

IOWA STATE BOARD OF  
PUBLIC INSTRUCTION

(Cite as 3 D.P.I. App. Dec. 190)

In re Terry Thill	:	
	:	
Ken Mallas, Appellant	:	DECISION
v.	:	
Iowa High School Athletic Association, Appellee	:	[Admin. Doc. 705]

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The above entitled matter was heard on August 24, 1983, before a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Dr. Carol Bradley, chief, instructional services section, special education division; and Mr. David Bechtel, administrative assistant. The hearing was held pursuant to Departmental Rules, Chapter 670--9, Iowa Administrative Code. The Appellant was represented by Ken Mallas, superintendent of the Corning Community School District (hereinafter District). The Iowa High School Athletic Association (hereinafter Association) was represented by Attorney Lloyd Courter.

Terry Thill appealed a decision of the Board of Control (hereinafter Board) of the Association regarding an extended period of athletic eligibility.

I.  
Findings of Fact

The Hearing Panel finds that it and the State Board of Public Instruction have jurisdiction over the parties and subject matter.

The facts underlying the issue in this appeal are not new to the State Board. In a decision entitled, In re Terry Thill, 3 D.P.I. App. Dec. 88, the State Board rejected a request that an earlier decision of the Board refusing to waive scholastic eligibility rules for Terry be overturned. That decision expressly left open for future determination the issue currently before us.

Terry Thill is an 18-year-old high school student residing in the District. He will be a senior during the 1983-84 school year and is expected to graduate if he successfully completes a heavy course load. The heavy course load is a result of poor school attendance and academic performance at the previous school attended by him in Wisconsin.

During the past year, Terry has had three different residences in the District. From August, 1982, until the latter part of December, 1982, Terry resided with an aunt and uncle. After it was mutually agreed that he should leave the residence of his aunt and uncle, he lived with a local farm family for about six months. He currently resides with a local minister.

While his frequent moves of the past year may seem a disruptive influence on his life, they in no way compare to the difficulty of his previous situation. Prior to moving to live with his aunt and uncle in the District in August of 1982, Terry resided in Wisconsin. His last two years in Wisconsin were a very difficult period in his life. Part of the time he lived with his parents on their dairy farm. At other times he lived where he could find shelter. He sometimes stayed at the homes of relatives and friends and on occasion, slept in barns, sheds and cafe booths. He frequently went without proper food, sleep and adult supervision.

The exact nature of Terry's problem with his parents is not evident from the record. Terry did testify before the Hearing Panel that his leaving his parents home was by mutual arrangement. He stated he had decided to leave at the same time his parents ordered him to leave.

Terry's school work suffered and his attendance was erratic. During his sophomore year, 1980-81, he was absent over 75 days and failed most subjects. In his junior year, 1981-82, he attended school for about the first three weeks, but not thereafter.

After moving to live in the District, Terry's personal and school life became relatively more calm and his academic performance improved. At the end of the first semester he received one C and four Ds, and at the end of the second semester he received four Cs and two Ds. He was absent eight and one-half days the first semester and three days the second semester.

Even though Terry was scholastically ineligible for athletics during the first semester, he practiced with the football team and the basketball team. When he became scholastically eligible at the beginning of the second semester, he was placed on the varsity basketball team but was not a starter. He usually played only during the last few minutes of contests and, his highest game score was two points.

Terry also went out for track competition in three events. While he was not the best pole vaulter on the team, he did qualify for the state track meet in the pole vault. Terry planned to go out for baseball but was ruled ineligible under local rules that will be discussed later.

During the 1982-83 school year, Terry was involved in two incidents of a disciplinary nature in school. During the fall of 1982, he was found to be in possession of chewing tobacco in school and was given a one-day in-school suspension. In the spring of 1983, while involved in Prom activities, Terry was cited by police for possession of an alcoholic beverage. Terry immediately notified school officials of his possession and consumption of alcoholic beverages in violation of the District's "good conduct rule." He was declared ineligible under the rule for six weeks. As a result of his ineligibility, he did not compete in the state track tournament or baseball. While school officials were displeased with Terry's violation of the "good conduct rule," they were gratified he came forward to notify them of his conduct and accept his punishment in a mature fashion. Several teacher-coaches and the high school principal wrote letters of support for Terry.

Terry testified that he began using drugs and alcohol when he was 12 years old, but that his use increased greatly during his sophomore year of high school in Wisconsin. This was also the time his family problems became severe. He also testified that after leaving his parents' home he had supported himself with eight or nine jobs. He said he used alcohol and drugs on the job and was fired from five jobs as a result

of his alcohol and drug involvement. He stated the terminations were mostly a result of his inability to work after his nights of partying. He testified he declined professional help when offered by his parents. There was nothing in the record to establish the degree of drug involvement or to corroborate Terry's testimony regarding his use of drugs and alcohol.

