

# EDUCATION DEPARTMENT[281]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to amend Chapter 36, “Extracurricular Interscholastic Competition,” Iowa Administrative Code.

Notice of Intended Action was published in the October 11, 2017, Iowa Administrative Bulletin as **ARC 3364C**. Public comments were allowed until 4:30 p.m. on October 31, 2017. A public hearing was held on that date. No one attended the public hearing, and no public comments were received. The adopted rules are nearly identical to the noticed rules.

This rulemaking incorporates changes to the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431, et seq.), as reauthorized in December 2015 by the Every Student Succeeds Act (ESSA). Changes as a result of ESSA include modifying the requirements of the State Plan to include procedures that ensure that homeless students do not face barriers to accessing extracurricular activities because of their homelessness. As a result of these changes, subrule 36.15(3) is being amended to ensure that homeless students are provided an exception to the 90 consecutive school days of ineligibility under the General Transfer Rule if they are determined to meet the definition of a homeless child or youth under McKinney-Vento as determined by the attending district.

An agencywide waiver provision is provided in 281—Chapter 4.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement the provisions of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431, et seq.), as reauthorized in December 2015 by the Every Student Succeeds Act (ESSA).

The following amendment are adopted.

Amend subrule 36.15(3) as follows:

**36.15(3) *General transfer rule.*** A student who transfers from a school in another state or country or 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 rule 281—12.1(256), 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. (“Varsity” means the highest level of competition offered by one school or school district against the highest level of competition offered by an opposing school or school district.) 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.

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:

(1) Upon a contemporaneous change in parental residence, a student is immediately eligible if the student transfers to the new district of residence or to an accredited nonpublic member or associate member school located in the new school district of residence. In addition, if with a contemporaneous change in parental residence, the student had attended an accredited nonpublic member or associate member school immediately prior to the change in parental residence, the student may have immediate eligibility if the student transfers to another accredited nonpublic member or associate member school.

(2) If the student is attending in a school district as a result of a whole-grade sharing agreement between the student’s resident district and the new school district of attendance, the student is immediately eligible.

(3) A student who has attended high school in a district other than where the student’s parent(s) resides, and who subsequently returns to live with the student’s parent(s), becomes immediately eligible in the parent’s resident district.

(4) Pursuant to Iowa Code section 256.46, a student whose residence changes due to any of the following circumstances is immediately eligible provided the student meets all other eligibility

requirements in these rules and those set by the school of attendance:

1. Adoption.
2. Placement in foster or shelter care.
3. Participation in a foreign exchange program, as evidenced by a J-1 visa issued by the United States government, unless the student attends the school primarily for athletic purposes.
4. Placement in a juvenile correction facility.
5. Participation in a substance abuse program.
6. Participation in a mental health program.
7. Court decree that the student is a ward of the state or of the court.
8. 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.

(5) A transfer student who attends in a member or associate member school that is a party to a cooperative student participation agreement, as defined in rule 281—36.20(280), with the member or associate member school the student previously attended is immediately eligible in the new district to compete in those interscholastic athletic activities covered by the cooperative agreement.

(6) Any student whose parents change district of residence but who remains in the original district without interruption in attendance continues to be eligible in the member or associate member school of attendance.

(7) A special education student whose attendance center changes due to a change in placement agreed to by the district of residence is eligible in either the resident district or the district of attendance, but not both.

(8) A student who is found by the attending district to be a homeless child or youth as defined in rule 281—33.2(256).

~~(8)~~ (9) 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.

*b.* In ruling upon the transfer of students who have been emancipated by marriage or have reached the age of majority, the executive board shall 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.

*c.* A student who participates in the name of a member or associate member school during the summer following eighth grade is ineligible to participate in the name of another member or associate member school in the first 90 consecutive school days of ninth grade unless a change of residence has occurred after the student began participating in the summer.

*d.* A school district that has more than one high school in its district shall set its own eligibility policies regarding intradistrict transfers.