

INTERIM JOINT COMMITTEE ON EDUCATION

Minutes of the 2nd Meeting of the 2019 Interim

July 10, 2019

Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Education was held on Wednesday, July 10, 2019, at 1:00 p.m., in Room 149 of the Capitol Annex. Senator Max Wise, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Max Wise, Co-Chair; Representative Regina Huff, Co-Chair; Senators Jimmy Higdon, Stephen Meredith, Gerald A. Neal, Dan "Malano" Seum, Reginald Thomas, Johnny Ray Turner, Stephen West, and Mike Wilson; Representatives Tina Bojanowski, Randy Bridges, John Bam Carney, Jeffery Donohue, Jim Glenn, Mark Hart, Scott Lewis, Bobby McCool, Reginald Meeks, Steve Riley, John Sims Jr, James Tipton, Russell Webber, and Lisa Willner.

Guests: Chris Redle, Bluegrass Golf Foundation; Tennyne Ohr, PGA Teaching Professional; Kevin Mims, KY Golf Coaches Association; Eric Straub, and Trent Taylor.

LRC Staff: Jo Carole Ellis, Joshua Collins, and Maurya Allen.

Chair Wise welcomed Governor's Scholars Program participants from Centre College and Bellarmine University campuses. Representative Bridges also welcomed Eric Straub and others.

Approval of Minutes

Representative Meeks made a motion, seconded by Senator West, to approve the minutes of the June 5, 2019, meeting as written. Motion passed by voice vote.

Kentucky High School Athletic Association

Commissioner Julian Tackett, Kentucky High School Athletic Association (KHSAA), and Chad Collins, General Counsel, KHSAA, were in attendance to give a general overview of the agency for committee members. Commissioner Tackett began the presentation by saying that the KHSAA is the 280 schools that participate together in high school athletics. The organization was founded over 100 years ago as a non-profit, and continues to maintain a 501c3 status. As a non-profit organization, they have an independent audit performed every year. They are also a public-private partnership, with a blend of public schools, private schools, and more recently home schools. KHSAA adopts

the NFHS rules for playing in order to best facilitate games played across state lines, but are otherwise free from NFHS mandates. There were over 57,000 boys and 48,000 girls on rosters in 2017-18 participating in 13 sports and 6 sport-activities, including e-sports. And in the next few days, the Board of Control is expected to approve membership of a new non-public school to bring the number of member schools to 281. Overall, the KHSAA and school sports are the most effective drop-out prevention program in high schools today.

Commissioner Tackett next explained that there has been significant change to the structure and function of KHSAA since its inception. Most notably was a re-organization in the 1970s following a federal court case ordering more black officials, as well as restructuring of the Board of Control for more representation of minorities. Transition continued through the passage of legislation such as KRS 156.070 which formally allowed Kentucky Board of Education (KBE) to designate the KHSAA to manage athletics. Additionally, in the 1970s, employees whose position require them to hold a college degree were incorporated in the KTRS. Later, through an executive order in 1984, non-college degree holding employees were included in the KERS, making it one of the 'quasi government' agencies affected by the current pension funding discussions.

Authority for KHSAA starts with the General Assembly, who established in KRS 156.070(2) the requirement for the KBE to manage and control the common schools, including interscholastic athletics in the schools and authorizes the KBE to designate an agency to manage athletics. The KBE appoints members of the KHSAA Board of Control, who are elected by the member schools. The Board hires the Commissioner and staff and creates the rules and regulations that member schools agree to follow. Until the mid-1990s the Board also determined student eligibility after initial review by the Commissioner. Composition of the Board led to allegations and innuendo regarding decisions as well as inconsistent rulings. In 1996, KHSAA appeals were made subject to the administrative hearing procedures in KRS 13B which requires using independent hearing officers. This has led to greater separation under the law for student eligibility and transfer decisions. Collaborative work with the legislature has resulted in several positive improvements including the transition from slow pitch to fast pitch softball and expanding the pool of coaches by allowing non-teaching coaches in all sports.

In 2009 there was a landmark piece of legislation, House Bill 383 (KRS 160.445), that requires safety training for coaches and facility specific emergency action plans. This legislation has resulted in tremendous improvement to player safety, as well as a significant cost savings for schools. In 2010, there was significant streamlining to the due process procedure to facilitate investigation into rules violations and eligibility. Under the new procedure, staff serve as initial ruling officers, providing a ruling typically within seven to 10 days. From the initial ruling, there is a 20 day notice of appeal for an administrative hearing with an independent hearing officer. A final decision is issued by the hearing officer within 30 days. Typically, these decisions take less than 14 days, and there is a process by which schools can waive the appeal process following the initial ruling. Of the

1000 rulings per year, there are only around 120 appeals. Rigid adherence to KRS 13B procedures would have resulted in such delay that transferring students would not know their eligibility status before their season was over.

