

**IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 21 D.o.E. App. Dec. 218)**

<i>In re Douglas Gillett</i>	:	
	:	
Susan Gillett, Appellant,	:	
	:	
v.	:	DECISION
Iowa High School Athletic Association, Appellee.	:	[Admin. Doc. #4522]

The above-captioned matter was heard telephonically on October 4, 2002, before Carol J. Greta, J.D., designated administrative law judge, presiding on behalf of Ted Stilwill, Director of the Iowa Department of Education.

Appellant Susan Gillett took part in the hearing on behalf of her minor son, Douglas Gillett. Appellee, Iowa High School Athletic Association [hereinafter, "IHSAA"], was represented in the hearing by Executive Director Bernie Saggau. Neither party chose to be represented herein by legal counsel. Hearing was held pursuant to this agency's administrative rules in 281 Iowa Administrative Code chapter 6. The Iowa Department of Education has jurisdiction over the hearing pursuant to Iowa Code § 280.13 and 281 Iowa Administrative Code 36.17.

The Appellant seeks reversal of a decision of the IHSAA Board of Control made on September 4, 2002, declaring Douglas ineligible to compete in interscholastic athletics for 90 schools days following his transfer from Northern University High School of the Malcolm Price Laboratory School to Cedar Falls High School.

The undersigned administrative law judge finds that she and the Director of the Department of Education have jurisdiction over the parties and the subject matter of this appeal.

**I.
FINDINGS OF FACT**

Douglas Gillett ["D.J."] is presently a 15-year-old tenth grader at the Cedar Falls School District, which is his district of residence. Prior to the 2002-2003 school year, D.J. attended the Malcolm Price Laboratory School ["MPLS"] operated in Cedar Falls within the College of Education of the University of Northern Iowa ["UNI"]. His family has, at all times pertinent herein, resided in Cedar Falls.

The transfer from MPLS to Cedar Falls High School was made, according to Ms. Gillett's testimony, for two primary reasons: an increase in tuition and questions about the sufficiency of the mathematics curriculum at MPLS. A secondary reason was the uncertainty of the future of the existence of the high school grades at MPLS after the 2002-2003 school year; however, Ms. Gillett was clear that this was not a deciding factor for her family.

MPLS is operated not by the Iowa Department of Education, but by the Iowa State Board of Regents. UNI has authority pursuant to Iowa Code sections 262.47 and 265.3 to charge tuition to parents and guardians whose children attend MPLS. Ms. Gillett testified that tuition increased 70%, from \$200 for the entire 2001-2002 school year to \$340 for the entire 2002-2003 school year. It is this \$140 per school year increase that Ms. Gillett cites as one of her two primary reasons for D.J.'s transfer to Cedar Falls High School. This increase works out to a monthly increase of \$11.67.

Regarding the mathematics curriculum, Ms. Gillett offered a chronology of her concerns, starting with the experience of D.J.'s older brother, Aaron, who had also attended MPLS from kindergarten through the first semester of his senior year. At the end of his 12th grade first semester Aaron, who was then 18 years of age, transferred his own enrollment to the Cedar Falls District. Aaron was not involved in any spring sports, and thus did not face a period of ineligibility such as confronts his brother. He had expressed to his mother concerns about the mathematics curriculum at MPLS prior to his transfer. An educator herself, Ms. Gillett candidly stated that she disregarded Aaron's concerns because his grades showed that he was performing well in his classes.

However, once D.J.'s math computation score on a standardized test confirmed that he was struggling in that area, Ms. Gillett took a hard look at the mathematics curriculum at MPLS. She talked with recent graduates of MPLS about their post-secondary experiences in math classes and was told by some of these graduates that they believed that MPLS left them ill-prepared for the challenges of college mathematics courses. Satisfied that the curriculum was in need of attention, Ms. Gillett shared her concerns in January 2002, with two administrators of MPLS, who suggested that she talk to a particular math instructor, Megan Balong. The meeting with Ms. Balong occurred on February 19, 2002. According to Ms. Gillett, Ms. Balong agreed that, based on the results of several students' standardized test scores in math computations, more emphasis needed to be placed on basic math skills. Ms. Gillett stated that Ms. Balong was willing to work with D.J. and the Gillett family to address D.J.'s needs.

Just two days after this meeting, officials of UNI issued a press release announcing that, beginning with the 2003-2004 school year, grades 10 through 12 at MPLS would be shifted to the Cedar Falls and other area school districts. [At the writing of this decision, no final determination of the fate of MPLS has been made; for the 2002-2003 school year, MPLS operates grades pre-kindergarten through 12.] This announcement caused the Gillett family to re-analyze D.J.'s situation. They were told that the math department at MPLS now would not be implementing any curricular changes until the school knew more about its own future. Thus, the

Gillett made the decision that D.J. would not be properly prepared for mathematics courses as an 11th grader at Cedar Falls in the 2003-2004 school year if he remained at MPLS for his 10th grade year.

