IOWA DEPARTMENT
OF EDUCATION
(Cite as 23 D.o.E. App. Dec. 55)

In re Travis Struss

Dean and Colleen Struss, Appellants,	:	
	:	DECISION
vs.	:	[Admin. Doc. 4592]
Iowa High School Athletic Association, Appellee.	:	

This matter was heard telephonically on October 8, 2004, before Carol J. Greta, designated administrative law judge[1], presiding on behalf of Judy A. Jeffrey, Interim Director of the Iowa Department of Education.

The Appellants, Mr. and Mrs. Struss, were both present on behalf of their minor son, Travis, who was also present. The Struss family was represented by attorney William Alexander. Appearing on behalf of the Appellee, Iowa High School Athletic Association [herein "IHSAA"] were Executive Director Bernie Saggau and Assistant Executive Director Richard Wulkow. IHSAA was represented by its legal counsel, Bruce Anderson.

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

The Strusses originally sought reversal of a decision of the Board of Control of the IHSAA made on September 16, 2004, that Travis is ineligible under the provisions of the open enrollment transfer rule, 281—IAC 36.15(4), for 90 consecutive school days to compete in interscholastic athletics following his open enrollment from the Albert City-Truesdale Community School District to the Laurens-Marathon Community School District. At this hearing they argued for the first time that Travis should *not* be

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[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.

considered open enrolled to the Laurens-Marathon District. Because this argument was not posited before the IHSAA management or its Board of Control, if Travis did not transfer via open enrollment, this matter must be remanded to the IHSAA for further consideration under the general transfer rule, 281—IAC 36.15(3).

Travis is a 17-year-old senior who resides with his parents in the Albert City-Truesdale District. Until the present school year, Travis had always attended school in the Albert City-Truesdale District. For the past several years, ending after the 2003-04 school year, the Albert City-Truesdale District had a cooperative sharing agreement with the Laurens-Marathon District for football, the fall sport in which Travis participates. Under the agreement, the Laurens-Marathon District was the host school; i.e., practices and competitions were held at Laurens-Marathon facilities. Therefore, Travis had a great deal of familiarity with the Laurens-Marathon District's coaches, students, and school facilities. Travis testified that he wanted to attend Laurens-Marathon for both school and athletic reasons.

Travis is the oldest of three children in the Struss family. His siblings, a 9th and 10th grader, attend school this year at Sioux Central Community School District pursuant to a whole grade sharing agreement between Sioux Central and the Albert City-Truesdale District. "Whole grade sharing is a procedure used by school districts whereby all or a substantial portion of the pupils in any grade … share an educational program." Iowa Code § 282.10(1)(2003).

This particular whole grade sharing agreement is new. The administration and board of the Albert City-Truesdale District first discussed the possibility of a whole grade sharing agreement with the Laurens-Marathon District, then with the Newell-Fonda Community School District. When neither set of discussions bore fruit, the Albert City-Truesdale District explored other options. The Albert City-Truesdale District reached an agreement with the Sioux Central District to send all of its secondary students to Sioux Central for all music (band and vocal), science and mathematics courses for the 2004-05 school year. Under this first agreement, Albert City-Truesdale students would remain in their own high school for all other courses. In addition, those two districts agreed to share all athletics, with Sioux Central as the host school. With that agreement in hand, the two districts next commenced negotiations for a whole grade sharing agreement whereby the Albert City-Truesdale high school students would attend all classes at the Sioux Central District *for the 2005-06 school year*.

