

**IOWA DEPARTMENT
OF EDUCATION
(Cite as 22 D.o.E. App. Dec. 136)**

In re Chase S.

Denzil S. and Nerea S., Appellants,	:	
vs	:	DECISION
Iowa High School Athletic Association, Appellee.	:	[Admin. Doc.4553]

This matter was heard on September 17 and September 23, 2003, before Carol J. Greta, designated administrative law judge¹, presiding on behalf of Ted Stilwill, Director of the Iowa Department of Education.

At the hearing on September 17, the Appellants, Denzil S. and Nerea S., were present telephonically for the hearing on behalf of their minor son, Chase S., who was also present telephonically. In addition, present telephonically on behalf of Chase were Steve Bohlen, high school principal of Wapello High School, Diane Vineyard, teacher at Wapello High School, and Kim Smith, employee of Great River Area Education Agency. 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.

When more evidence was taken at a subsequent telephonic hearing on September 23, all parties and other persons originally present were reconvened telephonically. The Appellants were joined by Wapello Superintendent Doug Graber and by AEA 16 special education zone coordinator and supervisor, Ed Longanecker.

The 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 August 28, 2003, that Chase 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 Mediapolis Community School District to the Wapello Community School District.

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.

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.

I. FINDINGS OF FACT

The Appellants reside in the Wapello Community School District, having moved there in late 2001. Their 16-year-old son, Chase, resides with them. When the family first moved into the Wapello District, Chase expressed a desire to remain in his former school district, Mediapolis. Accordingly, the family filed an open enrollment request, and Chase was allowed to continue his attendance at the Mediapolis District. While at Mediapolis High School, Chase was diagnosed with Attention Deficit Hyperactive Disorder, or ADHD.

Commencing at the Mediapolis District and continuing at Wapello, Chase has an Individualized Education Program [hereinafter, "IEP"] Testimony of Ms. Smith and Ms. Vineyard was that the contents of the IEP did not change from one district to the other. The most recent IEP, dated September 3, 2003, states that athletics are important to Chase's ability to learn organizational, time management, teamwork, and deadline skills. In one part of the IEP, the directive is given that Chase maintain eligibility for "all extracurricular activities," and in another part, the directive is that Chase be eligible to compete in sports. Ms. Smith and Ms. Vineyard both testified that these directives were aimed at the district. Ms. Smith added that Mediapolis allowed Chase to continue competing on its athletics teams despite his poor grades because of the IEP and its directives.

For the 2003-04 school year, the family made a decision that Chase's educational needs, particularly the services for his special education needs, could better be met at the Wapello High School. Therefore, they terminated his open enrollment to Mediapolis so that Chase could transfer to Wapello. As a transfer student to Wapello from Mediapolis, Chase was ruled ineligible to compete in interscholastic athletics, first by the administration of the IHSAA and later by the Board of Control. Both the IHSAA and its Board were unaware of the existence of the IEP and its terms. The family made those entities aware of Chase's disability; however, not all students with ADHD have an IEP or even a simple accommodation plan.

[The existence of the IEP for Chase was mentioned almost off-handedly by Ms. Smith near the end of her testimony before this agency. Therefore, put on notice that the IEP was in place, the undersigned asked for and received permission from the family for this agency and for the IHSAA to receive a copy of the same.]

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.

But for Chase’s IEP and its directives that he be deemed eligible to compete in interscholastic athletics, Chase’s transfer to Wapello from Mediapolis is not covered by any of the exceptions to the transfer rules, and he would be ineligible to compete for 90 school days. 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)].

However, an exception to the above general rule exists regarding a student with a disability whose IEP creates the right to participate by its terms.² Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. § 794) is a nondiscrimination law that provides individuals with disabilities access to, among other things, programs offered by schools that receive federal funding. This includes extracurricular programs as well as the educational program.

We emphasize that we limit this decision to the specific facts of this case, namely that Chase transferred for reasons specific to his special education needs and that his IEP directly required his participation in interscholastic athletics for reasons related to his special educational program.

III. DECISION

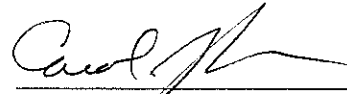
For the foregoing reasons, the August 28, 2003 decision of the Board of Control of the Iowa High School Athletic Association that Chase S is ineligible to compete in interscholastic athletics at Wapello Community School District for a period of 90 consecutive school days is **REVERSED**. There are no costs associated with this appeal to be assigned to either party.

² The existence of the IEP is not determinative. The IEP must state, as did the one in this case, that participation in sports is required because it will benefit the student educationally in some way. Here, the benefit was to Chase’s organizational skills, etc.


9.24.03
Date

It is so ordered.

9/24/03
Date



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



Ted Stilwill, Director
Iowa Department of Education