

Board of Control Meeting Minutes - August 2004

President Jim Sexton convened the special meeting of the Board of Control on Monday, August 23, 2004 at 8:00 a.m. All Board members were present. 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. Michael Dailey, Kentucky Department of Education liaison and Ted Martin, KHSAA Legal Counsel were also present.

Jerry Taylor provided a moment of reflection.

Assistant Commissioner Roland Williams led the Pledge of Allegiance.

President Sexton stated for the record that all eighteen Board members were present, and that ten votes were needed to pass any eligibility motions.

Jerry Taylor made a motion, seconded by Cynthia Elliott, to go into Executive Session to discuss pending litigation. The motion passed unanimously. Ozz Jackson made a motion, seconded by Donna Wear, to come out of Executive Session. The motion passed unanimously. No action was taken during Executive Session.

Let the record show that Bob Schneider left the meeting.

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

844, 6, ELIGIBLE
Overturn (Hardin), Haeberle, 13-4
Ineligible-A

845, 6, ELIGIBLE,
Uphold (Elliott), Jackson, 13-4
Eligible-B

843, 6, INELIGIBLE
Uphold (McGinty), Burgett, 17-0
Ineligible

848, 6, EXCEPTIONS
Uphold (Elliott), Broughton, 15-1-1
Ineligible

A-Findings of Fact

1. Student attended sending school during his freshman and sophomore years. He participated in varsity football, basketball and track at sending school.

2. On June 2, 2004, student transferred to receiving school.

3. On February 10, 2004, Assistant Principal and Athletic Director had a conversation with student's father during a basketball game. The AD asked the father whether the rumor was true that student was transferring to receiving school. Father responded that the rumor was true. The AD informed father that sending school would contest the transfer with the KHSAA. When father asked AD why sending school would contest the transfer, AD replied by asking father why student was going to receiving school. Father responded that student was going to receiving school to play football. AD responded if that was the reason, then sending school would contest the transfer. This conversation was documented in a statement attached to a letter dated June 7, 2004 from AD to KHSAA Commissioner Brigid DeVries. The letter and attached statement is a part of the record in this case. Further, the Hearing Officer's findings of fact provide that AD "stated, in support of sending school's contest of the transfer, that he had a conversation with father in February 2004 that indicated an athletic motivation for the transfer."

4. As of the date of the hearing, July 6, 2004, student's younger brother was still enrolled at a middle school in the sending school's district.

5. Based on this information, the sending school claimed student's transfer to receiving school was for athletic reasons.

6. On April 10, 2004, father signed a lease

for a residence in Lexington, Kentucky. The term of the lease is from May 1, 2004 until May 27, 2005. The residence is located in the public school district for Tates Creek High School. The former residence was located in Mt. Sterling, Kentucky. The family gave notice of their intent to move from that residence and no lease was broken.

7. Student's parents pay a tuition of \$5,820.00 for student to attend receiving school. The receiving school Athletic Director testified at the hearing that they do not provide financial assistance for tuition during the student's first year at the school.

8. The family claims that the move was so that father could spend more time with the family and to reduce the family's expenses. They did not, however, address AD's statement about the February 2004 conversation he had with father.

9. Student's mother testified that there had been some rumors for some time about student attending another Lexington High School, but claimed that there were no rumors about him attending receiving school.

Conclusions of Law

Based on the entire record, the Board concludes as follows:

1. Student's transfer is subject to Bylaw 6, Section 1 ("Bylaw 6") because he participated in varsity sports at sending school following enrollment in grade nine and then transferred to receiving school.

2. Contrary to the Hearing Officer's recommended conclusion of law, student's transfer does not meet the BONA FIDE CHANGE OF RESIDENCE exception at Bylaw 6(a). In Bylaw 6(a), the member schools have provided that a change in residence is not "bona fide" if "the change is motivated in whole or part by a desire to participate in athletics at the new school" or if "the change in residence is used or manipulated for the purpose of gaining athletic eligibility." These have been inserted to further Bylaw 6's purposes of preventing and deterring transfers due to recruit-

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ing and for athletic reasons.

The evidence in this case shows that student's transfer to the receiving school was motivated at least in part by a desire to participate in athletics at receiving school, and that the change in residence was used to gain athletic eligibility at receiving school. First, father admitted to AD that the reason for the transfer was to play football at receiving school. Second, even though student's parents claimed that one of the reasons for the transfer was to reduce the family's expenses, they have to pay \$5,820.00 in tuition for student to attend receiving school. Third, student's younger brother is still attending middle school in sending school's county.

