

**IOWA STATE DEPARTMENT  
OF EDUCATION**  
(Cite as 20 D.o.E. App. Dec. 314)

***In re Mark Winburn***

Mark Winburn,	:	
Appellant,	:	
v.	:	DECISION
Iowa High School Athletic	:	
Association, Appellee.	:	[Admin. Doc. #4457]

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The above-captioned matter was heard telephonically on April 17, 2002, before Susan E. Anderson, J.D., designated administrative law judge, presiding on behalf of Ted Stilwill, Director of Education.

Appellant, Mark Winburn, was present, as were his stepfather, Mark Schmadeke and his grandfather, John Hall. Also present on Mark's behalf were Allan Eckelman, principal at Sumner High School; and Wayne O'Brien, principal at North Fayette High School. Appellee, Iowa High School Athletic Association [hereinafter, "IHSAA" or "the Association"], was present in the person of Bernie Saggau, Executive Director. Both parties were unrepresented by counsel.

An evidentiary hearing was held pursuant to departmental rules found at 281-Iowa Administrative Code 6. Jurisdiction for this appeal is found at Iowa Code section 280.13(2001) and 281-Iowa Administrative Code 36.17. Appellant seeks reversal of a decision of the Board of Control of the IHSAA made on March 15, 2002, declaring that Mark Winburn is ineligible under the provisions of 281-Iowa Administrative Code 36 to compete in high school athletics for 90 school days following his transfer.

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.

**I.  
FINDINGS OF FACT**

Mark Winburn ("Mark") is currently a seventeen-year-old junior attending high school at Sumner High School ["Sumner"], a public school located in Sumner, Iowa. Mark lives with his mother and stepfather in the Sumner Community School District.

The underlying facts of this appeal were not disputed by the Association and were confirmed by the testimony of Mark, Mr. Schmadede, Mr. Eckelman and Mr. O'Brien, as follows:

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In the fall of 1999, Mark and his family moved from Cedar Falls where Mark was attending Northern University High, to a family farm in northeast Iowa. The house was one of two family homes in the area. The house where Mark's family lived was located in the North Fayette District. Mark and his three brothers, two younger and one older, began classes in the North Fayette District. During the 1999-2000 school year, Mark's family traded homes with an uncle and moved three miles south to the second family home, which is located in the Sumner District. Rather than change schools mid-year, the parents decided that the four boys would continue to attend school at North Fayette under the open enrollment continuation provision.

As a freshman and sophomore at North Fayette (1999-2000; 2000-2001), Mark played football, basketball, baseball and ran track. During his junior year (2001-2002), he has played football and basketball.

At the beginning of the 2002 spring semester, Mark's younger brothers began attending school at Sumner, primarily to take advantage of the bus transportation. In February 2002, Mark felt the cumulative effect of several pressures. Mark felt that a move from North Fayette to Sumner would be in his best interest.

The pressures Mark felt prior to transferring to Sumner arose from the following four situations: 1) His stepfather's uncle had some rather serious legal problems. Those problems reflected negatively on the family and the way in which Mark felt he was treated by his peers. 2) Mark's older brother, who also participates in athletics, had been involved with drugs. After a number of incidents, his brother left school and was admitted to a drug rehabilitation facility. Mark felt that the reputation his brother acquired also reflected negatively on Mark. He felt that

he was treated differently by his peers and perhaps some of the high school staff. Mark felt that no matter how hard he worked in his studies and in athletics, he "could not seem to get a fair shake."3) Mark and a girl whom he had been dating broke up after about a year. She was diagnosed with an eating disorder. Her eating disorder led to hospitalization and a coma. Mark felt that the girl's parents and friends blamed him for her condition because of their breakup. 4) Internal strife among members of the North Fayette basketball team led to Mark's feeling blamed for their disappointing season.

In February 2002, Mark asked his mother and stepfather to open enroll him out of North Fayette into Sumner. On February 13, 2002, Mark began attending school at Sumner High School. When Mark transferred, he was advised by Sumner that he would probably be ineligible to compete in interscholastic athletic competition for 90 school days. Mr. Eckelman sought an athletic eligibility ruling from the Association by letter dated February 13, 2002.

