

**IOWA DEPARTMENT  
OF EDUCATION**  
(Cite as 23 D.o.E. App. Dec. 295)

---

*In re Justin Moretti-Monpetit*

Vanessa Bauer, Appellant,	:	
vs.	:	DECISION
Iowa High School Athletic Association, Appellee.	:	[Admin. Doc. 4618]

---

This matter was heard telephonically on September 23, 2004, before Carol J. Greta, designated administrative law judge<sup>1</sup>, presiding on behalf of Judy A. Jeffrey, Director of the Iowa Department of Education.

The Appellant, Vanessa Bauer, was present on behalf of her brother, Justin, who was not present. The Appellee, Iowa High School Athletic Association [herein "IHSAA"] was represented by Assistant Executive Directors David Anderson and Alan Beste. Neither party was represented by legal counsel.

An evidentiary hearing was held pursuant to departmental rules found at 281-Iowa Administrative Code 6. Jurisdiction for this appeal is pursuant to Iowa Code § 280.13 and 281 Iowa Administrative Code [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.

Ms. Bauer seeks reversal of a decision that the Board of Control of the IHSAA made on September 1, 2005, that Justin is ineligible to compete in interscholastic athletics under the provisions of two eligibility rules, the "eight-semester" rule, 281—IAC 36.15(2)"d", and the general transfer rule, 281—IAC 36.15(3).

**I.  
FINDINGS OF FACT**

Justin's date of birth is November 7, 1986. In late July 2005, he moved from Canada to live with his older sister and her family in the Linn-Mar Community School District. He attends the 12<sup>th</sup> grade at Linn-Mar High School. Justin's father died several

---

<sup>1</sup> Judge Greta is the Iowa Department of Education's liaison to the Board of Control of the Iowa High School Athletic Association, a non-voting position. She deliberately was not present when the IHSAA Board discussed and voted on this eligibility matter. Her membership on that Board was fully disclosed to the Appellant in writing prior to this hearing, as well as on the record during the hearing.

years ago; Justin's mother continues to reside in the family home in or near Montreal, Quebec, Canada. He attended the equivalent of six semesters of high school in Canada. At the completion of 11<sup>th</sup> grade, Justin was awarded the accolade "best athlete." Justin was also then awarded a full football scholarship to attend Kent, a college preparatory school in Connecticut, his senior year, 2004-05. The scholarship was based on financial need, as well.

A few weeks into school (and the football season) at Kent, Justin and two classmates were taken to dinner by the father of one of the classmates to celebrate a football game victory. At the invitation of the father, all consumed wine. The three students were all given the choice by Kent to withdraw from school or be expelled for violating school policy. Justin withdrew from Kent and returned home to his mother.

Too late to enroll in another school, Justin – to his credit – acquired a full-time job in Quebec. He worked for the balance of the 2004-05 school year. Justin's mother discovered in May 2005 that her livelihood would be coming to an end. Because this discovery also meant that Mrs. Moretti-Monpetit might lose her house, the family decided that Justin should move to Iowa to live with his sister and to obtain his high school diploma.

## II. CONCLUSIONS OF LAW

Because the eight-semester rule is dispositive of this appeal, we do not decide whether Justin is ineligible under the general transfer rule.<sup>2</sup>

The eight-semester rule, 281—IAC 36.15(2)"d", states as follows:

36.15(2) *Scholarship rules. ....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.

---

<sup>2</sup> The general transfer rule, 281—IAC 36.15(3), holds that a transfer student is ineligible to participate in varsity level interscholastic athletics for 90 consecutive school days absent a contemporaneous change in parental residence or other exception.

Ms. Bauer does not dispute that Justin is now in his ninth semester of secondary school since he entered the 9<sup>th</sup> grade. Rather, she argues that extenuating circumstances exist to grant Justin eligibility for this school year. Contrary to Ms. Bauer's assertion that her brother "was denied his senior year," Justin's own actions caused him to leave Kent. Justin was nearly an adult when he made the informed decision to break that school's rule prohibiting the consumption of alcohol. The consequence was not the *denial* of his senior year, but the *deferral* of the same.

That Justin may have trusted the wrong adult – and we have only Ms. Bauer's testimony about the drinking incident – does not negate the fact that he made a poor personal choice. He knew about Kent's zero tolerance rule before he made his choice. When this agency has waived the eight-semester rule in the past, it has been in situations beyond the student's control and unrelated to athletics. *See, e.g., In re Joshua Owens*, 20 D.o.E. App. Dec. 92 (2001) (student rotating nighttime residence due to instability of family, which provided no support to him); *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); *In re Rob Olmstead*, 10 D.o.E. App. Dec. 330 (1993) (examples cited of students hospitalized for extended periods of time because of accident or illness).

It is not appropriate for us to call this situation an extenuating circumstance. Justin was celebrating an athletic victory. He was aware that consuming wine was in violation of Kent's zero tolerance policy for athletes and other students. He was in control of his decision. We decline to add to the list of exceptions we have made heretofore to the eight-semester rule.

This decision means that Justin has no eligibility remaining to participate in interscholastic athletics at any level this entire school year at any Iowa member school. For the sake of providing guidance to member schools, we make two further points:

1. The amendments to Iowa law [sections 256.46 and 282.18(13)] that limit the 90 consecutive school days of ineligibility for transfer students to varsity level competition do not apply to the eight-semester rule. Transfer students who are *otherwise eligible* may compete at any non-varsity level during their 90 days of ineligibility. But being "otherwise eligible" includes not having used up the eight consecutive semesters, as well as being under 20 years of age, academically eligible and having good conduct.
2. In cases where extenuating circumstances do exist, waiver of the eight-semester rule is not automatic. The reason for the rule is as follows: (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. *Pottgen v. Missouri State High School Activities Association*, 40 F.3d 926 (8<sup>th</sup> Cir. 1994). We do not find extenuating circumstances to grant Justin a waiver, but if we had, waiver may not have been appropriate because of his superior football abilities. In this case, we did not analyze whether waiver would have been harmful to other players, but that would have been the next step.

Finally, we note that a majority of courts, including the federal courts in Iowa, have ruled that there is no "right" to participate in interscholastic athletics [*Brands v. Sheldon Community School*, 671 F.Supp. 627 (N.D. Iowa 1987); *Gonyo v. Drake University*, 837 F.Supp. 989 (S.D. Iowa 1993)]. Therefore, it cannot be successfully argued that any student is harmed legally by his or her ineligibility to compete.

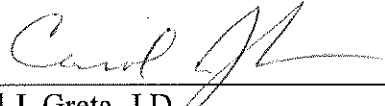
### III. DECISION


For the foregoing reasons, the September 1, 2005 decision of the Board of Control of the Iowa High School Athletic Association that Justin Moretti-Monpetit is ineligible to compete in interscholastic athletics at Linn-Mar Community School District under the eight-semester rule is **AFFIRMED**. There are no costs associated with this appeal to be assigned to either party.

9-26-05  
Date

It is so ordered.

9-25-05  
Date

  
\_\_\_\_\_  
Carol J. Greta, J.D.  
Administrative Law Judge

  
\_\_\_\_\_  
Judy A. Jeffrey, Director  
Iowa Department of Education