

**IOWA STATE DEPARTMENT  
OF EDUCATION**  
(Cite as 19 D.o.E. App. Dec. 140)

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*In re Jared Lovelady*

Mark & Julie Lovelady,  
Appellants,

v.

Iowa High School Athletic  
Association, Appellee.

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DECISION

[Admin. Doc. #4292]

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The above-captioned matter was heard on December 8, 2000, before a hearing panel comprised of Connie Cannon, consultant, Bureau of Administration and School Improvement Services; Ron Parker, consultant, Office of the Director; and Susan E. Anderson, J.D., designated administrative law judge, presiding on behalf of Ted Stilwill, Director of Education.

Appellants, Mark and Julie Lovelady 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 also unrepresented by counsel.

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. Appellants seek reversal of a decision of the Board of Control of the IHSAA made on November 18, 2000, declaring that Jared Lovelady is ineligible under the provisions of 281-Iowa Administrative Code 36 to compete in high school athletics for 90 school days following his transfer to Dowling.

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**

Jared Lovelady ("Jared") is currently a seventeen-year-old junior attending Dowling High School, a nonpublic high school located in Des Moines, Iowa. The Lovelady family, including Jared, currently lives in the Urbandale Community School District. The Lovelady family has lived in Urbandale for several years. Jared attended parochial schools from first grade through tenth grade.

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During his freshman and sophomore years, Jared attended Dowling High School [hereinafter, "Dowling"]. Jared participated in Dowling's basketball and spring soccer programs during his freshman and sophomore years.

At the beginning of August, 2000, Jared told his parents that he wished to enroll in the Urbandale Community School District [hereinafter, "Urbandale,"] at the beginning of his junior year. He had many friends in Urbandale since he had lived there for many years, and he wanted to go to school with them. He began attending Urbandale High School on or about August 24, 2000. He participated in no sports at Urbandale. After about three weeks of attending at Urbandale, Jared realized that he had made a mistake in switching from Dowling to Urbandale. He wasn't comfortable with the new student population at Urbandale.

In September, Jared and his parents told Dowling administrators that Jared wanted to transfer back to Dowling. Dowling responded that it had a rule which prohibited students from transferring in the middle of a quarter. Jared finished his first quarter coursework at Urbandale, therefore, and didn't begin attending Dowling until Dowling's second quarter began. By then, Jared had attended at Urbandale for 40 school days. Jared sought to compete in athletics at Dowling High School.

The Lovelady family had understood that Jared would be ineligible at Urbandale for 90 school days. The Lovelady family knew that Jared would be ineligible to compete at Dowling for a certain period of time. They wanted the 40 school days of attendance at Urbandale to count toward the 90-day ineligibility period at Dowling, so that Jared would have only 50 school days of ineligibility remaining at Dowling. Dowling's athletic director, John Hayes, wrote a letter to the Association's Board of Control requesting a ruling on Jared's eligibility. The

letter was dated October 6, 2000. The Association responded on October 11, 2000, that it would be willing to take the October 6 date and use it as Jared's first date of attendance at Dowling if Dowling would waive its rule and let Jared transfer immediately before the first quarter was completed. Dowling declined to allow Jared to transfer immediately.

On November 18, 2000, the Association voted that Jared was ineligible to compete at Dowling for 90 school days following his actual transfer to Dowling at the beginning of the second quarter. The Association decided that Jared was ineligible to compete in interscholastic athletics under the provisions of 281-Iowa Administrative Code 36.15(5)(c), which provides:

*c. Public to nonpublic and nonpublic to public transfers:* When a student transfers from a public school to a nonpublic school, or vice

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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. However, when a corresponding change of address occurs with the transfer, the executive board is empowered to make eligibility decisions based upon motivating factors for the transfer including, but not limited to, distance between the former school of attendance and the new residence.

Mr. Saggau testified that the Association's Board of Control allows a student athlete an adjustment period of 30 school days to change his mind and go back to his prior school. Mr. Saggau testified that if Jared had attended Urbandale for 30 school days or less, the Board would have ruled him eligible to compete immediately upon his transfer to Dowling. As it was, Jared attended 40 school days at Urbandale, so the Board of Control ruled him ineligible for 90 school days, starting at the beginning of Dowling's second quarter, when Jared began attending there.

