

Board of Control Meeting Minutes - January 2005

President Jim Sexton convened the regular meeting of the Board of Control on Friday, January 14, 2005 at 11:40 a.m. All Board members were present except Paula Goodin. 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. KDE liaison, Michael Dailey and KHSAA legal counsel, Ted Martin were also present.

Bob Schneider provided the reflection.

Ken Tippett led the Pledge of Allegiance.

President Sexton requested the record show that sixteen Board members were present, and that nine votes were needed to pass any eligibility motions.

Sally Haeberle made a motion, seconded by Ozz Jackson, to accept the minutes of the November 18, 2004 regular meeting. The motion passed unanimously.

Bob Schneider made a motion, seconded by Sally Haeberle, to accept the minutes of the December 16, 2004 special meeting. The motion passed unanimously.

Paul Dotson made a motion, seconded by L.V. McGinty, to approve the bills of the Association from November 1, 2004 through December 31, 2004. The motion passed unanimously.

Mike Deaton made a motion, seconded by Sally Haeberle, to go into Executive Session to discuss pending litigation. The motion passed unanimously. L.V. McGinty made a motion, seconded by Ozz Jackson, to come out of Executive Session. The motion passed unanimously. No action was taken during Executive Session.

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, Status

910, 6, ELIGIBLE
Overturn (Dearborn), Dotson, 16-0, Ineligible-A

914, 6, ELIGIBLE
Uphold (McGinty), Taylor, 14-2 Eligible

909, 6, INELIGIBLE
Uphold (Deaton), McGinty, 16-0 Ineligible

912, 6, INELIGIBLE
Uphold (Dotson), Broughton, 16-0 Ineligible

913, 6, INELIGIBLE

Uphold (Perkins), Haeberle, 16-0 Ineligible

915, 6, INELIGIBLE
Uphold (Parker), Haeberle, 16-0 Ineligible

916, 6, INELIGIBLE
Uphold (Burgett), Wear, 16-0 Ineligible

917, INELIGIBLE
Uphold (Dearborn), Parker, 16-0 918, 5, INELIGIBLE

Uphold (McGinty), Deaton, 15-0-1 (Broughton) Ineligible

911, 6, INELIGIBLE (EXCEPTIONS)
Uphold (Dearborn), McGinty, 15-0-1 (Schneider), Ineligible

A-Findings of Fact-#910

1. The student, born May 20, 1987, transferred from Neelyville, Missouri to the receiving school on August 11, 2004. The student participated in varsity athletics at Neelyville, Missouri.

2. The student was born in Missouri. In 1992 the state of Missouri, pursuant to an order of the County Juvenile Court, was made the custodian of the student and two of his siblings. Physical custody was given to his grandmother. The reason for the intervention of the state of Missouri was that the student's father's whereabouts were unknown and his mother was unstable.

3. The grandmother became concerned as to what would happen to her grandson if she were incapacitated and, as a result of that concern, the Circuit Court entered an order in April, of 2001 appointing the student's uncle, as guardian of his person.

4. Although the student's uncle became guardian pursuant to the court order the student did not move to Kentucky to live with his uncle until after the completion of his junior year. In his junior year the student's academic performance plummeted from straight A's. Apparently in Missouri adulthood is obtained at age 17 and the student moved out of his grandmother's home to live with a friend, vowing to quit school.

5. The student's uncle went to Missouri and talked him into coming to Kentucky to live with him and attend the receiving school, which he did.

6. When the receiving school's athletic director filled out the transfer forms, being uncertain about the student's legal status in Missouri, checked box number 32 on the transfer application indicating the student was a ward of the state.

7. The student is now living with his uncle in a two bedroom duplex in the receiving school district and his grades have returned to their former high level.

8. Athletic director at the receiving school had contact with the Neelyville school system speaking with a counselor there who advised him that the student had a difficult life since childhood and that he had significant potential. It was clear to the counselor that the student's attitude towards school changed dramatically during his junior year when he was beginning to get into some trouble and losing interest in school.

Conclusions of Law

Based on the record, the Board concludes that the application of Bylaw 6, Section 1 ("Bylaw 6") should not be waived for the following reasons:

1. The student's transfer is subject to Bylaw 6 because he participated in varsity sports at Neelyville High School ("Neelyville") in Missouri after enrolling in grade nine and then transferred to the receiving school.

2. As concluded by the Hearing Officer, the student's transfer does not meet a specific, enumerated exception to Bylaw 6. The student did not file any exceptions to this conclusion by the Hearing Officer.

3. The only other ground for a waiver of Bylaw 6 is set forth in the KHSAA Due Process Procedure. Under this provision, the Board has limited discretion to waive Bylaw 6 if strict application of Bylaw 6 is unfair to the student and the circumstances creating the ineligibility were clearly beyond the control of all involved parties. Contrary to the Hearing Officer's conclusion, the evidence does not support a finding that the strict application of Bylaw 6 is unfair to the student and that the transfer was for reasons beyond the control of all involved parties.

First, the restrictions contained in the enumerated exceptions to Bylaw 6 dictate against a waiver. The "Bona Fide Change in Residence" exception at Bylaw 6(a) specifically provides that a change of residence by the student after emancipation is not permitted under the exception. Further, under the "Guardianship/Change of Custody" exception at Bylaw 6(c), appointing a legal guardian does not qualify as an exception. In any event, the student's uncle was appointed guardian in April 2001, which is over three years prior to the transfer and before the student participated in varsity athletics at Neelyville. Further, the

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student remained with his grandmother in Neelyville for over three years after his uncle was appointed guardian. Lastly, the "Academic Concerns" exception at Bylaw 6(f) provides that "the KHSAA shall not recognize as grounds for a waiver of the period of ineligibility an argument that the educational needs of the transferring the students would be better served through a transfer." The alleged reason for the transfer was that the student's grades had dropped in his junior year, he had moved in with a friend and he had vowed to quit school. Thus, the enumerated exceptions to Bylaw 6 disapprove of the bases for his transfer.

