

**IOWA DEPARTMENT
OF EDUCATION**
(Cite as 29 D.o.E. App. Dec. 243)

In re: Athletic Eligibility
Chris Hatcher for

Shelby Hatcher,
Appellant,

DIA DOCKET NO. 19DOE0006

vs.

DECISION

Iowa Girls High School Athletic Union,
Appellee.

This matter was heard at an in person hearing on June 17, 2019, before Rachel Morgan, designated administrative law judge with the Iowa Department of Inspections and Appeals Division of Administrative Hearings, presiding on behalf of Ryan M. Wise, Director of the Iowa Department of Education (Department).

The Appellant, Shelby Hatcher, was represented by her mother, Lisa Hatcher, and father, Chris Hatcher. The Appellee, the Iowa Girls High School Athletic Union (IGHSAU) was represented by Jean Berger, Executive Director, and Craig Ihnen, Senior Associate Director.

An evidentiary hearing was held pursuant to departmental rules found at 281—Iowa Administrative Code chapter 6. Jurisdiction for this appeal is pursuant to Iowa Code section 280.13 and Iowa Admin. Code r. 281-36.17. 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.

Ms. Hatcher seeks reversal of a decision that the IGHSAU Board of Directors (Board) made on May 20, 2019, finding that Ms. Hatcher was ineligible to participate in interscholastic athletics at the varsity level at Saint Albert High School (St. Albert). At the hearing, Ms. Hatcher's parents, Lisa and Chris Hatcher presented testimony on behalf of Ms. Hatcher. Jean Berger testified on behalf of the Board. The Board offered the following items into evidence:

- Letter to Ms. Berger from Chris and Lisa Hatcher; (Bd Ex. 1)
- Official Transcript from Lewis Central High School; (Bd Ex. 2)
- Documentation regarding Ms. Hatcher's enrollment date at St. Albert; (Bd Ex. 3)
- Email dated April 1, 2019 regarding St. Albert calendar adjustment; (Bd Ex. 4)

- St. Albert 2018-2019 school year calendar; (Bd Ex. 5)
- Decision of the Board's Executive Director dated May 7, 2018; (Bd Ex. 6)
- Letter dated May 15, 2018 from Jean Berger setting an oral hearing; (Bd Ex. 7); and
- Decision of the Board dated May 20, 2019. (Bd Ex. 8).

Ms. Hatcher offered the following exhibits into the record:

- May 20, 2019 Board decision (which is the same as Board Ex. 8);
- The IGHS AU 2018-2019 By-Laws (App Ex. 2);
- IGHS AU Constitution (App Ex. 3);
- Affidavit of Chris Hatcher (App. Ex. 4); and
- Iowa Administrative Code Rule 281-12.1 (App. Ex. 5).

All proffered documents were admitted into the record. Both parties made closing arguments and the case is now fully submitted.

FINDINGS OF FACT

The Appellant, Shelby Hatcher, is 18 years old and entering her senior year of high school. Shelby transferred to St. Albert from Lewis Central High School on January 3, 2019, at the beginning of the second semester of the 2018-2019 school year. Ms. Hatcher believed that a smaller school would be better suited for her. (Chris Hatcher Testimony; Lisa Hatcher Testimony).

The scheduled school calendar for St. Albert consisted of 81 days scheduled for the first semester and 90 days for the second semester. (Bd. Ex. 5). During the second semester, St. Albert had to cancel at least five days of school due to inclement weather: January 18, 2019, January 30, 2019, February 20, 2019, February 25, 2019, and March 7. 1 (Bd Ex. 6). St. Albert decided to make up the missed classroom time by adding additional hours to the remaining school days rather than adding additional days to the end of the school year. (Bd. Ex. 4). Under Iowa law, schools must be in session a minimum of 180 days or 1,080 hours. Iowa Admin. Code r. 281-12.1(8). Although St. Albert was closed due to snow for at least five school days during the second semester, St. Albert only added the equivalent of one day's worth of time to the remaining school days because this was all that was needed to fulfill state requirements for being in session for 1,080 hours. (Bd Ex. 4). In light of the snow days, Ms. Hatcher only attended the equivalent of 86 consecutive school days at St. Albert, *i.e.*, 85 regularly scheduled days and 1 additional day made up by the additional hours. (Bd Ex. 4).

