

**BYLAW 17. SUPPLYING INFORMATION**

A superintendent, principal, student, or Designated Representative shall, when requested, supply the Commissioner with any information related to the athletic program at a member school. A failure to comply within a reasonable time may forfeit the school's membership in the Association, or the school may be penalized in accordance with approved Association penalty codes. Each member school shall annually certify that it will comply with any and all of the rulings of the Commissioner, Assistant Commissioners, Hearing Officer and Board of Control as they relate to the athletic program at a member school. This compliance shall include student eligibility matters, Board policy directives related to health and safety of student athletes, and other programs as may be instituted by the convened Board of Control. This certification shall not apply to any matter on review by any court.

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***Case BL-17-1- Are schools required to submit reports regarding the Financial Aid, Heat Index, Title IX and the Title IX reporting requirements, or other sports specific reports?***

*Yes. In accordance with Bylaw 17, these reports are required to be submitted by the timelines distributed by the Commissioner's office. Other reports may be added as requirements and requested by the Board of Control with notice to the membership.*

***Case BL-17-2- Are students or their parents compelled to file written responses or answer eligibility inquiries?***

*Yes. In accordance with Bylaw 17, these reports are required to be submitted when requested as necessary to verify the eligibility of a student.*

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### **BYLAW 33. IMPOSITION OF PENALTIES**

#### **Sec. 1) Authority to Penalize**

If Association rules and regulations have been violated, penalties may be imposed on the offending schools or individual within the defined parameters of this bylaw, the KHSAA Due Process Procedure, and KRS Chapter 13B. These penalties may be by the Commissioner's office, the KHSAA Hearing Officer or the Board of Control dependent upon the specifics of the bylaw, KHSAA Due Process Procedure, or KRS Chapter 13B. Each member school of the KHSAA through its Principal shall ensure that its athletic program remains compliant with KHSAA rules.

A member school, student, coach, or administrator shall not be punished or sanctioned, in any manner, by the KHSAA for allowing a student to play in an athletic contest or practice with the team during a time when an order of a court of competent jurisdiction permits the student to participate or otherwise stays or enjoins enforcement of a final KHSAA decision on eligibility.

For violation of any rule or regulation by any member school or school designated staff, student-athlete, official, or other representative, the penalty as may be called for under the specific rule or regulation, or, in case no specific penalty is called for, disciplinary action, including warning, reprimand, probation, suspension, or payment of a fine may be imposed.

#### **a) FINE**

A fine may be levied in lieu of, or in addition to, any other penalty imposed upon the school and may only be levied against a member school. The Board of Control shall adopt a schedule of fines and publish said schedule annually in the Association Handbook. The fine schedule shall also include any amounts paid by the Association or received by the school as a result of postseason competition. A fine shall not be levied against any individual within the interscholastic athletic program but may only be levied against the member school and only for selected violations as determined by the Board of Control.

#### **b) FORFEIT**

The forfeit of contests or meets may be included in penalties assessed for violation of Association rules.

#### **c) WARNING**

A warning may be issued which is written notification that a violation, or an inexcusable or unethical action, has occurred, is a matter of record, and that the action shall not be repeated.

#### **d) LETTER OF REPRIMAND**

A written reprimand of the individual, program, or school may be issued if a violation of the rules has occurred which was preventable. The action is a matter of record, and warnings that repeat actions of this type may be cause for further penalty.

#### **e) PROBATION**

Probation is a more severe penalty and may be described in the following manner. Normally, an individual or a school on probation is on conditional Association membership, but may be permitted to engage in a regular schedule, sanctioned events, or district, regional and state championships. This is provided that the individual or school has taken steps to ensure the problem which placed the individual or school on probation has been alleviated and will not re-occur. Additionally, a school on probation may be restricted to limits on scrimmages, regular season contests or post season competition as may be deemed appropriate.

#### **f) SUSPENSION**

An individual participant, coach, specific sport or school may be suspended from competition or from scrimmage participation. This penalty may range from the elimination of individual or team(s) participation in games, tournaments, meets or state championship competition, to suspension of the school from the Association. Individuals or teams suspended may not engage in contests with member schools of the Association, or with any other school that is a member of another state associated with the National Federation of State High School Associations.

