

IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

(Cite as 1 D.P.I. App. Dec. 284)

In re Carme Braby	:	
	:	
C. L. Braby & Jane Braby, Appellants	:	
	:	DECISION
v.	:	
	:	
Iowa Girls' Athletic Union, Appellee	:	
	:	[Admin. Doc. 460]

The above entitled matter was heard on October 16, 1978, before a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Dr. Don Cox, associate superintendent, instruction and professional education branch; and Mr. A. John Martin, director, curriculum. Carme Braby, C. L. Braby and Jane Braby were present and were represented by Attorney William Warin. The Board of Directors (hereinafter Board) of the Iowa Girls' High School Athletic Union (hereinafter Union) was represented by E. Wayne Cooley, its Executive Secretary. The hearing was held pursuant to Departmental Rule 670--9.17, Iowa Administrative Code. The Appellants are appealing a decision of the Board regarding the athletic eligibility of Carme Braby.

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.

Carme Braby is a 17-year-old minor currently enrolled as a senior in the Creston Community School District (hereinafter District). She is currently residing in the District with Larry and Janet Jannings, who were appointed her legal guardians by the Iowa District Court for Union County on August 31, 1978. The Jannings are friends of Carme's parents and the Braby residence is thirty to forty miles from Creston. Carme resides weekdays and most weekends with the Jannings. She returns to her parent's home for occasional visits. Her parents provide for her financial support on a need basis. The Jannings have apparently accepted no financial responsibility for Carme.

Prior to the current school year, Carme attended the Mount Ayr Community School District where her parents continue to reside. There was nothing in the record to indicate financial hardship, broken home condition or other common reason for establishing guardianship of a minor. The Brabys said that a decision had been made in Carme's best interest to attend school in the District her senior year and the guardianship was established subsequent to that decision for her protection.

The record shows quite clearly that the decision that Carme enroll in the District was based primarily, if not solely, on two points; better educational opportunities and athletic competition. There are numerous references in the record to problems which the Mount Ayr District has experienced with its educational facilities and the resulting hardship on the educational programs offered its students. Some emphasis was placed on Carme's interest in pursuing a career in nursing and the fact that the District offers instruction in a course in human physiology which is not offered at Mount Ayr. The Union pointed out that the Mount Ayr District continues to remain on the state's list of approved schools and offers work experiences in several doctors' offices for students interested in nursing careers. Other children in the family, including Carme's twin brother, continue to be enrolled in the Mount Ayr District.

The important part which athletics played in the Braby's decision to have Carme enrolled in the District is illustrated by a portion of the July 21, 1978, letter from Carme to the Association:

Along with the education, I plan on participating in sports. Sports have always played an important part in my high school years. The coach here is leaving and the one that was hired has only had 7th grade basketball. I would like to test my potential and find out where I stand in the state. I also feel that my chances of getting an athletic scholarship would be much greater in Creston.

Mrs. Braby's letter to the Association dated July 20, also contains references to the importance of athletic competition in the decision to enroll Carme in the District. The text of the letter is reproduced here in its entirety:

I'm writing this letter regarding our plea to transfer our daughter, Carme Braby, to the Creston High School for term beginning September, 1978. It was our understanding that if she took residence there with legal guardians, that she would be eligible to play softball and basketball without a waiting period. That, of course, is very important to us. Our reasons for wanting to make this change, are primarily, two fold. As you know, our present school situation at Mount Ayr, is to say the least, in a state of turmoil. She has always been a good student and has her future planned, as far as college and choice of career. We feel that her senior year would be more adequately served in the Creston High School, as we have heard many good things concerning the departments she is most interested in.

Secondly, Carme has challenged herself to see if her athletic ability is such, that she could fit in and play with the fine team that Creston has now. She knows, that to do this, would require a great deal of talent and hard work on her part and that there's always the possibility that she might not be able to fulfill her own expectations. Her coach, for all of her three years in Mt. Ayr High School, has signed to coach as Griswold, leaving her as the only Senior player and an unknown quality as far as a new coach. It is our understanding that he has not coached high school girls, and we also know that it will be a "rebuilding" as far as philosophy, etc. I do not mean to imply that he will be poor quality, just simply that we have no idea what one might expect in a situation like this. Making a move like this is not to be taken lightly. We have tried to take great care in making this decision. We have decided that we want this badly enough to withstand the inevitable criticism. If she thinks she's "tough"

enough to make the Creston team, then we'll be "tough" enough to support her all the way.

We will be anxiously awaiting your ruling on this--so that we can complete our legal work here.

In September, the Braby's requested that the Board approve Carme's eligibility for interscholastic athletics. The Board apparently felt that the guardianship was established for athletic purposes and denied the Braby's request for immediate eligibility.

II.

Conclusions of Law

In the absence of the existance of the guardianship established on the record, our decision would be an easy one. The Transfer Rule, 670--9.15(6), Iowa Administrative Code, of the Department of Public Instruction was promulgated to prohibit the type of conduct exhibited on the facts before us. It is paramount to the maintenance of the amateur character of Iowa high school athletics that in order to prevent abuses, students tempted to seek out greener athletic pastures be dulled in their enthusiasm. It is for this reason that with only a few exceptions, none of which are relevant here, students transferring between schools without a like change in the residence of their parents are not eligible for interscholastic athletic competition for 18 weeks. It is unfortunate that high school athletics require such a degree of regulation in order to prevent abuse, but such is the "nature of the game."

The existance of the guardianship in the record, however, makes the decision more difficult. We have a situation where a legal guardianship was established in a resident of the District, and one of the primary purposes of the guardianship was to circumvent the Transfer Rule on athletic eligibility. After due and deliberate consideration, we have determined that in the best interest of amateur high school athletics we must concur with the Board's decision to apply the 18 week ineligibility provisions to Carme Braby. As the State Board said in In re Steven Duncan, 1 D.P.I. App. Dec. 117 at page 120:

While guardianships are always relevant to the issue of athletic eligibility, a guardianship, such as was established in this instance, cannot be the sole, conclusive deciding factor of eligibility. To allow the mere establishment of guardianship, such a role would effectively emasculate athletic transfer rules.

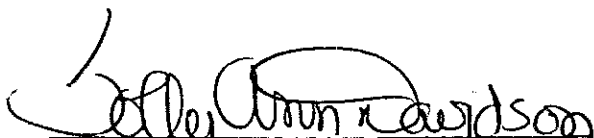
III.

Decision

The decision of the Board of Directors of the Iowa Girls' High School Athletic Union in the matter of eligibility for Carme Braby is hereby affirmed.

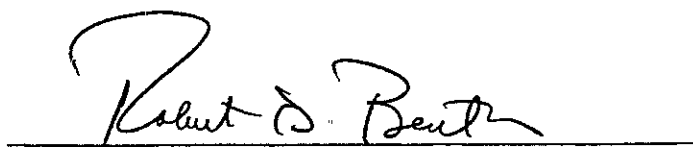
October 20, 1978

DATE


JOLLY ANN DAVIDSON, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

October 19, 1978

DATE


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