

IOWA DEPARTMENT OF EDUCATION

(Cite as 27 DoE App. Dec. 559)

<p>KALEY WHITE-CILUFFO,</p> <p style="text-align: center;">Appellant,</p> <p>v.</p> <p>IOWA GIRLS' HIGH SCHOOL ATHLETIC UNION (IGHSAU),</p> <p style="text-align: center;">Appellee.</p>	<p style="text-align: right;">Docket No. 14DOE005</p> <p style="text-align: center;">DECISION</p> <p style="text-align: right;">Admin. Doc. No. 4795</p>
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This matter was heard telephonically on November 19, 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 A. Buck, Director of the Iowa Department of Education.

The Appellant, Kaley White-Ciluffo [hereinafter, "White-Ciluffo"], was represented by attorneys Howard L. Jacobs and Alan O. Olson. Also appearing with White-Ciluffo was her mother, Michelle White. The Appellee, Iowa Girls' High School Athletic Union [hereinafter, "IGHSAU"] was represented by attorney Brad C. Epperly. Also appearing for IGHSAU was administrator Mike Dick. Pleasant Valley High School Athletic Director D'Anne Kroemer was also present on the line.

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 he and the Director of the Department of Education have jurisdiction over the parties and subject matter of this appeal.

White-Ciluffo seeks reversal of a decision that the IGHSAU Board of Directors ["Board"] made on September 12, 2014, finding that White-Ciluffo ineligible to compete in all sanctioned sports for the remainder of her high school career. White-Ciluffo was deemed ineligible for the 2014 and 2015 track season. White-Ciluffo's results from the 2014 High School Girls Track and Field season were invalidated and as a result of the loss of these points Pleasant Valley High School was stripped of its State Track and Field championship.

IGHSAU presented no testimony, but offered the record of the appeal as evidence; Bates stamped pages 001-077. White-Ciluffo testified on her own behalf and offered exhibits A-D into evidence. All proffered documents were admitted into the record.

FINDINGS OF FACT

The parties filed a Joint Stipulation of Undisputed Facts that was accepted. The Stipulation consists of:

1. During the 2013-2014 school year, Kaley White-Ciluffo did not participate in high school cross-country. She did not compete for any Pleasant Valley High School team during the 2013-2014 school year until the start of the Iowa high school indoor track & field season.

2. On February 8, 2014, prior to the start of the Iowa high school indoor track & field season, Kaley White-Ciluffo participated in the Keck Invitational at Illinois Wesleyan University. Kaley competed in the 1 mile race against college athletes representing their respective schools. She was entered in the meet as “Kayle Ciluffo.” (IGHSAU 15-16).

3. On February 27, 2014, prior to the start of the Iowa high school indoor track & field season, a meeting took place between Kaley, her mother Michelle White, Co-Head Girls Track Coach Jane Wheeler (“Coach J. Wheeler”) and Associate Principal for Activities at Pleasant Valley High School, D’Anne Kroemer. At this meeting Ms. Kroemer discussed Kaley’s eligibility to participate in non-high school sponsored track events with Ms. White and Kaley. Ms. Kroemer provided Ms. White and Kaley a copy of Iowa Code Scholarship Rule 36.15(2)(h), and the College Tryouts/Participation Against College and the PVHS Non-School Team Participation Contract. Ms. Kroemer explained to Kaley and Ms. White that Iowa high school athletes cannot participate in events against collegiate athletes who are representing their collegiate institution. Neither Kaley nor Ms. White said anything about the fact that Kaley had participated in the meet sponsored by Illinois Wesleyan on February 8, 2014

4. On February 28, 2014, Ms. Kroemer followed up the meeting by sending an email summarizing these points to Ms. White and Kaley and copied Kaley’s coaches Jane Wheeler and Kenny Wheeler. Ms. Kroemer stated in the email:

“If there is a meet Kaley would like to participate in, please provide me the meet details – name of event, location, contact information (email/phone number) for the meet director, etc.. Coach Wheeler and I would both need to sign the Non-School Participation Contract prior to the event...I want to make sure Kaley’s best interest is protected and I [sic] her high school and collegiate eligibility are not jeopardized.” (IGHSAU 4).

