

President Gary Dearborn convened the special meeting of the Board of Control on Friday, March 16, 2007 at 7:50 a.m. (CT). All Board members were present except Dave Weedman. Also present were Commissioner Brigid DeVries, Assistant Commissioners Larry Boucher, Julian Tackett and Darren Bilberry, Director of Promotions & Media Relations Butch Cope, Fundraising Consultant Ken Tippet and Office Manager Darlene Koszenski. Ted Martin, KHSAA Legal Counsel, was also present.

Darlene Koszenski led the Pledge of Allegiance.

Chuck Broughton provided a moment of reflection.

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

Donna Wear made a motion, seconded by Michael Barren, to amend the order of agenda items, and discuss University Heights Academy's request for international travel first. The motion passed unanimously. Marvin Denison and Coach Michael Parker were present and answered questions from the Board. L.V. McGinty then made a motion, seconded by Donna Wear, to approve the request for the UHA boys' soccer team to participate in the Gothica Cup in Gothenburg Sweden July 13-22, 2007, with the following stipulations: 1) The team may participate in a maximum of four matches and counted as two scrimmages and two matches; 2) UHA cannot schedule any soccer contests during the first regular week of the 2007 season, beginning on 8/13/07 (NFHS week 7). The motion passed unanimously.

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
#1121	6	ELIGIBLE	Uphold (McGinty)	Jackson	17-0	Eligible
#1122	6	ELIGIBLE	Overturn (Stewart)	Parker	16-0-1 (Keepers)	Ineligible-A
#1124	6	ELIGIBLE	Overturn (McGinty)	Perkins	14-3	Ineligible-B
#1130	6	ELIGIBLE	Uphold (Jackson)	Perkins	16-0-1 (Moore)	Eligible
#1127	6	ELIGIBLE	Uphold (Jackson)	Stewart	17-0	Eligible
#1128	6	ELIGIBLE	Overturn (Stewart)	Wear	17-0	Ineligible-C
#1123	6	INELIGIBLE	Uphold (McGinty)	Schlosser	17-0	Ineligible
#1126	6	INELIGIBLE	Uphold (McGinty)	Stewart	16-1	Ineligible
#1129	6	ELIGIBLE- EXCEPTIONS	Overturn (McGinty)	Jackson	15-1-1 (Dearborn)	Ineligible-D

#### **A-Findings of Fact, Case #1122**

1. The KHSAA Board incorporates by reference the Findings of Fact as contained in the Hearing Officer's Recommended Order. The KHSAA Board specifically notes from these Findings of Fact that: (1) the alleged reason for the transfer was the student's struggles and dissatisfaction with the major she had chosen at the sending school; (2) there was no Central Office placement of the student to the receiving school; (3) The student and her parents did not change residences; and (4) The student was not denied an opportunity to change "majors" by the sending school Principal.

### **Conclusions of Law**

Based on the whole record, the Board concludes that the application of the period of ineligibility contained in 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 she 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 satisfy any enumerated exception to Bylaw 6.
3. Bylaw 6 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 students would be better served through a transfer." Here, the student claimed she transferred because of her struggles and dissatisfaction with the major she had chosen at the sending school. Because this is an argument that her educational needs would be better served through a transfer to the receiving school, Bylaw 6 does not recognize this reason as a grounds for a waiver.
4. The Due Process Procedure provides for a discretionary waiver if strict application of the applicable Bylaw is unfair *and* the circumstances creating the ineligibility are clearly beyond the control of all the parties involved. The evidence provided does not support a conclusion that the strict application of Bylaw 6 is unfair to the student and the circumstances resulting in her transfer were clearly beyond the control of all the parties involved. Rather, the evidence demonstrates that the student made a voluntary decision to change her major at the sending school which resulted in her transfer. A dangerous precedent would be set if a waiver under these circumstances was recognized because students could easily transfer schools, without any ineligibility period, for athletic reasons thinly disguised as academic reasons by simply alleging that they are struggling or dissatisfied with an academic program or major at a high school.

