



MEMORANDUM

To Dr. Tim Mills
Superintendent, Bellevue School District

FROM Rob McKenna and Brian Moran

DATE July 29, 2016

RE Review of the Washington Interscholastic Activities Association (WIAA) Report and KingCo Principal Executive Board (KPEB) Decision

I. Summary

This memorandum discusses (1) how the WIAA investigators' approach to the investigation produced a skewed report; (2) how the KPEB's Decision has given unjustified credence to the WIAA Report as the definitive take on the investigation; and (3) why the investigators' and KPEB's allegations that Bellevue School District (BSD) administrators somehow obstructed the investigation and did not adequately cooperate with it are not supported by evidence either within or outside the Report or Decision.

II. Independent Review of the WIAA Report

We reviewed the WIAA Report, dated March 22, 2016. We also reviewed thousands of pages of documents that the BSD produced upon WIAA's request, along with other relevant materials such as hundreds of emails between BSD and the investigators.

Our review assessed the WIAA investigators' claims that BSD administrators did not cooperate with the WIAA investigation and, at times, interfered with or obstructed it. We find these claims of BSD obstruction and inadequate cooperation to be inaccurate and unfair but, unfortunately, they are repeated by KPEB in its Decision without any independent verification or analysis of the claims.

For reference, we attach an index which categorizes and summarizes allegations that the investigators made in the WIAA Report. In the same index, we comment on each allegation and provide alternative considerations. Reading the Report alongside (1) the underlying evidence; (2) ongoing extensive communications from the investigation; and (3) the guidelines provided for WIAA investigations, our view is that the investigators assumed an advocacy role when they should have maintained one of a neutral fact-finder. We also conclude that any objective, thorough review of the Report's evidence and of the BSD administrators' communications with the investigators

and 10.⁴ We are perhaps most concerned by the Decision's affirmance of KSRC's finding related to Allegation 10. The Report itself made no findings regarding whether BHS had illegally recruited football players. The KSRC, without evidence from the Report, BSD, or BHS, nevertheless concluded BHS had illegally recruited football players. The Decision affirmed the KSRC's conclusion because "BHS has already admitted to violations of the rule which was initially underreported by [BHS]" and that a "failure to cooperate with," and alleged obstruction of, the WIAA investigation somehow supports both a finding that illegal recruiting occurred at BHS *and* further investigation into illegal recruiting is warranted. Decision at 16. We cannot understand how the Decision could affirm otherwise inconclusive illegal recruiting allegations based only on (1) past violations, for which sanctions were already imposed, and (2) an alleged, unproven failure to cooperate with illegal recruiting investigations.

Further, the Decision endorses the Report's theories of BSD and BHS obstruction, lack of cooperation, and failure to investigate prior allegations. *Id.* at 17-20. In our view, the KPEB simply relied on the Report and did not consider that BSD and BHS, as public entities, have additional duties that a statewide interscholastic investigation cannot simply suspend. In perhaps the most radical recommendation from the Decision—that BSD pay for "all of the costs and expenses for the [Report] and the attorneys' fees for KingCo"—the KPEB hit on something important: "This is the most expensive investigation in the history of the WIAA. . . ." *Id.* at 23. This may very well be true. But what drew this investigation out was not an attempt to limit the investigation. Rather, the investigators tried to gain improper and unnecessary access to legally protected information and to students themselves, all without appreciating BSD's and BHS's duties outside of high school sports. BHS and BSD officials, then, tried to accommodate both the investigators' often opaque requests and federal and state laws that prohibit, for example, freely distributing student information to anyone who simply demands it. Despite the effort, the Report, and now the Decision, have unfairly painted BSD and its officials as obstructionist.

IV. Conclusion

The investigators apparently approached their task determined to support their initial hypothesis — that the BHS football program was cheating, and BSD helped. Further, the Report fails to reflect the high level of cooperation and professionalism that BSD and its employees showed during the investigation. Finally, the investigators' conduct, unchecked by the investigative procedures in Appendix 11, yielded a result that shows they abandoned the role of objective and neutral fact finding. The Decision's endorsement of the Report, combined with and the investigators' conduct, compound what we view as an unfair process from the beginning of the investigation.

⁴ Further, the Decision shows less than perfect attention to your appeal by affirming Allegation 8. Specifically, at the hearing and in the appeal letter, BSD admitted that the conduct underlying Allegation 8 occurred, but noted that the relevant rule was not cited. Rather than being a violation of WIAA Rule 27.1.0 (related to illegal recruiting), the conduct is a violation of WIAA Rule 23.1.1 (related to excessive payments to coaches). This is important, because sanctions associated with violations of Rule 27.1.0 are harsher than those associated with Rule 23.1.1 and can result in championship titles being stripped. Nevertheless, the Decision, without addressing your arguments, simply affirmed a violation of Rule 27.1.0.