

**MINUTES OF THE BOARD MEETING**

**SEPTEMBER 15, 2006**

President Gary Dearborn convened the regular meeting of the Board of Control on Friday, September 15, 2006 at 8:30 a.m. All Board members were present except Chuck Broughton. 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, Ted Martin, was also present.

Lonnie Burgett provided a moment of reflection, followed by the Pledge of Allegiance, led by Julian Tackett.

President Dearborn requested the record show that seventeen out of eighteen Board members were present, and that ten votes were needed to pass any eligibility motions.

Mike Barren made a motion to approve the minutes of the July 11, 2006 Board of Control meeting. The motion was seconded by Bob Schneider, and passed 16-0 with one (Marvin Moore) recusal.

Donna Wear made a motion to approve the minutes of the August 21, 2006 Board of Control meeting. The motion was seconded by Ozz Jackson, and passed 16-0 with one (Marvin Moore) recusal.

Donna Wear made a motion, seconded by Jeff Perkins, to go into Executive Session to discuss pending legal cases with Ted Martin. The motion passed unanimously. L.V. McGinty made a motion, seconded by Jeff Schlosser, to come out of Executive Session. The motion passed unanimously. No action was taken during Executive Session.

Mr. Dearborn asked the record to show that the following guests were present: Principal Sally Stevens, Lexington Catholic High School, Mike Fields, Lexington Herald-Leader reporter, Mr. & Mrs. Duncan, and their son, Caleb.

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	Status
#1055	6	Eligible	Uphold (McGinty)	Schlosser	17-0	Eligible
#1056	6	Eligible	Uphold (Jackson)	Parker	17-0	Eligible
#1057	6	Eligible	Uphold (McGinty)	Schlosser	16-1	Eligible
#1058	6	Eligible	Uphold (Perkins)	Keepers	16-0-1 (Burgett)	Eligible
#1059	6	Eligible	Overturn (Stewart)	Moore	11-4-2 (Keepers & Weedman)	Ineligible-A
#1060	6	Eligible	Uphold (Barren)	Wear	17-0	Eligible
#1062	6	Eligible	Uphold (McGinty)	Schlosser	14-3	Eligible
#1063	6	Eligible	Uphold (Jackson)	McGinty	17-0	Eligible
#1071	4	Eligible	Remand (Schlosser)	Keepers	12-4-1 (Goodin)	Ineligible-B
#1061	6	Ineligible	Uphold (Schlosser)	Schneider	15-1-1 (Burgett)	Ineligible
#1065	6	Ineligible	Motion to Reconsider	N/A	N/A	Ineligible

### A- Findings of Fact-Case #1059

1. The KHSAA Board incorporates by reference the testimony of the parties as reflected in the Hearing Officer's Findings of Fact contained in the Recommended Order. The Board also recognizes that the student participated in varsity wrestling during his 9<sup>th</sup> grade year and not his 10<sup>th</sup> grade year. From these Findings of Fact, the KHSAA Board reaches a different Conclusion of Law than the Hearing Officer with respect to the Due Process discretionary waiver provision.

### 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 the 9<sup>th</sup> grade 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 *both* strict application of the applicable Bylaw is unfair *and* the circumstances creating the ineligibility are clearly beyond the control of all the parties involved. While the evidence provided does lend sympathy to the student's situation because he participated in a limited amount of varsity sports during his 10<sup>th</sup> grade year, Bylaw 6 must be uniformly applied to all students. Bylaw 6 applies to any student who participates in any varsity sport regardless of the number of minutes or plays. As such, strict application of Bylaw 6 is not unfair to the student. Further, the circumstances resulting in his transfer were clearly not beyond the control of all the parties involved. The evidence in the record demonstrates that the student voluntarily chose to transfer to the receiving school for his 11<sup>th</sup> and 12<sup>th</sup> grade years due to academic concerns. Although the student should be commended for pursuing his belief that his academic situation would be better served at the receiving school, his decision to transfer was nonetheless voluntary. Bylaw 6 does not preclude the student from pursuing his education at the receiving school or engaging in academic extracurricular activities. Further, Bylaw 6 specifically provides that "[t]he 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." To the extent a contrary result was reached in the Pickinpaugh case, it is rejected as incorrect and inconsistent with the requirements necessary for a discretionary waiver and, as there is no evidence that the student relied on that decision in transferring, it does not require a waiver in this appeal.
4. Although the student has claimed that Bylaw 6 should not apply to him because the reason for his transfer does not offend the underlying purposes of Bylaw 6 to prevent and deter recruiting and athletically motivated transfers, the 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. 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 his transfer.

