IOWA DEPARTMENT
OF EDUCATION
(Cite as 22 D.o.E. App. Dec. 140)

In re Anthony Modicue and Robterrius Emerson

Donald and Mary McNeal, Appellants,	:	
	:	DECISION
vs.	:	
Iowa High School Athletic Association, Appellee.	:	[Admin. Doc. 4552]

This matter was heard on September 22, 2003, before Carol J. Greta, designated administrative law judge[1], presiding on behalf of Ted Stilwill, Director of the Iowa Department of Education.

Appellants Donald and Mary McNeal were present telephonically for the hearing on behalf of their wards and nephews, Anthony Modicue [hereinafter "Anthony"] and Roberrius Emerson [hereinafter "Rob"], as was Anthony himself. The McNeals were represented herein by attorney Ted Karpuk. The Appellee, Iowa High School Athletic Association [herein "IHSAA"] was represented telephonically by its Assistant Executive Director, Richard Wulkow, and by its attorney, Bruce Anderson.

An evidentiary hearing was held pursuant to departmental rules found at 281—Iowa Administrative Code [IAC] chapter 6. Jurisdiction for this appeal is pursuant to Iowa Code § 280.13 and 281—IAC 36.17. Appellants seek reversal of a decision of the Board of Control of the IHSAA made on August 28, 2003, that Anthony and Rob are ineligible for 90 school days to compete in interscholastic athletics following their transfers to the Sergeant Bluff-Luton Community School District from secondary schools in the State of Louisiana.

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 in that Board was fully disclosed to the Appellants in writing prior to this hearing.

I.
FINDINGS OF FACT

Robterrius Emerson

Rob is the oldest of seven children, all of whom are still residing with their mother in Monroe, Louisiana. Rob's mother is a sister of Anthony's mother and of Appellant Mary McNeal. Rob is 16 years old.

After the 2002-2003 school year, which was his sophomore year of high school, Rob moved from Monroe to the Sergeant Bluff-Luton Community School District [hereinafter "the District"] to live with the McNeals. According to Mr. McNeal, Rob was registered to attend his junior year of high school at the District but never started classes. Against the wishes of the McNeals, Rob returned to Monroe in late August. He is again residing with his mother, and attends his old high school – Richmond High – in Monroe, where he is also competing on that high school's football team.

On August 1, 2003, the McNeals were appointed guardians over Rob's person. Although Rob no longer resides with them, the guardianship had not been terminated as of the hearing before the undersigned.

Anthony Modicue

Anthony is a 17 year old junior attending his first semester at Sergeant Bluff-Luton High School. His mother, a single parent, and Appellant Mary McNeal are sisters. Prior to the 2003-2004 school year, Anthony attended Carroll High School in his hometown of Monroe, Louisiana. Anthony's mother and his five siblings reside in Monroe. Due to the lack of a bed for him at his mother's residence, Anthony stayed with his grandmother at her residence in Monroe.

Appellant Donald McNeal is a native of Monroe. He testified at length regarding the poverty-stricken, high crime environment in which he had lived and from which Anthony came. An African-American, Mr. McNeal described Monroe as a very segregated city in which young African-American males, such as his wife's nephews herein, have little chance of gainful employment. Mr. McNeal characterized many of his own high school classmates from Richmond High School in Monroe as now being deceased, incarcerated, or long-time substance abusers.

Having moved all members of his side of the family from Monroe to the Sioux City area, Mr. McNeal stated that he and his wife are trying to get Mrs. McNeal's mother and two sisters (Rob and Anthony's mothers) to also relocate to Iowa. Anthony testified that he was involved in a lot of fights at his old high school, and that his five siblings also get into a lot of fights at school. One of Anthony's brothers has been expelled from his school in Monroe, according to Mr. McNeal. Despite the efforts of the McNeals, so far Anthony is the only relative of Mrs. McNeal to leave Monroe and stay with the McNeals.

It was following the end of last school year that Anthony moved from his grandmother's home in Monroe to his aunt and uncle's home in the Sergeant Bluff-Luton District. Anthony testified that he wanted to get away from the gang-related and other violence in Monroe. He had no contact with any administrators, teachers, or coaches from the District until after he had moved in with the McNeals. Although he now is sidelined by a broken leg, an injury that occurred in practice, Anthony desires to compete in football for the District.

This is not the first time that Anthony has resided with the McNeals. Anthony lived with the McNeals three years ago, and attended 8th grade at West Middle School in the Sioux City Community School District. He started his freshman year at Sioux City West High School, attended one month, but then moved out of the McNeals' home to live with relatives in another state. It is not clear how long those arrangements lasted, but at some point Anthony returned to his mother and grandmother in Monroe, Louisiana. Now that he is older, though, Anthony is looking ahead to college. He stated that he wants to attend college in Iowa.

As of August 29, 2003, the McNeals are also the court-appointed guardians of Anthony. Both Anthony and his mother consented to the guardianship. In her Consent document filed in Woodbury County (Iowa) District Court, Anthony's mother stated her belief that "Iowa is less dangerous for a 17-year-old minor boy." Anthony's Consent included his statement, "I am looking forward to living and going to school in Woodbury County, Iowa."

II.
CONCLUSIONS OF LAW

Robterrius Emerson

Inasmuch as Rob never attended so much as one day of classes at Sergeant Bluff-Luton High School, and therefore is not a transfer student, the issues are moot as to him. *See,* e.g., *Martin-Trigona v. Baxter,* 435 N.W.2d 744, 745 (Iowa 1989), holding that a moot case is one that no longer presents a justiciable controversy because the issues involved have become academic or nonexistent. Although the McNeals did not press us to apply the "public interest" exception here, we think it is important to clarify that the exception is inapplicable because there is no private right or expectation of a student 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)], and therefore, there certainly is no public interest at stake.

