

**IOWA DEPARTMENT OF EDUCATION**

27 DoE App. Dec. 530

*In re Thor L.*

Harris-Lake Park Comm. School District	:	
Appellant,		DIA DOCKET NO. 14DOE004
	:	
v.		
	:	DECISION
Iowa High School Athletic Association,		
Appellee.		

This matter was heard telephonically on October 10, 2014, before Carol J. Greta, designated administrative law judge with the Iowa Department of Inspections and Appeals Division of Administrative Hearings, presiding on behalf of Brad A. Buck, Director of the Iowa Department of Education.

The Appellant, Harris-Lake Park Community School District [hereinafter, “District”], was represented by attorney John L. Sandy. Also appearing for the District were Superintendent Dennis Peters and Athletic Director Ashley Fisher. The Appellee, Iowa High School Athletic Association [hereinafter, “IHSAA”] was represented by attorney Brian Humke. Also appearing for IHSAA were administrators Alan Beste, Brett Nanninga, and Todd Tharp. Student Thor L. was also present, along with his mother, Deborah Elliott.

An evidentiary hearing was held pursuant to departmental rules found at 281—Iowa Administrative Code [IAC] 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 she and the Director of the Department of Education have jurisdiction over the parties and subject matter of this appeal.

The District seeks reversal of a decision that the IHSAA Board of Control [“Board”] made on September 9, 2014, finding that Harris-Lake Park Community School District student Thor L. is ineligible to compete in varsity interscholastic athletics for 90 consecutive school days under the provisions of the general transfer rule, 281—IAC 36.15(3). The District presented the testimony of Thor L. and Ms. Elliott, and a copy of the decree that dissolved the marriage of Thor’s parents, Deborah and Glen. The IHSAA presented no testimony, but offered the following:

- A recording of the hearing before the Board of Control,

- Documents that had been made available to the members of the Board of Control, including a statement of facts, correspondence between the parties, documentation of the employment and health statuses of Thor's father, and a partial transcript from the school in Minnesota Thor had attended, and
- A copy of the decision of the Board of Control signed by Chairperson Tom Keating on September 15, 2014.

All proffered documents and the recording were admitted into the record. Both parties made closing arguments and were given the option to file briefs by 4:30 p.m. on October 13, 2014. The Appellant chose to file a brief; the Appellee stated its citation on the record.

### **FINDINGS OF FACT**

Thor L., who is 16 years old and a high school junior, transferred to the Harris-Lake Park School District from Martin County West High School in Sherburn, Minnesota at the beginning of the 2014-2015 school year. Ms. Elliott, Thor's mother, resides in the Harris-Lake Park District. His father, Glen, resides in Sherburn, Minnesota.

Deborah and Glen divorced in 2005; Thor is the youngest of their three children. Inasmuch as Glen was incarcerated for a drug-related offense when the decree dissolving the marriage was finalized, custody of the three children was awarded to Deborah.

Sometime after he was released from prison, Glen bought and moved into his mother's house in Sherburn. Because he had never really known his father, Thor asked to live with him, and Deborah agreed. No court order was secured to memorialize this change. Thus, Deborah has always been Thor's legal primary custodial parent. Neither of Thor's siblings went to live with Glen. Glen is an alcoholic who suffered an "acute stroke" on January 25, 2014. His employment was terminated on April 30, 2014.

To the extent that his drinking habits changed after his stroke, Glen's drinking only got worse. Finally, on the night of July 1, 2014, Thor told his father that he had had enough to drink that day, reminding him of a recent trip to the hospital that occurred due to Glen's abuse of alcohol. Glen did not take kindly to Thor's intervention, and became violent. The details of the night of July 1 were not discussed by Thor or his mother during the hearing before the IHSAA Board of Control, but the Board did hear that the upshot was that Glen kicked Thor out of his residence. The Board was also aware that Thor spent the night of July 1 with a friend, and returned to Glen's house the next morning to find his clothes in Glen's yard. Thor has been living with his mother ever since.

