

IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 19 D.o.E. App. Dec. 179)

In re Travis Bass :

Paul Gullickson, :
Appellant, :

v. : DECISION

Iowa High School Athletic :
Association, Appellee. : [Admin. Doc. #4298]

The above-captioned matter was heard on January 25, 2001, before a hearing panel comprised of Ms. Rita Martens, consultant, Bureau of Administration & School Improvement Services; Joe DeHart, consultant, Bureau of Planning, Research & Evaluation; and Susan E. Anderson, J.D., designated administrative law judge, presiding on behalf of Ted Stilwill, Director of the Department of Education.

Appellant, Paul Gullickson, and his wife, Andrea, were present and were unrepresented by counsel. Appellee, Iowa High School Athletic Association [hereinafter, "IHSAA" or "the Association"], was present in the person of Bernie Saggau, Executive Director. The Association was represented by Attorney Bruce Anderson of Doran, Anderson & Baltimore, P.L.C., of Boone, Iowa.

An evidentiary hearing was held pursuant to departmental rules found at 281—Iowa Administrative Code 6. Jurisdiction for this appeal is found at Iowa Code section 280.13(1999) and 281—Iowa Administrative Code 36.17. Appellant seeks reversal of a decision of the Board of Control of the IHSAA made on January 11, 2001, declaring that Travis Bass is ineligible under the provisions of 281—Iowa Administrative Code 36 to compete in interscholastic athletics at Davenport Assumption High School for a period of ninety school days following his transfer there on December 20, 2000.

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.

I.
FINDINGS OF FACT

Travis Bass is a junior enrolled at Davenport Assumption High School, a nonpublic school in Davenport, Iowa. Travis resides in Davenport with Mr. and Mrs. Gullickson, his maternal

uncle and aunt. Mr. Gullickson is Travis' temporary custodian. This temporary custodial arrangement is pursuant to separate notarized documents, signed on December 17, 2000, by Mary Bass Milton, Travis' mother; and on December 19, 2000, by Harold Bass, Travis' father. These documents were not part of a formal court guardianship proceeding nor were they approved by any court. Travis' parents maintain his medical insurance and pay for his clothing, school expenses, and other living expenses.

Travis' parents have been divorced since 1992, for approximately eight years. The divorce decree originally gave custody of Travis to his mother. While Travis was a sophomore, his mother remarried in October 1999 and his father remarried sometime during 1999. Travis' custody was changed to his father by court order for financial reasons in early 1999. In July of 1999, however, Travis' father suffered a heart attack, at which time Travis moved back with his mother, stepfather, and stepsibling. Travis has therefore lived in the homes of both parents, who live separately in LaPorte, Indiana. The evidence showed that Travis was not functioning well at either of his parents' homes. His grade point average at LaPorte High School went from a 2.6 in his freshman year to a 1.7 in his sophomore year, following his parents' remarriages. His class rank slid from 231 to 358.

Travis attended high school in LaPorte, Indiana, throughout his freshman and sophomore years and completed the first semester of his junior year there as well. Travis participated in football and wrestling at LaPorte High School until he was declared ineligible under the good conduct policy for one year starting in February 2000, of his sophomore year. The violation was for marijuana use and made him ineligible until February 28, 2001. He, therefore, could not compete in football or wrestling during his junior year in LaPorte before his move to Davenport. He moved in with his aunt and uncle in Davenport, Iowa, and began attending Davenport Assumption High School on December 20, 2000. Travis desires to be immediately eligible for participation in wrestling.

Paul Gullickson urged the Board of Control to declare Travis immediately eligible for participation in interscholastic athletic competition for the reason that he is present in Iowa and is enrolled at Davenport Assumption High School as the result of a broken home.