The Albert City-Truesdale Board formally announced its intention to whole grade share its secondary students for 2005-06 with Sioux Central on June 1, 2004. However, Albert City-Truesdale parents continued to withdraw their children from the Albert City-Truesdale high school until it was clear that the high school was not going to be viable for the 2004-05 school year. *Therefore, on June 14, 2004, the Albert City-Truesdale Board voted to negotiate a whole grade sharing agreement with the Sioux Central District for the 2004-05 school year.*

Any agreement to whole grade share is to be signed by the board of the districts involved no later than "February 1 of the school year preceding the school year for which the agreement is to take effect." Iowa Code section 282.10(4). With that deadline having passed, the Iowa Legislature enacted special enabling legislation (S.F. 2298, section 81) waiving all usual deadlines upon the condition that one of the districts have an enrollment of less than 300 students and that the agreement be signed before July 1, 2004. Albert City-Truesdale's enrollment is less than 300 students; the whole grade sharing agreement for 2004-05 was signed on June 28, 2004.

Although Mrs. Struss testified that she knew before May that Travis wanted to attend Laurens-Marathon, it was not until July 7 that the family filed an open enrollment request on behalf of Travis with the Laurens-Marathon District. Laurens-Marathon Superintendent Mike Wright approved the request on July 10. He testified that it was not until mid-September that he learned that the Albert City-Truesdale superintendent was not counting Travis as an "open enrollment out" student on his district's certified enrollment documents. Therefore, the Appellants argue now that this is not an open enrollment transfer.

II.
CONCLUSIONS OF LAW

The first question to be answered in this case is whether Travis intended to use open enrollment as the means by which to transfer from Albert City-Truesdale to Laurens-Marathon. Inasmuch as this appeal underscores the confusion that exists regarding the applicability of the open enrollment and whole grade sharing laws, we also take this opportunity to discuss both laws.

Open enrollment is available to any parent or guardian who wishes to enroll a child in another district and who files the request before January 1 of the preceding school year. Requests for open enrollment are not limited to contiguous school districts. A subsection of the open enrollment law allows a late request to be granted "at any time with approval of the resident and receiving districts." Iowa Code section 282.18(16). In other words, if there is no "good cause" for a parent to have missed the January 1 deadline, open enrollment may still occur, but only if both the resident and receiving districts approve the request. The Albert City-Truesdale District, as is its right, does not approve this request.

Whereas section 282.18(16) addresses school districts' discretion to allow parents to miss the filing deadline for open enrollment, relief from the January 1 deadline shall be granted automatically for certain specific reasons related to either a change in the child's family residence or a change in the child's district of residence. These reasons, delineated in section 282.18(4)(b), include the following:

> "…the failure of negotiations for a whole-grade sharing … agreement or the rejection of a current whole-grade sharing agreement … . If the good cause relates to a change in status of a child's school district of residence, however, action by a parent or guardian must be taken to file the notification within forty-five days of the last board action … ."

For instance, if the Albert City-Truesdale and Sioux Central Boards had failed to reach an agreement after negotiating for several weeks, the Albert City-Truesdale parents would then, under section 282.18(4)(b), have had 45 days following a final vote to discontinue talks with Sioux Central to file for open enrollment out of the Albert City-Truesdale District. Or, if a few years from now, both Boards vote to dissolve the whole grade sharing agreement, parents of affected children will have 45 days from that vote to file for open enrollment. This, however, is a case of a new whole grade sharing agreement being initiated. This situation is not addressed anywhere in the *open enrollment statute*.

Not having good cause to file a late request for open enrollment did not leave the Struss family without an option. Iowa Code section 282.11 unambiguously states in pertinent part as follows:

> "… **Within the thirty-day period prior to the signing of the agreement, the parent or guardian of an affected pupil may request the board of directors to send the pupil to another contiguous school district**. For the purposes of this section, "affected pupils" are those who under the whole grade sharing agreement are attending or scheduled to attend the school district specified in the agreement, other than the district of residence, during the term of the agreement. The request shall be based upon one of the following: (1) That the agreement will not meet the educational program needs of the pupil. (2) That adequate consideration was not given to geographical factors. [Emphasis added.]