On behalf of Thor, the District requested that he be allowed to immediately participate in varsity football at Harris-Lake Park High School. Following a hearing on September 9, 2014, the IHSAA Board of Control concluded that no exceptions applied under which Thor could qualify for immediate eligibility to participate in varsity athletics.

In its decision the Board of Control found that “Thor testified that financial issues were part of the reason for the transfer to his mother’s home in Iowa.” The recording of the hearing shows that Thor told the Board that after his stroke, his dad had no income and could barely pay the bills, and Thor never knew if the utilities would be turned off. He was aware that his father had applied for disability benefits, and that these benefits were denied shortly before his father kicked him out of the house. Ms. Elliott told the Board that she had continued to support Thor financially the entire time he lived with his father. She paid for Thor’s driver education, clothes, and food “when his dad spent his money on alcohol.” The undersigned find that Thor did not say that financial issues motivated, in whole or in part, his move to his mother’s residence.

The Board concluded that the “facts and circumstances presented to the Board concerning the transfer do not reach the level that compels the Board to grant immediate eligibility under the exception requested by the Appellant.” Its decision goes on as follows:

Unfortunately the Board and IHSAA staff is at times presented with situations in which a student is in danger of immediate and identifiable irreparable harm. The granting of eligibility under the exception urged by the Appellant in this matter has been consistently reserved for those cases.

In addition, the Board understands that financial hardships may require parents or students to make decisions concerning selecting a school of attendance. However the Department of Education has expressly rejected financial hardship as a basis for granting immediate athletic eligibility to a transfer student. In re Cooper R[.], 22 D.o.E. App. Dec. 242, 245.

The Board believes that the decision of the Director and/or his designee was fair and reasonable. There exists no compelling reason to grant an exception to the General Transfer Rule. Furthermore, students do not have a ‘right’ to participate in interscholastic athletics. Brands v. Sheldon Community School, 671 F.Supp. 627 (N.D. Iowa 1987).

On September 23, 2014, the District perfected a timely appeal of that decision to the Director of the Iowa Department of Education.

## CONCLUSIONS OF LAW

### *Standard of Review*

This appeal is brought pursuant to 281—IAC 36.17, which states that “an appeal may be made ... by giving written notice of the appeal to the state director of education ... The procedures for hearing adopted by the state board of education and found at 281—Chapter 6 shall be applicable, except that the decision of the director is final. Appeals to the executive board and the state director are not contested cases under Iowa Code subsection 17A.2(5).”

“The decision shall be based on the laws of the United States, the state of Iowa and the regulations and policies of the department of education and shall be in the best interest of education.” 281—IAC 6.17(2). This statement admittedly does not provide much guidance. Nor are there any appellate cases in Iowa that shed light on what the proper standard of review should be in these appeals.

In Indiana, which has a transfer rule similar to Iowa’s and where there have been an abundance of court challenges to the rule, the Indiana Supreme Court has determined that its will “review the challenged [Indiana High School Athletic Association] decision for arbitrariness or capriciousness. ‘Arbitrary and capricious’ is a narrow standard of review and the reviewing court may not substitute its judgment for the judgment of the [Association]. The rule or decision will be found to be arbitrary and capricious ‘only where it is willful and unreasonable, without consideration and in disregard of the facts or circumstances in the case, or without some basis which would lead a reasonable and honest person to the same conclusion.’” *Indiana High School Athletic Ass’n, Inc. v. Carlberg by Carlberg*, 694 N.E.2d 222, 233 (Ind. 1997)

Accordingly, the undersigned examine the IHSAA Board of Control’s application of the transfer rule to Thor to see whether the Board abused its discretion. “Abuse of discretion is synonymous with unreasonableness, and a decision is unreasonable when it is based on an erroneous application of law or not based on substantial evidence.” *City of Dubuque v. Iowa Utilities Bd.*, 2013 WL 85807, 4 (Iowa App. 2013), citing *Sioux City Cmty. Sch. Dist. v. Iowa Dep’t of Educ.*, 659 N.W.2d 563, 566 (Iowa 2003).

