

**IOWA DEPARTMENT
OF EDUCATION**
(Cite as 26 D.o.E. App. Dec. 121)

Tyler R., on behalf of, Christian R., Appellants,	:	DIA DOCKET NO. 11DOE003 [4733]
vs.	:	DECISION
Iowa High School Athletic Association, Appellee.	:	

This matter was heard telephonically on October 17, 2011, before John M. Priester, designated administrative law judge with the Iowa Department of Inspections and Appeals-Division of Administrative Hearings, presiding on behalf of Dr. Jason Glass, Director of the Iowa Department of Education [hereinafter, "Department"].

The Appellants, Tyler and Christian R., were represented by Attorney Jon J. Puk. 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 Appellants seek reversal of a decision that the IHSAA Board of Control made on September 6, 2011, finding that Christian R. 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). Tyler R. testified on his son's behalf in the hearing. The IHSAA presented the testimony of Richard Wulkow, Executive Director of the IHSAA; David Anderson, Assistant Executive Director of the IHSAA; and the IHSAA exhibits.

FINDINGS OF FACT

Christian R. is a sophomore student who enjoys playing, and is very talented at, football. As a freshman he played on the varsity team at Daniel J. Gross Catholic High School in Bellevue, Nebraska. Christian evidently has a scholarship offer to play football at Montana State University once he graduates from high school.

Christian had a bad experience playing football for Gross High School. Before games started he suffered a "blindside" hit by another player in practice. The hit resulted in Christian sustaining a concussion. This resulted in his missing a few games and weeks of practice. Christian believes that the hit was intentional.

After the hit and resulting concussion, talk of the hit was exchanged on social media sites such as Facebook. Christian was being bullied at school and on-line.

Christian felt that he never became a member of the football team at Gross High School. His grades suffered and he experienced emotional problems. He sought the help of a therapist to deal with his problems.

Christian's father tried to address the problem with Gross' football coach. This, however, did not ultimately alleviate the problem.

In the summer of 2011 Christian attended a football camp at Creighton Prep in Omaha, Nebraska. He experienced the same ostracism by his teammates when he came to the camp. It was at this point that Christian and his father determined that he needed to leave Gross High School.

Christian's parents divorced in 1997. He lived with his mother in Springfield, Nebraska until recently. This was changed recently when a Nebraska Judge signed a Stipulated Custody Modification Order on August 16, 2011. That Order changed custody for Christian to his father Tyler who lives in Omaha, Nebraska. Christian was ordered to attend St. Albert's High School in Council Bluffs, Iowa. The August 16, 2011 Order has not been domesticated in Iowa.

At all times the Appellants Christian and Tyler have been residents of the state of Nebraska.

Tyler petitioned the IHSAA to allow Christian to play varsity football without having to sit out the 90-days. The petition was denied and Christian and his father then appealed that decision to the Board of Control. After reviewing the matter the Board of Control denied the appeal after the August 30, 2011 meeting.

The denial was based upon the fact that the Board found that the rule should not be waived for a non-resident student transferring into Iowa and that there was no compelling reason to grant an exception to the general transfer rule. Christian and his father filed a timely appeal of this decision.

In the hearing Tyler outlined the chronology of Christian's problems at Gross High School and how well he is doing after transferring to St. Albert's. Tyler believes that the 90-day rule should be waived due to the extenuating circumstances in this case considering the physical and psychological abuse Christian suffered while at Gross High School.

CONCLUSIONS OF LAW

The Iowa State Board of Education has adopted rules regarding student interscholastic eligibility, pursuant to Iowa Code section 280.13. The rules are found at 281 IAC chapter 36, and an intergovernmental agency agreement allows the IHSAA to interpret and enforce these rules, subject to appeal to the Director of the Department of Education. See 281 IAC 36.17.

The general transfer rule, 281 IAC 36.15(3), states in pertinent part as follows:

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... 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.

There are eight exceptions listed in the general transfer rule, the two that are the basis of the Appellants' appeal are as follows:

- (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:
 1. Adoption.
 2. Placement in foster or shelter care.
 3. Participation in a foreign exchange program, as evidenced by a J-1 visa issued by the United States government, unless the student attends the school primarily for athletic purposes.
 4. Placement in a juvenile correction facility.
 5. Participation in a substance abuse program.
 6. Participation in a mental health program.
 7. Court decree that the student is a ward of the state or of the court.
 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.

