

IOWA STATE DEPARTMENT  
OF EDUCATION  
(Cite as 11 D.o.E. App. Dec. 62)

In re Danica McDowell :  
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 John and Christine McDowell,  
 Appellants, :  
 :  
 v. : DECISION  
 :  
 Iowa Girls High School :  
 Athletic Union, :  
 Appellee. [Adm. Doc. #3474]

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The above-captioned matter was heard on December 28, 1993, before a hearing panel comprising Mr. Terry L. Voy and Ms. Su McCurdy, consultants in the Bureau of School Administration and Accreditation; and Kathy Lee Collins, legal consultant and designated administrative law judge, presiding. Appellants Mr. and Mrs. John McDowell were present in person, unrepresented by counsel. Appellee Iowa Girls High School Athletic Union [hereafter "IGHSAU" or "the Girls Union"] was present in the persons of Robert Smiley, associate executive secretary, and Troy Dannen, assistant executive secretary of the Girls Union, also unrepresented by counsel.

An evidentiary hearing was held in accordance with departmental rules found at 281 Iowa Administrative Code 6. Appellants seek reversal of a decision of the executive board [hereafter "the Board"] of the IGHSAU made on December 14, 1993, affirming the application of the rule imposing a 90-day athletic ineligibility period for students who transfer after ninth grade.

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. Authority for the appeal lies at 281 Iowa Administrative Code 36.17.

Appellants live in Hartford, South Dakota, with their son and another daughter. Their oldest daughter, Danica, is a junior in high school and currently lives with her grandparents in Eagle Grove, Iowa, where she has attended high school since approximately November 10, 1993. Previously she lived with her parents and attended Tri-County High School in Lyons, South Dakota.

Danica wants to be a doctor. During the summer after her sophomore year in high school, her father made arrangements with one of his former classmates, Dr. Rebecca Shaw, for Danica to "shadow" her in her medical practice. This activity not only firmed up Danica's interest in medicine, it also convinced her that she should attend the University of Iowa for undergraduate work and for medical school. Appellants learned that in-state college tuition at Iowa is currently more than \$5,000 per year lower than out-of-state tuition. At the graduate level the difference is nearly \$12,000 yearly. If Danica were an Iowa resident, Appellants determined they could save over \$20,000 in four years of undergraduate education and much, much more in medical school tuition.

The family reached a decision this fall during the first semester of Danica's junior year in South Dakota; they would send her to live with her grandparents in order to establish Iowa residency for college. Guardianship papers were contemplated, but as of the end of December had not been drawn. Danica transferred following the completion of the first quarter at Tri-Valley High School in Lyons. Appellants' testimony was most forthright; Danica's relocation to Eagle Grove was for the purpose of trying to establish her as an Iowa resident in order to pay in-state tuition at the University of Iowa.

Appellant John McDowell is a businessman who trades grain and feed; he also farms and maintains a cattle operation. The extent of his business prohibits the relocation of his family twenty miles across the Iowa border.

At the time of hearing, Danica was attending school full time and practicing with the girls' basketball team, although she had been ruled ineligible as a transfer student by the Girls Union and had, accordingly, been prohibited from participating in interscholastic competition. She has not been charged tuition at Eagle Grove.

Academically, Danica is an A-B student with better than 3.0 grade-point average. Although her class is about the same size in Eagle Grove as it was in Lyons, Danica's family feels she will be better prepared for college and medical school by her Iowa

education. For example, she can take chemistry as a junior in Eagle Grove whereas that course is only offered to seniors in Tri-Valley.

Danica played basketball this fall in South Dakota. Their season begins in the early fall with practice starting in August. The South Dakota state tournament is held December 4. Danica earned a starting position on the junior varsity and played sparingly at the varsity level there this fall. Her father characterized her as an "average or slightly above average player." She may also go out for golf and track later this year, but basketball is apparently her favored sport.

Appellant Christine McDowell testified that Danica feels left out by not getting to play in the games. However, she does practice with the team, rides the team bus, and sits immediately behind the team at games.

