

**IOWA DEPARTMENT
OF EDUCATION
(Cite as 23 D.o.E. App. Dec. 47)**

<i>In re Tara Ernst</i>	:	
Francis J. and Vicki Ernst, Appellants,	:	
vs.	:	DECISION
Iowa Girls High School Athletic Union, Appellee.	:	[Admin. Doc. 4591]

This matter was heard on September 23, 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 Appellants, parents of the minor child Tara Ernst, participated in this hearing via telephone. Tara was also present telephonically. The Appellee, the Iowa Girls High School Athletic Union was represented in person by its Executive Director, Troy Dannen. Also appearing on behalf of the Union was Associate Director, Mike Dick. 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. Appellant seeks reversal of a decision made by the Board of the Union on September 13, 2004, that Tara Ernst is ineligible under the provisions of 281 Iowa Administrative Code Chapter 36 to compete in interscholastic athletics for 90 consecutive school days following her transfer to Hempstead High School of the Dubuque Community School District.

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.

¹ Judge Greta is the Iowa Department of Education's liaison to the Board of the Iowa Girls High School Athletic Union, a non-voting position. She deliberately was not present when the IGHSAU Board discussed and voted on this eligibility matter. Her membership on that Board was fully disclosed to the Appellant, who did not object to Judge Greta being the administrative law judge for this appeal.

I. FINDINGS OF FACT

The Ernst family resides in the Dubuque Community School District. Tara is a 9th grader at Hempstead High School. She attended lower grades in nonpublic schools in the Holy Family System in the Archdiocese of Dubuque. In anticipation of beginning her freshman year at Wahlert High School, the only secondary school in the Dubuque Holy Family System, Tara played softball for Wahlert at the end of 8th grade.

Prior to the start of classes this school year, Tara transferred from Wahlert to Hempstead. Both schools are members of the Girls Union. She testified forthrightly that her transfer was motivated by the fact that friends of hers had transferred to Hempstead. She wants to be with her friends, and she wants to be able to be on sports teams with her friends.

Her parents support Tara's transfer, and they confirm her stated reason for the change. In addition, they presented the "instability of the Holy Family School System in Dubuque" as another factor behind the transfer. The Ernsts submitted newspaper articles chronicling uncertainly regarding the restructuring of some of the attendance centers within Holy Family, which is an accredited nonpublic school system. Wahlert is not directly affected by any of the restructuring plans.

The Ernst testified that the uncertainty, loss of enrollment and consequent layoffs of instructors have raised questions in their minds about the quality of education at the schools of Holy Family. The Ernst also noted in one of their submitted exhibits that they received tuition assistance from the school system last school year, but were notified that the assistance would not be available to them this school year.

II. CONCLUSIONS OF LAW

The Iowa State Board of Education has adopted rules regarding student interscholastic athletic eligibility pursuant to the authority in Iowa Code section 280.13. Those rules are found in 281 IAC Chapter 36. An intergovernmental agency agreement allows the Union (and its counterpart, the Iowa High School Athletic Association) to interpret and enforce these rules, subject to appeal to the Director of the Department of Education.

Incoming 9th graders have immediate eligibility at any member or associate member school of the Union, with one exception. Rule 281—IAC 36.15(3)"c" states as follows:

A student who participates in the name of a member or associate member school during the summer following eighth grade is ineligible to participate in the name of another member or associate member school in the first 90 consecutive school days of ninth grade unless a change of residence has occurred after the student began participating in the summer.

This exception applies here, inasmuch as Tara competed on behalf of Wahlert in softball the summer following 8th grade. Therefore, we examine the effect of the general transfer rule as it applies herein.

The Union relied on 281—IAC 36.15(3), the general transfer rule, when it determined that Tara is ineligible to compete at Hempstead 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. ...

There are eight exceptions listed, seven of which are narrowly tailored to address situations such as eligibility for foreign exchange students or students in foster care. Those seven exceptions are inapplicable to this appeal. Exception “a”(8) – the exception to be applied to this case – states as follows:

- 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. ...

