

**IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 21 D.o.E. App. Dec. 151)**

<i>In re Phillip Houston,</i>	:	
	:	
Kathy Houston, Appellant,	:	
	:	
v.	:	DECISION
	:	
Iowa High School Athletic Association, , Appellee.	:	[Admin. Doc. #4512]

This matter was heard telephonically on August 29, 2002, before Carol J. Greta, designated administrative law judge, presiding on behalf of Ted Stilwill, Director of the Iowa Department of Education.

Appellant Kathy Houston took part in the hearing on behalf of her minor son, Phillip; she was unrepresented by counsel. Executive Director Bernie Saggau of the Appellee, Iowa High School Athletic Association [“IHSAA”] participated in the hearing on behalf of IHSAA, which also chose to be unrepresented by counsel. Hearing was held pursuant to this agency’s administrative rules in 281 Iowa Administrative Code 6. The Iowa Department of Education has jurisdiction over the hearing pursuant to Iowa Code § 280.13 and 281—IAC 36.17.

Appellant seeks reversal of a decision of the IHSAA Board of Control made on August 2, 2002, declaring her son Phillip ineligible to complete in interscholastic athletics for 90 schools days following his open enrollment transfer from Walnut Community School District to A-H-S-T Community School District.

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.

FINDINGS OF FACT

Phillip Houston [“Phillip”] is a 16 year old student in the 11th grade who resides in the Walnut school district, but who attends the A-H-S-T district, commencing with the 2002-2003 school year. The pertinent underlying facts are agreed upon the parties to be as follows:

Phillip receives special education services. In December of 2001, before the open enrollment deadline of January 1, 2002, Phillip’s mother (one of the Appellants herein) filed an open enrollment request asking that Phillip attend the A-H-S-T district in 2002-

2003. This request was granted by the Walnut district, but was denied by A-H-S-T, which believed that it did not have a special education program appropriate to meet Phillip's needs. That denial was appealed to this agency by the Appellants. Following a telephonic hearing for that appeal, the State Board of Education issued a final decision reversing the A-H-S-T board, thereby permitting Phillip to open enroll to the A-H-S-T district for the 2002-2003 school year. *In re Phillip Houston*, 20 D.o.E. App. Dec. 327 (2002) [*"Houston I"*].

While the appeal in *Houston I* was pending, Phillip attended classes in an alternative school setting in Harlan for the second semester of the 2001-2002 school year. He was still enrolled in the Walnut District; attendance at Harlan was part of his educational program provided by Walnut. Mr. Saggau testified that, because Phillip receives special education services in a setting outside of his district of residence, the IHSAA would have considered Phillip eligible for interscholastic athletics – assuming he was also eligible academically and in good standing conduct-wise – at either the Walnut or Harlan districts.

Mrs. Houston testified that Phillip participates in football and wrestling; wrestling is primarily a second semester activity. Accordingly to Mrs. Houston, Phillip was not allowed to wrestle at Walnut, and that this decision was made by the Walnut high school principal. Mrs. Houston also stated that neither she nor her husband appealed the Walnut principal's decision about wrestling to either the Walnut Board or the IHSAA. The family did not ask that Phillip be allowed to wrestle for the Harlan District because, according to Mrs. Houston, of the large number of participants already on the wrestling squad at Harlan.

Mrs. Houston does not dispute that Phillip did not start his open enrollment to A-H-S-T until the 2002-2003 school year, nor does she argue that any of the exceptions to the open enrollment transfer rule apply to Phillip. Her argument is that the 90 school days should have been started during the second semester of the 2001-2002 school year because that is when the family had asked that open enrollment begin. Although there is no evidence in either this appeal or in *Houston I* that the family asked that open enrollment begin any sooner than the 2002-2003 school year, for the sake of argument it will be assumed that Mrs. Houston is truthful about having asked that Phillip's open enrollment be effective for the second semester of 2001-2002.

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 § 280.13. 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.

The IHSAA relied on 281—IAC 36.15(4), the open enrollment transfer rule, when it ruled Phillip ineligible to compete at A-H-S-T for 90 school days. This rule states, in part, as follows:

36.15(4) *Open enrollment transfer rule.* A student in grades 10 through 12 whose transfer of schools had occurred due to a request for open enrollment by the student's parent or guardian is ineligible to compete in interscholastic athletics during the first 90 school days of transfer. This period of ineligibility does not apply if the student: [list of 9 exceptions, none of which apply here].

Phillip's case is fully covered by this rule and is not subject to any exceptions. His participation in open enrollment, and therefore his transfer to A-H-S-T did not begin until the 2002-2003 school year. That the Houstons may or may not have asked that Phillip's open enrollment begin sooner is irrelevant. The fact is that open enrollment for Phillip and his transfer to A-H-S-T did not begin until this school year. Mrs. Houston argues that it is unfair to penalize Phillip for the delay she claims occurred with respect to his transfer. However, Phillip could have participated in interscholastic athletics for either Walnut or Harlan during the second semester of the 2001-2002 school year had the Houstons pursued this option.

III. DECISION

For the foregoing reasons, the August 2, 2002 decision of the Board of Control of the Iowa High School Athletic Association declaring that Phillip Houston is ineligible to compete in interscholastic athletics for 90 school days in the A-H-S-T Community School District is hereby affirmed. There are no costs of this appeal to be assigned.

Date

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

It is so ordered.

Date

Ted Stilwill, Director
Iowa Department of Education