IOWA STATE BOARD OF
PUBLIC INSTRUCTION
(Cite as 3 D.P.I. App. Dec. 143)

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| In re Dennis Vacha | : | |
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| Dennis Vacha, Appellant | : | |
| v. | : | DECISION |
| | : | |
| Iowa High School Athletic Association, Appellee | : | (Admin. Doc. 692) |

The above entitled matter was heard May 9, 1983, before a hearing panel consisting of Dr. Robert D. Benton, state superintendent and presiding officer; Mr. Dwight Carlson, director, school transportation and safety education division; and Mr. A. John Martin, director, instruction and curriculum division. The hearing was held pursuant to Departmental Rules, Chapter 670-9, Iowa Administrative Code. The Appellant was represented by Attorney Lee M. Walker. The Iowa High School Athletic Association (hereinafter Association) was represented by Mr. David Harty, assistant executive secretary.

## I.
## Findings of Fact

During the 1981-82 school year, Dennis Vacha was a student in the Colfax Community School District (hereinafter District). He was a 17-year old junior who competed on the District's varsity basketball, track and football teams. He was named an all conference player at the conclusion of his junior basketball season. At the end of his junior year he had expended six semesters of athletic eligibility.

His academic pursuits were not as distinguished, however. While he did not fail any subjects, his grades were normally in the C and D letter grade range.

Sometime during the spring or summer of 1982, Dennis decided to drop out of school for a year and obtain special tutoring in English and mathematics. He was apparently concerned that his academic standing would not be sufficient to allow him to take advantage of a college athletic scholarship should one be offered. His parents were at first reluctant, but eventually allowed him to drop out of school for tutoring. Dennis was scholastically eligible to participate in high school athletics in the fall of 1982.

Arrangements were made for Dennis to meet with an English tutor and a mathematics tutor once each week to receive instruction in those subject areas. For some reason not clear in the record, tutoring in mathematics did not occur during the 1982-83 school year. Instruction in mathematics is now planned to begin during the summer of 1983.

Dennis' total tutoring program for which he dropped out of school for one year consisted of weekly meetings with a certificated teacher of English for between 50 minutes and two hours and associated assignments. No special tutoring was planned or attempted during the summer of 1982. Apparently Dennis felt he was too busy with other activities, not specified in the record, to be tutored during the summer of 1982. The record is not clear why tutoring during the 1982-83 school year could not have been accomplished satisfactorily when only two short tutoring sessions were planned per week and only one was never actually implemented.

The decision of the Association in this matter stated that Dennis was advised by a school counselor prior to making his decision to drop out of school for a year that he would be forfeiting his senior year of eligibility. The Association found that "he was fully advised of this at the time of the high school graduation procedure in May of 1982." The details of these circumstances, however, were not contained on the record before the Hearing Panel.

The record does clearly disclose, however, that Dennis had reason to know at the time school started in the fall of 1982 that he would forfeit his last two semesters of eligibility by dropping out of school for a year. In a letter dated August 24, 1982, District Superintendent Leland S. Rankin wrote to the Association about Dennis. In the letter Mr. Rankin noted that one of Dennis' parents had requested an "extension of eligibility for one year under the eight semester rule." This certainly indicates that Dennis' parents were aware of the problem at that time. Mr. Rankin's letter explained the situation and made an implied request for waiver of the eight semester eligibility rule on Dennis' behalf.

In a letter dated August 30, 1982, Association Executive Secretary Bernie Saggau informed Mr. Rankin that the eight semester eligibility rule would not be waived for Dennis. Two days later, Dennis' father, Mr. Richard Vacha, telephoned Association headquarters and discussed the matter with David Harty. In a letter dated September 3, 1982, Mr. Harty outlined the discussion which had taken place and provided information regarding the procedure of appeal of his and Mr. Saggau's decision to the Association Board of Control and ultimately to the State Board of Public Instruction.

Dennis' father telephoned the Department of Public Instruction to obtain information on the issue. In a letter dated September 7, Administrative Assistant David Bechtel sent Mr. Vacha a copy of the Department's athletic eligibility rules, including the eight consecutive semester rule, and appropriate appeal procedures to be used by persons dissatisfied with eligibility decisions.

Between early September 1982 and March 1983, no appeal was filed regarding Dennis' eligibility. In a letter dated March 23, 1983, Mr. Walker notified Bernie Saggau that Mr. Vacha desired to appeal his son's declared ineligibility. Special attention was drawn to his son's "extenuating circumstances." Mr. Walker's letter stated the reason for Dennis' delaying his senior year was for the purpose of academic improvement and not for athletic purposes.