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Mr. Saggau wrote a letter to Mr. Eckelman on February 19, 2002, explaining that Mark would be ineligible to compete at Sumner for 90 school days.

On February 26, 2002, Mr. O'Brien wrote a letter to appeal Mark's ineligibility to the Association's Board of Control. Mr. Saggau acknowledged receipt of that letter and wrote Mr. O'Brien a letter dated February 28, 2002. Mark's appeal was placed on the Association's Board of Control agenda for the next meeting, scheduled for March 15, 2002. The Board of Control considered all of the previous correspondence and the facts of Mark's situation. The Board of Control upheld the determination of ineligibility for 90 school days following the open enrollment transfer. The Board of Control applied 281 Iowa Administrative Code 36.15(4) in its ineligibility determination. Mr. Eckelman and Mr. O'Brien were informed of that decision by letter dated March 18, 2002, from Mr. Saggau.

Mark then appealed to the Director of the Department of Education. Mark would like to compete in track during the spring of 2002. He is currently practicing with the track team. He would also like to compete in all of the football games during the fall of 2002. The 90-school-day ineligibility period would not conclude until after the third football game of the season.

Mr. Saggau testified at the appeal hearing that the Board of Control based its decision on the Open Enrollment Transfer Rule, 281 Iowa Administrative Code 36.15(4). He testified that during his 38 years at the Association, the Board of Control has never gone beyond that rule and its stated exceptions. Mark testified that he doesn't believe any of the stated exceptions apply to his situation, but he would nevertheless would like the Director to consider what Mark feels are extenuating circumstances.

## II. CONCLUSIONS OF LAW

The State Board of Education has adopted rules regarding student athletic eligibility pursuant to the authority contained in Iowa Code section 280.13(2001). Those rules are found in 281-Iowa Administrative Code 36. The rules are enforced by the schools themselves and by the coaches, subject to interpretations and assistance from the Iowa High School Athletic Association (for male athletes) and the Iowa Girls' High School Athletic Union (for female athletes). Pursuant to 28E agreements, the Association and the Union enforce the rules by their official determinations, subject to appeal to the Director of the Department of Education.

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The IHSAA applied on 281-36.15(4), the *Open Enrollment Transfer Rule* in declaring Mark ineligible to compete in athletics for 90 school days at Sumner High School. Rule 36.15(4) states:

**36.15(4)** *Open enrollment transfer rule.* A student in grades 10 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, but may practice with the team, during the first 90 school days of transfer. However, if an open enrollment student participates in the name of a member school during the summer, the student is ineligible to participate in the name of another member

school for the first 90 school days of the following school year. 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 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 has established athletic eligibility under open enrollment, it is continued, despite the parent's or guardian's change in residence; or

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- 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 has established athletic eligibility under open enrollment, it is continued, de-

spite 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 district of residence entering into a whole-grade sharing agreement on or after July 1, 1990, including the grade in which the pupil 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.

In this case, Mark's situation falls squarely within the language of the above rule. Mark open enrolled from a public school, North Fayette High School, to another public school, Sumner High School, after the ninth grade. None of the exceptions listed in Rule 36.15(4) apply to Mark's situation. Mark is, therefore, ineligible to compete in interscholastic athletics in the Sumner School Community School District, for ninety (90) school days following his open enrollment.

Any motions or objections not previously ruled upon are hereby denied and overruled.

### **III. DECISION**

For the foregoing reasons, the March 15, 2002, decision of the Board of Control of the Iowa High School Athletic Association, declaring Mark Winburn ineligible to compete in interscholastic athletics for ninety (90) school days in the Sumner Community School District, is hereby affirmed. There are no costs of this appeal to be assigned.

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DATE

SUSAN E. ANDERSON, J.D.  
ADMINISTRATIVE LAW JUDGE

It is so ordered.

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DATE

TED STILWILL  
DIRECTOR