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 Weer. Also present were Commissioner Bridg Devries, Assistant Commissioners Larry Boucher, Julian Tackett and Roland Williams, Fundraising Consultant Ken Tippett 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 #. 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
Overtun/(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
Overtun/(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
Overtun/(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
901 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 Inlay, 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.
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.

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 Bridg L. DeVries.

(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.