IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 11 D.o.E. App. Dec. 85)

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| In re Mick, Matt, Micah, and Mack John Daggy | : | |
| Mark Daggy, Appellant | : | |
| v. | : | DECISION |
| Iowa High School Athletic Association, Appellee. | : | [Adm. Doc. #3492] |

The above-captioned matter was heard on February 11, 1994, before a hearing panel comprising Dr. Barbara Wickless, consultant, Bureau of School Administration and Accreditation; Dr. David Wright, consultant, Office of Educational Services for Children, Families and Communities; and Kathy Lee Collins, J.D., legal consultant and designated administrative law judge, presiding. Appellant Mark Daggy was present in person and was represented by Mr. Larry Miller of Cosson & Miller, Des Moines. Appellee Iowa High School Athletic Association [hereinafter, "the Association"] was present in the persons of David Harty, associate executive director, and Alan Beste, wellness coordinator. The Association was represented by Mr. Lloyd Courter of Courter, Quinn, Doran & Anderson, Boone.

Appellant sought review of a decision of the executive board of control [hereinafter "the Board"] of the Association made on February 4 following a hearing on February 1, that Appellant's sons would be subject to 90 school days of ineligibility for transferring schools. Authority and jurisdiction for the appeal are found at 281 Iowa Administrative Code 36.17. Procedures found at 281 Iowa Administrative Code 6 were applied to the hearing.

## I.

## FINDINGS OF FACT

The administrative law judge finds that she and the Director of Education have jurisdiction over the parties and subject matter before them.

Mark and LeeAnn Daggy are the parents of four boys: Matt, a senior; Mick, a junior; Micah, a sophomore; and Mack John, a freshman in high school. Prior to December 6, 1993, the boys attended the Saydel Consolidated School District ("Saydel") where they had been enrolled since 1987 despite the fact that the

family did not live in the district but rather in the Des Moines Independent Community School District.[1] All four boys are wrestlers and superior academic students.

From 1987 until winter of 1993, the six family members resided at 1541 Seventh Street in Des Moines, also the location of the family business, Nite Owl Printing. It appears to be a two-story building with the first floor constituting the printing business and all of its equipment. The boys slept on the second floor. There is also a wrestling room with floor and wall mats and an extensive weight room with equipment recently purchased from the New Age Fitness Center on the second floor. The building has toilet facilities but no shower or bath and no kitchen or dining area *per se*. One witness testified at our hearing that he believed the family showered at a fitness center or health club where they held a membership. (There is also a "stock tank" in the back that can be used for baths.) The facility was obviously not originally designed as a single-family dwelling, although the Daggys used it as such for over six years.

Early this winter, after the apartment was rented in West Des Moines, Mr. Daggy began upstairs renovations in earnest. A videotape of the entire building and its contents was introduced into evidence at the hearing below and at our hearing as well. The hearing panel saw no bathroom or kitchen and no closets, bedrooms, or beds for that matter, although it is undisputed that the building was used as the family residence from August of 1987 until December 5, the date of the residence change at issue in this case.

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[1]When the oldest boy, Matt, was in seventh grade, the Daggys made an offer on an acreage or farmstead in the Saydel district. Mr. and Mrs. Daggy asked the Saydel superintendent to accept the boys in school on the promise that the family intended to move into that district. The offer on the property was ultimately denied, but apparently the family did not apprise Saydel school officials of this fact. According to Mr. Daggy, in the fall of the following year, (then) Superintendent Jensen at Saydel contacted the family and indicated they would have to enroll in the Des Moines district or pay tuition to continue to attend in Saydel as non-residents. Mr. Daggy stated, "See, they knew our boys were 4.0 students and good athletes. My wife said, 'my kids won't go to Des Moines . . . .' She said we'd home school them. [Jensen] said in the interest of the boys, rather than pull them out he would let them attend there." Prev. Record, Transcript at p. 40. When a new superintendent took over in Saydel, he contacted the Daggys about their status and then, according to Mr. Daggy, made arrangements with the Des Moines school district to show that the boys were in Saydel under open enrollment for all of those previous years.

The building is in an area of high crime activity. The family owns a large dog and apparently also arranges their schedule so that ideally someone is always there at night in order to discourage vandals or burglars.

On November 28 or 29, 1993, the first day of competition for wrestling in the 1993-94 school year, Matt Daggy failed to make the varsity team for Saydel as a heavyweight. If he dropped weight to 189 pounds -- the next lower weight class -- he would be in direct competition with his younger brother, Mick. A decision was made (by the four boys, according to Mr. Daggy) that all of them would transfer to Dowling High School in West Des Moines, an accredited private school.

