

**IOWA DEPARTMENT
OF EDUCATION**
Cite as 26 D.o.E. App. Dec. 357)

In re Marissa Malone

Ronald J. Malone,	:	
Appellant,		DIA DOCKET NO. 13DOE001
	:	
vs.		
	:	DECISION
Iowa Girls' High School Athletic Union,		[Admin. Doc. #4766]
Appellee.	:	

A telephone hearing was held on May 16, 2013, before Margaret LaMarche, designated administrative law judge with the Iowa Department of Inspections and Appeals Division of Administrative Hearings, presiding on behalf of Jason Glass, Director of the Iowa Department of Education. The Appellant, Ronald J. Malone, appeared and was self-represented. The Appellee, Iowa Girls' High School Athletic Union [hereinafter, "IGHSAU"] was represented by its Executive Director Mike Dick. An evidentiary hearing was held pursuant to departmental rules found at 281 IAC [Iowa Administrative Code] chapter 6.

The Appellant seeks reversal of a decision that the IGHSAU Board of Directors made on April 12, 2013, finding that Marissa Malone, an eighth-grade student currently enrolled at Mazzuchelli Catholic Junior High School in Dubuque, Iowa, is ineligible to compete in softball at Dubuque Senior High School while still attending Mazzuchelli Catholic Junior High School. The record includes the Notice of Telephone Hearing; Department of Education Acknowledgement of Appeal; Notice of Appeal and Sworn Affidavit of Ronald J. Malone (Exhibit A); and Affidavit Attachments 1-3 (Marked as A-1 to A-3). Exhibit A-1 is nine pages of research submitted by Dr. Malone. Exhibit A-2 is the appeal filed with the IGHSAU on April 5, 2013. Exhibit A-3 is the IGHSAU decision issued on April 12, 2013. The record also includes the testimony of Ronald Malone and Mike Dick.

The Department of Education has jurisdiction to hear athletic appeals pursuant to Iowa Code section 280.13 and 281 IAC 36.17. The administrative law judge finds that she and the Director of the Department of Education lack jurisdiction to resolve the ultimate issue presented by the Appellant, who is challenging the IGHSAU's interpretation of its eighth grade regulations as unfair and discriminatory.

FINDINGS OF FACT

Marissa Malone is currently enrolled as an eighth grade student at Mazzuchelli Catholic Junior High School in Dubuque, Iowa. Mazzuchelli Catholic Junior High School is part of Dubuque's non-public school system. Wahlert High School is Dubuque's non-public high school, but Marissa Malone does not plan to attend Wahlert High School. She will attend Dubuque Senior High School, which is part of Dubuque's public school system.

The last day of school at Mazzuchelli Catholic Junior High School is June 6, 2013. Marissa Malone wants to participate (both in practice and in competition) in ninth grade softball at Dubuque Senior High School. Softball practice started at Dubuque Senior High School on May 6, 2013, and the first softball competition is scheduled for May 20, 2013. The Dubuque Senior High School softball coach informed Marissa that since she was transferring from the non-public school system to the public school system, she could not participate in softball at Dubuque Senior High School until after her last day of junior high school.

Marissa's father, Dr. Ronald Malone, asked the IGHS AU's Executive Director, Mike Dick, to allow Marissa to start practicing with the Dubuque Senior High School softball team on May 6, 2013 rather than waiting for the last day of school on June 6, 2013. Marissa and her father are concerned that if she is not permitted to practice with the team or compete until after June 6, 2013, then one-third of the season will be over. The team will already have been selected and positions will have been assigned.

In 2006, the IGHS AU adopted the following administrative regulation regarding eighth grade eligibility for softball, which went into effect in 2008:

Eighth grade students will be eligible to practice with the softball team on the first allowable practice date and be eligible to play with the high school team on the first allowable game date. This dispensation is provided for 8th graders in softball only since the bulk of the season runs into the summer months. Seventh grade and younger are not permitted to practice or play with the high school team.

(Exhibit A-1, p. 2)

In addition, the 2012-2013 IGHS AU Regulations specify that eighth grade students are eligible to practice (include scrimmages) with the high school team on May 1, 2013 and are eligible to compete on May 20, 2013. Eighth graders may compete on the junior high team, on the high school team, or both. The regulations also provide a limit on the number of games that the student may play on a single calendar day and during the season. (Exhibit A-1, p. 3)

On their face, the IGHSAU regulations appear to permit Marissa to practice and compete with the Dubuque Senior High School team while she is still attending the non-public junior high school. The IGHSAU has interpreted and applied their regulations, however, to allow eighth grade students to play softball with the high school team only if the students are attending eighth grade and high school within the same (public or non-public) school system. If the eighth grade student will be attending high school in a different school system, the student must wait until after the last day of the student's current school to participate (in both practice and competition) on the high school team.