### **B-Findings of Fact, Case #1124**

1. The KHSAA Board incorporates by reference the Findings of Fact as contained in the Hearing Officer's Recommended Order, except disagrees with the findings that the father has been diagnosed with a liver condition that has resulted in a severe rheumatoid arthritis which has disabled him to a point that he cannot work. This exception is made because, although the Hearing Officer advised him to supplement the record with a Doctor's statement as to his condition, he was unable to provide such a statement. Rather, his former physician only submitted a statement that he had concluded that the father should obtain treatment for his rheumatic condition from a different physician.

### **Conclusions of Law**

Based on the whole record, the Board concludes that the application of the period of ineligibility contained in 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 she 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 satisfy any enumerated exception to Bylaw 6.
3. The Due Process Procedure provides for a discretionary waiver if strict application of the applicable Bylaw is unfair *and* the circumstances creating the ineligibility are clearly beyond the control of all the parties involved. The Hearing Officer recommended a waiver under this provision provided that the father's condition was verified with a Doctor's statement. The father did not provide the verification and, as such, the record does not contain sufficient evidence to support a waiver under this provision.

### **C-Findings of Fact, Case #1128**

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

### **Conclusions of Law**

Based on the whole record, the Board concludes that the application of the period of ineligibility contained in 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 satisfy the discretionary waiver provision contained in the Due Process Procedure.
3. The student's transfer does not satisfy any specific enumerated exception to Bylaw 6. The Hearing Officer mentioned that the student's transfer may satisfy the Bona Fide Change of Residence Exception at Bylaw 6(a). That exception requires, however, a change of permanent residence from one school district/defined school attendance area to another. Here, the student and his father lived with his grandmother in her home in the receiving school district while the student attended the sending school. The student alleged that he and his father have now moved into a different residence, but this residence is still in the receiving school district. Thus, the student and his father have not moved their permanent residence from one school district to another and have not undergone a "bona fide change of residence" as defined by Bylaw 6.

The Hearing Officer was incorrect in discussing the student and his father's former residence in the sending school district when analyzing whether a "bona fide change of residence" had occurred because the relevant residences are the grandmother's residence and the student and his father's alleged new residence. Notwithstanding, the change of residence in 2004 from the residence in the sending school district to the grandmother's residence in the receiving school district was not a "bona fide change of residence" as defined by Bylaw 6 because this change did not reasonably precipitate the transfer of schools. Bylaw 6 provides that a waiver will not be granted if the satisfying of the exception by the student and parent does not reasonably precipitate a transfer to the new school. Case BL-6-15 indicates that "reasonably precipitate" means "that a student cannot delay transferring after a change in residence for an unreasonable amount of time." A delay of around two years from change in residence to transfer is an unreasonable amount of time for purposes of Bylaw 6. Thus, the change of residence in 2004 did not reasonably precipitate the transfer of schools in 2006.

### **D-Findings of Fact, Case #1129**

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

### **Conclusions of Law**

Based on the whole record, the Board concludes that the application of the period of ineligibility contained in 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. Contrary to the conclusion recommended by the Hearing Officer, the student's transfer does not meet the Bona Fide Change of Residence exception at Bylaw 6(a). The record does not support a conclusion that the student and his parents moved their permanent residence from

one school district/defined attendance area to another prior to enrollment at the receiving school.

Donna Wear made a motion, seconded by Michael Barren, to go into Executive Session to discuss pending litigation. The motion passed unanimously. Donna Wear made a motion, seconded by Jeff Perkins, to come out of Executive Session. The motion passed unanimously. No action was taken during Executive Session.

Larry Boucher mentioned that the Assigning Secretary Correspondence had been sent to the schools. No action was taken.

The date for the next Board meeting is Thursday, April 19, 2007, at the KHSAA office in Lexington. This will be a full day, regular meeting. School membership applications for renewal will be discussed. Henderson County and Elizabethtown school personnel will appear before the Board at that meeting.

Julian Tackett stated that preliminary budget figures will be reviewed at the April meeting.

Since there was no other business to come before the Board, a motion to adjourn was made by L.V. McGinty, seconded by Chuck Broughton, and passed unanimously. The meeting adjourned at 9:20 a.m.

President Gary Dearborn

Gary Dearborn Date 4/20/07

Commissioner Brigid L. DeVries

Brigid L. DeVries Date 4-20-07