IOWA DEPARTMENT OF EDUCATION

(Cite as 29 DoE App. Dec. 317)

In re: Athletic Eligibility Arland Bruce IV, by Linda Bruce, Appellant, v. Iowa High School Athletic Association, Appellee.	**FINAL DECISION** Case No. 21DOEAE0002 DE Admin Doc. No. 5124

The telephone hearing in this matter was held on September 29, 2020, before Administrative Law Judge Jonathan Gallagher of the Iowa Department of Inspections and Appeals, who was presiding on behalf of the Director of the Iowa Department of Education ("DOE"). Linda Bruce ("Bruce") did not appear; she was represented by Travis Burk and Bradley Obermeier. Brian Humke appeared on behalf of the Iowa High School Athletic Association ("IHSAA"). Both parties called witnesses who testified, and the entire administrative file, including the decision under review, was admitted into the record. The matter is now fully submitted.

FINDINGS OF FACT

The issue in this case is whether IHSAA properly decided Arland Bruce IV ("A.B.") is ineligible to participate in varsity athletics at Ankeny High School. In August of 2020, Bruce and her son, over whom she has sole legal custody, moved from Olathe, Kansas, to Ankeny, Iowa. IHSAA Record, at p. 000011, 39. Bruce is leasing at least a portion of a home in Ankeny, and she left her other two children in the care of her brother, to whom she executed a document giving the ability to make medical and educational decisions over the two other children. Id., at p. 000041-47.

Bruce was motivated to move at least in part so that A.B. "could attend Ankeny High School and participate in the football this fall." Id., at p. 00039. At the time, Covid-19 prevented A.B. from participating in sports in Kansas. Id. A.B. is expected to graduate early and begin attending the University of Iowa in January of 2021 on a scholarship. Id. Bruce does not own a home in Kansas, and while she is spending a majority of her time in Iowa, she does travel back to Kansas to see her other children. Id. By all accounts, A.B. is doing well in school, and Ankeny High School is a member in good standing with IHSAA. Id., at p. 000002.

On August 28, 2020, IHSAA issued a letter finding A.B. ineligible to play varsity football. Id., at p. 000011. The ruling was appealed to the IHSAA executive board. Id. On September 10, 2020, a hearing was held on the matter, and on September 15, 2020, IHSAA issued a ruling affirming the initial decision. Id., at p. 000091. In its decision, the IHSAA found the following facts:

1. [A.B.] was enrolled at Olathe North High School in Olathe, Kansas, during the 2017-18, 2018-19 and 2019-20 school years.

2. [A.B.] enrolled at Ankeny High School for the 2020-21 school year.

3. On August 24, 2020, during a conversation with an athletic director at a Des Moines area high school regarding transfers and eligibility, the athletic director shared that Ankeny High School had a transfer from Olathe, Kansas, who moved to Ankeny with his mother but also had siblings still in Olathe, Kansas.

4. On August 24, in a conversation with Andy Umthun, Ankeny High School Activities Director, Mr. Keating asked him to check on the eligibility requirements for [A.B.].

5. On August 25, Andy Umthun sent an e-mail to Mr. Keating stating that [A.B.] and his mother, [Bruce] moved to Ankeny from Kansas. He indicated they had a lease agreement to reside in a house that was also occupied by a family.

6. Mr. Keating asked Mr. Umthun to provide a Transfer Checklist for [A.B.].

7. According to the IHSAA/IGHSAU Transfer Checklist, [A.B.] and his mother, [Bruce] reside at 2207 SW Abilene Rd., Ankeny, Iowa.

8. [Bruce] provided her Decree of Dissolution which indicates that she is the custodial parent of [A.B.] and his two younger siblings.

9. According to the IHSAA/IGHSAU Transfer Checklist, [Bruce] indicated that the entire immediate family does not reside at 2207 SW Abilene Rd., Ankeny, Iowa.

10. According to the IHSAA/IGHSAU Transfer Checklist, [Bruce] indicated that, "Uncle has guardianship of younger siblings." In a conversation with Executive Director Keating, [Bruce] shared that the uncle and siblings reside in Olathe, Kansas.

11. [Bruce] provided a lease which indicates that she is renting a home located at Ankeny, Iowa. The owner of the home testified at the hearing that [Bruce] is renting the basement of the home.

12. [A.B.'s] transcript from Olathe, Kansas, indicates his address as 21820 W. 121st Place, Olathe, Kansas.

