

**IOWA STATE DEPARTMENT  
OF EDUCATION\**  
(Cite as 21 D.o.E. App. Dec. 224)

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*In re Joseph Curran*

Michael Curran,  
Appellant,

v.

Iowa High School Athletic  
Association, Appellee.

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DECISION

[Admin. Doc. #4519]

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This matter was heard telephonically on October 3, 2002, before Carol J. Greta, designated administrative law judge, presiding on behalf of Ted Stilwill, Director of the Iowa Department of Education.

Appellants Michael and Judy Curran took part in the hearing on behalf of their minor son, Joseph Curran, who was also present for the hearing. The Currans were represented by legal counsel, Michael Ellwanger of the Sioux City law office of Rawlings, Nieland, Probasco, Killinger, Ellwanger, Jacobs & Mohrhauser. Also present for the Appellants was Robert Geary, activities director of Bishop Heelan Catholic High School. Appellee, Iowa High School Athletic Association [hereinafter, "IHSAA"], was represented at the hearing by Executive Director Bernie Saggau. Appellee was represented by legal counsel in the person of Bruce Anderson of Doran, Anderson & Baltimore, of Boone, Iowa. Hearing was held pursuant to this agency's administrative rules in 281 Iowa Administrative Code chapter 6. The Iowa Department of Education has jurisdiction over the hearing pursuant to Iowa Code § 280.13 and 281—IAC r. 36.17.

The Appellants seek reversal of a decision of the IHSAA Board of Control made on September 4, 2002, declaring Joseph ineligible to complete interscholastic athletics for 90 school days following his transfer from a public high school in South Dakota to Bishop Heelan Catholic High School ["Heelan"] in Sioux City.

The undersigned administrative law judge finds that she and the Director of the Department of Education have jurisdiction over the parties and the subject matter of this appeal.

**I.  
FINDINGS OF FACT**

At all times pertinent to this hearing, the Appellants ["Currans"] have resided in Elk Point, South Dakota. Their son, Joseph Curran ["Joe"], is presently a 16-year-old tenth grader at Heelan, where he would like to compete in football, wrestling, and track and field. For grades

kindergarten through fourth grade, Joe attended St. Peter's, a nonpublic Catholic school in or near Elk Point; for grades fifth through ninth, he was enrolled in public school (Elk Point-Jefferson), his district of residence in South Dakota.

The Currans testified that Joe transferred from Elk Point-Jefferson because of problems at the South Dakota public school that were not specific to Joe and which they do not wish to have recited in this decision. The Currans stated that they chose Heelan as the school to which Joe transferred for religious reasons. The family has strong religious beliefs and is active in their parish. Mrs. Curran, who is a former member of the board of education of St. Peter's, characterized her family as a "Heelan family." This characterization was supported by a letter submitted by Mr. Geary to the IHSAA in which he pointed out that Joe's father and three of four older brothers were graduates of Heelan. The exception in the family is Joe's older brother Tim, who attended and graduated from Elk Point-Jefferson public high school. Mrs. Curran testified that Joe did not start Heelan as a ninth grader because Tim was then a twelfth grader at Elk Point-Jefferson, and it was more convenient to have both sons attending the same attendance center.

Mr. Saggau did not dispute the reasons given by the Currans as the motivating factors behind Joe's transfer.

## II. CONCLUSIONS OF LAW

The Iowa State Board of Education has adopted rules regarding student interscholastic athletic eligibility pursuant to the authority in Iowa Code section 280.13. Those rules are found in 281 Iowa Administrative Code chapter 36. An intergovernmental agency agreement allows IHSAA (and its counterpart for female, the Iowa Girls High School Athletic Union) to interpret and enforce these rules, subject to appeal to the Director of the Department of Education.

IHSAA relied on 281 IAC 36.15(3), the general transfer rule, when it determined that Joe is ineligible to compete at Heelan for 90 consecutive school days. The rule states, in part, as follows:

**36.15(3) General transfer rule.** A student who transfers from one member or associate member school to another member or associate member school shall be ineligible to compete in interscholastic athletics for a period of 90 consecutive school days ... unless one of the exceptions listed in paragraph 36.15(3)"a" applies. ...

a. Exceptions. The executive officer or executive board shall consider and apply the following exceptions in formally or informally ruling upon the eligibility of a transfer student ... :

(1) Upon a contemporaneous change in parental residence, a student is immediately eligible if the student transfers to the new district of residence or to an accredited nonpublic member or associate member school located in the new school district of residence. ...

(2) If the student is attending in a school district as a result of a whole-grade sharing agreement between the student's resident district and the new school district of attendance, the student is immediately eligible.