#### **g) RESTITUTION**

A fine may be levied equal to the amount of itemized legal fees expended by the Association in defense of its rules in a court of law in cases where a school or school system is directly or indirectly involved in the legal challenge of an association rule which has passed via the proper Constitutional process and in

which case, the Association prevails in court. If the Association, its Commissioner, or other persons associated or employed by the Association are named as a party, or if the Association intervenes in any action to enforce a ruling, bylaw or other provision, it shall be presumed that the school where the student attends or the coach or other person is employed or is otherwise associated or connected, is involved in the legal challenge. The presumption of involvement may be rebutted by clear and convincing evidence. Involvement includes providing testimony, staff, staff legal counsel or funds for counsel, or direct filings by or on behalf of the school or school system.

If the Association conducts an investigation regarding any player, coach, assistant coach, paraprofessional, booster, supporter or other person associated with a team, program or member school, and the investigation results in any penalty being imposed by the Association, the school may be required to pay all costs of that investigation. The costs may include the costs, fees and expenses charged by an investigator, and the costs, fees and expenses charged by the Association's legal counsel.

#### **h) PERMANENT SUSPENSION**

Any coach, participant or other school representative may be permanently suspended from involvement in interscholastic athletics in this state if found by competent and conclusive evidence to be guilty of assaulting a sports official.

#### **i) REDISTRIBUTION**

If a school is found to have used an ineligible competitor and as an extension to the fine penalty listed above, it may be directed that a portion or all of the net proceeds received from a postseason contest or tournament be returned to the host or redistributed to the other contest or tournament participants.

#### **j) VACATE/STRIKE**

If a school is found to have used an ineligible competitor, it may be directed that 1) Individual records and performances be vacated or stricken; 2) Team records and performances including place finishes be vacated or stricken; or 3) Individual or team awards be returned to the Association.

#### ***Case BL-33-1- What level of institutional control is the principal of each member school expected to maintain?***

*There are several principles that go into the concept of maintaining institutional control. Control shall first be defined in common sense terms and is best summarized by the school having in place the proper policies to ensure that violations do not occur, and if they do occur, the Principal exhibiting the leadership and duty to correct the problems and prevent recurrence. In general violations do not result from a lack of institutional control if there are adequate preventive measures in place that are properly monitored and followed, and if swift action is taken.*

*However, there are several things that demonstrate a lack of institutional control including the failure to implement proper preventive procedures; failure by members of the designated athletic staff to thoroughly investigate and report violations; failure to adequately disseminate and distribute compliance information; failure to adequately distribute compliance duties to allow for effective control; failing to make clear to all coaches and participants that rules violations will not be tolerated, failing to fully investigate and file reports as requested when potential violations are reported; a head coach failing to create a compliant atmosphere with the assistant coaches.*

*The KHSAA enforces its rules based on the following premises-KHSAA regulations and information are readily available to the member schools and general public; the Principal or Designated Representative properly distributes information, rules manuals, communication, forms, and other needed materials to the members of the athletics staff; that meaningful education programs are conducted within the schools to ensure compliance; student-athletes are properly informed about rules prior to and during participation. Certainly the compliance history of a school and its cooperative spirit during any investigation or inquiry will factor into any penalty decision regarding violations.*

**Case BL-33-2- What are the possible penalties under Bylaw 33 for the violations of KHSAA rules?**

*Through the Due Process Procedure, the Commissioner may impose penalties under Bylaw 33, including each of the ten listed options. When cases are before the Board of Control, the Board has the same penalty options available.*

*Suspension, either of an individual or a program, is one of those penalties and could involve removal and restriction from contests or a reduction in schedule.*

*Other penalty options include Fine, Forfeit, Warning, Letter of Reprimand, Probation, Restitution, Permanent Suspension, Redistribution and Vacating/Striking. Each of these is described in detail in Bylaw 33.*

**Case BL-33-3- What is a contest official as described in the permanent suspension provisions?**

*A contest official could be one of the game officials (referees), scorers, timers, or other game management personnel working in an official capacity at the contest.*

**Case BL-33-4- Are penalties from the KHSAA necessary when schools violate rules that are more stringent than KHSAA standards?**

