IOWA STATE BOARD
OF EDUCATION
(Cite as 7 D.o.E. App. Dec. 232)

In re Michelle Sheahan :

Joseph Sheahan, :
Appellant,
:
v. DECISION
:
Davenport Community School
District[1] and Iowa Girls' :
High School Athletic Union,
Appellees. [Admin. Doc. #2063]

The above-captioned matter was heard on October 11, 1989, before a hearing panel comprised of Dwight Carlson, assistant chief, Bureau of School Administration and Accreditation, and designated presiding officer of this hearing by the Director of Education[2]; Edith Eckles, consultant, Bureau of School Administration and Accreditation; and Thomas Andersen, consultant, Bureau of School Administration and Accreditation.

An evidentiary hearing was held according to the provisions of Iowa Administrative Code 281--6. Appellant, an attorney, represented himself. Appellee Davenport Community School District [hereafter the District] was represented by Mr. Richard Davidson of Lane & Waterman, Davenport. Appellee Iowa Girls' High School Athletic Union [hereafter the Union] was present in the persons of Dr. E. Wayne Cooley, executive secretary, and Mr. Robert M. Smiley, associate executive secretary, and was represented by Mr. John McClintock of Hanson, McClintock & Riley, Des Moines.

Appellant timely appealed from a decision of the Union, made on September 22, 1989, affirming the application by the District of a rule of

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1 The actual appeal is from a decision of the Iowa Girls' High School Athletic Union, following a decision of the District, but in correspondence to Appellant, the case was captioned as "Joseph Sheahan v. Davenport Community School District," omitting reference to the Union. The Union appeared at the hearing voluntarily, and Mr. Sheahan called as witnesses both representative executives from that organization.

2 David H. Bechtel, special assistant to the Director of Education, was initially designated by the Director as the presiding officer in this case. Upon objection by Appellant, Mr. Bechtel was replaced by Mr. Dwight Carlson as the designee of the Director.

athletic eligibility. The eligibility rule, adopted by the State Board of (then) Public Instruction in 1972, is found at Iowa Administrative Code 281--36.15(7). The rule attaches a one-year period of ineligibility for a student athlete who participates in a nonsanctioned event without express permission while on a team governed by the Department of Education's rules. The appeal was filed pursuant to a rule of the Department of Education found at Iowa Administrative Code 281--36.17, allowing for a hearing at the state level from decisions of governing organizations for extracurricular activities.[3]

I.
Findings of Fact

The presiding officer finds that he and the State Board of Education have jurisdiction over the parties and subject matter of this appeal.

Michelle Sheahan is a student at Davenport North High school who played on the girls softball team and had since she was a freshman. She is a talented athlete who hopes to obtain a scholarship to college based upon her softball ability.

Appellee Davenport Community School District (the District) is a school corporation established by law. Iowa Code §274.1. Appellee Iowa Girls' High School Athletic Union (the Union) is an unincorporated, nonprofit, voluntary association of public, parochial, and private high schools in the State of Iowa, organized to promote, direct, protect and regulate amateur interscholastic athletic relationship for junior high and secondary girls between member schools and to stimulate fair play, friendly rivalry, and good sportsmanship among contestants, schools and communities throughout the State of Iowa.

Michelle Sheahan was made aware, prior to the season, of all eligibility rules including the rule at issue here regarding playing in non-sanctioned events without special permission during the regular season. On June 20, 1989, Michelle's father, Appellant Joseph Sheahan, ordered his daughter to play in an ASA (Amateur Softball Association) game in violation of the rule. Michelle reminded her father of the rule and the consequences for violating it, but he was not dissuaded. He insisted that she play, which she did. She was injured in that game.

The next day she reported to her softball coach at North, telling him of her injury and voluntarily admitting her rule violation and the circumstances under which she was instructed to play by her father. Her coach then contacted the activities director, Mr. Warner, at North High,

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[3] In the Notice of Appeal Hearing to Mr. Sheahan, a clerical mistake resulted in the statement, "The authority and jurisdiction for this appeal are found in Iowa Code chapter 290." Notice and Reply folder at page 2. This Notice should have referred to Iowa Administrative Code 281--36.17, the provision creating the right to appeal by a person dissatisfied with a decision on eligibility made by one of the governing organizations, in this case the Union. Appellant challenges the adequacy of notice of the applicable procedures due to this error. However, the hearing procedures used by the Department of Education for both chapter 290 appeals (from local school board decisions) and Iowa Administrative Code 281--36.17 appeals (from decisions of a governing board) are identical and found at Iowa Admin. Code 281--6. A copy of those procedures was mailed to Appellant with the Notice of Hearing.

who confirmed that the violation carried a one-year (twelve month) period of ineligibility.