Accordingly, the correct statement of the law is that the Strusses had two means, with two separate and distinct timeframes, available to them by which to request that Travis attend the Laurens-Marathon District for the 2004-05 school year. (1) They could have filed for open enrollment prior to January 1, 2004, under Iowa Code section 282.18. (2) In the alternative, the Struss family had a timeframe of 30 days prior to the June 28 signing of the new whole grade sharing agreement in which to file a request for a transfer of Travis to the Laurens-Marathon District.[2]

[2] In this case, Albert City-Truesdale families did not have the full 30 days in which to file under 282.11 because there was only a 14 day period between public notice of intent to sign the whole grade sharing

The following table summaries the key aspects of the whole grade sharing law when contrasted with the open enrollment law.

Key Point	**Whole Grade Sharing**	**Open Enrollment**
Iowa Code §	282.11	282.18
Timeframes	When new whole grade sharing agreement is signed, parents have 30 days prior to the signing of the agreement to request a transfer of an affected student	Before January 1 or within 45 days of final board action to end whole grade sharing negotiations or to terminate an existing whole grade sharing agreement
Where to file request	With board of the resident district (in this case, Albert City-Truesdale)	Absent exceptions that do not apply here, with the receiving district (in this case, Laurens-Marathon)
Grounds for timely request	Either (1) that the whole grade sharing agreement will not meet the student's educational program needs or (2) that adequate consideration was not given to geographical factors	No reasons or grounds needed when request is filed by January 1
Receiving district	Must be contiguous to resident district	No restrictions, other than must be another Iowa school district
Student	Must be in a grade affected by the whole grade sharing agreement	Any student

Having missed the January 1 open enrollment deadline, the Struss family had only the section 282.11 whole grade sharing transfer provisions at their disposal. However, it is clear that the Strusses intended to ignore the provisions of section 282.11 in favor of using the open enrollment provisions of section 282.18. The family not only used the open enrollment request form, they filed the form with the receiving district. It is just as clear that the section 282.11 whole grade sharing transfer provisions are adequate, had they been used by the family.

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agreement that the actual signing. However, we must assume that when the Iowa Legislature passed enabling legislation to allow the Districts to enter into this sharing arrangement, the legislators made the policy determination that the shortened timeframe was still adequate to protect the rights of all affected students. The legislation (Senate File 2298, Sec. 81), states: "Notwithstanding sections 282.10 and 282.11, the department of education may, at the department's discretion, waive any of the deadline requirements of sections 282.10 and 282.11, relating to the signing of a whole-grade sharing agreement by the boards of two or more school districts involved in the agreement and the public notice and hearing requirements, if one of the districts involved in the agreement has an enrollment of less than three hundred. This section is repealed July 1, 2004."

Mrs. Struss testified that she "couldn't" have filed the transfer request between the 14th and 28th of June, but neither she nor anyone else explained *why* the request could not have been filed in that 14 day period. In a newspaper article dated June 12, 2004, and submitted by the Strusses, "waves" of students were reported to be transferring from the Albert City-Truesdale District. Mrs. Struss testified that she knew before May that Travis wanted to attend high school at Laurens-Marathon, and she further stated that she attended many local Albert City-Truesdale Board meetings in May and June. Not only did the family fail to show why it waited until July 7 to file the open enrollment request for Travis, we conclude there was no justification for this delay.

Superintendent Wright testified herein that a school improvement consultant for the Iowa Department of Education told him that open enrollment was a "neater, cleaner" method of transfer in these types of situations. Superintendent Wright had earlier informed the undersigned judge (in an electronic mail transmission dated August 26) that the same agency consultant had told him that "even though the law has always said 30 days prior to the signing of such an agreement, it has always been interpreted and enforced as 30 days after the signing of the agreement."

For purposes of this appeal, we assume that the statements above were given to Superintendent Wright. However, this is not beneficial to the Struss family in this appeal. Even though both representations are not true, a cursory reading of Iowa Code section 282.11 by the superintendent, Mr. or Mrs. Struss, or their attorney would have cleared up any confusion. Secondly, as school administrators are aware, a Department of Education school improvement consultant has no authority regarding the eligibility of a secondary student to participate in interscholastic athletics.