*No. This is a situation between the member schools and is not a matter for Association review. For example, if a school has a more stringent academic requirement than the KHSAA minimum standard and then inadvertently allows a player to compete who is eligible by KHSAA rules, but not by local rules, KHSAA penalties do not apply. However, the offending school should report these situations to the opponents and take whatever agreed action is necessary.*

## KHSAA DUE PROCESS PROCEDURE

*Specific case situations are contained in this section of the KHSAA Handbook which are interpretations and rulings which have been made in accordance with applicable provisions of the KHSAA Constitution. These interpretations supplement the printed rules but do not in any manner substitute for the actual rule. Many of these rulings have established precedent for the interpretation or enforcement of these provisions, and remain in place until further altered, re-interpreted, or otherwise set aside. Specific inquiries not addressed by published interpretations should be submitted in writing to the Commissioner of the KHSAA, 2280 Executive Drive, Lexington, KY 40505. Interpretive questions or eligibility rulings shall be requested and issued in writing.*

In compliance with KRS Chapter 13B, the Board of Control of the Kentucky High School Athletic Association has adopted the following Due Process Procedure. Only relevant, additional definitions are listed in this procedure, and all other procedural questions, definitions and interpretations default to the current adopted version of Chapter 13B.

### 1. Definitions

"Agency Head" means the Commissioner of the KHSAA or the person designated with the authority in the event of his or her inability to serve, and who is responsible for entry of a final order in Hearing Officer Matters.

"Aggrieved Party" means the person within the confines of KRS Chapter 13B who is directly involved and aggrieved by a decision made within this Procedure. This could include but not be limited to,

- a) The Principal of the sending and receiving school in the case of a transferring student (Bylaw 6);
- b) The Principal of the enrolled school of a specific student in a matter related to Bylaws 2 through 13 (excluding 6);
- c) A student who has reached the age of eighteen (18), or the custodial parents of a minor student in a matter related to Bylaws 2 through 13; or
- d) The Principal of the directly involved and named member school in the case of any matter over which the Board of Control has final jurisdiction and does not involve an Independent Hearing Officer.

"Board Matters" means those matters not defined as Hearing Officer Matters, which are heard through a hearing before the KHSAA Board of Control.

"Board of Control" means the duly elected or appointed members of the Board of Control of the KHSAA, and is the body responsible for entry of a final order in Board matters.

"Commission" means the person(s) hired as the Assistant Commissioners in accordance with the amended Federal Consent decree.

"Commissioner" means the person hired as the Commissioner of the KHSAA. In Board Matters, Commissioner shall also include the member of the Commission designated by the Commissioner to rule in specific matters.

"Final Order" means the whole or part of the final disposition of an administrative hearing, whenever made effective by the Commissioner or Board of Control.

"Hearing Officer Matters" means eligibility matters related to KHSAA Bylaw 2 (Physician's Certificate), 4 (Enrollment), 5 (Minimum Academic Requirement), 6 (Transfer Rule), 7 (Foreign Exchange), 8 (Contestant on Other Teams, Post Season and All-Star Games), 9 (Other Eligibility Requirements and Regulations), 12 (Awards), 13 (Financial Aid), which are conducted through a process utilizing an Independent Hearing Officer under KRS Chapter 13B.

"KHSAA" means the Kentucky High School Athletic Association.

"Party" means:

- a) The named person whose legal rights, duties, privileges, or immunities are being adjudicated in the administrative hearing;
- b) The Principal of the sending and receiving school in the case of a transferring student (Bylaw 6);
- c) The Principal of the enrolled school of a specific student in a matter related to Bylaws 2 through 13 (excluding 6);

d) Any other person who is duly granted intervention in an administrative hearing; and

e) Any agency named as a party to the adjudicatory proceeding or entitled or permitted by the law being enforced to participate fully in the administrative hearing.

"Recommended Order" means the whole or part of a preliminary hearing report to the Commissioner for the final disposition of an administrative hearing in a Hearing Officer Matter.

"Regional Investigative Committee" means the representatives of the member schools within a region as defined in the basketball alignment, who are selected within approved Board of Control policies to assist in the acquiring of information related to a specific eligibility matter.

"Ruling Officer" means the member(s) of the Commission designated by the Commissioner to make initial eligibility determinations in Hearing Officer Matters.