13. According to [Bruce], the family lived in a home in Olathe that is owned by her deceased mother's trust.

14. The address of that home is 21820 W. 121st Place, Olathe, Kansas, and the documents received indicate that her two younger children are still residing there.

15. Despite the representations of the Appellant, [Bruce's] brother does not have legal guardianship of her other two children. [Bruce] did execute a form indicating that she gave

> her brother permission to seek medical care and make education decisions for the children on her behalf.
>
> 16. [Bruce] younger two children are still attending school in Olathe and Ms. Bruce testified that she has not decided whether they will be moving to Ankeny to attend school.
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> 17. [Bruce] executed an affidavit indicating that she goes back to Olathe to visit her other two children but the majority of the time is spent in Ankeny.
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> 18. In an article published by the Des Moines Register on August 31, 2020, [A.B.] is quoted as stating that "his mom goes back and forth between Ankeny and the Kansas City suburb."
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> 19. Ankeny High School is a member in good standing of the IHSAA.

Id., at p. 000091-93.

IHSAA then concluded there was no exception to the general transfer rule, which prohibits transfer students from playing varsity sports for 90 consecutive school days as more fully discussed below, that would allow A.B. to play immediately. Id., at p. 000096. The two exceptions considered were for a change in parental residence and the "catch-all" exception allowing any "fair and reasonable" eligibility decision. Id. With respect to the change in parental residence exception, IHSAA held Bruce was "maintaining two residences" and, therefore, could not demonstrate a qualifying "contemporaneous change in parental residence" allowing A.B. to fit within the exception. Id. This was because Bruce still had "two other minor children" in Kansas enrolled in school residing in the family's original home and because she had yet to "decide whether the two children will remain in Kansas or move to Iowa." Id. With respect to the "catch-all" exception, IHSAA held it was required to consider the "motivating factors of the student transfer" and found the exception could not apply because "it is clear that [A.B.] came to Ankeny solely to enroll in school and play football." Id. In its decision, IHSAA referenced the handbook as guidance on interpreting the rule. Id., at pp. 000095-96.

Bruce appealed the decision to DOE, triggering the present proceeding. On appeal, Bruce raises three arguments. First, Bruce claims A.B. meets the change in parental residency exception because Bruce must only show a change in residence and not domicile and because she has done this given she provided proof her primary residence was in Kansas and now is in Iowa where she is living a majority of the time. Appellant Br., at pp. 5-6. Bruce claims IHSAA erred in relying on its handbook and further claims the term "residence" is ambiguous, citing numerous contexts in which the term has been defined differently. Id. Second, Bruce claims A.B. meets the "catch-all" exception because the Covid-19 pandemic has caused many students to move to Iowa to compete and because those found to be eligible have done so by having more resources to fund a full move, such as by being able to sell a home "on a moment's notice." Id., at p. 6. General fairness, according to Bruce, requires all such students to be allowed to compete in this "once in a century global pandemic." Id. Third, Bruce argues A.B.'s equal protection rights are being violated because similarly-situated students have been found to be eligible. Id., at pp. 7-11.

In response, IHSAA argues its decision is proper. With respect to the change in parental residence, IHSAA argues—relying on a portion of its handbook— "a family unit must have only one residence to qualify for [the] exception." Appellee Br, at p. 8. As a result, anything less than the entire "family unit" moving to the new residence is insufficient to satisfy the exception since such would show "a change did

not totally occur." Id. According to IHSAA, Bruce has not moved the entire family unit to Iowa because she retains ultimate decision-making authority over her two children left in Kansas and because she has chosen to leave them in Kansas and not enroll them in Ankeny. Id., at p. 9. With respect to the catch-all exception, IHSAA argued in its brief that the analysis of IHSAA holds, and at the hearing, IHSAA claimed the DOE has no authority to employ it. Id., at p. 10. With respect to the equal protection claim, IHSAA generally denies any discrimination and argues such a claim can only be preserved but not decided for review.

Of note, Bruce agrees DOE cannot consider the type of constitutional challenge she has made, and she stated the claim was made before DOE for preservation purposes. Further, when questioned at the hearing, Bruce indicated she did not object to any factual finding by IHSAA, and given the record supporting each, they are accepted.

CONCLUSIONS OF LAW AND ANALYSIS

A.

