

IN THE IOWA DISTRICT COURT FOR STORY COUNTY

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YEMPABOU PALO,	)	
	)	
Petitioner,	)	No. CVCV048520
	)	
vs.	)	
	)	
IOWA BOARD OF REGENTS,	)	<b>RULING</b>
	)	
Respondent.	)	
_____	)	

On the 10th day of January, 2014, Petitioner's Interlocutory Motion for Review of Administrative Agency Denial of Stay, Petitioner's Motion to Disqualify Counsel and Respondent's Motion for Additional Time to File Record came before the Court for hearing. Petitioner, Yempabou Palo, appeared personally with his counsel, Matthew Boles and Adam Witosky; Diane Stahle, Special Assistant Iowa Attorney General, appeared for the Iowa Board of Regents.

Record was made concerning the Motion to Disqualify the attorney for the Iowa Board of Regents. Petitioner, on the record, waived his objection and the hearing proceeded without the Court ruling on the request to disqualify Ms. Stahle from further participation in the case. Record was also made concerning the Motion for Additional Time. Ms. Stahle requested additional time to file the full administrative record with this Court. Opposing counsel consented and the Court grants the request. The full administrative record shall be filed by

January 31, 2014. Counsel for both parties agreed that the full record was not necessary for the Court to rule on Petitioner's Interlocutory Motion.

The Court then proceeded to hear arguments and testimony on the Interlocutory Motion.

**BACKGROUND**

Mr. Palo was a member of the Iowa State University (ISU) basketball team. However, on September 18, 2012, he was formally charged by the Story County Attorney with Sexual Abuse in the Second Degree as a result of an alleged incident that occurred in May 2012.

The charges against Mr. Palo were dropped by the Story County Attorney in January 2013. Mr. Palo had been suspended from the ISU basketball team during this interim period while formal criminal charges were pending. However, after the formal criminal charges were dropped, Mr. Palo was reinstated on the basketball team and he played in 17 games thereafter to finish out the 2012-13 season.

In September 2012, the Office of Judicial Affairs of ISU charged Mr. Palo with violating the University's Code of Conduct relating to sexual misconduct. That matter proceeded to hearing before an Administrative Law Judge (ALJ) from the Iowa Department of Inspections and Appeals, who ruled that the accusations were "not founded." Both the University and the

Complainant each filed an administrative appeal of the ALJ's ruling. As mandated by appropriate protocol, the appeal was heard by the President of ISU, Dr. Steven Leath. President Leath ruled that the Student Code of Conduct had been violated by Mr. Palo and that as a result, he would be precluded from participating in intercollegiate athletics as a member of the ISU basketball team. Mr. Palo then appealed that Ruling to the Iowa Board of Regents, who affirmed President Leath's decision. Pursuant to the Iowa Administrative Procedures Act, Iowa Code Chapter 17A, Mr. Palo has requested the matter now come before this Court for judicial review.

The issue presented is whether, on a temporary basis pending disposition of the case on the full merits, this Court should stay the provision prohibiting Mr. Palo from rejoining the ISU basketball team as ruled on by President Leath, and subsequently affirmed by the Iowa Board of Regents.

**SIGNIFICANT FACTS**

There are several significant facts that this Court finds most troubling in attempting to reconcile the formal decisions of ISU President Leath and the Board of Regents with the decision to suspend Mr. Palo from the ISU basketball team, particularly on the basis of a stay awaiting a full hearing on the merits. The Court FINDS the troubling facts are as follows:

1. The ALJ from the Department of Inspections and Appeals who initially heard the facts of this case determined that "the University has not established by a preponderance of the evidence that Mr. Palo committed a violation of the Iowa State University Code of Conduct." The ALJ then ruled that the University's complaint against Mr. Palo was "not founded."
2. The ALJ was the initial finder of fact during the administrative proceedings against Mr. Palo, observed the witnesses and determined credibility. President Leath and the Board of Regents merely relied on the ALJ's ruling and the record before the ALJ to render their decisions.
3. The underlying criminal case filed against Mr. Palo by the Story County Attorney was dismissed on January 14, 2013.
4. The ALJ's findings and the dismissal of criminal charges by the Story County Attorney place the Complainant's credibility at issue.
5. After the Story County Attorney dropped the formal criminal charges, Mr. Palo was reinstated to the ISU basketball team and allowed to participate in 17 games during the 2012-13 season. During this period the University's disciplinary charges against Mr. Palo were still pending.
6. In June 2013, after taking into account Mr. Palo's situation and compliance with the Student Code of Conduct,

the University reviewed his athletic scholarship and the same was renewed. Mr. Palo currently remains on athletic scholarship from ISU, notwithstanding that his status could have been revoked as a scholarship athlete for violation of the Student Code of Conduct.

