

STATE DEPARTMENT OF EDUCATION
(Cite as 16 D.o.E. App. Dec. 235)

<i>In re Nick Awalt</i>	:	
Brad Kunecke,	:	
Appellant,	:	
v.	:	DECISION
Iowa High School Athletic Association,	:	
Appellee.	:	[Adm. Doc. #4038]

The above-captioned matter was heard on September 24, 1998, before a hearing panel comprising Jim Tyson, consultant, Bureau of Administration and School Improvement Services; Don Wederquist, consultant, Bureau of Community Colleges; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. Appellant, Brad Kunecke, principal of Lamoni High School, and Nick Awalt, were present and unrepresented by counsel. Appellee, Iowa High School Athletic Association [hereinafter, "the IHSAA"], was represented by David Harty, assistant executive director. Appellee also appeared *pro se*.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction are found in Iowa Code section 290.1 (1997) and 281 Iowa Administrative Code 36.17.

The administrative law judge finds that she and the Director of the Department of Education have jurisdiction over the parties and subject matter of the appeal before them.

Appellant seeks reversal of a decision of the Board of Control [hereinafter, "the Board"] of the IHSAA made on September 2, 1998, when it ruled that Nick Awalt would be ineligible to compete in athletics for Lamoni High School for a period of 90-school days.

I.
FINDINGS OF FACT

Nick Awalt is presently a senior at Lamoni High School. He turned 18 years old in August 1998 and moved to Lamoni to begin school there. The evidence showed that Nick moved into his own apartment in Lamoni and is supporting himself with no assistance from his mother or stepfather. He works at Graceland College in the Food Service Area, pays his own rent, utilities and phone. If these were the only facts in evidence, the case would be a simple one: Nick Awalt would be eligible to play under the provisions of the *General Transfer Rule* exception 36.15(3)(b)(4). The applicable rule states in pertinent part:

A student who transfers from one school district to another school district, except upon a **contemporaneous change in parental residence**, shall be ineligible to compete in interscholastic athletics for a period of 90-school days, as defined in 281 – 12.2(2), exclusive of summer enrollment, unless one of the following exceptions to the general transfer rule applies.

...

(4) In ruling upon the transfer of students who have been emancipated by marriage or by reaching the age of majority, the executive board is empowered to consider all circumstances with regard to the transfer to determine if it is **principally** for school or athletic purposes, in which case participation shall not be approved. If facts showing a valid purpose for the transfer are established, the executive board may declare the student eligible.

Id. (Emphasis added.)

The facts before the Board of Control of the IHSAA, however, were somewhat different. The IHSAA's Board denied Nick's eligibility based on these facts:

1. Nick Awalt was a student in Leon, Central Decatur during the 1997-98 school year.
2. Nick asked for and was granted open enrollment from Leon to Lamoni Community School District for the 1998-99 school year.
3. Nick was informed that he would be ineligible for 90-school days under the *Open Enrollment Rule*.
4. Nick turned 18 years of age at the end of August 1998 and desired to cancel the open enrollment papers
5. Lamoni was informed that Nick, even though he had reached the age of majority, was transferring for *educational reasons*, therefore, would be ineligible for 90-school days.
6. Lamoni appealed the ineligibility decision to the Board of Control at its September 2, 1998, Board meeting on the basis that the open enrollment was cancelled and Nick would not be ineligible under the *Open Enrollment Transfer Rule*.

As David Harty testified, the Board of Control denied Nick's eligibility because his request for open enrollment demonstrated that he was transferring schools for "school or athletic purposes". Mr. Harty also testified that the Board of Control made its decision based on the above-referenced facts.

At the appeal hearing at the Department of Education, the Principal of the High School, Brad Kunecke appeared with Nick to present additional evidence. Mr. Kunecke testified that had he realized that he could have appeared before the Board of Control, he would have done so. He stated he was appearing before the present panel to describe Nick's situation as he knew it because he did not feel that the evidence before the Board of Control reflected the total circumstances of Nick's move to Lamoni.

