IOWA DEPARTMENT
OF EDUCATION
(Cite as 22 D.o.E. App. Dec. 79)

In re Joseph Steven McGrath

Tricia McGrath, Appellant,	:	
	:	DECISION
vs.	:	[Admin. Doc. 4546]
Iowa High School Athletic Association, Appellee.	:	

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

Appellant, Tricia McGrath, was present telephonically for the hearing on behalf of her minor son, Joseph Steven McGrath [hereinafter, "Joseph"]. 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 Joseph is ineligible under the provisions of 281 Iowa Administrative Code chapter 36 for 90 school days to compete in interscholastic athletics following his open enrollment from the Mason City Community School District to the Clear Lake 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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[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.

I.
FINDINGS OF FACT

The facts of this case are not in dispute. Joseph was born on October 18, 1987, and will be a sophomore during the 2003-04 school year. He and his family moved from Missouri into the Mason City Community School District this summer. They rent a rural residence located approximately one mile from the boundary of the Clear Lake District.

The McGraths moved to Iowa for reasons unrelated to school or interscholastic athletics. Mrs. McGrath's parents own a Century farm[2]; she and her husband are changing careers to farm with her family. Mrs. McGrath also has personal ties to the Clear Lake Community School District. Her father was a member of the Clear Lake school board; she is a graduate of Clear Lake High School. It is understandable that the family wants Joseph and his younger sister to attend school in the Clear Lake District.

Mrs. McGrath testified that the family intends to build a residence in the Clear Lake District on an acreage owned by her parents, but that they cannot financially do so for a few years. In the meanwhile, according to Mrs. McGrath, the family wanted to rent a rural residence within the Clear Lake District. Despite having a realtor working on this goal for them, the McGraths were unable to find any residence within the Clear Lake District that suited them. Therefore, after deciding to rent a farmhouse in the Mason City District, the family filed open enrollment requests for their children to attend Clear Lake. These requests were approved by the Clear Lake District.[3]

The house-hunting and open enrollment requests took place this past spring. Mrs. McGrath stated that her family was not made aware that Joseph would be ineligible to compete in interscholastic athletics on behalf of the Clear Lake District until the Clear Lake activities director made them aware of the problem around May 23, 2003. Since learning of Joseph's ineligibility, Mrs. McGrath testified, the family has continued to look for suitable housing in the Clear Lake District with no success. Although the Clear Lake area has a population that Mrs. McGrath estimates at between 13,000 and 17,000, she attributes the lack of success in finding a suitable residence to the following reasons:

1. Alliant Energy Corporation has a large wind farm which has brought several persons to the area, and these persons are competing for available housing.

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[2] A Century farm is one which has been continuously owned by one family for at least 100 years.

[3] Because the family changed its residence, they had statutory good cause to miss the January 1 open enrollment filing deadline. Iowa Code § 282.18. The late-filing of Joseph's request had no impact on his ineligibility to compete in interscholastic athletics for 90 consecutive school days. *See In re Ben Baker*, 22 D.o.E. App. Dec. 73 (2003).

2. The McGrath family is limiting itself to rental properties at this time.

3. The family is also limiting its search to rural residences.

Because of these self-imposed limitations, Mrs. McGrath stated that the family had "no choice" other than to reside outside of the Clear Lake District.

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.

Mrs. McGrath argues that this transfer is not an open enrollment transfer because Joseph never enrolled in or attended school in the Mason City District. Although novel, the argument fails. To accept the argument would mean that open enrollment was available only to those students who actually had been enrolled in or attended school in their resident district. This is contrary to the open enrollment statute itself, which makes the process available to many students who will not have been enrolled in or attended school in their resident district, such as incoming kindergarten students, students who receive competent private instructions, and those who move into the resident district and immediately request open enrollment.

This is clearly an open enrollment transfer, which 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). 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 Joseph.

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 Joseph'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. Joseph 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 during interscholastic competitions during his period of ineligibility.

III.
DECISION

For the foregoing reasons, the June 14, 2003 decision of the Board of Control of the Iowa High School Athletic Association that Joseph McGrath is ineligible to compete in interscholastic athletics at the Clear Lake 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 Ted Stilwill, Director
Iowa Department of Education