

**IOWA DEPARTMENT  
OF EDUCATION**  
(Cite as 26 D.o.E. App. Dec. 99)

*In re Austin Trumbull*

<b>Deanna Trumbull,</b>	:	
<b>Appellant,</b>		<b>DIA DOCKET NO. 11DOE001</b>
	:	
<b>vs.</b>		
	:	<b>DECISION</b>
<b>Iowa High School Athletic Association,</b>		[D.o.E. Admin. Doc. #4730]
<b>Appellee.</b>	:	

This matter was heard telephonically on June 7, 2011, before Margaret LaMarche, designated administrative law judge with the Iowa Department of Inspections and Appeals Division of Administrative Hearings, presiding on behalf of Jason Glass, Director of the Iowa Department of Education. The Appellant, Deanna Trumbull, was represented by attorney Joseph Moreland. The Appellee, Iowa High School Athletic Association [hereinafter, "IHSAA"] was represented by attorney Brian Humke. An evidentiary hearing was held pursuant to departmental rules found at 281 IAC [Iowa Administrative Code] chapter 6. Jurisdiction for this appeal is pursuant to Iowa Code section 280.13 and 281 IAC 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 this appeal.

The Appellant seeks reversal of a decision that the IHSAA Board of Control made on April 29, 2011, finding that North-Linn High School student Austin Trumbull 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). The Appellant presented the testimony of Deanna Trumbull and Austin Trumbull, the May 5, 2011 Affidavit of Deanna Trumbull, and attached Exhibits A-F. The IHSAA presented the testimony of its Assistant Executive Director, Todd Tharp, its Exhibit pages 1-20 and the tape of the hearing before the Board of Control (designated as Exhibit A).

**FINDINGS OF FACT**

Austin Trumbull enrolled in the 9<sup>th</sup> Grade at the Iowa City West High School in Iowa City, Iowa for the 2008-2009 school year. Austin is an excellent student and had no reported disciplinary issues while attending Iowa City West.

Austin enjoys sports and he played football while at Iowa City West, although he was never a starter. Austin experienced some verbal harassment and bullying from other

football players, who made insulting comments about his red hair, freckles, and the way he dressed. In the winter of 2009, a football player punched Austin in the nose in the hallway at school. This was reported to administration. Austin continued to experience verbal harassment and bullying in the halls and in the locker room in 2009, although he apparently did not report it to his mother or to the school. (Testimony of Deanna Trumbull; Austin Trumbull; Affidavit of Deanna Trumbull; IHSAA Exhibit A)

In September 2009, Austin was hospitalized for eight days for major depression. Both the Iowa City West principal and the guidance counselor were notified of his hospitalization. (Appellant Exhibits A, E) Deanna Trumbull believes that Austin's depression was the result of several issues: bullying, harassment, peer pressure to use drugs, and grief over the relatively recent deaths of both his father and grandmother. (Exhibit 000001) Emails dated September 22, 2009 between the principal and Ms. Trumbull reveal that Austin had reported some incidents of harassment and bullying. The principal agreed to follow up on these reports and to revisit the issue of harassment with the athletic director. (Appellant Exhibit B; IHSAA Exhibits 000011-13; Testimony of Deanna Trumbull; Austin Trumbull)

In the spring of 2010, Austin often told his mother that he did not feel comfortable at Iowa City West and that he wanted to attend a smaller school with fewer students. He also stated that he wanted to have the same kind of high school experience that his parents had at North Linn High School. Deanna Trumbull seriously considered relocating her family to the North Linn School District but felt that the move would be too difficult for her work and for her younger son. (IHSAA Exhibits 000001-2 and A; Testimony Deanna Trumbull)

In the fall of 2010, Deanna Trumbull was diagnosed with breast cancer and started chemotherapy. During this difficult time Austin reports that some students continued to call him names, to exclude him at lunch, and to bully him in the halls and locker room. Austin started arriving at school as late as possible to avoid other students and also started eating lunch alone in a classroom. (Testimony of Deanna Trumbull, Austin Trumbull; IHSAA Exhibit A)

In her affidavit of appeal and in her testimony at hearing, Deanna Trumbull described a series of incidents between Austin and the head football coach that occurred over several days in September 2010. Austin felt that the coach had unfairly criticized him in front of the rest of the team and also felt that the coach was unfairly punishing the team for losing games. Although Austin considered quitting the team because of these incidents, he ultimately decided to finish the season with the team after the coach agreed to apologize to him. These incidents with the coach do not appear to have been a significant factor in the transfer decision and they were not raised at the hearing before the Board of Control. (May 5, 2011 Affidavit; Testimony of Deanna Trumbull, Austin Trumbull, Todd Tharp; IHSAA Exhibit A)

