

**IOWA STATE DEPARTMENT
OF EDUCATION**
(Cite as 17 D.o.E. App. Dec. 317)

In re R.J. Levesque :

Robert J. and R.J. Levesque, :
Appellants, :

v. : DECISION

Iowa High School Athletic :
Association, Appellee. : [Admin. Doc. #4169]

The above-captioned matter was heard telephonically on September 21, 1999, before Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding on behalf of Ted Stilwill, Director of Education. Appellants, Robert J. and R. J. Levesque, were "present" by telephone, represented by Tony Stoik, of Klass, Stoos, Stoik, Mugan, Villone & Phillips, L.L.P., Sioux City, Iowa. Appellee, Iowa High School Athletic Association [hereinafter, "IHSAA" or "the Association"], was also "present" by telephone in the person of Executive Director Bernie Saggau. The Association was represented by Bruce Anderson, of Quinn, Doran, and Anderson, of Boone, 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 Control of the IHSAA made on September 1, 1999, denying his request for a "waiver" of the 90-day period of ineligibility under the *Open Enrollment Transfer Rule* of 281--Iowa Administrative Code 36.15.

**I.
FINDINGS OF FACT**

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.

R.J. Levesque ("R.J.") is a senior at Sioux City North High School. The Levesque family lives in the Sioux City Community School District and has lived at the same address during the

entire time that is relevant to this appeal, during R.J.'s freshman, sophomore, junior, and senior years. R.J. has lived with his parents that entire time. R.J. is 18 years old and his date of birth is June 15, 1981. R.J. is not self-supporting

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financially and never has been. He has not been married. During his freshman, sophomore, and junior years, R.J. attended Sioux City Heelan High School, a private school that is located within the Sioux City Community School District.

There was evidence to show that R.J. chose to enroll in Sioux City North High School, a public school, for the 1999-2000 school year, due to verbal and emotional harassment from his peers at Sioux City Heelan. This harassment on two occasions included physical confrontations, one of which occurred at a football game and the other of which occurred at a party off of school premises. R.J. testified that during the physical confrontations, he received injuries to his ribs. R.J. did not at any time report the harassment to any school officials at Sioux City Heelan, nor did he report the harassment to any law enforcement officials. He did not seek medical attention and was never treated for any injuries, due to his embarrassment over not being accepted by his peers.

R.J. had participated in football at Sioux City Heelan during his freshman and sophomore years. R.J. chose not to play football during his junior year at Sioux City Heelan. R.J. was thinking about concentrating on soccer instead of football. During the spring semester of his junior year, R.J. did participate on the soccer team. During the fall and spring semesters of his junior year at Heelan, R.J. experienced rejection from his former peer group at Heelan, most of which consisted of football players who called him names and made threats to fight with him due to their perception that the reason he was no longer playing football was because he considered himself "too good" to play football with their team.

This harassment toward R.J. occurred verbally and emotionally in the halls of the school, at athletic events, and at parties off school premises. In his junior year, R.J. was pushed down some bleachers by a group of students. The only other physical confrontation that actually occurred was at a party off school premises. During this confrontation, the football players surrounded him, called him names and threatened to fight with

him. R.J. finally pushed one of the players in an attempt to get out of the circle, resulting in a fight, during which R.J. got kicked in the ribs.

During his junior year at Heelan, R.J.'s grades dropped, he stopped going to many extracurricular activities, and he experienced sleep disruptions. These situations were not reported to Sioux City Heelan officials, his parents, doctors, or law enforcement officials. He began associating with students who attended Sioux City North High School. During the third week of

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spring semester of his junior year, R.J. for the first time approached his parents and told them about the harassment he had been experiencing from his peers at Heelan. R.J. asked his parents to let him transfer to Sioux City North High School. His parents encouraged him to remain at Heelan and to do his best to adjust to circumstances in life, which might not always be favorable to him. R.J. then completed his junior year at Sioux City Heelan. He played for Heelan's soccer team in the spring of his junior year. The team experienced a successful winning season and qualified for district finals. However, R.J. approached his parents once again during the summer between his junior and senior years about his transferring from Heelan to another school. He had turned 18 years of age in June and during the summer thought about moving to Ohio (where he had lived prior to high school) and enrolling in an Ohio school for his senior year. His father did some research on what it would take for R.J. to attend school in Ohio during his senior year. His parents were able to convince R.J., however, that he should stay with his family in Sioux City and that they would do whatever was necessary to get R.J. enrolled in Sioux City North for his senior year.