### 2. Due Process Procedure for Hearing Officer Matters

#### A) Ruling Officer's Authority to Rule

- 1) Requests for initial rulings shall be made in writing to the KHSAA with a return address for response. Oral requests for rulings or requests by electronic mail shall not be accepted.
- 2) In Hearing Officer matters, the Ruling Officer(s) is/are empowered to make initial rulings and interpret the provisions of the KHSAA Constitution, Bylaws and Competition rules as it relates to the eligibility of a student-athlete, member school and to restore eligibility. Restoration may only be granted in cases where strict application of the applicable bylaw is unfair to the student athlete because the circumstances creating the ineligibility are clearly beyond the control of all of the parties involved.
- 3) The Ruling Officer shall act upon any request for initial ruling filed in accordance with this procedure when all information is available. Any appeal seeking a ruling based on unknown or speculative factors shall be denied as being premature. Unless further investigative information is needed, it shall be the objective of the Ruling Officer to make the initial ruling within thirty (30) calendar days of receipt of the request.

#### B) Appeals to the Hearing Officer in Hearing Officer Matters

- 1) If an aggrieved party is affected by a ruling of the Ruling Officer(s) interpreting a provision or provisions of a Hearing Officer Matter, the party may appeal the ruling to a hearing officer of the KHSAA through the Commissioner's office.
- 2) Any appeal seeking a ruling based on unknown or speculative factors shall be dismissed by the hearing officer as being premature and eligibility denied.

#### C) Support Information

- 1) The KHSAA staff or the Hearing Officer may request support documentation for all matters upon which an appeal is based.
- 2) Prior to issuing a recommended order in a Hearing Officer Matter, the hearing officer may direct the Commissioner's office to perform any investigative functions necessary to ensure that all support documentation and evidence is considered in making a recommendation.

#### D) Notice of Hearing

- 1) Notice shall be made to the Principal of all schools directly involved with an appeal and to the appealing parties. If an individual is pursuing the appeal and not a member school, notice shall also be made by first class mail to the Principal of all member schools that are parties to the proceeding.
- 2) The notice shall be plain in nature and shall include:
  - a) All information and notices required by KRS Chapter 13B; and
  - b) A copy of the KHSAA Due Process Procedure.

#### E) Attendance at the Hearing

- 1) Representatives of appealing parties and all potentially affected parties are advised, recommended and encouraged to attend hearings.
- 2) In the instance of a student submitting the appeal, the Principal of member school that the student attends may represent the student at the administrative appeal.
- 3) Any person entitled to be in attendance at the hearing may represent himself or herself. These persons are also entitled to be represented by counsel, provided that they notify all other parties involved in the appeal of the name, address and

telephone number of the counsel at least three (3) business days in advance of the hearing.

F) Administrative Hearing Procedures

1) Administrative hearings conducted involving Hearing Officer Matters shall be conducted in accordance with KRS Chapter 13B.

2) If an aggrieved or interested party fails to attend or participate in a hearing, the hearing officer or the Board of Control, at its discretion, may deny that party the right to seek additional review or present additional evidence at a later date.

G) Recommendation of Hearing Officer in Hearing Officer Matters

1) The recommendation of the hearing officer shall be completed and submitted to the Commissioner not more than thirty (30) calendar days after receiving the official record of the proceeding. The decision shall include findings of fact, conclusions of law and recommended disposition of the hearing, including any recommended penalties, if applicable.

2) A copy of the hearing officer's recommended order shall also be sent to each party in the hearing.

3) Each party shall have fifteen (15) days from the date a hearing officer's recommended order is mailed within which to file exceptions to the recommendations with the Commissioner.

4) The KHSAA shall maintain on file an official record of the complete proceedings of each administrative hearing and subsequent official actions.

H. Decision of the Commissioner in Hearing Officer Matters

1) The Commissioner shall act on a recommended order of the Hearing Officer in Hearing Officer Matters within fifteen (15) days after the deadline to file exceptions.

2) The Commissioner may:

(a) Accept the recommended order and adopt it as the Agency Head's final order;

(b) Reject or modify in whole or in part the recommended order; or

(c) Remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate.

3) If the final order differs from the recommended order, the Commissioner shall include separate statements of findings of fact and conclusions of law.

