

**IOWA DEPARTMENT
OF EDUCATION
(Cite as 22 D.o.E. App. Dec. 10)**

<i>In re Ramy Younes</i>	:	
	:	
Lori Price,	:	
Appellant,	:	
	:	
vs.	:	DECISION
	:	
Iowa High School Athletic Association,	:	
Appellee.	:	[Admin. Doc. 4539]

This matter was heard on March 18, 2003, before Carol J. Greta, designated administrative law judge¹, presiding on behalf of Ted Stilwill, Director of the Iowa Department of Education.

Appellant, Lori Price, was present telephonically for the hearing on behalf of her ward, Ramy Younes. Also present telephonically on behalf of Ramy were Dr. Mike Jorgensen, superintendent of Southeast Webster Community School District; Mark Graves, a teacher and head football and track coach at the District; Launi Danes, 7 – 12 principal and activities director for the District; and Ramy, himself. Appellee, Iowa High School Athletic Association [herein “IHSAA”] was represented in person by its Executive Director, Bernie Saggau. Neither party was represented by legal counsel.

An evidentiary hearing was held pursuant to departmental rules found at 281-Iowa Administrative Code 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 of the Board of Control of the IHSAA made on March 1, 2003, that Ramy is ineligible under the provisions of 281 Iowa Administrative Code 36 to compete in interscholastic athletics for 90 consecutive school days following his entry into the Southeast Webster Community School District.

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.

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, who did not object to Judge Greta being the administrative law judge for this appeal.

I. FINDINGS OF FACT

No one disputes the facts of this case. Ramy, whose present grade level at Southeast Webster is that of a high school junior, is a citizen of France. He attended the District as a sophomore during the 2001-2002 school year under the auspices of a foreign exchange program. Pursuant to section 256.46 of the Iowa Code, he had immediate eligibility to compete in interscholastic athletics at the District that entire school year.

At the end of the 2001-2002 school year, Ramy returned to his home in France. However, he desired to return to Southeast Webster to complete his secondary education and perhaps embark upon post-secondary education in this country. Therefore, commencing in July of 2002, efforts were begun to secure the necessary approval and documentation for Ramy by Ms. Price, district personnel, and Ramy and his family. The ensuing delay was described by Mr. Graves in a letter he sent to the IHSAA dated January 10, 2003, as follows:

Due to the terrorism acts of 9/11 and the ongoing threats of terrorism since then, national security concerns prevented the United States and French embassies from giving Ramy a visa until they were completely sure that he was not a threat to security. ... Ramy finally was granted a visa and has been attending [Southeast Webster] classes since school resumed on January 6, 2003.

Unquestionably, the intent of Ramy and of all persons involved on his behalf was that he start classes at the District in the fall of 2002. His residence in Iowa with the Price family was assured. His first semester tuition at the district had been paid.² Ramy, the Prices, and the school personnel involved understood that he would be ineligible for the first 90 school days at the district under the eligibility rules of 281—Iowa Administrative Code chapter 36. Of course, the assumption was that he would be at Southeast Webster in the fall of 2002, so that his period of ineligibility would be expired well before the date of this hearing.

While awaiting clearance to travel to Iowa, Ramy attended school in France. According to testimony on behalf of Ramy, his school did not offer athletics in which he could participate. Ramy desires to compete again for Southeast Webster's track team. During the 2001-2002 school year, according to Mr. Graves, Ramy ran on the school's 3200 (4 x 800) meter relay team at the state track meet. Mr. Graves also testified that

² Because Ramy is present in the Southeast Webster Community School District for school purposes, he is not a "resident" of that district as defined in Iowa Code § 282.6. Accordingly, the district had to charge tuition to Ramy. Dr. Jorgensen testified that the tuition paid was applied to second semester of this school year.

Ramy's best time at 800 meters was 2:09, a clocking that is not going to place him among the elite middle distance runners in Iowa. We find that his motive in returning to the District is not related to athletics.

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 36. An intergovernmental agency agreement allows IHSAA to interpret and enforce these rules, subject to appeal to the Director of the Department of Education.