Tara’s honest answer as to why she transferred to Hempstead – to be with her friends – is the motivation that will be examined in this decision. While the Ernsts also argue that the instability of the Holy Family System should be considered, it is clear that this factor is an afterthought. The Ernsts confirmed that wanting to be with her friends was Tara’s sole motivation. There is no indication whatsoever that, *but for the earlier transfer of her friends from Wahlert to Hempstead*, Tara would not still be at Wahlert.

Therefore, our analysis is limited to Tara's stated motivation. (While it will not be of comfort to the Ernsts, we do note that neither factor raised by them would be successful.²)

The Union does not argue that Tara's transfer was based on recruiting or was in anyway motivated by athletics. Indeed, we take at face value Tara's statement that she just wanted to be with her friends. She and her family argue that, because her transfer was not motivated by athletics, it is not fair that she be denied immediate eligibility at Hempstead. We have addressed the fairness argument in many cases, and have consistently stated that the fact that a transfer may not be motivated by athletics does not negate the validity of the general transfer rule. This agency consistently has declined to make an exception to the 90 school day period of ineligibility in cases where a student was motivated by factors other than athletics. *In re Douglas Gillett*, 21 D.o.E. App. Dec. 218 (2001); *In re Erin Kappeler*, 17 D.o.E. App. Dec. 348 (1999); *In re Scott Halapua*, 13 D. o.E. App. Dec. 394 (1996).

The transfer rules are reasonably related to the purpose of deterring situations where transfers are not so wholesomely motivated. *In re R.J. Levesque*, 17 D.o.E. App. Dec. 317 (1999). Given also that the 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)], the Ernsts cannot successfully argue that Tara has been harmed by her ineligibility to compete. She is allowed by the rules to practice with the team and enjoy the camaraderie engendered by such association; she simply may not "suit up" and play with her teammates come game time. While such playing time is not regarded as a mere frivolity by this agency, the Ernsts have stated emphatically that it was not a factor in the transfer. Accordingly, we shall not elevate its importance here.

While our general transfer rule has not been interpreted by an appellate court in Iowa, a similar transfer rule was the subject of *Indiana High School Athletic Assn., Inc. v. Avant*, 650 N.E.2d 1164 (Ind. App. 1995), in which the Indiana Court of Appeals stated as follows:

² The following decisions have precedential value here: *In re Cameron Kroemer*, 9 D.o.E. App. Dec. 302 (1992) (where no decisions have been made about the future of a school, parents "should be able to wait to see what their school board does, and hear the Board's basis for its [decision], before having to make their decision."); *In re Malcolm Bevel*, 21 D.o.E. App. Dec. 186 (2002) (transfer based on speculation that a high school might close does not justify immediate eligibility at new school); *In re Douglas Gillett*, 21 D.o.E. App. Dec. 218 (2002) (transfer based on desire to access a perceived superior mathematics curriculum does not justify immediate eligibility at new school); *In re Webster Clayton IV*, 21 D.o.E. App. Dec. 176 (2002) (transfer based on both uncertainty about future of a high school and desire to access a perceived superior overall education does not justify immediate eligibility at new school); *In re Cooper Rose*, 22 D.o.E. App. Dec. 242 (2004) (transfer based on change in personal finances – in this case, renewed ability of family to pay nonpublic school tuition – does not justify immediate eligibility at new school).

The Transfer Rule is designed to eliminate school jumping and recruitment of student athletes. Transfers not accompanied by a change in residence (or falling outside the 13 exceptions) are suspect in that they are subject to substantial manipulation. The Transfer Rule deters unscrupulous students and parents from manufacturing all sorts of reasons for a transfer, thereby faintly disguising athletically motivated transfers. The distinctions between these classifications are reasonably related to achieving the [Indiana High School Athletic Association]'s purpose in deterring school jumping and recruitment.

Id. at 1170.

Although we accept at face value that Tara's reasons for transferring to Hempstead were not motivated by school jumping or recruitment for athletic purposes, the transfer rules are applicable and controlling because the rules are reasonably related to achieving this agency's purpose in deterring school jumping and recruitment.

III. DECISION

For the foregoing reasons, the September 13, 2004 decision of the Board of the Iowa Girls High School Athletic Union that Tara Ernst is ineligible to compete in interscholastic athletics for 90 consecutive school days at Dubuque Hempstead High School is **AFFIRMED**. 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 A. Jeffrey, Interim Director
Iowa Department of Education