

**IOWA STATE DEPARTMENT
OF EDUCATION**
(Cite as 17 D.o.E. App. Dec. 348)

In re Erin Kappeler :
 :
 Douglas Kappeler, :
 Appellant, :
 v. : DECISION
 Iowa Girls' High School Athletic :
 Union, Appellee. : [Admin. Doc. #4177]

The above-captioned matter was heard on October 20, 1999, before Susan E. Anderson, J.D., designated administrative law judge, presiding on behalf of Ted Stilwill, Director of Education.

Appellant, Douglas Kappeler, was "present" by telephone, and was the designated spokesperson for Erin. Also "present" by telephone was Glenda Huntsman, Appellant's wife and Erin's mother. Mr. Kappeler had been given the opportunity to be present in person in the State Board Room, Grimes State Office Building, Des Moines, Iowa, but chose to be present by telephone instead. Appellee, Iowa Girls' High School Athletic Union [hereinafter, "IGHSAU" or "the Union"], was present in the persons of E. Wayne Cooley, Executive Secretary; and Troy Dannen, Associate Executive Secretary. The designated spokesperson for Appellee was Mr. Dannen. Also present was the Union's legal counsel, John McClintock of Hansen, McClintock and Riley of Des Moines, Iowa.

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 IGHSAU made on September 30, 1999, declaring that Erin Kappeler is ineligible under the provisions of 281-Iowa Administrative Code 36 to compete in high school athletics for 90 school days following her 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.

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I.
FINDINGS OF FACT

Erin Kappeler ("Erin") is currently a junior at St. Katharine/St. Mark College Prep School ["St. Katharine's"] in Bettendorf, Iowa. The Kappeler family lives in the Durant Community School District and has lived at the same Durant address during the entire time that is relevant to this appeal, during Erin's freshman, sophomore, and junior years.

During her freshman and sophomore years, Erin attended Durant High School, a public school located within the Durant Community School District. Erin competed in the Durant High School's cross-country program during her freshman and sophomore years. Before her junior year, Erin transferred to St. Katharine's, a private school located in Bettendorf.

Erin's parents transferred her to St. Katharine's because they felt that there are substantially greater academic opportunities available at St. Katharine's than there are at Durant High School. St. Katharine's does not have its own cross-country program, but has a cooperative sharing agreement with Bettendorf Community School District. Erin, therefore, sought to compete in athletics in the Bettendorf High School athletic program.

The Union deemed that Erin was ineligible to compete in interscholastic athletics under the provisions of 281-Iowa Administrative Code 36.15(3), the *General Transfer Rule*, and under the provisions of 281-Iowa Administrative Code 36.15(5)(c), regarding public to nonpublic and nonpublic to public transfers.

The decision of the Union's management was communicated to Appellant by letter dated August 27, 1999. The Board of Direc-

tors of the Union affirmed the decision of management, by letter dated September 30, 1999. Appellant then appealed to the Director of the Department of Education.

In addition to testimony during the appeal hearing, one exhibit was admitted into evidence as Appellee's Exhibit 1. Exhibit 1 consisted of three pages, including language from the Iowa Department of Education's *Iowa Education Directory* for the 1999-2000 school year. That language classified St. Katharine's as an accredited college preparatory high school.

II. CONCLUSIONS OF LAW

The State Board of Education has adopted rules regarding student athletic eligibility pursuant to the authority contained

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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(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, Appellant's situation falls squarely within the language of the first sentence of the above rule. Erin has transferred from a public school, Durant High School, to a non-public school, St. Katharine's, after the ninth grade without a contemporaneous change of parental residence. It is undisputed that the Kappeler family has lived at the same address within the Durant Community School District during the entire time when Erin was a freshman, sophomore, and junior. Erin is, therefore, ineligible to compete in interscholastic athletics for a period of 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). Although those circumstances did not exist in Erin's case, due to undisputed evidence that her transfer was due to increased academic offerings, this does not invalidate the rule. The Director of the Department of Education has refused to

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make an exception to the 90-day ineligibility rule in a number of cases. *In re R.J. Levesque*, 17 D.o.E. App. Dec. 317(1999); *In re Tim Ratino*, 13 D.o.E. App. Dec. 249(1996); *In re Scott Halapua, supra*; and *In re Leo Sullivan*, 13 D.o.E. App. Dec. 400(1996). We agree with Mr. Dannen of the IGSAU that the 90-day ineligibility rule and uniform application of the rule without exception is very important.

State regulation of high school and college student athletic eligibility is commonplace with respect to transfer rules. Specifically, the first of two scholarly sources states the following:

"Transfer of residents" rules typically provide that an athlete who changes schools sacrifices a

year of athletic eligibility immediately following his transfer. These rules are drafted to curb recruitment practices aimed at luring students away from their educational institutions for non-academic reasons. Courts generally uphold the application of such rules as a reasonable exercise of an organization's authority to forestall recruiting.

Sloan, *The Athlete and the Law*; Oceana Publications, Inc. 1983, p. 10.

The second 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.

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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 showed that Erin's reasons for transferring to St. Katharine's 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 IGHSAU's purpose in deterring school jumping and recruitment.

Appellant's argument that the transfer rules are unfair because they discriminate against fall athletes is rejected for the same reason. The transfer rules are reasonably related to achieving the IGHSAU's purpose in deterring school jumping and recruiting. The transfer rules are applied evenhandedly to any high school athlete who transfers, whether the transfer occurs at the beginning of the school year or at any other time during the school year. Under these circumstances, the Board of Directors' determination that Erin must serve her 90-day ineligibility period under 281-IAC 36.15(5)(c) is upheld.

We also must reject Appellant's argument that Erin's situation falls under the provisions of 281-Iowa Administrative Code 36.15(5)(d), regarding competent private instruction. That rule is intended to apply only to home-schooled students. Erin is not home-schooled.

We specifically find that that rule is not applicable to Erin's situation, but even if it were, we conclude that St. Katharine's is an accredited, nonpublic school for the purposes of these rules. As a student in an accredited school, Erin would still be subject to the eligibility requirements of Chapter 36. In other words, Erin would be ineligible to compete in high

school athletics for 90 school days following her transfer from Durant High School to St. Katharine's even if section 36.15(5)(d) were applicable.

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

III.
DECISION

For the foregoing reasons, the September 30, 1999, decision of the Board of Directors of the Iowa Girls' High School Athletic Union, denying eligibility for 90 school days to Erin Kappeler, 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