4) In making a final order, the Commissioner shall only consider the record including the recommended order and any exceptions duly filed to a recommended order. The Commissioner shall not consider new and additional evidence or allow oral argument, except that the Commissioner may grant a motion to introduce new and additional evidence or make oral argument if significant factual circumstances have changed since the administrative hearing or the administrative record does not permit adequate review of the hearing proceedings.

5) The final order shall be in writing and stated in the record. The final order shall also include the effective date of the order and a statement advising parties fully of available appeal rights.

I. Judicial Review

1) Final orders of the Commissioner in Hearing Officer Matters may be subject to judicial review in accordance with KRS Chapter 13B.

2) A party may institute an appeal by filing a petition in the appropriate Circuit Court within thirty (30) days after the final order is mailed or delivered by personal service.

3) A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within this procedure.

3. Due Process Procedure for Board Matters

A) Commissioner's Authority to Rule

1) Requests for initial rulings shall be made in writing to the Commissioner with a return address for response. Oral requests for rulings or requests by electronic mail shall not be accepted.

2) In Board matters, the Commissioner is empowered to make initial rulings and interpret the provisions of the KHSAA Constitution, Bylaws and Competition rules as it relates to the eligibility of a student-athlete, member school or contest official and to restore eligibility. Restoration may

only be granted in cases where strict application of the applicable bylaw is unfair to the student athlete because the circumstances creating the ineligibility are clearly beyond the control of all of the parties involved.

3) The Commissioner shall act upon any request for initial ruling filed in accordance with this procedure when all information is available. Any appeal seeking a ruling based on unknown or speculative factors shall be denied as being premature. Unless further investigative information is needed, it shall be the objective of the Commissioner to make the initial ruling within thirty (30) calendar days of receipt of the request.

B) Appeals to Board of Control (Board Matters)

1) If an aggrieved party is affected by a ruling of the Commissioner interpreting a provision or provisions of a Board Matter, the party may submit a written notice of appeal of the decision and request a formal hearing before the Board of Control.

2) The Board of Control shall conduct a formal hearing and act on an appeal at the next scheduled meeting provided that a minimum of ten (10) days has passed since receipt of the written notice of appeal.

3) Aggrieved and affected parties may request a special meeting of the Board of Control prior to the next regularly scheduled meeting. The request shall be ruled upon by the President of the Board of Control.

4) Any appeal seeking a ruling based on unknown or speculative factors shall be dismissed by the Board of Control as being premature and eligibility denied

C. Support Information

KHSAA staff or the Board of Control may request support documentation for all matters upon which an appeal is based.

D. Notice of Hearing/Consideration by the Board of Control

1) Notice shall be made to the Principal of all schools directly involved with an appeal and to the appealing party or parties.

2) If an individual is pursuing the appeal and not a member school, notice shall also be made by first class mail to the Principal of all member schools that are parties to the proceeding.

3) The notice shall be plain in nature and shall include:

a) All information and notices required by the policies of the Board of Control; and

b) A copy of the KHSAA Due Process Procedure.

E) Attendance at the Hearing

1) Representatives of appealing parties and all potentially affected parties are advised, recommended and encouraged to attend hearings.

2) In the instance of a student submitting the appeal, the Principal of member school that the student attends may represent the student at the administrative appeal.

3) Any person entitled to be in attendance at the hearing may represent himself or herself. These persons are also entitled to be represented by counsel, provided that they notify all other parties involved in the appeal of the name, address and telephone number of the counsel at least three (3) business days in advance of the hearing.

F. Administrative Hearing Procedures

1) Administrative hearings conducted involving Hearing Officer Matters shall be conducted in accordance with KRS Chapter 13B. Hearings conducted by the Board of Control shall be conducted in accordance with Roberts Rules of Orders and adopted Board of Control meeting procedures.

2) If an aggrieved or interested party fails to attend or participate in a hearing, the Board of Control, at its discretion, may deny that party the right to seek additional review or present additional evidence at a later date.

H. Decision of the Board of Control in Board Matters

1) The Board shall issue a final order in all Board Matters.

2) The final order shall be in writing and stated in the record. The final order shall also include the effective date of the order and a statement advising parties fully of available appeal rights.

I. Judicial Review

1) Final orders of the Board of Control in Board matters may be subject to judicial review in accordance with KRS Chapter 13B.

