

**IOWA STATE DEPARTMENT  
OF EDUCATION**

(Cite as 14 D.o.E. App. Dec. 17)

<i>In re David Miller</i>	:	
	:	
Deb Miller, Appellant,	:	
	:	
v.	:	DECISION
Iowa High School Athletic Association, Appellee.	:	[Admin. Doc. #3807]

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The above-captioned matter was heard telephonically on September 4, 1996, before a hearing panel comprising Dr. David Wright, Office of Educational Services for Children, Families and Communities; Ms. Marge Smith, Bureau of Internal Operations; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding on behalf of Ted Stilwill, Director of Education.

Appellant, Deb Miller, was "present" by telephone, unrepresented by counsel. Appellee, Iowa High School Athletic Association [hereinafter, "IHSAA" or "the Association"], was also "present" by telephone in the person of Assistant Executive Director David Hardy, also *pro se*.

An evidentiary hearing was held pursuant to Departmental hearing procedures found at 281--Iowa Administrative Code 6. Jurisdiction for this appeal is found at Iowa Code section 280.13(1995) and 281--Iowa Administrative Code 36.17. Appellant seeks reversal of a decision of the Board of Control of the IHSAA made on August 13, 1996, denying her request for a "waiver" of the 90-day period of ineligibility under the Rule regulating eligibility upon transfer from public to nonpublic school. (281--Iowa Administrative Code 36.15(5).)

**I.  
FINDINGS OF FACT**

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. 281--IAC 36.17.

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David Miller is currently a junior at Columbus, a parochial high school in the Waterloo Community School District. This is David's third high school in as many years. David attended parochial grade school and then began West High School as a freshman in the Fall of 1994. As his mother testified, West High was a "culture shock" for him. He had trouble adjusting to the large school as well as the perceived discipline problems and student fighting that he reported around him. Although David struggles academically, he is a successful athlete competing on both the high school football and wrestling teams.

In the fall of his sophomore year, David and his parents decided to enroll in the new Bunger School of Technology. He loved it there. The 90-minute block classes and the smaller school environment helped him academically. Unfortunately, in April of 1996, the Waterloo Community School District Board decided to close the Bunger School of Technology after only one year of operation. At that time, David and his parents decided that it would not be good for him to return to West High School. They made the decision to enroll him in Columbus, a parochial high school, in the Waterloo District.

At the time that this decision was made, Appellant was aware of the 90-day ineligibility rule which would prevent David from competing in football and wrestling in his junior year at Columbus. Because of the unique circumstances surrounding the closing of Bunger School of Technology, Deb Miller appealed to Bernie Saggau of the IHSAA for a waiver of the ineligibility rule. On August 13, 1996, Mr. Saggau, writing on behalf of the Board of Control, denied Ms. Miller's appeal. In so doing, he stated:

As I related to you via the telephone today, the Board could not make your son eligible at Waterloo, Columbus, because last year he attended Bunger School, which is part of the Waterloo public school system. Bunger closed and now your son desires to attend Waterloo, Columbus. Being consistent with previous rulings, the Board ruled your son could attend either one of the public schools in Waterloo and be eligible immediately. If he attends Waterloo, Columbus, that would be a change of school systems, therefore, ineligibility for 90-days.

Appellants appealed to the Director of the Department of Education on August 20, 1996. The appeal was heard on September 4, 1996.

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## II. CONCLUSIONS OF LAW

The State Board of Education has adopted rules regarding student eligibility pursuant to the authority contained in Iowa Code section 280.13. These rules are found in 281--Iowa Administrative Code 36. The rules are enforced by the schools themselves and the coaches, subject to interpretation and assistance from the Iowa High School Athletic Association (for male athletes) and the Iowa Girls High School Athletic Union (for female athletes). Pursuant to a 28E agreement, the Association and the Union enforce the rules by their official determinations, subject to appeal to the Department of Education.