A Title IX audit program was established in 1999, in accordance with administrative regulations and KBE directives, and is performed in every school on a regular basis. Retired educators are trained to go to schools and evaluate everything related to Title IX and athletics including facilities, equipment, and uniforms. Within a six year window, all schools are visited at a cost of approximately \$70,000 to \$90,000 annually; although the costs are not passed on to the schools or supported by general fund appropriation. However, KHSAA can only make recommendations; it does not have authority to penalize schools for non-compliance. In 2010, KHSAA worked collaboratively with the General Assembly and the KBE to implement middle school requirements due to concerns about health and safety. Most recently, there has been collaborative legislation to bring athletic opportunities to home schooled students without infringing on the member schools and their students.

There is no general fund appropriation for KHSAA; however, there are annual school dues. Unlike many states, these dues are not sport exclusive. KHSAA's daily operations are sustained predominately on event revenue from state-wide competitions such as from basketball and football tournaments. Other state associations get district and regional event monies. Despite these limited revenue sources, there is not a pressing need for funding right now as KHSAA also gets corporate and private sponsorship. The building housing the KHSAA is owned by the organization, making them debt-free and freeing funds for other purposes. Approximately \$4 million flows through the organization each year, and nearly 90 percent of the school dues every year is remitted to pay for the catastrophic insurance required for event participants and liability insurance.

The KHSAA operational philosophy is not to create events that ensures the absolute best possible field at the state tournament or to ensure that quality of play is the best it can be; rather, the Board of Control and staff strive to ensure that all regions of the state have an opportunity to have competitors experience the state championship and represent their schools, communities, and regions. This may not always result in the absolute best individuals or teams going to the state championship, or even the best quality of play, but it does ensure a quality experience for all athletes.

There are 13 full-time staff, 3 part-time staff (including a custodian), and 4 retired school administrators for the Title IX audit program, resulting in a much smaller organization than many envision. Commissioner Tackett again emphasized that the 280 member schools are the core of the organization. No school has any greater influence or importance than any other school. The 18 members of the Board are diverse by design. There are eight elected by schools (one for every two basketball regions), two elected by schools that must be female, two elected by schools that must be African-American, two elected by schools that must be from non-public schools, and then four appointees by the

Kentucky Department of Education. Currently, the Board has a wide range of diversity among its members' professions as well, including active and retired coaches, active and retired athletic directors, active and retired farmers, superintendents, a guidance counselor, a college professor, a diocese education director, and a car dealer.

Commissioner Tackett also briefly discussed issues regarding the state golf championship. He explained that changes had been made to the procedures for the tournament as a result of the unpredictable weather in fall and problems with students needing to stay longer to complete the rounds of play due to inclement weather delays. The process started by looking at what other states do with their state golf championships. The decision was made to reduce the number of players attending the tournament to 144, which is higher than any other state high school golf championship. However, it was difficult to determine how best to reduce the number of students while not slighting small schools who may only have one golfer. Pace of play was also a serious concern, and depends on rigid enforcement by officials. It was a no-win situation for the Board in terms of satisfying all of the member schools. The format changes were designed to best ensure representation of the entire state in order to satisfy the mission statement of the KHSAA. Commissioner Tackett also said that the format changes were still under consideration and would be discussed at the upcoming KHSAA Board meeting in late July. However, a great majority of schools and others who had provided feedback said they preferred to have the runner-up team from each region eliminated versus moving to a '4 play 4 count' format, which is admittedly a different format from the rest of the golf world.

In closing, Commissioner Tackett said that some ongoing challenges KHSAA faces are in terms of officials and officiating. Members of the General Assembly and others have been looking at making changes to KRS 518.090, assault on sports officials. It was a leading piece of legislation when it was passed, but is now a distant follower in terms of what other states are doing to protect sports officials. There is also a serious lack of certified trainers. Working with Kentucky Athletic Trainers Society and Kentucky Medical Association, as well as members of the General Assembly, KHSAA is trying to address this situation. There are anticipated changes to the tennis state championship tournament format in the next year.

In response to question from Chair Wise, Commissioner Tackett said that the games played in esports tournaments do not involve shooting. However, League of Legends was a topic of concern and has been discussed with Jon Akers and the Center for School Safety. There is an ongoing discussion about whether to continue prohibiting the game or to provide more instruction to schools in order to allow them to make an informed choice.

Responding to questions from Senator Higdon, Commissioner Tackett said there is steadily increasing participation in all sports except football. Football continues to decrease in participation and the KHSAA is looking into promoting it and viable alternatives, including lacrosse. There is particularly strong increase in girls' sports participation. And

there is also steep decline in officials for wrestling and soccer. Recruitment of officials is a difficult situation because of walking the line between being an employer and an independent contractor. However, the student participant pool is increasing, especially for soccer. Senator Higdon added that in addition to school sports being great drop-out prevention, student athletes also make excellent employees.

Regarding coaching questions from Senator Seum, Commissioner Tackett said there is an age requirement, but there is no education requirement in terms of a college degree. There is a background check and some minimal training requirements, but the costs for those are small. For teachers who take on coaching, those are considered extra-duty assignments, and there is limited training required. A lot of authority is granted to local schools to fill their coaching needs.

