

**IOWA STATE BOARD
OF EDUCATION**
(Cite as 19 D.o.E. App. Dec. 165)

In re Keith Degen	:	
Diane Degen, Appellant,	:	
v.	:	DECISION
Iowa High School Athletic Association,	:	
Appellee.	:	[Adm. Doc. #4294]

The above-captioned matter was heard telephonically on December 11 and December 14, 2000, before a hearing panel comprised of Ron Parker, consultant, Office of the Director; Jan Huss, consultant, 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, Diane Degen, and her son, Keith, were telephonically present and were unrepresented by counsel. Appellee, Iowa High School Athletic Association [hereinafter, "IHSAA" or "the Association"] was also telephonically present in the person of David Anderson, administrative assistant. The Association was also unrepresented by counsel.

Appellant seeks reversal of a decision of the Board of Control of the Association made on November 18, 2000, which denied her request for an additional semester of athletic eligibility for Keith Degen.

Jurisdiction for this appeal is found at Iowa Code section 280.13 (1999) 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**

Keith Degen ["Keith"] is currently a fifth-year high school senior, attending Mason City Alternative High School. He is scheduled to graduate at the end of the 2000-2001 school year. He is currently 18 years old.

Keith attended Mason City High School during his freshman year, the 1996-1997 school year. He participated in wrestling during both semesters of that year. During his sophomore year, Keith attended Mason City High School and then its alternative high school for the last few weeks of the 1997-98 school year. During that year, he

participated in wrestling for part of the fall semester and was academically ineligible during the spring semester. On two occasions, sometime during his freshman and sophomore years, he was suspended from extracurricular activities under the District's good conduct policy.

On July 4, 1998, during the summer between his sophomore and junior years, Keith was arrested for possession of marijuana. The Juvenile Court for Cerro Gordo County put him under probation and sent him to Prairie Ridge Addiction Treatment Services in Mason City for outpatient evaluation and treatment in its Adolescent Youth Program. A juvenile court officer notified the District of Keith's marijuana possession offense on July 15, 1998. Mr. David Ciccetti, the Supervisor at Mason City Alternative High School sent a letter to Keith's parents notifying them that Keith would be ineligible until July 15, 1999, for all extracurricular activities due to his third violation of the District's good conduct policy.

Keith began his junior year at the alternative high school in August 1998. During the evaluation and outpatient treatment at Prairie Ridge in September through October, Keith's urinalysis tests came back positive four times for marijuana and methamphetamine. Keith testified that he was spending approximately \$800 a week on drugs at that time.

On November 13, 1998, the alternative high school dropped Keith from school because of violations of his academic contract. On December 2, 1998, Keith was charged with interference with official acts when he would not stop when ordered to for questioning while riding his bicycle at 4:00 a.m. On December 21, 1998, Keith's juvenile court officer referred his case to juvenile court because he was not in school and was using drugs on a regular basis. There were two hearings, one on January 13, 1999, and the other on January 27, 1999. On January 28, 1999, the judge ordered Keith immediately into residential drug treatment at Youth and Shelter Services in Ames, Iowa. The judge's order recognized evidence of Keith's chemical dependency, positive drug tests and need for residential substance abuse treatment.

On January 28, 1999, Keith entered residential drug treatment in Ames. He did very well there and was discharged from the program on February 28, 1999. Keith's treatment team there included his juvenile court officer, a psychologist or psychiatrist, a medical doctor from McFarland Clinic, and a case manager/chemical dependency counselor. Keith's treatment plan there included assessments for withdrawal symptoms, self-assessments, individual therapy sessions, family therapy sessions, and extensive written assignments and evaluations.

In addition to staying drug-free, Keith was required to take responsibility for how his chemical dependency had affected his relationships with family members. He was also required to recognize the importance of developing a drug-free peer group that would support his recovery. After his discharge, from March 1999 to April 21, 1999,

Keith went to the alternative high school for part of his junior year. It took all his efforts to stay drug-free, and he was not able to concentrate on his school work during that difficult adjustment period. Keith testified that he succeeded in staying drug-free during that time and that, indeed, he has not used drugs for the nearly two years since he went into the Ames residential program.

On April 21, 1999, Keith dropped out of the alternative high school. Mr. Ciccetti testified that Keith was not performing up to the alternative high school's standards. He wanted to give another student a chance at the alternative high school since Keith wasn't doing well there. It was suggested that it might be better for Keith to get his GED instead. Mrs. Degen signed a paper stating that Keith was dropping out of school. During this time, Keith was following up his treatment with outpatient counseling at Prairie Ridge Treatment Center from March 1999 to July 1999. He also had a job.

From August 1999 to January 2000, Keith tried to get back into the alternative high school, but was told that he couldn't have a slot because he had violated his academic contract previously. Keith could have gone to the regular high school, but he testified that it would have taken him too many years to graduate there because he was so far behind. Keith kept requesting another chance at the alternative high school. Mr. Ciccetti finally agreed that if Keith completed and passed one class at North Iowa Area Community College [NIACC] at his own expense, he could have a slot at the alternative high school during the second semester of the 1999-2000 school year. He successfully completed the class at NIACC in January 2000 and enrolled back into the alternative high school, earning eleven credits during the spring semester of 2000.