- 2) A party may institute an appeal by filing a petition in the appropriate Circuit Court within thirty (30) days after the final order is mailed or delivered by personal service.
- 3) A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within this procedure.

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**Case DPP-1- What address should be used for filing appeals to the KHSAA?**

*For appeals to the KHSAA, address the appeal to Commissioner, KHSAA, 2280 Executive Drive, Lexington, KY 40505. All material mailed to the Hearing Officer or Board of Control shall be mailed to the same address. Appeals will only be accepted via US mail or other common carrier.*

**Case DPP-2- Is there an appeal process for students ineligible according to KHSAA Bylaws?**

*Yes, there is a Due Process Procedure. Appeals should be directed to the Commissioner c/o the KHSAA, 2280 Executive Drive, Lexington, KY 40505.*

**Case DPP-3- Is there a Philosophical Statement to guide the Ruling Officer in making rulings in Hearing Officer matters or the Commissioner in making rulings in Board of Control matters in accordance with this procedure?**

*Yes. The Constitution and Bylaws of the KHSAA were developed and approved by the member schools of the Association and represent the direction the schools desire in governing high school athletics. The ruling officer (or the Commissioner in Board of Control matters) is to determine 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. In those cases and in accordance with the applicable bylaws and this procedure, The ruling officer (or the Commissioner in Board of Control matters) may waive the rule and declare the student eligible or may choose not to waive the provisions of the rule. Participation in interscholastic athletics is a privilege for students who are in compliance with the Constitution and Bylaws of the KHSAA.*

**Case DPP-4- Is there a Philosophical Statement to guide appeals heard by the Hearing Officer and Commissioner in Hearing Officer Matters, and the Board of Control in Board of Control matters?**

*Yes. The Constitution and Bylaws of the KHSAA were developed and approved by the member schools of the Association and represent the direction the schools desire in governing high school athletics. The Hearing Officer and Commissioner shall be empowered to conduct eligibility hearings and determine the eligibility status of a student in hearing officer matters. The Hearing Officer or Commissioner, in Hearing Officer matters, shall determine 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. In those cases, a waiver of the rule may be granted or the Hearing Officer or the Commissioner may choose not to waive the provisions of the rule. In addition, the Hearing Officer may direct the Commissioner to study revisions in the applicable rules. Participation in interscholastic athletics is a privilege for students who are in compliance with the Constitution and Bylaws of the KHSAA.*

**Case DPP-5- If the Hearing Officer recommends overruling the original decision of the Ruling Officer when does that decision take effect?**

*When the Hearing Officer makes a recommended order to the Commissioner, his/her findings of fact, conclusions of law, and recommended order are to be submitted to the Commissioner in accordance with the timelines of the Due Process Procedure. The Commissioner may accept, reject, modify or remand that recommendation. Until final action is adopted by the Commissioner, the original ruling under appeal remains in force.*

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# KENTUCKY LEGISLATURE

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## SB168 WWW Version

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[SB 168](#) (BR 352) - R. Stivers

AN ACT relating to high school interscholastic athletics.

Create a new section of KRS Chapter 452 to require all appeals relating to high school interscholastic athletics to be in Franklin Circuit court.

### [SB 168](#) - AMENDMENTS

[SFA \(1\)](#), R. Stivers) - Limit application of the bill to appeals relating to athletic eligibility.

Feb 15-introduced in Senate

Feb 19-to Judiciary (S)

Feb 23-reported favorably, 1st reading, to Calendar

Feb 26-2nd reading, to Rules

Feb 27-posted for passage in the Regular Orders of the Day for Thursday, March 1, 2001

Mar 1-passed over and retained in the Orders of the Day; floor amendment (1) filed

Mar 2-3rd reading, passed 31-2 with floor amendment (1)

Mar 5-received in House

Mar 6-to Judiciary (H)

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AN ACT relating to high school interscholastic athletics.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

SECTION 1. A NEW SECTION OF KRS CHAPTER 452 IS CREATED TO READ AS FOLLOWS:

*Any action seeking to challenge any athletic eligibility ruling of the organization, agency, or entity designated to manage interscholastic athletics pursuant to KRS 156.070 shall be filed in the Franklin Circuit Court. Within thirty (30) days of the effective date of this Act, any athletic eligibility action pending in any other state court shall be transferred to the Franklin Circuit Court or otherwise dismissed.*





