

IOWA STATE BOARD OF
PUBLIC INSTRUCTION

(Cite as 4 D.P.I. App. Dec. 24)

In re Stephen Keys	:	
	:	
Stephen Keys, Appellant	:	
	:	DECISION
v.	:	
	:	
Iowa High School Athletic Association, Appellee	:	[Admin. Doc. 760]

The above entitled matter was heard on September 26, 1984, by a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Mr. David Bechtel, administrative assistant; and Dr. Carol McDanolds Bradley, administrative consultant. Stephen Keys was represented by Attorney David Takes. The Iowa High School Athletic Association (hereinafter Association) was represented by Attorney Lloyd Courter. The hearing was held pursuant to Departmental Rules, Chapter 670--9, Iowa Administrative Code. The Appellant appealed a decision of the Association regarding his athletic eligibility.

I.
Findings of Fact

The Hearing Panel finds that it and the State Board of Public Instruction have jurisdiction over the parties and subject matter.

Stephen Keys is a 17-year-old high school junior attending school in Cedar Falls, Iowa. Immediately prior to the beginning of the 1984-85 school year, Stephen transferred from Columbus High School, which is a nonpublic school located in the Waterloo Community School District.

During the late part of August, 1984, Stephen was informed by a Cedar Falls school official that his transfer may result in a problem with athletic eligibility. He was out for football and planned to participate in interscholastic competition. There was testimony that Stephen may have been informed of an eligibility problem as early as May, 1984, but the issue of notice is not directly relevant to the situation before us.

Upon learning of Stephen's possible ineligibility his mother, Mary Keys, telephoned Association officials who requested that she provide them with the details of the situation in writing. Mrs. Keys complied with the request in a letter dated August 24.

In her letter, Mrs. Keys alleged that the transfer was involuntary in that it was based on family financial problems. The letter especially noted that on the family's current financial situation, private school tuition and transportation costs were prohibitive. She also stated that athletic participation is an important academic motivator for Stephen.

In a letter to Mrs. Keys dated August 31, 1984, Bernie Saggau, executive secretary of the Association, explained the Department of Public Instruction's transfer rule and its application, and in effect, denied Stephen eligibility under the Department's transfer rule. Mrs. Keys' attorney contacted the Association by telephone and letter and requested a hearing before the Association Board of Control. His request was granted, and he appeared before the Board of Control at a regularly scheduled meeting on September 14.

At the September 14 meeting, the Keys' attorney presented evidence of alleged financial hardship. In 1981, Mrs. Keys' husband was laid off his job after 18 years as a truck driver, and he suffered health problems as a result. Mrs. Keys began gainful employment and attended night classes to improve her job skills. Mr. Keys subsequently purchased his own truck and has since been self-employed as an independent truck driver. Evidence presented at the hearing before this Panel indicated that net family income in 1983 was higher than the 1980 family income. This was due largely to Mrs. Keys becoming gainfully employed. Evidence and argument presented to the Panel indicates however, that Mr. Keys' income from his trucking business this year has been lower than last year, and that projections indicate his 1984 income may be about thirty percent lower than 1983.

The record indicates that the Keys family has been making regular payments to reduce the amount of money owed Columbus High School for previous years' tuition. The current outstanding tuition debt is about \$830.00. Mrs. Keys, in her testimony, stated that she did not think the family should further add to the tuition debt by sending Stephen to Columbus again this year. The tuition negotiated for the current school year was \$520.00.

After receiving evidence at its hearing on September 14, the Board of Control apparently found that insufficient evidence had been presented to substantiate the position of the Keys' family, but it did agree to receive additional information later. On September 17, the Board of Control met, by way of a telephone conference call, with the Keys' attorney participating. Members of the Board of Control received and discussed new evidence presented along with evidence presented earlier.

