

**IOWA DEPARTMENT  
OF EDUCATION  
(Cite as 22 D.o.E. App. Dec. 73)**

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*In re Ben Baker*

Michele Baker,	:	
Appellant,	:	
	:	DECISION
vs.	:	
	:	[Admin Doc 4547]
Iowa High School Athletic Association,	:	
Appellee.	:	

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This matter was heard on July 8, 2003, before Carol J. Greta, designated administrative law judge<sup>1</sup>, presiding on behalf of Ted Stilwill, Director of the Iowa Department of Education.

The Appellant, Michele Baker, was present telephonically for the hearing on behalf of her minor son, Ben Baker. The Appellee, Iowa High School Athletic Association [hereinafter, "IHSAA"] was represented telephonically by its 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. Appellant seeks reversal of a decision of the Board of Control of the IHSAA made on June 14, 2003, that Ben is ineligible under the provisions of 281 Iowa Administrative Code chapter 36 for 90 consecutive school days to compete in interscholastic athletics following his open enrollment from the Chariton Community School District to the Wayne 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.

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<sup>1</sup> 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.

## **I. FINDINGS OF FACT**

No one disputes the facts of this case. Ben is 15 years of age, having been born on March 15, 1988. He will be a sophomore during the 2003-04 school year, and there was no evidence presented that he is not academically eligible to participate in interscholastic athletics.

Ben's parents reside in the Chariton District. Due to some personal issues, including suffering from a major depressive disorder, Ben attended 9<sup>th</sup> grade at Chariton High School for only a few weeks before being placed in two separate juvenile residential facilities for the balance of the 2002-03 school year. He recently achieved a successful discharge from his second placement, Orchard Place of Des Moines.

Prior to his discharge, Ben, his family and local school administrators agreed that a return to Chariton High School would not be in Ben's best interests. Accordingly, Ben's family filed an open enrollment request for Ben to attend the Wayne Community School District. Under the circumstances, this request was approved readily by both Districts.

Mrs. Baker testified Ben had shown no interest in extracurricular sports until late Spring of 2003, when he told his parents that he would like to compete in football at Wayne Community. Although unsure of whether Ben would be eligible to do so, the Bakers told Ben that they would explore all lawful avenues of eligibility, including their appeal to the IHSAA Board of Control and this subsequent appeal.

## **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—Iowa Administrative Code [IAC] chapter 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 decision rendered herein is to be based on the laws of the United States and the State of Iowa, the regulations and policies of the Iowa Department of Education, and shall be in the "best interest of education." 281—IAC 6.17(2). The decision of the Director is final. 281—IAC 36.17.

This matter is fully covered by 281—IAC 36.15(4), the open enrollment transfer rule, which states as follows:

**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 attending 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 were not created by the State Board of Education from whole cloth. To the contrary, all of the exceptions were mandated by the Iowa General Assembly in Iowa Code § 282.18(13). No discretion exists to add to the exceptions. The statute is unambiguous; it does not state that "similar circumstances" may be considered as exceptions. This agency has no authority to create any additional exceptions. We cannot read into the law what the lawmakers did not include themselves. We must obey the rule of statutory construction that, if the legislature intended to include immediate eligibility for students who open enroll for the personal reasons presented here, the legislature would have so acted. Legislative intent is expressed by omission as well as by inclusion. *Wiebenga v. Iowa Department of Transportation, Motor Vehicle Division*, 530 N.W.2d 732, 735 (Iowa 1995).

After applying the facts of this case to the specific exceptions, it must be concluded that there is no exception that applies to Ben.

The transfer rules within 281—IAC chapter 36 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). Even though there is no question here that Ben's open enrollment has nothing to do with athletics, this does not negate the validity of the transfer rule. This agency consistently has declined to make an exception to the 90 school day period of ineligibility in cases where the motivating factor was something other than sports. *In re Erin Kappeler*, 17 D.o.E. App. Dec. 348 (1999) (greater academic opportunities); *In re R.J. Levesque, supra*, (peer harassment); *In re Scott Halapua*, 13 D.o.E. App. Dec. 394 (1996) (personality conflict with former coach).

While the 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 IHSAA's purpose in deterring school jumping and recruitment.

*Id.* at 1170.

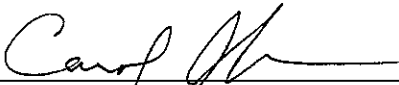
The majority of courts, including the federal courts in Iowa, have ruled that there is no "right" to participate in interscholastic athletics [*Brands v. Sheldon Community School*, 671 F.Supp. 627 (N.D. Iowa 1987); *Gonyo v. Drake University*, 837 F.Supp. 989 (S.D. Iowa 1993)]. Therefore, it cannot be successfully argued that any student is harmed by his or her ineligibility to compete. Ben 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.

Finally, we note that Ms. Baker was under the mistaken impression that, because the Baker family had filed Ben's open enrollment request after the January 1 deadline, this impacted the decision regarding his eligibility to compete for Wayne Community in interscholastic athletics. This is not the case. Because there is no exception to the open enrollment rule above that applies to these facts, Ben is ineligible to compete for 90 consecutive school days. Even if the open enrollment request had been filed prior to the deadline of January 1, Ben would still be ineligible for his first 90 school days at Wayne Community.

### III. DECISION

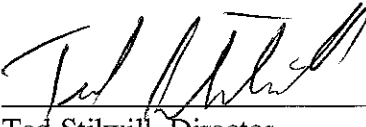
For the foregoing reasons, the June 14, 2003 decision of the Board of Control of the Iowa High School Athletic Association that Ben Baker is ineligible to compete in interscholastic athletics at Wayne Community School District for a period of 90 consecutive school days is **AFFIRMED**. There are no costs associated with this appeal to be assigned to either party.

7-11-03  
Date

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

It is so ordered.

8/19/03  
Date

  
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Ted Stilwill, Director  
Iowa Department of Education