

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 in 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 will 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 Tournament Rules as it relates to the eligibility of a student-athlete, member school and to restore such eligibility. Such 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 party (ies) 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.

J. Foreign Students Not Coming Through Board of Control Approved Programs

- 1) Any foreign student not being placed in a Kentucky school through an approved exchange agency may request eligibility during the initial year enrolled at a Kentucky school by applying directly through this appeals process in accordance with Bylaw 7.
- 2) The Hearing Officer shall determine the legitimacy of the transfer and the conditions for exceptions to the one-year period of ineligibility and shall make a recommendation to the Board of Control. A recommendation for the student to be

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

3) In order to be considered for this waiver, the student shall:

- a) be in compliance with all U.S. Immigration and Naturalization Service regulations;
- b) be in the first and only year as a student at the school;
- c) not be a graduate of the 12th or terminating grade or its equivalent in either the U.S. or his or her home country;
- d) be in possession of a complete transcript of records that has been translated into English prior to the request for eligibility; and
- e) be in possession of a J-1 student or other educational visa issued by the U.S. Immigration and Naturalization Service.

4) In addition, the student's host family cannot include members of the coaching staff at the KHSAA member school at which participation is desired.

5) Any student having requested and been granted a waiver of the one-year period of ineligibility shall not be eligible, under any circumstances, for any additional eligibility while enrolled in a KHSAA member school.

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 will 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 Tournament Rules as it relates to the eligibility of a student-athlete, member school or contest official and to restore such eligibility. Such 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 (ies)
- 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.

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.
