

Board of Control Meeting Minutes - February 2005

President Jim Sexton convened the special meeting of the Board of Control on Monday, February 21, 2005 at 9:30 a.m. All Board members were present except L.V. McGinty and Donna Wear. Also present were Commissioner Brigid DeVries, Assistant Commissioners Larry Boucher, Julian Tackett and Roland Williams, Director of Promotions & Media Relations Butch Cope, Fundraising Consultant Ken Tippett and Office Manager Darlene Koszenski. Peggy Miller, KHSAA Legal Counsel, and Michael Dailey, KDE liaison, were also present.

Butch Cope led the Pledge of Allegiance.

Sally Haeberle provided a moment of reflection.

President Sexton stated for the record that fifteen Board members were present, and that nine 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, H. O. Recommend Board Motion, Board Second, Vote Y/N/R Status

925, 4, ELIGIBLE**

Overturn (Dearborn), Dotson, 11-4 Ineligible - A

926, 5, ELIGIBLE

Overturn (Dotson), Perkins, 13-2 Ineligible - B

919, 6, INELIGIBLE

Uphold (Taylor), Dearborn, 15-0 Ineligible

920, 6, INELIGIBLE

Uphold (Deaton), Broughton, 15-0 Ineligible

923, 6, INELIGIBLE

Uphold (Parker), Deaton, 13-1-1 (Dearborn), Ineligible

924, 6, INELIGIBLE

Uphold (Perkins), Dearborn, 15-0 Ineligible

927, 6, INELIGIBLE

Uphold (Dearborn), Parker, 15-0 Ineligible

921, 6, INELIGIBLE

Uphold (Dotson), Burgett, 15-0 Ineligible

922, 6, INELIGIBLE

Uphold (Taylor), Dearborn, 15-0 Ineligible

**The Commissioner was asked to research the possibility that this student participated in athletics while ineligible the previous year.

Case #925-Findings of Fact-A

1. The Board adopts only the Findings of Fact in the Hearing Officer's Recommended Order. The Board reaches a different conclusion from the Findings of Fact because they do not establish grounds for a waiver of Bylaw 4, Section 1 ("Bylaw 4").

Conclusions of Law

Based on the record, the Board concludes as follows:

1. The student is ineligible under Bylaw 4 because he is in his fifth consecutive calendar year of high school following promotion from grade eight.

2. Under Bylaw 4, eligibility after the fourth consecutive calendar year of high school following promotion from grade eight is only allowed "in the case where i[t] has been documented by the attending physician, Principal and Superintendent that severe illness or injury has prevented the student from receiving necessary education services, and the right to an education has therefore been impacted rather than simply the loss of athletic privilege." The rationale for this limited exception is set forth in Case Situation BL-4-1. It provides that:

Case BL-4-1- Is there a basic philosophy and reason for Bylaw 4 and a limit on semesters?

A maximum participation requirement:

1. promotes timely progress toward graduation by discouraging students from delaying or interrupting their high school education;

2. disallows students to enroll for one semester each school year to increase athletic ability and skill;

3. diminishes risks stemming from unequal competition;

4. places emphasis on the academic mission of the school;

5. promotes harmony and fair competition among member schools by maintaining equality of eligibility affording each student the same number of semesters of athletic eligibility;

6. increases the number of students who will have an opportunity to participate in interscholastic athletics;

7. is conducive to the prevention of red-shirting;

8. helps avoid exploitation by coaches or boosters who otherwise might seek to obtain transfers or to delay a student's normal progress through school; and

9. prevents displacement of younger student-athletes by older students wishing to extend unfairly their high school careers.

Without a clearly defined limit, avenues remain open for red-shirting, deception, legal maneuvering, and other athletics-driven motivations for a student to remain in school rather than proceeding on into college or into the work force thereby denying the participation of a student who is otherwise "next in line" to play.

