



Introduction

This summarizes interpretive guidance for the member schools of the KHSAA related to SB145, passed in the 2023 General Assembly Regular Session. Inquiries should be directed to Commissioner Julian Tackett (jtackett@khsas.org) or General Counsel Chad Collins (ccollins@khsaa.org). The provisions of Acts Chapter 93 2023 (SB145) go into effect on June 29, 2023 and will be further codified as KHSAA Bylaw 8. This information is archived at <https://khsaa.org/05-22-23-guidance-related-to-2023-sb145-with-revisions-to-2021-hb563-krs156-070/>, or <https://khsaa.org/resources/2023%20SB145%20HB563%20Revision.pdf>.

Background of Legislative Change

In its regular session in 2023, the Kentucky General Assembly passed amendments to Acts Chapter 93 2023 (SB145), which became law on June 29, 2023. This legislation amended the prior provisions known colloquially as HB563, Acts Chapter 167 2021 (HB563).

SB145, now codified into Kentucky Revised Statutes further refined restrictions on non-resident, out-of-district students and their participation in interscholastic athletics after changing schools.

The changes passed with this measure impacted only KRS 156.070 and made no changes in KRS 157.350. These changes supersede and sunset the interpretive guidance issued by the KHSAA distributed as <https://khsaa.org/06-13-22-bylaw-8-replacement-and-guidance-related-to-2021-hb563-krs156-070/>. These changes become effective June 29, 2023.

Definitions

- "Non-resident student" continues to be in compliance with KRS 157.350 and are only applicable in those public schools subject to SEEK funding calculation.
- Non-resident student provisions continue to not apply to out-of-state students legally attending schools in Kentucky.
- The law now specifically references KHSAA Bylaw 6 (Transfer Rule) (Transfer Rule) with its reference to the transfer rule.

Specific Provisions

The provisions of the bill state:

Unless permitted to be eligible for varsity athletics by any transfer rule, policy, or administrative regulation promulgated by the state board or any agency designated by the state board to manage interscholastic athletics, any student who transfers enrollment from a district of residence to a nonresident district under KRS 157.350(4)(b) after enrolling in grade nine (9) and participating in a varsity sport shall be ineligible to participate in interscholastic athletics for one (1) calendar year from the date of the transfer. The state board or any agency designated by the state board to manage interscholastic athletics may adopt rules, policies, and bylaws and promulgate administrative regulations necessary to carry out this paragraph.

KHSAA Bylaws

As such, KHSAA Bylaw 8 is amended to state:

BYLAW 8. ENROLLMENT / TRANSFER OF NON-RESIDENT STUDENT

SEC. 1) NON-RESIDENT STUDENT ELIGIBILITY RESTRICTION

a) Under KRS 156.070 (2) (i), unless deemed to be eligible by the Ruling Officer or the Commissioner through Bylaw 6 (Transfer Rule), any student who transfers enrollment from a district of residence to a nonresident district under KRS 157.350(4)(b) after enrolling in grade nine (9) and participating in a varsity sport shall be ineligible to participate in interscholastic athletics for one (1) calendar year from the date of the transfer.

b) Per KRS 157.350 (4) (c), the provisions of subsection (a) above shall not apply to a nonresident pupil who attends a district in which a parent of the pupil is employed.

(1) The following definitions and guidelines must be met for a student to be counted as a CDE (child of district employee) student and, therefore, exempt from section 1(a) above, however, said students are subject to the provisions of Bylaw 6 (Transfer Rule):

a. The parent must be employed, holding an employment contract with the district at a level that requires that person to receive a W-2 and further requires the employee to participate in one of the state retirement systems (TRS, KRS, CERS), and does not include those who do not work enough hours to qualify for those benefits or if their employment is reported on a 1099-MISC.

b. The "parent" is defined as a person who has a school-age child who lives in the employee's household, and the employee exercises custodial care and control of the child, including a biological or adoptive parent, step-parent, foster parent, or any person to who the courts have award custodial care of the child.

