

**IOWA DEPARTMENT  
OF EDUCATION**  
(Cite as 25 D.o.E. App. Dec. 121)

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Will Artino,	:	
Appellant,	:	DIA DOCKET NO. 08DOE002
	:	
vs.	:	
	:	DECISION
Iowa High School Athletic Association,	:	
Appellee.	:	

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This matter was heard telephonically on September 29, 2008 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 [hereinafter, "Department"].

The Appellant, Will Artino, was represented by his parents, Monica and Bill Artino. 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 August 27, 2008, 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 Appellant presented the testimony of Monica and Bill Artino and Exhibits 1-2. The IHSAA presented the testimony of its Executive Director, Richard Wulkow, and Exhibits A and B.

**FINDINGS OF FACT**

Will Artino is a high school junior who transferred to Waukee High School in July, prior to the start of the 2008-2009 school year. During the 2007-2008 school year, Will was a part-time student at Des Moines Christian School and was also home schooled part-time. Will is a talented athlete, and he played basketball and baseball at Des Moines Christian. At all times relevant to this decision, the Artino family resided in the Waukee School District.

Will's parents, Monica and Bill Artino, made the decision to transfer their two children to a public school because they could no longer afford the private school tuition of approximately \$12,000. Mr. Artino has been unable to work due to serious health

problems and a number of surgeries in the past several years. Mr. Artino's initial application for disability benefits has been denied, and he is currently pursuing an appeal. Mrs. Artino is actively looking for employment and has started a t-shirt business.

Mr. and Mrs. Artino own two homes, one in Clive and one in Adel. Both homes are currently for sale, but the family lives in the Clive home, which is within the Waukee School District. The Artinos could have moved to their Adel home and enrolled their children in the Adel School District, but they chose Waukee for a variety of reasons. One reason that they selected Waukee over Adel was because Will attended open gym at Waukee over the summer, trained with the basketball team, and enjoyed the experience. Will is already being recruited by several Division I colleges to play basketball.

### 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, seven of which are narrowly tailored to address circumstances such as change in parental residence, foreign exchange students, or students in foster care. None of the seven specific exceptions address the factual situation presented in this appeal, i.e., a change in family finances. The eighth exception, however, grants the executive board discretion to grant eligibility in transfer situations not covered by one of the seven specific exceptions:

(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.

Since Will Artino's 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 reviewed Will's circumstances in light of the discretionary language found in 281 IAC 36.15(3)"a"(8). After considering past precedent established by the Department, the IHSAA determined

that the family's change in financial circumstances did not provide sufficient cause to grant Will immediate eligibility under subrule 36.15(3)"a"(8). However, the IHSAA noted that during the 90-day period of ineligibility Will is allowed to practice with the team and to participate below the varsity level.

In the case of *In re Cooper Rose*, 22 D.o.E. App. Dec. 242, the Department expressly rejected using 281 IAC 36.15(3)"a"(8) as a basis for granting immediate athletic eligibility to a transfer student whose family has had a change in their financial circumstances. The Department stated:

In the past, changes in a family's finances have been considered by the Association. See *Davies*, 14 D.o.E. App. Dec. at 315-316. The inherent danger in this is that a family of unchanging low socioeconomic status does not merit similar consideration, even though it may have a lower family income than a family that pleads reversals of its fortunes...It is simply unwise policy to try to determine the point at which a family's financial ups and downs are significant enough to affect their child's eligibility to play interscholastic sports. Therefore, nothing regarding financial circumstances is to be considered in transfer eligibility cases.

*Cooper Rose*, 22 D.o.E. App. Dec. at 245.

As pointed out by Mr. and Mrs. Artino, there were some differences between the cases of Cooper Rose and Will Artino. Cooper Rose attended private school through the 8<sup>th</sup> grade, transferred to public school at the beginning of 9<sup>th</sup> grade because his family could no longer afford the private school tuition, but then transferred back to private school for the second semester of 9<sup>th</sup> grade. At the time of his first transfer, Cooper Rose's eligibility was not affected because all students are given immediate athletic eligibility when they commence 9<sup>th</sup> grade. However, Cooper lost his eligibility when he transferred back to the private school for the second semester of 9<sup>th</sup> grade. At the time Cooper was ruled ineligible, his family's financial circumstances had apparently improved, while at the time of Will's transfer, his family was having financial difficulties.

Despite these factual differences, the guiding principles outlined by the Department in the *Cooper Rose* case are also controlling in this appeal. In *Cooper Rose*, the Department noted the inherent difficulties in fairly evaluating changing economic status ("financial ups and downs") of families and concluded that the transfer rules are reasonably related to achieving the Association's purpose of deterring school jumping and recruitment. The Department quoted with approval from a decision of the Indiana Court of Appeals, interpreting a transfer rule similar to Iowa's, which warned that "[t]ransfers not accompanied by a change in residence (or falling outside the 13 exceptions) are suspect in that they are subject to substantial manipulation" to disguise athletic motivations. 22 D.o.E. App. Dec. at 245-246. These inherent difficulties and fairness issues are present regardless of whether the family's finances are changing for the better or for the worse.

Mr. and Mrs. Artino were credible witnesses, and there is no reason to doubt that Will's transfer to public school was motivated by their financial circumstances. Nevertheless, the record indicates that athletics also had some bearing on the decision for Will to attend Waukee High School. The IHSAA decision denying eligibility in this case was fair and reasonable and consistent with past precedent. The IHSAA and the Department should not be put in the difficult position of having to evaluate the relative financial circumstances of families in order to make subjective judgments about whether the financial ups or downs justify a transfer and immediate eligibility to participate in athletics.

### DECISION

For the foregoing reasons, the August 27, 2008 decision of the Board of Control of the Iowa High School Athletic Association that Will Artino is ineligible to compete in varsity interscholastic athletics at Waukee 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  
Administrative Law Judge

10- 3 -2008  
Date

It is so ordered.

10-6-08  
Date

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