In conversations with David Harty, assistant executive director of the Association, and with Saydel Superintendent Randy Clegg, Appellant indicated that the reason for the transfer was to give Matt an opportunity to wrestle varsity in the hope of competing in the state tournament. He also stated that despite all four boys' nearly perfect grades, he believed they were not being adequately challenged academically at Saydel. At some point he indicated a desire to buy a home in the West Des Moines school district.

In his contacts with the Association, Appellant was informed orally and in writing of the eligibility rules relating to transfer students. Specifically, and for purposes of summary, [2] Mr. Daggy was informed that if the students transferred, they would be ineligible for 90 school days unless the entire family relocated. Appellant wrote to Mr. Harty on November 29 indicating that the family would be moving to West Des Moines in the near future and that "our sole and only residence will become the West Des Moines location." Prev. Record, Board Decision at p. 8. He asked for a ruling from the Association. Id. Mr. Harty wrote back indicating that once the move had taken place and the boys were enrolled, a ruling would be made. Id. at p. 9. Mr. Harty also reiterated the factors that the Association would apply in determining whether or not a "bona fide move" had occurred. Id.

Appellant paid rent for a furnished 2-bedroom apartment in West Des Moines on December 5 and enrolled his sons at Dowling on December 6, 1993. Appellee's Exhibit AA ("Respondent's Exhibit 9"), Petition for Injunction at para. 3. This date did not coincide with the quarter or semester break for either Saydel or Dowling. The boys went out for wrestling and some or all of them participated in at least one dual meet for Dowling.

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[2]The relevant eligibility rules are quoted in full in Division II of this decision.

Mr. Harty received a number of telephone calls following the boys' enrollment at Dowling. The nature of these calls could probably most generously be described as inquiries about the nature and timing of the Daggys' transfers and questions regarding the "good faith" relocation of the parents. Accordingly, David Harty and Al Beste of the Association engaged in some late night and early morning surveillance of the West Des Moines apartment and the family business that had also served as the family residence.[3]

Mr. Harty's and Mr. Beste's observations, jointly and separately,[4] led them to the conclusion that the four boys were living alone in the two-bedroom apartment and the parents continued to reside at the 7th Street address. In addition to their personal observations, the following factors played a part in the Association's initial decision made on January 10, 1994, that the entire family had not moved and that the rental and boys' occupancy of the apartment was merely a subterfuge to circumvent the 90 school day ineligibility period for transferring athletes:

1. The apartment was rented for two persons. Apartment rules, although not expressed in the written contract nor posted in the office, preclude more than four individuals from occupying a two-bedroom apartment, unless a fifth occupant is an infant under two years of age.

2. The Daggys had filed no change of address forms for mail or drivers' licenses.

3. There are only three beds in the apartment, two twins and a queen. It would be difficult if not impossible for six full-sized adults to sleep in three beds.

4. The family admittedly did not look hard for housing that would accommodate all six members. The apartment site, Warren House, offers only furnished apartments and is one of the few complexes where one can rent by the day, week, or month without signing a six-month or year-long lease.

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[3]Mr. Harty tried to retain the services of a private investigator, but he was unable to take the case at that time and instead advised the Association of his recommendations for conducting this type of investigation.

[4]The surveillance was conducted on the following dates: December 23, 1993, January 4, 1994, January 5, 1994, and January 6, 1994. The details of the two men's observations are chronologged at stipulated Appellee's Exhibit AA at pp. 3-6.

To date, Appellant has not indicated how long he intends to rent the apartment in question, #20.

5. Mr. and Mrs. Daggy made statements or responded to questions by Mr. Harty in his office on January 11 that led him to believe they were acknowledging the fact that they, as parents, were not living at the apartment.[5]

The observations themselves will not be repeated in full here. Suffice it to say, Mr. Beste and Mr. Harty were satisfied that the four boys were living in the apartment in West Des Moines but that the parents were not.

Following the Association's January 10 ruling that insufficient evidence existed to support the contention that a bona fide family relocation had taken place, Appellant retained counsel and sought an injunction in Polk County District Court to prevent the ruling of ineligibility from being imposed. The injunction was denied. Thereafter, Appellant exercised his right to a hearing before the Board of the Association, which was held on February 1, 1994. The Board affirmed the Association's initial ruling. This appeal followed.

