

Julian Tackett
Commissioner
Kentucky High School Athletic Association
2280 Executive Drive
Lexington, KY 40505

APR 25 2014

RE: Request for exemption from Bylaw 11 for St. Francis School

Dear Commissioner Tackett:

I am writing to formally submit a petition to the KHSAA Board of Control to approve the St. Francis School Scholarship Competition ("Scholarship Competition") pursuant to KHSAA Bylaw 11 Section 4. That Section reads as follows:

A member school may petition the Board of Control for approval of a specific program existing prior to the adoption of this rule or a program that can be documented to be unrelated to athletics that does not create an advantage to the school and provided that program is available to all students within the school based on objective criteria.

St. Francis School, Kentucky's only Preschool-12 Progressive School, has hosted a merit scholarship competition for incoming high school freshmen since 1990 as a means to attract and enroll academically talented students. There are a couple other schools that now offer Scholarship Competitions, but all of these were created in the 2000's and do not offer a 50% scholarship for the winner, making St. Francis the only school in the state affected by this bylaw. The St. Francis competition is open to any and all applicants to St. Francis from any middle school in any state. The school has consistently used the same standardized test as part of the criteria to determine each year's winners. The Scholarship Competition is based on objective criteria, and a committee considers contestants **anonymously**. The Scholarship Competition is designed to attract and award scholarship tuition assistance to students who demonstrate a history of excellent academic performance and perform well on the competition's standardized test, writing, and science components.¹ The Scholarship Competition is completely unrelated to athletics and in no way provides a benefit to St. Francis athletic teams.² Scholarship Competition winners are

¹ The Scholarship Competition includes a 50% tuition reduction to the overall winner. Runners-Up and Honorable Mentions also receive tuition reductions, but those are all below the 25% threshold of KHSAA Bylaw 11 Section 2(d). Tuition at St. Francis at the high school level is just over \$20,000 for 2014-15.

² Although athletics are considered important to the development of students and they are encouraged to play a sport at some point in their high school career, St. Francis is competitive in very few sports due primarily to its very small size. Enrollment is approximately 150 students on the high school campus. Very few sports are offered. All teams have a "no cut" policy and many players have never played the sport. Only a few sports have sufficient numbers of students participate to have a JV team. There are no Freshman teams.

selected who have demonstrated the ability to excel in St. Francis's rigorous educational environment, and will contribute positively to the school community.

As you may recall, because the Scholarship Competition includes an award of 50% tuition assistance to the winner, it is in conflict with Bylaw 11 Section 2(d). Often, this has not been an issue because many past winners have either not been athletes or have played sports not sanctioned by the KHSAA. However, on occasion winners of the merit scholarship do wish to participate in one or more sanctioned sports at St. Francis.³ The school believes that athletic activity and sports are in many instances a critical tool in the development of young adults. For many students, participation in sports is an essential developmental component to ensure that they are well-rounded, happy, and healthy. Scholarship Competition winners should not be denied this opportunity. St. Francis, therefore, makes this request for its Scholarship Competition to be exempted from Bylaw 11 Section 2(d) pursuant to Bylaw 11 Section 4.

In the past, St. Francis' Scholarship Competition and Bylaw 11 Section 2(d) have come in conflict twice. Last year's Merit Program winner, Matthew Siciliano, wished to play sports at St. Francis. An individual petition for relief from this Bylaw was successfully advanced. Following a hearing, Judge Pete Karem recommended student Siciliano be allowed to receive the full benefit of his scholarship and play sports. Commissioner Tackett accepted that recommendation. Judge Karem expressly found that "[t]he Merit Scholarship Program of St. Francis is not related to athletics and provides no athletic advantage to the school."⁴ Prior to that, two scholarship winners had been on the St. Francis bowling team at the time the KHSAA adopted bowling as a sanctioned sport. Those bowlers were granted an exemption that grandfathered their participation in bowling and allowed them to continue receiving the full benefit of their scholarships.⁵

At present, a winner of the Scholarship Competition, who will be a senior in the 2014-15 school year, desires to play women's golf in her senior year. We added a boys' golf team in 2013-14 and she would like to be the inaugural member of the St. Francis women's golf team, allowing the school to add an additional sport for women in 2014-15; she has no real experience in golf, but would like to learn it. St. Francis is therefore seeking a programmatic exemption for this student and all future Scholarship Competition winners who desire to play KHSAA-sanctioned sports.