Finally, Ms. Gillett testified that if athletics were the motivator behind D.J.'s transfer, he would have remained at MPLS this school year where he would most certainly be on the varsity cross-country, basketball, and track teams. The high school component of MPLS is much smaller than the high school at the Cedar Falls District, and Ms. Gillett stated her belief that D.J., if and when eligible to compete for Cedar Falls, will not be on the varsity team for cross-country or basketball. She concluded her testimony by asking that D.J. not be punished for a transfer from one school to another that was motivated by academic reasons.

On behalf of the IHSAA, Mr. Saggau did not dispute that D.J.'s transfer was unrelated to athletics. Rather, he analogized D.J.'s transfer to an open enrollment transfer. Under open enrollment, various educational options are available to parents and guardians of children because, as Mr. Saggau stated, "parents know what is best" for their children. However, under open enrollment [Iowa Code section 282.18(13)] students generally are subject to the 90 school day period of ineligibility at the receiving 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 chapter 36. An intergovernmental agency agreement allows IHSAA [and its counterpart for female, the Iowa Girls High School Athletic Union] to interpret and enforce these rules, subject to appeal to the Director of the Department of Education.

IHSAA relied on 281 IAC 36.15(3), the general transfer rule, when it determined that D.J. is ineligible to compete at Cedar Falls High School 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. ...

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 ... :

(1) Upon a contemporaneous change in parental residence, a student is immediately eligible if the student transfers to the new district of residence

or to an accredited nonpublic member or associate member school located in the new school district of residence. ...

(2) If the student is attending in a school district as a result of a whole-grade sharing agreement between the student's resident district and the new school district of attendance, the student is immediately eligible.

(3) A student who has attended high school in a district other than where the student's parent(s) resides, and who subsequently returns to live with the student's parent(s), becomes immediately eligible in the parent's resident district.

(4) Pursuant to Iowa Code section 256.46, a student whose residence changes due to any of the following circumstances is immediately eligible...: [circumstances range from foreign exchange students to various situations covered by court order].

(5) A transfer student who attends in a member or associate member school that is a party to a cooperative student participation agreement ... with the member or associate member school the student previously attended is immediately eligible in the new district to compete in those interscholastic athletic activities covered by the cooperative agreement.

(6) Any student whose parents change district of residence but who remains in the original district without interruption in attendance continues to be eligible in the member or associate member school of attendance.

(7) A special education student whose attendance center changes due to a change in placement agreed to by the district of residence is eligible in either the resident district or the district of attendance, but not both.

(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. ...

There is no question but that both MPLS and the Cedar Falls School District are members of IHSAA.¹ Therefore, this is a member-school-to-member-school transfer, and is covered by the general transfer rule. The general transfer rule is that a student does not have immediate eligibility unless one of the above listed exceptions applies. It was established during the hearing that none of the specific exceptions [(1) through (7)] applies here, and that this *de novo* hearing is

¹ For purposes of this decision, no distinction need be made between member schools and associate member schools.

limited to a consideration of the motivating factors put forth by Ms. Gillett pursuant to 281 IAC 36.15(3)"a"(8).

Preliminarily, it is noted that the transfer rules 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). 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)], Ms. Gillett cannot successfully argue that D.J. has 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 play with his teammates come game time. While such playing time is not regarded as a mere frivolity by this agency, Ms. Gillett testified that it was not a factor in the transfer. Accordingly, we shall not elevate its importance here except to note that D.J. is not being deprived of any "right" to participate in sports.

This leaves the issue whether a transfer motivated by valid academic reasons and an increase in tuition rises to the level that an exception should be made to the ineligibility rule for D.J. We first address the tuition increase.

While a 70% increase in tuition at MPLS sounds dramatic, the reality is that the increase works out to under \$12 per month. Mr. Saggau testified that, in reliance on a previous directive of this agency that the IHSAA and IGHSAA may not review financial motivations for transfers, he did not allow evidence of the tuition hike to be heard by the IHSAA Board of Control in this case. Assuming *arguendo* that such evidence may be considered by the Board of Control and by this agency, we conclude that the increase of \$140 per school year is not so onerous as to justify making an exception to the general transfer rule.

As to the concerns about the mathematics curriculum, there is no question here that the Gillett family had a long-standing concern about whether MPLS was meeting D.J.'s needs in math. There also is no question that the family had the right to make a change in D.J.'s educational environment by transferring his enrollment from MPLS to the Cedar Falls District. However, although athletics were not a motivating factor for D.J.'s transfer, this 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 the motivating factor was not shown to be related to athletics. *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.

Although the evidence showed that D.J.'s reasons for transferring 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 IHSAA's purpose in deterring school jumping and recruitment.

III. DECISION

For the foregoing reasons, the September 4, 2002, decision of the Iowa High School Athletic Association that D.J. Gillett is ineligible to compete in interscholastic athletic contests and competitions for 90 consecutive school days at Cedar Falls High School is **AFFIRMED**. There are no costs associated with this appeal to be assessed to either party.

Date

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

It is so ordered.

Date

Ted Stilwill, Director
Iowa Department of Education