Nor is the matter of certified enrollment dispositive of this issue. For purposes of an appeal of this nature, the determinative factor is the intent of the student and his family. The Strusses intended to use open enrollment. Laurens-Marathon accepted Travis as an open enrollment student. His family cannot now argue that their misuse of the open enrollment statute preserves an opportunity for them to press a new case that he is a general transfer student.[3]

Having determined that Travis is covered by the open enrollment transfer rule and no other transfer rule, we move on to the question whether he should be granted immediate eligibility under the transfer rule.

The open enrollment transfer rule states as follows:

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[3] The Laurens-Marathon Superintendent requested that the Department clarify certified enrollment and finance issues specific to Travis. This has been done in a separate letter to Supt. Wright, as well as to the superintendents of Albert City-Truesdale and Sioux Central.

36.15(4) *Open enrollment transfer rule*. A student in grades 10 through 12 whose transfer of schools had occurred due to a request for open enrollment by the student's parent or guardian is ineligible to compete in interscholastic athletics during the first 90 school days of transfer. This period of ineligibility does not apply if the student:

a. Participates in an athletic activity in the receiving district that is not available in the district of residence; or

b. Participates in an athletic activity for which the resident and receiving districts have a cooperative student participation agreement pursuant to rule 36.20; or

c. Has paid tuition for one or more years to the receiving school district prior to making application for and being granted open enrollment; or

d. Has attended in the receiving district for one or more years prior to making application for and being granted open enrollment under a sharing or mutual agreement between the resident and receiving districts; or

e. Has been participating in open enrollment and whose parents/guardians move out of their district of residence but exercise either the option of remaining in the original open enrollment district or enrolling in the new district of residence. If the pupil has established athletic eligibility under open enrollment it is continued despite the parent's or guardian's change in residence; or

f. Has not been participating in open enrollment, but utilizes open enrollment to remain in the original district of residence following a change of residence of the student's parent(s). If the pupil has established athletic eligibility, it is continued despite the parent's or guardian's change in residence; or

g. Obtains open enrollment due to the dissolution and merger of the former district of residence under Iowa Code subsection 256.11(12); or

h. Obtains open enrollment due to the pupil's district of residence entering into a whole grade sharing agreement on or after July 1, 1990, including the grade in which the pupil would be enrolled at the start of the whole-grade sharing agreement; or

i. Participates in open enrollment and the parent/guardian is an active member of the armed forces and resides in permanent housing on government property provided by a branch of the armed services.

These exceptions are mandated in Iowa Code § 282.18(13). The exception in "*h*" regarding a whole grade sharing agreement must be read in concert with the entirety of the open enrollment law, 282.18, and its accompanying administrative rules in 281—IAC chapter 17. As discussed previously, "good cause" for filing an open enrollment request after January 1st does not include a *new* whole grade sharing agreement. Therefore, the Struss family had no recognized excuse to file for open enrollment of Travis on July 7. The open enrollment request should not have been granted by Laurens-Marathon. As Travis did not obtain open enrollment properly, he cannot take advantage of the exception in rule 36.15(4)"*h*".

Finally, we note that a majority of courts, including the federal courts in Iowa, have ruled 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 successfully argued that any student is harmed by his or her ineligibility to compete. Travis is allowed by the rules to practice with the team and enjoy the camaraderie of his teammates. He may be with the team on the sidelines during a game and may even contribute to the team effort as, for example, a statistician. He simply may not compete with and for his teammates come game time.

III.
DECISION

For the foregoing reasons, the September 16, 2004 decision of the Board of Control of the Iowa High School Athletic Association that Travis Struss is ineligible to compete in interscholastic athletics at Laurens-Marathon Community School District for a period of 90 consecutive school days is **AFFIRMED**. There are no costs associated with this appeal to be assigned to either party.

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

It is so ordered.

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Date Judy Jeffrey, Interim Director
Iowa Department of Education