Meetings were held between Mr. and Mrs. Sheahan and North High officials, resulting in a letter from North High Associate Principal Ron Owen to Bob Smiley at the Union. In that letter, Mr. Owen asked the Union, in essence, and upon behalf of Appellant, to waive the full penalty and to reinstate Michelle's eligibility on the grounds that "Michelle did everything in her power to avoid playing [in the ASA game]. The fact that she obeys her parents, the fact that she tried to refuse to participate on the ASA team, and the fact that her father readily admits that he required her to play, should not be held against Michelle and cause her to lose her eligibility for the twelve months." Appellant's Exhibit A.

Mr. Smiley reviewed the situation with management staff at the Union and responded to Mr. Owen's letter on July 6, 1989. His letter reminded the associate principal that the Union was only the enforcement arm of the eligibility rules promulgated by the Department of Education, and that the Union lacked the power to waive the penalty. He also reprinted the Department's rules outlining due process appeals, and left it to Mr. Owen's discretion to inform Michelle and her parents of these provisions. Appellant's Exhibit B.

Mr. Owen apparently passed the issue to the North High principal, Dr. Paul Johnson, who wrote to Appellant the next day and included a copy of Mr. Smiley's correspondence outlining the roles of the Union and the Department of Education in the eligibility determination and of the procedure for appealing a decision of this nature. Appellant's Exhibit F.

On July 24, Appellant wrote to Bob Smiley of the Union indicating his desire to appeal and laying out seven grounds for appeal. Appellant's Exhibit G. Appellant also drafted a Petition which he claimed he filed in Scott County District Court on July 28, but which apparently was never filed. He wrote to the Union again on July 31 and on August 8 seeking a hearing. The executive secretary of the Union, Mr. Cooley, responded on August 9 to the effect that the executive board would consider his request at its next meeting in mid-September, and that Appellant would be advised of the time, date, and location. Appellant's Exhibit J. The hearing was eventually held on September 21, at 4:30 p.m., in Des Moines at the Union office.

On September 22, the day after the hearing, Mr. Cooley wrote to Appellant indicating that the executive board found Michelle Sheahan in violation of rule "9.17(7)"[4] and that she would be subject to twelve

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[4] In 1986, state government was reorganized by legislation. Several departments were affected, being consolidated into or absorbed by others or otherwise affected. See 1986 Iowa Acts chapter 1245. The Department of Public Instruction was renamed the Department of Education. Id. at chapter 1245, section 1401.

The downsizing and reorganization of state government also led to a renumbering of most or all state agencies' chapters in the Iowa Administrative Code. Up until that time, the Department's administrative rules for its own governance and for the governance of Iowa schools and school districts were found at Iowa Administrative Code 670; the rules regarding Extracurricular Participation were found at

(cont.)

months of ineligibility for the violation, dating from the date she played for the ASA team, June 21, 1989. Appellant's Exhibit L. Dr. Cooley also informed Appellant of the appeal procedures from the executive board's decision, and quoted them in full. Id.

On September 29, Appellant appealed the Union executive board's ruling by writing to Mr. Cooley and providing a copy to the Department of Education. The hearing was set by first contacting the parties by phone to establish availability, and all parties involved agreed to hold the hearing on October 11, 1989, in Des Moines. Michelle was unable to attend the hearing but submitted an affidavit. Appellant's Exhibits U, E.

