



2002 - October Board of Control Meeting Minutes

President Eddie Saylor convened the special meeting of the Board of Control on Monday, October 28, 2002 at 8:30 a.m. All Board members were present except Betsy Glover, Steve Parker and Jeff Perkins. 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, Counsel for KHSAA, Debbie Hendricks, Kentucky Department of Education liaison, Mr. & Mrs. Hall, (Parents of Courtney Hall), Mrs. Norman (Parent of Sarah Norman) and Attorney Charles Grundy were also present.

Gary Dearborn was called on for the invocation.

Paul Dotson made a motion to go into Executive Session to discuss the Due Process Procedure with KHSAA Legal Counsel, Ted Martin. The motion was seconded

Kathy Johnston, and passed unanimously. Kathy Johnston made a motion to come out of Executive Session. The motion was seconded by L.V. McGinty, and passed unanimously. No action was taken during Executive Session.

Let the record show that Steve Parker joined the meeting.

The next item on the agenda was consideration of the Hearing Officer's Recommendations (Cases in which the student was recommended to be eligible). L.V. McGinty made a motion, seconded by Robert Stewart, to uphold the Hearing Officer's recommendation on the following appeal. The motion passed 13-1 with one (Jim Sexton) recusal:

No., Bylaw, Student, School, Findings #668, 6, Monzell Rushin Eastern (Moore), Eligible

Kathy Johnston made a motion, seconded by Gary Dearborn, to uphold the Hearing Officer's recommendation on the following appeal. The motion passed unanimously:

No., Bylaw, Student School, Findings #671, 6, Devan Kestal East Jessamine (East Jessamine), Eligible

Paul Dotson made a motion, seconded

by Sally Haeberle, to uphold the Hearing Officer's recommendation on the following appeal. The motion passed unanimously:

No., Bylaw, Student School, Findings #675, 6, Kassie Rascoe Glasgow (Barren County), Eligible

Sally Haeberle made a motion, seconded by Cynthia Elliott, to remand Case #676 back to the Hearing Officer regarding new information on an another Bylaw. The motion passed unanimously:

No., Bylaw, Student School, Findings #676, 6, Garrett Kazee Russell High School, Ineligible

After the hearing for Garrett on the Commissioner's ruling under Bylaw 4, the KHSAA learned that Garrett was ineligible under Bylaw 6 because he transferred to Russell High School after participating in varsity athletics at Greenup County High School. The Board voted unanimously to remand the case back to the Hearing Officer. Therefore, Garrett is INELIGIBLE to participate in interscholastic athletics at Russell High School.

The next item on the agenda was consideration of the Hearing Officer's Recommendations (Cases in which the student was recommended to be ineligible). Kathy Johnston made a motion, seconded by Paul Dotson, to uphold the Hearing Officer's recommendation on the following appeal. The motion passed unanimously:

No., Bylaw, Student School, Findings #672, 6, Greg Jackson Whitley County (Williamsburg), Ineligible

Cynthia Elliott made a motion, seconded by Sally Haeberle, to uphold the Hearing Officer's recommendation on the following appeal. The motion passed 13-1:

No., Bylaw, Student School, Findings #673, 6, Andrew Pedron Central Hardin (Bethlehem), Ineligible

Gary Dearborn made a motion, seconded by Sally Haeberle, to uphold the Hearing Officer's recommendation on the following appeal. The motion passed unanimously:

No., Bylaw, Student School, Findings #674, 6, Franklin Watkins Seneca (Jeffersontown), Ineligible

Kathy Johnston made a motion, seconded by L.V. McGinty, to uphold the Hearing Officer's recommendation on the following appeal. The motion passed 13-0 with one (Cynthia Elliott) abstention:

No., Bylaw, Student School, Findings #680, 6, Twoboys Gumedede Walden (Lexington Catholic), Ineligible

Kathy Johnston made a motion, seconded by Chuck Broughton, to uphold the Hearing Officer's recommendation on the following appeal. The motion passed unanimously:

No., Bylaw, Student School, Findings #681, 4, Roland Butsitsi St. Xavier, Ineligible