¹ The record is not clear as to how many days St. Albert was closed. In the May 7, 2019 decision, the Board stated that St. Albert was closed for five days. In Chris Hatcher's affidavit, he states the school was closed for six days. However, as discussed herein, the actual number of days St. Albert was closed does not affect the conclusion in this case.

Iowa law requires students who transfer schools to serve a 90 school-day suspension before participating in varsity interscholastic athletic activities, unless certain exceptions are met. Student-athletes may play junior varsity games and may practice with varsity teams but may not play in varsity games during the suspension period. Because Ms. Hatcher transferred from a public school to St. Albert, she was subject to the 90 day suspension. At the end of the 2018-2019 school year, Ms. Hatcher had served 85 days, or including the additional hours, 86 equivalent days, of her suspension.

Ms. Hatcher was a varsity starting player for the past three softball seasons at her prior school and also played varsity volleyball. (Bd. Ex. 1). The softball season is scheduled during the summer and Ms. Hatcher requested that she be immediately eligible to participate in the varsity summer softball season at St. Albert. It appears that Ms. Hatcher is a strong athlete and her parents would like to see her continue playing sports possibility through college. (*Id.*).

St. Albert initially found that Ms. Hatcher was not eligible to participate in varsity sports because she did not attend St. Albert for 90 consecutive school days as required by Iowa Admin. Code r. 281-36.15(3). The Hatchers appealed the school's decision to the Board's Executive Director. On May 7, 2019, Jean Berger, the Board's Executive Director, determined that Ms. Hatcher was not eligible to participate. (Bd. Ex. 6). Ms. Hatcher appealed this decision to the entire Board. On May 18, 2019, the Board conducted a hearing to reconsider eligibility. On May 20, 2019, the Board denied Ms. Hatcher's request for eligibility to immediately participate in interscholastic activities at the varsity level. Ms. Hatcher appealed.

At this hearing on appeal, the Board explained that the general transfer rule, Iowa Admin. Code r. 281-36.15(3) requires that students attend a school for 90 consecutive days prior to being able to compete in a varsity sport. Ms. Hatcher did not attend St. Albert for 90 consecutive days and therefore, she is ineligible. The Board does not feel that it is depriving Ms. Hatcher of any learning experiences or life skills learned from sports because she is still able to practice with the varsity team and may play at a junior varsity or lower level. She is only barred from playing varsity sports. Further, the Board cited its need to apply the rule consistently across sports and did not feel that Ms. Hatcher had any extenuating circumstances that would allow her to be immediately eligible to compete at the varsity level. (Berger Testimony).

Ms. Hatcher argued that although the general transfer rule requires 90 consecutive days, she should not be punished because her school chose to make up the missed school days by adding hours to already scheduled school days instead of adding additional days at the end of the calendar. Ms. Hatcher argues that the general transfer rule contemplates the fact that hours can make up for missed days by referencing Iowa Admin. Code r. 281-12.1, which allows schools to make up for missed days by adding hours to their calendar. Further, Ms. Hatcher states that she

did not transfer to St. Albert for the athletics and therefore the purpose for the general transfer rule is not furthered in her case.

CONCLUSIONS OF LAW

Standard of Review

This appeal is brought pursuant to Iowa Admin. Code r. 281-36.17, which states that “an appeal may be made . . . by giving written notice of the appeal to the state director of education. . . . The procedures for hearing adopted by the state board of education and found at 281—Chapter 6 shall be applicable, except that the decision of the director is final. Appeals to the executive board and the state director are not contested cases under Iowa Code subsection 17A.2(5).”

