

**IOWA DEPARTMENT
OF EDUCATION**
(Cite as 25 D.o.E. App. Dec. 134)

Terence and Chase Cullen,
Appellants,

DECISION

vs.

Iowa High School Athletic Association,
Appellee.

This matter was heard in-person on October 29, 2008, before Margaret LaMarche, designated administrative law judge with the Iowa Department of Inspections and Appeals-Division of Administrative Hearings, presiding on behalf of Judy A. Jeffrey, Director of the Iowa Department of Education.

An evidentiary hearing was held pursuant to departmental rules found at 281 IAC [Iowa Administrative Code] chapter 6. Jurisdiction for this appeal is pursuant to Iowa Code section 280.13 and 281 IAC 36.17. 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.

Appellants Terence and Chase Cullen appeared by their mother, Monica Cullen, and were represented by attorney Robert Holliday. Appellee Iowa High School Athletic Association [hereinafter, "IHSAA"] was represented by attorney Brian Humke. Appellants seek reversal of the IHSAA Board of Control's September 23, 2008 decision, which denied their request for an additional year of athletic eligibility, based on its application of the eight consecutive semester eligibility rule found at 281 IAC 36.15(2)"e." The Appellants asked to present their appeals in a single hearing, but each student's case will be considered individually. Monica Cullen testified at the hearing on behalf of her sons. The IHSAA presented the testimony of Executive Director Richard Wulkow and Exhibit A, pp. 1-36. Appellants submitted a brief at the time of the hearing. The Appellee filed a responsive brief on November 5, 2008, and Appellants filed a reply brief on November 7, 2008.

FINDINGS OF FACT

During the summer of 2008, Monica Cullen and her four children relocated from New York State to the Lynnville-Sully Community School District in Iowa. Ms. Cullen grew up in Iowa and has family here. She has recently been through a very difficult divorce and believes that Iowa will provide a better environment to raise her children. This appeal concerns additional athletic eligibility for Monica Cullen's two oldest children: 17 year-

old Terence Cullen (DOB-1/11/91) and 14 year-old Chase Cullen (DOB-9/10/93). Ms. Cullen reports that in the last year both boys have suffered mentally, emotionally, socially, and academically as a result of the toxic environment in their home. She feels that this environment has caused them to perform poorly academically and to withdraw from their social circles. In addition, both boys had physical injuries last year which adversely affected their ability to participate in athletics. Ms. Cullen requested an extra year of athletic eligibility for both of her sons so that they can repeat the past academic year to improve their academic standing and confidence but still remain eligible to participate in athletics during their respective senior years. The circumstances of Terence and Chase will be separately considered and addressed.

Terence Cullen

Terence attended and completed six semesters of high school in New York. During his first two years of high school, Terence participated in basketball, cross-country, and football. Terence broke a bone in his back prior to the start of the basketball season during the 11th grade and was only able to play in one basketball game that year. He spent the remainder of the year in physical rehabilitation.

Terence has been treated for depression for many years. Although Terence received excellent grades during his first two years of high school, his grades in academic subjects declined during the 11th grade. Nevertheless, he passed all of his courses and has transferred the equivalent of 44 credits to Lynnville-Sully High School. The Lynnville-Sully High School guidance counselor estimates that Terence only needs four more credits to graduate, although the counselor believed that the school could offer Terence additional course offerings over a two-year period that would help him prepare for college. Ms. Cullen initially planned to have Terence repeat 11th grade in Iowa so that he could improve his academic standing, and this is how his extension request was presented to the IHSAA Board. However, Terence was not willing to repeat his junior year if it meant that he would be unable to participate in athletics during his senior year, and Terence is currently enrolled at Lynnville-Sully as a 12th grade student. Ms. Cullen testified that she believes that the school would be willing to re-enroll Terence in the 11th grade if he prevails in this athletic eligibility appeal.

Chase Cullen

Chase started kindergarten in New York as a four-year-old because New York's enrollment cut-off date was December 31st, and his birth date is September 10th. His mother regrets her decision to send him to school when he was so young. Chase has been diagnosed by a pediatric neurologist with Attention Deficit Disorder and has experienced both academic and behavioral difficulties in school. During the 2007-2008 school year, Chase attended 9th grade at a public high school in Bayport, New York. Chase passed all of his courses, although he continued to struggle academically. Chase joined the basketball team during 9th grade but was sidelined by a serious ankle injury after playing in only two games.

Regardless of the outcome of this appeal, Chase is repeating his 9th grade year at Lynnville-Sully High School. Since the enrollment cut-off date for Lynnville-Sully is several months earlier than New York (September 15th), Chase is still younger than some of his classmates.

CONCLUSIONS OF LAW

The relevant rule, 281 IAC 36.15(2)"e," provides:

e. A student who meets all other qualifications may be eligible to participate in interscholastic athletics for a maximum of eight consecutive semesters upon entering the ninth grade for the first time. However, a student who engages in athletics during the summer following eighth grade is also eligible to compete during the summer following twelfth grade. Extenuating circumstances, such as health, may be the basis for an appeal to the executive board which may extend the eligibility of a student when the executive board finds that the interests of the student and interscholastic athletics will be benefited.

The issues presented by this appeal is whether Terence and Chase Cullen each present sufficient "extenuating circumstances" to justify granting them an additional year of eligibility to participate in athletics during their senior year. Prior reported cases have noted that the reason for the eight-semester rule is three-fold: (a) it reduces the competitive advantage that an older player would have; (b) it protects younger athletes from injury at the hands of older and presumably more physically mature athletes; and (c) it discourages red-shirting. *In re Justin Moretti-Monpetit*, 23 D.o.E. App. Dec. 295 (2005). Red-shirting is sitting out of school for a semester or year for purposes of gaining a physical (developmental) advantage. See *In re Jason Jewett*, 7 D.o.E. App. Dec. 335 (1990).

