IOWA DEPARTMENT OF EDUCATION

(Cite as 27 DoE App. Dec. 995)

In re Sarah M.

David M.,	:	
Appellant,		DIA DOCKET NO. 17DOE004
	:	DE # 5055
v.		
	:	**DECISION**
Iowa Girls High School Athletic Union,		
Respondent.	:	

STATEMENT OF THE CASE

This matter was heard at the Wallace State Office Building in Des Moines on November 8, 2016, before 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, Director of the Iowa Department of Education ("Department").

Attorney Timothy J. Luce represented the Appellant, David M., who was also personally present with his minor daughter, Sarah M. Both the Appellant and his daughter testified. The Respondent, Iowa Girls High School Athletic Union ("IGHSAU") was represented by attorney Brad Epperly. Also appearing and testifying on behalf of IGHSAU was its Executive Director, Jean Berger.

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

The Appellant seeks reversal of a decision that the IGHSAU Board of Directors made as a result of a hearing before it on October 19, 2016, finding that West Delaware High School student Sarah M. is ineligible to compete in varsity interscholastic athletics for 90 consecutive school days under the general transfer rule, 281—IAC 36.15(3).

In addition to the testimony noted above, the administrative record before the undersigned consisted of the written decision of the IGHSAU Board of Directors, the affidavit of appeal from David M., IGHSAU exhibits 1 – 4 and Appellant exhibits A – M.

FINDINGS OF FACT

Sarah M. is a senior at West Delaware High School. This present school year, 2016-17, is her first year of attendance at West Delaware. The previous three school years she was a student at Independence High School. Sarah was enrolled at West Delaware High in August of 2016 after she and her father, David M., moved into a rented lower level of a house in Manchester, Delaware County, a community within the West Delaware School District. (David M. Testimony & Exhibit C)

The timing of events is clear, but not particularly enlightening.

- In late 2015, David's mother suffered a stroke, dying the next February. This undoubtedly put great strain on the marriage and the family. (David M. Testimony)
- Independence School District Superintendent Jean Peterson noted that Sarah's parents separated and lived apart from each other "[d]uring the late spring and early summer of 2016." (Exhibit I)
- The lease for the Manchester premises is dated August 1, 2016, but effective August 15, 2016. (Exhibit C) The letter provided by David's landlords notes that they first talked to David about leasing the lower level of their residence to him on July 24, 2016. (Exhibit L)
- David and Sarah acquired their new driver's licenses, and David his new voter registration, on August 17, 2016. (Exhibits D, E, & F)
- The No Contact Order protecting David from Lee Hunter Frank was issued August 25, 2016. (Exhibit H)

The above-mentioned No Contact Order recites that Mr. Frank, age 80 years, was earlier convicted of harassment in the 3rd degree, and that he poses a threat to the safety of David. Pictures presented by David show that Mr. Frank vandalized the front door and garage door of the Appellant's family home in Independence by painting the words "BURN IN HELL" under what appears to be a cross. (Exhibits A & B)

David moved to get away from Mr. Frank, but also for personal reasons related to his marriage. (David M. Testimony) David continues to be employed by the Independence School District, and commutes daily to his job at Independence High School from Manchester. The superintendent of the Independence School District, Jean Peterson, described him as a "long time" teacher for that district. (Exhibit I) David's wife – Sarah's mother – continues to reside in the family home in Independence with two of Sarah's three brothers. (One brother is a student at a four year university and lives away from home.)

David and Sarah are physically present in the West Delaware School District. Both have driver's licenses that list their Manchester address, and David has registered to vote in Delaware County. (Exhibits D, E & F) In his affidavit of appeal to the Department, David wrote in part, "While school and athletics may be a factor, it is not the sole reason for the residence being in West Delaware School District." (Appeal to Director Wise)

It is uncontested that no court action has been commenced either for separate maintenance, dissolution of marriage, or any custody or child support issues. (David M. Testimony) The Appellant stated that he and Sarah's mother are simply not ready to take that step yet. (*Id*.)

Sarah is a basketball player who was a starter on the Independence High School team. (Exhibit 1) On August 16, 2016, Mr. Luce called the IGHSAU office to ask about options for eligibility for a student who transfers from one school district to another. (*Id.*)
Ms. Berger spoke directly with Mr. Luce and explained that a court order or decree dealing with the transfer due to separation or divorce would be a reason for such a student to have immediate eligibility. (*Id*.; Berger Testimony)

Upon learning that her father was going to move out of the family residence and that her brothers were choosing to stay with their mother, Sarah made the decision to move with her father. (Sarah M. Testimony) She told her father that she did not want him to live alone, and that statement is accepted as credible. Sarah did not address why she chose to change school districts, other than to state that the disruption to her senior year of high school was less important to her than being with her father. She also described herself as being very close with her brother, Mark, who is the youngest child and still at home in Independence. (*Id*.) Sarah has a vehicle registered in her name in Delaware County, and drives to Independence every Saturday that she has free to see her mother and to attend worship services in Independence. (Exhibit K; Sarah M. Testimony)

On September 12 2016, IGHSAU management issued a decision that Sarah was ineligible for varsity level competition in interscholastic sports at West Delaware High for the first 90 days of the present school year. In a letter to David M., IGHSAU Executive Director Jean Berger noted that the family maintains two residences, and that Sarah's move with her father was not pursuant to any court order. The Appellant exercised his right to a hearing before the IGHSAU Board of Directors, which took place on October 19, 2016. The Board upheld the decision made by IGHSAU management.

