

IOWA DEPARTMENT OF EDUCATION(Cite as 28 DoE App. Dec. 513)

In re: Athletic Eligibility

SAMUEL FORT,

Case No. 19DOE0003

DE Admin.Doc. No. 5089

Appellant,

v.

IOWA DEPARTMENT OF
EDUCATION,**DECISION**Appellee.

This matter was heard in person at the Wallace State Office Building on August 14, 2018, by Kathleen M. O'Neill, designated administrative law judge with the Iowa Department of Inspections and Appeals Division of Administrative Hearings, presiding on behalf of Ryan M. Wise, Director of the Iowa Department of Education (Department).

The Appellant, Samuel Fort, was personally present and represented by attorney Elizabeth Pudenz. Also appearing was Thomas Vasquez, Senior Interventionist and Expert in Youth Outreach. Attorney Brian Humke represented the Appellee, Iowa High School Athletic Association (IHSAA). Also appearing for IHSAA were Executive Director Alan Beste and Assistant Director Jared Chizek.

An evidentiary hearing was held pursuant to departmental rules found at 281—Iowa Administrative Code (IAC) 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.

Mr. Fort seeks reversal of a decision that the IHSAA Board of Control (Board) made on July 24, 2018, denying his request for additional eligibility under the provisions of eligibility requirements, 281 IAC 36.15(2). At hearing, Mr. Fort and Mr. Vasquez presented testimony on behalf of Mr. Fort. Alan Beste testified on behalf of IHSAA. The IHSAA offered the following items into evidence:

- Documents that had been made available to the members of the Board of Control, including a statement of facts, Edward Memorial High School transcript, Blue Ridge

School transcript, documentation from previous schools, letter from Mr. Fort's mother, correspondence between the parties;

- Minutes of the meeting of the Board on July 18, 2018; and
- A copy of the decision of the Board signed by Chairperson Greg Darling. (Ex. A)
- A recording of the hearing before the Board of Control. (Ex. B)

Mr. Fort offered exhibits 1-6 into the record. Exhibits 1-4 were included within IHSA's exhibit A. Exhibit 5 was a letter from Mr. Fort's prior football coach, and exhibit 6 was an email between Mr. Fort and Dowling's football coach. All proffered documents and the recording were admitted into the record. Both parties made closing arguments and filed timely post-hearing briefs.

FINDINGS OF FACT

The Appellant, Samuel Fort, began high school in 2014 in Lynn, Massachusetts. He played football during his freshman season, and toward the end of the season, injured his ankle, causing him to miss the remaining four games. (Ex. 5, Fort testimony). At the end of November/beginning of December, Mr. Fort's parents lost their jobs. This caused financial hardship for the family and affected Mr. Fort's life both at home and at school. Mr. Fort's family moved in with a family member in Sharon, Massachusetts, which was approximately one hour and forty minutes from Lynn. Based on the distance, Mr. Fort missed a significant amount of school. The family then moved with another family member in Dorchester, Massachusetts, which was approximately one hour from Lynn. Mr. Fort received academic credit for two classes during this first semester in 2014, and no credit for five classes. (Ex. 1). Vice Principal at Lynn English, Gary Molea, wrote a letter explaining that that Appellant endured many hardships. He had troubles outside of school, which led to inconsistencies at school and on the football field. (Ex. 3)

The family moved to Oklahoma during Mr. Fort's second semester of his 2014-2015 freshman year.¹ He attended Putnam City High School in Warr Acres, Oklahoma and the family lived with Mr. Fort's aunt. Mr. Fort continued to struggle academically, as he entered the semester late and was academically behind other students. (Fort testimony). He participated in a strength-training program through the high school. The Appellant received two passing grades and four failing grades during this semester. (Ex. 1). According to Mr. Fort, counselors at school informed him that he needed to attend summer school; however, each class cost \$200.00, so his parents were unable to afford this option. Therefore, based on grades, Mr. Fort was unable to move on to sophomore year. (Fort testimony)

Mr. Fort repeated his freshman year, transferring to Edward Memorial High School, still in Oklahoma. Due to failing grades during the spring of 2015, Mr. Fort was ineligible to play football during the first five games of the 2015 football season. (Ex. 1, Fort testimony). He

¹ The exact date of this move is unknown, but testimony and briefs indicate that Mr. Fort missed a few weeks of school.