The Iowa legislature has authorized the State Board of Education to adopt administrative rules for the "proper administration, supervision, operation, adoption of eligibility requirements, and scheduling of extracurricular interscholastic athletic contests and competitions and the organizations." Iowa Code § 280.13. This includes providing immediate athletic eligibility to students in some circumstances. Id. § 256.46. At issue here is the "general transfer rule," which provides in relevant part:

> A student who transfers from a school in another state or country or from one member or associate member school to another member or associate member school shall be ineligible to compete in interscholastic athletics for a period of 90 consecutive school days . . . unless one of the exceptions . . . applies. The period of ineligibility applies only to varsity level contests and competitions. . . . In ruling upon the eligibility of transfer students, the executive board shall consider the factors motivating student changes in residency. Unless otherwise provided in these rules, a student intending to establish residency must show that the student is physically present in the district for the purpose of making a home and not solely for school or athletic purposes.
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> a. Exceptions. The executive officer or executive board shall consider and apply the following exceptions in formally or informally ruling upon the eligibility of a transfer student and may make eligibility contingent upon proof that the student has been in attendance in the new school for at least ten school days:
>
> (1) Upon a contemporaneous change in parental residence, a student is immediately eligible if the student transfers to the new district of residence or to an accredited nonpublic member or associate member school located in the new school district of residence. . . .
>
> (9) In any transfer situation not provided for elsewhere in this chapter, the executive board shall exercise its administrative authority to make any eligibility ruling which it deems to be fair and reasonable. The executive board shall consider the motivating factors for the student transfer. The determination shall be made in writing with the reasons for the determination clearly delineated.

281 Iowa Administrative Code ("I.A.C.") §36.15(3).

An individual aggrieved by the eligibility determination of IHSAA's executive board may file an appeal with the Director of DOE. Id. § 36.17. The hearing process to be followed is governed by Chapter 6 of the Education Department's rules, and the decision must be "based on the laws of the United States, the state of Iowa and the regulations and policies of the department of education and shall be in the best interest of education." Id. § 6.17. In absence of any provision of law delineating what party has the burden of proof, the appealing party bears the burden of proving an exception applies. See, e.g., Wonder Life Co. v. Liddy, 207 N.W.2d 27, 31 (Iowa 1973) (holding, "in administrative proceedings, as well as in court proceedings, the burden of proof, apart from statute, is on the party asserting the affirmative of an issue"); see also Norland v. Iowa Dept. of Job Services, 412 N.W.2d 904, 910 (Iowa 1987).

B.

In this case, IHSAA's decision must be set aside because there was a sufficient, contemporaneous change in parental residence to allow A.B. to play varsity athletics. This renders the issue of whether the catch-all exception applies moot. This also renders moot the equal protection claim, but it should be noted that in no event could this matter be decided at this administrative level. See, e.g., Soo Line R. Co. v. Iowa Dep't of Transp., 521 N.W.2d 685, 688 (Iowa 1994) ("Constitutional issues must be raised at the agency level to be preserved for judicial review. This is true despite the agency's lack of authority to decide constitutional questions." (internal citations omitted)).

As noted above, a transfer student is immediately eligible to play interscholastic, varsity athletics and does not need to wait 90 consecutive school days "upon a contemporaneous change in parental residence." 281 I.A.C. § 36.15(3)(a)(1). No dispute exists between the parties that Bruce's action in moving to Iowa with A.B. from Kansas to the relevant school district in Ankeny was sufficiently contemporaneous to satisfy the rule. IHSAA's ruling never raised this issue, and the record indicates a sufficient temporal nexus given all the events occurring in August of 2020. Additionally, no dispute exists that Bruce is the relevant parent in terms of parental residence given she had sole legal custody of A.B. at the time of the decision.[1] Further, while there may have been some stray comments at the hearing, the parties also agree Bruce established a residence in Ankeny. IHSAA specifically held such, finding Bruce was "maintaining two residences" which could only be possible if the home Bruce was renting was considered a residence. This conclusion is sound because the governing law does not create a specialized definition for the term "residence" in this context and because renting a home and living there most of the time would appear to meet virtually any generic definition of the term. See, e.g., In re Hanlen, 779 N.W.2d 494 (Iowa Ct. App. 2010) ("Residence has an ordinary meaning of the act or fact of dwelling in a place for some time [or] the place where one actually lives."). As such, the true dispute between the parties lies in whether there was a sufficient "change" in Bruce's residence.

[1]Of note, the general transfer rule contains a provision further limiting eligibility of students who have reached the age of majority, stating in relevant part: "In ruling upon the transfer of students who have been emancipated by marriage or have reached the age of majority, the executive board shall consider all circumstances with regard to the transfer to determine if it is principally for school or athletic purposes, in which case participation shall not be approved." 281 I.A.C. § 36.15(3)(b). An academic record in the file indicates A.B. reached the age of majority on September 26, 2020, after IHSAA made its ruling. IHSAA Record, at p. 000081. Although the record indicates A.B. did transfer for school or athletic purposes, this rule would not appear to bar his eligibility because it occurred after his transfer and after the IHSAA ruling.