The Iowa High School Athletic Association has adopted and implemented a procedure for establishing broken-home situations. In order to gather pertinent facts, the Association has developed a form, apparently in 1993, which describes a "broken home" as follows:

Broken home situations are those created by the death of one or both parents, by separation or divorce of parents, or when the student is removed from the home by jurisdiction of the courts. It is not considered a broken home when a student cannot get along with his/her parents because of indifference or when there is a desire to transfer to the State of Iowa, or to

change school districts and reside with relatives or friends. The excuse that one school is better than another is not sufficient reason for changing schools insofar as high school eligibility is concerned. The Board of Control will give no consideration for waiver of transfer if the student's indifference, attitude, and actions contribute to a transfer or pending transfer.

...

(Appellee Exh. 16, entitled, "Petition for Waiver of Transfer Rule – 36.15(3)"a".)

Mr. Saggau testified that the broken home waiver from the ineligibility rules serves to protect students from an unfair determination of ineligibility based upon moves or transfers forced upon them because of changes in their residence resulting from circumstances beyond their control. Prior to the Board of Control meeting, Travis and his father spoke separately to Mr. Saggau over the phone about the situation at his father's home. According to Mr. Saggau, Travis had stated that he could get along with everyone else, but not with his parents. Mr. Bass told Mr. Saggau that he and Travis just couldn't get along. Mr. Saggau did not have an opportunity to speak to Travis' mother before the Board of Control meeting.

An affidavit from Travis' mother was introduced into the record at the appeal hearing. The affidavit stated in pertinent part:

In October of 1999, I remarried. Travis' father had a severe heart attack and went through by-pass surgery. Travis moved back to my home because of his family's inability to rehabilitate from his medical problems, juggle his financial affairs over 11 months because of his disability, and keep up with his responsibilities both for his wife and step child in addition to Travis.

At first, my new husband and Travis got along. As time went on, their relationship went from okay to terrible. The tension between them worsened and I was right in the middle of it. Problems arose on a regular basis that was [sic] beyond Travis' control.

I got to the point that I feared a physical altercation could erupt at any time putting Travis in an at-risk situation, after witnessing some very unpleasant confrontations. Relationships between Travis, my husband, and I became so strained that I know Travis could not continue to live in my home. I also became aware of the physical altercations that happened at my ex-husband's home and knew Travis would again be at risk there.

(Appellant's Exh. 18.)

Letters from Beth Egan O'Keefe, a psychologist who evaluated Travis on January 5, 2001, were introduced into the record at the appeal hearing. Dr. O'Keefe interviewed and tested only Travis as part of her evaluation. She reported the following, in pertinent part:

Travis' parents, who live in Indiana, are divorced and remarried. They divorced about eight years ago. Travis has a non-identical twin brother who lives with his mother. There are also two older siblings, 23 and 21, who have left the home. Travis has lived with both parents, and has difficulties in both homes. Police have been called, and Travis has been put on probation as delinquent. Reviewing the court materials, it appears that Travis has only been in trouble for running away and for marijuana usage. There are no serious delinquencies such as robberies, burglaries, nor assault.

Travis seems to have been a victim of our current multiple-marriage society. It is unlikely that he would have ever gotten into such trouble if there hadn't been the divorce, the moving between the parents, and the stepparents. He and his father fight, to the point where one of them could get physically hurt. Police have been called to the home more than once. There was a terrible incident in which Travis' father choked Travis and Travis retaliated. There is a stepsister and a stepmother in the home, neither of whom Travis fully approves of nor gets along well with. It seems to be a foregone conclusion that he cannot return to his father. That would be a recipe for failure for Travis and physical danger to his father. (Travis' father had heart surgery – these fights are a serious risk to his health.)

(Appellant's Exh. 16.)

Let me summarize my professional opinion. I believe that Travis comes from a broken home. I believe that Travis is the victim here, not the perpetrator. Travis is a charming, well-spoken, sincere, attractive young man who was a victim of his parents' divorce and all that occurred after.

