

**IOWA DEPARTMENT
OF EDUCATION
(Cite as 23 D.o.E. App. Dec. 63)**

In re Tural Buol :
St. Mary's High School, Storm Lake, :
Appellant, :
vs. : DECISION
Iowa High School Athletic Association, : [Admin. Doc. 4593]
Appellee. :

This matter was heard telephonically on October 14, 2004, before Carol J. Greta, designated administrative law judge¹, presiding on behalf of Judy A. Jeffrey, Interim Director of the Iowa Department of Education.

The Appellant, St. Mary's High School of Storm Lake, was represented by its spokesperson, Principal Rose Davis. Also present for St. Mary's were Athletic Director Tracy Schultz, At-Risk Coordinator Sarah Main, and Tural himself. Appearing on behalf of the Appellee, Iowa High School Athletic Association [herein "IHSAA"] was Assistant Executive Director Richard Wulkow. Neither party was represented by legal counsel.

An evidentiary hearing was held pursuant to departmental rules found at 281-Iowa Administrative Code chapter 6. Jurisdiction for this appeal is pursuant to Iowa Code § 280.13 and 281 Iowa Administrative Code 36.17. The administrative law judge finds that she and the Interim Director of the Department of Education have jurisdiction over the parties and subject matter of this appeal.

**I.
FINDINGS OF FACT**

Tural Buol is an 18-year-old native of Sudan. He moved from his homeland to Minnesota with his 32-year-old brother (and the brother's wife and their children) seven years ago. Tural's father is deceased; his mother has at all times remained in Sudan. It is not clear whether the brother was appointed legal guardian of Tural, but he certainly acted as his *de facto* guardian.

¹ Judge Greta is the Iowa Department of Education's liaison to the Board of Control of the Iowa High School Athletic Association, a non-voting position. She deliberately was not present when the IHSAA Board discussed and voted on this eligibility matter. Her membership on that Board was fully disclosed to the Appellant in writing prior to this hearing.

This family unit of Tural, his brother, sister-in-law, and their children lived in Faribault, Minnesota until approximately August 12, 2004, when the family moved to Storm Lake, Iowa. The move to Storm Lake occurred solely because the sister-in-law obtained employment in the Storm Lake area. At the time of the move, Tural's brother was temporarily back in Sudan. He rejoined his wife, children, and Tural in Storm Lake in late August. He is still seeking employment in the Storm Lake area.

While in Faribault, Tural attended a nonpublic religious school, Trinity Lutheran School, his first three years in this country (grades 6 – 8). Although Faribault has a nonpublic religious secondary school that Tural desired to attend, he testified that his brother told him that the family could not afford for Tural to attend the nonpublic high school. Therefore, Tural attended Faribault public high school his freshman, sophomore, and junior years. Prior to his arrival in the United States, Tural knew nothing about basketball. It is undisputed that he is now a very talented basketball player. Tural competed in basketball for the Faribault public high school all three years he was in attendance there.

St. Mary's High School is a part of a nonpublic school system, St. Mary's Catholic Schools. The high school is a member of the Iowa High School Athletic Association. It is located in Storm Lake, which is also served by Storm Lake High School of the Storm Lake Community School District.

Sometime before classes commenced at either school, Tural discovered an opportunity on the campus of the local college to play open gym basketball, where he met students from both the local high schools. At the request of the undersigned hearing officer, Mrs. Davis provided this agency and the IHSAA with documentation of contact between Tural and the St. Mary's basketball coach, Brad Wild. From that documentation and from other correspondence in the official file of this appeal, the following is a summary of events as they unfolded after August 12:

- The activities director for Storm Lake High School wrote to the IHSAA that Tural had attended a basketball camp "as a member of the Storm Lake High School team during the summer." Per this agency's rules, the camp had to have been conducted prior to the first day of classes, August 23. Therefore, we assume that the camp was held sometime between August 12 and August 23.
- Thursday, August 19: Tural registered for classes at Storm Lake High School.
- Sunday night, August 22: Tural attended an open gym at St. Mary's to which he had previously been invited by St. Mary's students. Coach Wild was present at the open gym. He and Tural met for the first time that night, and Coach Wild answered questions pertaining to the school

and about the possibility of financial aid depending on income. Tural told Coach Wild and the students that he would like to see the rest of the school the next day.

