

**IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 15 D.o.E. App. Dec. 6)**

In re Thomas Vedral :

Tom & JoAnn Vedral, :
Appellants, :

v. : DECISION

Iowa High School Athletic :
Association, :
Appellee. :

[Admin. Doc. #3911]

This case was heard telephonically on September 2, 1997, before a hearing panel comprising Mr. Jim Tyson, Bureau of Administration, Instruction, and School Improvement; Dr. Ron Riekema, Bureau of Food and Nutrition; and Amy Christensen, J.D., designated administrative law judge, presiding. The Appellant, Mrs. JoAnn Vedral, was present telephonically and was unrepresented by counsel. Mr. Vedral was not present at the hearing. The Appellee, Iowa High School Athletic Association [hereinafter, "the IHSAA"], was present telephonically in the person of Mr. Bernie Saggau, Executive Director, and was also 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 sections 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 at the meeting held on August 2-4, 1997, which ruled their son ineligible to compete in interscholastic athletics for a period of ninety school days.

**I.
FINDINGS OF FACT**

Thomas (T.J.) Vedral, the Appellants' son, is a junior at North High School in Sioux City. During his freshman and sophomore years, he was a student at Heelan, a private Catholic high school in Sioux City. Thomas played football for Heelan, and would like to play for North.

Mrs. Vedral testified that while at Heelan, Thomas was subjected to harassment by a group of about ten fellow students. According to Mrs. Vedral, the ringleader of this group is a former student of hers and a bully. He is also on the Heelan football team. Mrs. Vedral testified she did not get along well with the ringleader when he was her student, and she believes he was "out to get" T.J. when he came to Heelan. Mrs. Vedral testified that beginning with his freshman year, T.J. was subject to taunting by the other students who would make extremely negative comments about her to T.J.

Mrs. Vedral also testified the students harassed T.J. because he would not drink alcohol or use drugs as they wanted him to. She testified T.J. was able to handle the harassment until March 26, 1997. On that date, Mrs. Vedral testified that these students made fun of T.J. in a class with a teacher present for 45 minutes. T.J. could not handle this, and did not know what to do to defend himself. As a part of the March 26th incident, a group of students ostensibly began a campaign to elect T.J. student body president. They put up pieces of paper around school with his name misspelled as "Verbal". Mrs. Vedral testified there was no real intent to campaign for T.J., and that this was further harassment of him by the same group of students.

According to Mrs. Vedral, when she spoke with the teacher about the incident on the telephone, the teacher admitted she could not control the class, and was upset by the behavior of the students. T.J. was extremely upset by this incident to the point he was physically ill. Mrs. Vedral testified she considered filing harassment charges, but did not do so because the teacher told her she was going to take care of it and file a complaint.

Mrs. Vedral testified she spoke with the principal at Heelan, who told her because of the rights of the other students, he could not give her much information regarding what would be done with the other students. Mrs. Vedral testified she called the principal at home because she was so upset, and he told her the situation would be taken care of, and the school has strict rules about harassment. Mrs. Vedral testified she was told to keep T.J. home for a few days, and he was let out of school early each day for a week for his own safety. According to Mrs. Vedral, there was a meeting in the Dean's office with the offending students, but nothing was done besides talking to the students.

Mrs. Vedral also testified this same group of students has repeatedly thrown eggs at their house and car and vandalized their mailbox both before and after the March 26th incident. For a while after the March 26th incident, she testified they had to clean up a mess about every three nights. She believes it got worse because the students thought T.J. had turned them in to school officials.

Since no one from the Heelan administration was present to testify, we do not know what action school officials took to punish the offenders and/or prevent further harassment, and we do not know their view of the situation.

As a result of this harassment, the Vedrals felt they had no choice, and they transferred T.J. to North High School. Because of the transfer, T.J. was ineligible to compete in athletics for ninety school days. Mrs. Vedral testified they knew of the ninety-day period of ineligibility, and considered transferring T.J. in April for that reason, but did not do so because they felt academics were more important, and T.J. should finish the year at Heelan. They are to be commended for this.

The Vedrals appealed to the IHSAA for a waiver of the 90-day period of ineligibility, arguing that if the IHSAA allows a waiver in cases of financial hardship, it should also do so in cases of emotional and psychological hardship due to harassment such as T.J. suffered. They argue it is unjust to deny him eligibility when he transferred due to a situation out of his control. Mrs. Vedral testified she knows T.J. may practice with the team during his period of ineligibility, but he is essentially acting as a waterboy, and it would be good for him to participate as a full member of the team.

