

**IOWA DEPARTMENT
OF EDUCATION**
(Cite as 25 D.o.E App. Dec 15)

Logan-Magnolia Community School District :	
Appellant,	DIA DOCKET NO. 07DOE001
vs.	
Iowa High School Athletic Association,	DECISION
Appellee.	

This matter was heard telephonically on October 22, 2007, before Margaret LaMarche, 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.

The Appellant, Logan-Magnolia Community School District, was represented by Superintendent James Hammrich. 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 she and the Director of the Department of Education have jurisdiction over the parties and subject matter of this appeal.

The Appellant seeks reversal of a decision that the IHSAA Board of Control made on September 26, 2007, finding that Logan-Magnolia Community School District student Derek Sears 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 Appellant presented the testimony of Derek Sears, Logan-Magnolia High School Principal Katy Sojka, and Exhibits A-B. The IHSAA presented the testimony of its Executive Director, Richard Wulkow and Exhibits 1-9. The IHSAA filed a brief on October 29, 2007. The Appellant declined the opportunity to file a reply brief.

FINDINGS OF FACT

Derek Sears, who is 18 years old and a high school senior, transferred to the Logan-Magnolia School District from Cheyenne, Wyoming at the beginning of the 2007-2008 school year. Derek last attended school in the Logan-Magnolia Community School District when he was in the eighth grade. At that time, he and his younger brother were living with his paternal grandparents in Logan. However, his paternal grandparents were unable to care for both of their grandsons, so Derek moved to Cheyenne Wyoming to live with his father and stepmother.

Derek completed the 9th grade in Cheyenne, Wyoming. Derek then moved to Florida with his father, where he attended 10th grade at Walton High School. After 10th grade, Derek moved back to Cheyenne, Wyoming, where he attended East High School and lived with his stepmother's parents. Following 11th grade, Derek's step grandparents could not afford to continue to care for him, and Derek returned to Florida. Derek lived with his father and stepmother during the summer of 2007. According to Derek, his father provided him a place to live but did not otherwise provide him financial support. Derek has had no recent contact with his mother.

Despite his frequent moves and uncertain living arrangements, Derek has maintained excellent school attendance and is motivated to finish high school on time and attend college. However, had he remained in Florida with his father, it would have taken Derek an extra year to graduate from Walton High School because all of his credits would not transfer. Derek made the decision to move to Iowa so that he could finish high school on time at Logan-Magnolia High School. Derek's younger brother continues to live with his paternal grandparents and attends the Logan-Magnolia Schools. One of Derek's older brothers also lives in Logan and offered to let Derek live with him for awhile. Since moving to Logan, Derek has stayed with his grandparents, an older brother, with his brother's girlfriend, and with an aunt and uncle. These relatives and friend have provided Derek with a place to sleep and food.

At the present time, Derek is living by himself in an apartment in Logan. His paternal grandparents are paying his rent but cannot afford to continue to do so indefinitely. Derek needs to find a job so he can pay his own rent. Derek requests the opportunity to immediately participate in varsity football and varsity wrestling at Logan-Magnolia High School. Following a hearing on September 26, 2007, the IHSAA concluded that Derek was not homeless and determined that Derek does not qualify for immediate eligibility to participate in varsity athletics under any of the exceptions to the general transfer rule. On October 2, 2007, the Logan-Magnolia Community School District filed a notarized letter appealing that decision to the Director of the Iowa Department of Education.

CONCLUSIONS OF LAW

I. Whether the Appeal Should Be Dismissed For Failure To Comply With 281 IAC 36.17 and 6.3(1).

In its brief, IHSAA argues that the appeal should be dismissed for Appellant's failure to comply with the filing requirements found at 281 IAC 36.17 and 6.3(1). Specifically, IHSAA asserts that the Appellant failed to: serve a copy of the Notice of Appeal on IHSAA by registered mail, set out the facts in the Notice of Appeal, set out any error complained of in the Notice of Appeal, or set out the reasons for the appeal in a plain and concise manner.

