

EDUCATION DEPARTMENT[281]

Adopted and Filed

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

Item 1 incorporates an amendment to the Open Enrollment Program included in 2016 Iowa Acts, House File 2264, which was passed by the 2016 General Assembly and became effective on April 7, 2016. Changes that resulted from House File 2264 include modifying the delineation of reasons that a pupil participating in open enrollment during grades 9 through 12 is not subject to the restriction on eligibility to participate in varsity interscholastic athletic contests and athletic competitions during the pupil’s first 90 school days of enrollment in the receiving district. In addition, a pupil is not subject to the restriction on eligibility for exercising open enrollment if the pupil had previously been the subject of a founded case of harassment or bullying in the district of residence.

Item 2 provides that the eligibility of a pupil open enrolling due to a founded case of harassment or bullying as defined in Iowa Code section 280.28 while attending school in the district of residence is not subject to review by the executive board of the governing organization.

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

Notice of Intended Action was published in the July 6, 2016, Iowa Administrative Bulletin as **ARC 2608C**. Public comments were allowed until 4:30 p.m. on July 26, 2016. A public hearing was held on that date. No one attended the public hearing, and no written comments were received. These amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code section 282.18 as amended by 2016 Iowa Acts, House File 2264.

These amendments will become effective November 16, 2016.

The following amendments are adopted.

ITEM 1. 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.) This period of ineligibility does not apply if the student:

- a. Participates in an athletic activity in the receiving district that is not available in the district of residence; or
- b. 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 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 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 been participating in open enrollment and whose 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 pupil student has established athletic eligibility under open enrollment, it is continued despite the parent’s or guardian’s change in residence; or

f. 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 ~~pupil~~ student has established athletic eligibility, it is continued despite the parent's or guardian's change in residence; or

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

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

i. 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 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.

ITEM 2. Amend rule 281—36.16(280) as follows:

281—36.16(280) Executive board review. A student, parent of a minor student, or school contesting the ruling of a student's eligibility based on these rules, other than subrule 36.15(1) or paragraph 36.15(2) "c," "d," "f," or "k," or paragraph 36.15(4) "j" or a school contesting a penalty imposed under paragraph 36.15(6) "b," shall be required to state the basis of the objections in writing, addressed to the executive officer of the board of the governing organization. Upon request of a student, parent of a minor student, or a school, the executive officer shall schedule a hearing before the executive board on or before the next regularly scheduled meeting of the executive board but not later than 20 calendar days following the receipt of the objections unless a later time is mutually agreeable. The executive board shall give at least 5 business days' written notice of the hearing. The executive board shall consider the evidence presented and issue findings and conclusions in a written decision within 5 business days of the hearing and shall mail a copy to appellant.

[Filed 9/16/16, effective 11/16/16]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/16.