STATE DEPARTMENT OF EDUCATION
(Cite as 16 D.o.E. App. Dec. 207)

In re Jeremy Pumphrey	**:**	
William and Deb Pumphrey,	**:**	
Appellants,	**:**	
v.	**:**	**DECISION**
Iowa High School Athletic Association,	**:**	
Appellee.	**:**	**[Adm. Doc. #4036]**

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. Appellants, William and Deb Pumphrey, were present and represented by attorneys Michael J. Moreland and Jeffrey R. Logan, of Lynch, McKay, Moreland, and Webber, P.C., Ottumwa, Iowa. Appellee, Iowa High School Athletic Association [hereinafter, "the IHSAA"], was present in the persons of Bernie Saggau, Executive Director, and David Harty, Assistant Executive Director. Appellee was represented by Attorney Bruce L. Anderson, of Quinn, Doran, and Anderson of Boone, Iowa.

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 290.1 (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.

Appellants seek reversal of a decision of the Board of Control [hereinafter, "the Board"] of the IHSAA made on September 2, 1998, which ruled that Jeremy Pumphrey is ineligible to compete in athletics for Ottumwa High School for a period of 90-school days. At the present time, however, Jeremy is competing on the football team of Ottumwa High School under the terms of a temporary writ of injunction issued by the Wapello County District Court on September 4, 1998.

I.
FINDINGS OF FACT

The facts are undisputed. Jeremy's parents were divorced before he was born 17 years ago. An order establishing paternity and child support obligations was entered on March 20, 1984 (Exhibit A). From the time of his birth, until two years ago, Jeremy lived in Fairfield, Iowa, with his mother.

Prior to the commencement of the 1996-97 school year, Jeremy's mother moved to Omaha, Nebraska, to attend Creighton Law School. Jeremy elected to move into the home of his father and stepmother, who live in Ottumwa, Iowa. Jeremy did not want to attend Ottumwa High School. He wanted to remain at Fairfield High School. He was able to do so under the provisions of Iowa's Open Enrollment statute, which states in pertinent part, as follows:

> If a parent/guardian moves out of a school district of residence, and the pupil is not currently under open enrollment, the parent/ guardian has the option for the pupil to remain in the original district of residence as an open enrollment pupil with no interruption in the education program.

Iowa Code section 282.18(9)(1997); 281 Iowa Administrative Code 17.8(7).

Pursuant to the Open Enrollment Law, Jeremy lived with his father in Ottumwa and attended school in Fairfield *tuition-free*. This arrangement necessitated a daily 60-mile round trip to school. Jeremy participated in baseball and football while he attended Fairfield during his sophomore and junior years. He did not serve any period of ineligibility because of his open enrollment status. For the 1998-99 school year, Jeremy chose to attend nearby Ottumwa High School. The evidence showed that the primary motivating reason for Jeremy's desire to complete his 12th grade in Ottumwa was due to family considerations, and not for the purpose of competing in athletics.

After learning of Jeremy's desire to participate in extracurricular athletic activities, the director of activities for the Ottumwa Athletic Department contacted the IHSAA, through Bernie Saggau, and requested Jeremy be declared eligible to participate (Exhibit 1). Mr. Saggau responded by letter the next day and stated that he would refer the matter to his Board of Control, but was sure that the Board would not grant permission for eligibility based on two facts:

1. The young man had been attending Fairfield for two years while living with his father in Ottumwa, so the broken-home rule would not apply in this particular situation; and

2. Under the open enrollment rule, the young man would be ineligible for 90-school days, upon returning to Ottumwa.

(Exhibit 2.)

The "broken-home" rule referred to by Mr. Saggau, states as follows:

> 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.

Id.; 281 Iowa Administrative Code 36.15(3)(b)(3).

The matter was to be reviewed by the Board of Control on August 8, 1998. On August 7, 1998, Mr. Saggau received a letter from William and Deb Pumphrey, which stated that in order for Jeremy to play sports, he had decided to attend school in Omaha and live with his mother. Appellants requested that Mr. Saggau remove Jeremy's appeal from the Board of Control's agenda. Mr. Pumphrey and his former wife, Joan Pumphrey, stipulated to a modification of the Custody Decree in order to award physical custody of Jeremy to his mother, Joan, in Omaha, Nebraska. The Order modifying custody was filed on August 18, 1998. (Exhibit 6.)

Jeremy testified that he drove to Omaha on August 16, 1998, for the purpose of enrolling in Central High School there. He then returned to Ottumwa and remained there until the evening of August 23, 1998. He only attended the first day of classes in Omaha on August 24, 1998. He then returned home on August 25, 1998, to live in Ottumwa.

On Wednesday, August 26th, Jeremy enrolled as a senior at Ottumwa High School. He was advised by the Executive Director of the Iowa High School Athletic Association that he would not be eligible to participate in extracurricular athletic activities at Ottumwa High School for a period of 90-school days. (Exhibit C.) On September 2, 1998, a hearing on the decision of the Executive Director was held before the Board of Control of the IHSAA. The Board entered its findings of facts, conclusions of law, and eligibility determination, upholding the ruling of the Executive Director, on September 3, 1998.