The transfer rule at issue here states as follows:

*Public to nonpublic and nonpublic to public transfers.* When a student transfers from a public school to a nonpublic school, or vice versa, after the start of ninth grade, without a contemporane-

ous change of parental residence, the student shall be ineligible to compete in interscholastic athletics for a period of 90 school days, as defined in 281-subrule 12.2(2), exclusive of summer enrollment. However, when a corresponding change of parental residence occurs with the transfer, the executive board is empowered to make eligibility decisions based upon motivating factors for the transfer including, but not limited to, distance between the former school of attendance and the new residence.

281-IAC 36.15(5)(c).

State regulation of high school and college student athletic eligibility is commonplace with respect to transfer rules. Specifically, two scholarly sources state the following:

"Transfer of residence" rules typically provide that an athlete who changes schools sacrifices a year of athletic eligibility immediately following his transfer. These rules are drafted to curb recruitment practices aimed at luring students away from their educational institutions for non-academic reasons. Courts generally uphold the application of such rules as a reasonable exercise of an organization's authority to forestall recruiting.

Sloan, The Athlete and the Law; Oceana Publications, Inc. 1983, p. 10.

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Athletic associations and conferences regulate nearly all areas of amateur athletics. Litigation involving these associations and conferences has centered around rulings of ineligibility of a student, team, or institution because of residency, sex, age limitations, participation on independent teams or other such restrictions.

[R]esidency/transfer rules limiting the eligibility of student athletes ostensibly exist to deter

two conditions: the recruiting of athletes by high schools or colleges which the student-athlete does not in fact attend, and the shopping around by student-athletes for institutions which seem to offer the best opportunities to advance the student's athletic career. Generally, the penalty for violating a transfer or residency regulation is disqualification from participation, usually for one semester or one year.

Rapp, J., Education Law, Vol. I, section 3.09[4][a][i], Matthew Bender, 1995.

The Department of Education has had numerous opportunities over the past 22 years to review decisions of the Association and the Union regarding athletic eligibility. Most recently, the Director of Education found that a foreign student who was a resident of Australia, living with an uncle and attending school in Iowa (without the benefit or sanction of a foreign exchange student program) was ineligible for 90 days as a regular transfer student. In re Ziyad Alwan, 13 D.o.E. App. Dec. 177 (May 1996).

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 the 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 1982, the State Board overturned an ineligibility ruling by the Association for a boy who was suffering from serious mental problems (abuse) at the school in the district in which his parents resided. His parents transferred guardianship to others in a neighboring district. The fact that there was "no evidence [of] any athletic recruitment ... by the receiving school," coupled with the testimony of the boy's psychiatrist as to his emotional stability, led the State Board to apply exception "f"<sup>1</sup> and rule him eligible immediately. In re Todd Bonnes, 3 D.P.I. App. Dec. 106 (1982).

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<sup>1</sup> [Now 36.15(3)(b)(3)(6)]

In In re Nancy Sue Walsh, the State Board overturned a decision of the Girls' Union and awarded eligibility to a junior girl whose guardianship was transferred from her parents to a family in another community because of rumors regarding the student-athlete and the coach in her resident district. The rumors reached a fever pitch, to the point where Nancy was contemplating dropping out of school entirely. Again, there was literally no contact between Nancy or her family and the coaches in the new district, so recruiting was not found or even hinted at. In re Nancy Walsh, 3 D.P.I. App. Dec. 34 (1982).

The Union was again overturned in an eligibility decision involving a young woman who moved from one divorced parent's home to the other's and then back again. At issue was transfer subrule (a), and the State Board, interpreting its own rule, stated, "We do not feel that eligibility should be denied a student who changes residence in a broken home situation in the absence of evidence of an improper motive for the change in residence." In re Tamara Burns, 2 D.P.I. App. Dec. 353, 356 (1981).

