

Summary

The Kentucky High School Athletic Association (KHSAA) is a private, nonprofit organization designated by the Kentucky Board of Education to manage interscholastic high school sports in the state. In almost all states, an organization that is not formally part of state government manages high school athletics. State practices vary as to whether the organization manages activities other than sports and whether middle schools are covered.

KHSAA's responsibilities include determining the eligibility of student athletes, licensing and training sports officials, enforcing regulations, and organizing state sports championships. The sports sanctioned by the association are basketball, cross country, golf, soccer, swimming, tennis, and track for both boys and girls; fast pitch softball and volleyball for girls; and baseball, football, and wrestling for boys.

KHSAA Has Responded to Some Concerns That Led to This Study

One eligibility-related concern was the situation that could arise when KHSAA ruled that a student was ineligible to play sports, but a court later ruled that the student could play immediately. KHSAA's policy was that it could penalize schools for allowing such students to play, despite the court order. At the urging of the Legislative Research Commission's Administrative Regulation Review Subcommittee, KHSAA and the Kentucky Board of Education changed this policy in May 2009. The revised state regulation governing KHSAA prohibits the association from punishing or sanctioning a school, student, coach, or administrator for allowing a student to play or practice under a court injunction.

A second eligibility-related concern was the length of time taken to determine the eligibility of student athletes. At the time this study was initiated, KHSAA's eligibility process began with a ruling by the commissioner, whose decision could be appealed to a hearing officer, who made a recommendation to the association's Board of Control, which made the final decision. Because the Board of Control meets monthly or every other month, an eligibility appeal that went through all the steps could easily take several weeks. Beginning in July 2009, KHSAA's eligibility process begins with a decision by a ruling officer of the association. Appealed cases go to a hearing officer for a recommendation, and the KHSAA commissioner makes the final decision. The Board of Control no longer has a formal role in making eligibility decisions.

Another concern was whether KHSAA's expenses for contracted legal services were appropriate. KHSAA hired an in-house counsel in 2009. In theory, this should reduce the association's legal expenses. However, it is unknown how the regulatory change that prohibits KHSAA from penalizing schools that appeal eligibility decisions to the court system will affect the number of appeals.

Membership and Governance

Any Kentucky high school accredited by the Kentucky Department of Education is eligible to join KHSAA. The association's 279 member schools consist of 232 public, 45 nonpublic, and two federally managed schools. Annual membership dues range from \$800 to \$1,400 depending on the size of the school.

Among other subjects, provisions in the association's constitution cover composition and governance of the association, including duties of the Board of Control and officers of the association; requirements for membership in the association; management of dues and revenues; and procedures for amending bylaws.

Thirty-three bylaws govern contests between teams representing member schools. Topics covered by the bylaws include eligibility; duties of school officials; rules and regulations governing contests; requirements and regulations for coaches, schools, and officials; and imposition of penalties. The requirements of some bylaws may be waived under some circumstances.

Each school may designate a voting delegate at the annual meeting of the delegate assembly, which must approve any proposed changes to the KHSAA constitution or bylaws.

The Board of Control is the governing body of KHSAA. The board has 18 members, called directors, who serve 4-year terms. Member schools elect 14 of the directors. Eight of the 14 are elected by member schools from the 16 basketball regions of the state, with each director representing two regions. The remaining six elected directors are specific designations required by federal decree: two African Americans, two females, and two nonpublic school representatives. The Kentucky Board of Education appoints four at-large members. The board elects a president and vice-president.

The association has 15 staff, including a commissioner and four assistant commissioners.

The size of the board and method of selection of board members are consistent with practices in other states. The size of KHSAA's staff is also typical of other states' activity associations.

The Kentucky Board of Education monitors KHSAA. The association's designation as the interscholastic sports agency is subject to renewal annually by the board.

Revenue and Expenses

Total annual revenue for KHSAA in fiscal year 2009 was just over \$4 million, a 20 percent increase since FY 2004. More than 70 percent of KHSAA's revenue in FY 2009 came from sports playoff ticket receipts, primarily from the boys basketball tournament. Other revenue sources included school dues (7.6 percent of revenue), officials fees (5 percent), and corporate partners (13.1 percent).

KHSAA's total expenses in FY 2009 were \$3.86 million, of which 31 percent was related to provision of sports playoffs. Other expenses included personnel (24.2 percent of expenses); other administration (25.6 percent); insurance, which includes the cost of catastrophic insurance for student athletes (6.6 percent); and expenses related to corporate partners (4.9 percent).

Among the "other administration" expenses is payment for contracted legal representation. From FY 2002 to FY 2009, KHSAA paid just over \$2 million for legal representation, which was 7.3 percent of total expenses over this period. KHSAA hired its own legal counsel in 2009. It is unknown how this will affect expenses for legal services. In FY 2009, \$210,000 was budgeted for contracted legal representation; the amount in the draft budget for FY 2010 is \$70,000.