5. On March 4, 2014, Ms. White replied to Ms. Kroemer’s February 28 email acknowledging the meeting and thanking Kroemer for providing the as-mentioned forms and information. (IGHSAU 5).

6. On April 5, 2014, Kaley participated in the Sam Howell Invitational at Princeton University. Kaley ran the 800 meter race, where she was placed in Heat 2, and as a result competed against college athletes representing their respective schools. In the four sections of the Women’s 800 meters at the Sam Howell Invitational, the runners listed with a collegiate institution next to their names in IGHSAU 047 in the Record were representing collegiate institutions; while the runners listed without any collegiate institution next to their names in IGHSAU 047 in the Record were not representing any collegiate institutions. She was entered in the meet as “Kayle White.” Neither Kaley nor Ms. White contacted either one of her coaches or Ms. Kroemer about participating in the event. (IGHSAU 17-18).

7. On June 7, 2014, Kaley participated in the NJ International at Colts Neck High School against two college athletes representing their respective schools. Kaley ran the 800 meter race and was entered in the meet as “Kaley Ciluffo.” She finished in fourth place, behind 3 athletes competing “unattached” and ahead of the two athletes competing for their respective schools. The two athletes competing for their respective schools ran in different heats from Kaley. Neither Kaley nor Ms. White contacted either one of her coaches or Ms. Kroemer about participating in the event. (IGHSAU 19-20).

8. On June 23, 2014, Co-Coach Kenny Wheeler (“Coach K. Wheeler”) received an email containing links to a blog “Track Blog.” Coach K. Wheeler contacted Ms. Kroemer immediately but was unable to speak with her until the morning of June 24, 2014.

9. On June 25, 2014, Ms. Kroemer, along with Kaley’s coaches met with Ms. White to discuss their findings that showed Kaley had participated in several events featuring collegiate athletes. Ms. White denied any knowledge of Kaley’s participation in the April 5, 2014 meet at Princeton in New Jersey.

10. On June 25, 2014, Pleasant Valley School contacted the Iowa Girls High School Athletic Union (“IGHSAU”) to self-report the violations it had discovered. The following day, in a letter dated June 25, 2014, the School submitted information and documentation regarding the matter. (IGHSAU 1-2).

11. On June 26, 2014, Ms. White emailed Ms. Kroemer and admitted that she did know about the April 5, 2014 (sic) when she met with Ms. Kroemer and the Coaches the previous day on June 25, 2014. (IGHSAU 9).

12. On July 7, 2014, Director Dick sent an informal email to Ms. Kroemer notifying her that Kaley’s participation in the reported events made her ineligible for the entire 2014 season and the 2015 season. (IGHSAU 21).

13. On July 10, 2014, Director Dick sent a formal letter to Ms. Kroemer confirming IGHSAU’s position that Kaley’s participation in three reported events made her ineligible to participate in the High School Girls Track and Field 2014 season. (IGHSAU 10).

14. On July 10, 2014, Pleasant Valley Schools responded to Director Dick’s letter of the same date, requesting to appear before the Executive Board. The School did not dispute the ineligibility ruling of Kaley, and stated that it intended to make Kaley ineligible for all sanctioned sports for the remainder of her high school career based on the actions of Kaley and Ms. White. The School did subsequently make her ineligible for all sports and this was not appealed by Kaley or Ms. White. (IGHSAU 11-12).

15. On July 14, 2014, Ms. White emailed Director Dick to express her position that Kaley had simply made an honest mistake and requested the entire team not be punished. Ms. White states in the email that the code was broken. (IGHSAU 10).