On the other hand, a student whose family relationship with his parents had broken down considerably, motivating the district court to place him with his older brother in another district, was ruled eligible over the Association's initial determination of ineligibility. That case is instructive for its broad definition or interpretation of the term "broken home situation" as used in subrule 36.15(a):

We feel that any significant and serious disruption of the family unit which causes a serious disfunctioning of the family unit as a whole should be taken into consideration as a "broken home" condition. Examples [include] death of a family member, divorce or separation of the parents, abandonment, and significant and serious breakdowns in communications with result in alienation of family members.

In re Scott Anderson, 1 D.P.I. App. Dec. 280, 282 (1978). We believe the discussion quoted above is instructive in that nearly if not all examples cited in support of a broad interpretation relate to conditions beyond the student's control, not conditions of the student's own making or choosing.

And, finally, in the earliest recorded State Board of Education decision on athletic eligibility and transfer status, the State Board denied eligibility to a student who moved with his family from West Des Moines to Missouri, and then moved back without them for his senior year under guardianship of his uncle.

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In that decision, the State Board rejected the notion that court-appointed guardianships should be determinant on the issue of transfer. In recognizing that court-appointed guardianships are relatively easy to obtain (given the consent of the legal parent) and yet to not necessarily establish the requisite non-athletic motivation, the State Board wrote, "To allow the mere establishment of guardianship [as the sole, conclusive, deciding factor of eligibility] would effectively emasculate the athletic transfer rules." In re Steven John Duncan, 1 D.P.I. App. Dec. 117, 120 (1976). Interestingly, Steven was just shy of his eighteenth birthday (age of majority) prior to the hearing and determination of his eligibility.

If the validity or reasonableness of the transfer rule was at issue, case law would be very instructive: the weight of it clearly supports the denial of immediate eligibility to a transfer student who parents do not move with him or her. See, United States ex rel. Missouri State H.S. Activ. Assn., 682 F.2d 147 (8<sup>th</sup> Cir. 1982)(Missouri Association rule making transfer students ineligible for one calendar year unless the student meets one of the exceptions (i.e. if the transfer is due to a corresponding change of parental residence, was due to a school closing or reorganization, or if the transfer was ordered by the board of education)(is a reasonable and neutral regulation); Simkins v. South Dakota H.S. Activ. Assn., 424 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 and rationally related to purposes

of discouraging recruitment and school-hopping and therefore constitutional); Steffes v. California Interscholastic Federation, 222 Cal Rptr 335 (Cal. App. 1986)(Transfer student whose parental residence did not correspondingly change is 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); Berschback v. Grosse Pointe Pub. Sch. Dist., 397 N.W.2d 234 (Mich. App.)(1986)(Similar transfer rule held constitutional as rationally related to valid, legitimate state purpose of deterring recruitment); and Menke v. Ohio H.S. Athl. Assn., 441 N.E.2d 620, 2 Ohio App.3d 244 (1981)(Similar transfer eligibility rule held constitutional; injunction denied). But, see, Anderson v. Indiana H.S. Athl. Assn., 699 F.2d 719 (S.D.Ind. 1988) (Similar rule held arbitrary and capricious).

We do not doubt for a minute the emotional upheaval this family has experienced as a result of the decisions they had to make for David's academic well-being. However, his case does not fit within the previously cited precedent involving the change in parents' marital status. Although Bunger School was closed,

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David never competed at Bunger; he was always required to compete for West High, his resident school. We understand that he did not choose Columbus High School because of its football or wrestling team. That is why it is with great difficulty that we have to tell this Appellant and her son that in spite of the fact that the application of this rule may seem unfair in David's case, the policy must be applied even-handedly. Only circumstances which come within the exceptions of the Rule can be granted waivers from ineligibility.

Any motion or objections not previously ruled upon are hereby denied and overruled.

### **III. DECISION**



For the foregoing reasons, the August 13, 1996, decision of the Board of Control of the Iowa High School Athletic Association, denying eligibility for 90 school days to Appellant's son, David Miller, is hereby affirmed. There are no costs of this appeal to be assigned.

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DATE

ANN MARIE BRICK, J.D.  
ADMINISTRATIVE LAW JUDGE

It is so ordered.

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DATE

TED STILWILL  
DIRECTOR