IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 21 D.o.E. App. Dec. 213)

In re Micah Keller	:	
	:	
Calvin & Kimberly Keller, Appellants,	:	
	:	
v.	:	**DECISION**
	:	
Iowa High School Athletic Association,	:	
Appellee.	:	**[Adm. Doc. #4520]**

This 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.

Appellants Calvin Keller and Kimberly Keller [hereinafter, "the Kellers"] took part in the hearing on behalf of their minor son, Micah Keller. Appellee, Iowa High School Athletic Association [hereinafter, "IHSAA"] was represented by Executive Director Bernie Saggau. Neither party was represented by legal counsel. The appeal hearing was held pursuant to administrative rules found in 281 Iowa Administrative Code 6. The Department of Education has jurisdiction over the hearing pursuant to Iowa Code § 280.13 and 281 Iowa Administrative Code 36.17.

Appellants seek reversal of a decision of the IHSAA Board of Control made on September 4, 2002, declaring their son, Micah, ineligible to compete in interscholastic athletics for 90 schools days following his transfer from Danville High School to Mediapolis 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

At all times pertinent to this appeal, the Kellers have lived in Middletown, Iowa, which is located within the boundaries of the Burlington Community School District. Until the 2002-2003 school year, Appellants' son, Micah Keller ["Micah"] was open enrolled to the Danville Community School District. Due to a number of disagreements that the Kellers had with the Danville district, the family decided to transfer Micah's open enrollment for the 2002-2003 school year to the Mediapolis Community School District.

Micah is presently in the 10th grade at Mediapolis High School. During the 2001-2002 school year, Micah participated in football, wrestling, and track and field. He wishes to participate in those same sports at Mediapolis during the 2002-2003 school year.

The Kellers testified, and Mr. Saggau confirmed, that Danville and Mediapolis share a cooperative wrestling program, pursuant to 281—Iowa Administrative Code 36.20. Under the terms of this administrative rule, wrestlers from these two schools are on the same team, competing in the name of the host school. [The identity of the host school of this particular cooperative program was not revealed during the hearing, but is not relevant to this decision.]

The IHSAA does not dispute that Micah transferred from Danville to Mediapolis for reasons that have nothing to do with athletics. The Kellers argue that they had no desire for Micah to leave the Danville district. Because they were only acting on behalf of their son's best academic interests, he should be allowed to participate immediately in interscholastic athletic competitions and contests.

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 sections 280.13 and 282.18. Those rules are found in 281 Iowa Administrative Code 36. An intergovernmental agency agreement allows IHSAA [and its counterpart for females, the Iowa Girls High School Athletic Union] to interpret and enforce these rules, subject to appeal to the Director of the Iowa Department of Education.

In determining that Micah is ineligible to compete in interscholastic athletics for 90 school days at Mediapolis, the IHSAA Board of Control relied on 281 IAC 36.15(4), the Open Enrollment Transfer Rule. The rule derives its authority from Iowa Code section 282.18(13), which states as follows:

> A pupil who participates in open enrollment for purposes of attending a grade in grades ten through twelve in a school district other than the district of residence is ineligible to participate in interscholastic athletic contests and athletic competitions during the pupil's first ninety school days of enrollment in the district except that the pupil may participate immediately in an interscholastic sport if the district of residence and the other school district jointly participate in the sport, if the sport in which the pupil wishes to participate is not offered in the district of residence, if the pupil chooses to use open enrollment to attend school in

> another school district because the district in which the student previously attended school was dissolved and merged with one or more contiguous school districts under section 256.11, subsection 12, if the pupil participates in open enrollment because the pupil's district of residence has entered into a whole grade sharing agreement with another district for the pupil's grade, or if the parent or guardian of the pupil participating in open enrollment is an active member of the armed forces and resides in permanent housing on government property provided by a branch of the armed services. …

The administrative rule written pursuant to the above statute, 281 IAC 36.15(4), adds the following exceptions to the five listed in the statute: that a pupil has paid tuition for one or more years to the receiving school district prior to attending the district by way of open enrollment; that the pupil attended the receiving district for one or more years under a sharing or mutual agreement between the resident and receiving districts prior to attending the district by way of open enrollment; and two exceptions that involve a change in parental residence.

Micah's district of residence is Burlington. However, this body has previously determined that, in an open enrollment situation where the pupil transfers from one receiving district to another receiving district, the former receiving district (now the sending district) is the equivalent of the district of residence for purposes of the above subrule. *In re Mark Lee Mills*, 19 D.o.E. App. Dec. 188 (2001). Accordingly, the analysis of these facts treats Danville as the district of residence.

The uncontroverted testimony was that wrestling is a shared program between Danville and Mediapolis; that all other sports in which Micah desires to participate at Mediapolis are offered at Danville; that Danville has neither dissolved nor is whole grade sharing with another district; that the Kellers are not members of the armed forces residing in government housing; that this is the first year that Micah is in attendance at Mediapolis; and that his parents have not changed residence from one district to another.

The only exception of those listed above that applies to Micah's transfer is the first exception regarding districts that jointly participate in a sport. This exception permits Micah to participate in wrestling as soon as that season begins, even though the ninety school days of ineligibility will not have ended yet. No other exception applies.

The Kellers argued that the IHSAA and this agency should look at the motivations behind Micah's transfer. Although there is no exception in the law or rule that applies to Micah other than the cooperative wrestling program, his parents urged that the entire eligibility period be waived because the application of the rule to Micah was unfair. The Kellers testified that they did not wish for Micah to leave the Danville

District. Their implication is that, because problems they perceived with that district were the motivation for the transfer, therefore, the transfer was outside of their family's control, much like a school reorganization is outside of the control of pupils and their families.

The legislative intent of Iowa Code section 282.18(13) is clear. The purpose of the statute as a whole is to give parents and their children more academic choice. Subsection (13) contains very narrow exceptions to the general rule that students who take advantage of open enrollment are ineligible to participate in interscholastic athletics for their first ninety school days of open enrollment. The application of the statute may seem unfair in an individual's case, but the policy must be applied even-handedly to achieve the goal of preventing the practice of recruiting. *In re Matthew Worthington*, 14 D.o.E. App. Dec. 10 (1996). With the exception of the wrestling season, Micah must serve his ninety school day ineligibility period under the open enrollment rule.

III.
DECISION

For the foregoing reasons, the September 4, 2002 decision of the Board of Control of the Iowa High School Athletic Association is reversed insofar as it would have prevented Micah from fully participating in the upcoming wrestling season and is affirmed in all other respects. There are no costs of this appeal to be assigned.

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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
DEPARTMENT OF EDUCATION