### **B - Remand - Case #1071**

Because the record did not permit adequate review of whether Joshua was promoted from the 8<sup>th</sup> grade by Whitley County Middle School at the end of the 2001-2002 school year, the Board requested that the Hearing Officer issue a subpoena to Whitley County Middle School for any and all documents relating to Joshua's promotion from the 8<sup>th</sup> grade during both the 2001-2002 and 2002-2003 school years. If the documents provided in response to the subpoena are insufficient to permit adequate review of this issue, the Board also requested that the Hearing Officer subpoena a representative of Whitley County Middle School to appear at a supplemental hearing to testify about this issue. Joshua remains INELIGIBLE to participate in interscholastic athletics at Whitley County High School until a final determination is made by the Board at the next available meeting.

Jeff Perkins, Chairperson, **Member Schools and Services Committee**, made the following motions:

1. Deny Community Christian Academy's (Paducah) written request to play non-member schools. The motion was seconded by Lonnie Burgett, and passed unanimously.
2. Accept Christian Fellowship School's written letter to not field junior varsity or varsity boys' or girls' basketball teams for the 2006-2007 season. The Board of Control will review their participation status for 2007-08 & 2008-09 at the January, 2007 Board meeting. The motion was seconded by Donna Wear, and passed unanimously.

Mr. Perkins, Chairperson, **Member Schools and Services Committee**, also asked the record to show that:

1. The KHSAA insurance policy benefit period was discussed and a breakout session will be held at the Annual Meeting on school insurance coverage benefits. Following the Annual Meeting, a survey will be sent to all schools, to be returned and information compiled before the November 15-16, 2006 meeting.

Paula Goodin, Chairperson, **Title IX Committee**, noted that administrators would prefer to have workshops held in their area before April 15<sup>th</sup> Title IX reports are due. Mr. Boucher reviewed the status report and 2006-2007 visit list. He also mentioned that this was our cleanest report submitted to the KBE. No action was taken.

Following an appearance by Peter Lafavre, Casey Fisk (Scott HS) and Tom Spritzky (Dixie Heights), Bob Schneider, Chairperson, **Football Committee**, asked the Board to approve the following motions:

1. Leave Class 5A, District 5 as is, with a review in two years. The motion was seconded by L.V. McGinty, and passed 16-0 with one recusal (Jeff Schlosser).
2. Move the 2007 and 2008 state football finals one week later in December. The motion passed 15-2. The dates for 2007 are: Week #1-August 24 (NFHS Week #8); State finals December 6-8 (NFHS Week #23). The Dates for 2008 are: Week #1-August 22 (NFHS Week #8); State Finals December 11-13 (NFHS Week #23).
3. Accept the rotation of playoff pairings for 2007 and 2008. The motion was seconded by L.V. McGinty, and passed unanimously.

Mr. Schneider, **Chairperson, Football Committee**, also asked the record to show that:

1. Ken Trivette, Kentucky Association of Basketball Coaches, presented his concerns on behalf of basketball coaches regarding the change in the football final date to one week later in December.

