

**IOWA DEPARTMENT  
OF EDUCATION  
(Cite as 24 DoE App. Dec 145)**

---

Wilmot Wellington, Appellant,	:	DIA DOCKET NO. 06DOE002
vs.	:	
Iowa High School Athletic Association, Appellee.	:	DECISION

---

**STATEMENT OF THE CASE**

This matter was heard telephonically on October 25<sup>th</sup> 2006, before John M. Priester, designated administrative law judge with the Iowa Department of Inspections and Appeals Division of Administrative Hearings, presiding on behalf of Judy A. Jeffrey, Director of the Iowa Department of Education.

The Appellant, Wilmot Wellington, was represented by attorney Myron Gookin; the Appellee, Iowa High School Athletic Association [hereinafter, "IHSAA"] by attorney Brian Humke. Also present for the Appellant was his brother Alfred Wellington and Fairfield High School Athletic Director Brad Rose and for the IHSAA, its Executive Director, Richard Wulkow.

An evidentiary hearing was held pursuant to departmental rules found at 281 IAC [Iowa Administrative Code] 6. Jurisdiction for this appeal is pursuant to Iowa Code section 280.13 and 281 IAC 36.17. The administrative law judge finds that he and the Director of the Department of Education have jurisdiction over the parties and subject matter of this appeal.

The Appellant seeks reversal of a decision that the IHSAA Board of Control made on September 27, 2006, that the Appellant is ineligible to compete in varsity interscholastic athletics for 90 consecutive school days under the provisions of the general transfer rule, 281 IAC 36.15(3).

**FINDINGS OF FACT**

The facts in this appeal are generally not in dispute. The Appellant emigrated from African Liberia with his family. His father settled in St. Paul, Minnesota. The Appellant and his younger brother lived with his father. The Appellant had two older sisters in the Minneapolis area and an older brother living in Fairfield, Iowa.

The living conditions at the Appellant's father's home were difficult. The Appellant's father is disabled and unable to work. The Appellant's father lives in an area of St. Paul with subsidized housing. This area has gang-activity. The Appellant and his brother would sometimes have to go without food because of the family's economic situation.

The Appellant's school in St. Paul was about 10-miles from his father's apartment. Due to transportation problems the Appellant would sometimes have to walk the 10-miles home from school after sports practices or games. The Appellant participated in sports while in St. Paul. He ran track and played football.

The Appellant visited his older brother in Fairfield, Iowa, during the summer of 2006. The first visit lasted a few days in July 2006. Then in August of 2006 the Appellant again visited his brother. The Appellant was not contacted by anyone at the high school during these visits about participating in sports. It was during this second trip to Iowa that the Appellant and his brother, Alfred Wellington, began discussing the possibility of the Appellant moving to Fairfield.

Alfred Wellington opened up his home to his brother so that the Appellant could have a safe place to live, food on the table, and an opportunity to excel in school. The Appellant accepted his brother's offer and moved in with him in Fairfield.

After school started the Appellant looked into the possibility of playing football. The school contacted the IHSAA to see if the Appellant could play sports. The Executive Director initially denied the request, and the Board of Control affirmed this on September 27, 2006. The Board's decision was based on:

1. Student voluntarily chose to move with brother in Fairfield.
2. Student was not compelled by necessity to do so.

The sole reason the Appellant moved to Fairfield was for a better living situation; a safe neighborhood, able to walk to school and to have food on the table. Since the move, the Appellant's father has voluntarily signed papers appointing Alfred Wellington as the Appellant's legal guardian.

### **CONCLUSIONS OF LAW**

Iowa law directs the state board of the Department of Education to "adopt rules that permit a child who does not meet the residence requirements for participation in extracurricular interscholastic contests . . . to participate in the contests or competitions immediately if the child is duly enrolled in a school, is otherwise eligible to participate, and meets one of the following circumstances or similar circumstance:"

- the child has been adopted;
- the child is placed under foster or shelter care;

- the child is living with one of the child's parents as a result of divorce, separation, death, or other change in the child's parents' marital relationship, or pursuant to other court-ordered decree or order of custody;
- the child has been placed in a juvenile correctional facility;
- the child is a ward of the court or the state;
- the child is a participant in a substance abuse or mental health program; or
- the child is enrolled in an accredited nonpublic high school because the child's district of residence has entered into a whole grade sharing agreement for the pupil's grade with another district.

