

**IOWA STATE DEPARTMENT
OF EDUCATION**

(Cite as 19 D.o.E. App. Dec. 30)

<i>In re Kyle Bargfrede</i>	:	
Scott & Terri Bargfrede,	:	
Appellants,	:	
v.	:	DECISION
Iowa High School Athletic	:	
Association, Appellee.	:	[Admin. Doc. #4269]

The above-captioned matter was heard on September 5, 2000, before a hearing panel comprised of Mr. Jeff Berger and Ms. Peggy Wetherell, consultants, Bureau of Administration and School Improvement Services; and Susan E. Anderson, J.D., designated administrative law judge, presiding on behalf of Ted Stilwill, Director of Education.

Appellants, Scott & Terri Bargfrede, were present and were represented by Attorney Mark Brownlee of Kersten Brownlee Hendricks, L.L.P., of Ft. Dodge, Iowa. Appellee, Iowa High School Athletic Association [hereinafter, "IHSAA" or "the Association"], was present in the persons of Bernie Saggau, Executive Director; and David Harty, Associate 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 September 1, 2000, declaring that Kyle Bargfrede 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

Kyle Bargfrede ("Kyle") is currently a junior attending high school in the Webster City Community School District. The Bargfrede family, including Kyle, currently lives in the Webster

31

City Community School District. The Bargfredes moved to Webster City on January 26th or 27th, 2000. Prior to their move to Webster City, the Bargfredes lived in Ft. Dodge, Iowa.

During his freshman and sophomore years, Kyle had attended St. Edmond High School [hereinafter, "St. Edmond'"], a nonpublic school located within the Ft. Dodge Community School District. Kyle participated in St. Edmond's football, basketball, track and baseball programs during his freshman and sophomore years. Although the entire Bargfrede family moved to Webster City on January 26 or 27, 2000, they made the decision that Kyle would complete his sophomore year at St. Edmond's. Kyle commuted the 26 miles to and from school between Webster City and St. Edmond's from January 26 or 27th, until the end of the school year in June 2000. He competed on St. Edmond's baseball team during the summer of 2000.

On August 2, 2000, Kyle told his parents that he had decided to enroll in the Webster City Community School District at the beginning of his junior year. He registered there on August 14, 2000, and immediately began practicing with the Webster City High School football team. Webster City High School is a public school located in Webster City.

Kyle transferred to Webster City High School because he wanted to attend school in the same district where the family had lived since January. Kyle sought to compete in athletics in the Webster City High School athletic program.

The Bargfredes had assumed that Kyle would be eligible at Webster City right away this fall since he was a resident within the Webster City District. The Association decided that Kyle 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 contem-

poraneous change in parental residence, shall be ineligible to compete in interscholastic athletics for a period of 90 school days.¹

32

The decision of the Association's management regarding Kyle's 90-day ineligibility to compete for Webster City High School was communicated to Appellants by letter dated August 9, 2000. On September 1, 2000, the Board of Control of the Association affirmed the decision of its management, and sent its decision to Appellants by letter dated September 1, 2000. Appellants then appealed to the Director of the Department of Education. Mr. Saggau testified that on the date of the appeal hearing, Kyle was still eligible to compete at St. Edmond's.

On or about February 1, 2000, Kyle's parents had been told by Dr. Kaye Forsythe, Webster City High School Principal, that a transfer from St. Edmond's to Webster City High School on January 26 or 27 would be difficult because St. Edmond's operates on a traditional semester academic year, but Webster City High School operates on a trimester academic year. On the date the Bargfredes moved, St. Edmond's was approximately one week into its second semester. On January 26, Webster City was approximately eight weeks into its second trimester, with about five weeks remaining.