Finding of Fact-B

The Board requested that the eligibility order be based on the discretionary waiver provision contained in the due process procedure, rather than the divorce exception at Bylaw 6-1(b).

Paul Dotson, Constitution and Bylaws Committee Chairperson, asked the Board to approve the following motions:

1. A motion was made by Jeff Perkins, and seconded by Steve Parker, for the Board of Control to author a Bylaw 6(2) proposal allowing foreign exchange students to only play junior varsity sports. The motion failed 8-9.
2. The Bylaw 6 proposal to allow transferring students to only play junior varsity was tabled until the September meeting for clarification by the author.
3. A motion was made by Lonnie Burgett, and seconded by Sally Haeberle, for the word "permanent" to be added to bona fide change of residence in Bylaw 6. The motion passed unanimously.
4. Sally Haeberle made a motion, seconded by Cynthia Elliott, to give second reading to the KHSAA/Board of Control proposal to repeal the exception in Bylaw 6 related to academic deficiency for the state testing. The motion passed unanimously.
5. Gary Dearborn made a motion, seconded by Lonnie Burgett, to give second reading to the KHSAA/Board of Control proposal to codify restriction on playing non-school teams. The motion passed unanimously.
6. Cynthia Elliott made a motion, seconded by Sally Haeberle, to approve the inclusion of another exception in Bylaw 6 and related to one school year of non-participation. The motion passed 15-2.

7. Jim Sexton made a motion to elect Board of Control members at the Annual Delegate Assembly. The motion died for lack of a second.

8. Sally Haeberle made a motion, seconded by Chuck Broughton, to approve clarification regarding the residence of foreign exchange students - Bylaw 6(2). The motion passed unanimously.

9. Jeff Perkins made a motion, seconded by Lonnie Burgett, to have all investigation requests in writing per Bylaw 16. The motion passed unanimously.

Gary Dearborn, Basketball Alignment Ad Hoc Committee Chairperson, asked the Board to approve the following motions:

1. Accept the proposed draft re-alignment as presented to be released to the membership on September 1, 2004. The motion was seconded by L.V. McGinty, and passed unanimously.
2. New seeding procedures to be established for those districts affected by the new alignment. The motion was seconded by Sally Haeberle, and passed unanimously.
3. Instruct schools to begin holding long-range site location meetings. The motion was seconded by Sally Haeberle, and passed unanimously.
4. Sally Haeberle made a motion, seconded by Steve Parker, for the proposed re-alignment to be effective with the 2005-2006 school year. The motion passed 13-4.

Mr. Dearborn asked the record to show that the draft re-alignment will be sent September 1st with the Commissioner's Notes. Release for media and public access of the proposed alignment would be via the KHSAA website September 2nd. Board members were asked not to distribute their copy before the schools received the official version. Schools will be asked to coordinate regional rotation plans.

The date for the next regular Board of Control meeting was reviewed. The Board will meet on Thursday September 16, 2004 in Lexington, KY.

Commissioner DeVries will be assembling a Member Schools Task Force. The main goals are: 1) Public/Private School issues; 2) Regulate Eligibilities; and 3) Educational Initiatives.

President Sexton asked staff to place proposal solicitations for new carpeting in the office on the September agenda.

Gary Dearborn asked that 9th Region concerns regarding Title IX enforcement be included on the September agenda for discussion.

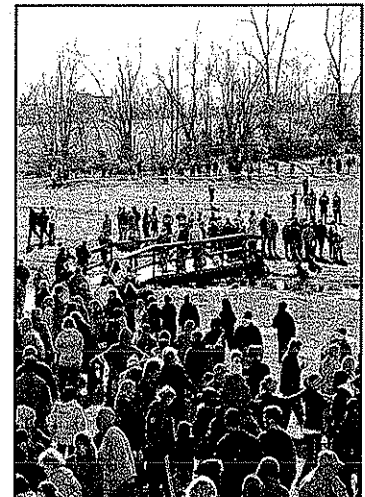


KHSAA Commissioner Brigid DeVries presents the Girls' Class AAA Individual Cross Country State Champion plaque to Melissa Massey of DuPont Manual.

Cynthia Elliott announced that she was resigning from the Board to relocate out of state and that this was her last meeting. Everyone wished her well.

There being no further business to come before the Board, Paul Dotson made a motion to adjourn. The motion was seconded by Jerry Taylor, and passed unanimously. The meeting adjourned at 3:00 p.m.

Brigid DeVries
L.V. McGinty



Cross Country fans packed the course for the 2004 State Championships held at the Kentucky Horse Park in Lexington.