IOWA DEPARTMENT OF EDUCATION

2 DoE App. Dec. 651

In re Grant D.

William and Krista D., Appellants,	:	DIA DOCKET NO. 15DOE006
	:	DOE # 5027
v.	:	DECISION
Iowa High School Athletic Association, Appellee.	:	

This matter was heard in person at the Wallace State Office Building on October 26, 2015, by 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. Wise[1], Director of the Iowa Department of Education ("Department").

The Appellants, William and Krista D., were personally present and represented by attorneys Martin Demoret and Kim Walker. Also appearing was their minor son, Grant. The Appellee, Iowa High School Athletic Association [hereinafter, "IHSAA"] was represented by attorney Brian Humke. Also appearing for IHSAA were Executive Director Alan Beste, Assistant Director Todd Tharp, and IHSAA Board of Control president Craig Scott.

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

The District seeks reversal of a decision that the IHSAA Board of Control ["Board"] made on September 16, 2015, finding that Grand View Christian High School student Grant D. 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). At this hearing, Appellant William D. and Mr. Tharp testified. The IHSAA offered the following items into evidence:

- A recording of the hearing before the Board of Control,

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[1] Dr. Wise is an *ex officio*, non-voting, member of the Board of Control of the Appellee. He did not take part in either the hearing of this appeal before the Board of Control or any deliberations of the Board.

- Documents that had been made available to the members of the Board of Control, including a statement of facts, correspondence between the parties (regular and electronic mail), documentation of the health status of Williams's father, documentation regarding the family's relocation to Altoona, Grant's transcript from Pella High School, letters of references on behalf of Grant, correspondence from the superintendent of Grand View Christian School,
- Minutes of the meeting of the Board on September 16, 2015, and
- A copy of the decision of the Board signed by Chairperson Scott on September 23, 2015.

All proffered documents and the recording were admitted into the record. Both parties made closing arguments and were given the option to file briefs on or before October 28, 2015. Both parties filed timely briefs.

FINDINGS OF FACT

It is undisputed that the Appellants and their family moved from Pella to Altoona prior to the start of the 2015-16 school year for family reasons. That is not the transfer in question. The transfer at the heart of this matter is that of the Appellant's son, Grant, now a high school sophomore at Grand View Christian High School ["GVC"], from Pella High School to GVC.

When the family decided to move to Altoona, which is part of the Southeast Polk Community School District ["SEP"], Grant first lobbied to remain at Pella High School. When that request was rejected by his parents, the family undertook an internet search of Christian schools within a reasonable distance of their new residence. (William D. Testimony) Although Grant and his siblings had never attended Pella Christian Schools, the family wanted a faith-based education for the children. The family and Grant also wanted a high school with an enrollment closer to that of Pella's. (*Id.*) IHSAA's web site (www.iahsaa.org) lists the BEDS – Basic Education Data System – enrollment numbers for all member schools for grades 9 – 11. The BEDS enrollment for Pella in 2014-15, as of August 3, 2015, was 520; SEP had 1510 students; GVC, 51.

GVC uses some athletic facilities that exist in the Southeast Polk School District, but its attendance center is in the Saydel Community School District. It had plans to purchase a building in SEP into which GVC desired to move its classes. The funding did not materialize to make that a reality. (Exhibits 45 – 47)

In conversations with Mr. Tharp, the family was informed that Grant would have immediate varsity eligibility at SEP or at GVC *if* GVC relocated its high school attendance center to SEP for the 2015-16 school year. (William D. Testimony; Tharp Testimony) By the first day of classes this fall, GVC high school was still located in the Saydel School District. Grant began his enrollment at GVC, having been informed that he would not be immediately eligible for varsity interscholastic sports.

The Appellants filed a formal request on behalf of Grant for immediate varsity eligibility at GVC. On September 4, 2015, Mr. Tharp sent a letter to William D., ruling Grant ineligible for immediate varsity competition because GVC's high school is not located within the SEP District. (Exhibits 4 -5) The Appellants exercised their right to a hearing before the IHSAA Board of Control.

During that hearing, held on September 16, 2015, the Board heard from both of the Appellants and Grant. The family asked that the Board reconsider Mr. Tharp's conclusion that GVC is not within the SEP District boundaries. Grant was very candid that his preference was to have stayed at Pella High School. He also stated, "I have a strong passion for basketball." Grant did not speak of any other factors that motivated him personally regarding his enrollment at GVC. Krista D., who was the head softball coach at Pella High School until the present school year, urged the Board to agree with her that "Grant has earned the right to play [varsity basketball] from Day One." (DVD of Board meeting)

The Board concluded that no exceptions applied under which Grant could qualify for immediate eligibility to participate in varsity athletics.

