

IOWA DEPARTMENT OF EDUCATION

27 DoE App. Dec. 645

In re Melanie H.

Daniel H., Appellant,	:	DIA DOCKET NO. 15DOE004
	:	DE # 5025
v.	:	DECISION
Iowa Girls High School Athletic Union, Respondent.	:	

STATEMENT OF THE CASE

This matter was heard telephonically on October 19, 2015, before Carol J. Greta, designated administrative law judge with the Iowa Department of Inspections and Appeals Division of Administrative Hearings, presiding on behalf of Ryan M. Wise¹, Director of the Iowa Department of Education (“Department”).

Appellant Daniel H. was personally present. The Respondent, Iowa Girls High School Athletic Union (“IGHSAU”) was represented by its Executive Director, Mike Dick.

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 have jurisdiction over the parties and subject matter of this appeal.

The Appellants seeks reversal of a decision that the IGHS AU Board of Directors made as a result of a hearing before it on September 16, 2015, finding that Iowa City West High School student Melanie H. is ineligible to compete in varsity interscholastic athletics for 90 consecutive school days under the general transfer rule, 281—IAC 36.15(3).

The administrative law judge took testimony from Daniel H. and Mr. Dick. In addition to the testimony, the administrative record before the undersigned consisted of the minutes of the IGHS AU Board’s meeting on September 16, 2015 and the affidavit of appeal from Daniel H.

¹ The Iowa Department of Education is required to have an *ex officio*, non-voting, member of the Board of Directors of the Appellee. At the time of these proceedings, Shan Seivert was the Department’s representative on the Board. She did not take part in either the hearing of this appeal before the Board of Directors or any deliberations of the Board. (Board Minutes of 9/16/15)

FINDINGS OF FACT

Melanie H. is a sophomore at Iowa City West High School (“West High”). This present school year, 2015-16, is her first year of attendance at West High. She and her older sister were enrolled at West High in the summer of 2015 after their parents, Daniel and Julee H., bought a residence in Iowa City. (Daniel H. Testimony & Appeal Letter)

In 2010, Melanie’s family, which has at all pertinent times been an intact unit, moved from Texas to Eldridge, Iowa, because of a job transfer for Daniel. His place of employment is in Clinton, which is approximately 32 miles from Eldridge and 88 miles from Iowa City. (Mapquest©) Julee was a teacher in the Quad Cities through the 2014-15 school year. She presently is employed as an adjunct math professor by Kirkwood Community College for its Iowa City campus and by Kohl’s department store in Coralville, directly adjacent to Iowa City. Melanie and her sister (who is also still in high school) both have part-time jobs in Iowa City. (Appeal Letter)

Daniel continues to be employed in Clinton. The family continues to own its former residence in Eldridge, choosing to keep a place for Daniel to use during the week. He estimated that he spends one-to-three nights per week in the Eldridge residence. That is the property on which the family receives the homestead exemption for real estate tax purposes.² (Daniel H. Testimony) The property continues to appreciate in value, making the family reluctant to put it on the market at this time. (Daniel H. Testimony & Appeal Letter)

The Appellant is very active in the Clinton community. He serves on the board of a minor league baseball team, which requires him to be personally present for home games. He is also a member of the Clinton Chamber of Commerce Board and Clinton Rotary. Despite this involvement, the family likes Iowa City and has no plans to divest itself of the house in Iowa City once the girls finish with high school. (Daniel H. Testimony)

The Respondent does not dispute that Julee and the girls live fulltime in Iowa City. It also does not dispute that the reasons the family maintains its original residence in Eldridge is for Daniel to reside there part time due to his “work situation in addition to the investment advantages involved.” (Letter from IGHSAU to Appellant) There also appears to be no disagreement by the IGHSAU with the Appellant’s statement that when he does stay in the Eldridge residence overnight, it is due to safety concerns, and is not a matter of mere convenience.

Melanie and her sister are swimmers. After the family moved to Eldridge, they open enrolled the girls to the Pleasant Valley Community School District because North Scott did not have a high school girls swim team. They also started swimming for an Iowa City-based non-school swim club. It was the desire to reduce travel from Eldridge to

² It is not clear from the record whether the IGHSAU Board was aware that the family did not switch its real estate tax homestead exemption from the Eldridge home to the Iowa City home. Accordingly, that fact shall not be a part of the analysis herein. It is a factor that the Board may want to keep in mind if it faces a similar question in the future.