At hearing and in his affidavit (Appellant's Exhibit C) Appellant admitted he ordered his daughter to play in the ASA game. We also find as fact that Michelle Sheahan had knowledge and notice of this rule at issue, both oral (from her coach) and written (in the Handbook). Appellant's Exhibit CC at p. 20. Furthermore, testimony evinced the fact that Appellant himself had a conversation with the softball coach, Mr. Teal, about Michelle's playing ASA softball during the season, prior to the incident, and was advised by the coach that such participation would be an infraction of the rules. We are unclear whether or not Appellant was advised of the option to seek permission from the school superintendent or designee to be allowed to play in non-school competition during the season, but we do not deem that to be a significant fact in assessing the quality of the notice provided of the existence of the rule.

Appellant attempted to nullify the consequences of his decision and Michelle's violation by submitting documentation of other, past rule violations by individuals or the school itself. We are also unpersuaded by this evidence and argument.

II.
Conclusions of Law

In one of the most contentious, fractured and hairsplitting appeals this agency has ever been subjected to, Appellant raised some ten or twelve grounds for holding Michelle Sheahan harmless from the application of the rule. Most of his arguments were based upon perceived jurisdictional and procedural flaws in getting to the hearing. We will, however, address each one and dispose of it as decided by the Presiding Officer, in consultation with the hearing panelists and counsel to the panel.

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[4] (cont.)
chapter 670--9 of those rules. The Union reprinted the applicable rules in its by-laws and referred to them as 670--9, etc., even after the Department's rules were moved from 670 to 281. See Appellant's Exhibit T at pages 5-8. The content of the rules at issue here was identical before and after the reorganization and renumbering took place, but the citation changed from I.A.C. 670--9 to I.A.C. 281--36. This administrative detail apparently escaped the attention of the Union. In its correspondence to Appellant, the cited references were to 670--9.17 (appeals provision), and Appellant had difficulty locating the referenced rules. Copies were provided to him, however.

A. The Notice of Appeal (to the State Board of Education) was flawed in the following respects:

1. The jurisdiction for the appeal arises under Iowa Administrative Code 281--36.17, not "Iowa Code chapter 290." See footnote 3, supra.

Appellant was totally unable to show how the inadvertent clerical error prejudiced him in any way. We find it harmless error.

2. On October 2, nine days before the scheduled hearing date, Mr. Cooley of the Union "faxed" the extracurricular rules of the Department of Education to Appellant. In the rules, an incorrect reference is made directing the reader to "chapter 5" of the Department's rules to review hearing procedures. In fact, the hearing procedures are found at chapter 6, and the Department had filed and completed the rule making process (by publication in the October 4, 1989, Iowa Administrative Bulletin) to correct that reference. The new page had not yet been printed by the Code Editor, however. Appellant claims that he was unable to locate the hearing procedures because of this error. He admitted that he did not attempt to contact the Department of Education regarding this confusion until the day prior to the hearing. At that time he had a copy of the hearing procedures that are automatically mailed out with the Notice.

Although we also regret this clerical error, we were not informed in any way of what prejudice this misreference caused Appellant, other than inconvenience. He did not request a continuance until the day of the hearing when all parties were present with their witnesses.

3. Appellant did not receive ten days' written notice as required by departmental rule found at Iowa Administrative Code 281--6.3(3).

Appellant does not deny that he was contacted by phone and agreed to the date of the hearing. Nor does Appellant dispute the plain language of the rule related to due process appeals from decisions of governing organizations. Specifically, the rule on point reads in pertinent part:

> 281--36.17(280) **Appeals.** If the claimant is still dissatisfied, an appeal may be made in writing to the state board of education by giving written notice of the appeal to the executive officer of the governing organization with a copy by registered mail to the state director of education. An appeal shall be taken within ten days after the date of mailing of the decision of the governing organization. The director of education shall establish a date for hearing within twenty days of receipt of notice of appeal by giving five days' written notice to Appellant unless a shorter time is mutually agreeable.

Iowa Administrative Code 281--36.17, Appellant's Exhibit E at pages 5-6 (emphasis added). Written notice in this case, of the date, time, and place of hearing as agreed to by the parties, was mailed on

Friday, October 6, five days before the hearing, as required by the rule. The fact that Monday, October 9 was a non-mail delivery holiday resulted in Appellant's receipt of the Notice on Tuesday, October 10, the day prior to the hearing. However, with the exception of the inclusion of the hearing procedures, no new information was given in that Notice that Appellant didn't already have. No evidence of prejudice was offered, and we find none. There is no error in the department's notice procedure; it was in compliance with the rule.