The Board has previously extended the eligibility of a boy who had been institutionalized for treatment for drug usage. Testimony indicated that medical evidence was present in that instance to show the medical necessity of the boy involved to miss school and athletic participation while undergoing treatment.

## II. Conclusions of Law

The sole issue before us is whether Terry Thill's period of eligibility should be extended beyond that which is normal for athletic competition. The Departmental Rule at issue is 670--9.15(2)(c). That subrule reads as follows:

c. 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. [emphasis added]

Terry's primary argument before the Board and before the Hearing Panel was that his alienation from his parents, his nomadic existence and his drug and alcohol problems together constitute "extenuating circumstances" which should allow him two more semesters of athletic eligibility. The decision of the Board in denying him additional eligibility was based on three points. We agree with one of those three points and affirm the Board's decision.

The first reason given by the Board in rejecting Terry's request for extended eligibility was that the phrase "extenuating circumstances, such as health" requires an involvement of health considerations before the Board can grant extension of eligibility. We disagree with the narrowness of this interpretation. The phrase "such as health" is meant in the rule to be a nonexclusive example of circumstances which may be sufficient reason to extend eligibility beyond the normal eight semesters. In a previous State Board decision entitled, In re Dennis Vacha, 3 D.P.I. App. Dec. 143, the State Board upheld a Board decision refusing the extension of eligibility to a student who dropped out of school for a year for the expressed purpose of academic improvement. While the State Board declined to overrule the Board's decision in the Vacha decision, it did expressly state that severe academic problems and attempts to remedy those problems could be considered "extenuating circumstances" under the eight semester eligibility rule. That decision stated in relevant part as follows:

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.

Clearly, State Board Rule 670--9.15(2)(c), as it is currently written, allows for the extension of eligibility beyond eight semesters in "extenuating circumstances" other than "health."

The second reason given in the Board's decision for denying Terry extended eligibility is not totally clear on the record but appears to be a denial that the use of drugs and alcohol constitute "health reasons" to be considered as "extenuating circumstances" for consideration in extending eligibility. This result appears to be based on the reasoning that allowing drug and alcohol use as justification for extending eligibility runs contrary to attempts of the Association to deter student use of alcohol and drugs. Indeed, it was even argued at the hearing that the many years of support for "good conduct rules" and other anti-drug and alcohol efforts of the Association would be eroded by allowing a student extended eligibility on the basis of alcohol and drug usage.

We feel that the Association and its Board are confusing alcohol and drug use with alcohol and drug abuse and dependency. 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 dependency 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 circumstance" 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.

The third reason given by the Board for denying Terry extended athletic eligibility was that Terry's experiences with drugs and alcohol, as shown on the record before it, did not adequately establish a degree of severity to constitute an "extenuating circumstance." We are in full agreement with this position. While we do not dispute Terry's testimony that he was involved with drugs and alcohol, there is no record made or verified as to the extent of drug and alcohol use and the degree to which his use of drugs and alcohol were involved with his school and domestic problems during his sophomore and junior years. We cannot tell from the record whether Terry ever suffered from a drug and alcohol abuse or dependency level which would qualify as an "extenuating circumstance." There is, as the Board found, inadequate evidence substantiating the severity of degree of Terry's involvement with drugs. It is possible that the involvement was great, but there is no evidence of evaluations or opinions establishing such as fact. Neither is there anything in the record to show how Terry's drug and alcohol abuse, if severe, has been diminished or brought under control. Terry testified that his moving to Iowa was to help him in straightening out his life. It would seem to us that a person involved in severe drug and alcohol abuse or dependency would have a great degree of difficulty in resolving the problem by a mere change in location. There is no evidence that he participated in any treatment or rehabilitation program in Wisconsin or upon his immediate coming to Iowa. He even declined such professional help when offered by his parents.

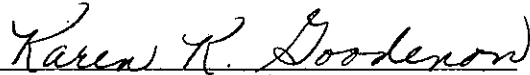
Perhaps Terry's problem with drugs and alcohol was sufficiently severe enough to constitute "extenuating circumstances." We cannot determine that from the record before us, however. What we find here is that the record does not satisfactorily establish that Terry's circumstance during his junior high school year in Wisconsin constitutes an "extenuating circumstance, such as health" on which to base an extension of athletic eligibility in Iowa.

III.  
Decision

The decision of the Iowa High School Athletic Association Board of Control in this matter on July 18, 1983, is hereby affirmed.

September 9, 1983

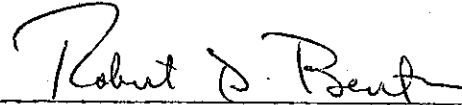
DATE



KAREN K. GOODENOW, PRESIDENT  
STATE BOARD OF PUBLIC INSTRUCTION

August 30, 1983

DATE



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