As a sophomore at St. Edmond's, Kyle was taking English, Math, History, Science and Spanish I, all full-year courses. He also was taking courses in religion. Webster City High School offered the same full-year sophomore courses, except the religion courses. Kyle was a good student with a 2.9 GPA at St. Edmond's. The grading system at St. Edmond's is different from the one at Webster City. (For example, at St. Edmond's, the scale is 94% to 100% for an "A"; at Webster City, the scale is 90% to 100% for an "A".)

Principal Forsythe testified that she had told the Bargfredes in February that given the differences in the academic

¹ Mr. Saggau testified that the Association interprets the word "contemporaneous," to mean within 30 school days. This interpretation should be added to the Association's Constitution and By-Laws. Even if this definition is applied, it does not help Kyle's situation because more than 30 school days have passed between his family's move to Webster City and his transfer to Webster City High School.

schedules and grading systems between the two schools, a transfer would be difficult. She testified, however, that a transfer would have been possible through the use of Webster City's standard formula used to convert credits and grades from one school to another. All of Kyle's credits would have transferred, including the ones for religion classes at St. Edmond's, which would have been transferred as electives at Webster City. Kyle's grades from St. Edmond's would have become higher as a result of the conversion. Principal Forsythe made these same statements to the Association's Board of Control at its September 1, 2000, meeting before it voted on Kyle's ineligibility.

33

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 not applicable to the Bargfredes' appeal because Kyle 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 the former school of attendance and the new residence.

Id.

In this case, Appellants' situation falls squarely within the language of the first sentence of the above rule. The result under rule 36.15(5)(c), however, is the same as the result under rule 36.15(3). Kyle is still ineligible to complete at Webster City High School. Kyle has transferred from a nonpublic school, St. Edmond's High School, to a public school, Webster City High

34

School, after the ninth grade without a contemporaneous change of parental residence.² It is undisputed that the Bargfrede family moved on January 26, 2000, and that Kyle transferred on August 14, 2000, nearly six months later. A six-month gap between the change of parental residency and the student's transfer means that the two events were not "contemporaneous." Kyle is, therefore, ineligible to compete in interscholastic athletics at Webster City 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 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 in the located in Durant School District) to St. Katherine's (a nonpublic school in the Bettendorf District) without a contemporaneous change in parental residence. *Id.* at 350.

² Mr. Saggau testified that the Association interprets the words "contemporaneous," and "corresponding" to mean within 30 school days. This interpretation should be added to the Association's Constitution and By-Laws. Even if this definition is applied, it does not help Kyle's situation because more than 30 school days have passed between his family's move to Webster City and his transfer to Webster City High School.

In *In re Joshua Birchmier*, 14 D.o.E. App. Dec. 243 (1997), a student athlete who transferred from Dowling High School (a nonpublic school located in the Des Moines District) to the Academic Achievement Center at DMACC (neither a public nor nonpublic school); and then transferred to Bondurant-Farrar (a public school located in the Bondurant-Farrar District). The *Birchmier* decision stated that if [that student] had transferred directly from Dowling to Bondurant-Farrar, then Rule 36.15(5)(c) would have applied. *Id.* at 246.

We find that the decisions *In re Eric Quiner*, 16 D.o.E. App. Dec. 141 (1998) and *In re Stephen Keys*, 4 D.P.I. App. Dec. 24 (1984) do not apply to this appeal. The *Quiner* decision involved a transfer from one public school to another public school. The *Keys* decision involved the application of former rules with different language from the present rules. [The former language declared ineligibility for a student in the following situations: "A student who transfers from a school **located in** a public school district to a school **located in** another school district ..." and "A student who changes school systems **located within** a given public school district." *Keys, supra*, at 26. (Emphasis added.)]

35

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). 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). We agree with the Association that the 90-day ineligibility rule and uniform application of the rule without exception is very important.

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:

36

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 Bargfredes' appeal showed that Kyle's reasons for transferring to Webster City 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 September 1, 2000, decision of the Board of Control of the Iowa High School Athletic Association, declaring Kyle Bargfrede ineligible to compete in athletics for 90 school days at Webster City 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