IOWA STATE DEPARTMENT OF EDUCATION
(Cite as 15 D.o.E. App. Dec. 328)

In re Michael Dodge	:	
Patti Dodge, Appellant,	:	
v.	:	DECISION
Iowa High School Athletic Association, Appellee.	:	
	:	[Admin. Doc. #3980]

The above-captioned matter was heard telephonically on April 14, 1998, before a hearing panel comprising Jim Tyson, consultant, Bureau of Administration/School Improvement Services; Don Smith, consultant, Bureau of Technical and Vocational Education; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. The Appellant, Ms. Patti Dodge, was present telephonically and was unrepresented by counsel. The Appellee, Iowa High School Athletic Association, [hereinafter, "the IHSAA"], was present telephonically in the person of Mr. Bernie Saggau, Executive Director. The IHSAA was also *pro se*.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for this appeal are found at Iowa Code section 280.13(1997) 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 the appeal before them.

The Appellant seeks reversal of a decision of the Board of Control [hereinafter, "the Board"] of the IHSAA made on March 24, 1998, denying her son an exemption from the eligibility rule that prohibits high school interscholastic athletic competition when a student reaches the age of 20.

I.
FINDINGS OF FACT

Michael Dodge is a 19-year-old senior at Creston Community High School. He presently competes in cross-country and track. Michael plans to graduate from Creston High School and attend Graceland Community College. He also plans to run cross-country and track while attending Graceland. Three of the five remaining track meets have been postponed because of rain. Michael has only been able to run in two meets this season. His birthday is April 18th and he will turn 20 years old. At that time, he will

become *ineligible* to compete in all high school interscholastic competitions. The rule at issue is eligibility rule 36.15(2)(b), which simply states, "All contestants must be under 20 years of age". 281 IAC 36.15(2)(b).

Bernie Saggau testified that this eligibility rule has been in place for 45 years and the Board of Control of the IHSAA has "never ruled a 20 year old youngster eligible." Mr. Saggau asserts that Iowa has a very liberal rule on age. It has never been waived and has never been successfully challenged.[1]

The 20-year-old age eligibility rule originated in Iowa in 1930. It was initially adopted as an IHSAA rule; then in 1972, it was promulgated as a rule by the State Board of Education. Mr. Saggau asked us to take judicial notice of the explanation of the rule's purpose as explained in the *Miller* case. There, the Court stated:

> The age-eligibility rule is necessary in interscholastic athletics to maintain an opportunity for equal, competitive conditions and for the safety of the participants. A 20-year-old participant has a distinct advantage over younger participants. There is a definite relationship between age, maturity and athletic accomplishment. Strength, stamina, agility, speed, confidence, aggressiveness, coordination, muscular development and other important contributions to successful athletic performance are greater in 20 year olds than in younger individuals. Dr. Charles Tipton, a qualified physiologist from the University of Iowa, has studied athletic performance extensively, and concludes that a 20 year old athlete has a biochemical advantage over a younger athlete, utilizes more oxygen because of greater muscle mass, and for these additional reasons 20 year old athletes have an unfair advantage over younger athletes, which is not present as between athletes of younger ages.

Id. at 9.

Appellant's argument is that Michael was never retained for athletic purposes or even for physical maturation reasons. Appellant's position is that Michael's ineligibility is the result of his disability. More specifically, Michael began kindergarten when he was six years old, which was not uncommon in Creston. During the first grade, he was staffed into special education because of a learning disability. During the second grade,

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[1] **Mr. Saggau referred us to an unreported 1973 Polk County District Court case: *Miller v. Iowa State Dept. of Pub. Inst.*, Mem. Op. 2-4-73 (Polk Cty. Dist. Ct., Eq. #76650). In the *Miller* case, Appellant unsuccessfully challenged the 20-year-old rule on Constitutional grounds: due process and equal protection. However, that case predated the enactment of all three Federal disability Acts: Section 504 of the Rehabilitation Act of 1973; the Education for All Handicapped Children Act of 1974 (now the IDEA); and the Americans With Disabilities Act of 1990.**

Appellant was advised during a staffing that Michael would profit by repeating the second grade. Consequently, Michael will turn 20 years old before he graduates from high school – a decision that was not made to capitalize on size or maturity for a competitive advantage in athletics.

II.
CONCLUSIONS OF LAW

The rule at issue is one of 11 scholastic eligibility criteria: *All contestants must be under 20 years of age.* 281 IAC 36.15(2)(b).

With respect to students with disabilities or other special needs, the eligibility rules have flexibility. For example, a special education student "shall not be denied eligibility on the basis of scholarship if the student is making adequate progress, as determined by school officials, toward the goals and objectives on the student's Individualized Education Program." *Id.* at (c). Students earning credits in summer school or through correspondence can redeem eligibility over the summer despite second-semester grades that might otherwise make them ineligible in the fall. *Id.* at (i). Drop-outs may be allowed to participate upon re-enrolling despite the operation of some of the other rules if the local superintendent and board decide to approve the drop-out's eligibility. (However, a 20-year-old returning drop-out could not be permitted to play; the 20-year-old age limitation rule is not waivable.) These rules demonstrate that as far as academics are concerned, there are provisions in the eligibility rules to accommodate the needs of qualified handicapped students.[2]

While it is true that a special education student has the right to an education through the age of 21, that right does not automatically translate into a right to participate in extracurricular athletics to age 21. *In re Joe Schisel*, 11 D.o.E. App. Dec. 230, 233 (1994). The age limitation rule, like the eight-semester limitation rule, stems in part from a concern for potential red-shirting, but a student might lose eligibility under the eight-semester rule before he or she reaches 20 years of age. *See, In re Shawn Shaffer*, 9 D.o.E. App. Dec. 376, 379 (1992); *In re Jason Jewett*, 7 D.o.E. App. Dec. 335 (1990).