There can be no question that the Scholarship Competition fits squarely within Bylaw 11 Section 4. In fact, it is St. Francis's belief that Section 4 was originally drafted expressly with the St. Francis Scholarship Competition in mind. Bylaw 11 is only a few years old. The Merit Program at St. Francis has existed since the 1990s. It therefore is "a

³ Since the inception of the Merit Program, approximately 50% of the Merit Program winners have played a KHSAA-sanctioned sport.

⁴ Copies of Judge Karem's decision and Commissioner Tackett's letter adopting that decision are attached as Exhibits A and B respectively.

⁵ See letter attached hereto as Exhibit C.


specific program existing prior to the adoption of this rule.” Moreover, the Scholarship Competition is completely “unrelated to athletics,” “does not create an advantage to the school,” (facts Judge Karem confirmed in his ruling last summer) and “is available to all students within the school based on objective criteria.” This petition should be granted under the plain language of Section 4 of Bylaw 11.

Finally, it should be noted that St. Francis is one of the most expensive schools in the state, and even a 50% tuition scholarship makes St. Francis tuition \$10,150, which is more expensive than all other private schools except our peer Independent Schools (Sayre, KCD, and Louisville Collegiate) and very close to the full tuition cost at a few private schools, including Presentation (\$16,425), St. X. (\$12,225), Trinity (\$11,775), Sacred Heart (\$11,550), and Mercy (\$10,450). Therefore, even winning the St. Francis Merit Scholarship still requires a family to make one of the most significant financial commitments of any school in the state.

St. Francis requests the opportunity to present this petition in person at the Board of Control’s next meeting, which we understand is May 12. We would like to make a brief oral presentation in support of the petition and also present additional documentation explaining the program, its importance to St. Francis, and the proper application of Section 4 in this instance. At your earliest convenience, please confirm that we may present at the upcoming meeting and provide us details about when and where we should appear to formally present our petition to the Board of Control.

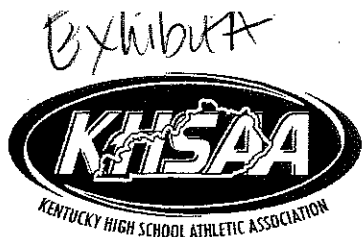
We thank you for your consideration of this request and look forward to your response. Please advise if you have any questions or concerns.

Sincerely,



Alexandra S. Thurstone '84
Head of School

61156543.1



Kentucky High School Athletic Association
2280 Executive Drive ° Lexington, KY 40505 www.khsaa.org ° (859)299-5472 (859)293-5999 (fax)

IN THE MATTER OF

**FINANCIAL AID
BYLAW 13**

APR 25 2014

MATTHEW SICILIANO, ST. FRANCIS HIGH SCHOOL

CASE #1557

This matter came on to be heard at 10:00 a.m., Wednesday, August 21, 2013, at the KHSAA office, 2280 Executive Drive, Lexington, Kentucky. Present were Chris Gorman, Attorney, St. Francis High School; Diane Siciliano, mother; Alexandra Thurstone, Head of School, St. Francis; Tyson Gorman, Attorney for St. Francis High School; Lisa Fleming, General Counsel for St. Francis High School and Chad Collins, Attorney for the KHSAA.

Having heard the testimony and having considered the entire record, which is incorporated herewith by reference into this recommendation, the Hearing Officer makes the following Findings of Fact and Conclusions of Law and tenders a Recommended Order.

FINDINGS OF FACT

Matthew Siciliano is an exceptional student. He tested 99.9 percent on standard testing. Matthew has received a Merit Scholarship to St. Francis High School which provides 50 percent of his annual tuition. Tuition at St. Francis is \$19,995.00 per year and it is the intention of Matthew's parents to utilize the savings resulting from the Merit Scholarship for a college fund.

St. Francis High School is an unusual school in that it is the only progressive school in Kentucky. It has a small enrollment, stresses improvement of the individual and academics. One hundred percent of its graduates attend college. There are a total of 140 students in the school giving the Head of School the ability to know all of the students. The class size is 11 students and all of the teachers have Masters Degrees, some of them having obtained a Ph.D. It is the highest rated academic school in the State pursuant to the testimony of Alexandra Thurstone, Head of School.

Due to the size of the student body, St. Francis is not seriously competitive; however, it adheres to the principle that athletics are important for a well rounded student. They are, the testimony suggests, particularly important for a student such as Matthew who is, because of his exceptional academic ability, finding it somewhat difficult to relate to his peers. Athletics provides him a mechanism for relating to his fellow students.