4. The rules laying out the hearing procedure (chapter 6) speak of applicability to cases invoking "appellate review by the state board of education." The subsequent chapter of the rules deals with hearing procedures in matters of "original jurisdiction" appeals. Appellant claims neither set of hearing procedures is applicable here.

Appellant, an attorney, apparently doubts the fact that an appeal from a decision of a lower tribunal constitutes "appellate review." Although we hear the case de novo, Berg, et al. v. Lakota Community School Dist., 4 D.P.I. App. Dec. 150, 167 (1986), the appeal is filed because a decision was made below with which the Appellant disagrees. We find no merit in this argument whatsoever.

B. Appellant also claims a violation of due process in his avenue here, to wit:

1. Appellant claims to be prejudiced by the fact that he did not know, prior to hearing, that he would be subject to an evidentiary hearing and that subpoenas could be issued by the Director of the Department of Education.

In fact, the choice of hearing types is up to the parties, but nothing is settled before the hearing, unless it is discussed between the Appellant and Appellee on their own. Of the options available (evidentiary hearing, on-the-record hearing, and mixed stipulated and evidentiary hearing), our practice is to honor a request for a full evidentiary hearing by either party, in the absence of agreement to hold a hearing on the prior record or to augment the prior record by stipulated evidence. See Iowa Administrative Code 281--6.7. As it happened, the Appellees appeared prepared to do an on-the-record hearing, and it was Appellant who brought additional evidence to be submitted. Appellant's choice appeared to be an evidentiary hearing, and the only possible "denial" he experienced was the lack of time to subpoena witnesses. However, he did not ask this office about subpoenas until the day prior to the hearing, and he did not at that time seek a continuance of the hearing to enable subpoenas to be served.

In his opening remarks at the outset of the hearing, Appellant indicated that had he been able to issue subpoenas, he would have called a number of witnesses to testify regarding other rule violations, even alleged violations of the rule at issue in this case. We do not believe those persons' testimony to be relevant to the issue before the hearing panel and State Board of Education, which is whether the cited eligibility rule was violated by Michelle Sheahan in obeying her father's directive to play in a nonsanctioned game during the season without permission of the District superintendent or designee.

Thus, we find no error in Appellant's contention that he was prejudiced because he was subject to an evidentiary hearing. He clearly came prepared to put on evidence and provide testimony, which he did; several persons employed by both Appellees were called as witnesses by Appellant, and he examined them thoroughly.

2. The Bylaws of the Union refer to the "Department of Public Instruction" (DPI), the former name of the Department of Education. A Memorandum of Agreement executed between the Union and the DPI (Appellant's Exhibit M) on November 10, 1972, established that the Department would develop and adopt eligibility rules for extracurricular activities that previously had been adopted by the Union (and the Iowa High School Athletic Association which regulates boys' athletics) and that the only delegation of authority from the State Board of Education to the Union and the Association would be that the latter would perform ministerial tasks, administer the athletic programs of the state, and enforce the rules. Id.

Appellant contends that the 28E agreement executed between the State Board of Public Instruction and the Union is invalid and unenforceable as between the Department of Education and the Union. Therefore, his reasoning continues, in the absence of a valid agreement, the State Board of Education has no jurisdiction of this appeal. We reject Appellant's contention on the ground that there is no material difference in the authority and powers conferred by statute between the prior State Board of Public Instruction and the current State Board of Education. The agreement continued in force and effect after the purely ministerial name change of the Department and State Board. If we followed Appellant's logic, a new agreement would have been necessary when the membership of the State Board changed, or when a new director was appointed and took office in 1988. We do not believe that is the case.

3. Appellant claims his daughter's procedural due process rights were violated when he sought a hearing with the Union's executive board by mail on July 24, 31, and August 8, and he did not receive a hearing within twenty days of his request as required by rule. (See Iowa Admin. Code 281--36.16). In fact, it was nearly two months after his request before the executive board convened to consider his appeal.

No testimony was received on this issue at the hearing, and we have no basis for knowing why the executive board was not convened within twenty days as required by the rule, other than the explanation offered in Mr. Cooley's August 9 response to Appellant:

> The Board of Directors sit as the hearing officers and will not be in session until mid-September. The August meeting of Directors is well past, therefore not convening again until the forthcoming month. Directors are scattered throughout our state and in some instances [are] temporarily out of state.