16. On July 25, 2014, Ms. Kroemer and Dr. James Spelhaug, the Superintendent for the Pleasant Valley School District, came before the Board of Directors for the IGHSAU to contest the ruling by Director Dick. The School did not dispute the ineligibility ruling by Director Dick, but only sought leniency for the School and the other athletes. Ms. White was notified prior to the hearing and afforded an opportunity for her and Kaley to appear and participate, but they declined to do so.

17. On July 27, 2014, Director Dick sent a letter to Ms. Kroemer and Dr. Spelhaug notifying them of the decision of the Board in upholding the ineligibility ruling and the consequences to the School for using an ineligible athlete. (IGHSAU 22).

White-Ciluffo testified in the hearing that she ran in the United States Track and Field Junior

National Championships in June of 2013. There were college runners in this meet. Her school was aware that she ran in this event. She did not qualify to represent the United States in the international meet.

White-Ciluffo testified that she had conducted research on the internet and she was under the belief that if the meet was not scored, then she could run against college runners representing their schools. She never confirmed this online research with her high school coach or her athletic director.

CONCLUSIONS OF LAW

Standing Issue

The record is unclear as to whether White-Ciluffo has standing in this appeal. Paragraph 15 in the Joint Stipulation of Undisputed Facts indicates that White-Ciluffo failed to appear before the Board of Directors for the IGHS AU meeting to contest the ruling by Director Dick. Since White-Ciluffo failed to appear and challenge Dick's ruling, it is unclear as to whether she is properly considered a "claimant" under 281 IAC 36.17 "Appeals to Director."

However, since the issue was not raised in this appeal, and the record is somewhat murky on the proceedings below, White-Ciluffo will be assumed to have standing and the merits of the appeal shall be addressed.

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 IAC 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).

The undersigned must examine the IGHS AU Board of Control's application of the scholarship rule 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).

The Scholarship Rule

The administrative rule at the heart of this appeal is found in 281 IAC 36.15, "Eligibility Requirements." This rule is part of the Department of Education's regulations. The rule provides:

A student is not eligible to participate in an interscholastic sport if the student has, in that same sport, participated in a contest with or against, or trained with, a National Collegiate Athletic Association (NCAA), National Junior College Athletic Association (NJCAA), National Association of Intercollegiate Athletics (NAIA), or other collegiate governing organization's sanctioned team. A student may not participate with or against high school graduates if the graduates represent a collegiate institution or if the event is sanctioned or sponsored by a collegiate institution. Nothing in this subrule shall preclude a student from participating in a one-time tryout with or against members of a college team with permission from the member school's administration and the respective collegiate institution's athletic administration.

281 IAC 36.15(2)(h)

The Board found in its September 12, 2014 ruling that:

There is no question that Kaley violated 36.15(2)(h). The February 8, 2014 and April 5, 2014 meets were track meets where she competed against college athletes representing their teams and sponsored by the college. Competing in the June 7, 2014 meet was also a violation of the rule in competing against college athletes representing their schools. Neither Kaley nor Michelle dispute that this occurred on these dates.

Constitutional Arguments

White-Ciluffo raises a variety of Constitutional arguments to attack the decision of the Board. White-Ciluffo alleges violation of the Due Process Clause (both procedural and substantive Due Process claims) and a violation of the Equal Protection Clause.

The undersigned does not have the authority to rule on the constitutional validity of a statute or administrative rule. *Salsbury Laboratories v. Iowa Department of Environmental Quality*, 276 N.W.2d 830, 836 (Iowa 1979). The administrative adjudicator, however, may receive evidence on constitutional issues to preserve the issue for appellate review. *Chauffeurs, Teamsters and Helpers Local No. 238 v. Iowa Civil Rights Commission*, 394 N.W.2d 375, 384 (Iowa 1986).

The issues have hereby been raised and preserved for review by the District Court and the Iowa Supreme Court. It would not benefit either side to do an exhaustive analysis of the Constitutional claims if this decision does not have the authority to rule on them. That being said, the undersigned believe that the *Brands v. Sheldon Community School*, 671 F.Supp. 627 (N.D. Iowa 1987) does shut the door to the Constitutional claims raised in this appeal.

