

**IOWA STATE DEPARTMENT
OF EDUCATION**
(Cite as 13 D.O.E. App. Dec. 177)

In re Ziyad Alwan :

Ziyad Alwan, :
Appellant, :

v. :

DECISION

Iowa High School Athletic :
Association, Appellee. :

[Admin. Doc. #3679]

The above-captioned matter was heard telephonically on October 25, 1995, before a hearing panel comprising Morris Smith, consultant, Bureau of School Administration and Accreditation; Marge Smith, Bureau of Internal Operations; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding on behalf of Ted Stilwill, Director of Education.

Appellant, Ziyad Alwan, "appeared" by telephone, representing himself. Appellee, Iowa High School Athletic Association [hereinafter, "IHSAA" or "the Association"], was also "present" by telephone in the person of Executive Director Bernie Saggau, and David Harty, associate director, also *pro se*.

An evidentiary hearing was held pursuant to Department Rules found at 281--Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found at 281 Iowa Code §256.46 (1995) and 281--Iowa Administrative Code 36.15(3)(b)(3). Appellant sought reversal of a decision of the executive board of control of the IHSAA [hereinafter "the Board"] made on October 9, 1995, denying Appellant's request to waive the 90 school day athletic ineligibility for the upcoming 1995-1996 school year.

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.

Ziyad Alwan is an Australian citizen who came to the United States in August, 1995, to "further his education." Ziyad's mother is American and has dual citizenship in Australia and the United States. Ziyad came to the United States to live with his uncle and to attend high school at Davenport North. After

graduation from high school, he plans to attend the University of Iowa for college. At the time of the hearing, Ziyad was 17 years old and would be 18 years old on February 14, 1996.

After school started in the fall, Ziyad decided he would like to play "American football." After trying out for the team, he was told the coach would like to have him play but needed to find out about his eligibility. Mr. Saggau testified that he received a phone call from Davenport North and was told that Ziyad was a foreign student. However, Ziyad was not part of an approved foreign exchange program, so Mr. Saggau said that he would be ineligible to play sports until January 1, 1996.

Ziyad wrote a letter to Mr. Saggau appealing his ineligibility which was received by the IHSAA on September 18, 1995. It was placed on the Board's agenda for the next meeting scheduled for October 9, 1995. After considering the facts of Ziyad's situation, the Board upheld the determination of ineligibility. Ziyad was informed of that by letter dated October 10, 1995, written and signed by Mr. David Harty, associate director. The letter stated two reasons for the ineligibility determination:

1. Ziyad was not attending school in the Davenport North attendance area under an approved foreign exchange program; and
2. he had not moved to the United States with his parents and therefore would be treated as any other transfer student who moves into the district from another school district without his parents moving with him.

On October 18, 1995, Ziyad wrote to Mr. Saggau stating that he disagreed with the decision because:

1. He was a permanent resident of the United States and not a foreign student, so his case did not fit under the foreign exchange rule; and
2. that since he had never attended school in the United States prior to the 1995-96 school year, it was impossible for him to have "moved from another district" as stated in Mr. Harty's second example.

He was then advised by Mr. Saggau that he could take his appeal to the Department of Education, which he did.¹

¹Since there was no one from the school district represented at the hearing, we have no indication of whether or not school district officials in Davenport North intend to require the payment of tuition for Ziyad's attendance. Iowa Code § 282.1 defines the term "resident student" for the purposes of free schooling versus mandatory tuition for non-residents.

II. CONCLUSIONS OF LAW

The State Board of Education has adopted rules governing the eligibility of students to participate in interscholastic competition. See, 281--IAC 36.15. The IHSAA relies on 281--36.15(3), the *General Transfer Rule* in denying Ziyad's request to play sports at Davenport North. That rule states in pertinent part as follows:

A student who transfers from one school district to another school district, except upon a contemporaneous change in parental residence, shall be ineligible to compete in interscholastic athletics for a period of 90 school days ... unless one of the following exceptions of the general transfer rule applies.

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.

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.

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,

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 Ziyad Alwan'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 IHSA Board of Control.

III.
DECISION

For the foregoing reasons, the decision of the Board of Control of the IHSAA to deny eligibility for Appellant until January 1, 1996, is hereby affirmed.

DATE

5/24/96

Ann Marie Brick
ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

5/24/96

Ted Stilwill
TED STILWILL
DIRECTOR