At hearing, Ms. Berger explained further that the IGHSAU and its Board based its decision on the totality of the following circumstances:

- There is no court order by which Sarah's change in residency was accomplished.
- The family maintains two separate residences; the rental unit occupied by David and Sarah is furnished.
- David and Sarah reside close enough to Independence that Sarah could have continued with her senior year at Independence High School, where she would continue to be eligible despite living in Manchester because she would not be a transfer student if she maintained her enrollment at Independence High School.
- David continues to work for the Independence School District. Sarah could commute with her father.

(Berger Testimony)

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 IGHSAU Board of Director's application of the transfer rule to Sarah 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).

General Transfer Rule

Pursuant to its authority in Iowa Code § 256.46, the State Board of Education promulgated and adopted the general transfer rule, 281—IAC 36.15(3). The Appellant argues that the following exception applies to his daughter:

> 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. …
>
> a. Exceptions. …:
>
> (4) Pursuant to Iowa code section 256.46, a student whose residence changes due to any of the following circumstances is immediately eligible provided the student meets all other eligibility requirements in thse rules and those set by the school of attendance:
>
> 8. 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 Appellant's position is that Sarah is living with one of her parents as a result of separation or other change in her parents' marital relationship, and that those circumstances are not required to be formalized by a court order. David M. reads the clause, "or pursuant to other court-ordered decree or order of custody" as another option within exception 281—IAC 36.15(3)"*a*"(4)8.

The Appellant misinterprets the rule. By its plain language, the clause regarding a court-ordered decree or order of custody expands the reasons *for a court order* to justify immediate eligibility. A separation of parents without a court order is not contemplated by the rule. As noted by the Department in *Riley v. Iowa High School Athletic Association*, 25 D.o.E. App. Dec. 216 (2010), any other interpretation "makes a mockery of the reason that transfer rules have been created." 25 D.o.E. App. Dec. 216 at 222. *See also Tyler R. v. Iowa High School Athletic Association*, 26 D.o.E. App. Dec. 121 (2011) (custody change was pursuant to court order; eligibility denied on other grounds).

In addition, Sarah's was not actually a change of residency due to separation or other change in her parents' marital relationship. Sarah chose to live with her father; she was not forced to do so by court order or intolerable circumstances. Her transfer of residence and schools was the result of her choice. This is one of the very reasons why the Department recognizes that exception 281—IAC 36.15(3)"*a*"(4)8 must be bolstered by a court order.

There is no question but that David and Sarah are physically present in the West Delaware School District. It is important to recognize that there is nothing at odds about Sarah *residing* in the West Delaware School District. Residency is not the linchpin for application of the transfer rules. The question is whether Sarah *transferred schools* for any exception under the transfer rules that will grant her immediate eligibility to participate in varsity athletics.

"The transfer rules … are reasonably related to the IHSAA's purpose of deterring situations where transfers are not wholesomely motivated." *In re R.J. Levesque,* 17 D.o.E. App. Dec. 317 (1999). The purpose of the transfer rules does not require that athletics be the motivating factor for a transfer. The rules are purposefully broadly written because participation in interscholastic athletics is a privilege, not a right. *Brands v. Sheldon Community School*, 671 F.Supp. 627, 630 (N.D. Iowa 1987).

The transfer rules are presumptively valid. *United States ex rel. Missouri State High School Activities Ass'n*, 682 F.2d 147 (8th Cir. 1982). They may be attacked successfully only by a showing that the governing authority – in this case, the IGHSAU Board of Control – has applied the rules unreasonably.

Here, the IGHSAU Board did not erroneously or unreasonably apply rule 281—IAC 36.15(3)"*a*"(4)8. It applied a reasonable interpretation of the underlying facts to the rule's requirement for a court order. Sarah had every right to move with her father, but the totality of the evidence did not support immediate eligibility for her transfer to another high school. Sarah continues to worship at her "hometown" church in

Independence. She could commute with her father or drive herself to Independence High School to finish her senior year. Sarah expressed that she wanted to spend more time with her father; that goal would be accomplished more so by living with him in Manchester and maintaining her enrollment at Independence High School than by the transfer to West Delaware High School. Her transfer of schools – not her residency – appears to be motivated by school or athletics or a combination of the two.

Because David testified that his move was also motivated by the No Contact Order, it is noted that such order was issued one month after David talked to his present landlords about a lease, nine days after Mr. Luce contacted the IGHSAU office, and a few days after David and Sarah actually moved to Manchester. This confusing sequence is mentioned solely for the purpose of emphasizing that rule 281—IAC 36.15(3)"*a*"(4)8 must be bolstered by a court order regarding separation, divorce, or custody to avoid the appearance of any transfers motivated by school or athletics.

The IGHSAU and its Board did not incorrectly apply the general transfer rule to determine that Sarah M. is ineligible to participate in varsity interscholastic athletics for a period of 90 days. There was no abuse of discretion; the decision must be affirmed.

DECISION

For the foregoing reasons, the October 19, 2016 decision of the Board of Directors of the Iowa Girls High School Athletic Union that Sarah M. is ineligible to compete in varsity interscholastic athletics at West Delaware 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 9th day of November, 2016.

Carol J. Greta
Administrative Law Judge

It is so ordered.

11/09/16	/s/ Ryan M. Wise
Date	Ryan M. Wise, Director Iowa Department of Education