

IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION
(Cite as 1 D.P.I. App. Dec. 117)

In re Steven John Duncan	:	
	:	
Steven John Duncan	:	
Appellant	:	
	:	DECISION
v.	:	
	:	
Iowa High School Athletic Association	:	
Board of Control	:	[Admin. Doc. 375]
Appellee	:	

The above entitled matter came for hearing on July 12, 1976, at 9:00 a.m. The appeal was heard before a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Dr. LeRoy Jensen, associate state superintendent; and Mr. David Bechtel, administrative assistant. Steven Duncan was present with his attorney, Mr. Dan Stamatelos. Mr. Bernie Saggau, executive secretary of the Iowa High School Athletic Association, appeared on behalf of that organization. The hearing was held pursuant to Departmental Rules, Chapter 670--51, Iowa Administrative Code.

Steven Duncan was declared ineligible for interscholastic athletic competition for eighteen weeks at Valley High School in West Des Moines, Iowa, by the Board of Control of the Iowa High School Athletic Association (hereinafter "Board"), under the transfer eligibility rule of the State Board of Public Instruction. The ruling was appealed by Steven Duncan through his attorney pursuant to Departmental Rule 670--9.17.

I.
Findings of Fact

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

From the record it appears that the parents of Steven Duncan moved to Missouri from West Des Moines, Iowa, in early March, 1976. Steven attended school in Missouri for about eight weeks and encountered emotional problems in adjusting to the new environment and life in a suburb of Kansas City. In the new school, Steven went out for the baseball team but was not selected as the first team catcher, a position he had held at Valley High School in West Des Moines. The record shows that during the time Steven attended school in Missouri, his grades dropped considerably. That spring he returned to West Des Moines on five out of eight weekends to be with friends. During the first week of May, Steven returned to Valley High School and enrolled as a student. His parents did not return to Iowa, but remained in Missouri. At Valley High School, Steven

will be eligible for graduation at the end of the first semester of the 1976-1977 school year. If he had continued school in Missouri he would not have been eligible for graduation until the end of the second semester. Even though athletic participation played a role in Steven's decision to return to Valley High School, there is nothing in the record to indicate that he returned for the primary purpose of participation in athletics at Valley High School.

On May 7, John Valdez, an uncle, was appointed Steven's guardian by order of the Iowa District Court in Polk County. It was also ordered that Steven be enrolled at Valley High School. Steven's attorney, Mr. Stamatelos, indicated at the hearing before this Panel, that this step was taken primarily as preparation for possible future litigation on the issue of athletic eligibility.

Testimony also indicated that Steven's parents would continue contributions to the support of their son during the period of guardianship. On this point, however, evidence was not entirely clear as to whom was primarily responsible for Steven's living expenses. Testimony did not show whether the father or the uncle would claim Steven as a dependent for tax purposes. It was established at the hearing that Steven planned to return to Missouri to reside with his parents following graduation in January, 1977, at the end of the first semester.

After Steven returned to school at Valley in May, inquiries were made as to his athletic eligibility. The school was told by the Iowa High School Athletic Association that he would be ineligible for eighteen weeks under the State Board of Public Instruction transfer eligibility rules. On June 13, the Board met with Steven's father pursuant to Departmental Rule 670--9.16. The Board determined on June 14, that if Steven furnishes a birth certificate as proof of age, when he reaches the age of majority on October 7, the Board will rule him eligible under paragraph f of Departmental Rule 670--9.15(6). However, until that time, Steven is to remain ineligible.

III.

Conclusions of Law.

The matter currently before this Hearing Panel is governed by the rules of the State Board of Public Instruction pertaining to eligibility for high school athletes who transfer from one school system to another. Those rules are found in rule 670--9.15(6), Iowa Administrative Code. Those rules in their entirety are as follows:

9.15(6) *Transfer*. 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 eighteen weeks of school, 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.

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 eighteen weeks of school, exclusive of summer enrollment.

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 existence of necessary conditions has been validated by the principal of the school from whence the student transfers, 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 a student whose transfer was caused by a change of designation by the area education agency board of directors or the state department of public instruction, the executive board has the authority to consider the factors underlying the change of designation in determining the student's eligibility.
- c. 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.
- d. A student who transfers from one school to another at the end of the spring semester is ineligible to participate in the 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.
- e. 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.
- f. 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 said transfer have been validated by the principal of the high school from which the student is transferring, the executive board may declare the student eligible immediately.
- g. A student who completes the ninth grade in a public or a 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.