L.V. McGinty, Chairperson, **Officials Policy Committee**, asked the Board to approve the following motions:

1. Increase the regular season Baseball officiating fee from a minimum of \$42.50 to \$46, without any offsetting cuts in mileage by local and regional policy boards, effective with the 2007-08 season. Increase the regular season Fast Pitch Softball officiating fee from a minimum of \$37.50 to \$41.00 without any off-setting cuts in mileage by local and regional policy boards, effective with the 2007-2008 season. The motion was seconded by Lonnie Burgett, and passed 15-2.
2. Larry Boucher was asked to have a draft ready for review at the November BOC meeting which deals with the relationship between KHSAA Assigning Secretaries and the KHSAA relative to job functions and responsibilities. The motion was seconded by Marvin Moore, and passed 14-2. (Jeff Perkins was not in the room at the time of the vote).

Donna Wear, Chairperson, **Constitution and Bylaws Committee**, asked the Board to approve the following motions:

1. Approve second reading of Bylaw 17 - Reports and Obligations. The motion was seconded by Paula Goodin, and passed 16-0. (Jeff Perkins was not in the room at the time of the vote)
2. Approve second reading of Bylaw 27 – Hiring of Coaches. The motion was seconded by Lonnie Burgett, and passed 16-0. (Jeff Perkins was not in the room at the time of the vote)
3. Clarify the existing proposal to count baseball games at a flat 36, effective with the 2008-2009 season. The motion was seconded by Paula Goodin, and passed 16-0. (Jeff Perkins was not in the room at the time of the vote)
4. Clarify the existing proposal to count fast pitch softball games as a flat 36, effective with the 2008-2009 season. The motion was seconded by Ozz Jackson, and passed unanimously.

Ms. Wear, Chairperson, **Constitution and Bylaws Committee**, also asked the record to show that:

1. Annual Meeting procedures were reviewed.
2. Richard Hamlin discussed KHSAA Bylaw interpretations, along with Superintendent Lu Young, Jessamine County Schools.
3. Staff was asked to have a cost analysis of the impact of passing Proposal 2 – Feeder Patterns; and Proposal 21 – Increase the size of the Board of Control, ready before the Annual Meeting.

President Dearborn, **Executive Committee** Chairperson, then asked the Board to approve the following motions:

1. Donna Wear made a motion, seconded by Steve Parker, to approve the Association bills for June 24, 2006 through August 31, 2006. The motion passed unanimously.
2. Gary Dearborn made a motion, seconded by Ozz Jackson. To accept the FY06 & FY07 budget report. The motion passed unanimously.
3. Gary Dearborn made a motion, seconded by Lonnie Burgett, to accept the Internal Corporate Report as presented. The motion passed unanimously.
4. Gary Dearborn made a motion, seconded by Steve Parker, to accept the External Corporate Report as presented. The motion passed unanimously.
5. Gary Dearborn made a motion, seconded by Jerry Keepers, to accept the financial aid survey as presented, and send it to all schools. The motion passed unanimously.

President Dearborn, **Executive Committee** Chairperson, then asked the record to show that:

1. Policy Manual sections will be distributed for review at the October meeting, with approval in November.
2. Commissioner DeVries and Assistant Commissioner Larry Boucher will establish a basketball advisory committee.

3. The Board accepted the retirement of Assistant Commissioner Roland Williams, effective January 1, 2007.

President Dearborn then called the Board's attention to miscellaneous items listed for their information only. 1) Review date for the Special Board Meeting on October 20, 2006 to consider August and September appeals; 2) Review dates for the next regular Board of Control Meeting, November 15-16, 2006 in Lexington; 3) Miscellaneous Board and staff items.

There being no further business to come before the Board, Steve Parker made a motion to adjourn. The motion was seconded by Jeff Schlosser, and passed unanimously. The meeting adjourned at 11:10 a.m., September 15, 2006.

President Gary Dearborn *Gary Dearborn* Date *Jan. 10, 2007*

Commissioner Brigid L. DeVries *Brigid L. DeVries* Date *Jan. 10, 2007*