Probably, had his parents not divorced, Travis would have never been in any trouble and would be peacefully living with his birth parents and siblings. But, they did divorce, and Travis' life was turned upside down. I feel that he was trapped in an untenable situation and that, for his psychological health, he had to leave Indiana and come to Iowa. I truly believe that the divorcing parents and their new spouses are much more to blame for this situation than is Travis. Circumstances beyond his control forced his move to Iowa. I feel he should be allowed to play Iowa sports. It would be good for Travis, helping him make friends in his new situation,

giving him something to look forward to and care about, and aiding in the rebuilding of his self-esteem which has been battered in the battles with his parents.

(Appellant's Exh. 17.)

The Board of Control Ruling on Travis' ineligibility states, "The Board of Control recognized and acknowledged that the family home of Travis Bass had been broken. The documents offered and the statement presented by Paul Gullickson makes it abundantly clear that the family situation is such that it is not in Travis' best interest to reside with either parent at this time."

There was no evidence or indication that the establishment of Travis' residence with his uncle was motivated by an improper motive such as recruiting. However, the Board of Control did take into consideration when declaring Travis ineligible the fact that Travis' violation of the LaPorte High School's athletic conduct policy resulted in his ineligibility to compete there until February 28, 2001. The Board of Control also took under consideration the fact that under the provisions of the good conduct policy of Davenport Assumption High School, Travis would be immediately eligible to compete.

The decision of the Association's management regarding Travis' 90-day period of ineligibility to compete for Davenport Assumption High School was communicated to Mr. Gullickson by letter dated December 21, 2000. On January 11, 2001, the Board of Control of the Association affirmed the decision of its management. Mr. Gullickson then appealed to the Director of the Department of Education.

II. CONCLUSIONS OF LAW

The State Board of Education has adopted rules regarding student athletic eligibility pursuant to the authority contained in Iowa Code section 280.13. Those rules are found in 281—Iowa Administrative Code 36. The rules are enforced by the schools themselves and by the coaches, subject to interpretations and assistance from the Iowa High School Athletic Association (for male athletes) and the Iowa Girls' High School Athletic Union (for female athletes). Pursuant to 28E agreements, the Association and the Union enforce the rules by their official determinations, subject to appeal to the Director of the Department of Education.

The primary issue before the Board of Control was the application of the Department of Education's longstanding rules relating to transfer. Rule 281—36.15(3)(a) provides, in pertinent part, as follows:

General Transfer Rule. A student who transfers from one school district, except upon a contemporaneous change in parental residence, shall be ineligible to compete in interscholastic athletics for a period of 90 school days, as defined in 281—12.2(2), exclusive of summer enrollment, unless one of the following exceptions to the General Transfer Rule applies:

(a) In ruling upon the eligibility of transfer students, the Executive Board is empowered to consider the factors motivating student changes in residency. Unless otherwise provided in the rules, a student intending to establish residency must show that the student is physically present in the district for the purpose of making a home and not solely for school or athletic purposes. Eligibility awarded under this transfer rule may be made contingent upon proof that a request for transfer has been made and that the student has been in attendance in the new school for at least 10 days.

Id.

Rule 36.15(5)(c), known as the *Public to Nonpublic Transfer Rule*, may also be considered applicable as LaPorte High School in Indiana is a public school and Davenport Assumption High School is a nonpublic school. That rule provides:

When a student transfers from a public school to a nonpublic school, or vice versa, after the start of ninth grade, without a contemporaneous change of parental residence, the student shall be ineligible to compete in interscholastic athletics for a period of 90 school days, as defined in 281—subrule 12.2(2), exclusive of summer enrollment.

Id.

In its consideration of Travis situation, the Board of Control applied both rules to the facts and has reached the same result, that Travis is ineligible to compete for 90 school days. It was undisputed that there has been no contemporaneous change of parental residence. Therefore, the 90-day ineligibility period stands unless there is an applicable exception. The Association applies the same exceptions under either the *General Transfer Rule* or the *Public to Nonpublic Transfer Rule*.