3. The student did not present sufficient documentation to support a waiver under this exception because there was no documentation from the Superintendent "that severe illness or injury has prevented him from receiving necessary education services and the right to an education has therefore been impacted rather than simply the loss of athletic privilege."

Case #926-Findings of Fact-B

1. The student went out for the varsity basketball team during his sophomore year and made the team. He played in a varsity match on November 30, 2004. The next day, the school self-reported that the student was not in compliance with KHSAA Bylaw 5 section 1(b). The Bylaw requires that a student at the beginning of his sophomore year must have 20% of the requirements for graduation. In this case that would be 5.2 credits. The student had 5.125 credits at the beginning of his sophomore year. Twenty-six (26) credits are required to graduate from the high school and the school policy requires that a student have five credits at the start of his sophomore year. The student, therefore, had more than was required by the school but less than required by the KHSAA.

2. It was pointed out that to be considered a junior under the policy of the school, a student would need 12 credits of the 26 required to graduate where under KHSAA Bylaw 5 Section 1(c) 45% would be required to graduate. That would be 11.7 credits.

3. School representatives pointed out that in the sophomore year the KHSAA requirements are more severe but in a junior year less severe.

4. The student has passed all four courses this year and has 9.125 credits and would thus be eligible under the 25% rule as a sophomore.

5. A meeting is going to be held in the very near future to work on a corrective action plan to bring the school's regulations in compliance with those of the KHSAA.

6. The Principal stated that the appeal was as to all of the sanctions imposed by the Commissioner but most significantly with

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regard to the eligibility of this young man. She believed he should not be required to pay for an adult mistake.

7. The Coach testified that the student had experienced a difficult home life. He has been primarily raised by a grandmother and aunt due to parental absence and has had little guidance from any male figure. He believed in this case this child could be lost without an opportunity to be part of a team.

8. This is the first instance of self-reporting that has occurred during the tenure of the current Principal.

Conclusions of Law

Based on the record, the Board concludes as follows:

1. Bylaw 5, Section 1 provides that: "On the first day of each school year, a student must be at his/her proper grade level. To be considered to be at the proper grade level, a student must have been enrolled during the previous grading period, and must be on schedule to graduate on the first day of school. For the verification of this provision, all course work, including summer and correspondence work, must be complete by the first day of the school year for the student body."

2. Because the student is a sophomore, he is subject to the requirement of Bylaw 5, Section 1(b). Under Bylaw 5, Section 1(b), he must have received twenty (20) percent of the graduation requirements of the school prior to the first day of his sophomore year to be considered on schedule to graduate. Because the school requires twenty-six (26) credits to graduate, he needed 5.2 credits to be eligible. The student only had 5.125 credits, however, prior to the first day of his sophomore year. Thus, he was and is ineligible under Bylaw 5, Section 1.

3. Under Bylaw 5, Section 2, a student who does not satisfy Bylaw 5, Section 1 may be reinstated a maximum of one time. Reinstatement is allowed if the student passes twenty-five (25) percent of his/her school's graduation requirements during the year he/she is ineligible. The student remains eligible under Bylaw 5, Section 1 provided that she/she passes twenty-five (25) percent of his/her school's graduation requirements during each subsequent year. As clearly indicated from Bylaw 5, Section 2, reinstatement is only possible after the conclusion of the year during which the student is ineligible. See also Case BL-5-5 (If a student is ineligible at the beginning of the school year according to Bylaw 5, Section

1, can this student become eligible during the school year? No. These provisions state that in order to be eligible during that school year, a student must be eligible on the first day of school for the student body. A student athlete who is ineligible due to failing to maintain normal progress as defined in Section 1 and remains ineligible an entire year may have eligibility reinstated for the following and subsequent years providing he/she meets all provisions for reinstatement in Bylaw 5). Because the student has not completed his sophomore year, the year in which he is ineligible, a determination of whether he may be reinstated under Bylaw 5, Section 2 cannot be made at this time. If he passes 6.5 credits during his sophomore year, he may be reinstated under Bylaw 5, Section 2.

