

**IOWA STATE DEPARTMENT  
OF EDUCATION  
(Cite as 15 D.o.E. App. Dec. 64)**

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<b>In re Clinton Youlden</b>	:	
Dick Wold & Curt Nelson, Appellants,	:	
v.	:	DECISION
Iowa High School Athletic Association, Appellee.	:	
	:	[Admin. Doc. #3914]

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This case was heard telephonically on September 18, 1997, before a hearing panel comprising Mr. Jeff Berger, Bureau of Administration, Instruction, and School Improvement; Dr. David Wright, Office of Educational Services for Children, Families, and Communities; and Amy Christensen, J.D., designated administrative law judge, presiding. The Appellants, Mr. Dick Wold and Mr. Curt Nelson, were present telephonically and were unrepresented by counsel. The Appellee, Iowa High School Athletic Association, [hereinafter, "the IHSAA"], was present telephonically in the person of Mr. Bernie Saggau, Executive Director, and Mr. Dave Harty, Assistant 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 section 280.13(1997) and 281 IAC 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 September 2, 1997, when it ruled Clinton Youlden ineligible to compete in athletics for a period of 90 school days.

**I.  
FINDINGS OF FACT**

Mr. Dick Wold is the principal of Maquoketa Community High School. Mr. Curt Nelson is the athletic director of Maquoketa High School. In about February or March of 1997, Mr. Bill Taylor contacted Mr. Wold regarding a possible foreign exchange placement. At that time, Mr. Taylor was employed as a coach for Southwestern Community Schools in Hazel Green, Wisconsin.

Mr. Wold testified this came about because Mr. Taylor had previously hosted a foreign exchange student who was a friend of Clinton Youlden's. Clinton is the student who is the subject of this appeal and is a foreign exchange student from Australia. Evidently, Clint understood that he was going to be placed in the Southwestern Community School District. Mr. Wold testified that did not happen because Mr. Taylor retired and had no placement for the boy. Therefore, Mr. Taylor contacted coaches he knew in Dubuque, western Iowa, and eventually Maquoketa, to find a placement for Clint.

According to the Maquoketa Board policy, the high school is allowed five foreign exchange students each year. Mr. Wold told Mr. Taylor that before he would do anything, he needed to find out which foreign exchange program was involved. The foreign exchange program was the STS Foundation, which is a bona fide foreign exchange program based in Virginia, and was recognized as such by Maquoketa High School in this case.

On about April 20, the STS Foundation contacted Mr. Wold about a placement for Clinton Youlden. Mr. Wold told the woman who called that before they would do anything, they had to see a student profile. About a week later, STS sent Clinton Youlden's profile to Mr. Wold. Mr. Wold met with the high school guidance counselors and looked over the documents. Everything looked all right to them, so they approved the placement on approximately May 14, 1997. On May 16, STS sent a letter to Mr. Wold informing him they had found a host family for Clint, and thanking him for the approval.

At sometime after STS contacted Mr. Wold, the Maquoketa basketball coach, Mr. Fleming, talked with Mr. Wold regarding Clinton. Mr. Fleming told Mr. Wold he had been called by another coach about Clinton. Mr. Wold testified this had no influence on his decision to approve Clinton's placement.

During the first week of school, which began August 25, 1997, Mr. Nelson, as athletic director, had Clint fill out the application for approval for foreign exchange student eligibility required by the IHSAA. Mr. Nelson did not know Clint, and had not known of the contacts made regarding Clint which occurred between February and May.

The application form states that "Eligibility rule 36.15(3) Transfer (b) of the Iowa High School Athletic Association Constitution states: 'In ruling upon eligibility of foreign exchange students, either students from foreign countries transferring to the American schools or American students who have gone to foreign schools and are returning to the American schools, the Executive Board is authorized to make any ruling regarding student's eligibility deemed to be fair and reasonable.' The Board of Control of the Iowa High School Athletic Association has established three (3) guidelines which they feel are fair and reasonable to determine the eligibility of the foreign exchange student. The guidelines are:

1. A student who had not reached 20 years of age.
2. Athletic participation is not a major concern in the student's decision in becoming a foreign exchange student.
3. There is no evidence of recruiting or other improper conduct on the part of school officials, employees or community persons attempting to get this student in your school.

The form then asks three questions, which the student is to answer yes or no. The questions are:

1. The student has reached 20 years of age.
2. Was athletic participation a major concern in the student's decision to become a foreign exchange student?
3. Is there any evidence of recruiting or other improper conduct on the part of any of your school officials, employees or community persons attempting to get this student in your school?

Mr. Nelson testified that when Clint filled out the form, he did not ask the meaning of the second question. Clint answered "yes" to the second question. Mr. Nelson testified Clint asked him the meaning of the third question, and Mr. Nelson answered that it meant "did we recruit you to come to school here?" Clint checked "no" to the first and third questions. Mr. Wold and Mr. Nelson then signed the form and sent it to the IHSAA. Mr. Nelson and Mr. Wold testified they believe Clint answered the second question "yes" because he thought the question was asking whether he intended to participate in athletics. Mr. Nelson and Mr. Wold have never asked Clint why he became a foreign exchange student.