Gary Dearborn made a motion, seconded by Sally Haeberle, to uphold the Hearing Officer's recommendation on the following appeal. The motion passed 12-2. Mr. Sexton asked the record to show that he was opposed:

No., Bylaw, Student School, Findings #682, 6, Heath Ward Pleasure Ridge Park (Jeffersontown), Ineligible

The next item on the agenda was consideration of the Hearing Officer's Recommendations (Cases in which the student was recommended to be eligible or ineligible and exceptions were filed). Gary Dearborn made a motion, seconded by Sally Haeberle, to uphold the Hearing Officer's recommendation on the following appeal. The motion failed 8-6. Cynthia Elliott made a motion, seconded by Steve Parker, to reverse the Hearing Officer's recommendation on the following appeal: The motion failed 7-7. Gary Dearborn then made a motion to remand case #670 back to the Hearing Officer to consider additional documentary evidence. The motion was seconded by Kathy Johnston, and passed unanimously:

No., Bylaw, Student School, Findings #670, 6, Sarah Norman Scott County (Sayre), Ineligible

1 of 4

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KHSAA

KHSAA

Kentucky High School Athletic Association

THE ATHLETE

October-November

2002 — October Board of Control Meeting Minutes

L.V. McGinty made a motion, seconded by Robert Stewart, to reverse the Hearing Officer's recommendation on the following appeal. The motion passed 11-3:
No., Bylaw, Student
School, Findings
#677, 6, Jessamyn Duke
Whitesburg (Letcher), Eligible
Findings of Fact

The Board incorporates by reference the Findings of Fact in the Hearing Officer's recommended order, and the other documents contained in the official record.

Conclusions of Law

Jessamyn currently lives in the school district for Letcher High School. Due to circumstances beyond her control, however, Letcher High School, Whitesburg High School and Fleming-Neon High School are in the process of consolidation. Due to a significant reduction in academic resources and improvements at Letcher High School in anticipation of the consolidation, Jessamyn would be forced to attend Whitesburg High School for half a day to take AP courses unavailable at Letcher High School. This would result in a substantial reduction in time at school because Jessamyn would have to ride a bus for 30 minutes to and from the schools. Further, Jessamyn is only now able to attend Whitesburg High School because her father recently retired and can drive her to school. For all these reasons and because this situation is part of the rationale embodied in Bylaw 6, Section 1(g), the Board rejects the Hearing Officer's recommended order and declares Jessamyn Duke immediately eligible at Whitesburg High School.

Cynthia Elliott made a motion, seconded by Sally Haeberle, to uphold the Hearing Officer's recommendation on the following appeal. The motion passed unanimously:

No., Bylaw, Student
School, Findings
#678, 6, Chase Wilson
Paducah-Tilghman (St. Mary), Ineligible

Jim Sexton made a motion, seconded by L.V. McGinty, to reverse the Hearing Officer's recommendation on the following appeal. The motion passed 10-4:

No., Bylaw, Student
School, Findings
#679, 6, Courtney Hall
Mercy Academy (Spencer County),
Eligible
Findings of Fact

The Board incorporates by reference the Findings of Fact in the Hearing Officer's recommended order and the other documents contained in the official record, specifically the exceptions filed on behalf of Courtney.

Courtney scored in the top 99 percentile on the Kentucky Core Content and KIRIS tests, and maintained a 4.0 GPA at Spencer County with minimal effort. Sophomores are unable to take advanced or honors curriculum at Spencer County. Courtney's older sister attends the University of Louisville and can assist with her transportation to Mercy. All of the classes Courtney is taking at Mercy are unavailable to her at Spencer County, including French. There are significantly more AP courses at Mercy than at Spencer County, and Mercy offers courses of study unavailable at Spencer County. The Spencer County Superintendent of Schools submitted a letter which noted this particular student's academic needs and the inability of Spencer County to meet those needs.

Conclusions of Law

Courtney is an extremely gifted student who, for reasons beyond her control, must go to a school, Spencer County, which clearly cannot satisfy her academic needs. In fact, documents submitted by a representative of Spencer County verify the inability of Spencer County to meet her needs. This is not a case where the student and her parents simply feel that the student's academic needs would be better served by a different school. For instance, Courtney cannot take an honors or advanced curriculum at Spencer County because one is not offered to sophomores. For these reasons, the KHSAA concludes that Courtney should be granted a waiver of Bylaw 6. Thus, the Board hereby reverses the Hearing Officer's Recommended Order and declares Courtney immediately eligible at Mercy Academy High School.