II.
CONCLUSIONS OF LAW

The first issue the administrative law judge was required to address in this case was a motion filed by Appellant to disqualify the designated Administrative Law Judge on the ground that she is a member of the Board of Control. (Although the motion did not expressly allege "bias," I assume this was the basis for the objection.) Ms. Collins denied the motion and explained on the record that the Department of Education has traditionally assigned an individual from this agency to fulfill the ex-officio and non-voting liaison role with both the Association and the Iowa Girls High School Athletic Union, its female counterpart. Often the liaison has been the same individual who has presided at Department hearings in the event of appeals from decisions of either of those organizations. Accordingly, scrupulous care has always been taken that in all eligibility rulings by the two boards, the ex-officio member is absent from the meetings when hearings and deliberations take place and is not advised of the deliberations. This was the case in this situation as well. Thus, in the absence of any evidence of bias or prejudice, I uphold Ms. Collins' ruling on the motion.

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[5]At the February 1 hearing, Mr. Daggy suggested that Mr. Harty had misunderstood him and his wife that day.

With respect to the primary issue before us, the Department of Education's long-standing rule regarding transfer students--which each of the fifty states has adopted in similar if not identical form and which exists in the National Collegiate Athletic Association as well, only with a longer period of ineligibility--reads as follows:

> *General transfer rule.* 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, as defined in 281--12.2(2), exclusive of summer enrollment, unless one of the following exceptions to the general transfer rule applies.
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> a. In ruling upon the eligibility of transfer students, the executive board is empowered to consider the factors motivating student changes in residency. Unless otherwise provided in the 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. Eligibility awarded under this transfer rule may be made contingent upon proof that a request for transfer has been made and that the student has been in attendance in the new school for at least ten days.

281 Iowa Administrative Code 36.15(3),(a). (Exceptions omitted as inapplicable here.)

Another rule comes into play in this situation, although it was not addressed by the Board below:

> *Transfers between public and nonpublic schools.*
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> . . .
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> c. . . . When a student transfers from a public school to a nonpublic school, or vice versa, after the start of ninth grade, without a contemporaneous change of parental residence, the student shall be ineligible to compete in interscholastic athletics for a period of 90 school days, as defined in 281--12.2(2), exclusive of summer enrollment. However, when a corresponding change of parental residence occurs with the transfer,

> the executive board is empowered to make eligibility decisions based upon motivating factors for the transfer including, but not limited to, distance between the former school of attendance and the new residence.

Id. at 36.15(5)(c).

The State Board of Education has adopted these rules regarding student eligibility pursuant to Iowa Code section 280.13 and an Iowa Supreme Court case, Burger v. Iowa High School Athletic Assn., 197 N.W.2d 555 (Ia. 1972). 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). 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.

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 Residence' 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.
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> . . . Residency/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][i], Matthew Bender, 1990.

The Association and Board found that the rules requiring ineligibility surrounding transfers without parental relocations stem from two concerns: recruiting of high school athletes, and family decisions to change schools for athletic purposes ("to benefit their competitive standing"). Prev. Record, Board Decision at pp. 15-16. If a family in good faith leaves a family residence in one district to move to a new residence in another district, no ineligibility period attaches except in the event that the student then transfers to a private school within the new district. The presumption then is that the student will have a semester (90 school days) of ineligibility unless the student is a freshman just starting high school. That presumption of ineligibility can be rebutted by factors showing that the parent chose the nonpublic school because of location as opposed to athletic advantage. 281 IAC 36.15(5)(c).

These are the transfer rules by which high school athletes in Iowa have played for over twenty years. There have been no appellate judicial determinations made in Iowa regarding the validity of these rules, but we do have prior cases from within this agency that can serve as guidance and precedents.

Most recently, In re Robert Joseph involved a former resident of the Virgin Islands who moved first to Florida and when he learned he was ineligible there (he was 19 years old), he moved to Iowa where his age would not be a bar to eligibility until he turned 20. The Association Board ruled him ineligible on other grounds, however; he had moved to Iowa without a like change of parental residence, and for the purpose of school and athletics, so the general transfer rule was applied to him and upheld by the State. In re Robert Joseph, 8 D.o.E. App. Dec. 146 (1991).

In 1989, the State Board found that a former *bona fide* foreign exchange student who returned to Iowa the following year without the benefit or sanction of a foreign exchange student program or organization was ineligible for 90 days as a regular transfer student. In re Rita Ricobelli, 7 D.o.E. App. Dec. 105 (1989).

In re Stephen Keys involved a student who transferred from a private school in Waterloo to a public school in Cedar Falls when his parents' financial situation required free education for the children. There was no change in parental residence. The State Board found insufficient hardship existed to justify an exception to the 90-day ineligibility period. In re Stephen Keys, 4 D.P.I. App. Dec. 24 (1984).

