

Board of Control Minutes - August 2005

President Jerry Taylor convened the special meeting of the Board of Control on Monday, August 22, 2005 at 10:00 a.m. All Board members were present except Sally Haeberle. 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.

L.V. McGinty provided a moment of reflection.

Jerry Taylor led the Pledge of Allegiance.

President Taylor stated for the record that seventeen out of eighteen Board members were present, and that ten

votes were needed to pass any eligibility motions. He then read a short summary of recusal procedures.

L.V. McGinty made a motion, seconded by Donna Wear, to go into Executive Session to discuss pending litigation. The motion passed unanimously. L.V. McGinty made a motion, seconded by Gary Dearborn, 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
Y/N/R,	Status	
954, 6,	ELIGIBLE	
Overturn (Dotson),	Dearborn,	11-6,
Ineligible-A		
957, 4,	ELIGIBLE	

Overturn (Dotson),	Parker,	10-7
Ineligible-B		
956, 6,	INELIGIBLE	
Uphold (McGinty),	Parker,	17-0
Ineligible		
953, 33,	PENALTY UPHELD	
Uphold (Dotson),	Broughton,	13-1-3
(Dearborn, Schlosser,	Schneider),	
Penalty Upheld		
955, 6,	INELIGIBLE (EXCEPTIONS)	
Uphold (Perkins),	Dotson,	11-6,
Ineligible		
958, 6,	INELIGIBLE (EXCEPTIONS)	
Uphold (McGinty),	Parker,	17-0,
Ineligible		

A-Findings of Fact-Case #954

1. The Board incorporates by reference the Findings of Fact as contained in the Hearing Officer's Recommended Order. The Board reaches Different Conclusions of Law, however, from those same

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Findings of Fact.

Conclusions of Law

Based on the whole 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 they participated in varsity sports at the sending school after enrolling in grade nine and then transferred to the receiving school.
2. Contrary to the Hearing Officer's conclusion, the student's transfer does not meet the Bona Fide Change in Residence exception at Bylaw 6(a). Bylaw 6(a) clearly applies only to a change in residence that occurs "prior to a change in enrollment of the student." Further, under all the specific, enumerated exceptions to Bylaw 6, "[d]eterminations of whether a student shall be granted a waiver . . . shall be based on the circumstances existing as of the date of enrollment at the school." In this appeal, the change of enrollment occurred 47 days before the change in residence. This is evident because the Transfer Form initially submitted by the receiving school to the KHSAA Commissioner shows that there was not a change in residence from one school district to another, as required by Bylaw 6(a). Thus, Bylaw 6(a) does not apply to the student's transfer.

This appeal is distinguishable from the transfer which occurred in Kentucky High School Athletic Ass'n v. Jackson, 569 S.W.2d 185 (Ky. App. 1978). Jackson involved the appeal of a student declared ineligible under Bylaw 6 whose parents had divorced in the middle of the school year. The student's custodial parent, his mother, moved following the divorce, but decided to leave the student with his father until the end of the school year. The student moved to live with his mother, who resided in another school district, at the end of the school year. Here, the change of residence did not occur until after the divorce. In fact, the student continued to attend the sending school during the period his mother had primary physical custody of him. Thus, Bylaw 6 may apply to the student under the precedent of Jackson.

Further, the fact that the lease on the student's new residence is on a month-to-month basis dictates against the application of the exception. The exceptions

at Bylaw 6 are designed to provide an objective indication that the transfer was not due to recruiting or for athletic reasons. When a student moves into an apartment in a nearby school district under a month-to-month lease, that objective indication is lacking because the student could move back into the former school district a significant amount of time before the one year period of ineligibility under Bylaw 6 would have expired. Thus, Bylaw 6(a) should not apply to the student's transfer.

3. Although the primary purposes of Bylaw 6 are to prevent and deter recruiting and athletically motivated transfers, lack of evidence of these dangers is not a ground to waive the application of Bylaw 6. The KHSAA member schools have adopted and the Kentucky courts have approved an objective standard to govern transfers in Kentucky. See Kentucky High School Athletic Ass'n v. Hopkins Co. Bd of Educ., 552 S.W.2d 685, 687 (Ky. App. 1977) (upholding application of Bylaw 6 to a transfer despite finding that there was no recruiting and the transfer was not athletically motivated). An objective standard is necessary because the inherent administrative and other difficulties make it often impossible to make a subjective determination in the numerous transfers processed each year. Indeed, around 1,000 transfers are processed by the Commissioner each year. If transfers were only precluded when there was evidence of recruiting or athletic-motivation, then Bylaw 6 would be subject to abuse and students would be transferring anytime and anywhere. While the member schools of the KHSAA are not preventing a transfer for subjective personal reasons, they have decided that the student should sit out one year of interscholastic athletics. Thus, although there is no evidence that the student transferred due to recruiting or was otherwise athletically motivated, Bylaw 6 still applies to this transfer.

B-Findings of Fact-Case #957

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 has had a potential of four consecutive calendar years of eligibility after enrolling in the ninth grade. Contrary to the Hearing Officer's conclusion, the student's argument that Bylaw 4 does not apply because he was not "promoted" from grade eight lacks merit. The student was essentially promoted from grade eight when he skipped the seventh and eighth grades to enroll as a ninth grader at High School. Indeed, if the student's argument is accepted, students would be able to circumvent the application of Bylaw 4 by skipping grades to enroll in the ninth grade. Thus, Bylaw 4 applies to this student.
2. Under Bylaw 4, Section 1(b), eligibility after the fourth consecutive calendar year of high school is 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 rationales 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;
 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



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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.

Contrary to the Hearing Officer's conclusion, Case #650 does not provide precedent to grant this student an additional year of eligibility. In Case #650, the Hearing Officer concluded that the evidence supported a finding that the student had met the limited exception set forth in Bylaw 4, Section 1(b). In this case, there is no evidence "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."

Further, the discussion in Case #650 about Case #601 does not necessitate an exception to Bylaw 4 in this appeal. According to Case #650, Case #601 concerned a student's eligibility under Bylaw 6, Section 1, the "Transfer Rule." In addition, the evidence in this appeal is that the student is in his fifth year of high school because he enrolled at the sending school as a ninth grader and chose to repeat his eleventh grade year when he transferred to the receiving school. This is not the type of circumstance warranting an exception to Bylaw 4.

Paul Dotson, **Constitution and Bylaws Committee** Chairperson, asked the Board to approve the following motions:
1. Gary Dearborn made a motion, seconded by Lonnie Burgett, to ask the Delegates to repeal Bylaw 35 because it is outdated, and place it on the Annual Meeting Agenda. The motion passed unanimously.

Gary Dearborn made a motion, seconded by Donna Wear, to accept the Accident Insurance Report. The motion passed unanimously.

Commissioner DeVries updated the Board on the results of the Triennial Participation Survey.

There being no further business to come before the Board, Bob Stewart made a motion to adjourn. The motion was seconded by Chuck Broughton, and passed unanimously. The meeting adjourned at 12:15 p.m.

A ten minute video on steroid abuse that is being distributed to member schools was shown to Board members after the meeting.

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Jerry Taylor
8-30-2005
M. J. DeVries
August 30-2005