

**IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 20 D.o.E. App. Dec. 103)**

<i>In re Yual Pul Kun</i>	:	
Yual Pul Kun, Appellant,	:	
v.	:	DECISION
Iowa High School Athletic Association,	:	
Appellee.	:	[Adm. Doc. #4402]

The above-captioned matter was heard on September 19, 2001, before a hearing panel comprised of Dr. Ed Thomas, consultant, Bureau of Instructional Services; Ms. Jane Heinsen, consultant, Bureau of Practitioner Preparation & Licensure; and Susan E. Anderson, J.D., designated administrative law judge, presiding. Appellant, Yual Pul Kun, was present and was unrepresented by counsel. Appellee, Iowa High School Athletic Association [hereinafter, “the Association” or “IHSAA”], was present in the person of Mr. Rick Wulkow, assistant executive director of the Association. The Association was also unrepresented by counsel.

Jurisdiction and authority for this appeal are found in Iowa Code section 280.13 (2001) and 281 Iowa Administrative Code 36.17. An evidentiary hearing was held pursuant to rules of the Department of Education found at 281 Iowa Administrative Code 6. Mr. Kun seeks reversal of a decision of the IHSAA Board of Control [hereinafter, “the Board”], made on August 29, 2001, denying his request for an exemption from the 90-school-day athletic ineligibility period that attaches to students transferring schools under open enrollment.

The administrative law judge finds that she and the Director of the Department of Education have jurisdiction over the parties and subject matter before them. 281 IAC 36.17.

**I
FINDINGS OF FACT**

Yual Pul Kun [“Yual”] is currently a senior attending Urbandale Community School District [“Urbandale”]. He is 17 years old. He intends to graduate from Urbandale at the end of the 2001-2002 school year. He resides with a relative, Mr. Chan, in the Des Moines Independent Community School District. Yual was open enrolled into Urbandale in August 2001. Yual and Mr. Robert Eilts, an Urbandale resident who has known Yual for several years, testified at the appeal hearing. The chronology of Yual’s residency and school attendance follows, according to the evidence they presented at the hearing.

Before his sixth-grade year (1995-1996), Yual lived in Sudan. In 1995, he moved to the United States and began residing in Des Moines with his uncle and legal guardian, Mr. Douth Deng. Yual's parents were living in Ethiopia. Yual attended sixth grade at Des Moines Harding Middle School. In 1996, Mr. Deng moved to Urbandale with Yual, who then attended school in Urbandale during his seventh, eighth, and ninth grade years, from 1996 to 1999. During his freshman year at Urbandale (1998-1999), Yual competed in basketball.

In 1999, Mr. Deng moved to Omaha, Nebraska in order to take advantage of a support system that had been formed in Omaha for Sudanese refugees, including better job opportunities. Yual moved to Omaha with Mr. Deng, even though Yual did not want to leave his friends in the Urbandale school system and in the Urbandale community.

Yual attended school at Omaha's Central High School during his sophomore and junior years (1999-2001). He competed in basketball both years at Central High in Omaha. In the summer of 2001, Yual had the opportunity to move back to Iowa to live with another relative, Mr. Hoth Chan. Mr. Chan had just graduated from Iowa State University in Ames and had moved to Des Moines near the Drake University campus to work on an advanced degree. Yual, who had never stopped missing his Iowa connections and friends, moved in with Mr. Chan in Des Moines. He was still welcome to live with Mr. Deng in Omaha, but chose to return to Iowa to finish high school. Mr. Deng remained Yual's legal guardian.

Mr. Deng completed an open enrollment application for Yual to attend school once again in Urbandale. His open enrollment application was approved by both the Des Moines and the Urbandale districts. Yual began attending classes at Urbandale as a senior on about August 23, 2001. Yual wants to compete in basketball his senior year. He intends to practice with the basketball team even if he can't compete in the games. He intends to graduate from Urbandale High School in the spring of 2001 whether or not he can play in all the basketball games.

The evidence showed that Yual changed schools for academic and social reasons. Yual feels a quality education is more important than athletic participation. However, sports are really important to Yual and he feels that all the exercise, discipline, and camaraderie involved in competition are additional benefits. Yual feels that he should be granted immediate eligibility to compete in athletics at Urbandale High School. He wishes to compete in basketball and plans to attend basketball practices as soon as that season begins.

Mr. Wulkow testified on behalf of the Association at the appeal hearing as follows. Mr. Brian Coppess, athletic director at Urbandale High School, first contacted Bernie Saggau, executive director at the Association, by letter dated August 24, 2001, to seek a ruling on Yual's athletic eligibility. Mr. Saggau responded to Mr. Coppess by letter dated August 29, 2001, stating in pertinent part:

The fact is the young man lived in Omaha for two years and now lives in the Des Moines School System and open enrolled to Urbandale, makes [sic] him ineligible for 90-school days. ...

Actually the young man would have eligibility in the Des Moines School System but not Urbandale. Had he moved into your school district, he would have been eligible immediately.

(Exh. 3.)

At its meeting on August 29, 2001, the Board of Control confirmed Mr. Saggau's decision that Yual is ineligible to compete at Urbandale for 90 school days under 281 IAC Rule 36.15(4). Yual then appealed to the Director of the Department of Education. Mr. Wulkow testified that the 90 school days would be over sometime near the middle of January 2002, well into the high school basketball season.

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. 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.

The Open Enrollment Law addresses eligibility for athletes in Iowa Code section 282.18(13)(2001). The rules which implement that Iowa Code section are found at 281 Iowa Administrative Code 17.8(2) and 281 Iowa Administrative Code 36.15(4). The rules provide, in pertinent part:

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
- 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, 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 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.

Id.

Yual does not contend that his situation fits under any of the exceptions to rule 36.15(4). He contends instead that the open enrollment transfer rule unfairly prohibits him from competing in athletics at Urbandale even though his transfer was not motivated by his desire to compete in athletics there.

When the General Assembly passes a law, such as the one in this case, the General Assembly has the power to declare if any exceptions can be made. It declared several specific circumstances that would justify an exception from the ninety-school-days ineligibility period. When the Department of Education and the State Board engage in rulemaking, unless the adopted rules by their very language create the potential for a “catch-all exception,” the Association is bound by the exceptions formally adopted in the rules. Neither the Association nor the Director of the Department of Education is free to add to, or subtract from, the list of exceptions in the rules.

Unfortunately, there is simply no avenue of redress for Yual to be found in either the state law or departmental rules. We, therefore, affirm the decision of the Association’s Board of Control.

III. DECISION

For the foregoing reasons, the August 29, 2001, decision of the Board of Control of the Iowa High School Athletic Association, declaring Yual Pul Kun ineligible to compete in athletics for 90 school days at Urbandale, is hereby affirmed. There are no costs of this appeal to be assigned.

DATE

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

DATE

TED STILWILL, DIRECTOR
DEPARTMENT OF EDUCATION