There was some indication at this hearing that Rob may return to live with the McNeals if he could be assured of immediate eligibility to play football. This agency does not issue decisions that are in the nature of advisory opinions so that a student may determine where to enroll. The appeal as to Rob is dismissed.

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[2] 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 case is governed by the general transfer rule in 281—IAC 36.15(3), which states in pertinent 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 complete in interscholastic athletics for a period of 90 consecutive school days … unless one of the exceptions listed in paragraph 36.15(3)"a" applies. …
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> *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 … :
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> …
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> (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:
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> …
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> 7. Court decree that the student is a ward of the state or of the court.
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> ...
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> (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. The executive board shall consider the motivating factors for the student transfer. …

[2] This agreement equally applies to the governing entity for interscholastic athletics for secondary girls, the Iowa Girls High School Athletic Union, or IGHSAU.

The exception in rule 36.15(3)(a)(4)"7" is based on Iowa Code section 256.46, which states in part, "The state board shall adopt rules that permit a child … to participate in the [interscholastic athletic] contests or competitions immediately if … the child is a ward of the court or the state… ." Appellants first argument, which is based on the above rule and statute, is that Anthony is a ward of the state or the court because he is under a guardianship.

Guardianships are statutorily part of Iowa's Probate Code, chapter 633 of the Iowa Code. The term "ward" appears 143 times in chapter 633.[3] The term "ward of the court" or "ward of the state" appears not at all in chapter 633. In fact, other than the reference in section 256.46, the only statute in the Iowa Code to use "ward of the state" is section 125.2(14), defining resident for purposes of determining payment for the treatment of chronic substance abuses. Specifically, section 125.2(14) provides that if a person is an unemancipated minor who is a ward of the state, no residency is established and the Department of Public Health pays the costs. On the other hand, an unemancipated minor who is not a ward of the state "is deemed to reside where the parent having legal custody or the legal guardian" resides.

We need not determine in these proceedings what exactly constitutes a "ward of the court or the state," but, clearly, a person under a guardianship is not such a ward. He or she is a ward of the guardian(s) appointed by the district court. Other statutes evidencing this include sections 282.2 ("The parent or guardian whose child or ward attends school in a district of which the parent or guardian is not a resident shall be allowed to deduct the amount of school tax paid by the parent or guardian in said district from the amount of tuition required to be paid.") and 321.219 ("A person shall not cause or knowingly permit the person's child or ward under the age of eighteen years to drive…when the minor is not authorized…").

This leaves the Appellants' alternative argument, that an eligibility ruling should be made for Anthony which is fair and reasonable, after considering the motivating factors for his transfer. Of course, the McNeals believe that a fair and reasonable ruling would be that Anthony be immediately eligible to participate in interscholastic athletics at Sergeant Bluff-Luton. They cite the motivating factors for Anthony's transfer as twofold: leaving a single parent household for a two-parent household and getting away from a dangerous environment.

We are not persuaded that this is a case in which immediate eligibility should be granted. The first factor cited (leaving a single parent household) is without merit. Ignoring for a moment that Anthony resided with his grandmother (about whom there was no testimony) in Monroe, there are many children who live and flourish in single parent households. That alone is not significant. The second factor (leaving a dangerous environment) is more challenging.

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[3] This is according to Folio Views, a software product licensed by Westlaw.

In prior cases, this agency has stated that an exception to the general rule of ineligibility should be made only where there has been a "significant and serious disruption of the family unit which causes a serious disfunctioning of the family unit as a whole." *In re David Miller*, 14 D.o.E. App. Dec. 17, 21 (1996), quoting *In re Scott Anderson*, 1 D.P.I. App. Dec. 280, 282 (1978).

We very recently stated that the "disruption factor" had not been met in a case where a high school student left the State of Texas to live with his grandparents in Iowa because he declined to live with his custodial parent due to that parent's work hours and refused to live with his noncustodial parent due to the presence of an adult in that household with whom he had had a confrontation. *In re Brandon Bergman*, 22 D.o.E. App. Dec. 130 (2003).

As in the *Bergman* case, here we do not question that living with the McNeals may be in Anthony's best interests. But nothing about Anthony's family unit has changed; there has been no disruption of his mother's family. It is the choice of the family for Anthony to be where he is. His extended family has helped him by offering him an alternative to the economically depressed and personally dangerous environment in which he lived. But he could have maintained his residence with the McNeals as a freshman (thereby avoiding this appeal) and he chose not to do so.

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). There is some evidence that Anthony's transfer was related to his education. However, even assuming *arguendo* that his transfer has nothing to do with school 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. Anthony 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.

Because we do not believe that Anthony's circumstances warrant a decision that he is immediately eligible to participate in athletics for Sergeant Bluff-Luton, we need not address the IHSAA's argument that subrule "8" does not apply. We previously addressed that issue in *In re Malcolm Bevel*, 21 D.o.E. App. Dec. 186, 190-191 (2002) and decline to revisit our statements here.

III.
DECISION

For the foregoing reasons, the August 28, 2003 decision of the Board of Control of the Iowa High School Athletic Association that Anthony Modicue is ineligible to compete in interscholastic athletics at the Sergeant Bluff-Luton Community School District for a period of 90 consecutive school days is **AFFIRMED**. The appeal as to Robterrius Emerson is **DISMISSED**. 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