“The decision shall be based on the laws of the United States, the state of Iowa and the regulations and policies of the department of education and shall be in the best interest of education.” Iowa Admin. Code r. 281- 6.17(2). The undersigned notes that there could be a question as to whether the standard of review is de novo or abuse of discretion. However, the most applicable controlling case law directs that the standard of review is abuse of discretion. *Sioux City Cmty. Sch. Dist. v. Iowa Dep't of Educ.*, 659 N.W.2d 563, 566 (Iowa 2003). Therefore, the Director of the Department of Education will examine the Board’s application of the general transfer rule to Ms. Hatcher to see whether the Board abused its discretion. “Abuse of discretion is synonymous with unreasonableness, and a decision is unreasonable when it is based on an erroneous application of law or not based on substantial evidence.” *City of Dubuque v. Iowa Utilities Bd.*, 2013 WL 85807, 4 (Iowa App. 2013), citing *Sioux City Cmty. Sch. Dist.* 659 N.W.2d at 566 (holding that the Iowa Department of Education erred when it did not apply the abuse of discretion standard).

General Transfer Rule

The Department has adopted rules regarding student interscholastic eligibility. The general transfer rule, 281 IAC 36.15(3), states in pertinent part as follows:

36.15(3) *General transfer rule.* A student who transfers from one member or associate member school to another member or associate member school shall be ineligible to compete in interscholastic athletics for a period of 90 consecutive school days, as defined in 281—subrule 12.1(8), exclusive of summer enrollment, unless one of the exceptions listed in paragraph 36.15(3)“a” applies. . . . In ruling upon the eligibility of transfer students, the executive board shall consider the factors motivating student changes in residency. Unless otherwise provided in these 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.

α. Exceptions. The executive officer or executive board shall consider and apply the following exceptions in formally or informally ruling upon the eligibility of a transfer student and may make eligibility contingent upon proof that the student has been in attendance in the new school for at least ten days:

...

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

The purpose of the general transfer rule is “to prevent the evils associated with recruiting of high school athletics and transfers motivated by athletics.” 1990 Iowa Op. Atty. Gen. 75 (1990) (citing *In re U.S. ex rel Missouri State High School Activities Assn.*, 682 F.2d 147, 152 (8th Cir. 1992)).

In this case, it is undisputed that Ms. Hatcher did not attend 90 consecutive school days. Ms. Hatcher argues that under Iowa Admin. Code r. 281-12.1(8), the school days she missed should be counted as “days” under the general transfer rule because St. Albert made up the time missed by adding extra hours to the remaining school days. Specifically, Ms. Hatcher argues that Iowa Admin. Code r. 281-12.1(8) allows schools to count days during which the school is closed as a “school day” provided that the time is made up during some other point during the school calendar. Iowa Admin. Code r. 281-12.1(8).

Iowa Admin. Code r. 281-12.1(8) defines a day of school as a day during which the school is in session. There is an exception to this definition if the school is closed and “provided that the time missed is made up at some other point during the school calendar so as to meet the minimum of 180 days or 1,080 hours of instruction for all grades 1 through 12.” Under this exception, if a school district makes up the missed time at some other point in their calendar, the missed days may constitute a school day.

Here, St. Albert did not make up the five days missed or the equivalent hours of instruction for the five days it was closed. Rather, St. Albert added only one day’s worth of hours to the remaining school days in the school calendar. (Bd. Ex. 4). The additional hours brought St. Albert in compliance with the requirement that schools provide at least 1,080 hours of instruction. However, the additional hours did not equate to the equivalent of five additional school days. The general transfer rule requires 90 consecutive school days. Even taking in account the additional hours added to the St. Albert school calendar, Ms. Hatcher did not attend or complete the equivalent of 90 consecutive school days. Therefore, Ms. Hatcher did not complete

90 consecutive school days or the equivalent thereof to satisfy the requirements of the general transfer rule.

Exception: Iowa Admin Code R. 36.15(3)"a"(9).

Although Ms. Hatcher did not complete the required 90 consecutive school days required by the general transfer rule, there are a number of exceptions to the rule. Ms. Hatcher argues that exception number 9, the extenuating circumstances exception, is applicable to her case. Under exception number 9, the Board is required to render an eligibility ruling “which it deems to be fair and reasonable” after “[considering] the motivating factors for the student transfer.” Iowa Admin Code R. 36.15(3)"a"(9).

Here, the Board properly reviewed Ms. Hatcher’s motivating factors for transfer as required. Ms. Hatcher urged the Board to grant her immediate eligibility to participate in interscholastic athletics on the grounds that it is “unfair” that Ms. Hatcher cannot meet the minimum 90 school day rule due to inclement weather and testified that Ms. Hatcher did not transfer to St. Albert for athletic reasons but because the school was a good fit.

