

**IOWA DEPARTMENT  
OF EDUCATION**  
(Cite as 25 D.o.E. App. Dec. 216)

---

Sara Riley, Ryan C. Brown, Appellants,	:	DIA DOCKET NO. 09DOE005 [DE App. Dec. 4706]
vs.	:	DECISION
Iowa High School Athletic Association, Appellee.	:	

---

This matter came on for an in-person hearing on January 12, 2010, before John M. Priester, designated administrative law judge with the Iowa Department of Inspections and Appeals-Division of Administrative Hearings, presiding on behalf of Judy A. Jeffrey, Director of the Iowa Department of Education [hereinafter, "Department"].

The Appellants, Sara Riley and Ryan C. Brown, were represented by Attorney Sara Riley. 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 December 4, 2009, finding that Ryan Brown 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).

Both Ms. Riley and Ryan testified on Ryan's behalf in the hearing. Appellants' exhibits 1-11 were admitted into the record. The IHSAA presented the testimony of its Executive Director, Richard Wulkow; Tom Keating, Xavier High School Principal; and IHSAA exhibits A-H.

## FINDINGS OF FACT

The facts in this appeal are generally not in dispute, and the Findings of Fact in the Board of Control's decision concisely summarize the facts. Those Findings, with minor alterations, are as follows:

1. Ryan Brown is the son of Sara Riley and Charles Brown. Ms. Riley resides in Cedar Rapids, Iowa and Mr. Brown resides in the state of Oregon.
2. Ms. Riley and Mr. Brown are divorced, the divorce being finalized in May of 1997. The court file in the divorce has been sealed by court order, so the divorce decree was not able to be made apart of the file. Ms. Riley was granted custody of the three children.
3. Ryan attended Xavier High School prior to the 2009-2010 school year.
4. Ryan was involved in many activities at Xavier, including but not limited to SADD, theatre and wrestling.
5. Early in the 2009-2010 school year, Ryan believed that he was being unfairly singled out by the Xavier administration and that false statements were made by certain vice principals and staff members concerning him. Ryan's mother also believed that this was occurring.
6. In September of 2009, Ryan and his mother made the decision that it would be best for him to transfer to Washington High School in Cedar Rapids. Ryan's sister currently attends Cedar Rapids Washington. This was Ms. Riley's preference. Ryan's choice was to go live in Oregon with his father, but initially Ms. Riley was very resistant to this arrangement.
7. Ms. Riley and Ryan were aware of the eligibility transfer rules and wished to effectuate the transfer on September 14, 2009 so as to allow Ryan to be eligible at Washington to attempt to qualify for the Iowa High School State Wrestling Tournament. They were aware that the timing would make him ineligible on the varsity level for the dual season but he would become eligible to compete in order to attempt to reach the State tournament.
8. Ryan was also scheduled to perform in the Xavier Theatre production of the "Fantasticks" which was scheduled to begin on September 17, 2009. He had no understudy for his part.
9. Ms. Riley and/or Ryan requested that Ryan be allowed to transfer to Washington on September 14, 2009 but still perform his part in the Xavier Theatre production after that date.
10. That request was denied by the Xavier Administration.

11. Ryan and/or Ms. Riley informed the Xavier Administration that Ryan would be moving to Oregon to live with his grandmother and attend High School in Beaverton, Oregon. At a later point, it was communicated that he would be living with his father.
12. Ryan did not withdraw from Xavier on September 14, 2009 and he performed in the Xavier production as scheduled.
13. Ryan went to Beaverton, Oregon on September 21, 2009, and registered and enrolled at Southridge High School.
14. A transcript was provided to the IHSAA showing that Ryan was "present" at Southridge High School for three days. Ryan testified that he was present for four days.
15. Ryan testified that things did not go well at his father's home. Ryan related that his father began drinking heavily, locked Ryan out of his house, and that Ryan wanted to return to Iowa. It is unclear how many nights he actually resided with his father as he did stay at a relative's home for at least one night.
16. Materials submitted to the Board indicate that on Thursday, September 25, 2009 Ryan asked the Southridge High School Administration "to prepare the necessary papers for him to withdraw from school."
17. After Ms. Riley purchased a one-way plane ticket, Ryan returned to Iowa on September 28, 2009 and immediately enrolled at Cedar Rapids Washington High School on September 29, 2009.
18. Ms. Riley sought a ruling from the Executive Director of the Iowa High School Athletic Association. Ryan was ruled ineligible based on the general transfer rule.
19. Ms. Riley appealed to the Board of Control and cites Iowa Code section 256.46 in support of her appeal.
20. The Board of Control denied the appeal on December 4, 2009. Ms. Riley filed a timely appeal.
21. In the contested case, Ms. Riley's position remains that her son's change in residence to Oregon to live with his father, and then his return to Iowa to live with his mother, makes him immediately eligible for varsity participation under Iowa Code section 256.46. It is the Appellants' position that pursuant to Iowa Code section 256.46, as a child of divorced parents, Ryan has a statutory right to immediate eligibility at any time Ryan moves between his parents' homes.