At hearing, Mike Dick explained that the basis for the IGHSAU's interpretation of its eighth grade eligibility regulation is that students are not allowed to be enrolled in two school systems at the same time, with very limited exceptions.¹ Mike Dick denied Dr. Malone's request for Marissa to participate on the Dubuque Senior High School softball team prior to her last day of junior high because her junior high is part of the non-public school system and Dubuque Senior High is part of the public school system. In his opinion, Marissa may not participate in softball at the public high school while still attending the non-public junior high school. Under the IGHSAU's interpretation of its regulation, Marissa is currently eligible to play softball at Wahlert High School.

Dr. Malone appealed Mike Dick's decision to the IGHSAU Board of Directors. The IGHSAU Board of Directors conducted a hearing on April 9, 2013 and issued a written decision affirming the decision of its management on April 12, 2013. The following is a summary of the reasons provided by the IGHSAU Board of Directors' for its decision:

- 281 Iowa Administrative Code 36.15(2)"c" indicates that all students shall be enrolled students of the school in good standing. Marissa is currently enrolled in Mazzuchelli Catholic Junior High School, which is not considered part of the Dubuque Senior school system;
- The normal progression of a student within any school system is elementary into junior high and then into high school of that school system. The IGHSAU policy allows students to make that progression and to begin summer softball at the same time as the high school students within that school system. Marissa is fully eligible to start practicing softball on May 6 at Dubuque Wahlert, which is the high school of her current system;
- All students are eligible at whatever high school they begin their 9th grade year for the first time, but if the student is transferring from one member school to another member school they are not allowed to begin practicing or playing at the new school until the school year is completed at the current school;
- The actual transfer rule, 281 IAC 36.15(3) governs the transfer of a high school student from one member school to another member school and the provisions and penalty imposed. The IGHSAU does not have jurisdiction to change this rule but can make various rulings and decisions on situations not specifically

¹ The three exceptions identified by Mike Dick are: when the eighth grade student attends a school system that does not have a high school, when the eighth grade student's school has a co-op sharing agreement with the high school for that particular sport, and when the eighth grade student's current school district is closing the following year.

- mentioned in the Iowa Administrative Code. The IGHSAU ruling governing when 8th graders choosing to transfer or open enroll to another school system can begin participation in summer softball is one of those decisions. The ruling is based on previous information provided by the Department of Education legal department;
- The Board felt that the management's opinion was consistent with previous rulings in similar circumstances and was consistent with the intent of not being part of two schools at the same time, given that Marissa has the opportunity to participate within the school system that she is currently part of. If she transferred to the Dubuque public school system during her 8th grade school year, she would become eligible immediately to participate in high school softball at the high school designated by the Superintendent of the Dubuque public school district.

(Exhibit A-3) The written decision of the IGHSAU Executive Board informed Dr. Malone that he could file an appeal with the Director of the Department of Education, pursuant to 281 IAC 36.17. The Department of Education acknowledged receipt of the appeal and transmitted it to the Department of Inspections and Appeals-Administrative Hearings Division for an evidentiary hearing.

CONCLUSIONS OF LAW

I. The Department of Education's Jurisdiction to Hear Appeals of Eligibility Decisions Made by the Executive Board of a Registered Organization.

The Iowa Girls' High School Athletic Union (IGHSAU) is an organization that is registered with the Department of Education (Department). 281 IAC 36.2(2). Each registered organization is required to maintain a current file of the following items with the Department: Constitution and bylaws approved by the state board of education, current membership and associate membership lists, organization policies, minutes of all meetings of organization boards, proposed constitution and bylaws amendments or revisions, audit reports, general bulletins, and other information pertinent to clarifying organization administration. 281 IAC 36.3.

Each registered organization has an executive board, which is the governing body authorized under the organization's constitution or bylaws to establish policy for the organization. 281 IAC 36.1. In addition, each governing organization has an executive officer. *Id.*

Registered organizations are required to prescribe and implement the Department's rules for participants in interscholastic athletic competition, which are found at subrules 36.14 and 36.15. 281 IAC 36.14. A student, a parent of a student, or a school may contest most rulings made by an organization's executive officer concerning the student's eligibility to compete, *if* the ruling was based on the Department's rules. The executive board is then required to hold a hearing and issue a written decision. 281 IAC 36.16. The decision of the executive board may be appealed to the Department's director. 281 IAC 36.17.