Appellant's Exhibit J.

Other than to raise the issue, Appellant asserted no prejudice as a result of the Union's noncompliance with the rule. We note that

eligibility decisions are subject to an expedited hearing, in comparison to other hearing schedules, and this is due, in part, to a desire promptly to determine a student's status because athletic seasons are relatively short. Waiting for a hearing date and perhaps months for a decision would render moot many appeals arising from eligibility issues. We also are aware that summer months are vacation months for the school administrators who sit on the executive board. We conclude that although there was a clear violation of the twenty-day hearing rule, no prejudice was shown to Michelle or her father, Appellant here.

4. The hearing held by the Union executive board allegedly violated Appellant's due process rights in that the Board did not publish hearing procedures, and did not follow the Iowa Administrative Procedures Act, Iowa Code chapter 17A, and Appellant generally had no idea of what to expect when he appeared at the hearing.

"Due process of law," a concept embodied in the Fifth and Fourteenth amendments to the United States Constitution and in Article I §9 of the Constitution of Iowa, applies to government action. Even assuming that the action of the Union is subject to due process constraints, an argument that has not been definitively resolved in our courts, the fact remains that procedural due process entails notice and an opportunity to be heard before an impartial decision maker prior to a deprivation of life, liberty, or property.

The naked assertion by Appellant that the absence of a formal, court-like hearing before the Union's executive board violated his due process right is unsupportable unless Appellant first establishes, on behalf of his daughter, a life, liberty, or property interest. Generally, the courts have not recognized a property or other constitutionally protected interest in participating in interscholastic athletics. See, e.g., In re U.S. Ex. Rel. Missouri State High School Activities Ass'n., 682 F.2d 147, 153 n.8 (8th Cir. 1982); Brands v. Sheldon Community School, 671 F.Supp. 627, 630 (N.D. Iowa 1987); Hamilton v. Tennessee Secondary School Athletic Ass'n., 552 F.2d 681, 682 (6th Cir. 1976).[5] Unless the violation reflects on the character of the student, seldom is a liberty interest found in ineligibility determinations, either. Brands, supra, 671 F.Supp. at 630-31. To our knowledge, no case has ever dealt with whether or not the denial of athletic participation impacts on one's right to live. So we conclude that a due process interest was not at stake in the hearing before the Union board. Therefore, there was no denial of due process.

5. Appellant continues his litany of challenges by attacking the authority of the Department of Education to administer Iowa Code section 280.15. Apparently Appellant believes that the statute and amendments to it do not give the State Board and Department of Education the authority to adopt the rule at issues. The statute reads, in pertinent part, as follows:

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[5] But see Hewitt v. Helms, 459 U.S. 460 (1983)(where a process is established, its deviation or denial could institute a due process violation.)

> Requirements for interscholastic contests and competitions. A public school shall not participate in or allow students representing a public school to participate in any extracurricular interscholastic contest or competition which is sponsored or administered by an organization as defined in this section, unless the organization is registered with the department of education, files financial statements . . ., and is in compliance with rules which the state board of education adopts for the proper administration, supervision, operation, adoption of eligibility requirements, and scheduling of extracurricular interscholastic contracts and competitions and the organizations.

Iowa Code §280.13 (1989).

In partially fulfilling its obligation under this section, the State Board of Public Instruction adopted the eligibility rules at issue in 1972. Those rules were merely transferred from the old D.P.I. chapter 670 of the administrative rules to chapter 281, as the rules of the State Board and Department of Education, in 1987. We find no basis for Appellant's contention that the rules are not valid. The rule at issue in this case flows directly from the statute cited above and was duly adopted in accordance with the administrative procedures laws in effect at the time of adoption.

6. Appellant challenges the rule itself as impermissibly vague and, therefore, unconstitutional. He also claims the delegation by the Department and State Board of Education of the enforcement of the rule to the Union violates principles of delegation enunciated in Bunger v. Iowa High School Athletic Ass'n; that the rule as written gives too much discretion and leaves too much room for misapplication because permission to deviate from the rule is given to 431 public school superintendents without guidance to them. There is, moreover, according to Appellant, no discernible purpose for the rule.