## CONCLUSIONS OF LAW

The Iowa Legislature directed the Department to adopt rules that:

[p]ermit a child who does not meet the residency 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 similar situations: . . . 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 . . .

Iowa Code § 256.46.

The Department has adopted rules regarding student interscholastic eligibility, pursuant to Iowa Code section 256.46. 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 on the eligibility of transfer students, the executive board shall consider the factors motivating student changes in residency. . . .

There are eight exceptions listed in the general transfer rule, the basis of the Appellants' appeal is 218 IAC 36.15(3)(a)(4)(8). That rule provides 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:

...

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

The Appellants' position is that Iowa Code section 256.46 gives Ryan immediate eligibility. The language relied upon is the provision that allows immediate eligibility if "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." Iowa Code § 256.46. The Appellants argue that the administrative rule promulgated by the Department to implement this code section is *ultra vires*, and the code section should govern the appeal and not the administrative rule.

Administrative rules "must not exceed or limit the scope of the authority granted by the enabling legislation." *Meredith v. Iowa Dept. of Transp.*, 648 N.W.2d 109, 117 (Iowa 2002). In the instant case, the enabling legislation is found in Iowa Code section 256.46 and quoted above. That enabling legislation directs the Department to adopt rules to cover situations where students have been affected by "divorce, separation, death, or other change in the child's parents' marital relationship, or pursuant to other court-ordered decree or order of custody." Iowa Code § 256.46. Administrative rule 281 IAC 36.15(3)(a) was promulgated in response to the direction from the Legislature.

The Iowa Supreme Court gives administrative rules "the force and affect of law as long as they are 'reasonable and consistent with legislative enactments.'" *Greenwood Manor v. Dept. of Public Health*, 641 N.W.2d 823, 835 (Iowa 2002)(citations omitted).

The undersigned finds that administrative rule 281 IAC 36.15(3)(a)(8) is reasonable and consistent with the legislative enactments found in Iowa Code section 256.46. The Department did not act in an unreasonable manner in the

promulgation of the administrative rule. Therefore, administrative rule 281 IAC 36.15(3)(a)(8) shall be afforded the same force and affect of law.

In applying 281 IAC 36.15(3)(a)(8) to the instant facts it is imperative that the language of that administrative rule be examined closely. The rule reads in full:

- (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 parents' marital relationship, or pursuant to other court-ordered decree or order of custody.

281 IAC 36.15(3)(a)(8) (emphasis added)

Ryan was unhappy at Xavier High School. He wanted to move out to Oregon to live with his father. He was able to convince his mother to allow him to move out to Oregon. After four days of school he returned to be with his mother and he registered at Washington High School.

Ryan's change in residence was the result of his choosing. The change in residency was not due to one of the enumerated reasons listed in 281 IAC 36.15(3)(a)(8). The fact that his parents are divorced made it possible for him to move from Iowa to Oregon, but the change in residence was not "a result of divorce, separation, death, or other change in the parents' marital relationship, or

pursuant to other court-ordered decree or order of custody.” 281 IAC 36.15(3)(a)(8).

The Board of Control member who questioned Ms. Riley at the end of the tape hit the issue on the head. Under Ms. Riley’s interpretation of the governing statute and administrative rule the following scenario would be possible: if Ryan’s father lived across town in the Cedar Rapids Prairie School District Ryan could play baseball for Cedar Rapids Washington in the summer, switch to Prairie and play football in the fall, switch back to Washington to wrestle in the winter, and then return to Prairie to run track in the spring. All this would be possible because according to the Appellants’ reasoning a child with divorced parents has an absolute right to live with either parent and be immediately eligible to participate. That interpretation makes a mockery of the reason that transfer rules have been created.

Under the facts in this case, Ryan chose to leave his mother to live with his father. He stayed four days and then returned. This change in residency was not the result of a divorce; it was the result of a student’s choice. A student’s choice to live with the non-custodial parent is not an exception recognized under 281 IAC 36.15(3)(a)(8).

### DECISION

For the foregoing reasons, the December 4, 2009 decision of the Board of Control of the Iowa High School Athletic Association that Ryan C. Brown is ineligible to compete in varsity interscholastic athletics at Washington 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

January 15<sup>th</sup> 2010  
Date



January 15<sup>th</sup> 2010  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Judy A. Jeffrey, Director  
Iowa Department of Education