Application of Scholarship Rule

White-Ciluffo ran in the Keck Invitational track meet on February 8, 2014, at Illinois Wesleyan University, in Bloomington, Illinois. She ran in the 1 Mile Run and she finished in first place. She beat college runners from such schools as Loras College, Illinois State, Washington University and Monmouth College. This was a scored meet. Participation in this meet, at a

University-sponsored track meet against college runners representing their schools, clearly violated 281 IAC 36.15(2)(h).

At this point, if a charge of violating 281 IAC 36.15(2)(h) were filed, White-Ciluffo could have argued that she was unaware of the rule and the violation was an honest mistake. However, after the meeting the Pleasant Valley coaches and Athletic Director had with White-Ciluffo on February 27, 2014 a defense of ignorance was no longer available. The Pleasant Valley officials explained the restrictions for competition that the Iowa Administrative rules impose. They provided a copy of the rules. They told her that if White-Ciluffo was contemplating running in a questionable meet then she was to provide the details to her coach and Athletic Director and they would have to sign off on her participation.

Just a few short weeks later, on April 5, 2014, White-Ciluffo participated in the Sam Howell Invitational at Princeton University, in Princeton, New Jersey. In Event 11, Women 800 Meter Run, White-Ciluffo was placed in Section 2. She finished first in this section ahead of nine runners from mostly Ivy League schools. This was a meet sponsored by Princeton University where other runners in the 800 Meter Run were women representing their respective universities. This was a clear violation of 281 IAC 36.15(2)(h).

Lastly, White-Ciluffo participated in the 28th New Jersey International Meet on June 7, 2014 in Colts Neck, New Jersey. White-Ciluffo finished fourth behind three unattached runners and ahead of two runners who were running for Penn University. The two Penn runners were assigned to heat #2 whereas White-Ciluffo was in heat #1.

White-Ciluffo argued that because she was in another heat, she did not run against the runners who were representing their schools. This is a distinction without a difference.

The rule states that “[a] student may not participate with or against high school graduates if the graduates represent a collegiate institution or if the event is sanctioned or sponsored by a collegiate institution.” 281 IAC 36.15(2)(h). When an athlete signs up for an event, they are participating with or against all the other athletes who have registered for the event. Awards are not given for finishing in a particular order in a heat, they are given to the fastest times when the heats are combined. Thus, an athlete is running against other runners who are in all the heats, not just the other runners who toe the line in that particular heat.

Since White-Ciluffo ran against two Penn University athletes in Event 11 at the New Jersey International Meet, she violated 281 IAC 36.15(2)(h).

Sanction to be imposed

White-Ciluffo is a very gifted runner. Her high school coaches recognized that and wanted to protect her high school eligibility. To further this goal they met with White-Ciluffo, White-Ciluffo's mother, and the Athletic Director. The rules were explained to her, a copy of the rules were given to her, and her mother acknowledged via email shortly thereafter that they understood the rules. If White-Ciluffo had any questions she was encouraged to contact her coaches or her Athletic Director.

White-Ciluffo ran in two meets against college-aged runners representing their schools on April 5th and June 7, 2014. There can be no claim to ignorance. White-Ciluffo was told the rules. She violated the rules. The Board's decision to find White-Ciluffo ineligible for the remainder of her high school career was appropriate in light of the Stipulated Facts.

This decision is not issued lightly. However, rules are for all athletes- for those gifted with talent and for others gifted with the desire to compete. For White-Ciluffo to violate the rules after the rules were explained to her justifies this sanction.

DECISION

For the foregoing reasons, the September 12, 2014 decision of the Board of Directors of the Iowa Girls' High School Athletic Union that found Kaley White-Ciluffo ineligible to compete in varsity interscholastic athletics is **AFFIRMED**. 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 10th day of December, 2014.



John M. Priester
Administrative Law Judge

It is so ordered.

12/10/2014
Date

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

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