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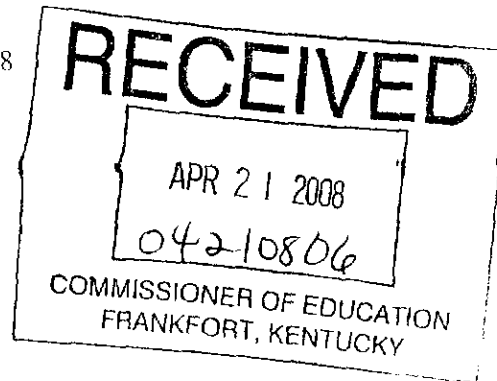
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April 15, 2008

Commissioner Jon E. Draud
Kentucky Board of Education
500 Mero Street
First Floor, Capital Plaza Tower
Frankfort, Kentucky 40601



Dear Commissioner Draud:

The Administrative Regulation Review Subcommittee may be reviewing 702 KAR 7:065 at its May 13, 2008 meeting. This administrative regulation incorporates by reference the Bylaws of the Kentucky High School Athletic Association (KHSAA).

We wish to advise you that we have received communications from some of our members who have problems with the "playing up" provisions of this administrative regulation. Specifically the problem text is located in Bylaw 6, Section 1 and reads as follows:

"Any student entering grade seven (7) in 2009-2010 or later who has participated in a varsity contest in any sport representing a member school while being enrolled in grades seven (7) or eight (8) and who then enrolls at a different member school (grade nine (9) or above) shall be ineligible for interscholastic athletics at any level in any sport for the first year of enrollment."

This provision seems to be aimed at curbing the recruitment of athletes. Our members had the same reaction to this provision as to similar KHSAA provisions reviewed by the subcommittee last year. That feeling is that it is bad public policy to try to prohibit or curb the recruitment of student-athletes by punishing the student-athlete, who has done nothing wrong. We would again urge the KHSAA and the KBE to find some other way to control the illegal recruitment of student-athletes. We believe that members of the ARRS and the General Assembly would be supportive of ways to control recruiting by punishing the perpetrator of that violation. That person could be a coach, a principal, an athletic director, or a superintendent. The punishment could range from a fine to suspension or revocation of a teaching credential. The punishment could even be extended to that person's supervisor in order to ensure compliance.

We would further question the inclusion of the statement in the last sentence of Bylaw 6, Section 1 which reads as follows:

"The KHSAA shall not recognize as grounds for a waiver of the period of ineligibility an argument that the educational needs of the transferring students would be better served through a transfer."

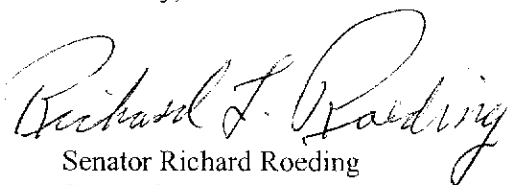
This statement seems to run counter to the idea that the student's educational needs should be seen as paramount. We wonder how such a statement could be made by the agency that is charged with the task of providing the best educational opportunities to the children of our state.

The main purpose of this letter is to let you know that it is quite likely that an amendment will be offered by a subcommittee member at the May 13 meeting to remove the two above cited provisions from the bylaws. KRS 13A.320(1) provides that "A subcommittee may amend an administrative regulation at a subcommittee meeting with the consent of the administrative body." KRS 13A.290(4) also requires that a representative of the administrative body with the authority to amend the administrative regulation be present at the subcommittee meeting. Since it is likely that an amendment will be offered to the administrative regulation, we thought that it would be prudent to inform you of that fact. Since this administrative regulation is the product of both the Kentucky Board of Education (KBE) and the KHSAA, this communication should provide those governing boards the opportunity to consider whether or not they would be willing to agree to such an amendment.

It should be noted that KRS 156.070(2)(c) prohibits the KBE or the KHSAA from promulgating administrative regulations or bylaws that would prohibit students in grades seven (7) and eight (8) from playing high school sports except for varsity soccer and football. In setting this policy by statute the General Assembly made it clear that these students should be allowed to "play up" if they wish to do so. Nowhere in that statute is a provision that those students who choose to play up should be required to forfeit any future eligibility for having done so, for any reason. In the second sentence of paragraph (c) the legislature specifically provided the agency with statutory authority ". . . to promulgate administrative regulations restricting, limiting, or prohibiting participation in high school varsity soccer and football for students who have not successfully completed the eighth grade." It would logically follow that if the legislature had wanted to allow the agency the authority to require forfeiture of eligibility for those students who choose to play up, they would have provided that authority in this statute. It simply is not there. A strong argument could be made that the agency has exceeded its statutory authority by requiring such a forfeiture, even in very limited circumstances.

We hope that this communication serves to let the KBE and the KHSAA know the thinking of some of the members of the ARRS regarding this administrative regulation. We all wish to see high school sports conducted in a fair and equitable manner that adds to the overall educational experience and therefore benefits the student. Athletics are an important part of that educational experience. We will continue to work with your agency to enhance this important component of our educational program.

Sincerely,



Senator Richard Roeding
Senate Co-chair



Representative Robert Damron
House Co-chair

cc: Brigid DeVries, Commissioner
Julian Tackett, Assistant Commissioner