**To:** State Association Executive Directors  
**From:** John Black  
**Re:** Eligibility Appeals Hearings  
**Date:** November 13, 2012

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**Responses to Inquiry on Eligibility Appeals Hearings  
Sent November 6, 2012**

**Inquiry:**

We have received an inquiry from a state association about challenges to eligibility rulings. Specifically, the inquiring state association would like to know:

1. Does your state association assess a filing fee for eligibility appeals hearings?
2. Does your state association hold such hearings in the home city of the state office, or are they held regionally?
3. Does your state association have a bylaw or rule in place to recover its legal fees from a school that pursues an unsuccessful lawsuit challenging an eligibility ruling?
4. Do you impose a pro rata assessment on all your member schools to pay such legal fees?
5. Do you have a “restitution rule?”

Please reply with your responses to [mscheiman@nfhs.org](mailto:mscheiman@nfhs.org) by Monday, November 12.

**Responses:**

**QUESTION #1:**

**States responding “Yes” – 6**

**Comments:**

State 11: Yes, \$100

State 13: Each [State Association] district has the authority to do so but typically only for late requests.

State 14: Yes, \$150

State 20: \$250 appeal fee if the ruling is upheld.

**States responding “No” – 29**

**Comments:**

State 1: No, but I think we should.

State 7: No fees until the final level, which involves an Independent Hearing Officer. The state association and appellant split the costs of that hearing, which normally runs around \$750 each.

State 10: We run our hearings in conjunction with our four Board Meetings per year. There is no charge for these hearings. If a school or parent requests a special hearing at another time during the year then they are responsible for the entire cost of the hearing.

**Other – 1**

**Comments:**

State 3: There is no charge to hear an appeal if it is heard at one of our regularly-scheduled meetings. If the school wants an immediate hearing, the school must pay a few to assemble the group hearing the appeal.

**QUESTION #2:**

**States that hold hearings in home city of state association office – 25**

**Comments:**

State 3: Appeals are usually heard at the state association office two times a month from August - March. Occasionally the caseload is so heavy that a regional hearing site is established in another area of the state.

State 7: Hearings are conducted at the state association office. Many are now being done by conference phone call.

State 16: Home city or via teleconference

State 18: All appeal hearing are at the state office except for one during the year, which is held during our annual member school meeting.

State 20: Held at the state office by teleconference.

**States that hold hearings regionally – 7**

**Comments:**

State 8: District hears appeals first.

State 14: Held regionally at [State Association] Section offices.

State 17: Our state is divided into four administrative sections, equally distributed throughout the state, based upon 1/4 of the total number of member schools (200 per

administrative section). The appeals hearings are held once per month, in each of the four sections for the appeals coming from the schools within those sections.

**Other – 3**

**Comments:**

State 6: Teleconference when possible, in person at the State Office

State 9: 3 choices = In writing; Conf. Call; at Assoc. Office

State 19: They are held by teleconference.

**QUESTION #3:**

**States responding “Yes” – 19**

**Comments:**

State 2: Yes – cost of investigation, suit brought by school.

State 4: Yes, if they are party and lose, our fees to outside counsel can be assessed.

State 5: If the appeal to the Board of Directors as a whole requires a special called meeting, the appealing party(ies) shall be required to make such arrangements as are satisfactory to the Executive Director to secure the payment of the costs of the appeal including travel expenses of the Board of Directors and the cost of taking and transcribing a record thereof to be paid by the appealing party(ies) in the event

State 9: Yes, all necessary court fees and legal fees may be assessed to the school.

State 14: Yes, only used once that I can recall as member school don't bring forward the legal action – it is the parents that bring the action thus making the school exempt....

State 15: Yes, for a member school. Does not apply to a parent that brings suit.

State 17: YES, PLEASE SEE THE FOLLOWING BYLAWS:

10.1.4 Court Injunctions. If a member school or student, in violation of or noncompliance with any provisions of this Association's rules, competes based on an injunction or restraining order which is later voluntarily vacated, stayed or reversed, or it is determined that injunctive relief is not or was not justified, they will still be subject to the penalties listed in 10.1.1.