(3) A student who has attended high school in a district other than where the student's parent(s) resides, and who subsequently returns to live with the student's parent(s), becomes immediately eligible in the parent's resident district.

(4) Pursuant to Iowa Code section 256.46, a student whose residence changes due to any of the following circumstances is immediately eligible...: [circumstances range from foreign exchange students to various situations covered by court order].

(5) A transfer student who attends in a member or associate member school that is a party to a cooperative student participation agreement ... with the member or associate member school the student previously attended is immediately eligible in the new district to compete in those interscholastic athletic activities covered by the cooperative agreement.

(6) Any student whose parents change district of residence but who remains in the original district without interruption in attendance continues to be eligible in the member or associate member school of attendance.

(7) A special education student whose attendance center changes due to a change in placement agreed to by the district of residence is eligible in either the resident district or the district of attendance, but not both.

(8) In any transfer situation not provided for elsewhere in this chapter, the executive board shall exercise its administrative authority to make any eligibility ruling which it deems to be fair and reasonable. The executive board shall consider the motivating factors for the student transfer. ...

The Currans argue first that, because Elk Point-Jefferson is neither a member nor associate member of the IHSAA, this transfer is not covered under the transfer rules in 281— IAC chapter 36. No one questions Heelan's status as a member school of IHSAA. Accordingly, they state that Joe is eligible immediately because his transfer is not regulated by the rules. Their second argument is that, assuming the transfer is covered by the rules, an exception should be granted to Joe because he transferred for reasons unrelated to athletics. We first address whether these rules apply at all herein.

As the Currans themselves pointed out, this is not the first case in which a nonresident of Iowa has enrolled in an Iowa school and sought immediate eligibility to compete in interscholastic athletics. The Currans cite *In re Christi Anderson*, 19 D.o.E. App. Dec. 94 (2000) as supportive of their position that the transfer rules do not apply. In *Anderson* the student had transferred from an Illinois nonpublic school to an Iowa nonpublic school. At the time of that decision, the general transfer rule referred to transfers “from one school district to another school district,” and another transfer rule referred to “[t]ransfers between public and nonpublic schools.” This agency determined that, because this was neither a district-to-district transfer nor a public-to-nonpublic school (or vice versa) transfer, the applicable rule was 36.15(3)“b”(8), which is identical to the present rule 36.15(3)“a”(8), quoted above. This agency did not rule that chapter 36 did not apply at all, to-wit:

We conclude that *under the above rule* [36.15(3)“b”(8)], it is fair and reasonable to allow Christi Anderson to be eligible to compete at Prince of Peace since her prior school did not offer cross country as an athletic activity. ... [Emphasis added.]

*Id.* at 97. The fact that Anderson was allowed immediate eligibility had nothing to do with the fact that she transferred in from out-of-state, but that her sport was not available at her previous school.

Another case in which a student transferred into this State without a contemporaneous change in parental residence is *In re Daniel L. Roberts*, 15 D.o.E. App. Dec. 49 (1997), in which a student whose eligibility to compete in interscholastic athletics had expired in his home state of Louisiana due to his age moved to Iowa to live with an older sibling. In applying the transfer rule and upholding the imposition of the 90-school-day period of ineligibility, this agency stated that “[t]he 90-day period of ineligibility for students *who change schools* exists to prevent recruitment of student athletes by school districts and to prevent students from shopping around for schools which they believe will give them the best opportunity for their athletic careers.” [Emphasis added.] *Id.* at 54.

The Elk Point-Jefferson School District in South Dakota is not a member or associate member of the IHSAA. However, the preamble of the general transfer rule that refers to member and associate member schools may not be viewed in isolation from the remainder of the rule, which refers to a “transfer student” and to “any transfer situation.” The Iowa Supreme Court has stated, “We do not consider one portion of a statute in isolation, but rather construe it in context with other portions of the statute.” *In the Interest of B.B.*, 516 N.W.2d 874, 878 (Iowa 1994). We know of no prohibition to application of this common sense guideline regarding statutory construction to agency rules. The Iowa Supreme Court has stated specifically regarding such rules that agencies are accorded “a reasonable range of informed discretion in the interpretation and application of their own administrative rules.” *Dameron v. Neumann Brothers, Inc.*, 339 N.W.2d 160, 162 (Iowa 1983).

When read as a whole, it is nonsensical to conclude that the transfer rules do not apply to students who transfer into Iowa from another state. Furthermore, it would be wholly inconsistent with our previous decisions to so conclude. We hold that rule 281 IAC 36.15(3) does apply to students in Joe's position who transfer to an Iowa school or school district from outside of this State without a contemporaneous change in parental residence. Thus, we now turn to application of the general transfer rule to the facts herein.