The most recent departmental appeal addressing the age-limitation rule stated that "[t]he age limitation rule pertains directly to a student's physical maturity, a factor that is generally not affected by the student's status as a special education student." *In re Joe Schisel*, 11 D.o.E. App. Dec. 230, 233 (1994). However, since that appeal was decided, several courts have entertained challenges to age-limitation rules by "handicapped" or "disabled" student athletes. The courts have been asked to decide whether a student-athlete who is held back in school due to a disability is entitled to a waiver from age rules

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[2] **Such accommodations are required for handicapped students by Federal law. *See*, n.1, *supra*.**

for athletic competition? Although some Federal Circuit Appeal courts have answered "yes", the Eighth Circuit Court of Appeals (which determines case law for Iowa) has recently answered the question in the negative. *Pottgen v. Missouri State High School Activities Assoc.*, 40 F.3d 926 (8th Cir. 1994), aff'd. 103 F.3d 720 (8th Cir. 1997).

In *Pottgen*, a high school student challenged the maximum age limit for eligibility to participate in high school athletics, set forth by the Missouri State High School Activities Association. The claim arose under both the ADA and Section 504. The student claimed that the age limit should be waived since he exceeded it only because of his learning disability that caused him to fail two grades in elementary school.

The Eighth Circuit Appeal Court rejected the claim and agreed with the Association that the age limit was an "essential eligibility requirement" for participating in high school sports. According to the Court, the age limit "helps reduce the competitive advantage flowing to teams using older athletes; protects younger athletes from harm; discourages student athletes from delaying their education to gain athletic maturity; and prevents over-zealous coaches from engaging in repeated red-shirting to gain a competitive advantage."

The Court then explained that if a reasonable accommodation would enable the student to meet this essential eligibility requirement, then he would be otherwise qualified to participate. Yet, there was no reasonable accommodation other than waiving the essential requirement itself, that would allow the student to meet the age limit. The Court reiterated that schools are not required to waive essential eligibility requirements, but only need to explore to see if a reasonable accommodation would permit the student to meet that requirement.[3]

Our conclusion, then, is that the age limitation rule must be sustained and applied in Michael's case. This was a very difficult decision to reach knowing the effect it will have on this student's ability to complete the track season with his teammates. We would love to make an exception for Michael Dodge, especially since it is clear that he was not red-shirted and that his size offers no threat to the safety of other team members in this "non-contact" sport. However, if we were to rule in Michael's favor, it would create an exception that would swallow the rule for all students who have been retained or delayed

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[3] A Federal District judge in Connecticut recently ruled directly opposite to the Eighth Circuit in *Dennin v. Connecticut Interscholastic Athletic Conference, Inc.* [ ]. This case is presently on appeal to the Second Circuit Court of Appeals. The *Dennin* court adopted the approach used by a federal district court in Florida in *Johnson v. Florida High School Activities Association*, 23 IDELR 218. The *Johnson* court said each case should individually analyze the purpose of age limit and determine if a waiver is reasonable. In the Connecticut case, the judge stated that there is no justification under the ADA, Section 1983, or the IDEA for refusing to waive the age limit without an individual analysis. He noted that the Connecticut Athletic Association "is not required to grant waivers to all students who fail to meet the age requirement", but it is required to give consideration to students with disabilities. This is especially true since the Connecticut Athletic Association already has a waiver process in place for other eligibility requirements (as does Iowa). Nonetheless, these cases have no precedential value since the Eighth Circuit has already ruled on this issue.

in school – and the line between a disability for IDEA purposes and the student who "just has problems in school", is not a bright one. It could be a very difficult line, indeed, to draw for the IHSAA, much less the Department of Education. A similar sentiment was expressed in the *Schisel* case, supra, which concluded as follows:

> It bothers us that such decisions as this can't be made, realistically, on a case-by-case basis. But the hard fact is, they cannot. The rule contains no built-in exceptions nor expresses the potential for any deviation. The most the hearing panel can recommend is that the State Board *consider* an amendment that would allow a student who turns 20 to complete the season in the sport in which he or she was participating. Unfortunately for [Michael], that is not the rule now.

Id. at 234.

Any motions or objections not previously ruled upon are hereby denied and overruled.

III.
DECISION

For the foregoing reasons, the decision by the Board of Control of the Iowa High School Athletic Association made at their meeting on March 26, 1998, denying an eligibility extension or waiver from the age 20 limitation rule is hereby affirmed. There are no costs of this appeal to be assigned.

4/16/98
DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

4/16/98
DATE

TED STILWILL
DIRECTOR