When Appellants learned that Danica was initially deemed ineligible, they met with Girls Union officials who attempted to explain the Iowa transfer rule and, in their opinion, the inapplicability of the rule's exceptions to Danica's situation. Thereafter, Appellants exercised their right to review of the IGHSAU's administrative decision by appearing before the Board. That body unanimously ruled that Danica was ineligible under the general transfer rule adopted by the State Board of Education and administered and enforced by the two athletic organizations in Iowa. Testimony evidenced the fact that the Girls Union is not contending that Danica's move to Eagle Grove was for athletic purposes. The IGHSAU administration and Board believed that Danica's move was for "school purposes."

## II. CONCLUSIONS OF LAW

The rule at issue in this case 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 ... unless one of the following exceptions ... applies.

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.

281 I.A.C. 36.15(3)"a". The exceptions are enunciated in subrules b(1) through b(8).

Appellants have urged us first to interpret the phrase "for school purposes" in subsection "a" as limited to elementary and secondary school concerns. Their position is that Danica's transfer was to establish Iowa residency for college, which they believe is beyond the level at which the Girls Union can or should be concerned about "school purposes." The Union's response to this argument was to suggest that if the state department of education or its director adopted this view, we would have a steady stream of students (athletes and non-athletes) moving to Iowa to establish residency for college, paying no property or income taxes but expecting free public education in the high schools of this state and then reduced tuition at college.

IGHSAU officials also testified that all 50 states have rules or laws imposing an ineligibility period for students who change schools. Ineligibility for students transferring is designed primarily to discourage recruiting, although it serves other purposes as well. Appellants argued that as there is no evidence or allegation of recruiting, Danica should be free from the application of the rule. Because recruiting is difficult to prove in all cases, this state -- and presumably the other 49 -- have adopted a general rule imposing ineligibility after a change in schools rather than engaging in a fact-finding inquiry in each case looking for evidence or non-evidence of recruiting. No one is suggesting Danica was recruited by Eagle Grove. Nevertheless, I agree with the Girls Union that we have not historically and cannot in the future enter into case-by-case determinations of the basis for student transfers beyond the simple question of whether the student left the parents' home out of a need to make a home elsewhere or instead moved "for school purposes."

To these arguments I would add that the Board of Regents has adopted a rule, of which I take official notice pursuant to Iowa

Code section 17A.14(4)<sup>1</sup>, that would indicate that Appellants' daughter's presence in Iowa is not indicative of *bona fide* ("good faith") residency. The Board of Regents' rule reads as follows, under the heading "Classification of residents and nonresidents for admission, tuition, and fee purposes":

a. A person enrolling at one of the three state universities shall be classified as a resident or nonresident for admission, tuition, and fee purposes by the registrar or someone designated by the registrar. The decision shall be based upon information furnished by the student and other relevant information.

b. In determining resident or nonresident classification, the issue is essentially one of why the person is in the state of Iowa. *If the person is in the state primarily for educational purposes, that person will be considered a nonresident.* For example, it may be possible that an individual could qualify as a resident of Iowa for such purposes as voting, or holding an Iowa driver's license, and not meet the residency requirements as established by the board of regents for admission, tuition, and fee purposes.

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<sup>1</sup>"Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. . . . Parties shall be notified at the earliest practicable time . . . of the facts proposed to be noticed and their source, . . . and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the agency determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such fact." Accordingly, it is my conclusion and decision that fairness does not require an opportunity for Appellants to contest the rule duly adopted by the Board of Regents related to the criteria for in-state residency for tuition purposes.

Although Appellant John McDowell testified that a person at the University of Iowa Admissions Department informed him that residency for the University could be established by "residing in Iowa for twelve months, taking fewer than six hours, or establishing a legal guardian in Iowa," it is my belief that the rules formally adopted by the Board of Regents control in this situation and a staff person at the Admissions Office would be estopped from applying criteria other than those announced in the rules.

c. The registrar, or designated person, is authorized to require written documents, affidavits, verifications, or other evidence deemed necessary to determine why a student is in Iowa. The burden of establishing that a student is in Iowa for other than educational purposes is upon the student.

A student may be required to file any or all of the following:

- (1) A statement from the student describing employment and expected sources of support;
- (2) A statement from the student's employer;
- (3) A statement from the student's parents verifying nonsupport and the fact that the student was not listed as a dependent on tax returns for the past year and will not be so listed in future years;
- (4) Supporting statements from persons who might be familiar with the family situation;
- (5) Iowa state income tax return.

d. Change of classification from nonresident to resident will not be made retroactive beyond the term in which application for resident classification is made.

e. A student who gives incorrect or misleading information to evade payment of nonresident fees shall be subject to serious disciplinary action and must also pay the nonresident fees for each term previously attended.

f. Review committee. These regulations shall be administered by the registrar or someone designated by the registrar. The decision of the registrar or designated person may be appealed to a university review committee. The finding of the review committee may be appealed to the state board of regents.

