

**IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 20 D.o.E. App. Dec. 92)**

In re Joshua Owens	:	
Joshua Owens, Appellant,	:	
v.	:	DECISION
Iowa High School Athletic Association,	:	
Appellee.	:	[Adm. Doc. #4394]

The above-captioned matter was heard on August 30, 2001, before a hearing panel comprised of Barbara Byrd and Lois Irwin, consultants, Bureau of Administration and School Improvement Services; and Susan E. Anderson, J.D., designated administrative law judge, presiding on behalf of Ted Stilwill, Director.

Appellant, Joshua Owens, was present and was unrepresented by counsel. 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.

Appellant seeks reversal of a decision of the Board of Control of the Association made on August 4, 2001, which denied his request for additional athletic eligibility.

Jurisdiction for this appeal is found at Iowa Code section 280.13 (2001) and 281 Iowa Administrative Code 36.17. An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6. 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. 281 IAC 36.17.

**I.
FINDINGS OF FACT**

Joshua Owens ["Josh"] is currently a high school senior, attending Lewis Central High School in Council Bluffs, Iowa. He is scheduled to graduate at the end of the 2001-2002 school year. He is currently 18 years old.

Josh attended Lewis Central High School during his freshman year, the 1997-1998 school year. He participated in football and baseball that year. During his sophomore year, the 1998-1999 school year, Josh also attended Lewis Central High School. During that year, he participated in football and wrestling. During his freshman and sophomore years, Josh's grades were B's, C's, and an occasional D. He had lived with his parents and his two younger sisters all his life.

During the summer of 1999, when Josh was 16 years old, his parents separated after some 18 years of marriage.¹ His parents decided that Josh's two younger sisters, ages 12 and 15, should live with Mrs. Owens. She moved with Josh's sisters out of the then family home into a three-bedroom apartment in Council Bluffs. The sisters and Mrs. Owens occupied the bedrooms. Josh was free to sleep on the couch in the living room if he chose. Josh's parents told him that he could live with whichever parent he chose. Josh testified at the appeal hearing that he was confused and saddened by the separation, but decided that he felt more comfortable living with his father.

Mr. Owens also moved out of the family home to New Mexico, where he lived with his girlfriend and her family. Josh moved down to New Mexico with his father, but got homesick and came back to Council Bluffs near the end of that same summer of 1999. He attended school at Lewis Central for about a week in the fall of 1999, and didn't play football during that week. Josh didn't feel that he had any place to live in Council Bluffs, and he missed his father, so he moved back down to New Mexico and started school at Las Lunas High School, where he attended for about two weeks. He testified that he was torn between his homesickness for Council Bluffs and his desire to be with his father. Still confused and feeling unwelcome in his father's new family, Josh worked at a fast-food restaurant in New Mexico until January 2000. He then moved back to Council Bluffs once again.

In January and February 2000, Josh lived from night to night in Council Bluffs, rotating among a friend's house, his grandmother's house, and the couch at his mother's apartment. He testified that he had no financial support from his father or mother, so he worked a full-time job. He didn't have many personal belongings, so he just carried them with him in his car and slept at different places at night. He did not go back to school during the 1999-2000 school year because he felt as if he had to support himself financially. He decided that he would eventually get a G.E.D. instead.

In March 2000, Josh's father moved from New Mexico back to Council Bluffs, bringing his new family with him to an apartment. Josh testified that he tried living with his father again, but still felt unwelcome there, as he did at his mother's apartment. He ended up rotating among his father's apartment, his mother's apartment, his friend's house, and his grandmother's house for a place to sleep when he wasn't at his job.

Also in March 2000, Josh's parents received a final dissolution decree, a copy of which was entered into the record at the appeal hearing. The decree simply declares without findings of fact or explanation, that "Joshua is emancipated and may live with the parent of his choice." It provides for no child support with regard to Josh and no financial support except for health insurance. Josh was 17 years old when the decree was entered.

¹ Josh's parents had filed for divorce, but the dissolution decree was not actually final until March 2001.

At the beginning of the 2000-2001 school year, Josh decided to try to go back to high school. By this time, Josh had missed what would have been his entire junior year (except for one week at Lewis Central and two weeks at Las Lunas). He began attending classes during the first trimester at Lewis Central, but dropped out due to bad grades. He didn't attend the second trimester at all. He attended three or four weeks of the third trimester, but dropped out again because he just couldn't concentrate on academics.

Finally, at the beginning of the summer of 2001, his grandmother sat him down and told him that he could live with her full-time and that she would support him financially as best as she could. She told him that she really wanted him to graduate from high school, so that his future would be better. Josh decided to settle down at her house permanently and to go back to school full-time in the 2001-2002 school year. Toward that end, Josh enrolled in two summer school courses at the Council Bluffs Community Schools Summer Program in the summer of 2001. He earned a "B-" in English and a "B-" in Government. These credits will transfer to Lewis Central as soon as Josh finishes paying for the courses in September. Josh also worked 44 hours per week during the summer of 2001. He planned to attend school at Lewis Central in August 2001.

Sometime in July 2001, Josh contacted Mr. Saggau at the Association to request an eligibility ruling for him to compete in football and wrestling during the 2001-2002 school year at Lewis Central. Josh attended football camp at the end of summer and has been practicing with the Lewis Central football team ever since. The Association's Board of Control voted on August 4, 2001, that Josh had no further athletic eligibility remaining under Rule 36.15(2)(d), the "eight-semester" rule. Mr. Saggau informed Josh of the ruling by letter on August 8, 2001. The letter states, in pertinent part:

I recognize you have had some tough times, but the Board also recognized that you started over several times and dropped out of school and the Board felt this was under your control.