Case No. 19DOE0003

Page 3

participated in the remainder of the football season and participated in track during his second semester. Mr. Fort received a 2.7 GPA during the 2015-2016 school year. At the conclusion of this year, Mr. Fort's parents separated, and his mother moved back to Lynn, Massachusetts. Mr. Fort chose to stay in Oklahoma and lived with a family from Edward Memorial High School. During 2016-2017, Mr. Fort again attended Edward Memorial High School, where he played football in the fall and spring and earned a 2.8 GPA. (Ex. 1). During the 2017-2018 school year, Mr. Fort transferred to Blue Ridge School, a private, all-boys boarding school in St. George, Virginia, where he played football and earned a 2.8 GPA. (Ex. 2, Fort testimony)

Mr. Fort's mother was offered a job in West Des Moines, Iowa. Mr. Fort contacted Dowling high school in September 2017, questioning whether he would be able to play football. (Ex. 6). In February 2018, he contacted the IHSAA, questioning whether he would be granted an extra year of athletic eligibility, if he moved to Des Moines. The IHSAA responded that until he was enrolled, they could not rule on his eligibility. (Ex. A, p. 27). In June 2018, the IHSAA received confirmation of Mr. Fort's enrollment at Dowling. (Ex. A, p. 12)

Mr. Fort requested that he be eligible to participate in interscholastic athletics during the 2018-2019 school year. Jared Chizek, IHSAA assistant director, determined that Mr. Fort was not eligible to participate. Mr. Fort appealed this decision. On July 18, 2018, the Board of Control conducted a hearing to reconsider eligibility. On July 24, 2018, the Board denied Mr. Fort's request for additional eligibility to participate in interscholastic activities. Mr. Fort appealed.

At this hearing on appeal, Appellant Samuel Fort further explained that his 2014 freshman year was difficult. He was still grieving the loss of his older brother, who died in 2010, and was then faced with obstacles due to his parents' loss of jobs toward the end of November. His schoolwork was affected because he had no motivation or support to get work done. The electricity of their home was shut off, so he had to do homework before it became dark. He had to boil water in order to take a bath. After the family moved to Sharon from their home in Lynn, it was difficult to get to school; his parents would not allow him to take the train on his own. After they moved to Oklahoma, he was already behind in school, and had a difficult time catching up. (Fort testimony)

Had he been able to take summer school following his freshman year, he would have, but his family could not afford the classes. Mr. Fort did not want to repeat his freshman year, but this was out of his control. His grades improved during his second freshman year, as he was able to attend school and his family life had improved. However, he had to miss the first five games of the 2015 fall football season because of his poor grades from the 2015 spring semester. When his parents split, he decided not to go back to Lynn, Massachusetts with his mother, as his friends in Lynn were not a good influence. Living with his father was not an option, so he lived with a family from Edmond Memorial High School. (Fort testimony)

Case No. 19DOE0003

Page 4

The following year, Mr. Fort attended Blue Ridge private boarding school with the assistance of tuition help of the family with whom he was living. He therefore lived away from his family for two years. When his mother got the job offer in Des Moines, Mr. Fort chose to live with her. He reached out to the Dowling football coach in September 2017 to inquire whether it would be possible for him to play. He chose to go to Dowling because he did well in a private school atmosphere. (Fort testimony)

Overall, Mr. Fort explained that he went through difficult times, but never resorted to drugs, alcohol, or crime. He had no control over the hardships he faced and did not want to sit out of school at any point. Currently, he has scholarship offers to play football in college, which would give him the opportunity to attend college. He fears that if he does not play football this season, those scholarships will be withdrawn. (Fort testimony)

CONCLUSIONS OF LAW, ANALYSIS

Standard of Review

This appeal is brought pursuant to 281 Iowa Administrative Code 36.17, which states that “an appeal may be made . . . by giving written notice of the appeal to the state director of education. . . . The procedures for hearing adopted by the state board of education and found at 281—Chapter 6 shall be applicable, except that the decision of the director is final. Appeals to the executive board and the state director are not contested cases under Iowa Code subsection 17A.2(5).”