The meaning of the term "change" is a matter of regulatory interpretation, and the Iowa Supreme Court has held the "interpretation and construction of statutes are nearly identical to the rules that guide [the] interpretation and construction of agency rules." Evercom Sys., Inc. v. Iowa Utilities Bd., 805 N.W.2d 758, 765 (Iowa 2011). Such is "a pure question of law," and the Iowa Supreme Court has articulated a very specific methodology. Andover Volunteer Fire Dep't v. Grinnell Mut. Reinsurance Co., 787 N.W.2d 75, 79 (Iowa 2010) (internal quotation marks omitted). The overarching purpose behind any interpretation is to effectuate the drafter's intent, and the "first step when interpreting a [provision of law] is to determine whether it is ambiguous." State v. Iowa Dist. Court for Scott Cty., 889 N.W.2d 467, 471 (Iowa 2017). "A [provision of law] is ambiguous if reasonable minds could differ or be uncertain as to the meaning of the [law]." The Sherwin-Williams Co. v. Iowa Dep't of Revenue, 789 N.W.2d 417, 424 (Iowa 2010) (internal quotation marks omitted). "Ambiguity arises in two ways—either from the meaning of specific words or from the general scope and meaning of the [law] when all of its provisions are examined." State v. McCullah, 787 N.W.2d 90, 94 (Iowa 2010) (internal quotation marks omitted). A term or phrase is given its "common and ordinary meaning," often from a common usage dictionary, unless the drafter chose to define it or it had "a well-settled legal meaning" at the time the law was established. Miller v. Marshall Cty., 641 N.W.2d 742, 748 (Iowa 2002).

"If no ambiguity exists, [a law] is rationally applied as written." Andover Volunteer Fire Dep't, 787 N.W.2d at 81. This is true absent the most exceptional circumstances where confidence exists that "the [drafter] did not intend the result required by literal application of the [law's] terms." Brakke v. Iowa Dep't of Nat. Res., 897 N.W.2d 522, 541 (Iowa 2017). Indeed, "the task is to interpret the [law], not improve it," and interpretation cannot be used as a guise for redrafting a provision of law, even one that is at best a "half measure" on an important issue. Id. In short, "[w]hen the meaning of a statute or rule is clear, [there will be no] search for meaning beyond the express terms of the statute or rule." Evercom Sys., Inc., 805 N.W.2d at 765.

Here, no ambiguity exists in the governing rule concerning the term change. Neither the administrative rule nor the statutes upon which it is built provide a special definition of the term "change," and there does not appear to be any specialized, "well-settled legal meaning" of the term. See, e.g., 281 I.A.C. § 36.15. As such, the common and ordinary meaning controls, and the Iowa Court of Appeals has held: "Change is commonly defined as to make different in some particular." State v. Adams, 791 N.W.2d 429 (Iowa Ct. App. 2010) (unpublished) (citing Merriam–Webster's Collegiate Dictionary 206 (11th ed. 2004) (internal quotation marks omitted)). Thus, "in order to change residences, one must necessarily establish a new one," which can occur—as the Court of Appeals noted when interpreting similar statutory language—by either replacing the old residence or securing an additional residence. State v. Jenkins, 810 N.W.2d 896 (Iowa Ct. App. 2012) (unpublished). More broadly, then, the exception's language that immediate eligibility is found "[u]pon a contemporaneous change in parental residence" where "the student transfers to the new district of residence" only requires the parent to establish a new residence, either by replacing an old residence or securing a second residence, in a new school district and having the student move to such district. 281 I.A.C. § 36.15(3). By all accounts, this is what occurred here because, as IHSAA found, Bruce established a new residence in Ankeny, Iowa, and A.B. moved to the new district of residence. Accordingly, eligibility must be found on these facts.

The arguments against this conclusion are not persuasive. As stated above, IHSAA argues the parental residence exception requires a "family unit to have only one residence." Appellee Br., at p. 8. As a result, anything less than demonstrating that a "total family change of residence has occurred on a permanent basis" is insufficient. Id. In short, there must be proof of a "bona fide family relocation." Id. For support, IHSAA cites In Re Melanie H., 15DOE004, Decision (Oct. 22, 2015). The core difficulty

with this claim, though, is the plain language of the rule does not reference or define a family unit, state the requisite family unit must all relocate, or even restrict a parent to one residence. 281 I.A.C. § 36.15(3). To the contrary, the rule explicitly references only a "change in parental residence" and the student transferring to the "new residence." Id. It does not state all immediate family members must move, and in today's world of blended and varied family compositions, it is not entirely certain who would compose a family unit. Granted, definitions could be created, but it would not be based on any statute or rule.