The process for obtaining the Merit Scholarship, which Matthew has, is operated in the following manner. Letters are mailed to 1,400 students in the Louisville area who are in the eighth grade advising them of the scholarship program and the date of a standard test which is the initial requirement. In addition to a standardized test, the students are given a creative writing test and a science project. This process narrows down the number of students that might receive the scholarship. After that process has been completed, a committee consisting of the Head of School, the senior Merit Scholarship student, a history teacher, and an Admissions Director meet to discuss the applicants. The committee does not know the school that the

She further testified the Presentation case was still in litigation. The case was still pending when the Board of Control's ruling was made in 2013 and is still pending at the present time. To her knowledge, there are very few Bylaw 13 requests for a waiver.

Alexandra Thurstone was recalled as a witness and testified that she had talked to Commissioner Tackett extensively about the program and she was of the understanding that there would be no problem with a waiver. She further testified that the reason given for that was that the Presentation case was not a related issue. She reiterated that St. Francis had no knowledge of the denial of the 2012 request for a waiver addressed to the Board of Control.

CONCLUSIONS OF LAW

KHSAA's closing argument framed the issue as whether or not Bylaw 13 Section 2(d) applied as that was the finding of Ruling Officer Passafiume. The KHSAA attorney further argued that all discussion of the program exemption request is background. The merit aid was more than 25 percent, which was what was found by Assistant Commissioner Passafiume.

The argument of counsel for St. Francis was that strict application of Bylaw 13 with regard to Matthew Siciliano would be unfair because the circumstances creating ineligibility were beyond the control of the parties. It was argued that Matthew is a unique student that needs the socialization of sports. It was also argued that the school thought the exemption in Bylaw 13 Section 4 was adopted for them (St. Francis) or similar schools. St. Francis was never advised of the denial of the request for waiver in 2012 which was something beyond their control. Further, it was argued that the Board of Control looked at the lawsuit related to Bylaw 13 and did not want to decide the waiver issue while a Bylaw 13 case was pending in another matter. It was the additional argument on behalf of Matthew that the 2013 request should not have been impacted by some other lawsuit and its application to Matthew was unfair.

This is a question of first impression for the Hearing Officer and the Hearing Officer believes it is a question of first impression for the KHSAA. That means that this specific issue has not come before the KHSAA through the hearing process.

The statement of law that the Hearing Officer is required to consider first and foremost are the bylaws of the KHSAA. Bylaw 13 Section 2 clearly states that students shall be ineligible to participate in interscholastic athletics if the student, "receives merit aid greater than 25 percent of the tuition of the member school." That provision of Section 2(a-d) is one of 11 specific exemptions from the mandate of Section 2(a). Section 4, a different section entirely from Section 2 states:

"A member school may petition the Board of Control for approval of a specific program existing prior to the adoption of this rule or a program that can be documented to be unrelated to athletics that does not create an advantage to the school."

There was no evidence that this program existed prior to the adoption of Rule 13. Therefore, no waiver could be given based upon that portion of Section 4; however, Section 4 goes on to say:

"or a program that can be documented to be unrelated to athletics that does not create an advantage to the school."

The use of the word "or" means that if either portion of Section 4 has been met, it may be the basis for a waiver. The St. Francis Merit Scholarship Program has been documented by the evidence of record in this matter to be unrelated to athletics and further has been shown, by the evidence at the hearing, that it does not create an advantage to the school.

On that basis, the Hearing Officer would recommend eligibility if the Board of Control had not twice rejected a waiver. The Hearing Officer has no authority to overturn the Board.

The Hearing Officer does recommend eligibility based on the Due Process Procedure of the Kentucky High School Athletic Association. That procedure provides that the Hearing Officer may recommend a waiver of the rule if strict application of the rule is unfair to the student athlete and the circumstances creating the ineligibility are clearly beyond the control of the parties involved. The evidence in this case leads the Hearing Officer to the conclusion that to deny Matthew Siciliano the opportunity to engage in athletics at St. Francis High School would be unfair to him due to circumstances beyond the control of he and of St. Francis.

For these reasons, the Hearing Officer will recommend eligibility for Matthew Siciliano and recommends that the Commissioner enter the following Recommended Order:

RECOMMENDED ORDER

It is recommended that the Commissioner consider granting the appeal; that the decision of the Ruling Officer be overturned; and that Matthew Siciliano be eligible to participate in interscholastic athletics with respect to the issues of the Bylaw under consideration.

