

**IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 14 D.o.E. App. Dec. 314)**

In re Marc Davies :

David Davies, :
Appellant, :

v. : DECISION

Iowa High School Athletic :
Association, :
Appellee. :

[Admin. Doc. #3886]

The above-captioned matter was heard telephonically on June 25, 1997, before a hearing panel comprising Mr. Terry Voy and Mr. Jim Tyson, Bureau of Administration, Instruction, and School Improvement; and Amy Christensen, J.D., designated administrative law judge, presiding on behalf of Mr. Ted Stilwill, Director of the Department of Education. The Appellant, Mr. David Davies, was present telephonically and was unrepresented by counsel. Mrs. Karen Davies was also 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 of the IHSAA, and was also unrepresented by counsel.

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

The Appellant seeks reversal of a decision of the Board of Control [hereinafter, "the Board"] of the IHSAA made at the meeting held on June 14 and 15, 1997, which ruled his son ineligible to compete in interscholastic athletics for a period of ninety school days.

**I.
FINDINGS OF FACT**

Marc Davies will be a senior next year at North High School in Sioux City. He has attended private school his entire academic career. During the 1996-97 school year, Marc attended Heelan High School, a private school in Sioux City.

The Davies have three other children, one who is attending private school, and two who are in college. Thus, the Davies have a considerable financial burden to pay for their children's education.

The Davies own their own business, the Brothers Paper Box Company in Sioux City. The family's income is determined solely by the profitability of their business. Evidence at the hearing showed that the company has experienced financial difficulty for approximately the last two years. The family has also accumulated significant personal debt in the past year. This is the main reason given by the Davies for their decision to transfer Marc from private school to public school for the 1997-98 school year.

The Davies are also concerned about academics and the general environment at Heelan, and think this will improve for Marc at North High School. Although Mr. Davies downplayed its significance in the family's decision to transfer Marc, there was an incident at school which also played a part in the decision to transfer. Marc played baseball for Heelan. During the first week of baseball practice, Marc forgot his baseball glove. The coach allowed the senior baseball players to determine Marc's punishment. These students held down Marc and forced him to chew and swallow an earthworm. The coach was present at the time, but said nothing. As would be expected, Marc was extremely upset by this, particularly when another student who had forgotten something was only required to run as his punishment. Although the family does not cite this as a major reason for the decision to transfer, it was one factor in the decision, and we note it because it is particularly offensive to the panel. It was inappropriate for the coach to allow the other students to determine the method of punishment when they obviously did not have the appropriate maturity to do so, and it is offensive that he stood by and allowed the degrading punishment to be carried out.

The Davies decided to transfer Marc to Sioux City North for the 1997-98 school year when Marc will be a senior. They asked the IHSAA to allow Marc eligibility to compete in athletics, because their main reason for his transfer was financial.

The IHSAA has a form it sends to parents who request eligibility when their child transfers from private to public school. The form includes disclosure of the family's financial situation. Mr. Saggau testified that in three or four unique cases over the past twenty years, the Board of Control has exercised discretion under rule 281 IAC 36.15(3)"b"(8), and allowed a student eligibility when he or she transferred from private to public school. Two of those cases involved financial problems of the parents. Once when a student had already served 70 days of the period of ineligibility, a student's parents requested relief from the Board. The parents had declared bankruptcy the previous May, and their financial situation was the reason for the student's transfer from private to public school. The Board granted relief. Another case involved a parent with

cancer who couldn't work, and the family could no longer afford to send the student to private school. The Board allowed the student eligibility. In both of these cases, Mr. Saggau spoke with the private school involved, and the school verified the circumstances.

Mr. Saggau sent the form to the Davies, and they filled it out and returned it with supporting financial records of their business and personal debt list. However, as a part of filling out the form, the Board requires the parents to talk with the private school involved, to disclose their financial circumstances to the school, and to submit a letter from the school principal explaining the circumstances of the transfer. Mr. Saggau testified the purpose of this is to allow the parents and school to try to work out a tuition arrangement which will accommodate the needs of the family. The Davies were not willing to disclose their financial situation to school officials, and thus did not complete this aspect of the form. Mr. and Mrs. Davies both testified they want to protect their privacy regarding finances from school officials in Sioux City, which is a small community, and were concerned about confidentiality. Therefore, they testified, they were unwilling to make the disclosures the Board of Control required.

At its meeting on June 14 and 15, 1997, the Board of Control ruled that Marc would be ineligible to compete for ninety school days, because he had transferred from a private to a public school without a contemporaneous change in residence, and cited to rule 281 IAC 36.15(5)c. Mr. Saggau testified the Board felt that the financial information submitted by the Davies showed that they could have afforded to send Marc to Heelan if they had really wanted to, and they were not willing to grant Marc eligibility, particularly when the Davies were not willing to discuss the situation with Heelan officials.

The Davies then filed this appeal with the Director of the State Department of Education.

III. 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 IHSAA] 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." This is the rule the Board of Control used as the basis to develop the financial hardship form for students transferring from private to public schools. (Testimony of Mr. Saggau.)

Unfortunately for the Davies, 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 Davies' 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. Therefore, as much as we may sympathize with the Davies' financial difficulties, their financial situation is irrelevant to the decision which must be made in this case. We do not have the authority under the statute or rules to grant Marc eligibility based on his parents' financial situation. Iowa Code 256.46 and 280.13(1997); 281 IAC 36.15(3)"b"(8) and 36.15(5)"c". Similarly, while we are offended by Marc's treatment at the hands of his baseball team and coach in the worm incident, and we sympathize with the Davies' belief that a change in schools will be good for Marc, these also do not provide us with an exception to the eligibility rule recognized in the statutes and rules.

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(1997). Although the evidence at the hearing showed Marc 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 Tim Ratino, 13 D.o.E. App. Dec. 249; In re Scott Halapua, *supra*; and In re Leo Sullivan, 13 D.o.E. App. Dec. 400. 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. We encourage Marc to benefit from practice with the team during his period of ineligibility, so long as the Sioux City school officials will allow it.

The Davies requested confidentiality of the financial records they submitted to the Department of Education. Pursuant to Iowa Code section 22.7(18)(1997), those financial records are confidential.

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 June 14 and 15, 1997, to deny eligibility for ninety school days to Marc Davies, is hereby affirmed. There are no costs of this appeal to be assigned.

DATE

AMY CHRISTENSEN, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

TED STILWILL
DIRECTOR