Eligibility Bylaws

KHSAA has 13 bylaws governing athletic eligibility. Bylaw 1 makes the principal responsible for the conduct of each school's athletic program. Bylaw 2 requires student athletes to have on file a physician's certificate, parental consent form, and proof of adequate insurance. According to Bylaw 3, students who turn 19 prior to August 1 are ineligible for high school athletics. Bylaws 4 and 5 establish enrollment and academic requirements for students. Bylaws 6 and 7 are discussed below. Bylaw 8 defines the circumstances under which football and basketball players may participate in those sports on teams not sponsored by KHSAA member schools. Bylaw 9 prohibits students who have graduated from high school or played for a college team from playing at the secondary school level; prohibits players who have been declared ineligible from practicing with the team; and makes ineligible any student, school official, or contest official who is under penalty or discipline or whose conduct is unbecoming to KHSAA. Bylaw 10 prohibits recruitment of any student to a KHSAA member school for athletic purposes. Bylaw 11 covers the authority of KHSAA officers regarding sportsmanship. Bylaw 12 requires that students participating in sports at KHSAA member schools be amateurs. Bylaw 13 covers permissible financial aid for student athletes, which cannot be related to athletic achievement. Merit-based financial aid cannot exceed 25 percent of the cost of tuition.

KHSAA's bylaws governing eligibility are generally consistent with such bylaws of the activity associations in other states.

The vast majority of decisions regarding student eligibility made by KHSAA involve Bylaws 6 and 7. Any student who transfers to a KHSAA member school after being enrolled elsewhere in grade 9 or higher is subject to the provisions of either Bylaw 6 (domestic students) or Bylaw 7 (foreign students). Both bylaws state that transfer students are ineligible for athletic competition at any level and in any sport for one calendar year from the date they enroll at the new school.

Most state associations, including KHSAA, grant waivers to transfer rules under specific circumstances. For example, Kentucky and 25 other states allow an exception for students who are reassigned to a new school by the state's education department. There are at least 12 exceptions included in other states' bylaws that KHSAA does not specifically list in its bylaws.

Recommendation 2.1

The Kentucky High School Athletic Association should consider expanding the exceptions to Bylaw 6 based on a review of specific exceptions allowed by other states.

The formal process for determining the eligibility of domestic transfer students under Bylaw 6 begins with administrative staff at the student's new school, called the receiving school, completing part of the KHSAA transfer form. The form is mailed to the student's previous school, the sending school, which has 7 days to verify whether the student participated in varsity high school sports prior to enrollment at the receiving school. The form is mailed back to the receiving school. If the sending school had verified that the student has not previously participated in varsity high school sports and there are no other eligibility issues, the student is immediately eligible to participate at the receiving school.

If the sending school verifies that the student previously participated in varsity sports, the receiving school must complete more sections of the transfer form, which includes information relevant to the decision as to whether the student qualifies for a waiver of the transfer rule. The form is returned to the sending school, which completes sections of the form dealing with enrollment and participation at the sending school. The form is returned to the receiving school, which submits the form and additional documentation relevant to KHSAA's eligibility decision to the association.

In practice, the receiving school's athletic director usually knows whether the new student previously participated in varsity sports, so staff at the receiving school complete all its sections of the form before mailing it to the sending school. Staff at the sending school completes all its sections of the form and returns it to the receiving school.

Once KHSAA receives the form and any related documents, the association has up to 30 days to rule on the student's eligibility. Until a ruling is made, the student may not practice, scrimmage or play in contests. Whether the year-long ineligibility period is waived depends primarily on whether the student's circumstances at the time of enrollment in the new school meet any of the nine exceptions contained in Bylaw 6. These include a bona fide change in residence by the parents, a change in custody by court decree, and the student's not having participated in varsity athletic contests for the entire school year prior to the transfer.

Other factors that are considered include whether the transfer was made primarily to circumvent rules, penalties, or ineligibility at the previous school; whether the circumstances of the waiver exception occurred after enrollment at the new school or were manipulated for the purpose of gaining eligibility; or whether the transfer was motivated by a wish to play at the new school.

Appeal Process for Bylaw 6 and Bylaw 7

As of July 13, 2009, assistant commissioners, called ruling officers in the eligibility process, make the initial ruling on eligibility cases. Parties wishing to appeal the ruling officer's initial decision still file a written request with the Commissioner's Office. KHSAA staff process the appeal by scheduling an administrative hearing with one of KHSAA's two hearing officers. Notice is given in writing to all parties no less than 20 days in advance of the date set for the

hearing. After taking the aggrieved party's testimony, the hearing officer has 30 calendar days in which to present the commissioner with findings of fact and a recommendation. Each party then has 15 days to file exceptions, which include updated or new information or disagreements with the findings of fact. The parties may sign a waiver if they have no exceptions. The commissioner's ruling is the final ruling of the association, but cases may be appealed to the courts.

Because the current process was initiated so recently, Program Review staff's analysis of eligibility cases primarily covers decisions made under the previous process.

Analysis of the Eligibility Decision Process for Domestic Transfer Students (Bylaw 6)

During each of the past 3 school years, KHSAA received more than 550 requests for eligibility rulings for domestic students and approximately 200 requests for foreign students. Typically, nearly half of all requests for the year were received in July and August.