The IHSAA monitors foreign exchange programs because they are concerned that there is the potential for recruiting of foreign students for their athletic ability. Mr. Harty reviewed Clint's form, and was alerted because he had answered "yes" to the second question. Therefore, Mr. Harty began checking into Clint's placement at Maquoketa.

He began by calling Mr. Nelson and Mr. Wold. The two told Mr. Harty everything they knew regarding how Clint got to Maquoketa. Mr. Harty testified the IHSAA has no doubts regarding the integrity of Mr. Wold and Mr. Nelson, and there is no allegation of recruiting by Mr. Wold and Mr. Nelson. After talking with Mr. Wold and Mr. Nelson, Mr. Harty testified it was clear to him that Clint was a foreign exchange student primarily for athletic purposes, to play basketball. Mr. Harty did not talk directly with Clint. In talking with Mr. Wold, Mr. Harty found out Mr. Fleming, the basketball coach at Maquoketa, had spoken with Mr. Wold about Clint, although this was after the STS Foundation had already called Mr. Wold. Mr. Harty also testified Mr. Fleming told Mr. Wold he had been contacted by another coach about Clint.

Mr. Harty also talked with school officials at Southwestern High School in Wisconsin. He testified two years ago, a former classmate of Clint's attended high school at Southwestern as a foreign exchange student, and had a very successful year playing basketball there. While there, Clint's classmate lived with the Taylors. Mr. Taylor was the athletic director. This also raised a red flag to Mr. Harty. Mr. Harty testified Mr. Taylor was very active in promoting Australian teams coming to southwestern Wisconsin to participate with teams in cultural exchanges. Mr. Harty testified there was a network of coach to coach contact to find Clint a placement, and he views this as irregular, and not customary and proper in foreign exchange programs. In general, he testified, the foreign exchange program contacts the high school administration directly, and that is how placements are made.

As a result of his investigation of this case, Mr. Harty submitted a letter to the Council for International Educational Travel, the body which oversees foreign exchange programs in the United States, asking them to review the STS Foundation placement practices.

## **II. CONCLUSIONS OF LAW**

Iowa Code section 256.46(1997) provides that the State Board of Education is to adopt rules which permit students who do not meet the residency requirements for participation in athletics to immediately participate if they are duly enrolled in the school, are otherwise eligible to participate, and meet one of the listed exceptions (or something similar). One of the listed exceptions is if the student is a foreign exchange student. Id.

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.

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. In general, a foreign student is regarded as transfer student, and therefore ineligible for 90 days, unless one of the listed exceptions applies. There are several paragraphs regarding specific situations contained in the rule. The first paragraph is a more general paragraph. It states:

In ruling upon the eligibility of transfer students, the executive board is empowered to consider the factors motivating student changes in residency. Unless otherwise provided in the 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. ...

281 IAC 36.15(3)"a".

Students whose residence changes due to any of a number of listed exceptions are immediately eligible, so long as they meet all other eligibility requirements in the rules. 281 IAC 36.15(3)"b". One of the listed exceptions is "Participation in a foreign exchange program recognized by the school of attendance." 281 IAC 36.15(3)"b"(3).

Since there is an exception for foreign exchange students specifically listed in the statute and rules, if it wants to deny eligibility, the IHSAA carries a heavy burden to prove that a foreign exchange student does not meet the eligibility requirements. In this case, we believe the IHSAA has met that burden. The preponderance of the evidence is that Clint became a foreign exchange student primarily to participate in athletics. In addition, the evidence introduced at the hearing shows that Clint's placement at Maquoketa was primarily due to coach-to-coach contact, rather than normal contact from the foreign exchange program to the administration.

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). In this case, it appears from the evidence presented that Clint may very well have been recruited for athletic reasons, and that he decided to become a foreign exchange student primarily so he could participate in athletics.

Therefore, we agree with the IHSAA that Clint did not meet the eligibility requirements in the rules. He is therefore to be treated as any other transfer student, and is ineligible to compete for a period of ninety school days. 281 IAC 36.15(3).

We note that the eligibility rule quoted on the application form for foreign exchange students is not the current rule, and we recommend the IHSAA update the form and quote the current rule.

We also note that Mr. Harty cited to Article VII, Part II, section 16 regarding undue influence. This part of the IHSAA Constitution and Bylaws handbook is not a part of the rules of the Department, and it is not contained in the Iowa Code. Therefore, the section itself is not binding on anyone. Iowa Code sections 17A.4(3) and 17A.2(10)(1997). It is the IHSAA's interpretation of what the rules mean. In order to

take action, the IHSAA is reminded that it must cite to a rule of the Department or the Iowa Code for authority to take action regarding student eligibility. Id. Alternatively, the IHSAA could ask the State Board to promulgate a rule incorporating the undue influence language if it wishes.

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 September 2, 1997, to deny eligibility for ninety school days to Clinton Youlden, is hereby affirmed. There are no costs of this appeal to be assigned.

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DATE

It is so ordered.

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AMY CHRISTENSEN, J.D.  
ADMINISTRATIVE LAW JUDGE

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DATE

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TED STILWILL  
DIRECTOR