SEC. 2) WAIVER PROVISION

a) Per statute, the Ruling Officer and the Commissioner shall not adopt administrative procedures that allow for the waiver of this rule.

SEC. 3) PENALTY

a) Any violation of this bylaw may have any or all penalties detailed in Bylaw 27 applied as part of the final dispensation of the matter, including required contest forfeiture.

b) By statute, the provisions of this bylaw are not appealable.

Major Changes Once Effective

- Any period of ineligibility for non-resident students below grade nine (9) will be eliminated.
- Any period of ineligibility for a student who enrolled after July 1, 2022, but such student would not be subject to the period of ineligibility under the new provisions would immediately end on June 29, 2023.
 - This includes any student below grade nine or any student in grade nine or above who has not participated in varsity athletics.

Additional Guidance and Examples

- This guidance provides critical updates to support schools and districts as they implement the provisions of HB 563 and follows weeks and months of consultation with KDE, members and staff of the Kentucky General Assembly, and various constituent groups.
- The information contained herein is solely related to the impact of the amendments to KRS156.070, which restrict interscholastic athletic participation in the event of a transfer into a district by a nonresident student.
- This provision is now contained in the statute as referenced and does not contain Due Process or exception options not expressly contained in KRS157.350.

Case BL8-1- What are the key definitions and notes regarding implementing this legislative change?

- *“Transfers enrollment” means enrolling as a nonresident student into a school district after attending a school in the district of residence. Pre-existing nonresident students who continue to be nonresident students in the same school system are not impacted if they do not change schools.*
- *“from a district of residence to a nonresident district” means that these provisions regarding eligibility are of no impact for resident district students, and the standard provisions of KHSAA Bylaw 6 (Transfer Rule) apply to those resident students. Even then, the provisions of Bylaw 6 (Transfer Rule) apply only for those students who have been in grade 9, represented a varsity team, and subsequently transferred.*
- *“interscholastic athletics” means any time a school is playing another school, irrespective of grade level.*
- *“one (1) calendar year from the date of the transfer” means one year from the date of enrollment at the new school as verified by the school and school system.*
- *NOTE: It should be noted that 157.350 (4)(c) creates an exception to the provisions of the period of ineligibility under KRS 156.070(2)(i) due to the new employment of the parent in the district.*
- *NOTE: Any of these interpretations dealing with a student transferring into a school as a nonresident student should presume that school capacity as defined within the bill was not exceeded.*

Case BL8-2- Are there additional regulations, definitions and statutes that KHSAA member schools should ensure are understood by all in the school and district related to this change?

- *With respect solely to this change, it is essential to have clear definitions within district regulations, policies and practices to ensure that enrollment requirements are clearly defined. Such issues, including “when is a student enrolled,” are to be defined within the district and should be consistent through the system office to all schools as those definitions are not contained in the statute. In legal parlance, enrollment is “the act of recording or registering” and enroll is “to register as an official record”.
Therefore, this definition and timing should be established in collaboration and clarity through the superintendent, central office staff, the Board attorney, and the Kentucky Department of Education. It should comply further with any relevant statute, regulation and regulatory guidance. For specific questions about enrollment requirements, districts should consult the KDE.*
- *Additionally, schools and systems should review several resources, including-*
 - *The complete revised text of the law is located at this link.*
 - *The current version of the KDE Pupil Attendance Manual is located at this link.*
 - *The previously distributed explanatory presentation from KDE is located at this link.*

Case BL8-3- What are the enforcement mechanisms for KRS 156.070(2)(i) provisions?

- *For students competing in high school athletics at any level (freshman, JV or varsity), regardless of grade level enrolled, using ineligible players results in contest/event forfeiture and other penalties within Bylaws 1, 17, and 27.*

Case BL8-4- Do students deemed ineligible solely under the provisions of KRS 156.070(2)(i) have appeal rights under the KHSAA Due Process Procedure?