Keith has earned Student of the Week honors several times at the alternative high school. He won the Most Improved Student of the Year Award for 1999-2000. Currently, he is completing his senior year at the alternative high school. He is doing well and should have no problem graduating after he completes seven credits during the spring semester of 2001.

Keith testified that he has not used any controlled substance since January of 1999 when he entered the residential treatment program in Ames. Mr. Ciccetti testified that he has no reason to believe that Keith would have a detrimental influence on the other student athletes at the high school. Appellant asked the Association for one more semester of eligibility so that Keith can wrestle during his last semester of high school. Keith testified that although his last term at school would be enhanced for him if he could participate in sports, he does intend to finish his high school education regardless of whether he competes in wrestling.

On November 18, 2000, the Association's Board of Control voted to deny further eligibility to Keith. Mrs. Degen appealed to the Director of the Department of Education. We note that the Board of Control was not presented with all of the evidence that was available at the appeal hearing before the Department.

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 (1999). 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.

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.

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 "redshirting" 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.

The same decision reviews previous cases involving the eight-semester rule:

The appeal cases brought under the eight-semester rule are instructive to our decision making. In 1983, the State Board affirmed a denial by the Board of Control of an additional semester of eligibility to a student who had dropped out of school for a year. *In re Dennis Vacha*, 3 D.P.I. App. Dec. 143 (1983). Later that summer a student who had experienced drug and alcohol problems that contributed to sporadic school attendance and lack of involvement for two school years asked for additional eligibility and was denied. *In re Terry Thill*, 3 D.P.I. App. Dec. 190(1983). In that case, the Board distinguished between Terry's problems with drugs and alcohol from another student's request for an additional semester of eligibility due to receiving inpatient treatment for drug dependency. The boy who sought inpatient treatment, thereby missing school for a semester, was granted an additional semester under the rule exception related to "extenuating circumstances, such as health."

Id. at 332-33.

The decision *In re Terry Thill*, 3 D.P.I. App. Dec. 190 (1983), states:

We certainly applaud the association's past record of attempting to deter students from experimentation and occasional use of drugs and alcohol. But, we feel that issues of drug and alcohol abuse and dependence are something totally different than occasional and experimental use by student athletes. We find in the context presented here that drug and alcohol abuse and dependency can, if verified, constitute a "health" circumstance subject for consideration under the "extenuating circumstances" exception for extension of athletic eligibility. This would be especially true if considered in light of other compounding circumstances such as a serious alienation from family members.

Id. at 193.

For the same reasons, we find that Keith Degen's documented chemical dependency and inpatient treatment constitutes "extenuating circumstances, such as health." We emphasize that documented evidence of chemical dependency requiring inpatient treatment can constitute "extenuating circumstances" under the eight-semester rule. The juvenile court judge and Keith's treatment team in the Ames facility documented his chemical dependency and need for inpatient treatment. Mr. Ciccetti, the principal at Mason City Alternative High School, testified that he is not concerned that Keith would be a detrimental influence on the other student athletes. In fact, 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, which can make all the difference in a young person's life.

In Keith's situation, however, proceedings under his local district's good conduct policy had already precluded him from competing from July 15, 1998, to July 15, 1999. Keith has shown that these were extenuating circumstances during the spring semester of 1999. We conclude that a local district's suspension of an athlete under its good conduct policy overrides the "extenuating circumstances" exception where the two are in direct conflict for the same time period, as they are in Keith Degen's situation. Rule 36.15(1), under the heading of "Eligibility requirements," provides as follows:

Local eligibility and student conduct rules. Local boards of education may impose additional eligibility requirements not in conflict with these rules. Nothing herein shall be construed to prevent a local school board from declaring a student ineligible to participate in interscholastic competition by reason of the student's violation of rules adopted by the school pursuant to Iowa Code sections 279.8 and 279.9.

Id. Iowa Code section 279.9 provides that a local board shall make rules that prohibit the use of controlled substances. In this appeal, it was undisputed that the Mason City District had already suspended Keith from participating in any extracurricular activities from July 15, 1998 to July 15, 1999, under its good conduct policy rules prohibiting the use of controlled substances. The District's prior suspension under its good conduct policy therefore overrides the extenuating circumstances exception covering the time Keith was in the residential treatment program for chemical dependency.

Before closing, we wish to commend Keith Degen for his outstanding effort, courage, and success in altering his life circumstances. We commend his mother, Principal Ciccetti and all other Mason City staff who have supported Keith's choices to remain drug-free and to graduate this spring. We wish Keith continued success.

**III.
DECISION**

For the foregoing reasons, the November 18, 2000, decision of the Board of Control of the Iowa High School Athletic Association denying Keith Degen an exemption from the eight-semester eligibility rule is hereby affirmed. There are no costs of this appeal to be assigned.

1 - 2 - 2001
DATE

Susan E. Anderson
SUSAN E. ANDERSON, J.D.
ADMINISTRATIVE LAW JUDGE

1/2/01
DATE

Ted Stilwill
TED STILWILL, DIRECTOR
DEPARTMENT OF EDUCATION