

**STATE DEPARTMENT OF EDUCATION**  
**(Cite as 16 D.o.E. App. Dec. 218)**

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<i>In re Corey Paige</i>	:	
<b>Jay Piersbacher,</b>	:	
<b>Appellant,</b>	:	
<b>v.</b>	:	<b>DECISION</b>
<b>Iowa High School Athletic Association,</b>	:	
<b>Appellee.</b>	:	<b>[Adm. Doc. #4037]</b>

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The above-captioned matter was heard on September 23, 1998, before a hearing panel comprising Jim Tyson, consultant, Bureau of Administration and School Improvement Services; Don Wederquist, consultant, Bureau of Community Colleges; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. Appellant, Jay Piersbacher, athletic director, along with Corey Paige and his parents, Randy and Penny Paige, were present “telephonically” and unrepresented by counsel. Appellee, Iowa High School Athletic Association [hereinafter, “the IHSAA”], was represented by Bernie Saggau, Executive Director. Mr. Saggau was present in the State Board Room for the hearing. He also appeared *pro se*.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction are found in Iowa Code section 280.13 (1997) and 281 Iowa Administrative Code 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 the appeal before them.

Appellant seeks reversal of a decision of the Board of Control [hereinafter, “the Board”] of the IHSAA made on September 2, 1998, when it ruled that Corey Paige would be ineligible to compete in athletics for Russell High School for a period of 90-school days under the provisions 281 IAC 36.15(3)(b)(4).

**I.**  
**FINDINGS OF FACT**

Corey Paige is the oldest child of three children. According to his father, he has always had a difficult time with academics. Last November, Corey quit attending Chariton High School. He had failing grades at the time. He returned to school on January 19, 1998, but dropped out again 11 days later.

Corey turned 18 on August 18, 1998. About that time, he also decided to return to high school to complete his education. He did not want to go back to Chariton. He enrolled at Russell Community School District to attend high school there.

Corey has not participated in any high school sports since freshman football during the fall of 1995. He would like to participate in athletics at Russell. His father testified that participation in athletics would make it much easier for Corey to complete his high school education. It would provide the extra motivation that Corey needs to “get up in the morning and go to school”.

Corey is off to a good start at Russell this year. So far, he has had outstanding attendance and is succeeding academically. His parents are very supportive of his efforts and want to have the ineligibility determination overturned to enable Corey to fully participate in athletics and academic opportunities at Russell.

His eligibility appeal was denied by the Board of Control on September 2, 1998, under the provisions of the *General Transfer Rule*, which states:

A student who transfers from one school district to another school district, except upon 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 – 12.2(2), exclusive of summer enrollment, unless one of the following exceptions to the general transfer rule applies.

*Id.*

Because Corey had turned 18 years old, the IHSAA considered the applicability of exception 36.15(3)(b)(4), which states in pertinent part as follows:

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.

*Id.*

The parents’ position is that a valid purpose for Corey’s transfer to Russell exists. They maintain that his need to “start over” and stay motivated in school through participation in athletics, is a valid reason for his transfer. The IHSAA, however, maintains that when the *principal* reason for the transfer is for school or athletic purposes, then eligibility must be denied. Mr. Saggau contends that Corey’s desire to attend Russell is for both athletic and school purposes. In addition, Mr. Saggau noted that regardless of the *General Transfer Rule*, Corey would not be academically eligible to play during his first semester under the provisions of the *Scholarship Rules* in 36.15(2).

Those rules require that contestants “shall have earned 20 semester hours’ credit toward graduation in the preceding semester and shall be making passing grades in subjects for which 20 semester hours’ credit is given for the current semester as determined by local policy.”

## II. CONCLUSIONS OF LAW

The primary issue before us is the application of the Department of Education’s longstanding rule regarding that

“[a] student who transfers from one school district to another school district, except upon **a contemporaneous change in parental residence**, shall be ineligible to compete in interscholastic athletics for a period of 90-school days ... unless one of the following exceptions to the general transfer rule applies.

...

(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.

281 IAC 36.15(3)(b)(4)(emphasis added).

It is important to note that because of Corey’s academic record, he would be ineligible to compete during the first semester of the 98-99 school year, whether he remained in Chariton or transferred to Russell. However, since the IHSAA based its decision on the provisions of the above-referenced rule, we will review the decision of the Board of Control on that basis.

The IHSAA Board of Control has long held that the rules requiring ineligibility surrounding transfers without parental relocation stems from two concerns: 1) recruiting of high school athletes; and 2) family decisions to change schools for athletic purposes (“to benefit their competitive standing”). While we understand that Corey was not “recruited” in the present case, it is extremely difficult, if not impossible, for the Board of Control to apply the eligibility rules on a case-by-case basis. Therefore, if a family in good faith leaves a family residence in one district to move to a new residence in another district, no ineligibility period attaches.

These transfer rules are the rules by which high school athletes in Iowa have played for over 25 years. There have been no Appellate judicial determinations made in Iowa regarding the validity of these rules, but we do have prior cases from within this agency that serve as guidance and precedent. In addition, athletic decisions from other states demonstrate that periods of ineligibility of up to one year have been upheld in similar circumstances.

A recent case decided under the *General Transfer Rule* was *In re Eric Quiner*, 16 D.o.E. App. Dec. 141(July 1998). In that case, Eric and his brother remained in the Des Moines District and played football for Roosevelt High School after their parents moved to Johnston Community School District. The boys “continued” their attendance at Roosevelt High School under the provisions of the Open Enrollment Law.