This additional evidence showed that Nick Awalt attended Lamoni Community Schools through the sixth grade. Nick has *never* attended school in Leon, Central Decatur. In the middle of his sixth grade year, he and his mother moved to Arizona, where Nick attended Paradise Valley Schools. During his junior year, Nick's mother married a man from Leon, Iowa, and she obtained a job in Lamoni at Graceland College. Nick and his mother planned to move back to Iowa after his junior year and live in Leon at the home of his new stepfather.

Because the move from Arizona to Iowa was going to be difficult for Nick, his mother wanted to make it less traumatic for him. She contacted Central Decatur Schools in Leon to see what she would need to do to enroll Nick in Lamoni. Central Decatur explained to the Awalts that they needed to apply for open enrollment. Ms. Awalt filed her application for open enrollment prior to the January 1st deadline. However, she did not move to Leon until May 1998. Technically, she could not have filed an application for open enrollment prior to the time she became a resident of Leon, Iowa. However, under the "good cause" rules, she had until June 30th in which to file her application.¹

After moving back to Iowa in June, Nick secured a full time job in Lamoni. He lived with friends in Lamoni during the summer. Nick's mother works in admissions at Graceland College and is out of town frequently. Since Nick doesn't have a car, it was only possible for him to work in Lamoni if he lived with friends (Exhibit C). Some time during the month of August 1998, Nick testified that he and his stepfather had a discussion about his plans to reside in Leon and commute to Lamoni for school. At some point, Nick's stepfather told him that he would have to chose to either live full time in Leon or

¹ A parent/guardian may apply for open enrollment after the filing deadline of January 1 and until June 30 of the school year preceding the school year for which open enrollment is requested if good cause exists for the failure to meet the deadline. Good cause is a change in the status of the pupil's residence or a change in the status of the pupil's resident district taking place after January 1, or the closing or loss of accreditation of a nonpublic school of attendance after January 1 resulting in the desire of the parent/guardian to obtain open enrollment for the following school year. If good cause can be established, the parent/guardian shall be permitted to apply for open enrollment in the same manner as if the deadline had been met. 281 IAC 17.4. Good cause related to change in the pupil's residence includes allowing a parent/guardian moving into an Iowa school district from out of state to obtain open enrollment to a different district from their new district of residence. 281 IAC 17.4(1).

live full time in Lamoni – but that he was not going to be “running back and forth”. This was about the same time that Nick was turning 18, so he decided to get his own apartment in Lamoni and live “independently”.

Because of this change in plans, Nick no longer needed open enrollment to attend school in Lamoni. On August 13, 1998, Brad Kunecke wrote a letter to Bernie Saggau, executive director of the IHSAA, and asked him to take this situation to the Board of Control to determine whether Nick could be eligible to play and compete in athletics since he was not under the *Open Enrollment Transfer Rule*. The Board of Control met on September 2, 1998, and reviewed Nick’s eligibility under rule 36.15(3)(b)(4). Because an open enrollment application had been filed for Nick to attend school in Lamoni, the Board felt that his attendance in Lamoni was principally for “athletics or school purposes” and denied him an exception to the ineligibility rule. At the appeal hearing, Mr. Harty testified that it appeared at the time of the Board of Control’s action that “the young man had open enrollment papers filed and approved by both boards of education. Later when he found out he was going to be ineligible for 90-school days, they dissolved the open enrollment papers, and Nick decided to live in Lamoni. ... If it were not for school reasons, he would have never requested open enrollment in the first place.” Mr. Harty acknowledged, however, that the facts regarding Nick’s ultimatum from his stepfather, as well as the fact that he was living in Lamoni and supporting himself, were facts that were not presented at the time the Board of Control made its decision.

II. CONCLUSIONS OF LAW

The primary issue before us is the application of the Department of Education’s longstanding rule regarding that

“[a] student who transfers from one school district to another school district, except upon a **contemporaneous change in parental residence**, shall be ineligible to compete in interscholastic athletics for a period of 90-school days ... unless one of the following exceptions to the general transfer rule applies.

...

(4) In ruling upon the transfer of students who have been emancipated by marriage or by reaching the age of majority, the executive board is empowered to consider all circumstances with regard to the transfer to determine if it is principally for school or athletic purposes, in which case participation shall not be approved. If facts showing a valid purpose for the transfer are established, the executive board may declare the student eligible.