10.1.2 Penalties and Sanctions. The Executive Director shall have full authority to invoke one or more of the following penalties and/or sanctions against the violating school or person:

- (a) REPRIMAND-An official letter of censure to the concerned party in regard to the offense committed which warns against further violations. This letter will be kept on file for future reference.

- (b) FINE-A monetary payment.
- (c) FORFEIT-The forfeiture of an interscholastic athletic contest.
- (d) PROBATION-Types of probation that may be imposed are as follows:
  - 1) Administrative Probation-The school or person is reprimanded, fined and served notice that it is in a period of warning for a minimum of one calendar year. Additional violations during this time will result in increased penalties which may include expulsion.
  - 2) Restrictive Probation-The school or person faces the same penalties as administrative probation, with the additional consequence of restriction from participation in championship competition in one or more sports, or other restrictions deemed appropriate by the Executive Director, for one or more calendar years.
  - 3) Suspension Probation-The school or person faces the same penalties as administrative probation, with the additional consequence of suspension from one or more sports for one or more calendar years.
- (e) EXPULSION-Involuntary termination of a school's membership in the Association for one or more calendar years. Any member school that competes with a currently expelled school may subject itself to expulsion from the Association for one calendar year.

**States responding “No” – 17**

**QUESTION #4:**

**States responding “Yes” – 2**

**Comments:**

State 14: Yes, called a “legal and liability assessment.”

State 17: Attorney's fees for injunctions and appeals hearings are covered in questions 3 and 5. All other legal fees assessed throughout the year are reimbursed through Bylaw 9.3.1:

9.3.1 Senior High Schools (Full Members).

9.3.1.1 Renewing Members. The legal fee assessment for a senior high school renewing its full membership for the current school year shall be determined by taking the total legal expense incurred by the [State Association] during the previous school year, subtracting the total flat fee assessed junior high school and middle school members, and dividing the balance equally by the total number of senior high school members at the close of the previous school year. The total legal expense includes all attorney's fees, court costs, settlements and judgments.

**States responding “No” – 34**

**QUESTION #5:**

**States responding “Yes” – 25**

**Comments:**

State 5: G. If a student is ineligible according to [State Association] rules but is permitted to participate in interscholastic competition contrary to such [State Association] rules but in accordance with the terms of a court restraining order of injunction against that student's school and/or [State Association], and that injunction is subsequently voluntarily vacated, stayed, reversed, or finally determined by the courts that injunctive relief is not or was not justified or expires without further judicial determination, those penalties stipulated in Rule 4A, B, C, D, E, or F may be imposed.

State 7: **30-3-2 Restitution Rule**-Any member school (or school board acting on behalf of a member school) which institutes an unsuccessful court suit challenging a rule, rules or decision of the League, either prior to or after having first exhausted the internal appeal procedures of the League, shall be assessed the full costs resulting from such litigation, including, but not limited to, court costs, counsel and actual expenses incurred by the League. Any member school that does not make full payment of such costs within sixty days of the assessment shall be prohibited from playoff participation in all sports. The restriction shall continue until the full amount plus interest at the statutory rate is paid.

State 8: **SECTION 10. SCHOOL RESTITUTION RULE**: Any member school that sues the [State Association], or is involved in a suit against the [State Association], and loses the case shall be required to pay all legal expense in the litigation.

State 12: **Restitution Rule** – Any member school (or school board acting on behalf of a member school) which institutes an unsuccessful court suit challenging a rule, rules or decision of the League, either prior to or after having first exhausted the internal appeal procedures of the League, shall be assessed the full costs resulting from such litigation, including, but not limited to, court costs, counsel and actual expenses incurred by the League. Any member school that does not make full payment of such costs within sixty days of the assessment shall be prohibited from playoff participation in all sports. The restriction shall continue until the full amount plus interest at the statutory rate is paid.

State 17: YES, PLEASE SEE THE FOLLOWING BYLAW:

10.5.1 Cost of Appeal. The cost of an appeal, if any, including the Association's attorney fees, shall be borne by the person or entity making the appeal if the finding of the Executive Director or the penalty imposed is upheld or if the request for waiver is denied as in Bylaw 10.4.1.

### States responding “No” – 11

#### Comments:

State 4: We had for a long time, but was struck down by our Legislature a couple of years ago