

**IOWA STATE DEPARTMENT  
OF EDUCATION**

(Cite as 18 D.o.E. App. Dec. 37)

<i>In re Mark Patton</i>	:	
	:	
Julie Patton, Appellant,	:	
	:	
v.	:	DECISION
Iowa High School Athletic Association, Appellee.	:	[Admin. Doc. #4183]

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The above-captioned matter was heard telephonically on November 18, 1999, before a hearing panel comprising Amy Sandvold, consultant, Bureau of Administration and School Improvement Services; Vic Lundy, consultant, Bureau of Technical and Vocational Education; and Susan E. Anderson, J.D., designated administrative law judge, presiding on behalf of Ted Stilwill, Director of the Department of Education.

Appellant, Julie Patton, was present by telephone, and was unrepresented by counsel. Appellee, Iowa High School Athletic Association [hereinafter, "IHSAA" or "the Association"], was present by telephone in the person of Bernie Saggau, Executive Director. The Association was unrepresented by counsel.

An evidentiary hearing was held pursuant to departmental hearing procedures 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 Directors of the Association made on October 28, 1999, declaring that Mark Patton 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. 281 IAC 36.17.

## FINDINGS OF FACT

Mark Patton ("Mark") is currently a 17-year-old senior at Valley High School in the West Des Moines Community School District [hereinafter, "the District"]. Mark will reach the age of majority on February 23, 2000. He resides in the District in

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the home of Mr. and Ms. Brown, who are family friends. Mark's parents, Julie and Steven Patton, currently reside in the Bettendorf Community School District.

During Mark's freshman and sophomore years of high school, he resided with his parents in the District. While attending Valley High School, Mark participated in the swimming program. Mark's coaches were always his mentors; Ms. Patton testified that Mark's father is not, and has never been, a "good father figure" to Mark. Before Mark's junior year in high school, his parents moved the family, including Mark, to Bettendorf after a job transfer related to Mr. Patton's employment. Mark competed in the swimming program at Bettendorf during his junior year. During Mark's junior year, the problems he always had experienced in his relationship with his father worsened and escalated to the point that Mark no longer wanted to reside in his parents' home. The problems in his relationship with his father consisted of extreme emotional stress as a result of his father's treatment of him, which fortunately never resulted in physical abuse. However, the relationship was strained and traumatic enough that Mrs. Patton testified that she agreed with Mark that it wasn't in his best interest to remain in the family residence. She, therefore, agreed that it would be best if Mark moved back to West Des Moines and lived with family friends.

Mrs. Patton wrote a document to the family friends, Dan and Sandra Brown, stating that she was giving her permission for Mark to live with them in West Des Moines. This document, however, was not notarized and did not constitute a change in legal guardianship to Mr. and Mrs. Brown.

This difficult and painful decision was not put into action until two weeks into the 1999-2000 school year. Therefore, Mark attended Bettendorf High School as a senior for approximately the first two weeks of the school year. He then moved to West Des

Moines and began attending classes at Valley High School on or about September 20, 1999. Mark did not miss any days of school making the transfer from Bettendorf to West Des Moines.

The evidence showed that Mrs. Patton's and Mark's decision for him to move to West Des Moines was motivated solely by his desire to make a home for himself in West Des Moines, away from his father's residence. Mark is attending Valley High School as a resident; according to the West Des Moines Community School District, he is not paying tuition because they consider him to be a resident. Mark is receiving no financial assistance whatsoever from his parents other than the fact that he remains on his father's health insurance policy. Mr. and Mrs. Brown are not receiving any financial support from Mr. and Mrs. Patton due to the fact that Mark is residing with them. Other than room and board from the Browns, Mark is supporting himself financially

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from his savings and a job at Best Buy where he works approximately 15 hours a week in conjunction with a government class he is taking at Valley High School. Mark has a car which he pays for himself and which he insures himself. Mark pays for his own clothing. His mailing address is West Des Moines. Mark has every intention of remaining in West Des Moines, even after he graduates from high school and continuing to make it his home. Mark's contact with his parents consists mainly of telephone conversations with his mother.

