

STATE BOARD OF
PUBLIC INSTRUCTION

(Cite as 2 D.P.I. App. Dec. 353)

In re Tamara Bruns	:	
	:	
Tamara Bruns, Appellant	:	DECISION
v.	:	
	:	
Iowa Girls High School Athletic Union, Appellee	:	[Admin. Doc. 608]

The above entitled matter was heard on November 4, 1981, before a Hearing Panel consisting of Dr. Robert Benton, state superintendent and presiding officer; David Bechtel, administrative assistant; and Carol Bradley, chief, special education instructional services section. The Appellant, Tamara Bruns, was represented by Attorney Roger Ott; and the Appellee, the Iowa Girls High School Athletic Union (hereinafter Union) was represented by E. Wayne Cooley, executive secretary of the Union. The hearing was held pursuant to Departmental Rules, Chapter 670--9, Iowa Administrative Code. The Appellant appealed a decision of the Union regarding her 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.

Tamara Bruns is a senior at the Clear Lake Community School District high school. She most recently registered there as a student on August 10, 1981, and started attending fall classes on August 27, the first day of school.

Tamara had attended the Clear Lake schools previously. After her natural parents were divorced in April, 1976, Tamara resided in Clear Lake with her natural mother and attended the Clear Lake schools. Apparently, Tamara and her father missed each other, and, after lengthy consideration, the mother and father mutually agreed that Tamara could reside with her father in Charles City. Apparently, this was done with the approval of the District Court involved with the parents' divorce and the original awarding of custody. Tamara moved to Charles City to reside with her father in the summer of 1980 and completed the 1980-81 school year at the Charles City Community School District high school. Her father is a teacher and a coach in the Charles City schools. At the time she changed her residence to Charles City, she applied for a waiver of athletic ineligibility from the Union, and it was granted. While not an outstanding athlete, she did participate on the Charles City girls' basketball team which played in the State Tournament in Des Moines. Sometime before the State Tournament, Tamara suffered a knee injury which resulted in surgery, and she was unable to play in the State Tournament.

About tournament time, Tamara's father's attention was diverted from her to caring for his elderly parents who lived nearby. Both grandparents were seriously ill, and the grandmother passed away. Tamara was pretty much left on her own in the early months of 1981 and felt somewhat neglected.

The relationship between Tamara and her stepmother was not a good one. The record does not detail the circumstances surrounding the relationship, but those details are unnecessary because everyone concerned in the hearing, including the Union, agrees that serious problems of alienation existed between the two.

The pressures of her father being absent to care for his parents for extended periods of time, the injury to her knee and subsequent surgery, and a hostile relationship with her stepmother combined to cause more pressure and unhappiness than Tamara felt she wanted to bear. She began considering a return to her mother's home in Clear Lake.

Because athletics have been an important part of her life up to this point, she made an inquiry to the Union regarding her eligibility status in the event she would return to her mother's home. In a letter to the Union dated April 1, 1981, Tamara outlined her situation and inquired about a second waiver of ineligibility. A letter dated April 12, 1981, on Clear Lake School letterhead signed by Kay Bacon supported Tamara's desire for eligibility on return to her mother's residence and stated that the Clear Lake schools had not been responsible for her desire to return to Clear Lake.

In a letter dated April 15, 1981, E. Wayne Cooley wrote to the Clear Lake schools requesting evidence of a change of legal custody status for Tamara to present to the Union's Executive Board before it rendered a final ruling on the issue of waiver of ineligibility. Sometime in late April, the Union received a document entitled, "Stipulation and Agreement," purporting to be an agreement to amend the 1976 Decree of Dissolution between Tamara's parents to allow the transfer of permanent custody of Tamara to her mother in Clear Lake. The document, signed only by Tamara's mother and not by her father, showed no evidence of filing in the District Court and was not accompanied by a Court order. The Union also received additional correspondence verifying the home situation previously discussed above. Mr. Cooley testified before the Hearing Panel that in mid-May, he was planning to recommend to the Executive Board of the Union that it grant athletic eligibility to Tamara at Clear Lake.

The Union conducted an independent investigation of the facts and found that Tamara had begun practice with the Charles City girls' softball team on May 11, and participated in that team's first game on May 20. Tamara was a starter on a team which won the state summer championship, concluding its season on August 6. Because of Tamara's involvement with a Charles City team, the Union did not render a decision on her request to be eligible at Clear Lake. No exchange of communications on the subject was made between mid-May and the end of August. The Charles City team was runner-up in the state fall girls' softball tournament.

The record made on Tamara's behalf at the hearing before the Panel indicated that the matter of eligibility approval at Clear Lake was not pressed in early summer because conditions for Tamara in her father's home had improved. Her father became less involved in the care of his daughter and gave Tamara more attention. Efforts were also made to reconcile the differences between Tamara and her stepmother. For a time during the early summer months, there was a temporary respite from the personality clash. In late summer, however, the problem between Tamara and her stepmother renewed itself.