After the two opportunities to present evidence to the Board of Control, it found the evidence presented inadequate to substantiate the Keys' claim of financial hardship sufficient to cause it to waive Stephen's ineligibility. In a ruling dated September 19, 1984, the Board of Control denied the Keys' request for waiver of ineligibility for Stephen Keys under the Department's transfer rule. In its decision, the Board of Control noted the absence of verification of several aspects of

the evidence presented. It also noted that the record disclosed that the family would be responsible for tuition for one less child than it had been in the 1982-83 and 1983-84 school years, and that Columbus High School did not have a practice of expelling students because of nonpayment of tuition.

In a letter dated the same date as the decision, the Keys, through their attorney, notified the Association and the Department of their intention to appeal the decision of the Board of Control. In testimony before the Hearing Panel, Bernie Saggau testified that determinations of financial hardship are difficult to administer because such decisions are often subjective and based upon speculation of future events. He also stated that enhanced economic circumstances would have had the same result as diminished economic circumstances. If, for instance, a student changes schools as a result of an inheritance without a change in residence, the student would be ineligible for 90 school days.

Stephen has continued to participate in football practice with his fellow classmates, and will be allowed to continue to do so. His only restriction is that he has not been allowed to participate in interscholastic contests.

II. Conclusions of Law

The controversy before us centers around the Department's rule regarding the eligibility of students participating in interscholastic competition after transferring between schools. The rule plays a multiple function in discouraging recruitment and other improper activities by persons associated with interscholastic high school athletics and removing the exercise of student discretion in the choice of schools of enrollment for athletic purposes. The rule reads as follows:

9.15(6) Transfer. A student who transfers from a school located in a public school district to a school located in another school district, except upon a like change of parental residence, shall be ineligible to compete in interscholastic athletics for a period of ninety school days as defined in 3.2(11), exclusive of summer enrollment.

A student who changes school systems located within a given public school district shall be ineligible to compete in interscholastic athletics for a period of ninety school days as defined in 3.2(11), exclusive of summer enrollment.

When a like change of parental residence occurs within a public school district, and a transfer of a student occurs between a private and a public school both located within the public school district, distance from the school transferred to shall be taken into consideration. The executive board shall be empowered to make decisions on the merits of the individual case.

The executive board must be notified at once relative to all circumstances regarding any legal guardianship custody of the student. A student who attends a high school in a school district other than where the student's parents reside and subsequently returns to live with the student's parents becomes eligible immediately in the district in which the student's parents reside.

a. In ruling upon the eligibility of transfer pupils, the executive board is empowered to consider broken home conditions of students when transfers are alleged to depend upon such factors. When the necessary conditions have been validated, the executive board may declare the student eligible. But under no circumstances shall a student who transfers from one school to another be made eligible for interscholastic athletics until after the student has been in attendance at the school to which the student transfers for a period of ten school days, unless there has been a like change of residence on the part of the student's parents.

b. In ruling upon the eligibility of foreign exchange students, either students from foreign countries transferring to American schools, or American students who have gone to foreign schools and are returning to American schools, the executive board is authorized to make any ruling regarding the student's eligibility deemed to be fair and reasonable.

c. A student who transfers from one school to another at the end of the spring semester is ineligible to participate in school summer program unless such transfer involves a bona fide change of parental residence and a certified registration for the next semester has been completed at the student's new school.

d. In the event a student participates and represents a member school in a tournament series sponsored by a governing organization, the student shall be ineligible to represent another school in the same tournament series.

e. In ruling upon the transfer of students who have attained majority by age or marriage, the executive board is empowered to consider all circumstances with regard to the transfer to determine if it is principally for the purpose of participation in interscholastic athletics, in which case participation will not be approved. If facts showing a valid purpose for the transfer have been validated, the executive board may declare the student eligible.

f. A student who completes the ninth grade in a public or nonpublic school may change from a public school system to a nonpublic school system or from a

nonpublic school system to a public school system and be eligible upon entering the tenth grade.

g. 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. The determination shall be made in writing with the reasons for the determination clearly delineated.