In Re Melanie H. does not require a different conclusion. In that case, the family consisted of married parents and two children. In Re Melanie H., 15DOE004, at p. 646. The family moved from Texas to a home in Eldridge, Iowa. Id. Ultimately, the family purchased a second residence in Iowa City, and the mother and two children moved to Iowa City full-time for school and work. Id., at p. 647. Due to his employment, the father stayed in the family's Eldridge home one to three nights a week, where he was active in the nearby Clinton community. Id. The family also received the homestead exemption for the Eldridge residence and had no plans to sell the home. Id. Under these facts, it was found there was "no contemporaneous change in parental residence" sufficient to trigger the exception because "it was not unreasonable for the Board to conclude that the Appellant had no intention of permanently making a move to Iowa City." Id., at p. 649. The decision also stated the issue was novel, and: "There is substantial evidence that a total family change of residence has not occurred on a permanent basis." Id., at p. 648.

While there are similarities, the present case is factually distinguishable from In Re Melanie H.. In Re Melanie H. involved two parents, one of whom may not have truly established a second residence given the specific finding "one member of the family continues to reside regularly, albeit part-time, in the original home in Eldridge." Id., at 648. By contrast, Bruce is a single parent of three children, who rented at least part of a house in Ankeny and does not appear to own a home in Kansas even though two of her children reside there with a relative. However, even if the facts of the case are materially similar, the case does not provide a regulatory analysis of how an exception that explicitly references only a "change in parental residence" in fact requires showing a greater move of the entire family. Without any express language in the rule, the only means of finding such a requirement would be to find the language in the rule ambiguous and then use such ambiguity to write in additional requirements. This is a step too far given the plain language of the rule, and such an action would be no more than a guise for redrafting a provision of law to correct some perceived shortcoming. Brakke, 897 N.W.2d at 541. Any claim that it would be absurd to interpret the law in this fashion as it would allow too many exceptions is not compelling given the onerous requirements of the doctrine as explained in Brakke. Id.

Any remaining arguments against applying the exception as written to find A.B. eligible are also not persuasive. IHSAA cites its handbook for the concept that the general transfer rule is concerned with the "change" of a student's residence and the idea there can "only be one residence." Appellee Br, at p. 7. However, the dispositive language in the governing administrative rule concerns a "change in parental residence," which is a different issue. Moreover, handbooks, even if issued by an agency, have no force of law because they are not properly promulgated administrative rules. See, e.g., Fears v. Iowa Dep't of Human Servs., 382 N.W.2d 473, 475 (Iowa Ct. App. 1985). Further, no relief can be found in any standard of review because, while the abuse of discretion standard has often been applied in Director cases including in In Re Melanie H., the issue in this case is a legal question concerning interpretation of the law, which is essentially reviewed de novo absent deference given to agencies in certain contexts on judicial review. See, e.g., Iowa Code 17A.19. This administrative review is not such a case.

Finally, the ending two sentences of the general transfer rule do not compel a different conclusion in this case. Once again, those provisions state:

> In ruling upon the eligibility of transfer students, the executive board shall consider the factors motivating student changes in residency. Unless otherwise provided in these rules, a student intending to establish residency must show that the student is physically present in the district for the purpose of making a home and not solely for school or athletic purposes.

281 I.A.C. § 36.15(3). These provisions have no significance in the outcome of this case because, as for the first sentence, consideration of the factors motivating a student's change is residency does not bear on the issue in dispute in terms of whether there was a sufficient change in parental residence. Further, both parties agree the related last sentence concerning a student's purpose is also not controlling for the same reason that it does not bear on the exception at hand. Accordingly, A.B. satisfied the exception for parental change in residence, and is eligible. The remaining issues are moot, and the underlying decision must be REVERSED.

DECISION

For the foregoing reasons, the September 15, 2020, IHSAA decision finding A.B. ineligible is REVERSED. There are no costs associated with this appeal to be assigned to either party.

Dated this _1_ day of October, 2020.

Jonathan M. Gallagher
Administrative Law Judge

It is so ordered.

10/1/2020
_____
Date

_____
Dr. Ann Lebo, Director
Iowa Department of Education