On September 4, 1998, Appellants sought and obtained a temporary writ of injunction that enjoined the IHSAA and the Ottumwa Community School District from "restraining and/or keeping Jeremy Pumphrey from participating in interscholastic extracurricular athletics and competitions and/or from declaring Jeremy Pumphrey ineligible to participate in said events until such time as Jeremy Pumphrey has exhausted all administrative remedies, including his right to appeal said decision to the District Court of the State of Iowa, or until such further order of this Court." (Exhibit C.) The IHSAA and the Ottumwa Community School District moved to dissolve the temporary writ of injunction (Exhibit H). On September 18, 1998, the Court ruled on the motion to dissolve the injunction and held that "the injunction entered on September 4, 1998, shall remain in effective until the *Board of Control decision is filed*, at which time, Petitioner may seek further injunctive relief. Respondent's, Iowa High School Athletic Association's, application to dissolve temporary injunction, filed September 8, 1998, is hereby denied." (Exhibit G.) (Emphasis added.)

On September 21, 1998, the District Court amended its Ruling to clarify that "the Court's intention was to Rule that the injunction shall stand until the decision from the appeal heard before the *Department of Education* is filed." (Emphasis added.)

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.
> …
> (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.

…

(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.

281 Iowa Administrative Code 36.15(3). (Emphasis added.)

There is no dispute that Jeremy did not "subsequently return to live with his parent(s)" as the rule provides. In Mr. Pumphrey's affidavit in support of his application for the injunction[1], he states that "Jeremy has resided with me at my home in Ottumwa, Wapello County, Iowa, since his sophomore year; however, he attended Fairfield High School through open enrollment his sophomore and junior years of high school." (Exhibit C.)

[1] **The affidavit was signed by Mr. Pumphrey on September 3, 1998, after the modification of custody "back and forth," and after Jeremy's enrollment, first in Omaha, then in Ottumwa.**

Under the provisions of exception (2), above, Jeremy would have been immediately eligible to compete at Ottumwa High School had he attended there when he "subsequently returned to live with his father" at the beginning of his sophomore year. However, Jeremy elected to remain under open enrollment in the Fairfield Community School District. When that decision was made, he came within exception (6). That exception allowed him to remain eligible in the Fairfield District as an exception to the *Open Enrollment Transfer Rule*, 36.15(4), which provides for 90-school days of ineligibililty whenever a student attends a school under open enrollment.

Exception (6) allows students to continue their education and athletic participation in a district that they had been attending, even though their parents no longer live in that district. When the parents move, the student's district of residence moves as well. As an accommodation to those students who do not want to interrupt their education, open enrollment allows for continuation in the original district without payment of tuition and this exception allows the student to remain in the district without loss of eligibility.

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 this was not a consideration in the present case, it is extremely difficult, if not impossible, 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. Likewise, if parents divorce and both parents leave the original district of residence, and move to different districts of residence, the student athlete will suffer no ineligibility when s/he moves to a new district to live with the custodial parent. This is referred to as the "broken home" rule. *See,* 36.15(3)(b)(3).

The final exception proffered in the present case was the "subsequently returns to live with a parent" rule of 281 IAC 36.15(3)(b)(2). As Mr. Pumphrey and his son truthfully testified, the decree which modified custody giving Joan Pumphrey custody of Jeremy just before he enrolled in the Omaha high school, was done for the sole purpose of obtaining an eligibility exception under this provision. Jeremy enrolled in the Omaha school and attended only one day. He then returned to Ottumwa and enrolled in high school there. Jeremy never intended to live with his mother on an extended basis or to attend school in Omaha. The custody decree was modified for the sole purpose of "interrupting" the custody of William Pumphrey so that Jeremy could leave and then "subsequently return to live with his father". We cannot allow this type of legal maneuvering to circumvent the ineligibility period of the *General Transfer Rule.*

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 can serve as guidance and precedent.

The most 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. This is the same law that allowed Jeremy to remain in Fairfield after he moved to Ottumwa to reside with his father. Like Jeremy, Eric Quiner had family reasons for deciding to attend school in Johnston. However, he did not want to suffer the 90-day period of ineligibility for deciding to change schools. He argued that, he was "subsequently returning" to the district in which his parents now lived. In the *Quiner* case, as in the present case, there was no move by Eric since he had lived continuously with his parents for the year he had attended at Roosevelt. Since he never lived apart from his parents, he could not come within the exception that he "subsequently returned" to live with them. In fact, he was covered squarely by the same provisions of the Open Enrollment Law as Jeremy Pumphrey is.

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 (8th 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. Any decision that would grant Jeremy eligibility under these

creative, but strained interpretations of 36.15(3) would constitute a radical departure from the precedents of the past 25 years in athletic eligibility. It would also encourage individuals to intentionally circumvent the provisions of the *General Transfer Rule* and take athletic eligibility determinations out of the hands of the Board of Control and place them in the district court's jurisdiction.

Because the issue before us did not involve a change in the student's residence, but a change in his choice of school districts, we find that he must serve a 90-day period of ineligibility before he can compete in interscholastic athletic competitions for Ottumwa High School.

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 June 2, 1998, regarding the athletic ineligibility of Jeremy Pumphrey is, for the reasons stated above, hereby affirmed.

_____ _____

DATE ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

_____ _____

DATE TED STILWILL, DIRECTOR
DEPARTMENT OF EDUCATION