IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 13 D.o.E. App. Dec. 249)

In re Tim Ratino	:	
Regina Ratino, Appellant,	:	
v.	:	DECISION
Iowa High School Athletic Association, Appellee.	:	[Admin. Doc. #3790]

The above-captioned matter was heard telephonically on June 17, 1996, before a hearing panel comprising Dr. Lee Wolf, consultant, Bureau of Instructional Services; Ron Riekena, consultant, Bureau of Food and Nutrition; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding on behalf of Ted Stilwill, Director of Education.

Appellant, Regina Ratino, and her husband, Dr. Richard Ratino, "appeared" by telephone, representing their son, Tim Ratino, who is the subject of this appeal. 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*.

A mixed evidentiary and on-the-record hearing was held pursuant to Departmental Rules found at 281--Iowa Administrative Code 6. Jurisdiction for the appeal is found at 281--Iowa Administrative Code 36.17, authority for which is derived from Iowa Code section 280.13 (1995).

Appellant sought reversal of a decision of the Association by its executive board of control made on May 30, 1996, following a telephonic hearing. The Association's decision was to deny interscholastic athletic eligibility to Appellant's son who attends a private, parochial, boarding school in Nebraska, but who wants to play baseball for a school he does not attend but which is located in the District of his parents' Iowa residence.

I.

FINDINGS OF FACT

The administrative law judge finds that she and the Director of Education have jurisdiction over the parties and subject matter of this appeal. 281--IAC 36.17.

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Appellants' son, Tim Ratino, is a 15-year-old who has just completed his sophomore year at Mt. Michael Benedictine High School, a religious boarding school in Elk Horn, Nebraska. During the school year, he boarded during the week and spent his weekends at home in Sioux City. He spends summers living with his parents at home in Sioux City, Iowa. He has played baseball every summer since t-ball and enjoys the sport very much. Mt. Michael does not offer a high school baseball program.[1] According to Appellant, Sioux City does not have an American Legion team for players Tim's age, so he'd like to play baseball for West High School in Sioux City.

Appellant testified that she contacted Ron Heaton, the athletic director for the school district and inquired about Tim's eligibility to play for West High School. He, in turn, contacted the superintendent, Dr. Austin, who forwarded the inquiry to Bernie Saggau, who is the Executive Director of the Iowa High School Athletic Association. About May 3, 1996, Mr. Saggau sent a letter, Dr. and Mrs. Ratino explaining that Tim would be ineligible for high school baseball at Sioux City, West High School. Mrs. Ratino requested an appeal before the IHSAA Board of Control, which was held on May 30, 1996.

Her appeal was denied in a letter of that same date. Accompanying the denial was a condensed form of the minutes of the appeal hearing which contained a more detailed discussion of the basis of the Board of Control's denial of eligibility. Basically, Appellant argued before the Board of Control that her son's situation was unique and should be analyzed to the situations addressed by the "exceptions to the General Transfer Rule" contained in 281--IAC 36.15(3)(b)(5) which states:

> A transfer student who attends in a school district that is a party to a cooperative student participation agreement, as defined in rule 36.20(280), with the school district the student previously attended is immediately eligible in the new district to compete in

[11] According to Bernie Saggau of the IHSAA, Iowa is the only state in the Union which offers a summer high-school baseball program.

> those interscholastic athletic activities covered by the cooperative agreement.

Secondly, Appellant argues that her son's case should be covered by 36.15(3)(b)(8) which states:

> In any transfer situation not provided for elsewhere in this chapter, the executive board shall be empowered to exercise its administrative authority to make any eligibility ruling which it deems to be fair and reasonable. The determination shall be made be writing with the reasons for the determination clearly delineated.

The synopisis of the minutes of the hearing before the Board of Control explained why the rules referenced by Appellant did not provide for an exception to the eligibility rule which prevents her son from playing interscholastic sports for a school that he does not attend. First of all, Appellant's son is not a **transfer** student as both of the subrules require. Tim Ratino does not intend to transfer to West High School now or in the future. He attends high school in Nebraska. In denying Appellant's request for eligibility, the Board of Control explained that "cooperative programs" exist between schools in the event that a school does not directly make participation in an interscholastic activity available to its students, [then] the board of education of the school may, by formally adopted policy ... provide for the eligibility of its students in interscholastic activities provided by a [contigious] school district. It was also explained that there could not be a cooperative program with a school that was not a school in Iowa." (May 30, 1996, Min. Bd. of Cont.)

In regard to Appellant's second referenced subrule, 36.15(3)(b)(8), the Board of Control stated that "the Board does not exercise judgement here unless it is a **transfer** situation. This case clearly is not a transfer. This is a case where a young man is returning to live with his parents during the summer, and plans to return to the school he attended last spring." Id.

In response to the parents' inquiry about the applicability of 36.15(3)(b)(2), the Board of Control stated that this is a subrule that applies only after the student returns to his parents' resident district and enrolls to become a student in that district.[2] In other words, "if Tim were attending Elk Horn

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[22] The subrule at issue states as follows: The student who has attended high school in a district other than where the student's

and on October 15, decides that he wants to come back and live with his parents, he would be made eligible immediately at West High once he enrolls and becomes a student at West High." Id.