*Does Thor L. Qualify For Immediate Participation in Varsity Athletics Under Any of the Exceptions To The General Transfer Rule?*

The Iowa Legislature, in Iowa Code § 256.46, directed the State Board of Education to adopt rules that:

...permit a child who does not meet the residence requirements for participation in extracurricular interscholastic contests ... to participate in the contests or competitions immediately if the child is duly enrolled in a school, is otherwise eligible to participate, and meets one of the following circumstances or a similar circumstance: ... the child is living with one of the child’s parents as a result of divorce, separation, death, or other change in the child’s parents’ marital relationship, or pursuant to other court-ordered decree or order of custody... .

The rule for eligibility adopted by the State Board of Education that applies to these facts is the general transfer rule, 281—IAC 36.15(3). The District urges that Thor fits at least one of the following four provisions:

36.15(3) General transfer rule. A student who transfers from a school in another state or country ... to [a] member or associate member school shall be ineligible to compete in [varsity] interscholastic athletics for a

period of 90 consecutive school days... unless one of the exceptions listed in paragraph 36.15(3)“a” applies. ... 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.

a. Exceptions. The executive officer or executive board shall consider and apply the following exceptions...:

...

(3) A student who has attended high school in a district other than where the student’s parent(s) resides, and who subsequently returns to live with the student’s parent(s), becomes immediately eligible in the parent’s resident district.

(4) Pursuant to Iowa Code section 256.46, a student whose residence changes due to any of the following circumstances is immediately eligible provided the student meets all other eligibility requirements in these rules and those set by the school of attendance:

...

8. The child is living with one of the child’s parents as a result of divorce, separation, death, or other change in the child’s parents’ marital relationship, or pursuant to other court-ordered decree or order of custody.

...

(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 exceptions in subparagraphs (3) and (4.8) of paragraph “a” do not apply to this appeal. Subparagraph (3) only applies to situations in which a student has not been residing with either parent and then returns to the home of a parent. For instance, here if both of Thor’s parents had been incarcerated so that he had to live with another relative and then transferred to live with a parent upon the parent’s release from incarceration, immediate varsity eligibility would be granted. The District’s interpretation of that subparagraph would render paragraph (4.8) meaningless.

Subparagraph (4.8) is inapplicable because there is no contemporaneous court order to accompany the change in Thor’s living arrangement from his father’s house to his mother’s house. *See In re Ryan B.*, 25 D.o.E. 216 (2010).

Thus, Thor's reason for transferring does not fall squarely within any of the exceptions listed in 281—IAC 36.15(3)“a”. The Board was correct to review Thor's circumstances in light of the discretionary language found in 281—IAC 36.15(3)“a”(8), the “catchall” subrule.

The District urged the IHSAA to grant Thor immediate eligibility to participate in interscholastic athletics on the grounds that his father kicked him out of the residence they had shared for several years, and Thor had nowhere else to go but to his mother's residence.

The IHSAA asserts that Thor may not be granted immediate eligibility to participate in interscholastic athletics under subrule 36.15(3) because (1) finances cannot be cited as a reason for granting immediate eligibility, (2) there was no compelling reason to grant an exception because there was no danger to Thor of danger of immediate and identifiable irreparable harm, and (3) there is no right recognized in Iowa of a student to participate in interscholastic athletics.

Under the *Brands* case, *supra*, it is absolutely true that Thor has no right to participate in interscholastic sports. The District was not arguing to the contrary. This appeal is not about whether there is a substantive due process right in Iowa to participate in interscholastic sports. This appeal is about whether the facts of Thor's case fit an exception in chapter 36. There is no *specific* exception to be applied here. Accordingly, the General Transfer Rule includes a “catchall” subrule that the IHSAA and its Board are compelled to use when a student's transfer does not fit any of the specific exceptions to the rule. The analysis comes down to whether the Board abused its discretion in deciding that an exception should not be granted to Thor.

The undersigned conclude that the Board did abuse its discretion when it refused to grant an exception to Thor under 281—IAC 36.15(3)“a”(8).

