

**IOWA DEPARTMENT
OF EDUCATION**

In re Hunter Drake

Daric & Danyel Drake, Appellants,	:	DIA DOCKET NO. 14DOE001 [DE Admin. Docket #4782]
	:	
vs.	:	DECISION
Iowa High School Athletic Association, Appellee.	:	

This matter was heard telephonically on February 18, 2014, before John M. Priester, designated administrative law judge with the Iowa Department of Inspections and Appeals Division of Administrative Hearings, presiding on behalf of Brad Buck, Director of the Iowa Department of Education. The Appellants, Daric and Danyel Drake, were represented by Keith Meyers, former Superintendent. The Appellee, Iowa High School Athletic Association [hereinafter, "IHSAA"] was represented by attorney Brian Humke. An evidentiary hearing was held pursuant to departmental rules found at 281 IAC [Iowa Administrative Code] chapter 6. Jurisdiction for this appeal is pursuant to Iowa Code section 280.13 and 281 IAC 36.17. The administrative law judge finds that he and the Director of the Department of Education have jurisdiction over the parties and subject matter of this appeal.

The Appellant seeks reversal of a decision that the IHSAA Board of Control made on January 14, 2014, finding that Pleasantville High School student Hunter Drake is ineligible to compete in varsity interscholastic athletics for 90 consecutive school days under the provisions of the open enrollment transfer rule, 281 IAC 36.15(4). The Appellants presented the testimony of Keith Meyers. The IHSAA presented the testimony of its Assistant Executive Director, David Anderson, its Exhibit pages 1-26 and the tape of the hearing before the Board of Control.

FINDINGS OF FACT

Hunter Drake enrolled in the 9th Grade at the Carlisle High School in Carlisle, Iowa for the 2013-2014 school year. Hunter experienced problems with other students during the Fall Semester. An Anti-Bullying and Harassment Form was filled out and the Carlisle School District conducted an investigation of the matter. On November 19, 2013 the Drakes met with Carlisle High School Administration to express their concerns about Hunter's treatment at the school.

On November 21, 2013 the Drakes filled out an Open Enrollment Application for Hunter to open enroll from Carlisle to Pleasantville.

The school district provided a decision on November 22, 2013. The decision states, “the outcome of your complaint was deemed to be founded harassment allegation.” On November 25, 2013 the Carlisle Community School District granted Hunter’s Open Enrollment application.

On December 1, 2013 the Drakes wrote an email to the Iowa High School Athletic Association requesting that Hunter be allowed to immediately participate in varsity sports at his new high school. The request stated:

Considering the circumstances, my wife and I decided that it would be in Hunter’s best interest, physically and mentally, to transfer to a different school. This decision was not based solely on our intuition, but our family physician thought that it would be in Hunter’s best interest as well.

The request was denied on December 9, 2013 pursuant to 281 Iowa Administrative Code (IAC) 36.15(4). The Drakes appealed to the IHSAA Board of Control. On January 14, 2014 the Board also denied the application. The Drakes filed a timely appeal to the Iowa Department of Education.

In the administrative hearing Mr. Meyers testified that a student such as Hunter, who is forced to open enroll to a different school as a result of bullying and harassment, should be eligible to participate in varsity sports immediately. It is the only fair and reasonable interpretation of the law. Mr. Meyers believes that the IHSAA overstepped its bounds by refusing to look at the “good cause” component of the Drakes request.

CONCLUSIONS OF LAW

The Department of Education’s General Transfer rule, 281 IAC 36.15(3), provides in relevant part:

36.15(3) *General transfer rule.* A student who transfers from one member or associate member school to another member or associate member school shall be ineligible to compete in interscholastic athletics for a period of 90 consecutive school days, as defined in 281—subrule 12.1(8), exclusive of summer enrollment, unless one of the exceptions listed in paragraph 36.15(3)“a” applies. The period of ineligibility applies only to varsity level contests and competitions ... In ruling upon the eligibility of transfer students, the executive board shall consider the factors motivating student changes in residency. Unless otherwise provided in these rules, a student intending to establish residency must show that the student is physically present in the district for the purpose of making a home and not solely for school or athletic purposes.

The general transfer rule includes a number of exceptions. An exception found at 281 IAC 36.15(3)"a"(8), provides:

a. Exceptions. The executive officer or executive board shall consider and apply the following exceptions in formally or informally ruling upon the eligibility of a transfer student and may make eligibility contingent upon proof that the student has been in attendance in the new school for at least ten school days:

...

