IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 14 D.o.E. App. Dec. 10)

In re Matthew Worthington	:	
Tony Worthington,	:	
Appellant,	:	
v.	:	DECISION
Iowa High School Athletic	:	
Association, Appellee.	:	[Admin. Doc. #3824]

The above-captioned matter was heard telephonically on December 10, 1996, before a hearing panel comprising Sharon Willis, Bureau of Planning, Research and Evaluation; Don Wederquist, Bureau of Community Colleges; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding on behalf of Ted Stilwill, Director of Education.

Appellant, Tony Worthington, was “present” by telephone, and represented by Attorney Carole Anderson of Lane and Waterman of Davenport, Iowa. Appellee, Iowa High School Athletic Association [hereinafter, "IHSAA" or "the Association"], was also "present" by telephone in the person of Executive Director Bernie Saggau, *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 November 25, 1996, denying his request for a “waiver” of the 90-day period of ineligibility under the *Open Enrollment Transfer Rule* of 281--Iowa Administrative Code 36.15(4).

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.

In November 1996, Appellant Tony Worthington was promoted to a new position within John Deere. This promotion required him to move his family from Maryland to the quad-cities' area. At the

time of the transfer, Matthew was a sophomore at Loyola-Blakesfield High School in Towson, Maryland, and had just made the varsity basketball team. On November 11th, Matthew became concerned when he learned that the coach was going to make further cuts in the roster without knowledge of his impending move. Although Matthew had been assured he would not be cut from the team, he knew he would be moving to Iowa prior to the end of the basketball season. As his father stated, Matthew unselfishly told the coach of his family's move and resigned the team, knowing that one of his teammates would not be cut if he did this. Matthew told his father that he wanted to move immediately and play basketball at his new school. Matthew and his father reasoned that it would make the difficult transition of moving out of state easier if he could immediately make friends and play on an Iowa basketball team.

In order to facilitate this plan, Appellant and his wife immediately flew both of the children back to Iowa to pick a school and to get them immediately enrolled. He had assured his children that they could pick their school so that they would be comfortable with the environment in which they would finish their high school years.

The Worthingtons' choice, with no reservation, was Pleasant Valley High School in Bettendorf, Iowa. Mr. Worthington stated that the decision was made because of the high academic performance of the school. In addition, they liked the facilities and the interest they received from the staff when they visited. Matthew was especially excited to learn that the basketball season had not yet started and that he could begin practicing with the team on Monday, November 18, 1996.

The problem arose when they were trying to decide on a house to buy. The house they were interested in purchasing was located in the Davenport Community School District. Their realtor, however, assured the Worthingtons that they would be able to Open Enroll to Pleasant Valley. After visiting with the school administration of both districts, the Worthingtons were assured that they would be allowed to open enroll. Matthew's ability to play basketball with the team under Open Enrollment, was never discussed.

On November 14, 1996, the Worthingtons registered their children at Pleasant Valley School. It was then that they learned for the first time, that Matthew would not be eligible to compete in athletics for a 90-day period because of his status as an Open Enrolled student. Mr. Worthington admitted that at the

time he registered Matthew for school at Pleasant Valley, he knew that Matthew would be ineligible to play basketball for 90 days under the provisions of 281—IAC 36.15(4). During the appeal hearing, he was asked if he had considered changing his decision to open enroll because of this, and he replied "No, I hoped that we could appeal and get a waiver from the Rule." Mr. Worthington testified that he believed that the provisions of 36.15(4) did not apply to his situation because his family has never lived in the Davenport District; that this was not a case of athletic recruitment; and the realtor told them that they could open enroll without a problem. Mr. Worthington also testified that his family did not choose to attend Pleasant Valley because of athletic considerations. They made their choice on the basis of academics. He felt strongly that this Rule unfairly punishes Matthew for the "abrupt change in residence" of his parents. He stated that

> [e]very single person that I spoke with has empathy for our situation and was solidly behind my cause, except nobody knows how we can make an exception to the Rule and do what is right, and that is what we are talking about doing here. I understand the Rule and why it exists. I agree in principle with the intent. This is clearly a case

> of the Rule interfering with the situation it shouldn't.

Mr. Worthington appealed to the IHSAA's Board of Control and his appeal was denied on November 25, 1996. In so doing, Mr. Saggau wrote: "A discussion was held, but the Board reaffirmed the position that they do not have the prerogative of setting aside a law or rule on Open Enrollment, so your son would be ineligible for open enrolling to Pleasant Valley High School from the Davenport Community School District." (Letter from Bernie Saggau to Tony Worthington, November 25, 1996.) Mr. Worthington appealed to the Director of the Department of Education on November 28, 1996. His appeal was heard on December 10, 1996.