When exercising its discretion under subrule 36.15(3)“a”(8), the Board is still required to consider the motivating factors for the student transfer. However, the Board was mistaken in citing to *In re Cooper R*, *supra*. Certainly it is true that financial motivations are not an extenuating circumstance, but that case is inapplicable here for two reasons. First, the ruling in *Cooper R*. was addressing transfers from nonpublic schools to public schools in which appellants were citing the financial hardship of paying nonpublic tuition. *Cooper R*. has never been applied to a public-to-public transfer, as is the case here. Whether it should be so applied is a question for another day, because secondly, it was a misstatement of the record for the Board to find that finances were a motivating factor in Thor's transfer. Deborah was making sure that Thor was provided for financially. In his letter to the Board, Thor wrote, “If I wasn't kicked out I don't think I could live with my father due to his health and lack of income. I was forced to move to my mom's whether I liked it or not.” The fact is that Thor *was* kicked out of his father's residence. This is not the case in which to determine whether one parent's lack of income is an exceptional circumstance.

It was error for the Board to make a decision based on lack of danger of immediate and identifiable irreparable harm to Thor. No such language is in any part of the General Transfer Rule. The applicable subrule required the Board to render an eligibility ruling “which it deems to be fair and reasonable” after “[considering] the motivating factors for the student transfer.”

Thor L. did not move or transfer schools for financial reasons. He did not move in with his mother to Harris-Lake Park Community School District either for the purpose of participating in athletics or even for the specific purpose of attending school. Thor’s father had precluded Thor from living with him. Thor, a minor, had no choice but to return to the home of his mother, a residence that happens to be within the boundaries of the Harris-Lake Park Community School District. In other words, Thor L. came to Harris-Lake Park for the purpose of making a home. By contrast, *see In re Wilmot W.*, 24 D.o.E. App. Dec. 145 (2006)(student’s choice not to stay with his father in Minnesota); *In re Ryan B.*, 25 D.o.E. App. Dec. 216 (2010)(transfer motivated by athletics); *In re Christian R.*, 26 D.o.E. App. Dec. 121 (2011) (“broken home” rule did not apply because new custodial parent not a resident of Iowa; “catchall” rule did not apply because athletics was a primary motivating factor in the transfer).

The previous appeal decision closest factually to this appeal is *In re Brandon B.*, 22 D.o.E. App. Dec. 130 (2003). Brandon lived in Texas with his father who often traveled overseas, leaving him alone. His mother (his non-custodial parent) was in the same school district in Texas, but Brandon did not want to live with his mother because her live-in boyfriend was a man of “bad habits.” Brandon chose to live with his maternal grandparents in Iowa. The Board found, and the Director agreed (in a decision written by this administrative law judge), that while Brandon’s best interest may have been to live in Iowa, he had a choice in the matter. It was also very pertinent in that decision that Brandon’s little sister was at all times residing with their mother and the mother’s boyfriend, a fact that neutered any contention that life at the mother’s residence was unbearable.

Here, Thor could not remain at his father’s house. His father kicked him out on July 1, and confirmed that decision the very next day by telling Thor’s mother that “none of his kids were going to tell him when to quit drinking.”

The IHSAA and its Board do great things for students in Iowa. Both act in good faith in fulfilling their duties. However, in this appeal, the IHSAA and its Board were incorrect when they applied the General Transfer Rule and determined that Thor is ineligible to participate in varsity interscholastic athletics for a period of 90 days. That decision cannot be supported by the facts, and is therefore an abuse of discretion.

## DECISION

For the foregoing reasons, the September 15, 2014 decision of the Board of Control of the Iowa High School Athletic Association that Thor L. is ineligible to compete in varsity interscholastic athletics at Harris-Lake Park High School for a period of 90 consecutive

school days is **REVERSED**. There are no costs associated with this appeal to be assigned to either party.

Any allegation not specifically addressed in this decision is either incorporated into an allegation that is specifically addressed or is overruled. Any legal contention not specifically addressed is either addressed by implication in legal decision contained herein or is deemed to be without merit. Any matter considered a finding of fact that is more appropriately considered a conclusion of law shall be so considered. Any matter considered a conclusion of law that is more appropriately considered a finding of act shall be so considered.

Dated this 14<sup>th</sup> day of October, 2014.



Carol J. Greta  
Administrative Law Judge

It is so ordered.

10/14/14  
Date

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