

IOWA STATE BOARD  
OF EDUCATION  
(Cite as 8 D.o.E. App. Dec. 87)

In re Shawn North :  
Hugh Field, :  
Appellant, :  
v. : DECISION  
Iowa High School :  
Athletic Association, :  
Appellee. : [Admin. Doc. #3071]

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The above-captioned matter was heard on September 11, 1990, before a hearing panel comprising Mr. David H. Bechtel, special assistant to the director and presiding officer; Dr. Mark Haack, chief, Bureau of Instruction and Curriculum; and Ms. Sherie Surbaugh, consultant, Bureau of School Administration and Accreditation. Appellant, an attorney, was present in person and represented himself; Appellee Iowa High School Athletic Association [hereafter the Association] was present in the person of Mr. David Harty, assistant executive secretary, unrepresented by counsel. Also present were Mrs. Jane Field and Shawn North on behalf of Appellant, and Mr. Rick Wulcow for the Association.

An evidentiary hearing was held following procedures found at 281 Iowa Administrative Code 6. Appellant seeks reversal of a decision of the executive board of the Association, made on August 31, denying Appellant's request for an exception to the athletic eligibility rule that limits participation to eight consecutive semesters computed from the time a student enters ninth grade for the first time. The appeal to the State Board of Education was made under the provision of 281 IAC 36.17, and an expedited hearing schedule was established.

I.  
FINDINGS OF FACT

The presiding officer finds that he and the State Board of Education have jurisdiction over the parties and subject matter of the case before them.

Appellant and his wife are residents of the Waterloo Community School District and are parents of four children. On Christmas Eve, 1989, Appellant and Mrs. Field agreed to accept custody of 18 year-old Shawn North who was incarcerated for commission of a

are acting as "foster parents" although, because Shawn is 18 and of majority age, no foster placement was possible. The Fields are not related to Shawn but heard of his situation from their son who knew Shawn from school and socially.

Shawn's life story, even eighteen short years of it, is a traumatic one. He was born February 15, 1971, to parents who were members and perhaps leaders of a motorcycle gang. Shawn's father was in and out of the home but didn't reside there in order that the family could collect the maximum welfare and ADC payments. Shawn often found himself without a place to sleep, and frequently turned to shirttail relatives, Mr. and Mrs. Victor Laughlin, for a place to stay temporarily. At some point, Shawn's parents were divorced. Although his father's presence was inconstant, Shawn was very much influenced by him.

In third or fourth grade, Shawn was identified as a student in need of special education and was labeled learning disabled. Later, in middle school, his primary disability was changed to behavior disorder. Shawn testified to the ostracism he felt as a special education student because his classes were separate ("in the basement") from the rest of the students'. Although his grades were more than acceptable at one point, he consistently tested at the first percentile in terms of academic achievement. His reading level is still low, at approximately fourth grade.

Shawn lived with his father in Waterloo until Mr. North was arrested for and convicted of illegal drug sales and sent to prison. Apparently Mr. North extracted a promise from Shawn that Shawn would graduate from high school. At the time, Shawn had been enrolled in Central High in Waterloo where he had completed ninth grade (1986-87) and one semester of his sophomore year. During second semester, he was expelled but was permitted to enroll in Van Eaton alternative school. He failed to receive any credits from there for spring 1988 and, according to Shawn, he hated it.

In school year 1988-89, Shawn did not attend school at all. He got into legal trouble, committing a burglary for which he was caught and sentenced, but received a deferred judgment. That deferral was later withdrawn when, in the fall of 1989 he was arrested and convicted for theft. He had served approximately 48 days in jail and was awaiting transfer to prison when the Field family intervened on his behalf and was able to obtain probation for him, conditioned upon his agreement to live with the Field family, to enroll and attend school full-time, and, of course, to avoid further criminal activity.

Shawn enrolled at Central High School in Waterloo in second semester of the 1989-90 school year where he was classified a junior. He initially rejected special education programming, even knowing how difficult his regular classes would be, out of his strong desire to be educated alongside regular education students.

He passed three of his five classes, dropping two. He had no more disciplinary problems at school last spring.

Shawn also began working one or two jobs, and is currently in good standing with his employer(s). His school attendance has been exemplary, and he is learning to live within the bounds of discipline and rules in the Field home.

Shawn participated in football and hockey in junior high, and went out for football in ninth grade, but apparently quit or withdrew from the team feeling nobody knew who he was, according to Shawn, because he had been educated in special classes outside the regular education program. In effect, the most eligibility Shawn may have used since he enrolled in ninth grade is one semester.

Appellant submitted into evidence at the hearing before the Association (and consequently is part of the Previous Record here for purposes of review) some 13 letters of recommendation for Shawn's extended eligibility. His supporters include the Mayor of Waterloo, two judges, a probation officer, a sheriff, a police chief, a state senator, a psychologist, the football coach from West High School, and an administrator from the Waterloo school district. The majority spoke to Shawn's rehabilitation from the path he had started down about two years ago, and stressed the benefits of athletics to a young man of Shawn's background.

The Association executive board of directors unanimously denied the request to extend Shawn an extra semester of eligibility on the ground that the interest of interscholastic athletics would not be benefited by granting such an exception to a young man with Shawn's history. Mr. Harty testified, on behalf of the Association, that the executive board felt that the rule exception should only be applied in situations where a student's health or an accident or other circumstances clearly beyond the student's control existed. The Association's position was clearly that the "wrong message" would be sent to student athletes, fans, coaches, and school personnel if a student such as Shawn were permitted to play after bringing his problems on himself as he had.