“The decision shall be based on the laws of the United States, the state of Iowa and the regulations and policies of the department of education and shall be in the best interest of education.”² The undersigned notes that there could be a question as to whether the standard of review is *de novo* or abuse of discretion. However, the most applicable controlling case law directs that the standard of review is abuse of discretion, and no party disputed that standard.³ Therefore, the Director of the Department of Education will examine the IHSA Board of Control’s application of the scholarship rule to Mr. Fort to see whether the Board abused its discretion. “Abuse of discretion is synonymous with unreasonableness, and a decision is unreasonable when it is based on an erroneous application of law or not based on substantial evidence.”⁴

Scholarship Rule

The issues presented by this appeal is whether Samuel Fort presents sufficient “extenuating circumstances” to justify granting him an additional year of eligibility to

² 281 Iowa Administrative Code (IAC) 6.17(2).

³ *Sioux City Cmty. Sch. Dist. v. Iowa Dep't of Educ.*, 659 N.W.2d 563, 566 (Iowa 2003)

⁴ *City of Dubuque v. Iowa Utilities Bd.*, 2013 WL 85807, 4 (Iowa App. 2013), citing *Sioux City Cmty. Sch. Dist.* 659 N.W.2d at 566 (holding that the Iowa Department of Education erred when it did not apply the abuse of discretion standard).

participate in athletics during his senior year. The relevant rule, 281 Iowa Administrative Code 36.15(2)(e) provides:

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.

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.⁵ Red-shirting is sitting out of school for a semester or year for purposes of gaining a physical (developmental) advantage.⁶

The administrative rule recognizes that eligibility may be extended based on extenuating circumstances, “such as health.” The phrase “such as health” is meant as a *nonexclusive* example of sufficient circumstances for extension.⁷ Neither case law nor administrative rules provide an exclusive list of exceptions. 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.⁸ Prior case law provides a path in order to make that determination.

The case of *Vacha* acknowledged that in an appropriate case, a “severe scholastic problem and accompanying efforts at remediation may in some circumstances constitute ‘extenuating circumstances’” under the eight-semester eligibility rule.⁹ However, in *Vacha*, the Department denied the student additional eligibility because he *chose* to drop out of school for a year to obtain tutoring to raise his academic standing in order to potentially take advantage of a college athletic scholarship.¹⁰

In the case of *Olmstead*, the student opted out of football during his sophomore year in order to work and earn money for his family. This caused his grades to suffer. After improving academically, Mr. Olmstead sought an additional year to play football, based on

⁵ *In re Justin Moretti-Monpetit*, 23 D.o.E. App.Dec.295 (2005).

⁶ *See In re Jason Jewett*, 7 D.o.E. App. Dec. 335 (1990).

⁷ *In re Terry Thill*, 3 D.P.I. App. Dec. 190 (1983).

⁸ *Jewett, supra*, at p. 338.

⁹ *In re Dennis Vacha*, 3 D.P.I. App. Dec. 143 (1983).

¹⁰ While Mr. Fort has been offered college scholarships, and which by all accounts is an important objective for seeking eligibility, there is no assertion that Mr. Fort voluntarily repeated his freshman year as a red-shirt tactic.

family hardship. The Department found that this was not a “significant enough situation, particularly where he missed no semesters or trimesters of school, to justify giving him another football season.”¹¹

In the case of *Jewett*, Mr. Jewett had a diagnosed growth delay that caused physical immaturity and required medical treatment; he also suffered a serious sports injury. This combination caused him to miss 75% of a wrestling season. The Department found that this circumstance was not unusual enough to justify granting additional eligibility.¹² Similarly, in *Thill*, the Department denied an extension request because the record failed to establish that the student’s drug and alcohol problem was sufficiently severe to constitute extenuating circumstances.¹³

In the case of *Terence Cullen*, there is no dispute that Mr. Cullen’s grades dropped based on a stressful home environment. Mr. Cullen attended and completed six semesters of high school in New York, where he participated in sports. He broke his back and played only one game his junior year and his grades declined significantly. His parents divorced and he moved to Iowa with his mother and brother. Mr. Cullen passed all of his classes and was within approximately four credits of being eligible to graduate, although the counselor believed that the school could offer Mr. Cullen additional course offerings over a two-year period that would help him prepare for college. Mr. Cullen chose to enroll in 12th grade. The Department found that although the circumstances of his parents’ divorce were outside of Mr. Cullen’s control, the family’s situation was not the type of unique circumstance contemplated by prior Department of Education decisions as justifying an exception to the eight-semester rule. The Department further found that missing a season or even a year of athletics due to a physical injury did not justify an extension of the eight-consecutive semester rule. The Department emphasized that Mr. Cullen chose to enroll in 12th grade, but recognized that even if he had repeated the 11th grade, he ran the possibility of not being able to participate in athletics the following year.¹⁴