The general transfer rule essentially states that, absent an exception provided for in the rules, a transfer student "shall be ineligible to compete in interscholastic athletics for a period of 90 consecutive school days." 281—IAC 36.15(3). The rule is based on Iowa Code § 256.46, which states as follows:

The state board shall adopt rules that permit a child who does not meet the residence requirements for participation in extracurricular interscholastic contests or competitions sponsored or administered by an organization as defined in section 280.13³ to participate in the contest or competitions immediately if the child is duly enrolled in a school, is otherwise eligible to participate, and meets one of the following circumstances or a similar circumstance: the child has been adopted; the child is placed under foster or shelter care; 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 child is a foreign exchange student; the child has been placed in a juvenile correctional facility; the child is a ward of the court of the state; the child is a participant in a substance abuse or mental health program; or the child is enrolled in an accredited nonpublic high school because the child's district of residence has entered into a whole grade sharing agreement for the pupil's grade with another district.

IHSAA relied on 281-IAC 36.15(3), the General Transfer Rule, when it determined that Ramy is ineligible to compete at Southeast Webster for 90 consecutive school days. The rule states, in part, as follows:

³ The Iowa High School Athletic Association and the Iowa Girls High School Athletic Union are the organizations defined in Iowa Code section 280.13.

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. ...

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:

...

(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 these rules and those set by the school of attendance:

...

3. Participation in a foreign exchange program recognized by the school of attendance.

...

(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. ...

There is no question that Ramy is no longer a participant of a foreign exchange program, the exception under subrule “a”(4)“3”. The argument being urged on Ramy’s behalf is that an exception should be made for him under subrule (8) above. Ramy’s advocates recognize that the IHSAA has the authority to rule as it did. However, they argue that it would be fair and reasonable to rule Ramy eligible now to compete in track at Southeast Webster because, had his attendance begun in the fall, the 90 days would be completed. In the alternative, we are asked to rule Ramy immediately eligible simply because the delay in his attendance at the District was beyond his control.

As for the argument that the 90-day “clock” should have started running on the first day that Ramy *intended* to be in class in the district, we cannot ignore the fact that he was physically attending another school at that time. An argument similar to Ramy’s was previously rejected by this department in *In re Phillip Houston*, 21 D.o.E. App. Dec. 151 (2002). In that case, an open enrolled student argued that his 90 days should have started running as of the date he would have started classes at the receiving district but could not

due so because his open enrollment request was initially, and wrongly, denied. We ruled that, although his request should not have been denied (the districts involved in that matter were ordered in a separate proceeding to allow the open enrollment to occur), the 90 school days of ineligibility started when Phillip actually began his attendance at the receiving district.

Regarding the “fairness” argument, although athletics were not a motivating factor for Ramy’s transfer to Southeast Webster, this 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 R.J. Levesque*, 17 D.o.E. App. Dec. 317 (1999); *In re Scott Halapua*, 13 D.o.E. App. Dec. 394 (1996).

Iowa Code § 256.46 and the transfer rules are reasonably related to the purpose of deterring situations where transfers are not wholesomely motivated. *In re R.J. Levesque, supra*. 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)], Ramy has not been harmed by his ineligibility to compete. He is allowed by the rules to practice with the team and enjoy the camaraderie engendered by such association; he simply may not “suit up” and compete with his teammates at competitions and contests until the period of ineligibility has expired. While this agency does not regard competing for the track team as a mere frivolity, all who testified agreed that competing in track (or any other interscholastic sport) was not a factor in Ramy’s transfer to the district. Accordingly, we shall not elevate its importance here except to note that Ramy is not being deprived of any “right” to participate in sports.

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:

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 the evidence showed that Ramy's reasons for transferring back to Southeast Webster 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 the IHSAA's purpose in deterring school jumping and recruitment.

III. DECISION

For the foregoing reasons, the March 1, 2003 decision of the Board of Control of the Iowa High School Athletic Association that Ramy Younes is ineligible to compete in interscholastic athletics for 90 consecutive school days at Southeast Webster Community School District 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

Ted Stilwill, Director
Iowa Department of Education