastern High School. This order constitutes the Final Order of the KHSAA in Appeal No. 464. This Final Order is subject to judicial review in accordance with KRS Chapter 13B.

No.	Bylaw	Student	School	Findings
#464	4	Felix James	Eastern HS	Ineligible

Dale Stewart 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
#469	6	Dustin Todd Gayheart	Madison Central HS (Model HS)	Ineligible

3084

Gary Kidwell made a motion, seconded by Roland Williams, to go into Executive Session to discuss litigation. Wendell Thomas made a motion, seconded by Kathy Johnston to come out of Executive Session. There was no action taken in Executive Session.

Kathy Johnston made a motion, seconded by Cookie Henson, to uphold the Hearing Officer's Recommendation on the following appeal. The motion passed 13-0 with one (Ken Cox) abstention.

No.	Bylaw	Student	School	Findings
#467	6	Calhoun Clifton	Sayre HS (Henry Clay HS)	Ineligible

## NOV. BOARD OF CONTROL

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

1. Host USA presented a Progress to Date Report and discussed a Ticket Project.
2. Julian Tackett distributed a one page summary of the KHSAA Strategic Plan, 1999-2002.
3. Revision in Staff Benefit Package, Blue Cross/Blue Shield to be tabled until January, 2000.
4. KHSAA Legal Services and options were discussed.
5. Ken Cox would like to see the football playoffs televised either in real time or delayed.

President Saylor, Executive Committee Chairperson then recommended the following items for the Board's approval:

1. Evaluation Instrument for the Commissioner to be developed by an ad hoc committee consisting of Chair, Wendell Thomas, Kathy Johnston, Gary Dearborn and Dale Stewart. Motion was made by Eddie Saylor, seconded by Betsy Glover, and passed unanimously.
2. Revision in State Travel Reimbursement Policy (retroactive to July 1). Motion was made by Gary Kidwell, seconded by Eddie Saylor, and passed unanimously.

Bob Rogers, Chairperson, Constitution and Bylaws Committee, recommended the following Bylaws be submitted to the Delegate Assembly:

- Bylaw 4, Enrollment, Revision in Eight (8) semester rule
- Bylaw 9, Repeal section (2)
- Bylaw 16, Protests, Consideration of Oldham County Correspondence (to be handled through interpretation)
- Bylaw 25, Limitation of Seasons, Starting Date for basketball and swimming practice
- KHSAA Member School Proposed and Considered Amendments - Bylaw 26 (2) proposal from Christian County and Muhlenberg North concerning Dead Period

The motion was seconded by Jim Sexton and passed unanimously.

Ken Cox, Chairperson, Title IX Committee, asked Executive Assistant Commissioner Brigid DeVries to give a report:

1. Title IX Audit notebooks are complete and a copy was distributed to each board member. Brigid DeVries and Danny Reeves discussed all sections of the notebook during this session.
2. Assistant Commissioners Larry Boucher and Julian Tackett will be trained to conduct audits.
3. Five schools have already been audited: Harrison County, Pulaski County, Pulaski Southwestern, Paul Dunbar and Somerset.
4. Outside assistance is needed to conduct audits. Three or four former school administrators will be hired. Commissioner Stout will notify the BOC who they are at the next meeting.
5. KDE has a goal of 20% of the schools to be audited each year - this year there are 58.
6. KHSAA will be looking at applying for a federal grant to help cover Title IX expenses.

Kathy Johnston, Chairperson, Individual Sports Committee, recommended that the Board approve the cross country and track

alignment into 6 regions. After discussion, a motion was made by Bob Rogers and seconded by Wendell Thomas to table the issue until the January, 2000 meeting. The motion passed unanimously.

1. A motion was made by Kathy Johnston and seconded by Gary Dearborn, to expand Swimming from 4 regions to 5 effective for the 2000-2001 school year. This includes a change to two automatic qualifiers from each region into the state meet. The motion passed unanimously.
2. A motion was made by Bill Beasley and seconded by Bob Rogers, to approve the locations of the Boys' and Girls' State Golf tournaments for 2000-2001 & 2001-2002. The motion passed unanimously. (2000-2001: Boys' - Barren River State Park; Girls' - Glasgow Country Club. 2001-2002: Boys' - Eagle Nest Country Club, Somerset; Girls' - London Country Club).

Team Sports Committee Chairperson Roland Williams made the following recommendations for board approval:

1. 2000 State Fast Pitch Softball Tournament in Jeffersontown and 2001 in Owensboro. A motion was made by Betsy Glover and seconded by Cookie Henson, but was tied 7-7. After some discussion, another motion was made by Jim Sexton and seconded by Jerry Taylor, to have the Tournament in Jeffersontown for 2000 and 2001. The motion passed 10-4.
2. 2001 and 2002 State Baseball finals to be held at The University of Kentucky in Lexington. A motion was made by Ken Cox, seconded by Jerry Taylor, and passed unanimously.
3. A Soccer classification proposal was tabled.

Football Committee Chairperson Gary Kidwell, recommended that Allen Central be allowed to return to the district and take the place of Jenkins if all schools were in agreement. A motion was made by Gary Kidwell, seconded by Betsy Glover, and passed unanimously. Staff is to facilitate contract problems.

Ad Hoc Committee for Officials Chairperson Ken Cox, updated the board on the following items:

1. 800 officials have been trained in 3-person basketball officiating.
2. Assistant Commissioner Boucher will provide updates to the board throughout the year.

Mr. Saylor called the Board's attention to miscellaneous items listed for their information only. 1) Eligibility report of rulings, September 1 to October 31, 1999; 2) December KBE Staff Note and Request for Regulation Approval (see Constitution Committee); 3) Periodic Status Report, FY2000 Budget; 4) Distribution of KHSAA Policy & Procedure Manual.

The board decided to rule on November and December appeals at the January meeting.

The Executive Session will be held on January 12, 2000, after the Delegate Assembly at 4:00 p.m. at the KHSAA Office.

There being no further business to come before the Board, Cookie Henson made a motion to adjourn. The motion was seconded by Ken Cox and passed unanimously. The meeting adjourned at 1:45 p.m.

4 of 4