In 1982, the State Board overturned an ineligibility ruling by the Association for a boy who was suffering from serious emotional problems (abuse) at the school in the district in which his parents resided. His parents transferred guardianship to others in a neighboring district. The fact that there was "no evidence [of] any athletic recruitment . . . by the receiving school," coupled with the testimony of the boy's psychiatrist as to his emotional stability, led the State Board to apply exception "f" and rule him eligible immediately. In re Todd Bonnes, 3 D.P.I. App. Dec. 106 (1982).

In In re Nancy Sue Walsh the State Board overturned a decision of the Girls Union and awarded eligibility to a junior girl whose guardianship was transferred from her parents to a family in another community because of rumors regarding the student-athlete and the coach in her resident district. The rumors reached a fever pitch, to the point where Nancy was contemplating dropping out of school entirely. Again, there was literally no contact between Nancy of her family and the coaches in the new district, so recruiting was not found or even hinted at. In re Nancy Sue Walsh, 3 D.P.I. App. Dec. 34 (1982).

The Union was again overturned in an eligibility decision involving a young woman who moved from one divorced parent's home to the other's and then back again. At issue was transfer subrule (a), and the State Board, interpreting its own rule, stated, "We do not feel that eligibility should be denied a student who changes residence in a broken home situation in the absence of evidence of an improper motive for the change in residence." In re Tamara Bruns, 2 D.P.I. App. Dec. 353, 356 (1981).

In 1978, a student who changed school districts without a corresponding change of residence by her parents was denied eligibility when her stated motive for changing residences (to family friends under guardianship) was for superior academic and athletic opportunity in the new district. In re Carme Braby, 1 D.P.I. App. Dec. 284 (1978).

On the other hand, a student whose family relationship with his parents had broken down considerably, motivating the district court to place him with his older brother in another district, was ruled eligible over the Association's initial determination of ineligibility. In re Scott Anderson, 1 D.P.I. App. Dec. 280

(1978).

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.

And finally, in the earliest recorded State Board of Education decision on athletic eligibility and transfer status, the State Board denied eligibility to a student who moved with his family from West Des Moines to Missouri, and then moved back without them for his senior year under guardianship with his uncle. In that decision, the State Board rejected the notion that court-appointed guardianships should be the sole determinant on the issue of transfer. In recognizing that court-appointed guardianships are relatively easy to obtain (given the consent of the legal parent) and yet do not necessarily establish the requisite non-athletic motivation, the State Board concluded, "To allow the mere establishment of guardianship [as the sole, conclusive, deciding factor of eligibility] would effectively emasculate the athletic transfer rules." In re Steven John Duncan, 1 D.P.I. App. Dec. 117, 120 (1976).

If the validity or reasonableness of the transfer rule were at issue, case law would be very instructive; the weight of it clearly supports the denial of immediate eligibility to a transfer student whose parents do not move with him or her. See United States ex rel. Missouri State H.S. Activ. Assn., 682 F.2d 147 (8th Cir. 1982) (Missouri Association rule making transfer students ineligible for one calendar year unless the student meets one of the exceptions (i.e., if the transfer is due to a corresponding change of parental residence, was due to a school closing or reorganization, or if the transfer was ordered by the board of education) is a reasonable and neutral regulation.); Simkins v. South Dakota H.S. Activ. Assn., 434 N.W.2d 367 (S.D. 1989) (Association rules barring transfer student from eligibility for one year except students whose parents correspondingly made a bona fide change in residence was rationally related to purposes of discouraging recruitment and school-hopping and therefore constitutional); Steffes v. California Interscholastic Federation, 222 Cal. Rptr. 355 (Cal. App. 1986) (Transfer student whose parental residence did not correspondingly change is ineligible, under rule, for varsity sports in which student previously competed or ineligible for all sports, depending upon certain conditions, for one full year from date of transfer; rule held valid under constitutional challenge); Berschback v. Grosse Pointe Pub. Sch. Dist., 397 N.W.2d 234 (Mich. App. 1986) (Similar transfer rule held constitutional as rationally related to valid, legitimate state purpose of deterring recruiting); and Menke v. Ohio H.S. Athl. Assn., 441 N.E.2d 620, 2 Ohio App.3d 244 (1981) (similar transfer eligibility rule held constitutional; injunction denied). But see Anderson v. Indiana H.S. Ath. Assn., 699

F.2d 719 (S.D. Ind. 1988)(similar rule held arbitrary and capricious).