We do not believe that eligibility or other school rules need to be written with the requisite clarity of a criminal code. Accord, Bethel School District #403 v. Fraser, 478 U.S. 675, ___, 91 S.Ct. 3159, 3161-62 (1986). Moreover, basic concepts of unconstitutional vagueness are tied primarily to criminal laws, Grayned v. City of Rockford, 408 U.S. 104 (1972), and the "same degree of precision is not required of an athletic [rule] that would be required of a criminal statute." Burrows v. Ohio High School Athletic Ass'n., 712 F.Supp. 620, 628 (S.D. Ohio 1988). In a similar challenge to an outside conference play ban by the Ohio High School Athletic Association, the federal district court rejected a vagueness argument and concluded, as we do, that the rule is "quite clear, to wit: no squad member can participate in independent [nonconference] soccer and maintain his eligibility for interscholastic [conference regulated] soccer without obtaining . . . approval." Id. at 627-28.

Further, we disagree that the State Board's delegation of the enforcement of the eligibility rules to local school officials and the governing organizations, subject to appeal to the State Board of Education, violates Bunger. In that case, the Iowa Supreme Court was

asked to rule on an eligibility rule that had been promulgated by the Iowa High School Athletic Association ("the Association") and concluded that the State Board of (then) Public Instruction and a local school district had the power to adopt the eligibility rule, but that the Association did not. Bunger, 197 N.W.2d 555, 563 (Iowa 1972). The State Board thereafter promulgated eligibility rules under the rule making process that was the precursor to the Iowa Administrative Procedures Act, Iowa Code chapter 17A. Subsequently, through an agreement (Appellant's Exhibit M), the State Board and Department of (then) Public Instruction delegated to the Association and the Union the enforcement of the eligibility rules, subject to appeal to the State Board. Clearly, there is a "difference between delegation of judgment and discretion and the performance of ministerial or administrative duties." Bunger, 197 N.W.2d at 560 (citations omitted). Equally clear is the principle in this case that enforcement is a ministerial task rather than a discretionary function. Any discretion in interpretation or ultimate application of the rule and penalty has been retained by the State Board. Iowa Admin. Code 281--36.17. We thus reject Appellant's argument related to improper delegation of authority.

While it may be true that there is no written guidance to school superintendents in granting permission to deviate from the "no outside competition" rule, we disagree that the rule exception creates an automatic, arbitrary application. This argument is speculative at best. There is no evidence that the rule or exception has been enforced in an arbitrary manner. Accord Burrows, supra, 712 F.Supp. at 628.

Finally, we take issue with Appellant's contention that the rule has no purpose, or that superintendents could not discern the purpose in applying the exception. Testimony of the Union executives and the high school principal illustrated agreement among them that the purposes of the rule are related to safety and educational concerns. Specifically, an athletic season is of specified duration with a limited number of contests. This is both educationally sound, to prevent athletics from occupying too much of a student's time and to prevent her from limiting herself to one sport, and sound from a safety perspective, to prevent injuries by overdoing the season. See also Burrows, supra; University Interscholastic League v. North Dallas Chamber of Commerce Soccer Ass'n., 693 S.W. 2d 513, 517 (Tex.Ct.App. 1985); Zuments v. Colorado High School Activities Ass'n., 737 P.2d 1113 (Colo.App. 1987); Eastern New York Youth Soccer Ass'n. v. New York State Pub. High School Athletic Ass'n., 488 N.Y.S.2d 293 (App.Div 1985).

In addition, the prohibition on outside, nonsanctioned competition reduces the likelihood that a student will experience a conflict and have to decide for which team she will play on a given date. Finally, the requirement stems in part from the consistency of training of coaches; other rules of the Department of Education establish minimum training and competencies for the individuals who coach high school athletics governed by the Union and the boys' association in Iowa. A student who plays for an outside team does not have the assurances of the coach's credentials; although that person may be professionally trained, there are no guarantees or minimum

standards established by the state for coaches not involved in the governing organizations.

Therefore, we think the purposes behind the rule's limitation are clear, and that an administrator's grant of permission would not automatically be an abuse of discretion. It should also be noted that Michelle did not seek permission to play in the ASA game, so the argument that the rule exception is an improper delegation of authority or results in an abuse of discretion is not even factually a part of this hearing.