281 IAC 36.15(3)(a).

The Board ruled that neither Christian nor his parents are residents of the state of Iowa. "The Association has consistently required that non-resident students

transferring to IHSAA member schools be subject to the 90 day ineligibility period." (emphasis in original)

The exceptions Christian and Tyler are requesting to be applied are the "broken home" rule (281 IAC 36.15(3)(a)(4)(8) and the "catchall exception" rule (281 IAC 36.15(3)(a)(8) for what is "fair and reasonable." The Appellants are requesting an exception to the 90 day ineligibility ruling because the transfer from Gross High School to St. Albert's High School was based upon the physical and emotional mistreatment that Christian was receiving from the other football players at Gross High School.

The IHSAA argued that jurisdictionally the Appellants' case fails because the Order signed by the Nebraska Judge on September 6, 2011 has not been domesticated in Iowa. Without being properly domesticated, the Nebraska Order has no force and effect in Iowa.

While this jurisdictional argument has merit, to rule against the Appellants on that ground would be putting form over substance. The Order could be readily domesticated and the matter would then have to be relitigated. To foster judicial economy the merits of the case shall be address.

The Department has not approved an exception for a non-resident student athlete who transfers into an IHSAA school. The IHSAA points to the definition of "resident" found in the School Attendance and Tuition Chapter 282. That definition provides that "'resident' means a person who is physically present in a district, whose residence has not been established in another district by operation of law, and who meets any of the following conditions . . . a. Is in the district for the purpose of making a home and not solely for school purposes." Iowa Code § 262.1 (School Age) and 262.6 (Tuition).

St. Albert's Catholic School's website indicates that "St. Albert Catholic Schools in Council Bluffs, Iowa serves Southwest Iowa and Eastern Nebraska as a Christian School alternative to Public Schools." (IHSAA – Ray 000031). The Appellants' argue that Christian lives within the district for St. Albert's because the school's district encompasses Eastern Nebraska.

The Department's administrative rules define attendance boundaries with respect to extracurricular interscholastic activities. The rules provide that:

The attendance boundary of each school that is party to the agreement is contiguous to or contained within the attendance boundary of one of the other schools, unless the activity is not offered at any school contiguous to the party district, or all schools that are contiguous refuse to negotiate an agreement with the party district, in which case the contiguous requirement may be waived by the applicable governing organization. For the purposes of this rule, a nonpublic school member will utilize the attendance boundaries of the public school in which its attendance center is located;

281 IAC 36.20(2)

From this definition it is clear that St. Albert's boundaries are fixed by the attendance boundaries of the public schools in Council Bluffs, Iowa. Thus, Christian does not live within the boundaries of St. Albert.

A reading of all the applicable administrative rules leads one to the clear determination that if a student's residence is changed by an outside decision-adoption, placement in a mental health facility, placement in a drug treatment facility, or changing residents because of parental divorce, and that change lands the student in an Iowa school district they are immediately eligible for varsity level athletics.

If the student ends up in an Iowa school because of a choice, then the exceptions listed in 281 36.15(3)(a)(4) do not apply and the "catch all" rule must be analyzed. Since Christian's placement at St. Albert's was a choice made by the attorneys and ratified by the Nebraska Judge, his invocation of the "broken home" rule is found to be without merit.

In the "catch all" rule the Board attempts to determine the student's motivating factor in transferring schools and makes the determination as to what is "fair and reasonable." 281 IAC 36.15(a)(8).

The undersigned agrees with the determination made by the Board of Control. The motivating factor to Christian's transfer was for him to find a football team that accepted him.

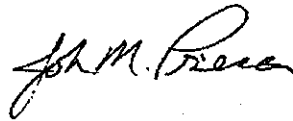
The undersigned finds that the Appellants have not established a valid basis to waive the requirements of the General Transfer Rule. Issues regarding

acceptance on a team do not constitute a valid reason to waive the requirements of the General Transfer Rule.

DECISION

For the foregoing reasons, the September 6, 2011 decision of the Board of Control of the Iowa High School Athletic Association that Christian R. is ineligible to compete in varsity interscholastic athletics at St. Albert's Catholic 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.

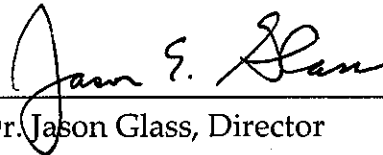
It is so ordered.



John M. Priester
Administrative Law Judge

October 21st 2011

Date



Dr. Jason Glass, Director
Iowa Department of Education

Date