Based upon the evidence submitted in this case, Appellant apparently misunderstands the conclusion of the Association and Board. The Board did not contest the fact that the four Daggy boys are living in the apartment in West Des Moines and that their parents are paying the bills there as well as at Dowling. The hearing panel also does not question the fact that the upstairs of the business is being remodeled and meanwhile is of doubtful habitability. (Frankly, although there may not have been the widespread construction taking place on the second floor while the boys were living there as has occurred since they moved out, the upstairs accommodations are probably as habitable now as they were when the boys slept there on bare mattresses or sleeping bags.) No one questions the fact that Mr. and Mrs. Daggy work long and hard to maintain their business enterprise profitably, and that this may entail all night shifts by them to complete a job or jobs.

Most of the evidence offered by Appellant is wide of the relevancy mark. The question is whether Mr. and Mrs. Daggy moved with the boys to the two-bedroom furnished apartment at Warren House in West Des Moines, Iowa, and whether that move was for the purpose of making a home or rather to avoid the consequences and application of the general transfer rule. In four nights of observation, Mr. and Mrs. Daggy were at the apartment only once, and then quite briefly -- for only ten minutes -- before returning to their place of business and residence, not to work all night but obviously to retire for the evening.

The hearing panel also took note of one important fact: no one has given sworn testimony in this case that Mr. and Mrs. Daggy intended to give up their former residence on 7th and College and move to West Des Moines to an apartment with the intent to remain there. Attorneys for the Appellant and the Association waived swearing in at the Board's hearing, and Mr. Daggy did not choose to testify at this agency's hearing where oath or affirmation is required. (Mrs. Daggy did not appear.) The boys did not testify. No affidavits were offered of neighbors at the apartment building or others who could or would swear under oath that the family has fully relocated. The only statements, in over fifty-seven pages of transcription and two hours of hearing before this agency, dealing with the ultimate issue is the following colloquy between Mr. Courter and Mr. Daggy that occurred in the Board's hearing on February 1:

Q. Mr. Courter: Do you and your wife live there? In the Warren House Apartments?

A. Mr. Daggy: When we are not working, yes.

Q. Mr. Courter: On an average of, per week, since December 1993 up to the present time, how many nights have you and your wife resided in the Warren House Apartments with your four sons?

A. Mr. Daggy: To the best of my recollection my wife has been out there -- there have been five members out there all but about ten nights.

Q. Mr. Courter: How many nights have you resided there?

A. Mr. Daggy: *Probably, maybe once a week at most.*

Prev. Record, Transcript at p. 50 (emphasis added). Thus, from December 5 to February 1, a total of 57 days, Appellant acknowledges that he had slept there *at most* eight nights; we are supposed to assume that the other 49 nights he was working all night or his wife was there. Furthermore, we are asked to believe that of the ten days of admitted nonpresence by one or the other of the boys' parents, Mr. Harty and Mr. Beste just happened to be observing the apartment on four of them. I am inclined to agree with the hearing panel and the Board of the Association that such evidence (including the fact it was non-sworn "testimony") is not highly credible.

I believe Mr. Daggy is a father who, himself a former Iowa State wrestler, has understandably and admirably high hopes and goals for his sons, obviously exceptional students and gifted athletes. The family has struggled together for several years to build a business, living in less than desirable accommodations above the print shop operation without beds and a shower. But I also see a father who has operated outside of the system for over six years, enrolling his children in a district other than that of his residence (perhaps initially in good faith but once his offer on the property was rejected, kept them there in questionable faith); a father who so badly wants his sons, all of them, to wrestle at the tournament level that he would rent an apartment and pay tuition for four to Dowling, at considerable expense, because, in his own words,

> "We made that move because we were requested for the eligibility of our sons."

Id.

If nothing else, this statement reveals the Daggys' intent, and that intent was emphatically *not* "for the purpose of making a home." It was, quite apparently, "solely for school or athletic purposes." This is the father who has indicated in no uncertain terms that he'll take his son or sons out of the state if he has

to so that they can wrestle in state tournament level competition this year, while in the same breath inquiring what that would do to their eligibility when they returned. Appellee's (stipulated) Exhibit AA at "Respondent's Exhibit 6."

The burden is on Appellant to prove that his family relocated; he failed to carry his burden. Any motions or objections not previously ruled upon are hereby denied and overruled.

III.
DECISION

For the foregoing reasons, the decision of the board of control of the Iowa High School Athletic Association, imposing a ninety school day period of ineligibility on Matt, Mick, Micah, and Mack John Daggy, is hereby affirmed.

2-22-94
Date

Al Ramirez, Ed.D.
Director of Education