In the same case, *Cullen*, Chase Cullen, brother of Terence Cullen, failed to establish sufficiently compelling and/or unique circumstances to justify extending the eight-consecutive semester rule for him.¹⁵ Mr. Cullen was diagnosed with Attention Deficit Disorder, experienced both academic and behavioral difficulties in school, and chose to repeat freshman year after moving to Iowa. The Department found that his case was similar to *Klayton Williams*, as both Mr. Williams and Mr. Cullen were young compared to their classmates. Mr. Williams was identified as having a learning disability and struggled academically throughout his school years. Mr. Williams had asked to repeat eighth grade after failing three core academic courses, but the school denied his request. After Mr. Williams failed three core courses in the 11th grade and received D’s in all of his other

¹¹ *In re Olmstead*, 10 D.o.E. App. Dec. 330 (1993).

¹² *Jewett*, *supra*, at p. 339.

¹³ *In re Terry Thill*, 3 D.P.I. App. Dec. 190 (1983).

¹⁴ *In re Cullen*, 25 D.o.E. Dec. 134 (2008).

¹⁵ *Id.*

courses, he voluntarily repeated 11th grade while sitting out sports for the entire year.¹⁶ Neither Mr. Cullen nor Mr. Williams were granted an extra year of eligibility.

In two cases, the Department found sufficient extenuating circumstances to extend additional athletic eligibility. In the case of *North*, Mr. North grew up in an unstable home, with parents imprisoned for drug activity. Mr. North enrolled in special education and was labeled as “behavior disordered.” He also faced legal trouble for burglary and did not attend school one year. Mr. North lived in multiple homes, until one family provided a stable home. Subsequently, Mr. North was able to maintain a job, improve academically, and applied to play sports. The Department found that at most, Mr. North had exercised one month of his athletic eligibility during his high school years, and the Department granted an extension of the eight-consecutive semester rule based on severe circumstances beyond the student’s control, which caused him to be absent from school for an entire year.¹⁷

In *Owens*, the student lacked of stable residence and parental support, moving between states to live with each parent. This resulted in Mr. Owens not attending school for an entire year because he had to work full-time to support himself. The Department found that the student had used only six semesters of eligibility, so granted an extension based on severe circumstances beyond the student’s control.¹⁸

Mr. Fort argues that unlike the *North* case, he did not become involved in illegal activity and everything that happened was beyond his control. However, similar to both *North* and *Owens*, upon being in a stable environment, he persevered and improved his grades.

Analysis

The question is whether Mr. Fort meets the exception of “extenuating circumstances such as health,” which would benefit the student and interscholastic athletics, in order to extend his eligibility. This record fails to demonstrate compelling and/or unique circumstances to justify granting Mr. Fort an extension of the eight-semester rule. There is no question Mr. Fort experienced hardships unique and distinguishable from any previous case, but his circumstances do not establish an exception.

Mr. Fort began high school in 2014 and played nearly the entire football season. He experienced an injury with four games remaining, but as shown in *Jewell* and *Terence Cullen*, an injury is not a sufficient reason to be granted an extension. *Jewell* additionally presented the compelling extenuating circumstance of medical illness that added to him missing 75% of an athletic season, and his extension was still denied. The undersigned recognizes that the regulation governing the exception was different at the time of the

¹⁶ *In re Klayton Williams*, 25 D.o.E. App. Dec. 58 (2008).

¹⁷ *In re Shawn North*, 8 D.o.E. App. Dec. 87 (1990).

¹⁸ *In re Joshua Owens*, 20 D.o.E. App. Dec. 92 (2001).

Jewell decision; however, the reasoning and analysis is not dissimilar under the current regulation.

Subsequent to the fall 2014 football season, Mr. Fort faced extreme hardship when his parents lost their jobs and were evicted from their home. The family moved one hour and forty minutes from Mr. Fort's school and due to the distance, among other factors, Mr. Fort did not consistently attend school. He did not enroll in a school closer to where his family was living, explaining that his family intended to move to Oklahoma, but the timing of the move continued to change. His grades suffered and he received incomplete grades in the majority of his classes. The record does not show how many days Mr. Fort attended school during the fall 2014 semester.

