

Iowa State Board of Education

Executive Summary

August 5, 2021



Agenda Item: Rules: 281 IAC Chapter 36 – Extracurricular Interscholastic Competition (Adopt)

State Board Priority: Implementing Iowa’s Academic Standards

State Board Role/Authority: Iowa Code section 256.7(5) gives the State Board of Education the statutory authority to adopt rules under Chapter 17A.

Presenter(s): Thomas A. Mayes
General Counsel

Attachment(s): One

Recommendation: It is recommended that the State Board amend Chapter 36.

Background: House File 847 made changes to athletic eligibility for certain transfer situations. This rule making incorporates those changes. This rule making also makes changes in light of current family law practice.

The Department received comments from four individuals who asked the Department to expand the availability of paragraph “m” (agreement between boards of sending and receiving districts) to nonpublic school students. This is beyond the scope of the legislation. The Department is unable to recommend the requested change.

EDUCATION DEPARTMENT[281]

Adopted and Filed

The State Board of Education hereby amends Chapter 36, “Extracurricular Interscholastic Competition,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, 2021 Iowa Acts, House File 847.

Purpose and Summary

2021 Iowa Acts, House File 847, makes changes to athletic eligibility for certain transfer situations. This rule making incorporates those changes. This rule making also makes changes in light of current family law practice.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 30, 2021, as **ARC 5746C**.

A public hearing was held on July 20, 2021, at 10:00 a.m. at the Grimes State Office Building, Room B100, with an option to participate by video conference. One person appeared at the hearing and presented public comment. The Department received four written comments. All comments requested the Department to expand paragraph “m” of item 4 to include nonpublic school students. All comments want a more permissive transfer rule. After consideration, the Department cannot agree. The language of paragraph “m” parallels the relevant provision in House File 847. Expansion of this language is a legislative function. For that reason, the

Department cannot make the requested change. The amendments are identical to those published in the notice of intended action.

Adoption of Rule Making

This rule making was adopted by the State Board of Education on August 5, 2021.

Fiscal Impact

This rule making has no fiscal impact to the state of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on September 29, 2021.

The following rule-making action is adopted:

ITEM 1. Amend subparagraph **36.15(3)“a”(1)** as follows:

(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. For purposes of this subparagraph, a contemporaneous change in parental residence includes a change in a student's residence from the residence of one parent or guardian to the residence of a different parent or guardian.

ITEM 2. Amend subparagraph **36.15(3)“a”(4)** as follows:

(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. to 8. No change.

9. The child's former school or school district, if located in this state, was unable to participate in varsity interscholastic sports as the result of a decision or implementation of a decision of the school board or superintendent.

ITEM 3. Amend subrule 36.15(4) as follows:

36.15(4) *Open enrollment transfer rule.* A student in grades 9 through 12 whose transfer of schools had occurred due to a request for open enrollment by the student's parent or guardian is ineligible to compete in interscholastic athletics during the first 90 school days of transfer except that a student may participate immediately if the student is entering grade 9 for the first time and did not participate in an interscholastic athletic competition for another school during the summer immediately following eighth grade. 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.) If a pupil is declared ineligible for interscholastic athletic contests and athletic competitions in the pupil's district of residence due to the pupil's academic performance, upon participating in open enrollment, in addition to any other period of ineligibility under this rule, the pupil shall be ineligible in the receiving district for the remaining period of ineligibility declared by the district of residence. This period of ineligibility does not apply if ~~the student~~:

a. ~~Participates~~ The student participates in an athletic activity in the receiving district that is not available in the district of residence; or

b. ~~Participates~~ The student participates in an athletic activity for which the resident and receiving districts have a cooperative student participation agreement pursuant to rule 281—36.20(280); or

c. ~~Has~~ The student has paid tuition for one or more years to the receiving school district prior to making application for and being granted open enrollment; or

d. ~~Has~~ The student has attended in the receiving district for one or more years prior to making application for and being granted open enrollment under a sharing or mutual agreement between the resident and receiving districts; or

e. ~~Has~~ The student has been participating in open enrollment and ~~whose~~ the student's parents/guardians move out of their district of residence but exercise either the option of remaining in the original open enrollment district or enrolling in the new district of residence. If the student has established athletic eligibility under open enrollment, it is continued despite the parent's or guardian's change in residence; or

f. ~~Has~~ The student has not been participating in open enrollment, but utilizes open enrollment to remain in the original district of residence following a change of residence of the student's

parent(s). If the student has established athletic eligibility, it is continued despite the parent's or guardian's change in residence; or

g. ~~Obtains~~ The student obtains open enrollment due to the dissolution and merger of the former district of residence under Iowa Code ~~subsection~~ section 256.11(12); or

h. ~~Obtains~~ The student obtains open enrollment due to the student's district of residence entering into a whole-grade sharing agreement on or after July 1, 1990, including the grade in which the student would be enrolled at the start of the whole-grade sharing agreement; or

i. ~~Participates~~ The student participates in open enrollment and the parent/guardian is an active member of the armed forces and resides in permanent housing on government property provided by a branch of the armed services; or

j. ~~Open~~ The student open enrolls from a district of residence that has determined that the student was previously subject to a founded incident of harassment or bullying as defined in Iowa Code section 280.28 while attending school in the district of residence; ~~or~~

k. The student participates in open enrollment because of circumstances that meet the definition of "good cause" under Iowa Code section 282.18(4) "b"; or

l. The board of directors or superintendent of the district of residence issues or implements a decision that results in the discontinuance or suspension of varsity interscholastic sports activities in the district of residence; or

m. The board of directors of the district of residence and the board of directors of the receiving district both agree to waive the ineligibility period; or

n. For open enrollment applications approved for the school year beginning July 1, 2021, the student's district of residence had a voluntary diversity plan in effect on January 1, 2021, and applicable to the school year beginning July 1, 2021.

ITEM 4. Adopt the following new implementation sentence in **281—Chapter 36**:

These rules are intended to implement Iowa Code sections 256.46, 280.13, and 282.18 and 2021 Iowa Acts, House File 847.