- Monday, August 23: This was the first day of classes at both Storm Lake High School and St. Mary's. Tural was not *in attendance* at either high school. Rather, he *toured* St. Mary's facilities and shadowed a St. Mary's student for the day. Tural told St. Mary's personnel that he wanted to visit both high schools and make up his mind within the first week of school as to which school would be better for him. Coach Wild spoke to Tural this day, telling him to "make a decision that would be the best personal fit for him."
- Tuesday, August 27, through Monday, August 30: Tural attended class (except as noted on Friday morning, August 27) at Storm Lake High School. At some point during this time, Tural – in response to a direct question from the district's activities director – confirmed that he was considering attending St. Mary's High School.
- Thursday, August 26: Tural came into the St. Mary's office around 4:00 p.m., asking to talk to Coach Wild. Mrs. Davis located the coach via telephone. Coach Wild and Tural spoke on the phone, after which Coach Wild came to St. Mary's and met briefly with Mrs. Davis and Tural. Tural told Coach Wild that he had decided to attend St. Mary's.
- Friday, August 27: Tural came to St. Mary's in the morning for a meeting about school rules and class schedules. Present at the meeting were Coach Wild, Mrs. Davis, and Mrs. Main. He requested that Mrs. Davis send a request to Storm Lake High School for his records, which she did that same day via facsimile transmission.
- Saturday, August 28: Coach Wild spoke to Tural as Tural was playing basketball at the local college's outdoor courts. Among other things, the coach reminded Tural of open gym at St. Mary's on the following day.
- Sunday, August 29: Tural attended open gym and told Coach Wild that he would be late for classes at St. Mary's the next day because he had to first meet with a guidance counselor at the public high school.
- Monday, August 30: Tural attended Storm Lake High School to return his books.

- Tuesday, August 31: Tural started classes at St. Mary's, and has been in attendance at St. Mary's since that date. *August 31 is the date of his enrollment at St. Mary's.*

Tural had no objective counsel from a trusted adult when he made his decision to attend St. Mary's. In testifying at this hearing, Tural explained that, in his brother's absence, he could not seek counsel from his brother's wife because to do so would be a sign of disrespect of his brother according to the customs and mores of his homeland.

II. CONCLUSIONS OF LAW

This is a far more complex case than appears on its surface. The circumstances here have created a "perfect storm" regarding not just one student's eligibility, but regarding the conduct of member schools vis-à-vis the IHSAA and each other.

ELIGIBILITY

The Iowa State Board of Education has adopted rules regarding student interscholastic athletic eligibility pursuant to the authority in Iowa Code § 280.13. Those rules are found in 281—IAC chapter 36. An intergovernmental agency agreement allows the Association to interpret and enforce these rules, subject to appeal to the Director of the Department of Education.

The IHSAA relied on 281—IAC 36.15(3), the general transfer rule, when it determined that Tural is ineligible to compete at St. Mary's for 90 consecutive school days. The rule states, in 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 ... unless one of the exceptions listed in paragraph 36.15(3)"a" applies. In ruling upon the eligibility of transfer students, the executive boards shall consider the factors motivating student changes in residency. ...

The written decision of the IHSAA denying immediate eligibility for Tural states simply that no exception to the general transfer rule exists for Tural. However, the decision of the IHSAA management and Board assumes that a transfer took place. We are not convinced under the facts herein that this is a transfer situation.

Turial had been living with his brother's family for seven years, and when they moved to Iowa, he moved with them. The IHSAA did not argue that this was not tantamount to a change in "parental residence," and we agree with them. Thus, as a new resident of the Storm Lake public school district, Turial had a choice under the eligibility rules of attending the public school or any nonpublic school within the district. This is in accordance with rule 36.15(3)"a"(1), which states as follows:

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.

...

The undersigned hearing officer asked Mr. Wulkow whether Turial would have had immediate eligibility at St. Mary's had he done everything the same except not actually attend classes the four-and-a-half days he did so at the public high school. The exact question posed was: *Could Turial have visited with staff from both schools in late August, not enroll at or attend either school, make a decision to enroll at St. Mary's within the first two weeks of school and have immediate eligibility?* Mr. Wulkow answered that management's answer (subject to discretionary examination by the Board of Control) would be "yes," Turial would have immediate eligibility at St. Mary's had he just not attended class at Storm Lake Public.

Turial registered for classes at the public high school on August 19, but was not *in attendance* at that school until August 24, one day after he visited the facilities at St. Mary's and shadowed a student for the day. He told staff from both schools that he was in the decision-making process. After three days of classes at Storm Lake High School, Turial made his decision, and disclosed his decision to St. Mary's on Thursday, August 26 and to the public school officials on the next day. It appears that Turial fully intended to merely turn in his books at Storm Lake High School on Friday afternoon, August 27.

Under these facts, it is not reasonable to treat Turial as a transfer student. We caution that this conclusion is not to be read broadly. It is strictly limited to the highly unusual convergence of the facts herein, including that (1) because his family moved to Storm Lake so close to the start of school, actually going to class may have been the best means available for a young person in Turial's position to gather the information he needed to make his decision; (2) Turial is an English language-learner who is unfamiliar with our education laws, rules, and policies; and (3) Turial did not have the benefit of guidance from a trusted, objective adult in making his decision.

The eligibility rules are unquestionably related with good reason to the purpose of deterring school jumping and recruiting of student athletes (*see, e.g., In re R.J. Levesque*, 17 D.o.E. App. Dec. 317 (1999)). However, this is not to say that the rules make a student who has been recruited ineligible. They do not. No form of the word "recruit"

and no synonymous word or phrase appears anywhere in the rules.² Are the IHSAA and its sister organization, the Iowa Girls High School Athletic Union, helpless in the face of unwholesome situations? As discussed later herein, they are not.