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. Those rules are found in 281--Iowa Administrative Code 36. The rules are enforced by the schools themselves and the coaches, subject to interpretations and assistance from the Iowa High School Athletic Association (for male ath-

letes) 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 IHSAA relied on 281—Iowa Administrative Code 36.15(4), the *Open Enrollment Transfer Rule* in denying Appellant's request for Matthew to play basketball at Pleasant Valley High School, beginning immediately in the 1996-97 school year. That *Rule* states in pertinent part as follows:

> *Open Enrollment Transfer Rule:* 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. However, if an open enrollment

student participates in the name of a member school during the summer, the student is ineligible to participate in the name of another member school for the first 90 school days of the following school year. This period of ineligibility does not apply if the student:

a. Participates in an athletic activity in the receiving district that is not available in the district of residence; or

b. Participates in an athletic activity for which the resident and receiving districts have a cooperative student participation agreement pursuant to rule 36.20(280); or

c. Has paid tuition for one or more years to the receiving school district prior to making application for and being granted open enrollment; or

d. Has attended in the receiving district for one or more years prior to making application for and being granted open enrollment under a sharing or mutual agreement between the resident and receiving districts; or

e. Has been participating in open enrollment and whose parents/guardians move out of their district of residence but exercise either the option of remaining in the original open enrollment district or enrolling in the new district of residence.

If the pupil has established athletic eligibility under open enrollment, it is continued despite the parent’s or guardian’s change in residence; or

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). If the pupil has established athletic eligibility, it is continued despite the parent’s or guardian’s change in residence; or

> g. Obtains open enrollment due to the dissolution and merger of the former district of residence under Iowa Code subsection 256.11(12); or
>
> h. Obtains open enrollment due to the pupil's district of residence entering into a whole-grade sharing agreement on or after July 1, 1990, including the grade in which the pupil would be enrolled at the start of the whole-grade sharing agreement; or
>
> i. Participates in open enrollment and the parent/guardian is an active member of the armed forces and resides in permanent housing on government property provided by a branch of the armed services.

Id.

None of the above-referenced exceptions are applicable to Matthew's situation. Nevertheless, his father urged the Board of Control, as well as the hearing panel on this appeal, to waive the application of the Rule because its application is unfair. He argued that it is unfair to penalize students who transfer schools because of their parents' change in residence,[1] but who are not within the intent of the prohibition on recruitment of athletes. As Mr. Saggau pointed out, the Open Enrollment Transfer Rule is taken right out of the Code of Iowa. That means that it is more than a Rule of the State Board of Education. It is an Iowa statute which has been passed by the Legislature and signed by the Governor. (See, Iowa Code section 282.18(15)(1995). This explains why Mr. Saggau and the Board of Control have never made an exception or waived ineligibility under this Open Enrollment Transfer Rule. Consistent with the intent of the Legislature,

and in spite of the fact that the application of the rules may seem unfair in an individual's case, the policy must be applied even-handedly to prevent the practice of recruiting.

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[1] It is important to note that Matthew is not being penalized because of his parents' move, but because they did not move into the Pleasant Valley School District. He is penalized by Open Enrolling out of the district his parents moved into.

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 residents" 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.

> 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, we have heard two decisions concerning the Open Enrollment Transfer Rule:

In re Scott Halapua, 13 D.o.E. App. Dec. 294 (Appellant sought a waiver of the Open Enrollment Transfer Rule because her son had been diagnosed with Attention Deficit Disorder and needed the "outlet of athletics."); In re Leo Sullivan, 13 D.o.E. App. Dec. 400 (Student open enrolled to receive appropriate 504 services and asked for a waiver of student ineligibility rule. The waiver was denied because the participation in extracurricular athletics was not part of his 504 Accommodation Plan.).

In the present case, the reasonableness of the open enrollment transfer rule is not being questioned by the Appellant.[2] Neither is there any dispute about the fact that Matthew's situation does not come within the purview of exceptions (a) through (i) of the *Open Enrollment Transfer Rule*. Under these circumstances, we have to agree with the Board of Control's determination that Matthew must serve his 90-day ineligibility period under the *Open Enrollment Transfer Rule.*

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

III.
DECISION

For the foregoing reasons, the November 25, 1996, decision of the Board of Control of the Iowa High School Athletic Association, denying eligibility for 90 school days to Appellant's son, Matthew Worthington, is hereby affirmed. There are no costs of this appeal to be assigned.

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[2] **The validity of the General Transfer Rule was challenged in In re Duncan, 1 D.P.I. App. Dec. 117. In that decision the hearing panel found the Rule to be valid in accordance with what appears to be the majority view of most state courts.**

DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

TED STILWILL
DIRECTOR