Prior reported cases have further recognized that the phrase "such as health" is meant to be a *nonexclusive* example of circumstances which may be sufficient reason to extend athletic eligibility beyond the eight consecutive semesters. *In re Terry Thill*, 3 D.P.I. App. Dec. 190 (1983). One prior decision acknowledged that severe academic problems and attempts to remedy those problems *could* constitute "extenuating circumstances" under the eight semester eligibility rule in an appropriate case. *In re Dennis Vacha*, 3 D.P.I. App. Dec. 143 (1983). However in that case, additional eligibility was denied to a student who dropped out of school for a year and obtained tutoring to raise his academic standing in order to potentially take advantage of a college athletic scholarship.

Prior decisions have noted that the "such as" terminology, indeed the very creation of an exception, is acknowledgement of the fact that there may be a myriad of unimagined, unanticipated, rather unique circumstances that could arise in a student's life, and the rule exception cannot contemplate them all. *Jewett, supra*, at p. 338. Nevertheless, while the Department of Education has examined, interpreted, and applied the eight-

consecutive semester eligibility rule in several previous appeal decisions, it has found sufficient extenuating circumstances to extend additional athletic eligibility in only two reported cases. *In re Joshua Owens*, 20 D.o.E.App.Dec.92(2001)(lack of stable residence and parental support resulted in student not attending school for an entire year because he had to work full-time to support himself; student had only used six semesters of eligibility); *In re Shawn North*, 8 D.o.E. App.Dec. 87(1990)(unstable home life led to student going from home to home, in and out of school and working to support himself; at most student had exercised one month of his athletic eligibility during his high school years) In both cases where the extension of the eight-consecutive semester rule was granted, severe circumstances beyond the students' control caused them to be absent from school for an entire year.

In all of the other reported cases, the request for additional athletic eligibility was denied. See, e.g. *In re Klayton Williams*, 25 D.o.E. App. Dec. 58 (denied request for extra year of eligibility for student who voluntarily repeated 11th grade and did not participate in sports during that year in order to raise his academic standing after failing several courses); *In re Rob Olmstead*, 10 D.o.E. App. Dec. 330(1993)(denied request for ninth semester of eligibility for a student who did not go out for football in his sophomore year because he had to work 30 hours a week to help with family finances); *In re Jason Jewett*, 7 D.o.E. App. Dec. 335 (1990) (finding that the student's serious sports injury and his physical immaturity, which required medical treatment and caused him to miss 75% of the wrestling season, were not unusual enough circumstances to justify granting additional eligibility); *In re Terry Thill*, 3 D.P.I. App. Dec. 190 (1983) (extension request denied because the record failed to establish that the student's drug and alcohol problem was sufficiently severe to constitute extenuating circumstances). Clearly, a student faces a very heavy burden when seeking to establish the type of "extenuating circumstances" that justify an extension of the eight consecutive semester rule.

Terence Cullen

This record fails to demonstrate compelling and/or unique circumstances to justify granting Terence an extension of the eight semester rule. When he enrolled at Lynnville-Sully High School for the 2008-2009 school year, Terence had attended school for six consecutive semesters without interruption since entering the ninth grade. There is no reason to doubt his mother's testimony that the drop in Terence's grades during the 11th grade was largely due to his stressful home environment at the time. Nevertheless, Terence managed to pass all of his classes and is within approximately four credits of being eligible to graduate. Although the circumstances of his parents' divorce was outside of Terence's control, the family's situation is not the type of unique circumstance contemplated by prior Department of Education decisions as justifying an exception to the eight-semester rule. Many students have similar family issues. In addition, missing a season or even a year of athletics due to a physical injury also does not justify an extension of the eight-consecutive semester rule. Moreover, rather than repeat the 11th grade with the possibility of not being able to participate in athletics as a senior, Terence chose to enroll as a 12th grader. The IHSAA makes a strong argument that this fact renders his appeal moot. Even if the appeal is not moot and it is possible for Terence to

re-enroll as an 11th grader if he prevails in this appeal, the fact that he chose to enroll as a 12th grader seriously undermines his claim of compelling circumstances justifying an extra year of athletic eligibility.

Chase Cullen

While Chase certainly presents a stronger case for an extension than Terence, the record fails to establish sufficiently compelling and/or unique circumstances to justify extending the eight-consecutive semester rule for him. The circumstances presented by Chase are similar and no more compelling than the circumstances in the recent case of *Klayton Williams*. Like Chase, Klayton was very young compared to his classmates, was identified as having a learning disability, and had struggled academically throughout his school years. However, Klayton had asked to repeat eighth grade after failing three core academic courses, but the school denied his request. After Klayton failed three core courses in the 11th grade and had D's in all of his other courses, he voluntarily repeated 11th grade while sitting out sports for the entire year. It would be inconsistent and unfair for the Department of Education to grant Chase an extension of the eight-consecutive semester rule when the extension request was denied in the *William* case.

DECISION

For the foregoing reasons, the September 23, 2008 decisions of the Board of Control of the Iowa High School Athletic Association, which denied the requests of Terence Cullen and Chase Cullen for an additional year of athletic eligibility, are AFFIRMED. There are no costs associated with this appeal to be assigned to either party.

Margaret LaMarche

11-13-08

Date

Margaret LaMarche
Administrative Law Judge

It is so ordered.

Judy A. Jeffrey

11-13-08

Date

Judy A. Jeffrey, Director
Iowa Department of Education