After an informal hearing on the matter, at which the Board gave Steven and his father the opportunity to bring forth all relevant information, the Board applied the facts of the matter to existing rules of the State Board of Public Instruction. The Board found that because Steven Duncan transferred from one school district to a school located in another school district without a like change of residence of his parents, he should be ineligible for eighteen weeks, exclusive of summer enrollment unless one of the exceptions to ineligibility for transfer students was applicable. The Board did not find any of the exceptions currently applicable, but did, by resolution, indi-

cate that the exception pertaining to students attaining majority age under paragraph f would be applicable to Steven when he attains the age of 18 years.

Transfer rules of state high school athletic associations are enacted to protect students against the possibility of recruitment and enticement of student athletes and to maintain the amateur character of high school athletics. Activities such as football and other sports require a degree of regulation in order to prevent abuse. Without the strict regulations and rules necessary for enforcement, recruiting in high school athletics can become a serious problem. Recognizing that such rules are rationally related to the governmental interests of preventing recruitment and are not arbitrary if uniformly applied, most courts which have ruled on the question have upheld the validity of such rules. *Chabert v. Louisiana High School Athletic Association*, 323 S.2d 774 (La. 1975); *Josephine County School District v. Oregon School Activities Association*, 15 Ore. Ap. 185, 515 P.2d (1973); *Bruce v. South Carolina High School League*, 258 So.C. 546, 189 S.E.2d 817 (1972); see also *Scott v. Kilpatrick*, 286 Ala. 129, 237 S.2d 652 (1970); *Marino v. Waters*, 220 S.2d 802 (La. App. 1969); *Tennessee Secondary School Athletic Association v. Cox*, 221 Tenn. 164, 425 S.W.2d 597 (1968).

To our knowledge, only one state court, after consideration of a transfer rule, found it to be invalid on the basis that it violated the equal protection clause of the Fourteenth Amendment to the United States Constitution in that it was unreasonably broad and excluded many students who move for reasons wholly unrelated to athletics. *Sturup v. Mahon*, 261 Ind. 463, 305 N.E.2d 887 (1974).

While recognizing that none of the courts cited herein have jurisdiction in Iowa, and being unable to determine the existance of any legal precedent in Iowa on this point, the Hearing Panel feels that the interests of interscholastic athletic competition is best served by following what appears to be the majority view in the states whose courts have ruled upon the validity of their respective transfer rules. The Hearing Panel finds that Departmental Rule 670--9.15(6) is a valid rule and was properly applied by the Board to Steven Duncan.

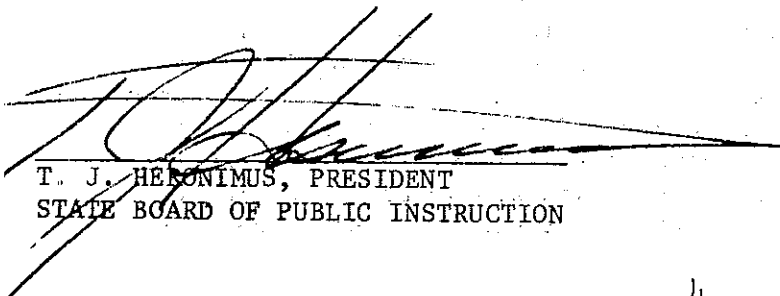
Some emphasis was placed on Steven's behalf on the fact that a guardianship had been established in which a resident of the West Des Moines Community School District was appointed Steven's guardian. While guardianships are always relevant to the issue of athletic eligibility, a guardianship, such as 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.

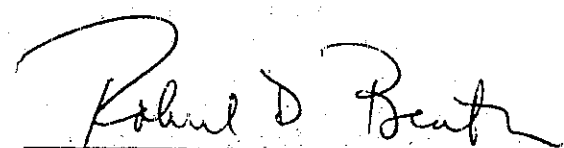
III.
Decision

The decision of the Board of Control of the Iowa High School Athletic Association in the matter of athletic eligibility of Steven John Duncan is hereby affirmed.

August 13, 1976
DATE

July 26, 1976
DATE


T. J. HERONIMUS, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION


ROBERT D. BENTON, Ed.D.
STATE SUPERINTENDENT AND
PRESIDING OFFICER