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ROBERT D. BENTON, Ed.D., STATE SUPERINTENDENT  
David H. Bechtel, M. S., Administrative Assistant  
RICHARD N. SMITH, Ph.D., DEPUTY SUPERINTENDENT

Declaratory Ruling #2  
(Cite as 1 D.P.I. Declaratory Ruling 2)

September 8, 1975

Robert R. Kemp, M.D.  
206 North 7th  
Keokuk, Iowa 52632

Dear Dr. Kemp:

Your Petition for Declaratory Ruling was filed in my office on August 18, 1975. In it you request a ruling on shared time provisions of the Code related to extracurricular activities, especially athletics, as follows:

Many nonpublic schools are unable to provide certain sports activities such as swimming, wrestling, etc. Shared time for school classes, band, choruses, and the like are allowed. Why not shared time and participation in sports? More pointedly if a parochial or private school does not and has no possibility of providing a specific sport; and if the school board of the district involved is in agreement, we ask that interested parochial or private students be allowed to participate on public school teams.

A fair rephrasing of the issue you present would be as follows:

May students enrolled in nonpublic schools participate in extracurricular activities, especially athletics, sponsored by the public school and also be allowed to participate on public school teams in such activities under shared time provisions of Section 257.26, The Code 1975, when the nonpublic school does not provide that specific sport or activity for the students?

The answer to the question as rephrased is in the negative.

Section 257.26, herein set out in part refers repeatedly to course offerings and does not expressly or impliedly authorize shared time arrangements for extracurricular activities:

257.26. SHARING INSTRUCTORS AND SERVICES. The state board, when necessary to realize the purposes of this chapter, shall approve the enrollment in public schools for specified courses of students who also are enrolled in private schools, when the courses in which they seek enrollment are not available to them in their private schools, provided such students have satisfactorily completed prerequisite courses, if any, or have otherwise shown equivalent competence through testing. Courses made available to students in this manner shall be considered as compliance by the private schools in which such students are enrolled with any standards or laws requiring such private schools to offer or teach such courses. (Emphasis mine)

The clear and plain meaning of the term "courses" does not include extra-curricular activities or participation on school teams. The Dictionary of Education, 3rd edition at page 148 defines the term "course" as:

course: organized subject matter in which instruction is offered within a given period of time, and for which credit toward graduation or certification is usually given.

Section 257.26, as amended by H.F. 801 (1975), section 2, sets forth those services which may be provided for nonpublic school students. Extra-curricular activities are not provided for in that section as amended.

Support for this view is also found in an Attorney General's opinion at 1968 O.A.G., 69 at page 72:

Accordingly, we conclude the state board may not approve shared time for courses other than those required by law as "necessary" in order to meet the minimum requirements for an approved school.

Further support for my response to your Petition is found in Chapter 670--9 of the Rules of this Department on file with the Secretary of State. The relevant provisions are found in the Eligibility Requirements of Rule 670--9.14 for interscholastic competition:

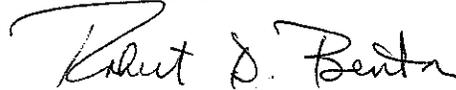
670--9.14(280) ELIGIBILITY REQUIREMENTS. The organizations shall prescribe and implement eligibility requirements for students participating in contests or competitions as described below:

9.14(1) All contestants must be enrolled and in good standing in a school that is a member in good standing of the organization sponsoring the event.

9.14(3) All contestants shall be regular students of the school in good standing; they shall have earned 15 semester hours credit toward graduation in the preceding semester of the school, and shall be making passing grades in subjects for which 15 semester hours credit is given for the current semester as determined by the local school administrator. (Emphasis mine)

All of the foregoing leads me to the conclusion that nonpublic school students may not participate in the extracurricular activities, including sports, of the public school system under the statutory provisions for shared time enrollment found in Section 257.26, The Code 1975.

Sincerely yours,

A handwritten signature in cursive script that reads "Robert D. Benton". The signature is written in dark ink and is positioned above the typed name.

Robert D. Benton, Ed.D.  
State Superintendent of Public Instruction

RDB:tag