

**IOWA DEPARTMENT  
OF EDUCATION**  
(Cite as 25 D.o.E. App. Dec. 198)

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| Anna Hayek,<br>Christina Hayek,<br>Appellants,      | : | DIA DOCKET NO. 09DOE003 |
|   | : |                         |
| vs.   | : | DECISION                |
| Iowa High School Athletic Association,<br>Appellee. | : | [Admin. Doc. #4701]     |

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This matter was heard telephonically on October 26, 2009, 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"].

Attorney John Werner appeared and represented the Appellants, Anna and Christina Hayek. The Appellee, Iowa Girls' High School Athletic Union [hereinafter, "IGHSAU"] was represented by attorney Brad Epperly who called as a witness Mike Dick, Executive Director of the IGHSAU. 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 IGHSAU Board of Directors made on September 16, 2009, finding that she is ineligible to compete in varsity interscholastic athletics for 90 consecutive school days under the provisions of the Open Enrollment Transfer Rule, 281 IAC 36.15(4).

## FINDINGS OF FACT

Christina Hayek is currently a senior at North English High School. Last year she attended HLV High School.

This transfer was the result of sexual harassment at the hands of one boy. This boy moved into Christina's residence when his father moved in with Christina's mother. The boy would physically assault Christina by grabbing her breasts. Initially the matter was brought to the police department's attention but charges were not filed. The boy was sent away so he would not live in the same house as Christina.

The matter settled down, but the boy again began physically assaulting Christina last school year. At the end of the school year Christina decided reluctantly to leave HLV High School to open enroll at North English High School in an attempt to stop the sexual assaults.

After Christina open enrolled at North English High School she attempted to receive a waiver so she could participate in varsity athletics her senior year. She was initially denied the waiver under the general transfer rule. Christina was informed that her circumstances did not satisfy the "fair and reasonable" waiver criteria found under 281 IAC 36.15(3)(8). This was appealed to the IGHS AU Board of Directors. The Board of Directors denied the appeal based upon their determination that Christina's transfer was actually an open enrollment. Under the governing administrative rules open enrollment cases are not subject to the "fair and reasonable" waiver criteria. Christina appealed this determination.

Christina's appeal is based upon the fact that the only reason she left HLV was to avoid further sexual abuse. She was the victim in this case and believes that the IGHS AU is punishing her by not granting a waiver. Christina wants to participate in varsity cheer leading her final year in high school. The denial of a waiver precludes her from enjoying this activity.

## 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...The period of ineligibility applies only to varsity level contests and competitions...

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

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

...

(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 administrative rules also provide that:

A student in grades 9 through 12 whose transfer of schools had occurred due to a request for open enrollment by the student's parent or guardian is ineligible to compete in interscholastic athletics during the first 90 school days of transfer . . .

281 IAC 36.15(4).

The Open Enrollment chapter then lists 9 exceptions to the 90-day rule. None of these exceptions provide any discretion to the Board of Directors, such as is enumerated in 281 IAC 36.15(3)(8).

After reviewing the facts in this case and applying them to the applicable law the only outcome that is allowed is the upholding of the Board of Director's decision dated September 16, 2009. Christina's transfer to North English High School was the result of open enrollment. In applying 281 IAC 36.15(4), there is no exception that allows the Board of Director's to look to the facts underlying the appeal. Christina's circumstances do not meet any of the exceptions enumerated in 281 IAC 36.15(4)a-i. Because she does not meet any of these exceptions, the 90-day rule must be applied.

### DECISION

For the foregoing reasons, the September 16, 2009 decision of the Board of Directors of the Iowa Girls' High School Athletic Union that Christina Hayek is ineligible to compete in varsity interscholastic athletics at North English 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.



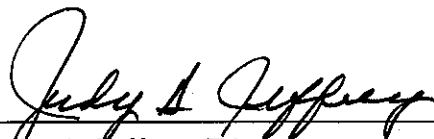
John M. Priester  
Administrative Law Judge

November 24, 2009

Date

11.24.09

Date



Judy A. Jeffrey, Director  
Iowa Department of Education