

**IOWA STATE DEPARTMENT  
OF EDUCATION**

(Cite as 19 D.o.E. App. Dec. 81)

***In re Scott Perkins*** :

Scott Perkins, :  
Appellant, :

v. : DECISION

Iowa High School Athletic :  
Association, Appellee. : [Admin. Doc. #4279]

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The above-captioned matter was heard on September 29, 2000, before a hearing panel comprised of Mr. Joe DeHart, consultant, Bureau of Planning, Research & Evaluation; Ms. Christine Anders, consultant, Bureau of Food and Nutrition; and Susan E. Anderson, J.D., designated administrative law judge, presiding on behalf of Ted Stilwill, Director of Education.

Appellant, Scott Perkins, was present and was represented by Attorney James Sayre of Clive, Iowa. 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 September 18, 2000, declaring that Scott Perkins is ineligible under the provisions of 281-Iowa Administrative Code 36 to compete in high school athletics for 90 school days following his transfer.

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**

Scott Perkins ("Scott") is currently an 18-year-old senior attending high school in the Adel-Desoto-Minburn Community School District ["ADM"]. He reached the age of majority on June 2, 2000. Scott currently lives in an apartment in Adel, Iowa. Scott's parents, Dave and Pam Perkins, reside in Dallas Center with Scott's younger brother and sister.

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During his freshman, sophomore, and junior years, Scott attended Dallas Center-Grimes High School ["DCG"], a public school located in the Dallas Center-Grimes Community School District. Scott participated in DCG's football, basketball, track and soccer programs. The entire Perkins family, including Scott, lived together in Dallas Center all three of those years. During his freshman year, Scott violated DCG's good conduct policy by smoking a cigarette. He served an athletic suspension under DCG's good conduct policy. During his junior year, Scott again violated DCG's good conduct policy by attending a party where alcohol was being served and where he consumed alcohol. He served another athletic suspension under DCG's good conduct policy.

On June 23, 2000, Scott was arrested and charged in Dallas County with possession of marijuana. Scott had reached his eighteenth birthday on June 2 and was arrested as an adult. Scott is represented by Attorney Jonathan Kimple in the criminal proceeding. (Scott pleaded not guilty and the charges are pending until a trial set for December 14, 2000.) In July 2000, DCG School officials became aware of the pending criminal charges against Scott and started proceedings for an athletic suspension for Scott's third violation of its good conduct policy.

The DCG Principal found that Scott had violated its good conduct policy for the third time, which carried a one-year suspension from competing in athletics at DCG. The principal notified Scott of his decision by letter dated August 15, 2000. Scott appealed the principal's decision to a DCG faculty panel, which met on the evening of August 29, 2000. At that time, Scott was still living with his family in Dallas Center and had begun attending classes as a senior at DCG High School.

Scott and Attorney John Kimple went before the faculty panel at DCG and requested that the session be closed and that Scott's parents not be allowed to be present. This request was granted.

Dave and Pam Perkins waited outside and when Mr. Kimple came out to wait on the panel's decision, he and Scott's parents had a heated exchange. During this exchange, Dave Perkins told Mr. Kimple that if he and his wife were to be excluded from Scott's affairs, then Scott would have to find another place to live. The DCG faculty panel decided later that evening that Scott had violated the good conduct policy and that he would be under athletic suspension for one year, effectively his entire senior year. Dave and Pam Perkins told Scott later that night at their home that he was not welcome to remain in their home. Mr. Kimple arranged the next day, August 30, 2000, for Scott to live in an apartment in a house in Adel. Scott moved to Adel that day. He began attending school in Adel and practicing with the ADM football team on August 31, 2000.

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Mr. Kimple testified that he did not consider trying to find an apartment for Scott in Grimes because it is too urban and because Mr. Kimple doesn't get there as often as he does to Adel. Mr. Kimple testified that he would be better able to check on Scott in Adel. Scott testified that he is not receiving financial assistance from his parents. They have mended their relationship to the extent that Scott makes frequent visits to his parents' home and his parents now have a key to his apartment.