Program Review staff analyzed the 1,607 domestic student transfer cases over the past 3 years for which there was sufficient information in the case files to determine the time between all stages in the process.

The first stage of the eligibility process is the time between when officials at the receiving and sending schools sign the transfer form. In 66 percent of cases, this took 1 week or less, with 39 percent taking no more than 2 business days. The second stage represents the period between the date of the sending school's signature and when KHSAA receives the transfer form. Forty-eight percent of cases made it from the sending school to KHSAA in less than 1 week. The association received just over one-half of the forms within 2 weeks, 70 percent within 3 weeks, and 80 percent by the end of 4 weeks.

Over the past 3 years, nearly 50 percent of all transfer cases represented either foreign exchange students being placed in a Kentucky school (28 percent) or students moving to Kentucky from out of state (20 percent). More than 90 percent of transfer students who sought eligibility rulings to attend a Kentucky school transferred to public high schools.

It is possible that the length of time before KHSAA receives the request for an eligibility ruling could be shortened if parents were informed earlier in the process about KHSAA's transfer rule, the circumstances under which the rule can be waived, and what documents the association needs to help justify waiving the transfer rule under each circumstance.

Recommendation 2.2

The Kentucky High School Athletic Association should consider creating a document that provides a concise explanation of the association's transfer rule that details the various circumstances under which the transfer rule can be waived, and that describes the supporting documentation that KHSAA needs to justify waiving the rule under each circumstance. The document should encourage any student wishing to participate in sports to contact the athletic director at the student's new school immediately. This document should be made available by the school to the student's parents at the time the student is enrolled in the new school.

The third stage represents the period between the transfer form arriving at KHSAA and the issuance of an initial ruling on eligibility to play. The Commissioner's Office took less than a 1 week to issue a ruling in 73 percent of the cases, with nearly 55 percent being ruled on within 2 business days.

Once the Commissioner's Office issues the initial ruling, parties involved in the case have 30 days to appeal the decision. For the cases analyzed, 42 percent of students ruled ineligible by the Commissioner's Office under Bylaw 6 appealed the decision to the Board of Control. On average, appealed cases took 33 days to have a final ruling made by the Board of Control.

Analysis of Eligibility Rulings for Domestic Transfer Students (Bylaw 6)

Over the past 3 years, there were 1,798 domestic transfer cases under Bylaw 6 for which an eligibility decision was made. The Commissioner's Office ruled 1,185 students eligible (66 percent) and 613 ineligible (34 percent). Of those initially deemed ineligible, 250 appealed to the Board of Control. The hearing officers recommended that 118 (47 percent) of the students who appealed should be considered eligible. The Board of Control ruled that 99 (40 percent) were eligible. Overall, 71 percent of domestic transfer students who requested eligibility under Bylaw 6 were ruled eligible by KHSAA.

Program Review staff analyzed the 1,798 domestic transfer cases to determine if there were patterns to the decisions based on the time period the decision was made, the sports students played, and the type and region of schools. The percentage of students initially ruled eligible by the Commissioner's Office increased over the past 3 years. The Commissioner's Office ruled 57 percent of cases eligible during the 2006-2007 school year, which increased to 73 percent eligible in 2008-2009. The trend was opposite for the hearing officers and the Board of Control, possibly because some of the students they would have made eligible had already been ruled eligible by the Commissioner's Office. During the 2006-2007 school year, hearing officers recommended that 53 percent of appealed cases should be considered eligible; this decreased to 40 percent in 2008-2009. The Board of Control, which ruled 46 percent of students who appealed eligible in 2006-2007, ruled that 31 percent were eligible in 2008-2009.

Over the 3-year period, the Commissioner's Office ruled that 60 percent of students seeking waivers to play at a private school and 65 percent of students transferring to a public school were eligible. Of the 250 students who appealed the initial decision, the hearing officer recommended that 33 percent of students transferring to a private school should be considered eligible and that 48 percent of those transferring to a public school should be eligible. The Board of Control ruled that 19 percent of students seeking a waiver to play at a private school were eligible and that 42 percent of those transferring to a public school were eligible to play.

Eligibility cases were analyzed based on the location of the school to which the student was transferring within each of the 16 basketball regions of the state. In four regions, more than 80 percent of transferring students were eligible. In two regions, both of which included schools in Jefferson County, fewer than 60 percent of students were ruled eligible.

The Board of Control's oversight role includes reviewing any patterns among eligibility decisions. To do this, however, timely and specific information is required regarding students who are the subject of eligibility rulings. For the groupings analyzed in this report, Program Review staff coded each eligibility case, usually based on information gathered from paper files. This takes too much time to be feasible for the board or for existing KHSAA staff to undertake.

A potential solution is to move as quickly as is feasible toward an eligibility process in which member schools submit needed information electronically rather than by paper forms as in the current system. This could allow eligibility cases to be automatically coded by the criteria selected by the Board of Control and KHSAA staff so that information relevant to oversight of eligibility cases could be comprehensive and timely.

Recommendation 2.3

The Kentucky High School Athletic Association should consider creating an electronic system for processing the forms and other information required to determine the eligibility of student athletes.