The IHSAA Board of Control has long held that the rules requiring ineligibility surrounding transfers without parental relocation stems from two concerns: 1) recruiting of high school athletes; and 2) family decisions to change schools for athletic purposes ("to benefit their competitive standing"). While we understand that this was not a consideration in the present case, it is extremely difficult, if not impossible, for the Board of Control to apply the eligibility rules on a case-by-case basis. Therefore, if a family in good faith leaves a family residence in one district to move to a new residence in another district, no ineligibility period attaches.

For public policy reasons, courts have supported athletic associations' attempts to limit the recruitment of athletes. At the same time, these courts have recognized the impossibility of making case-by-case determinations for the reasons a student transfers school districts when his parents do not change their district of residence. As a practical matter, case-by-case eligibility hearings would exhaust the resources of the athletic associations. For that reason, there is a *presumption* that students who transfer school districts, without a contemporaneous move by their parents, will be ineligible to compete in athletics

The *presumption* of ineligibility, however, is a rebuttable one. There are reasons for which exceptions can be made. According to Black's Law Dictionary, a "rebuttable presumption" is, in the law of evidence, "[a] presumption which holds good until disproved." *Blacks Law Dictionary* 1432 (4th ed. 1951).

A transfer/ineligibility rule that makes no exceptions is vulnerable to a constitutional challenge. *See, e.g., Sturup v. Mahan*, 261 Ind. 463, 305 N.E.2d 877(1974).² *Sturup* invalidated Indiana's General Transfer Rule as unreasonably over-broad when applied to a student transferring schools for reasons unrelated to athletics. In a recent Indiana "transfer/ineligibility" case which followed *Sturup*, a separate concurring opinion reasoned that a total ban on eligibility after a transfer is not "rationally related to the goal of preventing recruitment." A better classification would require students and parents to demonstrate the motives behind the student's transfer, and in the absence of a legitimate explanation, would then apply the presumption that the transfer was motivated by athletics". *IHSAA v. Carlberg*, 661 N.E.2d 833, 835 (Ind. App. 1996)(concurring opinion).

In Iowa, the presumption of ineligibility can be rebutted. There are exceptions to the rule. These are codified in §256.46 of the Iowa Code and are part of the athletic rules adopted by the State Board of Education at 281 Iowa Administrative Code 36.15(3)(b).

² *Sturup* has been criticized as "out of the mainstream of case law on federal equal protection analysis". *IHSAA v. Carlberg*, 661 N.E.2d 833, 8343 (Ind. App. 1996).

Based upon all the evidence before this hearing panel, we believe Nick's situation comes within 36.15(3)(b)(4). That is because Nick completed his junior year in Arizona, then moved to Iowa. He lived in Lamoni over the summer then started school in Lamoni in August. He is eighteen and emancipated from his mother and stepfather. There would be no question that he would be eligible under these circumstances. The filing of the open enrollment application by his mother has created the problem regarding his eligibility. But Nick is not attending Lamoni under open enrollment. While it is true that he is living in Lamoni and will pursue academic and athletic opportunities there, it does not appear that he moved there *principally* for that reason. It appears that he moved there *principally* for the purpose of making a home for himself among old friends and familiar surroundings.

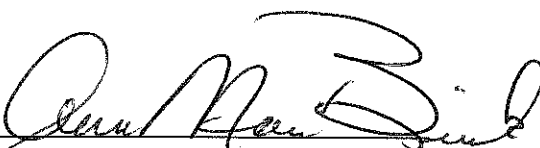
Nick's situation is understandable. His mother has a position at Graceland College that requires her to travel a lot. His stepfather gave Nick a choice about where to make his home and Nick chose Lamoni. Based on all the evidence before this hearing panel, we believe that Nick's situation merits an exception to the *General Transfer Rule*.

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

III. DECISION

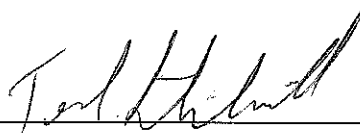
The decision of the Board of Control of the Iowa High School Athletic Association made on September 2, 1998, regarding the athletic ineligibility of Nick Awalt is, for the reasons stated above, hereby reversed.

Oct 28, 1998
DATE


ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

Oct. 29, 1998
DATE


TED STILWILL, DIRECTOR
DEPARTMENT OF EDUCATION