

## Board of Control Meeting Minutes - March 2005

President Jim Sexton convened the special meeting of the Board of Control on Friday, March 25, 2005 at 7:45 a.m. All Board members were present except Lonnie Burgett. 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 Tippet and Office Manager Darlene Koszenski. KHSAA legal counsel, Peggy Miller, was also present.

Commissioner Brigid DeVries led the pledge of allegiance.

Donna Wear provided a moment of reflection.

Mr. Sexton welcomed Jeff Schlosser to the Board of Control. Mr. Schlosser is completing the state-at-large position vacated by Cynthia Elliott.

Mr. Sexton requested that the record show seventeen 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, H. O. Recommend Board Motion, Board Second, Vote Y/N/R Status

929, 6, ELIGIBLE  
Overturn (Dearborn), Parker, 12-4-1 (Stewart), Ineligible - A

932, 6, ELIGIBLE  
Uphold (McGinty), Taylor, 14-3 Eligible

933, 4, ELIGIBLE  
Overturn (Deaton), Dotson, 16-1 (Schlosser), Ineligible - B

930, 6, INELIGIBLE  
Uphold (Dotson), Stewart, 17-0 Ineligible

931, 6, INELIGIBLE  
Uphold (Dearborn), McGinty, 17-0 Ineligible

934, 6, INELIGIBLE  
Uphold (McGinty), Broughton, 16-0-1 (Dotson), Ineligible

928, 6, EXCEPTIONS  
Uphold (Dearborn), Deaton, 16-1 Ineligible

935, 6, EXCEPTIONS  
Uphold (McGinty), Deaton, 16-0-1 (Dearborn), Ineligible  
A-Findings of Fact #929

1. The KHSAA Board adopts the Findings of Fact in the Hearing Officer's Recommended Order, except reaches a different conclusion from those facts.

### 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 the sending school 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. He did not file any exceptions to this conclusion by the Hearing Officer.

3. There was no letter submitted by the Superintendent documenting academic deficiencies and remedies. In addition, the sending school has not been in the lowest level of assistance for two consecutive biennia as required by KRS 158.6455 and specifically detailed in Section 5 of 703KAR 5:120 as stipulated in exception (f) of Bylaw 6.

4. 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 par-

ties.

### B-Findings of Fact #933

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 wants to participate in a fifth consecutive calendar year of high school following initial 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 it 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 are 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;

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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. Although the high school permitted the student to "start over," this does not alter the fact that he is in his fourth consecutive calendar year of high school. His high school transcripts cannot be altered or eliminated for purposes of determining his eligibility.

Peggy Miller asked the Board to reconsider Bylaw 4 Appeal Case #925 at the April, 2005 Board of Control meeting, based on a "Motion to Reconsider" received from their attorney.

Sally Haeberle made a motion, seconded by Donna Wear, to go into Execu-

tive Session to discussing pending legal cases. The motion passed unanimously.

Sally Haeberle made a motion, seconded by Chuck Broughton, to come out of Executive Session. The motion passed unanimously. No action was taken during the Executive Session.

Let the record show that Michael Dailey arrived at the meeting at 8:40 a.m.

President Sexton requested that Bylaw 33 regarding current pending penalties be included on the April agenda.

Chairperson Gary Dearborn, **Team Sports Committee**, turned the floor over to Jeffersontown, Hopkinsville and Owensboro to present Fast Pitch Softball bids for the site of the tournament in 2006 and 2007. Jim Sexton made a committee motion, seconded by Stan Hardin, to award the Fast Pitch Softball site to Jeffersontown for 2006 and 2007. The committee motion passed 7-6.

Mr. Dearborn asked the record to show that Assistant Commissioners Roland Williams and Larry Boucher noted that the NFHS was no longer providing tests for Slow Pitch Softball umpires. He requested that this item be included on the April or May agenda.

Gary Dearborn made a motion, seconded by Stan Hardin, to award the Fast Pitch Softball site to Jeffersontown for 2006 and 2007. The motion passed 11-6.

The Board requested that the April 11-

12, 2005 meeting be limited to a one day meeting on Monday, April 11, 2005.

Mr. Dearborn requested that the Official's Committee meet in April to discuss official's pay based on page 59 of the KHSAA handbook.

Mr. McGinty requested that the Official's Committee also discuss how officials are assigned to state basketball tournaments.

Stan Hardin requested that the Constitution and Bylaws Committee meet in April to discuss the interpretation of Bylaw 24, Section 4.

Paula Goodin requested that the Title IX Committee meet in April or May.

Jerry Taylor requested that the Executive Committee discuss a contract dispute between Dupont Manual and Paul Dunbar at the April meeting.

Jim Sexton requested that the Basketball Committee discuss Seneca and Casey County re-alignment requests in April.

The five members of the Board of Control attending the NFHS Summer meeting are: Gary Dearborn, Paula Goodin, Stan Hardin, L.V. McGinty and Jim Sexton.

There being no further business to come before the Board, Sally Haeberle made a motion to adjourn. The motion was seconded by Stan Hardin, and passed unanimously. The meeting adjourned at 11:00 a.m.

*Bill DeVries*  
*R. Sexton*

*2/11/05*