IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 16 D.o.E. App. Dec. 141)

In re Eric Quiner	**:**	
Steve & Mary Quiner, Appellants,	**:**	
v.	**:**	**DECISION**
Iowa High School Athletic Association, Appellee.	**:** **:**	**[Adm. Doc. #4011]**

The above-captioned matter was heard telephonically on July 15, 1998, before a hearing panel comprising Sara Petersen, consultant, Bureau of Instructional Services; Gary Henrichs, consultant, Bureau of Technical and Vocational Education; and Ann Marie Brick, J.D., legal consultant, and designated administrative law judge presiding. The Appellants, Steve and Mary Quiner, were "present" telephonically and unrepresented by counsel. The Appellee, Iowa High School Athletic Association, [hereinafter, "the IHSAA,"], was also "present" telephonically in the person of Bernie Saggau, Executive Director. The IHSAA was unrepresented by counsel.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for this appeal are found at Iowa Code seciton 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.

The Appellants seek reversal of a decision of the Board of Control [hereinafter, "the Board"] of the IHSAA made on June 14, 1998, when it ruled that Eric Quiner is ineligible to compete in athletics for a period of 90 school days.

I.
FINDINGS OF FACT

Steve and Mary Quiner are the parents of two sons and a daughter. Eric is the youngest and the subject of this appeal. Eric's older brother graduated from Roosevelt High School this past spring. Eric's sister attends high school in Johnston.

After Eric and his parents moved from Des Moines to Johnston a year ago, Eric and his brother decided to continue to attend school in the Des Moines Independent Community School District. They were entitled to continue their enrollment without loss

of eligibility under the "continuation" provisions of the Open Enrollment Law. However, no open enrollment applications were ever filed by the Quiners nor required by the Des Moines District.

Eric has just completed the ninth grade at Roosevelt. He and his brother participated in the football program there. Mr. and Mrs. Quiner testified that they believe it is because of their older son's participation in Roosevelt's football program that he is attending college this fall. They emphasized that Eric's desire to attend school in Johnston is not because of any dissatisfaction with the athletic or educational program at Roosevelt. It has just become too inconvenient; transportation is a problem now that Eric's brother is no longer attending there. In addition, Eric would like to develop friendships with students who live closer to him in Johnston.

However, Eric's participation in football is also extremely important to him. He does not want to be penalized by 90 days of ineligibility when he changes schools. Mary Quiner testified that pursuant to 281 IAC 36.15(3)(a), the Board of Control is allowed to consider factors that motivate the student's change in schools. Under this test, the Board and the Department of Education should consider the fact that Eric is not moving because he has been recruited. Therefore, the policies underlying the ineligibility period do not apply to him.

II.
CONCLUSIONS OF LAW

The primary issue before us is the application of the Department of Education's long-standing rule regarding transfer students. Specifically, Eric's parents seek an exception from the ruling of ineligibility under 281 Iowa Administrative Code 36.15(3)(b)(2) that states as follows:

> 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.

Id. (Emphasis added.)

There is no dispute in the record that Eric has not "subsequently return[ed] to live with his parent(s)" as the rule provides. Eric has continuously lived at home with them since the completion of his freshman year at Des Moines Roosevelt High School until now -- prior to the commencement of the 1998-99 school year at Johnston for which he seeks eligibility. When his parents elected to move from their residence in Beaverdale to a bigger home in Johnston, both Eric and his older brother elected to remain and attend school at Roosevelt High School. Although his parents terminated their residency in the

Des Moines District upon their move to Johnston, the boys were entitled to remain in the Des Moines District to attend school "tuition-free" under the operation of the Open Enrollment Law. (*See*, Iowa Code section 282.18(9)(1997).)

As implemented by the departmental rules on open enrollment, the procedure is as follows:

> If a parent/guardian moves out of the 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. The parent/guardian exercising this option shall file an open enrollment request form with the new district of residence for processing and record purposes. This request shall be made no later than the third Thursday of the following September. Timely requests under this subrule shall not be denied. If the request is for a high school pupil, the pupil shall not be subject to the initial 90-school-day ineligibility period of subrule 17.8(2). If the move is after the third Friday in September, the new district of residence is not required to pay per-pupil costs or applicable weighting or special education costs to the receiving district until the first full year of the open enrollment transfer.

281 Iowa Administrative Code 17.8(7).

The Department of Education has consistently held that continuation in the original district of residence is a manner of right under the Law. Nevertheless, parents are expected to make application for continuation of enrollment in the original district of residence so that the pupil can be appropriately included on the new district's certified enrollment count. For reasons not germane to this appeal, this process was overlooked in the present situation. For all practical and legal purposes, however, Eric attended Roosevelt in ninth grade under the provisions of the Open Enrollment Law. In reality, the provisions of rule 36.15(3)(b)(2) relating to a student's "subsequent return to live with his parent(s)" are not applicable to this case. It is really a situation that comes squarely within the open enrollment transfer rule. Specifically, rule 36.15(4) that states:

> A student in grades 10 through 12 whose transfer of schools had occurred due to a request for open enrollment by the student's parent or guardian is ineligible to compete in interscholastic athletics, but may practice with the team, during the first 90 school days of transfer. ...