4. The only other ground for a waiver of Bylaw 5, Section 1 is set forth in the KHSAA Due Process Procedure. Under this provision, the Board has limited discretion to waive Bylaw 5, Section 1 if strict application of Bylaw 5, Section 1 is unfair to the student and the circumstances creating the ineligibility were clearly beyond the control of all involved parties. The evidence does not support a finding that the strict application of Bylaw 5, Section 1 is unfair to the student and that the circumstances creating the ineligibility were clearly for reasons beyond the control of all involved parties. The Hearing Officer erroneously concluded that a waiver was appropriate "[b]ecause there was a variation between the requirements of the high school and the KHSAA and this young man was in compliance with the requirements of the school it would be unfair to penalize him for what the principal candidly acknowledged to be adult mistakes." While the student may have been in compliance with the progress requirements of the high school, he was clearly not in compliance with KHSAA Bylaw 5, Section 1. The school is a voluntary member of the KHSAA and has agreed to abide by all of its Bylaws, including Bylaw 5, Section 1. For the student to exercise the privilege of participating in interscholastic athletics at the school, he must also abide by the KHSAA Bylaws, including Bylaw 5, Section 1. Simply because there is a difference between the requirements of the school and the KHSAA does not mean that a waiver is appropriate. Further, the evidence did not show that student's failure to obtain the credits necessary to satisfy Bylaw 5, Section 1(b) was due to circumstances be-

yond his control. Lastly, a mistake by the high school as to the KHSAA Bylaws does not justify a waiver of Bylaw 5, Section 1.

Lonnie Burgett made a motion, seconded by Sally Haeberle, to go into Executive Session to discuss legal cases. The motion passed unanimously. Gary Dearborn made a motion, seconded by Sally Haeberle, to come out of Executive Session. The motion passed unanimously. No action was taken during Executive Session.

The date for the next Board meeting is Friday, March 25, 2005, at 8:00 a.m. C.T., in conjunction with the Houchens/KHSAA Girls' Sweet 16® Basketball Tournament in Bowling Green, KY. At least three fast-pitch softball proposals will be reviewed during the meeting.

Michael Dailey, Kentucky Department of Education, gave an update. Proposal #21 was sent back to the Board of Control for review, because the KBE and LSAC feel that the 64 hours educational component should remain for coaches. The Proposal will be discussed further at the April BOC meeting.

For the record, the State Board was very complimentary of KHSAA regarding its ongoing Title IX compliance efforts.

KHSAA staff presented a status update on marketing representation contract negotiations. The proposal will be reviewed by the Finance Committee at the April BOC meeting and voted on in May, 2005. Staff was asked to research the option of hiring an in-house fundraiser and other fundraising alternatives.

The Basketball Committee will discuss the Seneca alignment adjustment request at the April BOC meeting, as well as any other previously submitted requests.

The summer BOC meeting dates are July 11-12, 2005 and the meeting will be held at Green Turtle Bay in Grand Rivers.

BOC ballots will be opened at the KHSAA office on Tuesday, March 8, 2005 at 1:30 p.m.

Larry Boucher mentioned that a memo was sent to all schools regarding sportsmanship issues.

Ms. DeVries updated the BOC on the first meeting of the Current Issues Committee. Bob Schneider and Donna Wear serve on that committee. The next meeting is April 14, 2005.

Jeff Schlosser has been selected by the KDE as the new state-at-large Board member. A short bio was distributed to the other

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BOC members. He will be in place for the March meeting.

Since there was no other business to come before the Board, a motion was made by Ozz Jackson, seconded by Stan Hardin, to adjourn. The motion passed unanimously, and the meeting was adjourned at 11:00 a.m.

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**REMINDER
DEADLINE TO UPDATE SCHOOL INFORMATION
ON KHSAA WEBSITE
FOR 2005-06 HANDBOOK IS AUG. 5**

David L. DePina