Iowa City for swim club practices that led the family to the decision to purchase a residence in Iowa City. (*Id.*) After the girls were enrolled in West High, some of Melanie's friends informed her that she might be ineligible for varsity competition for 90 school days. Daniel H. asked West High Athletic Director Scott Kibby about this, and Mr. Kibby acknowledged that, under the facts as he knew them, he would have to rule Melanie ineligible for varsity competition for the first 90 school days at West High. (Daniel H. Testimony)

IGHSAU management issued a decision that Melanie was ineligible for varsity level competition in interscholastic sports at West High for the first 90 days of the present school year. The Appellant exercised his right to a hearing before the IGHSAU Board of Directors, which took place on September 16, 2015. The Board concluded that no exceptions applied under which Melanie could qualify for immediate eligibility to participate in varsity athletics. According to the letter from IGHSAU Executive Director Mike Dick to the Appellant, "The basis for the board's decision was the need for a contemporaneous change in family residence and the premise of maintaining the previous property as a residence based on Dan's written statement that he 'will regularly sleep and eat in Eldridge, if it is more prudent to do this than make the commute back to Iowa City.'" (Appeal Letter)

At hearing, Mr. Dick explained further that the IGHSAU and its Board did not find the move to Iowa City to be a "contemporaneous change in parental residence" because the entire family did not move to the new residence in Iowa City. (Dick Testimony) In its decision the Board of Directors found, in part, "If two residences are maintained, it implies that a change did not totally occur."

CONCLUSIONS OF LAW, ANALYSIS

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). The Director of the Department of Education examines the IGHSAU Board of Director's application of the transfer rule to Melanie 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) (holding that the Iowa Department of Education erred when it did not apply the abuse of discretion standard).

General Transfer Rule

Pursuant to its authority in Iowa Code § 256.46, the State Board of Education promulgated and adopted the general transfer rule, 281—IAC 36.15(3). The parties appear to agree that this appeal involves only the first exception, as follows:

- 36.15(3) General transfer rule. A student who transfers from a school ... 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. ...
- a. Exceptions. ...:
- (1) Upon a contemporaneous change in parental residence, a student is immediately eligible if the student transfers to the new district of residence... .

[There is also a “catchall” exception that applies “[i]n any transfer situation not provided for elsewhere in this chapter.” 281—IAC 36.15(3)“a”(8). It appears the IGHSAU Board did not analyze that exception. The Board was correct not to do so because these facts fall under the “contemporaneous change in parental residence” exception above.]

The key issue here is what is meant by a “contemporaneous change in parental residence?”

It is important to note that none of the interscholastic eligibility rules prohibit a family from owning more than one residential dwelling. A family may own the home in which it resides, and may at the same time own other dwellings that no one in the family occupies, but are – for example – held as rental properties. Here, one member of the family continues to reside regularly, albeit part-time, in the original home in Eldridge.

This agency has not faced a factual situation on all fours with the facts of this appeal. The sole question here is whether the IGHSAU Board abused its discretion in ruling Melanie ineligible for varsity interscholastic sports for 90 school days. Under the abuse of discretion standard, the Board’s decision cannot be overturned unless the Board misapplied the law or reached a conclusion unsupported by the underlying facts. *Sioux City Cmty. Sch. Dist. v. Iowa Dep't of Educ.*, *supra*.

Here, the IGHSAU Board did not erroneously apply rule 281—IAC 36.15(3) “a”. It looked at the correct exception and applied a common sense interpretation to the underlying facts. There is substantial evidence that a total family change of residence has not occurred on a permanent basis. The Board noted that the Appellant is very active in

the Clinton area. It was not unreasonable for the Board to conclude that the Appellant had no intention of permanently making a move to Iowa City. Therefore, there was no contemporaneous change in parental residence.

The IGHSAU and its Board did not incorrectly apply the general transfer rule to determine that Melanie is ineligible to participate in varsity interscholastic athletics for a period of 90 days. There was no abuse of discretion; the decision must be affirmed.

DECISION

For the foregoing reasons, the September 16, 2015 decision of the Board of Directors of the Iowa Girls High School Athletic Union that Melanie H. is ineligible to compete in varsity interscholastic athletics at Iowa City West 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.

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 22nd day of October, 2015.



Carol J. Greta
Administrative Law Judge

It is so ordered.

10/22/2015
Date

/s/
Ryan M. Wise, Director
Iowa Department of Education