Paul Dotson made a motion, seconded by Gary Dearborn, to reverse the Hear-

ing Officer's recommendation on the following appeal. The motion passed 10-4:

No., Bylaw, Student
School, Findings
#683, 6, Bradley Lawson
Corbin (Whitley County), Ineligible
Findings of Fact

Bradley Lawson ("Bradley") is a sophomore currently enrolled at Corbin High School ("Corbin"). He transferred to Corbin on June 28, 2002, after attending Whitley County High School ("Whitley County") for his freshman year. While at Whitley County, Bradley participated in both varsity basketball and football.

At the hearing before Hearing Officer Karem on September 16, 2002, testimony was introduced on behalf of Bradley in an effort to establish that he had undergone a bona fide change in residence prior to enrolling at Corbin. According to this testimony, Bradley and his parents moved from their four bedroom house in Whitley County, which they had owned for seventeen years, to a two bedroom apartment in the Corbin school district. Bradley's father, "Bob," claimed that he put the house up for sale, but only for a brief period of time from the end of June to the beginning of July. Bob admitted that he has no intention of selling the house and the family may move back there in the future. The documents and testimony reflect that there is only a twelve month lease for the apartment.

Instead of selling the house, Bob testified that they decided to rent the house to their oldest son, Bobbie Joe, who is 26 years of age and working on his master's degree at Cumberland College. Bobbie Joe claimed that he pays his parents \$300 a month for rent and canceled checks were presented as evidence. Bradley's parents claimed that they rented the former residence to Bobbie Joe because he would have to pay \$500 a month to maintain his former apartment and they wanted to help out their son. Brian Lawson, Bradley's other brother, testified that he is 19 years of age, married and expecting his first child, on a football scholarship at Cumberland College as a freshman, and living in the Mount Morgan apartments which are the same apartments where Bobbie Joe lived before moving back to the house.

2002 - October Board of Control Meeting Minutes

Bob testified that the primary reason for the family's change in residence was so that he could be closer to his place of work. He claimed that a recent fire at the plant where he worked motivated the move. According to Bob, his employer had difficulty locating him at the time of the fire. His employer testified, however, that he did not require him to change residences as a condition of employment and he did not have any problem with Bob's job performance while living at the house. Bob has been employed at this place of business for the past five years and has not had encountered any problems with performing his job duties.

Bradley's parents maintain a garden at the house and also keep some cows there. The utilities at the former residence are still in Bob's name and he pays those and the taxes and insurance on the property. Bob also indicated that he helps with the upkeep on the property, such as mowing the grass.

Julian Tackett, KHSAA Assistant Commissioner, conducted an investigation into the transfer. Bradley's parents testified that Mr. Tackett told them that he needed a reason why Bradley was unhappy at Whitley County if he wanted to play at Corbin. In response, they told Mr. Tackett that there had been an ongoing problem with the family of a football player at Whitley County, the Atkins family, and it concerned complaints by the Atkins' parents that their son was not getting enough playing time. Bradley's parents testified that this was not the reason they changed residences.

Conclusions of Law

Under Bylaw 6, Bradley Lawson was immediately ineligible to participate in interscholastic athletics at Corbin because he transferred to Corbin after participating in varsity athletics as a freshman at Whitley County. Bradley claimed that he was entitled to a waiver of Bylaw 6 under Section 1(a), commonly known as the "bona fide change in residence exception." This is a discretionary exception which may be applied when there has been a bona fide change in residence by the student and his parents prior to a change in schools. To be considered "bona fide," the change in residence cannot be "motivated in whole or part by a

desire to participate in athletics at the new school" or "used or manipulated for the purpose of gaining athletic eligibility." This Board concludes that the alleged change in residence by Bradley and his parents does not fit within the letter and spirit of the bona fide change in residence exception to Bylaw 6.