The decision of the Association's management regarding Kyle's 90-day ineligibility to compete for Dowling High School was communicated to Appellants by letter dated November 21, 2000. The Lovelady family 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 (1999). 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.

We conclude that the applicable rule governing this appeal is 281-Iowa Administrative Code 36.15(5)(c). In this case, Appellants' situation falls squarely within the language of the first sentence of the rule. Jared has transferred from a public school, Urbandale High School, to a nonpublic school, Dowling High School, after the ninth grade without a contemporaneous change of parental residence. The Lovelady family contends that

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the thirty-school-day leeway period for a student to change his mind should be extended to 40 days in Jared's case. We disagree.

The Association's practice is to give a maximum of 30 school days for a student to adjust to a new school or decide to return to his original school. That maximum adjustment period will be upheld as long as it is consistently applied. The evidence showed that the thirty-school-day leeway period is consistently applied and we will uphold it in this appeal.

The Lovelady family contends in the alternative that the 40 days of attendance at Urbandale should count toward the 90-school-day ineligibility period at Dowling. We have never done this before and we decline to do it now. The rule is that there is a 90-day ineligibility period for each transfer. Jared is,

therefore, ineligible to compete in interscholastic athletics at Dowling High School for a period of 90 school days.

Earlier decisions by the Director of the Department of Education support this conclusion under Rule 36.15(c). In *In re Kyle Bargfrede*, 19 D.o.E. App. Dec. 30 (2000), the Director affirmed the 90-day ineligibility of a student athlete who transferred from St. Edmond's High School (a nonpublic school located in the Ft. Dodge Community School District, to Webster City High School (a public school located in the Webster City Community School District) without a contemporaneous change in parental residence. *Id.* at 33. In *In re Erin Kappler*, 17 D.o.E. App. Dec. 348 (1999), the Director affirmed the 90-day ineligibility of a student athlete who transferred from Durant High School (a public school located in Durant Community School District) to St. Katherine's (a nonpublic school in the Bettendorf Community School District) without a contemporaneous change in parental residence. *Id.* at 350.

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 opportunities for their athletic careers. The fact that any particular student's transfer was not motivated by recruitment or "shopping around" for the best opportunity does not invalidate the rule. *In re Scott Halapua*, 13 D.o.E. App. Dec. 394 (1996). 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 Apollo Olango*, 19 D.o.E. App. Dec. 74 (2000); *In re Scott Perkins*, 19 D.o.E. App. Dec. 81 (2000); *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); *In re Leo Sullivan*, 13 D.o.E. App. Dec. 400 (1996). We agree with the Association that the 90-day ineligibility rule and uniform application of the rule without exception is very important.

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State regulation of high school student athletic eligibility is commonplace with respect to transfer rules. The following scholarly source states:

Athletic associations and conferences regulate nearly all areas of amateur athletics. Litigation involving these associations and conferences has centered around rulings of ineligibility of a student, team, or institution because of residency, sex, age limitations, participation on independent teams or other such restrictions.

[R]esidency/transfer rules limiting the eligibility of student athletes ostensibly exist to deter two conditions: the recruiting of athletes by high schools or colleges which the student-athlete does not in fact attend, and the shopping around by student-athletes for institutions which seem to offer the best opportunities to advance the student's athletic career. Generally, the penalty for violating a transfer or residency regulation is qualification from participation, usually for one semester or one year.

Rapp, J., *Education Law*, Vol. I, section 3.09[4][a][i], Matthew Bender, 1995.

In addition, an Indiana court facing an athletic ineligibility issue upheld similar transfer rules in the case of *Indiana High School Athletic Assn., Inc. v. Avant*, 650 N.E.2d, 1164 (Ind. App. 1995). In that case, the court stated:

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 in the Lovelady family's appeal showed that Jared's reasons for transferring from Urbandale to Dowling were not motivated by school jumping or recruitment for athletic

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purposes, the transfer rules are applicable and controlling because the rules are reasonably related to achieving the IHSA's purpose in deterring school jumping and recruitment.

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

**III.  
DECISION**

For the foregoing reasons, the November 18, 2000, decision of the Board of Control of the Iowa High School Athletic Association, declaring Jared Lovelady ineligible to compete in athletics for 90 school days at Dowling High School, is hereby affirmed. There are no costs of this appeal to be assigned.

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DATE

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

It is so ordered.

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DATE

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TED STILWILL  
DIRECTOR