Mrs. Vedral testified there was no recruitment of T.J. by North.

The Board of Control denied the Vedrals' request for a waiver, and ruled T.J. ineligible for 90 school days at their meeting on August 2-4, 1997. Mr. Saggau testified the Board based its decision on the private to public school transfer rule (although the Board minutes incorrectly refer to the general transfer rule), and there is no exception for harassment in that rule. Furthermore, Mr. Saggau testified, it would be difficult to administer a harassment exception, because it would be difficult to determine what is harassment, and what level of harassment would be needed for use of the exception.

The Vedrals then appealed to the Department of Education.

II. CONCLUSIONS OF LAW

The State Board of Education has adopted rules governing student eligibility pursuant to Iowa Code sections 256.46 and 280.13(1997). The eligibility rules are contained at 281 Iowa Administrative Code 36.15. The section of those rules which specifically relates to transfers between public and nonpublic schools is at 281 IAC 36.15(5)"c". When a student transfers from a nonpublic to a public school, or from a public to a nonpublic school, the student is ineligible to compete in interscholastic athletics for 90 school days, unless there is a contemporaneous change of parental residence.

There is a general transfer rule at 281 IAC 36.15(3), which provides that a student who transfers from one school district to another school district is ineligible to compete in athletics for 90 school days unless there is a contemporaneous change in parental residence, or unless one of the listed exceptions applies. Students whose residence changes due to any of the listed exceptions are immediately eligible. 281 IAC 36.15(3)"b"(3). The rule contains a list of exceptions, none of which apply in this case, and it then contains the following more general exception at subparagraph (8): "In any transfer situation not provided for elsewhere in this chapter, the executive board [of the IHSA] shall be empowered to exercise its administrative authority to make any eligibility ruling which it deems to be fair and reasonable. The determination shall be in writing with the reasons for the determination clearly delineated."

Unfortunately for the Vedrals, the general exception paragraph at 36.15(3)"b"(8) starts out with the phrase "In any transfer situation not provided for elsewhere in this chapter". The Vedrals' situation is specifically provided for elsewhere in the chapter, in rule 36.15(5)"c", which states that when a student transfers from a private to a public school, the student is ineligible for ninety school days. Therefore, the general exception paragraph cannot be used. None of the exceptions specifically enumerated in the statute or rules applies. We have a great deal of sympathy with the Vedrals, and specifically with T.J. for the harassment he has suffered. However, we do not have the authority under the statute or rules to grant T.J. eligibility based on the harassment he has suffered. Iowa Code 256.46 and 280.13(1997); 281 IAC 36.15(3)"b"(8) and 36.15(5)"c".

We also want to clear up a misconception held by Mrs. Vedral: that if the family had suffered financial hardship, the Iowa Department of Education would have the authority to grant an exception to the 90-day ineligibility rule. This is not correct. There is no exception in the nonpublic to public transfer rule for financial hardship. 281 IAC 36.15(5)"c"; In re Marc Davies, 14 D.o.E. App. Dec. 314 (1997).

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 Joshua Birchmier, 14 D.o.E. App. Dec. 243 (1997); In re Scott Halapua, 13 D.o.E. App. Dec. 394 (1996). Although the evidence at the hearing showed T.J. did not transfer either as the result of recruitment nor as a result of shopping for the most advantageous athletic program, 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 Joshua Birchmier, *supra*; In re Marc Davies, *supra*; In re Tim Ratino, 13 D.o.E. App. Dec. 249 (1996); In re Scott Halapua, *supra*; and In re Leo Sullivan, 13 D.o.E. App. Dec. 400 (1996). Sometimes, as in this case, application of the rule seems harsh. However, the 90-day ineligibility rule and uniform application of the rule is very important so that school districts and students and their families clearly understand the consequences of a transfer decision.

We note that the eligibility rules prohibit competition during the ninety-day period. They do not prohibit a student from practicing with the team during the ninety-day period. Although this is not a perfect solution, we encourage T.J. to benefit from practice with the team during his period of ineligibility, so long as the Sioux City school officials will allow it.

Any motion or objection not previously ruled on is hereby denied or overruled.

III. DECISION

For the foregoing reasons, the decision by the Board of Control of the Iowa High School Athletic Association made at their meeting on August 2-4, 1997, to deny eligibility for ninety school days to Thomas Vedral, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

September 4, 1997

DATE

Amy Christensen

AMY CHRISTENSEN, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

9/10/97

DATE

Ted Stilwill

TED STILWILL
DIRECTOR