Second, the student made a voluntary decision to move in with a friend and vowed to quit school. The discretionary waiver provision is designed to allow for waivers when strict application is unfair and the transfer was involuntary. The student could have continued to go to Neelyville and put forth sufficient effort to obtain satisfactory grades. Under these circumstances, the student should not be rewarded with a waiver of Bylaw 6. A contrary result would set an undesirable precedent.

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

1. Assistant Commissioner Larry Boucher received the post-season basketball officiating assignments as follows:

REGION #	DISTRICT PLAY	REGION PLAY
1	IN	OUT
2	IN	OUT
3	IN	OUT
4	IN	OUT
5	IN	OUT
6	IN	OUT
7	IN	IN
8	IN	IN
9	IN	OUT
10	IN	IN
11	IN	IN
12	IN	OUT
13	IN	OUT
14	IN	OUT
15	IN	OUT
16	IN	IN

President Sexton, Executive Committee Chairperson, then asked the Board to approve the following motions:

1. Donna Wear made a motion, seconded by Sally Haerberle, to authorize Commissioner DeVries to enter into negotiations regarding an extended Golf Title Partnership

with Bowling Green. The motion passed unanimously.

2. L.V. McGinty made a motion, seconded by Stan Hardin, to send the approved Annual Meeting proposals to the Kentucky Department of Education for consideration: 1, 2, 3, 4, 5, 8, 10, 13, 17, 19, 20. The motion passed unanimously.

3. L.V. McGinty made a motion, seconded by Stan Hardin, to send approved Annual Meeting proposal 21 to the Kentucky Department of Education for consideration. The motion passed 12-4.

Gary Dearborn, **Team Sports Committee** Chairperson, asked the Board to approve the following motions:

1. A motion was made by Paul Dotson, and seconded by Ozz Jackson, to move Butler High School in Region 6 from District 22 to District 23, in Baseball, based on the new Basketball alignment. The motion passed 13-3.

2. A motion was made by L.V. McGinty, and seconded by Steve Parker, to move Butler High School in Region 6 from District 22 to District 23 in Fast Pitch Softball, based on the new Basketball alignment. The motion passed 13-3.

3. A motion was made by Ozz Jackson, and seconded by Lonnie Burgett, to divide the 9th Region into two Districts, leaving the 33rd intact, and the remaining 9th Region schools in one district, in Fast Pitch Softball. The motion passed unanimously.

4. A motion was made by Paul Dotson, and seconded by Bob Schneider, to make the international tie-breaker rule mandatory beginning in the 10th inning during regular season only in Fast Pitch Softball, beginning with the 2005 season. The motion passed unanimously.

5. Ozz Jackson made a motion, seconded by Bob Schneider, to make the above changes in the Baseball and Fast Pitch Softball alignment effective for the 2005-2006 season. The motion passed unanimously.

Mr. Dearborn also asked the record to show that at the March Board of Control meeting at least three site proposals will be considered for the Fast Pitch Softball venue.

Chuck Broughton, **Basketball Committee** Chairperson, then asked the Board to approve the following motion:

1. A motion was made by Sally Haerberle, seconded by Gary Dearborn, to review the Casey County alignment in the 12th Region, along with any other Regions, in two years. It was also reinforced that ongoing Basket-

ball alignment will be reviewed every two years with a comprehensive review every four years. The motion passed unanimously.

President Sexton then called the Board's attention to miscellaneous items listed for their information only. 1) Confirm date for Special Board Meeting on February 21st to consider January appeals; 2) Review dates for the next special Board of Control Meeting, March 25, 2005, in conjunction with the Houchens/KHSAA Girls' State Basketball Tournament in Bowling Green, KY; 3) Miscellaneous Board and staff items.

Assistant Commissioner Roland Williams presented an update on the NIAAA meeting. Banning unruly fans from contests was discussed and it was reiterated that this is a host school decision.

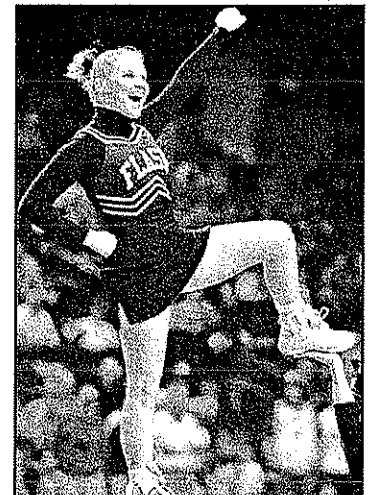
Mr. Cope and Mr. Tippett reminded 3rd year Board members about the Hall of Fame Screening Committee, which will meet on Friday, March 18, 2005.

Commissioner DeVries reviewed the NFHS Council meeting.

Mr. Williams asked the record to show that the State Slow Pitch Softball Tournament will be held in a one day format on Saturday, May 21, 2005.

There being no further business to come before the Board, L.V. McGinty made a motion to adjourn. The motion was seconded by Stan Hardin, and passed unanimously. The meeting adjourned at 11:45 a.m.

[Handwritten signature]



A Lone Oak cheerleader performs during the KAPOs half-time competition during the National City/KHSAA Boys' State Basketball Tournament.