*In re Robert Joseph* involved a former resident of the Virgin Islands who moved first to Florida and when he learned he was ineligible there (he was 19 years old), he moved to Iowa where his age would not be a bar to eligibility until he turned 20. The Association’s Board of Control ruled Robert ineligible on other grounds; however, he had moved to Iowa without a like change of parental residence and for the purpose of school and athletics, so the *General Transfer Rule* was applied and was upheld by the Director of the Department of Education. *In re Robert Joseph*, 8 D.o.E. App. Dec. 146(1991).

*In re Stephen Keyes* involved a student who transferred from a private school in Waterloo to a public school in Cedar Falls when his parents’ financial situation required free education for their children. There was no change in parental residence. The Director found insufficient hardship existed to justify the exception to the 90-day ineligibility period. *In re Stephen Keys*, 4 D.P.I. App. Dec. 24(1984).

In 1978, a student who changed school districts without a corresponding change of residence by her parents, was denied eligibility when her stated motivation for changing residence (from parents to family and friends under guardianship) was for superior academic and athletic opportunities in the new district. *In re Carme Brabe*, 1 D.P.I. App. Dec. 284(1978).

If the validity or reasonableness of the transfer rule were at issue, case law would be very instructive; the weight of it clearly supports the denial of immediate eligibility to a transfer student whose parents do not move with him or her. In *U.S. ex rel, Missouri State High School Activities Association*, 682 F2d 147 (8<sup>th</sup> Cir. 1982), the court found no fundamental right to education, and rejected the argument of the plaintiffs that their right to travel interstate was burdened. The anti-transfer rule was upheld. In *Simkins v. South Dakota High School Activities Association*, 434 N.W.2d 367(S.D. 1989), the Supreme Court of South Dakota found that a student who transferred to a private bible school in his first year of high school athletics was properly declared ineligible for one year under the Association’s transfer rule. The student did not have a property interest in interscholastic athletics and the rule was rationally related to the goal of discouraging school-

switching by athletes and recruiting of athletes. The rule classified between transferring and non-transferring students, and thus there was no suspect classification at issue.

In *Mississippi High School Activities Association, Inc., v. Coleman*, 631 So.2d 768 (Miss.1994), the Supreme Court of Mississippi rejected the challenge of a student who was not a resident of the high school where he was enrolled, finding no protected property interest or right to participate in athletics, determining that freedom of religion was not implicated by the student's enrollment in a religious high school, and finding that the classes created by the rule of resident and non-resident students was valid.

In *Indiana High School Activities Association, Inc., v. Avant*, 650 N.E.2d 1164 (Ind. App. 3 Dist. 1995), the Indiana Court of Appeals held that application of a transfer rule to a student who transferred schools without change of residence by his parents was not arbitrary or capricious, because the evidence showed that athletics was a factor in the student's decision to transfer and there was no change in the financial circumstances of the student's family which would have caused undue hardship. The Court also held that applying the transfer rule in that case did not violate the Indiana Constitution's privileges or immunities clause, since treating transfer students without a change in their parents' residence differently from students with a change in their parents' residence was reasonably related to the deterrence of school jumping and recruitment.

Finally, in *Alabama High School Activities Association v Scaffidi*, 564 So. 2d 910 (Ala. 1990), the Supreme Court of Alabama rejected the challenge of a high school student seeking to overturn his ineligibility for one year following a transfer. The Court held that the rule was not arbitrary, and that the action had been taken in strict accordance with lawfully adopted rules of the League.

What is noteworthy is that the transfer rules at issue in the above-referenced cases involve ineligibility periods of one year. In the present situation, athletic ineligibility is limited to only 90 days. As hard as that might be for a senior who does not want to suffer one semester of ineligibility in a sport, we cannot ignore the ramifications of a contrary ruling in the present case. For public policy reasons, courts have supported athletic associations' attempts to limit the recruitment of athletes. At the same time, these courts have recognized the impossibility of making case-by-case determinations for the reasons a student transfers school districts when his parents do not change their district of residence. As a practical matter, case-by-case eligibility hearings would exhaust the resources of the athletic association. For that reason, there is a presumption that students who transfer school districts without a contemporaneous move by their parents, will be ineligible to compete in athletics. The Iowa Legislature has determined that in certain situations, exceptions will be made to the restrictions of the *General Transfer Rule*. These exceptions are enumerated in Iowa Code section 256.46(1997) and the rules of the State Board of Education contained at 281 IAC 36.15(3)(b). Unfortunately, Corey's situation does not come within one of these exceptions.

For the foregoing reasons, we find that Corey Paige must serve a 90-day period of ineligibility beginning with the first day of the 1998-99 school year. In spite of this, we hope that Corey will continue to pursue his high school diploma at Russell.

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

**III.  
DECISION**

The decision of the Board of Control of the Iowa High School Athletic Association made on September 2, 1998, regarding the athletic ineligibility of Corey Paige is, for the reasons stated above, hereby affirmed.

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DATE

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ANN MARIE BRICK, J.D.  
ADMINISTRATIVE LAW JUDGE

It is so ordered.

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DATE

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TED STILWILL, DIRECTOR  
DEPARTMENT OF EDUCATION