

**IOWA STATE DEPARTMENT  
OF EDUCATION**  
(Cite as 20 D.o.E. App. Dec. 263)

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***In re Robert Cooper***

Mary Cooper, :  
Appellant, :  
  
v. : DECISION  
  
Iowa High School Athletic :  
Association, Appellee. : [Admin. Doc. #4456]

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The above-captioned matter was heard on April 3, 2002, before Susan E. Anderson, J.D., designated administrative law judge, presiding on behalf of Ted Stilwill, Director of Education.

Appellant, Mary Cooper, was present, as was her son, Robert. Appellee, Iowa High School Athletic Association [hereinafter, "IHSAA" or "the Association"], was present in the person of Bernie Saggau, Executive Director. The Association was also 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 Robert Cooper 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**

Robert Cooper ("Robby") is currently a sixteen-year-old sophomore attending high school at Cedar Rapids Jefferson High School ["Jefferson"], a public school located in Cedar Rapids, Iowa. Robby lives with his parents in the College Community School District.

Robby testified that he open enrolled out of the College District because he "felt disenfranchised and discriminated against based on his religion." Robby is Jewish. At noon on September 14, 2001, the District's Prairie High School sponsored what was announced as a memorial assembly for the victims of

September 11th. Robby attended along with the majority of students and staff. Attendance at the memorial assembly was voluntary. Robert testified that during the assembly, some pre-selected students directed the audience to bow their heads and pray to Jesus Christ. Robby testified that, as a Jewish student, he felt excluded, isolated, hurt and alienated by the Christian prayer. During the four months following the memorial assembly, he continued to attend school at Prairie High School, but never regained a sense of being a valued member of the school community.

Robby asked his mother to open enroll him at the end of the first semester. On January 14, 2002, Mrs. Cooper filled out the open enrollment application, which was approved by the College Community District Board on January 15, 2002. Robby's open enrollment was then approved by the Cedar Rapids District.

When Robby began attending school at Jefferson High School in Cedar Rapids on January 20, 2002, Mrs. Cooper sought an athletic eligibility ruling from the Association. Mrs. Cooper was told during telephone conversations with the Association that Robby would be ineligible to compete at Jefferson for 90 school days.

On March 8, 2002, Mrs. Cooper wrote a letter to appeal Robby's ineligibility to the Association's Board of Control, which was received on March 11, 2002. Robby's appeal was placed on the Association's Board of Control agenda for the next meeting, scheduled for March 15, 2002. After considering the facts of Robby's situation, the Board of Control upheld the determination of ineligibility for 90 school days following the open enrollment transfer. Mrs. Cooper was informed of that decision by phone on March 18, 2002 and by letter dated March 19, 2002, from David Harty, associate executive director.

Mrs. Cooper then appealed to the Director of the Department of Education. Robby would like to compete in track during the spring of 2002. He is currently practicing with the track team.

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).

## 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.

The IHSAA relied on 281-36.15(4), the *Open Enrollment Transfer Rule* in declaring Robby ineligible to compete in athletics for 90 school days at Jefferson High School. Rule 36.15(4) states, in pertinent part, as follows:

**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
- 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, 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.

In this case, Robby's situation falls squarely within the language of the above rule. Robby open enrolled from a public school, Prairie High School in the College Community School District, to another public school, Jefferson High School in the Cedar Rapids Community School District, after the ninth grade. None of the exceptions listed in Rule 36.15(4) apply to Robby's situation. Robby is, therefore, ineligible to compete in interscholastic athletics at Jefferson High School in the Cedar Rapids 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 Robert (Robby) Cooper ineligible to compete in interscholastic athletics for ninety (90) school days at Cedar Rapids Jefferson High School, is hereby affirmed. There are no costs of this appeal to be assigned.

4-11-2002  
DATE

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

It is so ordered.

4/11/2002  
DATE

Ted Stilwill  
TED STILWILL  
DIRECTOR