In response to questions from Representative Tipton regarding safety, Commissioner Tackett said there are not currently any requirements on portable automated external defibrillators outside of what is required in statute. KHSAA worked to facilitate getting AEDs to many schools at a very low cost. There is ongoing work toward getting grants to afford one at every venue, not just in every school. He also said that KHSAA would like to continue working to inform parents and students about the ‘dead period’ between the sports seasons and the importance of preserving it for students’ wellbeing. Finally, Mr. Collins and Commissioner Tackett said it would be a benefit for KHSAA to have subpoena power.

Following comments from Representative Carney, Commissioner Tackett said that Spaulding game ball company, based in Bowling Green, and Whitaker Bank in Lexington were platinum level sponsors. There are a number of other corporate partners including Ted Cook Tire in London, Musco Sports Lighting in Georgetown, Bob Roberts Insurance in Richmond, University of Kentucky Healthcare Orthopedic Center, and many more small and large partners who provide services at low- to no-cost to KHSAA and the partner schools. Representative Carney also said he was glad to work with KHSAA on KRS 518.090 as it is something that would be beneficial to officials and school districts.

In response to a question from Senator Wilson, Commissioner Tackett said that the home school groups were now fully integrated into the KHSAA schedules. There are approximately a dozen teams that have entered into team sport competition, and an even larger number of students participating in track and single-participant sports. This area has taken off in terms of participation, providing excellent opportunities for all the students involved.

Responding to Senator Meredith’s questions, Commissioner Tackett said that concussions and head injury were constantly being studied. The current challenge is lack of a mandatory period of rest for students, largely because there is so much variability in how individuals recover from a head trauma. Education seems to be the most important

piece to reaching parents and students and ensuring that they take head injuries more seriously instead of ‘doc shopping’ until they are cleared to play. He agreed that by and large soccer and cheerleading are the most concussion prone sports and there should be some model guidance coming before the KHSAA Board soon that will be passed on to schools.

In response to questions from Representative Willner, Commissioner Tackett answered that the biggest challenges with Title IX compliance are playing uniforms and equipment which are replaced more often for boys than girls. Additionally, there are fewer opportunities for girls to participate in sports. While there is little KHSAA can do to make schools see problems, as a last resort they do occasionally refer schools with significant inequity to the Office of Civil Rights in Philadelphia to help ensure that compliance issues are taken seriously. Fayette County has had tremendous inequity in terms of softball facilities for several years, and while they are beginning to address this, they are only correcting one field per year. This means that some facilities are five and six years away from being addressed. This may be an area where some policy guidance may be useful.

Responding to questions from Senator Thomas about Amateur Athletic Union (AAU), Commissioner Tackett said that the KHSAA cannot check the grade records of students unless it is part of a transfer eligibility investigation. Manipulation of class has only recently become an issue and does not seem to be a large problem currently in our schools. In response to questions about transgender and cross-gender students, Commissioner Tackett said the KHSAA defers to the local school to determine the student’s gender and then participation is based on that. However, those that are biologically male or identifying as male cannot participate in exclusively female sports in order to protect opportunities for more girls to participate in sport. But there are such a wide variety of sports that all students should be able to find an opportunity to participate.

Opposition to Proposed Changes to State Golf Tournament

Mr. Eric Straub thanked the members for allowing them to be present to share their passion and concerns with the high school golf tournament. He gave brief testimony regarding their attempts to persuade the KHSAA to return to the ‘5 count 4’ format. Ms. Tennyne Ohr added that a ‘4 count 4’ format would potentially run the risk of disqualifying a team should any member become ill or injured before the tournament, as there are also not currently any substitutions allowed. Mr. Kevin Mims added that there were a number of other ways to address pace of play, or reduce the number of students at the state championship, suggesting perhaps instituting district level competition to post-season play.

Responding to questions from Chair Wise, Commissioner Tackett answered that there have been efforts to address pace of play in other ways, but different courses are structured differently, so it is hard to apply the same rules throughout the season. There are also those that refuse to be rigid in enforcing checkpoints or other alternatives. Adding an additional round of post-season play as suggested would eliminate even more students, and

increased participation depends on the viewpoint. There is also an open mind to try this approach and evaluate it afterward to see how it works. They will look into the rules regarding sickness and injury as a separate issue. Currently, the decision to go to 144 players is final, but there is still some opportunity for the Board to return to a '5 play 4 count' structure in their upcoming meeting.

Responding to questions from Representative Riley, Commissioner Tackett said there were no dissenting votes on the matter at the February meeting. Representative Riley also expressed concerns about the illness and injury issue and a desire for substitutions. Commissioner Tackett said that that situation will be addressed after the final format is decided.

Representative Carney made comments regarding the desire to see the sport grow and a desire to see all the parties come together to reach a decision that will address all the needs of athletes.

Representative Bridges also commented that he would like to see opportunities provided to all the students who, as the fifth member of a team, may only get one chance to attend the tournament.

In response to questions from Senator Thomas, Commissioner Tackett said that the addition of more post-season play is something that has been not eliminated, but poses its own significant issues. Specifically that would stand to eliminate more teams and students from outside the higher population triangle, thus going against the KHSAA operational philosophy of ensuring that all regions of the state have an opportunity to experience the state championship.

Chairman Wise again thanked the Commissioner for coming and with no further business, the meeting adjourned at 3:15 p.m.