

**IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 19 D.o.E. App. Dec. 188)**

<i>In re Mark Lee Mills</i>	:	
	:	
Richard & Laurie Mills, Appellants,	:	
v.	:	DECISION
Iowa High School Athletic Association,	:	
Appellee.	:	[Adm. Doc. #4301]

The above-captioned matter was heard on January 30, 2001, before a hearing panel comprised of Steve Fey and Peggy Wetherell, consultants, Bureau of Administration and School Improvement Services; and designated administrative law judge Susan E. Anderson, J.D., presiding. Appellant, Laurie Mills, and Mark Mills, appeared in person, unrepresented by counsel. Appellee, Iowa High School Athletic Association [hereinafter, "IHSAA" or "the Association"], was present by telephone in the person of David Harty, assistant executive director of the Association. The Association was also unrepresented by counsel.

Jurisdiction and authority for this appeal are found under 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. The Mills family seeks reversal of a decision of the IHSAA Board of Control [hereinafter, "the Board"] made on January 11, 2001, denying their request for an exemption for their son from the 90-school-day athletic ineligibility period that attaches to students transferring to 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**

Mark Mills is currently a junior attending Adel-Desoto-Minburn Community School District ["ADM"]. He began at ADM at the beginning of the second semester on January 15, 2001. He and his parents reside on a farm in the Dexfield Community School District, where Mark attended kindergarten. The Mills open enrolled Mark to the Panorama Community School District ["Panorama"] beginning with his first-grade year. Mark attended Panorama through the end of the first semester of his junior year.

The evidence is undisputed that Mark Mills is a very good student; his GPA at Panorama was 3.8. He is a junior and is short only ½ credit from the number he needs to graduate at the end of the 2000-2001 school year. He intends to stay in school and graduate at the end of the 2001-2002 school year. He has taken the “college track” classes that Panorama has to offer. He took a college advanced algebra and trigonometry class over the ICN last semester. This was the first class ever offered over the ICN at Panorama. Mark has taken all the math classes Panorama has to offer. The Panorama District offers no advanced placement classes besides the advanced algebra and trigonometry class Mark has already taken. He is considering a major in engineering and will need a very strong math background.

Mark and his parents feel strongly that Mark should participate in high school activities. He is a very social young man and has participated in the talented and gifted program, Odyssey of the Mind program, Destination Imagination program, Teens Against Cigarettes, Rock in Prevention, student council for the past two years and he was an officer of his freshman and sophomore classes. Mark has participated in sports, including football and soccer in the fall; wrestling in the winter; and running track in the spring.¹

During the first semester of his junior year at Panorama, Mark made the difficult decision to transfer to ADM, which is a larger school that can offer him better academic preparation for college and an engineering degree. The Mills family applied for open enrollment at Dexfield, their original resident district, even though Panorama was now the receiving district and Adel was the desired alternative receiving district. The Mills were told that Panorama would have to approve the open enrollment. Panorama has not formally acted on Mark’s open enrollment for this semester. It is scheduled to vote on it at the February 12, 2001 meeting. Mark’s open enrollment has already been approved for the 2001-2002 school year when he will be a senior.

The evidence showed that Mark changed schools purely for academic reasons. ADM offers calculus, advanced placement physics, and advanced placement chemistry. The Mills feel a quality education is more important than athletic participation. However, sports are really important to Mark and they feel all the exercise, discipline, and camaraderie involved are additional benefits. The Mills feel that Mark should be granted a waiver from the rule of 90-school-days of ineligibility due to his open enrollment to ADM.

Mrs. Mills first contacted Bernie Saggau at the Association by telephone to seek a ruling on Mark’s athletic eligibility. Mr. Saggau wrote the Mills a letter on December 12, 2001, saying he was without authority to waive the rule. Mr. Saggau advised the

¹ The Panorama District does not offer soccer, so he has played in a community soccer team in the fall.

Mills of the avenue of appeal from his decision, but cautioned them that the Board also lacked the authority to waive or otherwise make exception to the rule. Nevertheless, the Mills requested that the Board of Control consider their request and submitted a letter dated December 16, 2000, for its consideration at the January 11, 2001 meeting.

The Mills are requesting immediate eligibility for Mark, or at least a decrease in the number of days of ineligibility, to allow their son to gain access to advanced placement classes at ADM without penalty. This would allow him to compete in the rest of this semester's wrestling season and in other sports along with other activities for the remainder of his high school career.

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 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.

The Mills family contends that Mark's situation fits under exception (a) or (g).² They argue that "district of residence" means the Dexfield District, which has no high school sports this year due to the end of a whole-grade sharing agreement with the Stuart-Menlo District. We conclude that exception "g" does not apply to Mark's situation because his open enrollment was not due to the dissolution or consolidation of any district. Mark's open enrollment was due to academic reasons. Therefore, exception "g" does not apply.

The Mills argue that exception "a" should apply, using Dexfield as the district of residence and ADM as the receiving district. We conclude that exception "a" does not apply because the actual transfer of schools that has caused the ineligibility period is from Panorama to ADM, not from Dexfield to ADM. Therefore, exception "a" does not apply.

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 Director is bound by the exceptions formally adopted in rules. Neither he nor the administrative law judge acting on his behalf is free to add to or subtract from the list of exceptions in the rules.

Unfortunately, there is simply no avenue of redress for the Mills family and Mark to be found in either the state law or departmental rules. As we are without authority to grant the relief Appellants seek, we affirm the decision of the IHSAA Board of Control.

III. DECISION

For the foregoing reasons, the January 11, 2001, decision of the Board of Control of the Iowa High School Athletic Association declaring Mark Mills ineligible to compete in athletics for 90 school days at ADM, is hereby affirmed. There are no costs of this appeal to be assigned.

² At the appeal hearing, the Mills for the first time argued that "a" should apply because soccer was not available in the Panorama School District, but was available in the alternative receiving ADM School District. This issue was remanded to the Board of Control and will be addressed for the first time on February 24, 2001.

DATE

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

DATE

TED STILWILL, DIRECTOR
DEPARTMENT OF EDUCATION