## II. CONCLUSIONS OF LAW

The rule at issue in this case reads as follows:

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 the interest of the student and interscholastic athletics would be benefited.

281 IAC 36.15(2). The department's rules related to interscholastic athletic competition allow for appeals from an initial determination of the Association to the executive board as a whole. Id. at 36.16. If a person is still dissatisfied, an appeal to the State Board is then available. Id. at 36.17. This is the path this appeal has taken.

The State Board has only had three appeals from decisions of the executive board on this rule and its exception. See In re Dennis Vacha, 3 D.P.I. App. Dec. 143 (1983); In re Terry Thill, 3 D.P.I. App. Dec. 190 (1983); and In re Jason Jewett, 7 D.o.E. App. Dec. 335 (1990). In each case, the rule exception was not applied.

In Vacha, the 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.

The next case, chronologically, recognized that the Association's executive board of control had, on at least one occasion, granted an extra semester or more of eligibility to a student who received inpatient treatment for a drug/alcohol problem. In re Terry Thill, 3 D.P.I. App. Dec. 190, 192. However, the Association refused to extend the same exception to a student who had been in and out of school, moved from relative to relative, all due to a drug or alcohol problem that had not been treated. Although at the time of hearing the student appeared to be settled down and improving his conduct and his life while living with an aunt and uncle, the board of control nevertheless refused to view Terry Thill in the same way as a student who had been hospitalized for treatment. Unfortunately, his prior participation in athletics was not made a part of the record.

The recent case of Jason Jewett involved a family decision for Jason to repeat ninth grade due to his physical and emotional immaturity, and not due to poor academic performance. In re Jason Jewett, 7 D.o.E. App. Dec. 335, 336 (1990). The student athlete had used all eight semesters of eligibility in participation in wrestling and at the end of his eligibility period had won the state wrestling tournament. The State Board upheld the Association's denial of an extra year -- or even an extra semester -- for "extenuating circumstances, such as health" finding that a

low metabolic rate of physical maturity was not unique enough to justify the exception being applied. Indeed, if that were the case, nearly all students whose physical development was delayed could be granted the exception, and such a result would mean most high school wrestlers at 98, 103, and even 112 pounds could qualify for extended eligibility. Id. at 338.

However, the State Board has also consistently reminded the Association that the rule exception should not be read so narrowly that no one ever qualifies. Vacha, supra, at p. 145; Thill, supra, at p. 192; Jewett, supra, at p. 338. ("The 'such as' terminology, indeed the very creation of an exception, is there in acknowledgement of the fact that there may be a myriad of unimagined, unanticipated, rather unique circumstances that could arise in a student's life. The rule exception cannot contemplate them all. The Association is reminded to be aware of this and should not read the rule so narrowly that no student ever meets the standard.")

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 in 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 semesters during his high school years. It is on this basis that we reverse the Association.

This young man's whole life has been one extended "extenuating circumstance." While he has to accept responsibility for the crimes he committed, everyone involved in his situation to this point has given him a second chance. The judicial and law enforcement systems have recognized that he is worth saving. His employers took a chance, despite the fact that his crimes were burglary and theft. Mr. and Mrs. Field stuck their necks out, despite having a family of four other children who, in living with Shawn, would surely be subject to his influence. The football coach at West is apparently not concerned that Shawn would be a detrimental influence on the other student athletes. In fact, as Appellant suggested in closing arguments, this would be a chance to send a message to students who themselves have strayed from the "straight and narrow" that we do recognize honest efforts at rehabilitation, and those efforts can make all the difference in a young person's life.

We do not agree with the Association that just because Shawn's legal problems were within his control, he should not be given an opportunity to participate in athletics and to experience the

values of hard work, discipline, and teamwork leading to personal growth and improved self-esteem. Nor do we believe that because Shawn attends Waterloo West, a football power in the state, he should be penalized by denial of his request. Clearly this is not a case remotely smacking of recruitment. It merely comes down to doing the right thing for a kid who is trying hard to turn his life around.

The hearing panel was unanimous in its belief that Shawn North's situation justifies an exception; we can think of no single reason to deny Mr. Field's request. Although the rule exception is premised on language "such as health," the focus is two-fold: that there be extenuating circumstances, and that the student and athletics will be benefited by granting the exception. We find both requirements to be met.

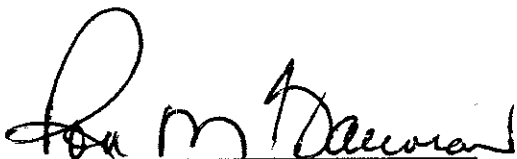
Any motions or objections not previously ruled upon are hereby denied and overruled.

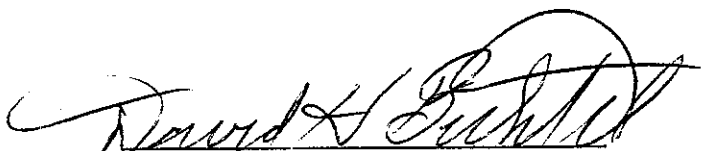
III.  
DECISION

For the foregoing reasons, the decision of the Iowa High School Athletic Association executive board made on August 31, 1990, to deny Appellant's request for an exception to the athletic eligibility rule is hereby reversed. Shawn North is hereby granted one additional semester (fall 1990) of eligibility for interscholastic athletic competition.

10/11/90  
DATE

Aug 1, 1990  
DATE

  
RON MCGAUVRAN, PRESIDENT  
STATE BOARD OF EDUCATION

  
DAVID H. BECHTEL, SPECIAL  
ASSISTANT TO THE DIRECTOR  
AND PRESIDING OFFICER