The family moved to Oklahoma in the spring of 2015. The record does not show when Mr. Fort started school or how many days he attended during the second semester of his freshman year. However, it is clear that he enrolled in classes and attended a sufficient amount of time in order to receive grades. Mr. Fort received three Fs, one D, and two As. He did not attend summer school following the spring 2015 semester, citing financial reasons.¹⁹ Based on these grades, he was academically ineligible to play football for five games during the fall 2015 season.

Mr. Fort argues that his situation is distinguished from *Chase Cullen* and *Klayton Williams* because he did not pass all of his classes, nor voluntarily repeat his freshman year. As distinguished from *Olmstead*, Mr. Fort notes that he did not choose to sit out five games during the fall 2015 season. He was not given the opportunity to play these five games due to his failing grades in spring 2015. He also reasoned that overall his freshman year "didn't count" based on his incomplete grades in fall 2014 and failing grades in spring 2015.

Previous decisions demonstrate that a student faces a heavy burden when seeking to establish the type of "extenuating circumstances" that justify an extension of the eight consecutive semester rule. The cases show that each situation is individual and no specific pattern exists in order to determine what meets the definition of extenuating circumstances. Each decision presents a compelling situation illustrating unimaginable hardships. At times, the outcomes of cases run in opposition to one another. For example, had Mr. Fort chosen to sit out for one semester or one year, as *Olmstead* or *Chase Cullen*, there would have been no guarantee that he would have been granted another year of eligibility. Yet, had he chosen to enroll in the next grade, such as in *Terence Cullen*, his appeal may have been denied for using his eligibility. However, while cases can run counter to each other, it is because each case is based on the individual, unique circumstances in combination with those distinguishable facts, all in play together.

¹⁹ While the undersigned does not question Mr. Fort's truthfulness regarding the price of these classes, the record contains no cost breakdown, nor discusses the option of financial assistance in order to attend summer school.

There is no defined length of time a student must be absent to meet an exception. *North* and *Owens* missed an entire year of school and athletics, and *Olmstead* demonstrated that the exception clause was built to take into consideration those students “who, for reasons generally beyond their control and unrelated to athletics were unable to attend school and participate in sports for a time.” Mr. Fort missed a portion of the fall 2014 season due to injury; he did *not* miss the fall 2014 football season based on extenuating circumstances.

The crux of the argument is the spring semester of 2015, as this semester determined Mr. Fort’s academic ineligibility for the fall of 2015. Based on spring 2015 failing grades, Mr. Fort was ineligible to play five games during the fall 2015 football season. He asserts that because of his family situation, he was unable to attend school and participate in sports for a time, which constituted an extenuating circumstance. There is no dispute surrounding the difficulty of moving from Massachusetts to Oklahoma amidst a tenuous family situation, starting a new school, and being behind his peers. However, the facts remain that Mr. Fort was enrolled academically during the spring of 2015 such that he was able to receive grades; there is no evidence that he withdrew from school or did not complete the semester. During this semester, the eight-semester clock continued to run. While a severe scholastic problem is a consideration for extenuating circumstance, that exception was not granted in *Vacha*, *Olmstead*, *Chase Cullen*, *Terence Cullen*, or *Klayton Williams*, among others.

The undersigned must look at whether the Board’s decision was unreasonable, or based on an erroneous application of law or not based on substantial evidence. The bottom line is Mr. Fort attended school for eight consecutive semesters and had the opportunity to play football for four years. Mr. Fort did not demonstrate that he faced extenuating circumstances so unique as to justify an exception. Allowing someone to participate in an additional year of athletics beyond eight semesters provides a competitive advantage that does not benefit interscholastic athletics.

Importantly, there is no dispute that regardless of this appeal, Mr. Fort will be able to attend one additional year of high school in order to receive the academic credit necessary to graduate high school. For purposes of interscholastic athletics, the undersigned cannot find that Mr. Fort met his burden to show that the Board abused its discretion in finding no compelling and/or unique circumstances to justify granting Mr. Fort an extension of the eight-semester rule.

DECISION

For the foregoing reasons, the July 24, 2018 decision of the Board of Control of the Iowa High School Athletic Association, which denied the request of Samuel Fort for an additional year of athletic eligibility, is AFFIRMED. There are no costs associated with this appeal to be assigned to either party.

Dated this 24th day of August, 2018.

Case No. 19DOE0003

Page 10

Kathleen M. O'Neill

Kathleen M. O'Neill
Administrative Law Judge

It is so ordered.

8-24-18

Date

Ryan M. Wise

Ryan M. Wise, Director
Iowa Department of Education