The IGHSAU decision currently under appeal cites to the Department’s rules under chapter 36 and to the IGHSAU’s own regulations (policies). As pointed out to the parties at the commencement of the appeal hearing, it appeared unclear whether the IGHSAU’s ruling was based on the its application of the Department’s eligibility rules or was based solely or primarily on the IGHSAU’s application of its own regulations. The parties were advised that the Department lacks jurisdiction to review decisions based on IGHSAU policy and may only review eligibility decisions based on the Department’s rules. Following a review of the evidence in this case, including the testimony of the witnesses, it is clear that the IGHSAU’s decision was based on the IGHSAU eighth grade regulations, as those regulations are interpreted and applied by the IGHSAU. The IGHSAU does cite to the Department’s rules as providing the basis for its interpretation of its own regulations.

II. The Department’s Eligibility Rules for Interscholastic Athletic Competition.

The Department of Education (Department) has established rules governing Extracurricular Interscholastic Competition at 281 IAC chapter 36. These rules provide the following relevant definitions:

“*Compete*” means participating in an interscholastic contest or competition and includes dressing in full team uniform for the interscholastic contest or competition as well as participating in pre-game warm-up exercises with team members.

“*Student*” means a person under 20 years of age enrolled in grades 9 through 12. For purposes of these rules, ninth grade begins with the summer *following eighth grade*. The rules contained herein shall apply uniformly to all students.

(emphasis supplied).

281 IAC 36.15(2) includes, in part, the following provisions relating to a student’s academic (referred to in the rules as “scholarship”) eligibility to participate in interscholastic athletic *competition*:

a. All contestants must be enrolled and in good standing in a school that is a member or associate member in good standing of the organization sponsoring the event.

...

c. All contestants shall be enrolled students of the school in good standing...

...

e. A student who meets all other qualifications may be eligible to participate in interscholastic athletics for a maximum of eight consecutive semesters upon entering the ninth grade for the first time. However, a

student who engages in athletics during the summer *following eighth grade* is also eligible to compete during the summer following twelfth grade...

...

g. A student is academically eligible upon entering the ninth grade.

(emphasis added).

The Department's General Transfer rule [281 IAC 36.15(3)], which makes most transfer students ineligible to participate in interscholastic competition at the varsity level for 90 days following their transfer from one school to another, does not apply to students who are entering 9th grade for the first time. Similarly, the Department's Open Enrollment Transfer Rule [281 IAC 36.15(4)], which imposes a 90 day period of ineligibility at the varsity level for students who transfer between public schools through a request for open enrollment, includes an exception for students entering 9th grade for the first time, so long as they did not participate in an interscholastic athletic competition for another school during the summer immediately following eighth grade.

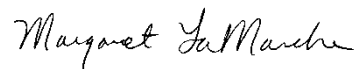
It is inherent in these rules that a student may not be enrolled in two schools at the same time, unless such enrollment is authorized by a specific exception. *See* 281 IAC 36.15(5) (*Eligibility for other enrollment options.*) Pursuant to the Department's rules, all students, regardless of where they attended eighth grade, are eligible to participate in interscholastic competition upon entering 9th grade for the first time. Ninth grade begins with the summer *following eighth grade* for purposes of competing in interscholastic competition. Therefore, under the Department's rules Marissa would not be eligible to engage in interscholastic athletic competition at the high school level until after she has completed the eighth grade. This is true regardless of where Marissa attends the eighth grade. The Department's rules do not address eligibility to participate in practices.

III. Lack of Jurisdiction to Review the IGHSAU's Regulations

It is the IGHSAU's interpretation of its own regulations on Eighth Grade Eligibility that permits some eighth graders (those continuing on to a high school within the same school system as their middle school or junior high school) to participate in softball practice and competition prior to completing the eighth grade. The IGHSAU primarily relied on its interpretation of these regulations when it denied Marissa's request to participate in 9th Grade softball at Dubuque Senior High School while still she was still attending Mazzuchelli Catholic Junior High School. Dr. Malone objects to IGHSAU interpretation of its regulations as unfair, inconsistent with state law, and discriminatory against those students who choose to attend high school in a different school system. The IGHSAU's denial of Marissa's request is not inconsistent with the Department's administrative rules, which allow a student to compete in interscholastic athletics the summer *following* eighth grade. The Department has no jurisdiction, however, to review or reverse the regulations or policies of its registered organizations. Therefore, the Department lacks jurisdiction to decide the ultimate issue presented by this appeal.

DECISION

For the foregoing reasons, the appeal is dismissed for lack of jurisdiction. There are no costs associated with this appeal to be assigned to either party.



Date: 5-21-2013

Margaret LaMarche
Administrative Law Judge

/s/

Date: 5-21-13

Jason Glass, Ed.D., Director
Iowa Department of Education

It is so ordered.