The bona fide change in residence exception does not permit the family to keep their former residence regardless of the circumstances. The bona fide change in residence exception was primarily designed for those situations where the change in residence provided an objective indication that the transfer was not due to recruiting or athletic reasons. This objective indication is wholly lacking in this case because Bradley's parents continue to own the house that they have owned for seventeen years, pay the utilities and taxes at the house, help maintain the house, keep a garden and cows at the house, repeatedly visit the house, rent the house to another son, made a weak effort to sell their house, and have no intention to sell the house. The lack of objective indication is magnified by the fact that the only reason advanced for the change in residence was the subjective belief of Bradley's father, Bob, that moving closer to work would help him better perform his job by being closer to work. This case lacks an objective indication such a requirement by his employer that he move closer to work. In fact, Bob had carried out his duties effectively for the preceding five years at the house and there were much simpler solutions to the communication problems surrounding the fire at the plant, such as a cellular phone or a pager. But instead of trying these methods, the Lawson family uprooted from their established home and rented a two bedroom apartment on a one year lease.

In his exceptions, Bradley noted that one of the purposes of Bylaw 6 is to "reinforce the view that a family is a strong and viable unit and as such is the best place for students to live while attending high school." Because he and his parents moved to the apartment rather than just his father, Bradley argued that his transfer supported this rationale. Bradley forgets, however, that there are other rationales underlying Bylaw 6 which would be vio-

lated by a waiver under these circumstances. These rationales include, but are not limited to, the: (1) prevention and deterrence of transfers due to recruiting or athletic reasons; (2) protection of participation opportunities of bona fide resident students; (3) provision of a fair and equitable framework for athletic competition in an academic setting; (4) provision of a uniform standard for all schools to follow; (5) position that athletics is a privilege and must not be permitted to assume a dominant position in a school's program; (6) keeping the focus of educators and students on the fact that students attend school to receive an education first and participate in athletics second; and (7) prevention and deterrence of students manipulating the change in residence exception solely or primarily for gaining interscholastic athletic eligibility.

Bradley also argued that Whitley County tried to persuade him to come back to that school after the transfer. This has no relevance, however, to whether Bradley is entitled to a waiver under Bylaw 6. As stated in Bylaw 6, determination of whether a student is entitled to a waiver is "based on the circumstances existing as of the date of enrollment at the new school." In addition, the actions of Whitley County after the transfer do not bear on the reason Bradley claimed for the change in residence.

Lastly, Bradley argues that "each particular situation is unique and must be evaluated on its own particular set of circumstances as was done in this case." Although each case is unique, the Board must consider the precedential effect of granting a waiver in this case. As discussed above, the primary reason the KHSAA allows for waivers under Bylaw 6 when there has been a bona fide change in residence is that there is an objective indication that the transfer was not due to recruiting or for athletic reasons. Under the circumstances of this case, the objective indication is wholly lacking. If a waiver were recognized for Bradley, it would encourage athletic transfers thinly disguised as non-athletic transfers.

For these reasons, the Board concludes that the change in residence was not bona fide. Thus, the Board denies Bradley Lawson's request for a waiver of

3084



Kentucky High School Athletic Association



2002 - October Board of Control Meeting Minutes

Bylaw 6.

Commissioner DeVries gave a Title IX report from her recent meeting with the U.S. Department of Education Title IX in Chicago.

Mr. Saylor then called the Board's attention to miscellaneous items listed for their information only. 1) Review dates for the next regular Board of Control Meeting, November 19-20, 2002 in Lexington, KY; 2) Miscellaneous Board and staff items.

Mr. Saylor asked that financial aid again be sought from the KDE regarding Title IX Audit and monitoring expenses. A motion was made by Gary Dearborn for staff to write a letter to the KDE seeking funding for Title IX expenses. The motion was seconded by L.V. McGinty, and passed unanimously.

Mr. Saylor commended Commissioner DeVries on the great job she has done and is doing as the new Commissioner these past four months.

There being no further business to come before the Board, L.V. McGinty made a motion to adjourn. The motion was seconded by Kathy Johnston, and passed unanimously. The meeting adjourned at 11:10 a.m.

Eddie Long
Basil F. DeVries

4 of 4