

**IOWA DEPARTMENT  
OF EDUCATION  
(Cite as 22 D.o.E. App. Dec. 242)**

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<i>In re Cooper Rose</i>	:	
Maharishi School of the Age of Enlightenment, Appellant,	:	
vs.	:	DECISION
Iowa High School Athletic Association, Appellee.	:	[Admin. Doc. 4567]

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This matter was heard on March 9, 2004, before Carol J. Greta, designated administrative law judge<sup>1</sup>, presiding on behalf of Ted Stilwill, Director of the Iowa Department of Education.

Appellant, Maharishi School of the Age of Enlightenment [herein “Maharishi”], was represented in person by its Athletic Director, Harley Carter, and its Director, Ashley Deans. Appellee, Iowa High School Athletic Association [herein “the Association”] was represented in person by its Executive Director, Bernie Saggau, and its legal counsel, Bruce Anderson. Maharishi was not 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 Association made on February 12, 2004, that Cooper Rose is ineligible under the provisions of 281 Iowa Administrative Code chapter 36 to compete in interscholastic athletics for 90 consecutive school days following his transfer to Maharishi.

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, which 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. Cooper Rose [herein “Cooper”] is presently a 9<sup>th</sup> grader at Maharishi. With the exception of the first semester of this school year (2003-04), Cooper has attended Maharishi – a nonpublic school located within the boundaries of the Fairfield Community School District [herein “Fairfield”] – since kindergarten. Cooper started his 9<sup>th</sup> grade year at Fairfield High School and completed one semester there. He had immediate eligibility to compete in interscholastic athletics at Fairfield, even though he transferred from another school, because all 9<sup>th</sup> graders have immediate eligibility at whatever school they commence their 9<sup>th</sup> grade (assuming the students are eligible under other requirements such as academics).

Cooper’s family transferred his enrollment from Maharishi to Fairfield solely because they could not afford the tuition at Maharishi at the start of the 2003-04 school year. Director Dean stated that the tuition at Maharishi for a 9<sup>th</sup> grader is approximately \$10,500, and next year will be in excess of \$12,000 for 10<sup>th</sup> – 12<sup>th</sup> graders. In a letter written just prior to the start of the second semester to Athletic Director Carter, one of Cooper’s parents wrote that Cooper was returning to Maharishi. The letter (Appellant’s Exhibit A) states that “the only reason he [Cooper] did not attend [Maharishi] this past semester was that it was not feasible for us financially to pay the tuition.”

The sport that Cooper – if rule eligible – desires to play for Maharishi is tennis, a sport that Fairfield also offers to male students. Mr. Carter stated that the Fairfield athletic director had given his permission to Mr. Carter to represent to this agency that Fairfield does not dispute that Cooper’s transfer back to Maharishi was not motivated by sports.

The facts being agreed upon, the issue at hand is whether a change in financial circumstances should be viewed as enough of an extenuating circumstance to allow Cooper relief from the required 90 consecutive school days of ineligibility to compete for Maharishi in interscholastic 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 chapter 36. An intergovernmental agency agreement allows the Association 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 Association relied on 281—IAC 36.15(3), the general transfer rule, when it determined that Cooper is ineligible to compete at Maharishi 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. There is no subrule that specifically addresses the circumstance that exists here, a change in a family’s finances. Exception “a”(8) 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. ...

Exception (8) is the one to be applied – if any exception is to be applied – to this case.

Previously, in *In re Marc Davies*, 14 D.o.E. App. Dec. 314 (1997), this agency dealt with a case in which a student transferred from a nonpublic school to a public school because of a downturn in his family’s finances. We did not directly deal with the issue of whether a change in financial circumstances can be an extenuating circumstance so as to give a student relief from the 90-day period of ineligibility. Rather, we determined that the “extenuating circumstances” exception, as subrule (8) above is often termed, did not apply in transfers between public and nonpublic schools. We later rejected this conclusion in *In re Malcolm Bevel*, 21 D.o.E. App. Dec. 186(2002). We clarify again (noting that the Association did not raise the issue) that extenuating circumstances may be considered under appropriate circumstances in public to nonpublic and nonpublic to public transfers of students.

The issue that remains is whether it is ever appropriate to consider giving relief from the transfer rule due to financial circumstances. It is not appropriate here. Furthermore, it is never appropriate to consider financial circumstances when deciding eligibility under the transfer rules.

In the past, changes in a family's finances have been considered by the Association. See *Davies*, 14 D.o.E. App. Dec. at 315-316. The inherent danger in this is that a family of unchanging low socioeconomic status does not merit similar consideration, even though it may have a lower family income than a family that pleads a reversal of its fortunes. This case also demonstrates the other danger in using financial circumstances. The tuition at Maharishi is much higher than the tuition at other Iowa nonpublic schools. If financial circumstances were to be considered, where does one draw the line? If a family finds the tuition at Nonpublic School A within its budget, but not the tuition at Nonpublic School B, do we consider whether to grant immediate eligibility at B for a child of that family?

It is simply unwise policy to try to determine the point at which a family's financial ups and downs are significant enough to affect their child's eligibility to play interscholastic sports. Therefore, nothing regarding financial circumstances is to be considered in transfer eligibility cases.

Maharishi also argued that, because Cooper's transfer was not motivated by athletics, it is not fair that he be denied immediate eligibility at their school. 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 R.J. Levesque*, 17 D.o.E. App. Dec. 317 (1999); *In re Scott Halapua*, 13 D.o.E. App. Dec. 394 (1996).

The chapter 36 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)], Cooper 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 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 Cooper’s reasons for transferring back to Maharishi 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 Association’s purpose in deterring school jumping and recruitment.

### III. DECISION

For the foregoing reasons, the February 12, 2004 decision of the Board of Control of the Iowa High School Athletic Association that Cooper Rose is ineligible to compete in interscholastic athletics for 90 consecutive school days at Maharishi School of the Age of Enlightenment 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

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Ted Stilwill, Director  
Iowa Department of Education