A meeting of the Association's Board of Control to consider the appeal was scheduled for April 8, 1983. Following a hearing and on the subject, the Board of Control voted to deny Dennis' request for an additional year of eligibility during the 1983-84 school year.

The record does indicate that some discussion and concern was evidenced in the District regarding Dennis' situation. The concern apparently centered around the "redshirting" of student athletes as a result of Dennis' decision to sit out a year of high school.

II.
Conclusions of Law

The focus of this appeal centers upon the Department's rule which provides in most circumstances, that a high school student entering the ninth grade exhausts his eligibility for athletic competition after eight consecutive semesters. The rule is found at 670--9.15(2)(c), I.A.C. and 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 that the interests of the student and interscholastic athletics will be benefited.

While the rule provides generally for exhaustion of eligibility after eight consecutive semesters, it does provide for an extension of eligibility in "extenuating circumstances, such as health." Dennis Vacha alleges here that his need for academic self improvment as evidenced by his scholastic record, his tutoring program and his expressed desire for a college scholarship based on his athletic prowess is an "extenuating circumstance" envisioned in rule 670--19.15(2)(c). We do not agree.

We do recognize the possibility that a severe scholastic problem and accompanying efforts at remediation may in some circumstances constitute "extenuating circumstances," but such is clearly not the case here. The record does not disclose any substantial justification for Dennis not to have engaged in a self-improvement tutoring program during the summer of 1982. Neither does the record show why a tutoring program which involved contact with an English tutor for as little as 50 minutes a week could not have been appropriately provided during the 1982-83 school year. In sum and substance, we have not been shown that Dennis Vacha's scholastic problems and the accompanying remedy are "extenuating circumstances" as provided in Departmental Rule 670--9.12(2)(c). Neither do we find any other rule provision which will extend his eligibility beyond the 1982-83 school year.

We commend Dennis for his expressed desire to improve himself academically. This is especially true in light of recent revelations in the media that many college athletes are ill-prepared for academic and career pursuits. It has not been established on the record before us, however,

that the problem was sufficiently severe or that the remedy was appropriate to meet an alleged severe scholastic problem to justify an extension of Dennis Vacha's athletic eligibility.

The decision of the Association denying Dennis his request for an extension of eligibility pointed out its long standing position that high school athletics were not established and are not maintained for the purpose of preparing high school students for college athletic scholarships. We are in complete agreement with that position. The future of high school athletics is doomed if persons in education and the public generally look upon college athletic scholarships as a primary purpose or function of high school athletics.

The Appellant has alleged that he was treated unfairly due to the timing of the State Board's adoption of the "eight consecutive semester" rule and its application to his situation. He argued that since he began his freshman year in the District's schools in 1979 and the State Board adopted the current rule in July 1981 and it became effective on September 25, 1981, that he should be governed by the rule in effect at the time of the beginning of his freshman year. The eligibility rules at the time provided for eligibility for eight semesters and did not provide for eight "consecutive" semesters as the rule currently provides. He argues in effect that he should be "grandfathered in" under the current rule. We do not agree with his position.

Clearly, had the Appellant established that his position had been prejudiced by a change in the eligibility rules, we would be obliged to give stronger consideration to his argument. But, the record is devoid of any evidence that he has actually been caught unaware or prejudiced by the rule change effective on September 25, 1981. The record indicates that he probably knew that he was jeopardizing his final two semesters of eligibility as early as May 1982. He and his parents were definitely aware of the rule and its impact upon him in the early days of the 1982-83 school year. He had ample time in the fall of 1983 to adjust his plans or to appeal his ineligibility for a timely determination of the issue. He did neither. Instead, he remained out of school, and he did not appeal the issue of ineligibility until March 1983. He cannot now come before this body and claim that he has been improperly prejudiced by a rule which became effective nearly one year before his discontinuance in school and of which he had actual notice in time to his eligibility. He made the decision which resulted in his forfeiting of his final two semesters of high school athletic eligibility will full knowledge of the potential consequences of his actions. He should not now come before the State Board and expect not to be held accountable for his decision.

## III.
## Decision

The decision of the Board of Control of the Iowa High School Athletic Association regarding the eligibility of Dennis Vacha rendered on April 8, 1983, is hereby affirmed.

June 16, 1983
DATE

Karen K. Goodenow

KAREN K. GOODENOW, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

June 2, 1983
DATE

Robert D. Benton

ROBERT D. BENTON, Ed.D.
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
AND
PRESIDING OFFICER