Iowa Code § 256.46.

The Department of Education did promulgate administrative rules in response to the Legislature's mandate. The general transfer rule, 281 IAC 36.15(3), states in pertinent 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, as defined in 281—subrule 12.1(8), exclusive of summer enrollment, 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 and may make eligibility contingent upon proof that the student has been in attendance in the new school for at least ten days:

...

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

In an agency action, where the Appellant is challenging an agency determination, the burden of proof is upon the Appellant to show the agency's actions were unreasonable, arbitrary or capricious or characterized by an abuse of discretion. Empire Cable v. Dept. Of Revenue & Finance, 507 N.W.2d 705, 707 (Iowa App. 1993); Busing v. Iowa Dept. Of Transp, MVD, 455 N.W.2d 921, 922 (Iowa 1990).

The Iowa Supreme Court has held that a court reviewing the decision of an administrative agency may reverse, modify, or grant other appropriate relief only if the agency action is affected by error of law, is unsupported by substantial evidence in the record, or is characterized by an abuse of discretion. Burns v. Board of Nursing, 495 N.W.2d 698 (Iowa 1993).

The Iowa Supreme Court has recently held that it will utilize a deferential standard of review when reviewing agency's interpretation of its own statutes. "This does not mean the agency's interpretation is conclusive, but we give it 'appropriate deference.' . . . We will not reverse an agency action based on an interpretation of law in the agency's discretion, unless the agency's interpretation is 'irrational, illogical, or wholly unjustified.'" Thoms v. IPERS, 715 N.W.2d 7, 12 (Iowa 2006).

The Appellant's reason for transferring did not fall within any of the exceptions found in 281 IAC 36.15(3)(a). The Board of Control then reviewed the Appellant's circumstances in light of the discretionary language found in 281 IAC 36.15(3)(a)(8). The Board found that the Appellant voluntarily chose to move to Iowa and he was not compelled to move.

The IHSAA cites the case of In re Brandon James Bergman, 22 D.o.E. App.Dec. 130, to support the Board's decision. In Bergman the Board applied the discretionary language found in 281 IAC 36.15(3)(a)(8) to facts similar to those faced by the Appellant. Bergman found himself with unfavorable living conditions in Texas, either choosing between a father who often traveled and a mother whose new live-in boyfriend was a man of "bad habits." Bergman chose to live with his maternal grandparents in Iowa because it offered him a better life. The decision affirmed the Board's decision ruling Bergman ineligible to compete in interscholastic athletics in Iowa. The Board found that while it may be in Bergman's best interest to live in Iowa, this was his choice and under the facts and circumstances the Board did not exercise its discretion to waive the 90-day requirement.

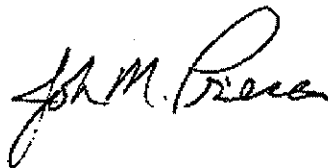
The Appellant has made the choice to move to Iowa. From reviewing the record, that is probably in his best interests. However, nothing forced the Appellant to move to Fairfield and he could move back with his father if he so chose.

In applying the rationale laid out in Bergman as precedent, the undersigned finds that the Board's decision is not "irrational, illogical, or wholly unjustified" in ruling the Appellant ineligible to compete in varsity interscholastic athletics at Fairfield High School for 90 consecutive days.

## DECISION

For the foregoing reasons, the September 27, 2006 decision of the Board of Control of the Iowa High School Athletic Association that Wilmot Wellington is ineligible to compete in varsity interscholastic athletics at Fairfield High School for a period of 90

consecutive school days is **AFFIRMED**. There are no costs associated with this appeal to be assigned to either party.



10/27/06

Date

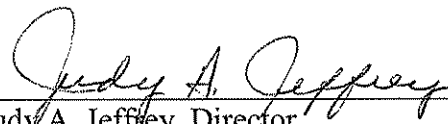
John M. Priester

Administrative Law Judge

It is so ordered.

10.30.06

Date



Judy A. Jeffrey, Director

Iowa Department of Education