Deanna Trumbull eventually agreed to allow Austin to transfer to North Linn High School. They chose North Linn because Austin could live with his grandfather and

because he had several aunts in the area and cousins who attended North Linn. Deanna Trumbull and her younger son did not move with Austin. Austin started school at North Linn High School on February 28, 2011. Austin is a transfer student and is not open-enrolled. Austin has had a good adjustment to his new school and is able to participate in junior varsity sports. However, Austin wants to participate in varsity baseball so that he can become better acquainted with the students in his own age group, who primarily play at the varsity level. (Testimony of Deanna Trumbull; Austin Trumbull; Todd Tharp)

Prior to the hearing before the IHSAA Board of Control, Assistant Executive Director Todd Tharp spoke by telephone to the Iowa City West High School principal, athletic director, and counselor. They denied that there was a pattern of bullying and harassment at Iowa City West that would lead to Austin having to transfer schools due to duress. (Testimony of Todd Tharp; IHSAA Exhibit 000008)

Following a hearing on April 27, 2011, the IHSAA Board of Control concluded that Austin does not qualify for immediate eligibility to participate in varsity athletics under the exceptions to the general transfer rule found at 281 IAC 36.15(3)"a"(8) because his transfer was primarily for "school or athletic" reasons. The IHSAA further concluded that the facts of this case do not reach the level that compels the Board to grant eligibility, such as a situation where a student is in danger of immediate and identifiable irreparable harm. (IHSAA Exhibit 000014-17) On May 5, 2011, Deanna Trumbull filed a notarized letter appealing that decision to the Director of the Iowa Department of Education.

### CONCLUSIONS OF LAW

The Department of Education's General Transfer rule, 281 IAC 36.15(3), provides in relevant part:

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. The period of ineligibility applies only to varsity level contests and competitions ... In ruling upon the eligibility of transfer students, the executive board shall consider the factors motivating student changes in residency. **Unless otherwise provided in these rules, a student intending to establish residency must show that the student is physically present in the district for the purpose of making a home and not solely for school or athletic purposes.**

(emphasis supplied). The general transfer rule includes a number of exceptions. This appeal is based on the exception found at 281 IAC 36.15(3)"a"(8), which provides:

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 school 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.

The IHSAA and the Department of Education have previously reserved this final exception to the general transfer rule for compelling personal circumstances, such as when a student is in danger of immediate and identifiable irreparable harm. The Department has previously held that the general transfer rules require the Board of Control to consider the factors that led up to the residence change and that created the ineligibility. The residence change must occur for the purpose of making a home and not solely for school or athletic purposes. *In re Derek Sears, 25 D.o.E. Dec 15 (2007)*.

The record reveals that while he was a student at Iowa City West, Austin was subjected to unfair treatment from some students. This occurred at times when Austin was particularly vulnerable due to the loss of his father and grandmother and due to his mother's serious illness. Austin's mother reported some of the harassment to administrators in September 2009, but it does not appear that either she or Austin reported ongoing or persistent harassment throughout the 2009-2010 and 2010-2011 school year. Austin's resilience and determination throughout this time has been admirable. Despite these difficult experiences, Austin was able to maintain an excellent academic record and was able to continue his participation on the varsity football team.

It is clear that Austin made the decision to transfer schools, in part, to avoid the bullying and harassment that he was experiencing at Iowa City West. However, there is insufficient evidence to conclude that Austin would have suffered immediate or irreparable harm unless he transferred schools. Moreover, Austin's transfer was also motivated by his desire for a smaller school environment and for a high school experience similar to what his parents had at North Linn. While Austin's high school experience would no doubt be enhanced if he was able to participate in varsity athletics immediately, the facts of this case are not sufficiently compelling to grant an exception. Based on this record, the IHSAA Board of Control's decision to deny the exception was reasonable and should be affirmed. The record supports the conclusion that Austin's transfer was principally for "school" purposes. Austin may participate in athletics at the Junior Varsity level so long as he is otherwise eligible.

The majority of courts, including the federal courts in Iowa, have held that there is no "right" to participate in interscholastic athletics. *Brands v. Sheldon Community School*, 671 F. Supp. 627 (N.D. Iowa 1987) Therefore, it cannot be argued that a student is harmed legally by his or her inability to compete.

**DECISION**

For the foregoing reasons, the April 29, 2011 decision of the Board of Control of the Iowa High School Athletic Association that Austin Trumbull is ineligible to compete in varsity interscholastic athletics at North-Linn 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.



Date: 06-15 -2011

Margaret LaMarche  
Administrative Law Judge6/15/11  
Date/s/  
Jason Glass, Ed.D., Director  
Iowa Department of Education

It is so ordered.