Scott sought to compete in athletics in the ADM Community School District's athletic program. On September 5, 2000, Kelly Hood, activities director of ADM, informed Bernie Saggau, Executive Director of the IHSAA, in writing of the enrollment of Scott Perkins and provided additional background to request a ruling regarding Scott's eligibility as it pertained to the *General Transfer Rule*, 281 Iowa Administrative Code 36.15(3). On September 6, 2000, Bernie Saggau responded to Kelley Hood in writing, and ruled that Scott was ineligible on the basis that his transfer from DCG to ADM was for athletic purposes. On September 14, 2000, Mr. Saggau's ruling was appealed to the Board of Control of the IHSAA by Jonathan Kimple, counsel for Scott Perkins. The Association held a telephonic hearing and upheld the decision that Scott was ineligible to compete in interscholastic athletics at ADM under the provisions of 281-Iowa Administrative Code 36.15(3). The *General Transfer Rule*, 36.15(3) provides, in pertinent part:

A student who transfers from one school district to another 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.<sup>1</sup>

The minutes of the Board of Control's special meeting of September 18, 2000, state in pertinent part:

Upon full consideration of the matters presented, it was determined that Scott Perkins had transferred from Dallas Center-Grimes Community School District to Adel-Desoto-Minburn School District without a contemporaneous change in parental residence, and that considering all circumstances presented that said transfer was principally for school or athletic purposes. Accordingly, it was determined that a ninety school day period of ineligibility pursuant to the *General Transfer Rule*, Iowa Administrative Code 281-36.15(3) should be

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imposed as none of the exceptions provided therein, specifically including Iowa Administrative Code Section 36.15(3)(b)(4) apply. It was moved by Board Member Sextro, seconded by Board Member Stilwell and unanimously resolved to affirm the decision of Executive Director Saggau that Scott Perkins be declared ineligible for interscholastic athletic competition for a period of ninety (90) school days commencing with his first day of actual attendance at Adel-Desoto-Minburn Community School District.

Scott Perkins then appealed to the Director of the Department of Education.

## II. CONCLUSIONS OF LAW

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<sup>1</sup> Mr. Saggau testified that the Association interprets the word "contemporaneous," to mean within 30 school days.

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.

We conclude that the General Transfer Rule is applicable to Scott's appeal because Scott "transfer[red] from one school district to another school district." 281 IAC 36.15(3). In this case, Scott's situation falls squarely within the language of the first sentence of the *General Transfer Rule*. Scott transferred from a public school, Dallas Center-Grimes High School, to another public school, Adel-Desoto-Minburn High School, after the ninth grade without a contemporaneous change of parental residence. It is undisputed that Scott transferred on August 31, 2000, and that his parents remained in Dallas Center. Scott is, therefore, ineligible to compete in interscholastic athletics unless one of the exceptions to the *General Transfer Rule* applies. Scott argues that his change in residence on August 31, 2000, qualifies him for the exception in 281-36.15(b)(4), which reads as follows:

In ruling upon the transfer of students who have been emancipated by marriage or by reaching the age of majority, the executive board is empowered

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to consider all circumstances with regard to the transfer to determine if it is principally for school or athletic purposes, in which case participation shall not be approved. If facts showing a valid purpose for the transfer are established, the executive board may declare the student eligible.

Scott asserts that he moved to Adel and transferred to ADM to make a home for himself. The Board of Control found that Scott transferred to ADM principally for school or athletic

purposes. We conclude that the preponderance of the evidence showed that Scott moved to Adel and transferred to ADM principally for school purposes. Scott is, therefore, ineligible to participate in interscholastic athletics for 90 school days.

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 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).

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

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for violating a transfer or residency regulation is disqualification 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.

The evidence in Scott's appeal showed that even if his reasons for transferring to ADM were not motivated by school jumping or recruitment for athletic purposes, they were certainly motivated by his desire to attend school somewhere other than DCG. We believe that Scott could have made an effort to live in Grimes and to stay at DCG High School if his transfer had been motivated solely by a need to leave his parents' residence in Dallas Center and to make a home for himself.

We conclude that Scott's transfer was principally for school or athletic purposes and that exception 36.15(b)(4) does not apply. The *General Transfer Rule* is, therefore, controlling and Scott is ineligible to compete at ADM for 90 school days.

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

### III. DECISION

For the foregoing reasons, the September 18, 2000, decision of the Board of Control of the Iowa High School Athletic Association, declaring Scott Perkins ineligible to compete in athletics

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for 90 school days at Adel-Desoto-Minburn Community School District, is hereby affirmed. There are no costs of this appeal to be assigned.

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DATE

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

It is so ordered.

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DATE

TED STILWILL  
DIRECTOR