- *No. This statutory provision contains specific application language and no authority to waive its application. As such, the KHSAA is without power or jurisdiction to review the matter or grant relief from this statutory provision set forth by the Kentucky General Assembly.*

Case BL8-5- What is the relationship between participation in interscholastic competition and practice allowances given the provisions of KRS 156.070(2)(i) for a student who is subject to KHSAA Bylaw 6 (Transfer Rule) who then transfers into a school and enrolls as a nonresident student?

Unless the student is declared eligible under Bylaw 6 (Transfer Rule), the KRS 156.070(2)(i) provisions of ineligibility for one year apply and the student may not participate in interscholastic contests (including scrimmages) for one year from the date of enrollment. In the case of a student ineligible to participate in

interscholastic contests, participation in practice sessions solely within the enrolled student body is at the discretion of the member school

Case BL8-6- Do the Bylaw 14 provisions on district-approved non-varsity interscholastic play apply to students who are enrolling as a nonresident student and not ruled eligible per Bylaw 6 (Transfer Rule)?

No. KRS 156.070(2)(i) stipulates no interscholastic competition for those students subject to the provisions of that statute who do not qualify for a waiver of Bylaw 6 (Transfer Rule). There is no option within the law to allow for any play against an outside opponent at any level.

Case BL8-7- Do the provisions of KRS 156.070(2)(i) apply to elementary and other non-KHSAA contests for students not subject to Bylaw 6 (Transfer Rule)?

No.

Case BL8-8- How is the situation resolved when a student's family transfer into a district as a resident student while maintaining their prior residence?

Per KDE, in determining a student's district of residence to determine if they are enrolling as a nonresident student, the first examination would be the residence of the parents or legal guardians. In most situations, that is determinative and the inquiry ends. However, if the student's parents live in multiple districts (i.e. separated parents), or the student is living with someone other than the parents/legal guardian, then KDE would look to see where the student spends most nights to determine his/her district of residence.

As such, if the determination is made that the "most nights" are outside of the district, the student(s) in the household are to be considered a nonresident student(s) and the provisions of athletic ineligibility would apply. Consult KDE if needed for clarification.

Case BL8-9- A student and family live in and are enrolled in their school of residence in Jeffersonville (IND), are subject to the provisions of Bylaw 6 (Transfer Rule) by having been enrolled in grade 9 and subsequently playing varsity athletics, and then enrolls at a JCPS school as a nonresident student. Do the provisions of KRS 156.070(2)(i) apply to this student?

Yes, and if the student is recorded as a nonresident student in JCPS (or another common school), and does not receive a waiver of the one-year period of ineligibility per Bylaw 6 (Transfer Rule), then the KRS 156.070(2)(i) provisions of ineligibility apply, and the student is ineligible for any interscholastic athletics for one year from the first date of enrollment at any level.

Case BL8-10- A student and family live in the Scott County district and attend Bourbon County as a nonresident student, then transfer to Paris Independent, and the parent is NOT employed in the newly enrolled district. Do the provisions of KRS 156.070(2)(i) apply to this student?

No, KRS 156.070(2)(i) provisions on ineligibility would not apply as this student was and remains a nonresident student. The student would, however, be subject to KHSAA Bylaw 6 (Transfer Rule).

Case BL8-11- The student and family live in the Franklin County district. The student has attended Franklin County Schools as a resident student, moved to Woodford County and subsequently enrolled at Paul Laurence Dunbar. The parent is NOT employed in the Fayette County Public Schools and the student is subject to Bylaw 6 (Transfer Rule), Transfer Rule. Do the provisions of KRS 156.070(2)(i) apply to this student?

Yes, and unless receiving a waiver of the provisions of Bylaw 6 (Transfer Rule), Transfer Rule, the KRS 156.070(2)(i) provisions on ineligibility for one year apply. The student is ineligible for interscholastic athletics for one year from the first enrollment date per statute.