7. Appellant introduced evidence, by way of affidavits of himself, his wife, and his daughter as well as eliciting testimony from District officials, regarding whether or not this particular rule had been violated in the past by Davenport North or any other District high school. Again, we believe that information to be irrelevant to the sole issue before us in this case, but in any event, the evidence with respect to one Kim Waite playing ASA ball and playing for North established that at the time Kim was given permission to play ASA ball she was still in eighth grade and technically not eligible to play for North until she actually completed eighth grade. See Iowa Admin. Code 281--36.15(2)(a).

8. Finally, Appellant argues that the rule is invalid because it lacks a scienter requirement, or knowledge or intent to violate the rule. This, he urges, is in violation of due process guarantees of the Fifth and Fourteenth Amendments to the Constitution. He cites no authority for this proposition, but we do not believe this argument valid at any rate. Assuming for the sake of argument that due process is implicated here, at best only advance notice of prohibited conduct is sufficient for due process purposes in our view. The record is clear that both Michelle and her father knew of the rule's existence, and Mr. Sheahan nevertheless ordered his daughter to break the rule with knowledge that some consequences would attach to her eligibility.

While we have little doubt that in this case the intent to violate the rule did not originate with Michelle, we are loathe to except her from the consequences on the basis that "Daddy made me do it." Such a defense could be raised every time a student violated either a state or local rule, and if the parent could easily accept responsibility for the student's conduct, thus exempting the student from the penalty for the violation, we would be faced with a number of rule infractions with no ability to enforce the rule or the penalty. Our hearts go out to Michelle for the position in which she was placed by her parent, but he and she both knew that negative consequences would flow from her participation in the game. We simply cannot condone the approach taken here by lifting Michelle's penalty.

It is clear from Appellant's brief filed following the hearing in this case that he misconstrues the source of the rule. His focus is on the Union's bylaws, where the eligibility rules adopted by the State Board of Education are reproduced, albeit with currently improper citations to the Iowa Administrative Code. The rule is a rule of the State Board of Education, adopted in compliance with Iowa Code chapter 17A. The enforcement of the rule, practically speaking, lies first with the District and then with the Union and the boys' association pursuant to an executive agreement between the State Board

and those organizations. Due process appeals to the State Board are permitted from determinations made by both local school officials and the governing organizations. That process was followed in this case, with the exception of the late hearing by the Union which has not been shown to prejudice Appellant or his daughter in this case.

C. That brings us, finally, to a conclusion with respect to the ultimate issue in this case: whether Michelle Sheahan violated an eligibility rule by playing in an ASA game on June 20, 1989. The rule reads as follows:

> Nonschool team participation. A student who is participating in a sport sponsored by a governing organization may not participate in that particular sport as an individual or member of a team in an outside school event during the same season without written permission of the student's school superintendent or designated representative. At the conclusion of that sport season, a student may then participate on an outside school team without jeopardizing eligibility and without written permission from the student's school superintendent.
>
> A student who participates in a sport sponsored by an organization other than the governing organization without obtaining permission while also participating in that sport sponsored by the governing organization shall be ineligible for twelve calendar months.

Iowa Admin. Code 281--36.15(7).

The facts are clear, admitted, and unrefuted in this case, and we conclude that Michelle did violate the rule and is subject to the penalty as stated above.

Any motions or objections not previously ruled upon are hereby denied and overruled.

III.
Decision

For the foregoing reasons, the appeal of Joseph Sheahan on behalf of his daughter Michelle is dismissed, and the decisions of the Davenport Community School District and the Iowa Girls' High School Athletic Union in applying the rule are affirmed. Costs of this appeal under Iowa Code chapter 290, if any, are hereby assigned to Appellants.

December 15, 1989
DATE

Karen K. Goodenow
KAREN K. GOODENOW, PRESIDENT
STATE BOARD OF EDUCATION

December 7, 1989
DATE

Dwight R. Carlson
DWIGHT CARLSON, CHIEF,
BUREAU OF SCHOOL
ADMINISTRATION AND ACCREDITATION
AND PRESIDING OFFICER