The Association ruling on this issue was in two parts. It first concluded that under the rule "Stephen Keys, when transferring from Columbus High School to Cedar Falls High School without his parents making a change in residence, would be ineligible for ninety school days." The Association then went on to consider an exception alleged by the Keys family. The Keys alleged that financial hardship considerations are "not provided for elsewhere" in the eligibility rules and should, therefore, be considered by the Board of Control under 670--15(6), paragraph (g). The Association, in its written decision, considered the alleged financial hardship issue under paragraph (g), but concluded that the allegation was not substantiated by the evidence presented to it.

The Hearing Panel concludes that the Board of Control should have discontinued its review of the appeal after it concluded that Stephen Keys was ineligible due to his transfer without change of parental residence pursuant to the first paragraph of the rule. We think the Board of Control erred in considering the financial hardship issue in the absence of a change in student residence. This oversight on the part of the Board of Control was likely due to this being a case of first impression and its desire to give the Keys family a full hearing.

Paragraph (g), while perhaps not written as distinctly as it could have been, was not intended to cover transfer situations where the student's residence remains the same. It was intended to be utilized only where the student's residence is also changed. Rule 670--9.15(6) begins with the blanket provision, contained in the first two paragraphs, that students who transfer between schools will be ineligible for ninety school days. An exception built into paragraph one is a situation where the transfer is a result of change in parental and student residence. A similar exception is contained in the third paragraph which allows eligibility for transfer students as a result of a change in parent and student residence within a school district when distance factors are altered.

Other potential exceptions to the blanket ineligibility include establishment of a guardianship (fourth paragraph), return to parents' home from a previous residence, such as a foster home (fourth paragraph), broken home conditions (a), foreign exchange students (b), students who attain majority by age or marriage (e), and transfer because of organizational structure of the schools students attend (f).

All of these exceptions but one contemplate a transfer accompanied by a change in student residence. A guardianship established in a person other than a parent may be an exception to the blanket ineligibility only in situations where the student changes residence to that of the guardian. See *In re Todd Bonnes*, 3 D.P.I. App. Dec. 106. A student who returns to the home of the student's parents obviously changes residence. Mere broken home conditions without a change in residence of the student does not result in a waiver of ineligibility. See *In re Tamara Bruns*, 2 D.P.I. App. Dec. 353, and *In re Scott Anderson*, 1 D.P.I. App. Dec. 280. The issue of eligibility of foreign exchange students is created by a change in residence between countries. The issue of attainment of majority by age or by marriage is relevant only when the 18-year-old moves from the parent or guardian's residence to one of the student's choosing and when marriage results in a change of residence as one spouse changes residence to live with the other.

The only true exception to the blanket ineligibility of students who transfer between schools not related to a change in residence is a change in school systems provided for in paragraph (f). That exception is provided as a result of diversity in the organizational structures of schools. Students attending a public or nonpublic school may complete the junior high level at the end of either the eighth or ninth grade, depending on the organizational structure of the school they attend. The high school they may wish to attend may not have corresponding consecutive grades, and the rule provides an ineligibility exception regardless of change of student residence.

Because the issue before us did not involve a change in residence of the student, we find that paragraph (g) is inapplicable and the first paragraph of 670--9.15(6) is controlling and must be applied to the facts before us.

All motions and objections not previously ruled upon are hereby overruled.

III.
Decision

The decision of the Board of Control of the Iowa High School Athletic Association on September 19, 1984, regarding the eligibility of Stephen Keys Is, for the reasons stated above, affirmed.

October 18, 1984

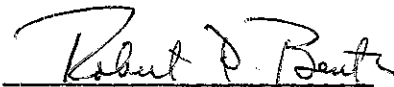
DATE



LUCAS J. DEKOSTER, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

October 4, 1984

DATE



ROBERT D. BENTON, Ed.D.
STATE SUPERINTENDENT OF
PUBLIC INSTRUCTION, AND
PRESIDING OFFICER