

**IOWA STATE DEPARTMENT
OF EDUCATION**
(Cite as 13 D.o.E. App. Dec. 394)

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<i>In re Scott Halapua</i>	:	
Diane Halapua,	:	
Appellant,	:	
v.	:	DECISION
Iowa High School Athletic	:	
Association, Appellee.	:	[Admin. Doc. #3810]

The above-captioned matter was heard telephonically on September 19, 1996, before a hearing panel comprising Sharon Willis, Bureau of Planning, Research and Evaluation; Judge Brown, Bureau of Administration, Instruction, and School Improvement; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding on behalf of Ted Stilwill, Director of Education.

Appellant, Diane Halapua, 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 Executive Director Bernie Saggau, 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 September 5, 1996, denying her 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.

Appellant Diane Halapua and her husband have been divorced for almost six years. During this time, their son, Scott, lived with his father in the Cedar Rapids Community School District but attended the College Community School District under open enrollment. During the 1995-96 school year, Scott attended Prairie High School in College Community School District where he completed the tenth grade.

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Appellant and her husband are now getting back together. They now live together in the Cedar Rapids School District in a location which is nine miles from the Prairie High School that Scott attended last year. There was evidence to show that the additional distance, coupled with a conflict Scott had with his former football coach, prompted him to enroll in LaSalle High School, a private Catholic school, for the 1996-97 school year. Although LaSalle is located in the Cedar Rapids Community School District, Scott's resident district, he is prevented from competing in football and wrestling until he serves a 90-day period of ineligibility.

Scott is ineligible to compete in interscholastic athletics under the provisions of 281-Iowa Administrative Code 36.15(4). Basically, that Rule prohibits students in grades 10 through 12 whose transfer of schools is the result of open enrollment, to compete in interscholastic athletics (although they may practice with the team), during the first 90 school days of transfer. There are exceptions to this Rule, but those exceptions are not applicable to Scott's situation. Therefore, Ms. Halapua sought a waiver of the 90-day period from the Board of Control of the IHSAA.

Appellant appeared before the Board of Control and asked for an exception because Scott has an Attention Deficient Disorder. By participating in athletics, Scott is able to channel his "excess energy" in a positive way. Mr. Saggau advised Appellant that although Scott cannot formally compete on the team at LaSalle for 90 days, he hoped Scott would stay out for football

and practice with the team. This experience would help him channel his energy and help him develop the skills and ability needed so he can be a varsity player someday. By letter dated September 5, 1996, Mr. Saggau formally notified Appellant that her appeal for a "waiver" had been denied by the Board of Control. In addition, he advised her that "there has never been an exception made in the Open Enrollment Rule." Appellant then appealed to the Director of the Department of Education.

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

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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 ineligi-

ble 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

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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 waive 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 because the rule does not penalize students who participate in golf or track in the Spring. As Mr. Saggau pointed out, ineligibility rules are commonplace and even though their application 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._

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.

In the present case, the reasonableness of the open enrollment transfer rule is not being questioned by the Appellant.¹ Neither is there any dispute about the fact that Scott'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 Scott must serve his 90-day ineligibility period under the *Open Enrollment Transfer Rule*.

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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 Appellant's son, Scott Halapua, 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.

¹ 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

TED STILWILL
DIRECTOR