(8) In any transfer situation not provided for elsewhere in this chapter, the executive board shall exercise its administrative authority to make any eligibility ruling which it deems to be fair and reasonable. The executive board shall consider the motivating factors for the student transfer. The determination shall be made in writing with the reasons for the determination clearly delineated.

The IHSAA and the Department of Education have previously reserved this final exception to the general transfer rule for compelling personal circumstances, such as when a student is in danger of immediate and identifiable irreparable harm. The Department has previously held that the general transfer rules require the Board of Control to consider the factors that led up to the residence change and that created the ineligibility. The residence change must occur for the purpose of making a home and not solely for school or athletic purposes. *In re Derek Sears, 25 D.o.E. Dec 15 (2007).*

The Department of Education's Open Enrollment transfer rules provide:

36.15(4) *Open enrollment transfer rule.* A student in grades 9 through 12 whose transfer of schools had occurred due to a request for open enrollment by the student's parent or guardian is ineligible to compete in interscholastic athletics during the first 90 school days of transfer except that a student may participate immediately if the student is entering grade 9 for the first time and did not participate in an interscholastic athletic competition for another school during the summer immediately following eighth grade. The period of ineligibility applies only to varsity level contests and competitions. ("Varsity" means the highest level of competition offered by one school or school district against the highest level of competition offered by an opposing school or school district.) This period of ineligibility does not apply if the student:

- a.* Participates in an athletic activity in the receiving district that is not available in the district of residence; or
- b.* Participates in an athletic activity for which the resident and receiving districts have a cooperative student participation agreement pursuant to rule 36.20(280); or
- c.* Has paid tuition for one or more years to the receiving school district prior to making application for and being granted open enrollment; or

- d.* Has attended in the receiving district for one or more years prior to making application for and being granted open enrollment under a sharing or mutual agreement between the resident and receiving districts; or
- e.* Has been participating in open enrollment and whose parents/guardians move out of their district of residence but exercise either the option of remaining in the original open enrollment district or enrolling in the new district of residence. If the pupil has established athletic eligibility under open enrollment, it is continued despite the parent's or guardian's change in residence; or
- f.* Has not been participating in open enrollment, but utilizes open enrollment to remain in the original district of residence following a change of residence of the student's parent(s). If the pupil has established athletic eligibility, it is continued despite the parent's or guardian's change in residence; or
- g.* Obtains open enrollment due to the dissolution and merger of the former district of residence under Iowa Code subsection 256.11(12); or
- h.* Obtains open enrollment due to the pupil's district of residence entering into a whole-grade sharing agreement on or after July 1, 1990, including the grade in which the pupil would be enrolled at the start of the whole-grade sharing agreement; or
- i.* Participates in open enrollment and the parent/guardian is an active member of the armed forces and resides in permanent housing on government property provided by a branch of the armed services.

The record reveals that Hunter changed schools pursuant to an Open Enrollment Application. Therefore his eligibility will be governed by 281 IAC 36.15(4). The "good cause" language in 281 IAC 36.15(3)(a)(8) cannot be applied to this situation because Hunter's transfer was not a general transfer.

It is clear that Hunter made the decision to transfer schools to avoid the bullying and harassment that he was experiencing at Carlisle High School. However, none of the 9 exceptions that are listed in 281 IAC 36.15(4) allow for Hunter to immediately participate in sports.

Only the Legislature has the power to write statutes and approve administrative rules. The Department can only apply the law that has been written. It would be wholly inappropriate for the Department to apply 281 IAC 36.15(3)(a)(8) to the facts of an open enrollment application.

The Legislature will have to address the problem that the Hunters have raised. It is not the Department's place to change the law that is written, only to apply the law as it is written.

The majority of courts, including the federal courts in Iowa, have held that there is no "right" to participate in interscholastic athletics. *Brands v. Sheldon Community School*,

671 F. Supp. 627 (N.D. Iowa 1987) Therefore, it cannot be argued that a student is harmed legally by his or her inability to compete.

DECISION

For the foregoing reasons, the January 14, 2014 decision of the Board of Control of the Iowa High School Athletic Association that Hunter Drake is ineligible to compete in varsity interscholastic athletics at Pleasantville High School for a period of 90 consecutive school days is **AFFIRMED**. There are no costs associated with this appeal to be assigned to either party.

Date: 02-25 -2014

/s/ _____
John M. Priester
Administrative Law Judge

02-26-2014

Date

/s/ _____
Brad A. Buck, Director
Iowa Department of Education

It is so ordered.