681 IAC 1.4(1) (emphasis added). (It appears that the information given to Mr. McDowell when he called the Admissions Office is contained in subrule 1.4(2)"d." This provision of "residency" at each institution applies to college students already enrolled.)

Given this rule, it seems clear that what Appellants have attempted to do is in violation of the law, at least insofar as their attempt to establish residency for purposes of in-state college tuition. Moreover, the Board of Regents' rule confirms this agency's belief that the state universities operate under the same principle as do the K-12 public institutions. In general, a student cannot move to Iowa or to a given school district, without her parents, primarily for school purposes and expect to be deemed a resident. See Mt. Hope School District v. Hendrickson, 197 Iowa 191, 194, 197 N.W.47, \_\_\_ (1924) ("If a minor leaves the home of his father, to reside in another place for the sole purpose of securing a free public school education, and with the intent to return to his former residence, he does not become an actual resident within the purview of our school law.") See also Iowa Code § 282.1 (definition of resident for [K-12] school purposes); In re Connie Berg et al., 4 D.P.I. App. Dec. 150, 165 (1986).

It is my decision that there is no need to read or apply any of the exceptions to the general transfer rule<sup>2</sup> in this case. This is due to the fact that the general transfer rule quoted in full at the outset of the Conclusions of Law portion of this decision represents exactly the circumstances presented in Danica's situation. She is "a student who transfer[red] from one school district to another . . . [without] a contemporaneous change in parental residence." This decision is wholly consistent with prior precedent of this agency. See In re Patricia McGinnis, 1 D.P.I. App. Dec. 125, 127 (1977); In re Stephen Keys, 4 D.P.I. App. Dec. 24, 29 (1984); In re Rita Ricobelli, 7 D.o.E. App. Dec. 105, 107 (1989); In re Robert Joseph, 8 D.o.E. App. Dec. 146, 158 (1990).

In passing, I note that Appellants have not been asked to pay tuition at Eagle Grove, and to avoid that potential, are or were contemplating a judicial order placing guardianship of Danica with her grandparents. I sincerely hope that they do not go to that trouble and expense given the fact that a guardianship is not determinative of the issue of bona fide residency. See Mt. Hope School District, supra; Iowa Code § 282.1. The issue is whether the student leaves her parents' home for the purpose of making a home or, instead, primarily for school purposes. If the McDowells were unable or unwilling to care for Danica, or if, for example, Danica were living in a one-parent situation and the single parent worked nights leaving Danica and her siblings

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<sup>2</sup>Appellants also urge this agency to apply 36.15(3)"b"(8) to their situation. ("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.")

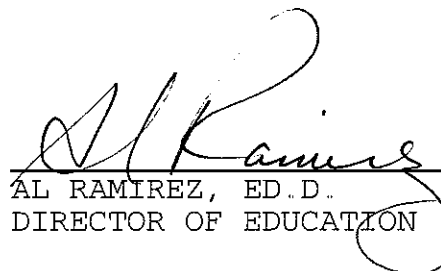
without supervision, or if Danica were to marry and follow her husband to Eagle Grove, she would be entitled to a tuition-free education and immediate eligibility for athletics upon her relocation. This would be leaving her parents' home for the purposes of making or the need to make a new home. Fortunately for her, none of these situations exists; unfortunately for her parents, she could and should be charged tuition by Eagle Grove.<sup>3</sup>

III.  
DECISION

For the foregoing reasons, the decision of the executive board of the Iowa Girls High School Athletic Union made on December 14, 1993, is hereby affirmed. Danica McDowell is ineligible for a total of 90 school days beginning with her first day of attendance at Eagle Grove High School.

January 21, 1994

DATE

  
AL RAMIREZ, ED.D.  
DIRECTOR OF EDUCATION

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<sup>3</sup>Iowa law is mandatory: "Nonresident children shall be charged the maximum tuition rate as determined in section 282.24, subsection 1 . . .". Iowa Code § 282.1 (1993) (emphasis added).