

IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 10 D.o.E. App. Dec. 319)

In re Evan Vallance :
Paul Thielking, :
Appellant, :
v. : DECISION
Iowa High School :
Athletic Association, :
Appellee. : [Admin. Doc. #3369]

The above-captioned matter was heard telephonically on August 9, 1993, before a hearing panel comprising Don Helvick, consultant, Bureau of School Administration and Accreditation; Robert Yeager, assistant chief, Bureau of Educational and Student Services; and Kathy L. Collins, legal consultant, designated administrative law judge, presiding on behalf of William L. Lepley, Ed.D., director of education.

Appellant, Paul Thielking, an attorney, "appeared" by telephone, representing himself and Evan Vallance, the student who is the subject of this appeal. Appellee Iowa High School Athletic Association [hereafter, IHSAA or the Association] was also "present" by telephone in the person of Executive Director Bernie Saggau, unrepresented by counsel.

A stipulated, on-the-record hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6. Appellant seeks reversal of a decision of the Board of Control of the IHSAA made on June 25, 1993, denying Appellant's request to waive the ninety school day athletic ineligibility period for his ward, Evan Vallance, for the upcoming 1993-94 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. 281 IAC 36.17.

Evan Vallance is an Australian citizen who came to the United States as a foreign exchange student one year ago. The family with whom he was initially placed moved from Ankeny to Urbandale early in the school year, and shortly thereafter Evan was placed with a different family, the Thielkings, also in Urbandale. Evan participated in athletics, specifically basket

ball and track, last year as a junior although he did not complete the track season.

In approximately April or May, after several months of discussion, Evan decided to come back to the United States for his senior year, continuing to live with the Thielkings who have a son Evan's age. Evan returned to Australia in July to visit with his family, so he was not available for the hearing. Appellant expected him to return in time for school to start this fall.

Appellant stressed that there were no family problems motivating Evan's decision to stay in the United States for another year, nor was the decision made solely for athletics. This, he assures us, is not a recruiting situation; although Evan is apparently a good basketball player, he was not necessarily a standout on the team. He played in several games and even started in some, but his decision was not made so that he could play basketball. It was, rather, for educational reasons. Evan may wish to go to college in the United States.

Appellant became Evan's guardian in order to be on firmer legal ground in his status as *in loco parentis*. As this hearing did not involve testimony *per se*, we have no indication of whether school district officials in Urbandale intend to require the payment of tuition for Evan's attendance or not.¹

II. CONCLUSIONS OF LAW

Appellant's argument that Evan should have full eligibility for athletics this year rests on the following language from the *Code of Iowa*:

The state board [of education] shall adopt rules that permit a child who does not meet the residence requirements for participation in extracurricular interscholastic contests or competitions sponsored or administered by an organization [including the IHSAA] to participate . . . immediately if the child is duly enrolled in a school, is otherwise eligible to participate, and meets one of the

¹Iowa Code section 282.1 defines the term "resident student" for purposes of free schooling versus mandatory tuition for non-residents.

following circumstances or a similar circumstance: . . . the child is or has been a foreign exchange student; . . .

Iowa Code §256.49 (1993).

Unfortunately for Appellant, the key language in that statute, ("is or has been a foreign exchange student") was affected by legislation this spring. The words "or has been" were deleted. 1993 Iowa Acts, ch. 206 §201 (West 1993). The change went into effect July 1, 1993. Thus, the basis for Appellant's argument that Evan should be eligible all year no longer exists.

For what it's worth, the change is consistent with our rules² and our longstanding view that any student (except a foreign exchange student) who moves into a school district solely for school purposes is not a bona fide resident entitled to all of the privileges of school, including free tuition. See Iowa Code §282.1 (1993). Correspondingly, our eligibility rules have long read that transfer students must sit out one semester to reduce the likelihood or potential of students changing schools for athletic reasons. See 281 IAC 36.15.

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.

²Our department rule reads, ". . . a student whose residence changes due to any of the following circumstances is immediately eligible . . . :

. . . 3. Participation in a foreign exchange program recognized by the school of attendance. . . ."

If we are not to turn this country into a giant athletic incubator, rules need to be established and observed to discourage such activities.

Are we saying that Evan Vallance has been recruited for athletic purposes, or is staying here another year just to play basketball in the hope of receiving some athletic scholarship offers? No. However, even though Evan Vallance's personal circumstance may not be an example of the worst kind of recruiting situation, we see no loss to him that would not be experienced by any other student who transferred into Urbandale, without a like change of parental residence.

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 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.

I therefore concur with the judgment of the Board of Control of the Association, albeit perhaps for slightly different reasons.³ Evan Vallance will be ineligible for high school athletics for ninety (90) school days in school year 1993-94. The decision of the Board of Control of the IHSAA is affirmed.

9-2-93
DATE

William L. Lepley
WILLIAM L. LEPLEY, Ed.D.
DIRECTOR OF EDUCATION

³It seems clear that the Board of Control was not aware of the 1990 statute at issue in this case, but rather based the decision herein on past practice involving transfers of foreign students and on the Department's rule language. At the time of hearing, this agency was aware of the statute but unaware of the amendment deleting the words "or has been."