At the appeal hearing, Mr. Saggau stated that the facts of this case are not in dispute with the exception of one item. Mr. Saggau stated that it was his understanding that there is an American Legion baseball team which has been started in Sioux City by a Rick and Margaret Voss. This fact is contrary to the parent's assertion that there is no American Legion team in Sioux City so Tim's only hope to play baseball is for the high school. The real dispute in this case is the consequence that will follow from the application of the IHSAA's eligibility rules. Appellant argues persuasively that her son's case is so unique, that an exception should be made in his "best interest." She argues that they have lived in this school district in Sioux City for 21 years and have contributed substantially to that community. This is not a case of school district recruitment that is the reason these eligibility rules exist in the first place.

In contrast, Mr. Saggau argues that an exception in Tim's case will create a "slippery slope." It will be nearly impossible for the Association to control eligibility in cases in which "look like this one" but are not quite the same. Although Mr. Saggau admitted that in his 29 years as Executive Director he has never seen an appeal like this, he also stated that he believed appeals had not been made because the eligibility rules were well respected and understood. When that is the case, folks don't waste their time appealing issues that are clearly contrary to the rules.[3]

II.
CONCLUSIONS OF LAW

The State Board of Education has adopted rules governing student eligibility pursuant to Iowa Code section 280.13. Those rules are found in 281--Iowa Administrative Code 36. The rules

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parent(s) resides and who subsequently returns to live with the student's parent(s) becomes immediately eligible in the parent's resident district. 36.15(3)(b)(2).

[3] This testimony is consistent with testimony given by Mr. Saggau in the past that "the purpose of the rule limiting the eligibility of transfer students is to discourage recruiting of prep athletes of all kinds, and to keep academics above athletics as a reason for changing schools ... the absence of a rule in this area would create "chaos" within high school athletics. See, In re Robert Joseph, 8 D.o.E. App. Dec. 146, 151 (1990).

are enforced by 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). The Department of Education has a long-standing agreement (pursuant to Iowa Code chapter 28E) with the Association and the Union to enforce the rules by unofficial and official determinations, subject to appeal here.

Generically, state regulation of high school and college student athletic eligibility is common place. 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.

In re Robert Joseph, pplies.

> a. [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. ...

However, in Iowa Code §256.46 (1995), the Legislature directed the State Board to adopt rules that permit a child "who does not meet the residence requirements for participation in extracurricular interscholastic contests or competitions sponsored [by the IHSAA] ... to participate in the contests or competitions **immediately** if the child is duly enrolled in a school, is otherwise eligible to participate, and ... is a foreign exchange student; ... ." Id. (Emphasis added.)

Unfortunately for Appellant, the facts show that he is attending Davenport North "primarily for school purposes" and does not qualify as a student in "an approved foreign exchange

program." As a result, Appellant falls into the longstanding eligibility rules which have consistently required transfer students to sit out one semester (or as presently written, 90 school days) to reduce the likelihood or potential of students changing schools for athletic reasons. See, 281--IAC 36.15.

The most recent precedent on this issue is the appeal of In re Evan Vallance, 10 D.o.E. App. Dec. 319 (1993). That decision stated the rationale for requiring the period of ineligibility as follows:

> In establishing a period of ineligibility for transfer students, the State Board of Education is in step with 49 other states and the National

> Collegiate Athletic Association (NCAA), the organization that governs amateur athletics at the college level. Collegiate-level transfers result in a one-year ineligibility period, however, compared to most states' one-semester period for high school athletes.
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> We are not so naive to believe that no student athletes come to the United States in the hope of enjoying high school visibility, a full college scholarship, and perhaps a professional career thereafter. It occurs with some degree of regularity. Recruiting of foreign high school aged students is no longer uncommon; our globe is getting smaller, figuratively speaking, and U.S. high school coaches take teams to foreign countries for educational and athletic purposes. Could they recruit foreign athletes to return? Most assuredly. Do they? It has happened. If we are not to turn this country into a giant athletic incubator, rules need to be established and observed to discourage such activities.
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> ...
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> In an earlier case we reviewed past State Board precedent involving requests to waive the ineligibility period and the reasons behind the granting or denial of those requests. The decision stated,
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> > 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. In re Robert Joseph, 8 D.o.E. App. Dec. 146 at 155 (1990).

> That belief is also true when applied to a foreign exchange student who arrived here without being under an exchange program. Our interpretation of Evan's situation results in all students being treated equally and fairly.

In re Evan Vallance, supra at 321-22.

The facts of Tim Ratino's case fit squarely within the conclusions and rationale of the two cases cited above. Both the evidence and the law support upholding the decision of the IHSAA Board of Control.

III.
DECISION

For the foregoing reasons, the decision of the Board of Control of the Iowa High School Athletic Association, to deny eligibility for Tim Ratino to play baseball for his parents' resident district beginning in the summer of 1996, 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