We now turn to whether or not Travis qualifies for an exception under 36.15(3)"a".¹ The Association's form for determining whether there is a broken home situation has been set forth in the Findings of Fact. We also point out that the 1978 decision of *In re Scott Anderson*, 1 D.P.I. 280 (1978), sets forth the definition of a "broken home" as follows:

Since there is apparently no definition of the phrase "broken home conditions," the meaning of that phrase could be extended to include a situation where a child is alienated from his family and goes elsewhere to make his or her residence. Our independent research has verified the lack of a clear definition of the phrase "broken home" and after due consideration and deliberation, we are in general agreement with an expansive definition of the phrase. We feel that any significant and serious disruption of the family unit which causes a serious disfunctioning of the family unit as a whole should be taken into consideration as a "broken home" condition. Examples of situations which we think appropriate for such consideration are death of a family member, divorce or separation of the parents, abandonment, and significant and serious breakdowns in communications which result in alienation of family members.

Id. at 282.

The Gullicksons contend that Travis' situation is a broken home, which was the sole motivating factor for his move to Davenport under Rule 36.15(3)"a". We conclude that the evidence established that Travis' situation is a "broken home" under the definition in the *Anderson* decision and under the Association's form. However, Rule 36.15(3)"a" states that the Board of Control "is empowered to consider the factors motivating student changes in residency." In Travis' case, the Board of Control considered as a motivating factor that prior to his move to Davenport, he had been ruled ineligible under LaPorte High School's good conduct policy until February 28, 2001.

Looking at all of the evidence, we believe a credible argument can be made either way as to the primary rationale for Travis' move to Iowa. 281 Iowa Administrative Code 36.15(3)"a" provides the Board of Control with discretion to consider all factors motivating the student

¹Other exceptions to the *General Transfer Rule* provide that a student is immediately eligible whose residence changes due to adoption, due to placement in foster or shelter care, or due to court decree that the student is a ward of the state or of the court. 281 IAC 36.15(3)"b"(3). Although we applaud the extraordinary generosity of the Gullickson family in inviting Travis into their home, the preponderance of the evidence did not show that Mr. and Mrs. Gullickson's relationship with Travis constituted a legal guardianship. The December 17th and 19th documents were not the result of any court proceeding nor were they approved by any court. Therefore, none of the exceptions under 36.15(3)"b"(3) apply to Travis' situation.

changes in residency and to make the decision it deems appropriate. *In re Daniel L. Roberts*, 15 D.o.E. App. Dec. 49, 54(1997). The Board of Control considered evidence on both sides and still ruled Travis ineligible for 90 school days. The Board of Control's position that the good conduct violation was a motivating factor was reasonable and is, therefore, affirmed.

The 90-day period of ineligibility for students who change schools exists to prevent recruitment of student athletes by school districts and to prevent students from shopping around for schools which they believe will give them the best opportunity for their athletic career. *In re Scott Halapua*, 13 D.o.E. App. Dec. 394 (1996). The facts in Travis' situation show that recruitment for athletic participation did not motivate the transfer from LaPorte to Davenport. This does not invalidate the rule. The Director of the Department of Education has refused to make an exception to the 90-day ineligibility rule in a number of cases. *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 Joshua Birchmier*, 14 D.o.E. App. Dec. 243 (1997); *In re Tim Ratino*, 13 D.o.E. App. Dec. 249(1996); *In re Scott Halapua*, 13 D.o.E. App. Dec. 394 (1996); and *In re Leo Sullivan*, 13 D.o.E. App. Dec. 400(1996).

Although the evidence in Mr. Gullickson's appeal on behalf of Travis showed that Travis' reasons for transferring to Davenport were not motivated by 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 recruitment.

Any motions or objections not previously ruled upon are hereby denied and overruled.

III. DECISION

For the foregoing reasons, the January 11, 2001, decision of the Board of Control of the Iowa High School Athletic Association, declaring Travis Bass ineligible to compete in athletics for 90 school days at Davenport Assumption High School, is hereby affirmed. There are no costs of this appeal to be assigned.

DATE

SUSAN E. ANDERSON, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

TED STILWILL
DIRECTOR