IHSAA did not raise this issue prior to or at hearing. Since no evidence was presented to support the factual assertion that IHSAA did not receive a proper copy of the appeal, any defect in the service is deemed waived by the IHSAA. There is no doubt that IHSAA

received notice that the appeal was filed and had a full opportunity to present evidence at hearing. In addition, while the appeal letter did not set out specific facts or claimed errors as provided in 281 IAC 6.3(1), the specific provision relating to athletic eligibility appeals, 281 IAC 36.17, does not state that the appeal must include a statement of facts and claimed errors. Moreover, the Appellant attached a copy of the IHSAA letter denying eligibility to its Notice of Appeal. The IHSAA letter set out some basic facts and issues raised before IHSAA. For all of these reasons, the request to dismiss the appeal for improper form and improper service is denied.

II. What is the Standard of Review?

In its brief, the IHSAA cites to a case¹ involving judicial review of a Department of Education decision on a transportation appeal. The current appeal is not a judicial review case, rather it is agency review. It is appropriate for the Department of Education to review the decision of IHSAA for any errors of fact, law or application of law to the facts to ensure that the decision made was correct.

III. Whether The Appellant's Student Qualifies For Immediate Participation in Varsity Athletics Under Any of the Exceptions To The General Transfer Rule?

Iowa law directs the Department of Education to “adopt rules that permit a child who does not meet the residence 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 circumstance:”

- the child has been adopted;
- the child is placed under foster or shelter care;
- 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;
- the child has been placed in a juvenile correctional facility;
- the child is a ward of the court or the state;
- the child is a participant in a substance abuse or mental health program; or
- the child is enrolled in an accredited nonpublic high school because the child's district of residence has entered into a whole grade sharing agreement for the pupil's grade with another district.

The rules shall permit a child who is otherwise eligible to participate, but who does not meet one of the foregoing or similar circumstances relating to residency requirements, to participate at any other level of competition other than the varsity level. Iowa Code § 256.46 (2007).

¹ *Sioux City Community School District v. Iowa Department of Education*, 659 N.W.2d 563, 566 (Iowa 2003).

The Department of Education promulgated administrative rules in response to the Legislature's mandate. 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, as defined in 281—subrule 12.1(8), exclusive of summer enrollment, 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.

a. Exceptions. The executive officer or executive board shall consider and apply the following exceptions in formally or informally ruling upon the eligibility of a transfer student and may make eligibility contingent upon proof that the student has been in attendance in the new school for at least ten days:

(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.

Derek Sears' reason for transferring did not fall squarely within any of the exceptions listed in 281 IAC 36.15(3)(a). The IHSAA Board of Control then reviewed Derek's circumstances in light of the discretionary language found in 281 IAC 36.15(3)(a)(8). Appellant urged the IHSAA to grant Derek immediate eligibility to participate in interscholastic athletics on the grounds that he is homeless. The IHSAA found that Derek was not homeless and should not be granted immediate eligibility under subrule 36.15(3)(a)(8). The IHSAA asserts that Derek may not be granted immediate eligibility to participate in interscholastic athletics under subrule 36.15(3) because he moved to Logan, Iowa for the specific purpose of attending school and not for the purpose of making a home.

Through the Stewart B. McKinney Homeless Assistance Act, as reauthorized in January 2002 as the McKinney-Vento Homeless Assistance Act (42 USC §11431, et seq.), Congress has established that each state educational agency shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education, . . . as provided to other children and youths. 42 USC

§11431(1). As used in the Act, the terms “enroll” and “enrollment” include attending classes and participating fully in school activities. 42 USC §11434a(1).