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Kentucky High School Athletic Association.

You are reminded that there is no change in the eligibility status of the student until the Commissioner issues the Final Order after the period of time for exceptions to be filed has lapsed. The Final Order of the Commissioner of the Kentucky High School Athletic Association may be appealed pursuant to KRS 13B.140(1), which states:

All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the

grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

Pursuant to KRS 23A.010(4), "Such review [by the Circuit Court] shall not constitute an appeal but an original action." Some courts have interpreted this language to mean that a summons must be served upon filing an appeal in Circuit Court.

SO RECOMMENDED this 28th day of August, 2013.

A handwritten signature in cursive script, reading "Edmund P. Karem". The signature is written in dark ink and is positioned above a horizontal line.

EDMUND P. KAREM, HEARING OFFICER

In the matter of Matthew Siciliano, St. Francis High School -- Case #1557

NOTICE

A copy of the Hearing Officer's Recommended Order shall be sent to each party in the hearing and each party shall have fifteen (15) days from the date the Recommended Order is mailed within which to file exceptions with the Commissioner.

You will be notified in writing of the Commissioner's final action following the conclusion of the period to file exceptions.

CERTIFICATE OF SERVICE

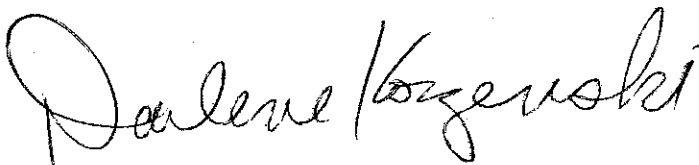
I hereby certify that a copy of this original ORDER was mailed this 28th day of August, 2013, by certified mail to:

Head of School Alexandra Thurstone
St. Francis School
233 West Broadway
Louisville, KY 40202

Dr. Gerard & Mrs. Diane Siciliano
12010 Charlock Court
Prospect, KY 40059

Mr. Chad Collins
KHSAA General Counsel
2280 Executive Drive
Lexington, KY 40505

Mr. Kevin Brown
KY Department of Education
Capital Plaza Tower, 500 Mero
Frankfort, KY 40601



Darlene Koszenski, Records Custodian

Exhibit B



Kentucky High School Athletic Association

2280 Executive Drive ° Lexington, KY 40505 ° www.khsaa.org ° (859)299-5472 (859)293-5999 (fax)

September 18, 2013

Head of School Alexandra Thurstone
Ft. Francis School
233 West Broadway
Louisville, KY 40202

Dear Ms. Thurstone:

In accordance with KRS Chapter 13B, the Hearing Officer's Recommended Order for Matthew Siciliano - Case #1557 has been considered by the Commissioner.

After considering the written record, I hereby UPHOLD the Hearing Officer's Recommended Order. Therefore, Matthew is ELIGIBLE to participate in interscholastic athletics at St. Francis High School – as it relates to Bylaw 13.

This Order does not address any other eligibility requirements of the Association that have not been the subject of this appeal. The student is expected to meet these requirements. This Order also does not address any local or school eligibility requirements that he or she may be subject to.

Notice

This is a final order, effective immediately, and may be appealed to the appropriate circuit court pursuant to KRS 13b.140(1) within thirty (30) days after this final order is mailed or delivered by personal service.

Sincerely,

A handwritten signature in black ink, appearing to read "Julian Tackett", written over a horizontal line.

Julian Tackett
Commissioner

xc:

Dr. Gerard & Mrs. Diane Siciliano, Parents
Mr. Kevin Brown, Kentucky Department of Education
Mr. Chad Collins, KHSAA General Counsel

Exhibit C



Kentucky High School Athletic Association

2280 Executive Drive • Lexington, KY 40505 • www.khsaa.org • (859)299-5472 (859)293-5999 (fax)

October 20, 2011

Superintendent Alexandra Thurstone
St. Francis High School
233 W. Broadway St.
Louisville, KY 40202

Dear Mr. Thurstone:

Per the direction of the Board of Control and Commissioner Julian Tackett the student at St. Francis high school who previously competed in bowling is eligible due to the students participation having predated the sanctioning of the sport activity of bowling.

If you have any further questions, please feel free to contact us at the KHSAA offices.

Sincerely,

A handwritten signature in cursive script, reading "Angela Passafiume".

Angela Passafiume
Assistant Commissioner, Ruling Officer Bylaw 13

xc: KHSAA Executive Staff