R.J. was consequently enrolled in Sioux City North, a public high school in the district where he had always resided. It was undisputed that R.J.'s reasons for transferring to Sioux City North had nothing to do with either scholastics or with athletics. He transferred to Sioux City North solely because of the harassment he had experienced during his junior year at Sioux City Heelan. After the transfer, R.J. sought to participate in football at Sioux City North during his senior year. R.J. was ineligible to compete in interscholastic athletics under the provisions of 281 Iowa Administrative Code 36.15(5)(c). That rule provides that students in grades 10 through 12 who transfer from a nonpublic to a public school, without a contemporaneous change

of parental residence, are ineligible to compete in interscholastic athletics (although they may practice with the team) during the first 90 school days after the transfer. Appellants sought a waiver of the 90-day ineligibility period from the Board of Control of the IHSAA.

Appellants submitted a packet of material to the IHSAA consisting of a letter from Mr. Levesque requesting a waiver; a letter from R.J. in support of the request; and a copy of a report from a psychologist, Dr. Galinski, who had evaluated R.J. for three hours on August 18, 1999. This packet of material was sent to the IHSAA by Mr. Levesque and was submitted to the Board of Control on September 1, 1999. The packet of material was admitted into evidence as Appellant's Exhibit 1. Appellants requested a waiver of the 90-day ineligibility rule on the basis

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that R.J.'s sense of identity and his sense of confidence would be elevated if he could compete in football at Sioux City North High School during his first semester there. Dr. Galinski's report after evaluating R.J. supported this basis.

By letter dated September 1, 1999, Mr. Saggau formally notified Appellants that their appeal for a "waiver" had been denied by the Board of Control. Appellants then appealed to the State Board of Education.

II. CONCLUSIONS OF LAW

The State Board of Education has adopted rules regarding student 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 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.

The letter dated September 1, 1999, from the IHSAA stated that the IHSAA had relied on 281 Iowa Administrative Code 36.15(3) and 36.15(5) in denying Appellant's request for a waiver to the 90-day ineligibility rule. Although the decision does state that the Association relied on 36.15(3) in making this

decision, Mr. Saggau testified in the appeal hearing that that rule applies only to students who transfer from one school district to another school district. In this case, R.J. transferred not from one district to another district, but from a nonpublic school to a public school in the same district; Sioux City North High School is in the same district as Sioux City Heelan. Therefore, 36.15(3) is not applicable to the situation. Even if it were applicable, we reject Appellants' argument that R.J. should fall under exception 36.15(3)(b)(4), regarding students who have been emancipated by marriage or by reaching the age of majority. R.J. never lived outside the family residency; he was never financially self-supporting; he was never married; and his parents have always provided guidance and made the major relevant decisions concerning his high school career. Attaining the age of majority is not conclusive evidence of emancipation. See, *Turner v. McCune*, N.E.2d 942, 943 (Mass. App. Ct. 1995).

However, the Board of Control also relied on the applicable section 36.15(5)(c) when it denied Appellants' request for a waiver. That section provides as follows:

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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. R.J. has transferred from a nonpublic school, Sioux City Heelan, to a

public school, Sioux City North, after the ninth grade without a contemporaneous change of parental residence. It is undisputed that the Levesque family including R.J., has lived at the same address within the Sioux City Community School District during the entire time when R.J. was a freshman, sophomore, junior and senior. R.J. 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 (1997). Although those circumstances did not exist in R.J.'s case, 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 Tim Ratino*, 13 D.o.E. App. Dec. 249; *In re Scott Halapua, supra*; and *In re Leo Sullivan*, 13 D.o.E. App. Dec. 400. We agree with Mr. Saggau of the IHSAA 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:

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"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 stu-

dent, 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

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athletically motivated transfers. The distinctions between these classifications are reasonably related to achieving the IHSA's purpose in deterring school jumping and recruitment.

Id. at 1170.

In the present case, the reasonableness of the transfer rule is not being questioned by Appellants. Although the evidence showed that R.J.'s reasons for transferring to Sioux City North High School 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.

Under these circumstances, the Board of Control's determination that R.J. must serve his 90-day ineligibility period under 281 IAC 36.15(5)(c) is upheld.

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

III.
DECISION

For the foregoing reasons, the September 1, 1999, decision of the Board of Control of the Iowa High School Athletic Association, denying eligibility for 90 school days to R.J. Levesque, is hereby affirmed. There are no costs of this appeal to be assigned.

DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

TED STILWILL
DIRECTOR