The Iowa Department of Education has promulgated rules to implement the provisions of the McKinney-Vento Act at 281 IAC chapter 33. The purpose of the rules is to “facilitate the enrollment of homeless children of school age and, ...in the public school districts of Iowa to enable the children to have access to a free, appropriate public education, and to be free of being stigmatized on the basis of their being homeless.” 281 IAC 33.1. The board of directors of a public school district shall examine and revise, if necessary, existing school policies or rules that create barriers to the enrollment of homeless children or youth ...281 IAC 33.3(3).

281 IAC 33.2 provides, in relevant part:

“Homeless child or youth” is defined as a child or youth from the age of 3 years through 21 years who lacks a fixed, regular, and adequate nighttime residence and includes the following:

1. A child or youth who is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; is living in a motel, hotel, trailer park, or camping grounds due to the lack of alternative adequate accommodations; is living in an emergency or transitional shelter; is abandoned in a hospital; or is awaiting foster care placement;

At the time of the IHSAA Board of Control hearing, Derek Sears had been sharing housing with a number of different persons, mostly relatives, due both to his decision to move to Logan, Iowa and to economic hardship. While Derek’s nighttime residence appears to have been adequate, it was neither fixed nor regular. At the time of the Director’s hearing, Derek was arguably not homeless since he was residing in his own apartment. Although it was unclear how long Derek’s economic circumstances would permit him to keep the apartment, this could be said about many students and their families. Nevertheless, Appellant considers Derek Sears to be homeless for the purposes of offering him enrollment in the school district and access to the services provided to eligible students, such as free and reduced lunch.

Appellant argues that given Derek’s assigned status in their school district as a homeless youth, imposing the 90-day ineligibility for varsity interscholastic athletics constitutes an impermissible barrier to his full participation in school activities under the provisions of the McKinney-Vento Act. However, even assuming that Derek does qualify as “homeless” for purposes of the McKinney-Vento Act and the rules found at 281 IAC chapter 33, the general transfer rule still requires the Board to consider the factors motivating the change of residency when ruling on his eligibility. A student intending to establish residency must show that the student is present in the district for the purpose of making a home and not solely for school or athletic purposes. 281 IAC 36.15(3). When exercising its discretion under subrule 36.15(3)(a)(8), even if the student is homeless, the Board is still required to consider the motivating factors for the student transfer.

In addition, 281 IAC 36.15(3)(b) states that in ruling upon the transfer of students who have reached the age of majority, the executive board shall consider all circumstances with regard to the transfer to determine if it is principally for school or athletic purposes, **in which case participation shall not be approved.** (emphasis supplied). Derek has reached the age of majority, and the executive board was correct in considering the motivations for his transfer.

Derek did not move or transfer schools for the purpose of participating in athletics. However, Derek was quite frank that he moved to Logan, Iowa for the specific purpose of attending school. Derek wanted to be able to finish high school in four years, rather than the five years it would take him to finish in Florida where his father resides. Since Derek did not come to Logan for the purpose of making a home, but rather came for the specific purpose of attending school, the IHSAA was correct when it applied the general transfer rule and determined that Derek Sears is ineligible to participate in varsity interscholastic athletics for a period of 90 days. This decision does not prevent Derek from participating in athletics at the junior varsity level or from practicing with the varsity team.

The majority of courts, including the federal courts in Iowa, have held that there is no "right" to participate in interscholastic athletics. *Brands v. Sheldon Community School*, 671 F. Supp. 627 (N.D. Iowa 1987); *Gonyo v. Drake University*, 837 F. Supp. 989 (S.D. Iowa 1993). Therefore, it cannot be argued that a student is harmed legally by his or her inability to compete.

DECISION

For the foregoing reasons, the September 26, 2007 decision of the Board of Control of the Iowa High School Athletic Association that Derek Sears is ineligible to compete in varsity interscholastic athletics at Logan-Magnolia 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.

Margaret LaMarche

10-30-2007
Date

It is so ordered.

10-30-07
Date

Margaret LaMarche
Administrative Law Judge

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