

**IOWA STATE DEPARTMENT  
OF EDUCATION**

(Cite as 19 D.o.E. App. Dec. 70)

<i>In re Eric Joseph Tweet</i>	:	
Eric Tweet, Appellant,	:	
v.	:	DECISION
Iowa High School Athletic Association, Appellee.	:	[Admin. Doc. #4275]

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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, Eric Tweet, Sr., was present telephonically along with his son, Eric Joseph Tweet ["Joe"], the subject of this appeal. The Tweets were represented by Attorney Scott Hindman of Bikakis, Arneson, Karpuk & Hindman of Sioux City, 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 August 29, 2000, declaring that Joe Tweet 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**

Eric Joseph Tweet ("Joe") is currently a sixteen-year-old junior attending high school at Bishop Heelan Catholic High School ["Heelan"], a nonpublic school located in Sioux City, Iowa.

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Joe and his father moved to LeMars on August 3, 2000. Prior to their move to LeMars, Joe and his father lived in Sioux City. During his freshman year, Joe had attended Heelan. That year, Joe lived with his mother and father in Sioux City. He attended Heelan during the first semester of his sophomore year and participated in football. During that first semester, Joe's parents started divorce proceedings. Joe and his father moved out of what had been the family home to an apartment in Sioux City in November of 1999. The divorce was final on December 15, 1999. Under the divorce decree Joe's father, Appellant Eric Tweet, was granted primary physical care of Joe with joint legal custody to both parents.

As a result of the divorce proceedings, Joe's father experienced a significant decrease in his finances. The financial demands included bills for legal fees, counseling expenses for himself and Joe, and the expenses of temporarily maintaining two residences for the family. Joe's father was forced to tell Joe that he could no longer afford the tuition at Heelan. Joe then transferred to Sioux City West High School on January 14, 2000, at the beginning of the second semester of his sophomore year. Joe did not want to make the transfer. He wanted to stay with his friends at Heelan, most of whom had attended school with Joe at Sacred Heart School, a kindergarten through eighth grade nonpublic school in Sioux City.

Joe did not compete in track as a sophomore at Sioux City West because he was ineligible for 90 school days following his January 14, 2000, transfer. Joe continued to express his wishes to return to Heelan during that semester and during the summer following his sophomore year. His father remarried on August 3, 2000, and moved with Joe to LeMars, Iowa, to live with his new wife at her residence there. Due to the passage of time and the remarriage, Joe's father was then able to once again afford the tuition at Heelan. He told Joe that he could return to Heelan

for his junior year, which he did. Joe seeks to compete in football, track and wrestling at Heelan.

The Association decided that Joe 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:

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>

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Joe's father and David Fravel, Athletic Director at Heelan, requested the Association's management to rule Joe eligible at Heelan. Management's decision was that Joe was ineligible for 90-school days. This decision was communicated to Appellants by letter dated August 9, 2000. On August 29, 2000, the Board of Control of the Association confirmed that Joe was ineligible and sent its decision to Mr. Tweet by letter dated August 29, 2000. Mr. Tweet and Mr. Fravel then appealed to the Director of the Department of Education. Mr. Saggau testified that on the date of the appeal hearing, Joe was eligible to compete at LeMars High School, Sioux City West, and at Gehlen Catholic High School in LeMars.

## 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 Associa-

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

tion 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 not applicable to the Tweets' appeal because Joe did not "transfer from one school district to another school district." 281 IAC 36.15(3). We find instead that the applicable rule governing this appeal is 281-Iowa Administrative Code 36.15(5)(c). That rule provides as follows:

*c. Public to nonpublic and nonpublic to public transfers:* 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. 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

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the former school of attendance and the new residence.

*Id.*

In this case, Joe's situation falls squarely within the language of the above rule. Joe has transferred from a public school, Sioux City West High School, to a nonpublic school, Heelan High School, after the ninth grade. Joe's transfer occurred with a contemporaneous change of parental residence. It is undisputed that Joe and his father changed residences on August 3, 2000, and that Joe transferred to Heelan on August 14, and began football practice. August 21, 2000, was the first day of school at Heelan. The transfer and the change of parental residence occurred within 30 school days of each other. According to the definition used by the Association, these two events were

"contemporaneous." Mr. Saggau testified that the Association uses the terms "contemporaneous" and "corresponding" interchangeably. See, *In re Kyle Bargfrede*, 19 D.o.E. App. Dec. 30 (2000). The evidence showed that the motivating factor for the transfer back to Heelan High School was for Joe to get back to the status quo in his life, which was interrupted against his will by his parents' divorce proceedings. Joe is, therefore, eligible to compete in interscholastic athletics at Heelan High School.

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

**III.**  
**DECISION**

For the foregoing reasons, the September 29, 2000, decision of the Board of Control of the Iowa High School Athletic Association, declaring Eric Joseph Tweet, Jr., ineligible to compete in athletics for 90 school days at Bishop Heelan High School, is hereby reversed. There are no costs of this appeal to be assigned.

\_\_\_\_\_  
DATE

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

It is so ordered.

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DATE

TED STILWILL  
DIRECTOR