IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 13 D.o.E. App. Dec. 400)

In re Leo Sullivan	:	
Cae and Joe Sullivan, Appellants,	:	
v.	:	DECISION
Iowa High School Athletic Association, Appellee.	:	[Admin. Doc. #3811]

The above-captioned matter was heard telephonically on September 19, 1996, before a hearing panel comprising Sharon Slezak, consultant, Office of the Director; Mary Jo Bruett, consultant, Bureau of Planning, Research, and Evaluation; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding on behalf of Ted Stilwill, Director of Education.

Appellants and their son, Leo Sullivan, “appeared” by telephone, and were represented by Steve Sovern, Esq., of Eells and Sovern, PLC, of Cedar Rapids, 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 Rules found at 281--Iowa Administrative Code 6. Jurisdiction for the appeal is found at Iowa Code section 280.13(1995) and 281—Iowa Administrative Code 36.17. Appellants seek reversal of a decision of the Board of Control of the IHSAA [hereinafter, “the Board”] made on September 5, 1996, denying Appellants’ request to “waive” the 90-day athletic ineligibility rule for the current 1996-97 school year.

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.

Leo Sullivan became a 10th grade student at Maquoketa Valley under open enrollment in the Fall of the 1996-97 school year. He had begun high school as a 9th grader in West Delaware where he

was identified as a "504 student." Leo is not a "special education" student, but he suffers from a profound hearing loss which contributes to a learning disability.[1]

While attending West Delaware, Leo participated in cross-country, basketball and track. In an evaluation completed at the Keystone AEA in September 1995, the school psychologist noted in the summary of his report:

> *I am further pleased to see that he [Leo] is involved in extracurricular activities which will assist to enhance his self-esteem.*

As a result of Leo's identification as a student needing special accommodations to benefit from his educational program, the West Delaware Community School District developed a "504 Accommodation Plan." This plan detailed specific actions necessary for Leo's teachers to implement to enable him to benefit from his educational program. Most of the suggestions were modifications required to accommodate his hearing loss and dyslexia. The accommodation plan, though fairly detailed and specific, made no mention of Leo's need to participate in athletics to enhance his self-esteem. Although there were specific suggestions for his various teachers on how to accommodate Leo's hearing problems, there are no suggestions directed to his

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[1] Section 504 of the Rehabilitation Act of 1973 (Section 504), and implementing regulations under 34 CFR section 104.33(a) provide as follows:

> **(a) *General*. A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.**

coaches. There are no suggestions to the cross-country, basketball, or track coaches of ways they could accommodate Leo's disabilities in giving directions. The 504 plan itself made no reference at all to Leo's participation in extracurricular athletic competition.

Some time after Leo began 9th grade at West Delaware, the resource teacher who had developed his 504 plan left and was not replaced. The high school counselor then assumed responsibility for monitoring Leo's 504 plan and his educational program. In May 1996, the parents and the school administration came to the conclusion that Leo was having problems both educationally and socially. Apparently, Leo was being teased by other students which contributed to his problems with self-esteem. Therefore, his parents and West Delaware school personnel determined that Leo would benefit from a fresh start in a new school.

To the credit of Joe Kirchoff, Superintendent of West Delaware and Robert Vittengl, Superintendent of Maquoketa Valley, Leo was allowed to open enroll to Maquoketa Valley even though his application was made well after the deadline. This was accomplished between the two schools in August 1996, for the benefit of Leo's education.

After transferring to his new high school, the 504 Accommodation Plan that was developed at West Delaware the year before, was adopted for implementation at the Maquoketa Valley school. There was no revision of the plan. The Sullivans testified that they were unaware of any restrictions on Leo's eligibility until they had their first meeting with the principal at Maquoketa Valley. Although they did not like the restriction or think it was fair, the ineligibility issue did not change their decision to transfer Leo to Maquoketa Valley. They appealed Leo's ineligibility to the IHSAA Board of Control, seeking a waiver of the open enrollment transfer rule because of his status as a 504 student. Their appeal was denied by the Board of Control on September 5, 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 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 IHSAA relied on 281—Iowa Administrative Code 36.15(4), the *Open Enrollment Transfer Rule* in denying Appellant's request for Scott to play football at LaSalle High School, beginning in the Fall of 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 Scott's situation. Nevertheless, his mother urged the Board of Control, as well as the hearing panel on this appeal, to waiver the application of the Rule because its application is unfair. She argued that it is unfair to penalize students who participate in Fall sports with the 90-day ineligibility rule that does not penalize students who would participate in golf or track in the Spring. As Mr. Saggau pointed out, ineligibility rules are common place and either though it may seem unfair in an individual's case, the policy must be applied even-handedly to prevent the practice of recruiting.

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.

> Athletics associations and conferences regulate nearly all areas of amateur athletics. Ligitation 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 restricts.
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> 405

> [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.

In the present case, the reasonableness of the open enrollment transfer rule is not being questioned by the Appellant. Neither is there any dispute about the fact that Leo's situation does not come within the purview of exceptions (a) through (i) of the *Open Enrollment Transfer Rule*. Indeed, Appellants' attorney conceded that the rules were necessary to prevent recruitment problems between schools. Instead, Appellants relied on the provisions of Iowa Code section 282.18(20)(1995) as authority for the Director to waive the ineligibility rule. That provision is part of the Open Enrollment Law and states:

> Notwithstanding the general limitations contained in this section, in appeals to the state board from decisions of school boards relating to student transfers under open enrollment, the state board shall exercise broad discretion to achieve

> just and equitable results which are in the best interest of the affected child or children.

Id.

Although that provision gives the State Board broad discretion, it does not do so without limitation. The present situation is not appropriate for the exercise of this "subsection 20" power. It would be a different result if the 504 Accommodation Plan specifically addressed the need for Leo to participate in athletic competition to accommodate his disability. There is no mention of athletics in the accommodation plan. Appellants argue that Maquoketa Valley did not put "athletics" in the 504 plan because they knew it would not be possible for Leo to compete prior to the expiration of 90 days. This does not explain why West Delaware omitted mentioning athletic competition when the 504 plan was initially developed. It is also important to note

that Leo is able to practice with the team during the 90-day period. Only competition is prohibited. The benefits of after school athletic activity as an outlet for excess energy and to enhance self-esteem are not denied him.

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

III.
DECISION

For the foregoing reasons, the September 5, 1996, decision of the Board of Control of the Iowa High School Athletic Association, denying eligibility for 90 school days to Appellants' son, Leo Sullivan, is hereby affirmed. There are no costs of this appeal to be assigned.

DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

TED STILWILL
DIRECTOR