In a letter dated August 24, Tamara requested a Union decision on her previously-filed request for eligibility at Clear Lake. Her position was supported by an undated letter from the Director of Athletics at the Charles City high school.

In a letter dated September 17, Mr. Cooley stated that the Union's State Administrative Office had reviewed the matter and found that Tamara should be ineligible for 18 weeks of school at Clear Lake. The letter gave no specific reason for the denial of eligibility.

Tamara appealed the administrative decision to the Union's Board in a letter dated September 20. Her position was supported by letters from both of her natural parents. A hearing before the Union Board was held on October 23. After discussing the matter with the family and considering the issues, the Union Board voted to affirm the Administrative decision to deny Tamara eligibility at Clear Lake for 18 weeks of school. Through legal counsel, Tamara filed an appeal of that decision with the State Board on October 30, 1981.

The record before the Hearing Panel contains a completed version of the incomplete "Stipulation and Agreement" submitted to the Union in the spring of 1981. It was filed in the District Court on August 19, 1981. Also filed on that date is a Court order transferring permanent custody of Tamara to her natural mother.

II. Conclusions of Law

The issue present for resolution in this hearing arises out of the facts presented above and the application of those facts to State Board rules regarding eligibility of students. Departmental rules generally provide that students who transfer between schools without a like change in residence of their parents will be ineligible for athletics for a period of 90 school days (previously 18 weeks). Rule 670--9.15, sub-rule 6, Iowa Administrative Code. That rule does, however, provide for exceptions when the transfer of the student is related to a broken home situation. Rule 670--9.15, subrule 6, paragraph a., reads as follows:

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.

The issue here then is whether the Union has properly applied the rule above to the facts presented at the hearing. We feel that the Union has erred in its decision.

The primary thrust of the Union's position is suspicion raised by the timing of events. The Union's argument is that if Tamara's home life with her father was as serious as she claims, she should have moved to live with her mother at the earliest opportunity or at least when the school session ended in May. The Union concludes that her failure to take advantage of an early opportunity to leave her father's home was based primarily on her desire to compete on a softball team with excellent chances for a winning season. Stated in a different way, the Union Board concluded that athletic participation was more important to Tamara than her living conditions. The Union also implied that the timing of the end of the softball season, August 6, the enrollment at Clear Lake, August 10, the filing of the documents changing the custody of Tamara, August 19, and the start of the school year, August 27, were more than mere coincidence.

The problem with the Union's position is that it is based on mere suspicion and thin circumstantial evidence. Let there be no mistake, decisions based on substantial circumstantial evidence should be upheld. But here, we feel that the statements made at the hearing before the Panel that the family was attempting reconciliation during the early summer and the accompanying temporary improvement in conditions adequately negates mere suspicion and thin circumstantial evidence. We do not feel that eligibility should be denied a student who changes residence in a broken home situation in the absence of evidence of an improper motive for the change in residence. We would not want to punish Tamara for her participation in summer softball when her motives for returning to Clear Lake are not disputed.

We also note that the softball practice and probably the competitive season began before school at Charles City was out for the summer. It was, therefore, not inconsistent for Tamara to begin the season, and perhaps because of the successful nature of the team's efforts, desire to finish the season with a winning team.

While we do not condemn the Union's position based on circumstantial evidence and suspicion, we do not agree with its conclusions. We call the Union's attention to the State Board decision In re Scott Anderson, 1 D.P.I. App. Dec. 280, which involved a different type of alienation between a student and his parents.


The Union has urged that a reversal of its decision in this matter will exacerbate the existing problem of establishment of guardianships for the purpose of athletic competition. While we recognize the existence of a problem of legal guardianships established for the purpose of athletic participation, and commend the Union for its diligence in that area, we do not feel that reversing the decision at issue here will have any negative effect on efforts to control improper use of guardianships. The issue of child custody is one to which the courts give an inordinate amount of attention and consideration, and is one not usually decided ex parte. We do not feel, in the absence of strong evidence of improprieties for athletic purposes, that a court's awarding of custody should be seriously challenged when making determinations of athletic eligibility.

III. Decision

The decision of the Iowa Girls High School Athletic Union Board in this matter is hereby overruled.

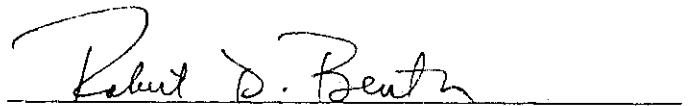
November 18, 1981

DATE


SUSAN M. WILSON, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

November 10, 1981

DATE


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