(Letter, B. Saggau, dated August 8, 2001.) Josh was also academically ineligible at the time of the hearing because he hadn't earned 20-semester hours' credit toward graduation in the preceding semester. Josh then appealed to the Director of the Department of Education.

By the time of the appeal hearing on August 30, 2001, Josh was attending Lewis Central with a plan to graduate in May 2002. He had entered the Iowa Jobs for America's Graduates ["I-JAG"] program at Lewis Central with the help of Ms. Monica Mayberry, I-JAG Specialist. Ms. Mayberry wrote a letter for the appeal hearing which commended Josh's efforts and urged that Josh be allowed to compete in football at Lewis Central this year. The letter stated, in pertinent part:

He has courageously returned to school because he knows that obtaining a high school education is important. In addition to his education he would like to play football and other sports. I believe that his being part of a team, having an additional support system, and a sense of belonging would help Josh keep his commitment to himself to finish high school and assist him in his future career goals.

(Letter, M. Mayberry, dated August 28, 2001.)

Ms. Laurie Phelan, President/CEO of I-JAG, Inc., testified on Josh's behalf that it was her opinion that Josh should be allowed to compete in athletics, not just practice. She testified that being "on the team in every way" would boost Josh's self-esteem, help him feel accepted and be an added incentive to graduate. Josh testified that he loves football and wants to feel as if he's back at school like everyone else after two years of confusion, low self-esteem and instability in his personal life. He has committed to a permanent living arrangement with his grandmother to allow him a stable home environment in which to concentrate on finishing high school at the end of this school year.

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.

In this appeal, we are asked to determine whether Joshua Owens has any eligibility remaining under the "eight-semester rule" to allow him to compete this year. We conclude that he has, for the following reasons. The eligibility rule at issue in this case is 281 IAC 36.15(2)(d) ["the eight-semester rule"], which reads, in pertinent part, as follows:

- d. 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. ... 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 it finds that the interests of the student and interscholastic athletics will be benefited.

Id.

Rule 281—IAC 36.15(2)(h) provides:

- h. A student who is eligible at the close of a semester is academically eligible until the beginning of the subsequent semester. **Twenty days of attendance in any semester, or participation in any part of an athletic contest on a team representing the student’s school, shall be regarded as a semester of attendance and a semester of athletics.**

Id.(emphasis supplied.)

The decision in *In re Rob Olmstead*, 10 D.o.E. App. Dec. 330 (1993), states the purpose of the “eight-semester rule” as follows:

The rule, of course, is designed to keep athletics and academics in balance. Its intent is to prohibit the practice of holding students back (known as “red-shirting” at the collegiate level of interscholastic athletics) for the purpose of gaining additional physical or other maturation. It is similar to another rule limiting athletic eligibility to students under the age of 20. 281 IAC 36.15(2)”b.” The exception clause was built in to take into consideration students who, for reasons generally beyond their control and unrelated to athletics, were unable to attend school and participate in sports for a time. For example, a student who is injured in a car accident and is hospitalized missing an extended period of school, or a student who suffers from an illness and is unable to attend school would be a strong candidate for the executive board (“Board of Control”) of the IHSAA to grant an exception.

Id. at 332.

In *In re Dennis Vacha*, 3 D.P.I. App. Dec. 143 (1983), the Director affirmed the denial of eligibility under the “eight-semester rule.” A later decision explained the reasoning in *Vacha* as follows:

[T]he student at issue had poor grades but had been an outstanding athlete (basketball, track, and football with “All-Conference” honors). He decided to drop out of school for one year to obtain concentrated tutoring in English and mathematics with the stated goal of improving his grades in order to qualify for a college athletic scholarship. In fact, he made little or no effort to obtain tutoring assistance. The decision implies, but does not state, that Dennis Vacha’s decision to drop out of school for one year was

akin to the collegiate practice of red-shirting. This was clearly the type of situation the rule is designed to prevent.

In re Shawn North, 8 D.o.E. App. Dec. 87, 91(1990).

In *In re Shawn North*, 8 D.o.E. App. Dec. 87 (1990), the Director reversed the Board of Control's denial of eligibility under the "eight-semester rule." Shawn had been going from home to home, in and out of school and working to support himself. The decision states, in pertinent part:

The facts of this case justify the exception in our view. We have before us a young man who had not one single advantage growing up; in fact, every disadvantage one can imagine was placed upon him. We have no doubt that had the Field family not intervened, this young man would have shortly run out of options.

If the rule was designed, at least in part, to eradicate the possibility of red-shirting, as was the Association's position in Jewett and Vacha, it cannot be argued that such is even a possibility in this case. Shawn North has, in essence, exercised none or at most one of his eligibility semester during his high school years. It is on this basis that we reverse the Association.

Id. at 91.

In Joshua Owens' appeal, as in *North*, we conclude that Joshua Owens has eligibility remaining under the "eight-semester rule." He has used only six semesters of his eight semesters of eligibility. (Two from his freshman year; two from his sophomore year; and two from the 2000-2001 school year.) Because he did not attend school for twenty days of attendance in any semester of the 1999-2000 school year when he was moving back and forth between Council Bluffs and New Mexico, he still has two semesters of athletic eligibility remaining. He will not be able to use those remaining semesters, however, until he becomes academically eligible.

III. DECISION

For the foregoing reasons, the August 4, 2000, decision of the Board of Control of the Iowa High School Athletic Association, denying Joshua Owens' athletic eligibility under the "eight-semester rule," is hereby reversed. 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