

**IOWA STATE DEPARTMENT
OF EDUCATION**

(Cite as 19 D.o.E. App. Dec. 74)

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| <i>In re Apollo Olango</i> | : | |
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| Bernie Brueck, Appellant, | : | |
| | : | |
| v. | : | DECISION |
| Iowa High School Athletic Association, Appellee. | : | [Admin. Doc. #4274] |

The above-captioned matter was heard on September 19, 2000, before a hearing panel comprised of Ms. Sandy Hulse and Ms. Susan Fischer, consultants, Bureau of Practitioner Preparation & Licensure; and Susan E. Anderson, J.D., designated administrative law judge, presiding on behalf of Ted Stilwill, Director of Education.

Appellant, Bernie Brueck, activities director at Fairfield High School, was present and was 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. Appellants seek reversal of a decision of the Board of Control of the IHSAA made on August 29, 2000, declaring that Apollo Olango 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.

FINDINGS OF FACT

Apollo Olango ("Apollo") is currently a sixteen-year-old junior attending high school in the Fairfield Community School District. Apollo's parents were divorced before Apollo was a freshman. Both parents currently live separately from each other in San Diego, California.

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During his freshman and sophomore years, Apollo lived in Fairfield with his father and attended Fairfield High School, a public school located within the Fairfield Community School District. Apollo participated in Fairfield High School's football and basketball programs during his freshman and sophomore years.

On March 6, 2000, Apollo moved to California with his father, who had procured employment in the San Diego area. Apollo moved back to Fairfield during the first two weeks of July 2000. Apollo registered for his junior year at Fairfield in August 2000. He sought to complete in athletics in the Fairfield High School athletic program. He has been practicing with the football team and wishes to compete in the remaining football games and in the basketball season.

On September 7, Mr. Bernie Brueck, activities director, sent a letter to the Association requesting a ruling on Apollo's athletic eligibility, which reads in pertinent part:

Apollo Olango, due to employment of his father, left Fairfield in March of 2000 and moved to San Diego, California. After attending San Diego High School for the remainder of the 2000 school year, his family decided it was in Apollo's best interest to return to the community of Fairfield. The environment that Apollo was introduced to was a dramatic change from that of Fairfield. Academically, his grades suffered due to the educational setting he was introduced to at his new high school. Socially, he was at risk with the lure of gangs and violence in the area. And emotionally, Apollo needed the stability he had grown accustomed to in Fairfield.

Apollo was, and will continue to be an "at-risk" student at Fairfield. He is a young man that

needs direction and structure in his life, and through athletics he has gained the self-confidence and self-discipline needed to become a successful student here at Fairfield High School. Apollo has been involved in many activities and is a very well liked young man by his peers, along with the faculty and staff at Fairfield High School. Apollo is currently staying with Mr. and Mrs. George Farmer, who have been given full guardianship. They have a son who will be a junior at FHS and the two of them have a close friendship.

Mr. Brueck, Fairfield Superintendent John Kelley and Fairfield High School Principal Ralph Messerli all testified that they believed it is in Apollo's best interests to be allowed to

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compete in athletics right away. Mr. George Farmer, with whom Apollo is now living, testified that he considers himself and his wife to be Apollo's guardians. Mr. and Mrs. Farmer are residents of the Fairfield District who volunteered to take Apollo under their roof so that he could escape the detrimental environment in California.

Although Apollo's father could not leave his employment in California, he and Apollo's mother each signed a document in which they expressed their wishes that the Farmers be Apollo's guardians in Fairfield. The document is dated July 17, 2000. It is not notarized and was not approved or ordered by any court.

Dear Sir/Madam:

The purpose of this letter is to authorize Mr. George Farmer to become a guardian for our son Apollo Olango. At the same time, this letter gives permission to Mr. George [sic] and his wife, to sign all official documents needed for our son Apollo.

We will highly appreciate any assistance rendered to Mr. and Mrs. George Farmer whenever they are handling any document regarding our son Apollo.

Thank you.

Since July of 2000, the Farmers have provided clothing, food, schoolbooks, and transportation for Apollo. He has resided in their home at no charge and is considered as part of the Farmer family. Apollo's mother still carries Apollo's medical and dental insurance, but Mr. Farmer testified that he would gladly pay for any expenses that Apollo would have. Apollo's mother has contributed approximately \$200 toward Apollo's expenses since July 2000. His father has contributed no money toward Apollo's expenses since July 2000. Apollo was born in Uganda and on October 2, 2000, was to travel to California by bus for the sole purpose of attending legal proceedings at which he would become a U.S. citizen. Mr. and Mrs. Farmer were not involved in any way with the application process or proceedings for Apollo's U.S. citizenship. Apollo's mother and father signed all of the documentation and would be present with Apollo at the citizenship proceedings in San Diego.

The Association decided that Apollo was ineligible to compete in interscholastic athletics under the provisions of 281-Iowa Administrative Code 36.15(3), the *General Transfer Rule*. Rule 36.15(3) provides, in pertinent part:

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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.¹

The decision of the Association's management regarding Apollo's 90-day ineligibility to compete for Fairfield High School was communicated to Appellant by letter dated August 22, 2000. On August 29, 2000, the Board of Control of the Association affirmed the decision of its management, and sent its decision to Appellant by letter dated August 29, 2000. Appellant then appealed to the Director of the Department of Education.

¹ Mr. Saggau testified that the Association interprets the word "contemporaneous" to mean within 30 school days.

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.

We conclude that the General Transfer Rule is the applicable rule governing this appeal because Apollo "transfer[red] from one school district to another school district." 281 IAC 36.15(3). In this case, Apollo's situation falls squarely within the language of the *General Transfer Rule*. Apollo has transferred from one school district, San Diego School District, to another school district, Fairfield Community School District, after the ninth grade without a contemporaneous change of parental residence. It is undisputed that Apollo and his father moved from Fairfield to San Diego on March 6, 2000. It is also undisputed in July 2000, Apollo moved back from San Diego to Fairfield and that his father remained in San Diego, California. Apollo is, therefore, ineligible to compete in interscholastic athletics at Fairfield High School for a period of 90 school days.

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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)(3).

Although we applaud the extraordinary generosity of the Farmer family in supporting Apollo in every way, the preponderance of the evidence did not show that Mr. and Mrs. Farmer's relationship with Apollo constituted a legal guardianship. The July 17th document was not notarized or court-approved. The fact that the Farmers had no involvement in the U.S. citizenship procedure is significant evidence that they are not the people whose signatures were required in such an important legal proceeding involving Apollo. Therefore, none of the exceptions to the *General Transfer Rule* apply.

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 Apollo's situation show that recruitment for athletic participation did not motivate the transfer from San Diego to Fairfield. 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).

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 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.

Although the evidence in Mr. Brueck's appeal on behalf of Apollo showed that Apollo's reasons for transferring to Fairfield were not motivated by school jumping or 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 school jumping and recruitment.

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

III.

DECISION

For the foregoing reasons, the August 29, 2000, decision of the Board of Control of the Iowa High School Athletic Association, declaring Apollo Olango ineligible to compete in athletics for 90 school days at Fairfield High School, 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.

DATE

TED STILWILL
DIRECTOR