7. Though Mr. Palo faced potential restrictions and possible suspension or even expulsion from the University as a result of the University's complaint against him, he is currently a student in "good standing" at ISU. Further, his academic performance is exceptional, having previously been named twice an academic Big XII performer.
8. As a student in good standing, Mr. Palo has all the same rights and privileges of all other students, with the exception of the restrictions concerning his participation in intercollegiate athletics as a member of the ISU basketball team.
9. If Mr. Palo had been suspended from the University and failed to graduate, it could potentially affect the number of athletic scholarships available to the University.
10. President Leath issued his decision concerning Mr. Palo five days after the deadline that would have allowed Mr. Palo to transfer to another school and still take advantage of his remaining athletic eligibility. President Leath

issued his decision on August 30, 2013, despite the fact that the matter was appealed to him in early June 2013.

11. The decision of the Iowa Board of Regents of December 5, 2013, is, at best, short and contains neither discussion nor analysis of the underlying facts of the case. On first blush, the decision appears to simply be a "rubber stamp" of President Leath's decision, even though it took three months to render said Ruling.
12. Mr. Palo is a fifth-year senior who has used his "red shirt" year. His eligibility to play intercollegiate athletics as a basketball player expires at the end of the current basketball season. "Irreparable injury" will occur to Mr. Palo if not allowed to return to the team as his time is short and there is no "next season" concerning his eligibility.
13. The Iowa Board of Regents alleges that granting a stay would interfere with the University's ability to protect the Complainant. The Court FINDS that this position is not sustainable in that the Complainant is no longer a student at ISU and no longer resides in the state of Iowa. Further, neither Complainant nor her counsel appeared nor participated in the hearing conducted on January 10, 2014.
14. The Iowa Board of Regents also alleges that having Mr. Palo on the ISU basketball team tarnishes the University's

reputation and image and presents a threat to other students. If this is true, then why renew Mr. Palo's scholarship, allow him to remain a student in "good standing," and have full and unrestricted privileges as an ISU student, other than participating in basketball? Further, if these claims are truly believed, then why was he reinstated to the basketball team during the 2012-13 season and allowed to participate in 17 games?

Given the factual record, the Court FINDS that these claims are without merit.

**LAW OF THE CASE**

During the pendency of the judicial review, a party may file an interlocutory motion in the reviewing court seeking review of the agency's action on an application for stay or other temporary remedies. See Iowa Code section 17A.19(5)(b).

Further, the Court may grant relief but only after a consideration and balancing of factors, as provided in Iowa Code section 17A.19(5)(c):

- (1) The extent to which the applicant is likely to prevail when the court finally disposes of the matter.
- (2) The extent to which the applicant will suffer irreparable injury if relief is not granted.
- (3) The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings.

- (4) The extent to which the public interest relied on by the agency is sufficient to justify the agency's action in the circumstances.

Iowa Code Section 17A.19(5)(c).

The Court may issue an Order granting the stay on appropriate terms. See Iowa Code Section 17A.19(5)(d). A stay of an agency decision pending appeal can be granted where the likelihood of success is not high but the balance of hardships favors the Applicant. See *Grinnell College v. Osborn*, 751 N.W.2d 396 (Iowa 2008).

**ORDER**

IT IS ORDERED as follows:

1. The provision of the Order of the Board of Regents dated December 5, 2013, disallowing Palo from participating as a member of the ISU basketball team is hereby STAYED on a temporary basis only.
2. Respondent shall have until January 31, 2014, to file the full administrative record.

Clerk to furnish copies to:

Matthew Boles  
Diane Stahle



State of Iowa Courts

**Type:** OTHER ORDER

**Case Number** CVCV048520  
**Case Title** YEMPABOU PALO VS IOWA BOARD OF REGENTS

So Ordered

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Thomas J. Bice, District Court Judge,  
Second Judicial District of Iowa