The general transfer rule is that a student does not have immediate eligibility unless one of the listed exceptions applies. It was established during the hearing that none of the specific exceptions [(1) through (7)] applies here, so this *de novo* hearing is limited to a consideration of the motivating factors put forth by the Currans pursuant to 281 IAC 36.15(3)"a"(8).

Preliminarily, it is noted that the transfer rules are reasonably related to the IHSAA's purpose of deterring situations where transfers are not wholesomely motivated. *In re R.J. Levesque*, 17 D.o.E. App. Dec. 317 (1999). Given also that the majority of courts, including the federal courts in Iowa, have ruled that there is no "right" to participate in interscholastic athletics [*Brands v. Sheldon Community School*, 671 F.Supp. 627 (N.D. Iowa 1987); *Gonyo v. Drake University*, 837 F.Supp. 989 (S.D. Iowa 1993)], the Currans cannot successfully argue that Joe has been harmed by his ineligibility to compete. He is allowed by the rules to practice with the team and enjoy the camaraderie engendered by such association; he simply may not "suit up" and play with his teammates come game time. While such playing time is not regarded as a mere frivolity by this agency, the Currans testified that it was not a factor in the transfer. Accordingly, we shall not elevate its importance here except to note that Joe is not being deprived of any "right" to participate in sports.

This leaves the issue whether a transfer motivated by religious reasons rises to the level that an exception should be made to the ineligibility rule for Joe. While we believe that such reasons *may* form the basis for waiving the period of ineligibility, this is not that case.

The educational path chosen by Joe's brother Tim notwithstanding, the Curran family appears to take its commitment to a Catholic education seriously. The family may indeed be a "Heelan family." However, this is not a situation where a family that deeply desired a spiritually-centered education for its child was *deprived* of that opportunity. Joe could have transferred to Heelan prior to his 9<sup>th</sup> grade year, but did not do so for reasons of convenience for the family. We do not criticize that reason, but note that family convenience has never been recognized by this agency as a reason to grant relief from the 90-school-day period of athletic ineligibility.

The Curran family could, and did, change Joe's educational environment by transferring his enrollment from Elk Point-Jefferson to Heelan. This does not mean that the transfer is accompanied by immediate eligibility to participate in interscholastic athletics. Even assuming *arguendo* that athletics had nothing to do with the transfer, this does not negate the validity of the

general transfer rule. This agency consistently has declined to make an exception to the 90-school-day period of ineligibility in cases where the motivating factor was something other than sports. *In re Erin Kappeler*, 17 D.o.E. App. Dec. 348 (1999) (greater academic opportunities); *In re R.J. Levesque, supra*, (peer harassment); *In re Scott Halapua*, 13 D. o.E. App. Dec. 394 (1996) (personality conflict with former coach).

While the general transfer rule has not been interpreted by an appellate court in Iowa, a similar transfer rule was the subject of *Indiana High School Athletic Assn., Inc. v. Avant*, 650 N.E.2d 1164 (Ind. App. 1995), in which the Indiana Court of Appeals stated as follows:

The Transfer Rule is designed to eliminate school jumping and recruitment of student athletes. Transfers not accompanied by a change in residence (or falling outside the 13 exceptions) are suspect in that they are subject to substantial manipulation. The Transfer Rule deters unscrupulous students and parents from manufacturing all sorts of reasons for a transfer, thereby faintly disguising athletically motivated transfers. The distinctions between these classifications are reasonably related to achieving the IHSAA's purpose in deterring school jumping and recruitment.

*Id.* at 1170.

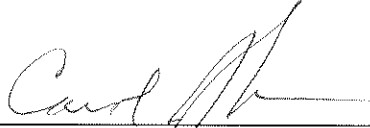
Although the evidence does not demonstrate that Joe's reasons for transferring were motivated by school jumping or recruitment for athletic purposes, the transfer rules are applicable and controlling because the rules are reasonably related to achieving the IHSAA's purpose in deterring school jumping and recruitment.

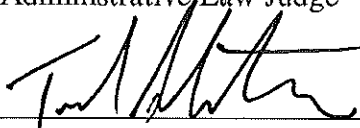
### III. DECISION

For the foregoing reasons, the decision of the IHSAA that Joseph Curran is ineligible to compete in interscholastic athletic contests and competitions for 90 consecutive school days at Bishop Heelan Catholic High School is AFFIRMED. There are no costs associated with this appeal to be assessed to either party.

10-24-02  
Date

It is so ordered.  
10/29/02  
Date

  
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Carol J. Greta, J.D.  
Administrative Law Judge

  
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Ted Stilwill, Director  
Iowa Department of Education