Mark would like to compete in Valley High School's swimming program during his senior year. The Board of Control issued a decision on October 28, 1999, declaring Mark ineligible to compete in interscholastic athletic competition for 90 school days following his transfer from Bettendorf to West Des Moines. under the provisions of 281-Iowa Administrative Code 36.15(3), the *General Transfer Rule*, regarding a student who transfers from one school district to another school district without a contemporaneous change in parental residence. Appellant then appealed to the Director of the Department of Education.<sup>1</sup>

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<sup>1</sup> Mr. Saggau stated at the appeal hearing that he would recommend to the Board of Control that Marks' 90-day period of ineligibility should run from the first day of school at Valley High School, instead of from September 20, 1999. This would make Mark eligible at or near the end of the first semester.

**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 a 28E agreement, the Association and the Union enforce the rules by their official determinations, subject to appeal to the Department of Education.

We find that the applicable rule governing this appeal is 281 Iowa Administrative Code 36.15(3). That rule provides as follows:

*General transfer rule.* A student who transfers from one school district to another school district, without a contemporaneous change in parental residence, shall be ineligible to compete in interscholastic athletics for a period of 90 school days, as defined in 281 -- subrule 12.2(2),

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exclusive of summer enrollment, unless one of the following exceptions to the general transfer rule applies.

a. In ruling upon the eligibility of transfer students, the executive board is empowered to consider the factors motivating student changes in residency. Unless otherwise provided in the rules, a student intending to establish residency must show that the student is physically present in the district for the purpose of making a home and not solely for school or athletic purposes. Eligibility awarded under this transfer rule may be made contingent upon proof that a request for transfer has been made and that the student has been in attendance in the new school for at least ten days.

b. Exceptions. The executive officer or executive board is empowered to consider and apply the following exceptions in formally or informally ruling upon the eligibility of a transfer student:

(1) If the student is attending in a school district as a result of a whole-grade sharing agreement between the student's resident district and the new school district of attendance, the student is immediately eligible.

(2) A student who has attended high school in a district other than where the student's parent(s) resides, and who subsequently returns to live with the student's parent(s), becomes immediately eligible in the parent's resident district.

(3) Pursuant to Iowa Code section 256.46, a student whose residence changes due to any of the following circumstances is immediately eligible provided the student meets all other eligibility requirements in these rules and those set by the school of attendance:

1. Adoption.
2. Placement in foster or shelter care.
3. Participation in a foreign exchange program recognized by the school of attendance.
4. Placement in a juvenile correction facility.
5. Participation in a substance abuse program.
6. Participation in a mental health program.
7. Court decree that the student is a ward of the state or of the court.

8. The child is living with one of the child's parents as a result of divorce decree, separation, death, or other change in the child's parents' marital relationship.

(4) 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 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.

(5) A transfer student who attends in a school district that is a party to a cooperative student participation agreement, as defined in rule 36.20(280), with the school district the student previously attended is immediately eligible in the new district to compete in those interscholastic athletic activities covered by the cooperative agreement.

(6) Any student whose parents change district of residence but who remains in the original district without interruption in attendance continues to be eligible in the school district of attendance.

(7) A special education student whose attendance center changes due to a change in placement agreed to by the district of residence is eligible in either the resident district or the district of attendance, but not both.

(8) In any transfer situation not provided for elsewhere in this chapter, the executive board shall be empowered to exercise its administrative authority to make any eligibility ruling which it deems to be fair and reasonable. The determination shall be made in writing with the reasons for the determination clearly delineated.

c. A student who participates in the name of a member school during the summer following eighth grade is ineligible to participate in the name of another member school in the first semester of ninth grade unless a change of residence has occurred after the student began participating in the summer

*Id.*

In this case, none of the exceptions apply. Therefore, we conclude that Mark is ineligible to compete in interscholastic athletics for 90-school-days as provided under 281 Iowa Administrative Code 36.15(3). We assume that Mr. Saggau will make the recommendation to the Board of Control that the period of ineligibility should run from the first day that Valley High School began classes.

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

**III.  
DECISION**

For the foregoing reasons, the October 28, 1999, decision of the Board of Control of the Iowa High School Athletic Association, denying eligibility for 90 school days to Mark Patton, 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.

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DATE

TED STILWILL, DIRECTOR