Case BL8-12- The student and family live in Franklin County (and attend a Franklin County school or Frankfort Independent), move to Woodford County and subsequently enroll at Paul Laurence Dunbar. The parent IS employed in the Fayette County Public Schools. Do the provisions of KRS 156.070(2)(i) apply to this student?

No, KRS 156.070(2)(i) provisions on ineligibility for one year do NOT apply (due to KRS 157.350 (4)(c)). However, the student is subject to KHSAA Bylaw 6 (Transfer Rule).

Case BL8-13- The student and family live in Fayette County, and the student attends Lafayette as assigned by residence and transfers to Henry Clay (for ROTC). Do the provisions of KRS 156.070(2)(i) apply to this student?

No, KRS 156.070(2)(i) provisions on ineligibility for one year do NOT apply as the district is Fayette County Public Schools, and this would be an out-of-assigned area transfer, not a nonresident student per KRS 157.350. Residence in the specific locally assigned school district boundaries but within the overall school system district boundaries would not categorize the student as a nonresident. However, local district policy on eligibility and KHSAA Bylaw 6 (Transfer Rule) apply in this case. This would apply to any public school district with multiple high schools.

Case BL8-14- The student and family live in Fayette County, enrolled at Lafayette, and transferred enrollment to Lexington Catholic HS. Do the provisions of KRS 156.070(2)(i) apply to this student?

No, KRS 156.070(2)(i) provisions on ineligibility for one year do NOT apply as the student is not a nonresident student at a common school. However, the student is subject to KHSAA Bylaw 6 (Transfer Rule).

Case BL8-15- The student and family live in Jefferson County, enrolled at DeSales, and transferred enrollment to their "resides" Jefferson County public school. Do the provisions of KRS 156.070(2)(i) apply to this student?

No, KRS 156.070(2)(i) provisions on ineligibility for one year do NOT apply as the student is not a transfer from a district or residence since the former school does not have a defined district boundary. However, the student is subject to KHSAA Bylaw 6 (Transfer Rule).

Case BL8-16- The student and family live in Mayfield Independent, and the student has long attended Graves County under a KRS 157.350 written "reciprocal" agreement with the resident district. Do the provisions of KRS 156.070(2)(i) apply to this student?

No, KRS 156.070(2)(i) provisions only impact those that transfer enrollment, so this student is not-impacted by the statutory provisions.

Case BL8-17- The student and family live in Bullitt, Fayette, Hardin, Jefferson or Oldham County (or any school district with multiple schools), and one of the schools closes. Due to the closure, the family wants to attend school in another county as a nonresident student and the student would be subject to the provisions of Bylaw 6 (Transfer Rule), Transfer Rule. Do the provisions of KRS 156.070(2)(i) apply to this student?

Yes, and unless receiving a waiver of the provisions of Bylaw 6 (Transfer Rule), Transfer Rule, the KRS 156.070(2)(i) provisions on ineligibility for one year in interscholastic athletics would apply. Bylaw 6 (Transfer Rule) contains provisions that might address this situation and should be reviewed by school personnel prior to requesting a ruling.

Case BL8-18- The student and family live in Bullitt, Fayette, Hardin, Jefferson or Oldham County (or any school district with multiple schools), and one of the schools closes. Due to the closure, the family wants to attend school in another county as a nonresident student and the student would be subject to the provisions of Bylaw 6 (Transfer Rule), Transfer Rule. Do the provisions of KRS 156.070(2)(i) apply to this student?

Yes, and unless receiving a waiver of the provisions of Bylaw 6 (Transfer Rule), Transfer Rule, the KRS 156.070(2)(i) provisions on ineligibility for one year in interscholastic athletics would apply. Bylaw 6 (Transfer Rule) contains provisions that might address this situation and should be reviewed by school personnel prior to requesting a ruling.

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