The Board found that the decision to transfer Ms. Hatcher involved both athletic and non-athletic reasons. Specifically, the non-athletic reasons for Ms. Hatcher’s transfer were that she experienced stress, anxiety and depression at her former school, St. Albert had a smaller community and family atmosphere, and St. Albert was a good fit. There were also athletic reasons for Ms. Hatcher’s transfer. Ms. Hatcher’s parents stated that St. Albert had a “good experience for the athletes, who will want to keep participating” in their chosen sport. (Bd Ex. 1). The Board noted that Ms. Hatcher and her parents expressed interest in and knowledge of playing collegiate softball. (Board Exs. 1, 6). At the hearing in this appeal, Ms. Hatcher’s parents stated that the athletic culture at her prior school was not healthy in that it showed favoritism and had an atmosphere to “win at all costs.” (Chris Hatcher Testimony). However, Ms. Hatcher’s parents admitted that as far as academics were concerned, Ms. Hatcher’s prior school was “just fine” and Ms. Hatcher maintained good grades. (*Id.*).

The Board also took into consideration that the decision to transfer to St. Albert was Ms. Hatcher’s choice; it was not an involuntary transfer. The Board has found that in cases where a transfer is voluntary and motivated in part by athletics, the extenuating circumstances exception is not applicable. *See In re Christian R.*, 26 D.o.E. App. Dec. 121 (2011) (“catchall” rule did not apply because athletics was a primary motivating factor in the transfer); *In re Ryan B.*, 25 D.o.E. App. Dec. 216 (2010) (transfer motivated by athletics). The case *In re Christian R.*, is similar to the case at issue here. The Board declined to find extenuating circumstances in light of the fact that the motivating factor of the appellant’s transfer was for him to find a football team that accepted him. As in *Christian*, the record establishes that the

motivating factor in Ms. Hatcher's transfer was to find an athletic culture that accepted her.

"The transfer rules ... are reasonably related to the IHSAA's purpose of deterring situations where transfers are not wholesomely motivated." *In re R.J. Levesque*, 17 D.o.E. App. Dec. 317 (1999). The purpose of the transfer rules does not require that athletics be the motivating factor for a transfer. The rules are purposefully broadly written because participation in interscholastic athletics is a privilege, not a right. *Brands v. Sheldon Community School*, 671 F.Supp. 627, 630 (N.D. Iowa 1987).

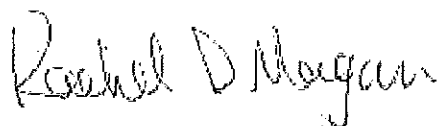
The transfer rules are presumptively valid. *United States ex rel. Missouri State High School Activities Ass'n*, 682 F.2d 147 (8th Cir. 1982). They may be attacked successfully only by a showing that the governing authority – in this case, the Board – has applied the rules unreasonably.

Here, Ms. Hatcher had every right to transfer to St. Albert, but the totality of the evidence does not support immediate eligibility for varsity sports. Ms. Hatcher's transfer of schools was voluntary and was, in part, motivated by athletics. It should be noted that the Board is not excluding Ms. Hatcher from participating in extracurricular activities and that Ms. Hatcher may practice with the varsity team and compete at the junior-varsity level. Accordingly, the Board did not erroneously or unreasonably apply the general transfer rule to determine that Ms. Hatcher is ineligible to participate in varsity interscholastic athletics for a period of 90 days. There was no abuse of discretion; the decision must be affirmed.

DECISION

For the foregoing reasons, the May 20, 2019 decision of the Board of Directors of the Iowa Girls High School Athletic Union that Shelby Hatcher is ineligible to compete in varsity interscholastic athletics at St. Albert High School for a period of 90 consecutive school days is **AFFIRMED**. There are no costs associated with this appeal to be assigned to either party.


Dated this 20th day of June, 2019.



Rachel D. Morgan
Administrative Law Judge

It is so ordered.

6-20-19
Date


Ryan M. Wise, Director
Iowa Department of Education