

**IOWA DEPARTMENT
OF EDUCATION**
(Cite as 25 D.o.E. App. Dec. 159)

Sandra J. Hirschauer, Thomas Hirschauer, Appellant,	:	DIA DOCKET NO. 09DOE001
	:	DoE #4695
vs.	:	
	:	DECISION
Iowa High School Athletic Association, Appellee.	:	

This matter was heard telephonically on May 28, 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"].

The Appellants, Sandra and Thomas Hirschauer, appeared and participated on behalf of their son, Chase Hirschauer. 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 April 27, 2009, finding that he 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). The Appellants testified on their son's behalf in the hearing. The IHSAA presented the testimony of its Assistant Director, David Anderson, and Exhibit A.

FINDINGS OF FACT

Chase Hirschauer just finished his junior year of high school at Valley High School in West Des Moines, Iowa. He attended school in the West Des Moines School District from kindergarten until his sophomore year.

During Chase's sophomore year he was involved in a criminal mischief incident where a large group of students threw eggs at a female student's house. The evidence indicated that Chase was only "tangentially" involved in the criminal activity. Nonetheless, Chase was charged, along with about ten other students, and pled guilty to the crime.

After the incident Chase began to be harassed by other students over the criminal mischief incident, even by students who also participated in the criminal activity. Due to the harassment, the Appellants and Chase decided that Chase should open enroll into the Waukee School District for his junior year of high school, the 2008-2009 school year. Chase open-enrolled at the Waukee High School and was required to sit out of varsity sports for 90-days because of the Appellee's transfer rules.

In the summer before he began his studies at Waukee High School Chase received two moving violations. Due to these violations, Chase's driving privileges were suspended by the Iowa Department of Transportation from August 3, 2008 to September 3, 2008. Appellant Sandra Hirschauer was not employed during this period, so she was able to drive Chase to and from football practice, school, and all other extra curricular activities.

After the suspension Chase drove himself to and from school. On November 25, 2008, Chase received a citation for Failure to Yield at a Stop Sign. After reviewing the evidence against him, Chase pled guilty in February of 2009 to the charge.

The Appellants contacted the Iowa Department of Transportation to find out what sanction Chase would be facing. The Department indicated that Chase would receive a suspension between 90 and 180 days. At this time, both Mr. and Ms. Hirschauer were employed and not able to take Chase to and from school in Waukee. The Hirschauers investigated all other means of transportation, but were unable to find any way for Chase to get to and from school in Waukee.

Faced with the upcoming suspension of Chase's driving privileges, and there being no way to get Chase to and from school, the Appellants canceled Chase's open enrollment at Waukee High School and re-enrolled him at Valley High School. Chase returned to Valley High School on March 3, 2009. Chase lived with his parents in West Des Moines, Iowa, the entire time.

Chase has aspirations to play baseball at the college level, and hopefully receive a scholarship from a school to play baseball. He played sophomore baseball at Waukee High School and wanted to play varsity baseball upon his return to Valley High School. To further this goal, Mr. Hirschauer wrote a letter on March 5, 2009, requesting an eligibility ruling on Chase's situation. A determination was made that Chase would be ineligible to participate in varsity sports for 90 school days pursuant to the General Transfer Rule. This determination was made on March 6, 2009.

On April 22, 2009, Chase and his father appeared before the Board of Control of the Iowa High School Athletic Association to request a waiver of the 90-day period of ineligibility based upon transfers. Chase's request was based upon both rule 36.15(3)(a), whereby a student returns to the school district where his parents reside and is immediately eligible for participation, and 36.15(3)(a)(8), the section that allows the Board to allow waivers where it is fair and reasonable.

On April 27, 2009, the Appellee denied the waiver request, finding that "there exists no compelling reason to grant an exception to the general transfer rule." The Appellants filed a timely appeal of this determination.

In the administrative appeal the Appellants asserted that since Chase has already served on 90 day period of ineligibility, it would be undue punishment to make Chase serve another 90 day period of ineligibility. Chase has already served 59 days of ineligibility, and the Appellants believe that this is sufficient considering the circumstances. The Appellants also testified to the hardships that were caused by the loss of Chase's driving privileges.

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 IHSA 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 two exceptions shall be addressed separately. The first exception is when a student has attended high school in another district other than where the student's parents reside and who "subsequently returns to live with the student's parents. These students become immediately eligible in the parents' district to participate in varsity sports.

Chase was attending a high school in a district other than where his parents live, however he did not return to live with his parents. Chase lived with his parents the entire time. He was not living in the Waukee School District away from his parents and then returned to live with his parents. Thus, the exception to the General Transfer Rule found in 281 IAC 36.15(3)(a)(3) is not applicable in Chase's circumstances as he resided with his parents the entire time he was going to Waukee High School.

The next exception is the catchall exception for what is "fair and reasonable." The Appellants are requesting an exception to the 90 day ineligibility ruling because the transfer from Waukee High School to Valley High School was based upon the Appellants' inability to find transportation to and from Waukee High School after Chase lost his license.

The Board of Control found that the "Hirschauers did not apparently investigate alternative means of transportation such as mass transit, rides from friends, etc." After reviewing the entire record, the undersigned finds that this finding of fact is not supported by the record. The Hirschauers did make extensive efforts to try to arrange for transportation for Chase to and from Waukee High School. They investigated mass transit (there was none), they tried to find friends (there were none who could transport Chase), and they looked at all other options. There was no way to get Chase to Waukee High School after he lost his license.

The changing of that finding of fact, however, does not change the outcome of this appeal. Chase is only 17 years of age, but he is learning some very hard life lessons. Actions have consequences.

Chase was involved in a criminal mischief incident that resulted in fellow students harassing Chase. If Chase had not been involved in that criminal activity, he would be playing varsity baseball for Valley High School right now. However he did participate in the criminal activity, was convicted of a crime, and was harassed. This decision in no way condones the harassment Chase faced, it only points out that Chase put himself in the position by his own choice of action.

Chase, and his parents, chose to leave Valley High School. Chase open enrolled in school at Waukee and sat out the required 90 days of ineligibility from varsity sports. Before he began his studies at his new school Chase received two moving violations while driving. The consequence that resulted from these violations was that he lost his license for 30 days. This suspension should have put Chase on notice that any more moving violations would result in the loss of his license.

Chase received yet a third moving violation and he was going to receive another, longer suspension from the Department of Transportation. This time, however, Chase's parents were not free to drive him back and forth to school. Because Chase was going to lose his driving privileges he had to re-enroll in classes at Valley High School.

After all of this, Chase and his parents believe that the "fair and reasonable" thing to do is to let Chase play varsity baseball, and not have to sit out the 90 days of ineligibility.

All of the hardships that the Hirschauer family is facing in this matter were created entirely by Chase's own actions. In a little over a year Chase received a Criminal Mischief conviction and three moving violations while driving. Chase must now live with the consequences of those actions. The undersigned finds that the Appellants have not established a valid basis to waive the requirements of the General Transfer Rule.

DECISION

For the foregoing reasons, the April 27, 2009 decision of the Board of Control of the Iowa High School Athletic Association that Chase Hirschauer is ineligible to compete in varsity interscholastic athletics at Valley 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

June 3rd 2009

Date

Date

Judy A. Jeffrey, Director
Iowa Department of Education