When asked whether the IHSAA believed that recruitment was an issue in this case, Mr. Wulkow replied, “There has been no evidence presented that would indicate that recruitment has taken place.” In fairness to the IHSAA, neither its management nor its Board of Control had the benefit of reviewing the documentation from St. Mary’s (regarding Coach Wild) until after Mr. Wulkow made this statement. Because we believe it to be possible that recruitment of Turlial took place,³ we address that issue at this time.

UNDUE INFLUENCE

The transfer rules address whether a student has immediate eligibility due to his own conduct. Students are not members of either the Iowa High School Athletic Association or the Iowa Girls High School Athletic Union. Therefore, those organizations cannot make rulings regarding students outside the confines of the chapter 36 rules.

As this agency noted in the case of *In re Clinton Youlden*, 15 D.o.E. App. Dec. 64 (1997), any “part of the IHSAA Constitution and Bylaws handbook is not a part of the rules of the Department [of Education], and is not contained in the Iowa Code. ... In order to take action, the IHSAA is reminded that it must cite to a rule of the Department or the Iowa Code for authority to take action regarding student eligibility. Alternatively, the IHSAA could ask the State Board to promulgate a rule incorporating the undue influence language if it wishes.”⁴

On the other hand, the athletic organizations have more latitude to deal with their member and associate member schools, including coaches, other school personnel, or any other person directly or indirectly associated with those schools. For example, the stated Purpose in Article II of the Constitution and Bylaws of the IHSAA is to “stimulate fair play, friendly rivalry, and good sportsmanship among contestants, schools and communities throughout the state.” To that end, Article V, Section 8(d) gives the IHSAA Board of Control the power and the duty to investigate violations by members and associate members of the Constitution, Bylaws, and rules and violations of the “spirit of fair play and good sportsmanship” by its members and associate members, and to “determine and assess penalties in case of conviction.”

² The phrase “undue influence” appears in the IHSAA Constitution and Bylaws Handbook, but that is not a part of the rules of this agency.

³ We again caution, however, that recruitment is not prohibited by the transfer rules in chapter 36. The rules are designed to inhibit recruitment, but a student who is otherwise eligible cannot be denied eligibility solely because he was recruited to enroll in a member or associate member school.

⁴ This decision uses the terms “undue influence” and “recruitment” synonymously.

Although Turlial did not violate the transfer rules, this is not to say that there may be nothing to investigate and act on. There appears to be much that is amiss here. While it is not within the authority of the Iowa Department of Education to conclude that any violations of the IHSAA Constitution and Bylaws have occurred, the following actions raise questions that the IHSAA may decide to investigate and act accordingly:

- This agency cannot determine the motivation of the St. Mary's coach, but we note that he had more contacts with Turlial at decision-making points than appear to be appropriate. Knowing that Turlial did not have a family member with whom he could discuss his decision was all the more reason for Coach Wild to keep his distance and not taint the decision-making process with the appearance of impropriety.
- The narration provided by St. Mary's seems to indicate that the coach was present at an "open gym" on a Sunday night after classes started. If true, this is a direct violation of rule 36.15(6), which prohibits player-coach contact out-of-season during the school year. The penalty for such a violation is *team ineligibility* in that sport for up to one year.
- Turlial was given a reduction in tuition, and we do not doubt that the income of his family unit justifies the reduction. The question begged by this situation is whether another student in Turlial's place would be given the same benefit. Turlial testified herein that he decided to attend St. Mary's "because of the kids" and because he thought he would get more help from the teachers because class size is smaller than at Storm Lake Public. He said nothing at this hearing about desiring to attend St. Mary's for moral and religious instruction. (We note that his previous experience in a nonpublic system was in a Lutheran school; St. Mary's is affiliated with a Roman Catholic diocese.)

It is also revealing that the Storm Lake school district's activities director characterized Turlial's attendance at a summer basketball camp as being "as a member of the Storm Lake High School team." This characterization has two negative implications for the district:

- (1) At the time of the camp (which would have had to take place before the first day of classes), Turlial could not be considered "enrolled" or "in attendance" at any school, and therefore at that time he could not be considered a member of any school's team. The proprietary way in which Storm Lake High School viewed Turlial is distressing. It may not be actionable by the IHSAA, but it is both misplaced and contrary to the spirit of fair play and good sportsmanship.

- (2) The activities director's use of the term "Storm Lake High School team" also implies that students were representing the public high school outside of the basketball season, a violation of rule 36.15(6)(c), if true.

The record in this case included much finger-pointing of both schools at the other. In short, neither school is to be commended for the way in which they viewed Tural as some prize to be won in a game of tug-of-war. It is little wonder that Tural clearly defines himself as a basketball player first and foremost. We hope that his teachers and administrators do better by Tural for the remainder of his time in school.

III. DECISION

For the foregoing reasons, the September 20, 2004 decision of the Board of Control of the Iowa High School Athletic Association that Tural Buol is ineligible to compete in interscholastic athletics at St. Mary's High School, Storm Lake, for a period of 90 consecutive school days is **REVERSED**. There are no costs associated with this appeal to be assigned to either party.

Date

Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

Date

Judy Jeffrey, Interim Director
Iowa Department of Education