This period of ineligibility does not apply if a student: ... "(f)has not been participating in

open enrollment but utilizes open enrollment to remain in the original district of residence, following a change of residence of the student's parent(s).[1] If the pupil has established athletic eligibility, it is continued despite the parent's or guardian's change in residence; or ". *Id* at 36.15(4)(f).

The reason this applies is that Eric received the benefits of the exception to ineligibility when his parents left the Des Moines District and moved to Johnston. When he remained at Roosevelt, he was not truly a resident of the Des Moines District, but remained there under the exception to ineligibility quoted above. Now, however, when he changes school districts, he is terminating his open enrollment and comes within the purview of the "general transfer" rule. Since he has continually lived with his parents in their residence, common sense dictates that the provisions of 281 IAC 36.15(3)(b)(2) (the exception to the General Transfer Rule) do not apply.

In spite of the desire of the hearing panel and, apparently Mr. Saggau, to allow Eric to be eligible in Johnston under the provisions of the "subsequently returns to live with his parents" rule, we have found no precedent for this interpretation.

The Association and Board have long held that the rules requiring ineligibility surrounding transfers without parental relocations stem from two concerns: recruiting of high school athletes, and family decisions to change schools for athletic purposes ("to benefit their competitive standing"). While we understand that 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. Although, there are statutory exceptions to the 90-day period of ineligibility, none of those exceptions is applicable in the present case.

These are the transfer 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.

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 Board ruled him 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

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[1] **This is what occurred when Eric remained at Roosevelt for 9th grade. He was given the benefits of the 36.15(4)(f) exception.**

the general transfer rule was applied to him and upheld by the State. *In re Robert Joseph*, 8 D.o.E. App. Dec. 146(1991).

In 1989, the State Board found that a former *bona fide* foreign exchange student who returned to Iowa the following year without the benefit or sanction of a foreign exchange student program or organization was ineligible for 90 days as a regular transfer student. *In re Rita Ricobelli*, 7 D.o.E. App. Dec. 105(1989).

In re Stephen Keys 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 State Board found insufficient hardship existed to justify an 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 (to family and friends under guardianship) was for superior academic and athletic opportunities in the new district. *In re Carme Braby*, 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 did not move with him or her. *See, United States Ex rel. v. Missouri State H.S. Activ. Assn.*, 682 F.2d 147 (8th Cir. 1982)(Missouri association rule making transfer student ineligible for one calendar year, unless the student meets a specified exception, is a reasonable and neutral regulation.); *Simkins v. South Dakota H.S. Activ. Assn.*, 434 N.W.2d 367(S.D. 1989)(Association rules barring transfer student from eligibility for one year except students whose parents correspondingly made a bona fide change in residence, was rationally related to purposes of discouraging recruitment and school-hopping and therefore constitutional.); *Steffes v. Calif. Interscholastic Federation*, 222 Cal. Rptr. 355 (Cal. App. 1986)(Transfer student ineligible, under rule, for varsity sports in which student previously competed or ineligible for all sports, depending upon certain conditions, for one full year from date of transfer; rule held valid under constitutional challenge.).

We cannot ignore the ramifications of a ruling that would grant Eric eligibility under a strained interpretation of 36.15(3)(b)(2), finding that Eric "subsequently returned to live with his parent(s)" when he decided to attend school in Johnston. The reason is that this interpretation would circumvent the operation of the open enrollment transfer rule. It was because of innocent oversight on behalf of both the Des Moines District and the Appellants by their failure to observe the notice requirement of the Open Enrollment Law that Eric was able to continue at Roosevelt High School after his parents had moved. The fact that there was no formal filing of an application for continuation under the Open

Enrollment statute does not change this result. To hold otherwise would encourage individuals to intentionally circumvent the Open Enrollment Law under the continuation provisions: as a result, they could return to their home districts at will without loss of eligibility under the interpretation that they "subsequently returned to live with their parent(s)".

Because the issue before us did not involve a change in residence of the student but a change in his choice of districts, we find that he must serve a 90-day period of ineligibility if he attends school at Johnston in the Fall of the 1999 school years.

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

III.

DECISION

The decision of the Board of Control of the Iowa High School Athletic Association made on June 14, 1998, regarding the eligibility of Eric Quiner is, for the reasons stated above, affirmed.

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

_____ _____

DATE TED STILWILL, DIRECTOR
DEPARTMENT OF EDUCATION