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 IHSAA Board of Control's application of the transfer rule to Evan 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). *See also Indiana High School Athletic Ass'n, Inc. V. Carlberg by Carlberg*, 694 N.E.2d 222 (Ind. 1997), in which the Indiana Supreme Court determined that decisions of the Indiana High School Athletic Association based on its transfer rule (very similar to the transfer rule of the IHSAA) are reviewed for arbitrary and capriciousness. 694 N.E.2d at 233.

Does Grant D. Qualify For Immediate Participation in Varsity Athletics Under Any of the Exceptions To The General Transfer Rule?

The Iowa Legislature, in Iowa Code § 256.46, directed the State Board of Education to adopt rules to address eligibility of transfer students. The State Board of Education then promulgated and adopted the general transfer rule, 281—IAC 36.15(3). The Appellants urge that Grant fits at least one of the following provisions:

> 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. 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.
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> a. Exceptions. …
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> (1) Upon a contemporaneous change in parental residence, a student is immediately eligible if the student transfers to the new district of residence or to an accredited nonpublic member or associate member school located in the new school district of residence In addition, if with a contemporaneous change in parental residence, the student had attended an accredited nonpublic member or associate member school immediately prior to the change in parental residence, the student may have immediate eligibility if the student transfers to another accredited nonpublic member or associate member school.
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> …
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> (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.

Applicability of Subparagraph 36.15(3)"a"(1)

This provision offered Grant immediate varsity eligibility at the SEP High School. It would also have provided him immediate varsity eligibility at any nonpublic high school, regardless of location, *if* he had attended Pella Christian (or another nonpublic school) his freshman year.

The Board was correct to reject the argument that GVC is located within the SEP District merely because some of its athletic facilities are in the SEP District. In *Tyler R. ex rel. Christian R. v. Iowa High School Athletic Association*, 26 D.o.E. App. Dec. 121 (2011), this agency formalized the long-standing practice of defining, for purposes of the general

transfer rule, the "boundaries" of a nonpublic school to be those of the school district in which the nonpublic school is physically located. Using the attendance center as synonymous with the "school" is wholly consistent with education statutes regarding student transportation (Iowa Code §§ 285.1(14-16), 285.16), textbook support (Iowa Code § 301.1), and educational programming for students with disabilities (Iowa Code § 256B.9(4); 20 U.S.C. § 1412(a)(10)).

Athletic facilities are moving targets, and cannot be sensibly understood to define a school in the same way that attendance centers do. This is particularly true of bowling alleys and golf courses. Schools do not own such facilities and must often use bowling alleys and/or golf courses not within their districts to offer those sports to their students. This does not alter the boundaries of those schools. GVC's attendance center is in the Saydel School District, not the SEP District.

Applicability of Subparagraph 36.15(3)"a"(8)

Grant's curcumstances fell squarely within subrule "*a*"(1), the contemporaneous parental change of residence. As discussed above, he has no immediate eligibility under that subrule. Accordingly, the Board did not have to review Grant's appeal in light of the discretionary language found in 281—IAC 36.15(3)"a"(8), the "catchall" subrule. The record shows that the Board did so only because asked to do so by the Appellants.

Again, the Board properly concluded that no exception should be made for Grant under this subrule. The Board did consider the motivating factors for the transfer, but the Appellants misstate the transfer as being from their residence in Pella to their residence in Altoona. The transfer at issue is Grant's transfer from Pella High School to Grand View Christian High School. By his own statements to the Board, that transfer was very much motivated by Grant's "passion" for basketball.

The undersigned conclude that the Board in no way abused its discretion when it refused to grant an exception to Grant under either 281—IAC 36.15(3)"a"(1) or (8).

DECISION

For the foregoing reasons, the September 16, 2015 decision of the Board of Control of the Iowa High School Athletic Association that Grant D. is ineligible to compete in varsity interscholastic athletics at Grand View Christian 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 2nd day of November, 2015.

Carol J. Greta
Administrative Law Judge

It is so ordered.

11/2/2015_____	/s/________________________________
Date	Ryan M. Wise, Director Iowa Department of Education