

Iowa Department
of Education

(Cite as 11 D.o.E. App. Dec. 230)

In re Joe Schisel.

Darrell Schumacher,
Appellant,

v.

Iowa High School
Athletic Association,
Appellee.

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DECISION

[Admin. Doc. #3519]

The above-captioned matter was heard on June 30, 1994, before a hearing panel comprising Mark Haack, chief, Bureau of Instructional Services; Don Helvick, consultant, Bureau of Administration and Accreditation; and Kathy Lee Collins, legal consultant and designated administrative law judge, presiding. Appellant Darrell Schumacher, the athletic director at Garner-Hayfield Community School District ["Garner-Hayfield"], was present in person, unrepresented by counsel. Appellee Iowa High School Athletic Association [hereinafter "the Association"] was present in the persons of Bernie Saggau, executive director, and Dave Harty, associate executive director, also unrepresented by counsel.

An evidentiary hearing was held pursuant to department procedures found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found at 281 Iowa Administrative Code 36.17. Appellant seeks reversal of a decision of the executive board of the Association made on June 11, 1994, denying an extension of the age limitation rule for Joe Schisel.

I.

Findings of Fact

The administrative law judge finds that she and the Director of Education have jurisdiction over the parties and subject matter of this appeal.

Joe Schisel is a nineteen year-old student at Garner-Hayfield. He graduated from high school this spring. In his career he has played football, basketball, and baseball and has run track. Joe is 5' 10" and weighs 150 pounds. This year he was captain of the football team, a part-time starter on the basketball team, placed at the state track meet for the third time in four years (he has also set three school track records),

and is currently playing center field on the Garner-Hayfield baseball team. At the time of hearing, the team had a 10-9 record with approximately ten days left in the regular season.

When Joe was five, his parents, in conjunction with school officials' recommendations, chose to keep him at home for one more year out of concern for his academic readiness.¹ He began kindergarten in 1980 at the age of 6. At the close of that year, the school and Joe's parents decided Joe needed yet another year of preparation and maturation prior to beginning first grade, so Joe was placed in a pre-first grade class in the 1981-82 school year. Since that time Joe has proceeded through school without interruption from first through twelfth grade. However, those two extra years at the front end of his education mean that Joe graduated at the age of 19; he will turn 20 this Sunday, July 10, 1994.

At hearing, we received testimony and evidence from Appellant Mr. Schumacher; the outgoing superintendent at Garner-Hayfield, Mr. Dennis Bahr; former elementary principal and district athletic director, Don Hoppel; and Joe's father, Larry Schisel. (Joe was present but opted not to testify.) The hearing panelists are in accord; rarely have we had the opportunity to hear such glowing and heartwarming praise for a student as we heard about Joe Schisel. Despite having a severe reading and language disability, Joe has been a model student and is a superior person. He is well liked and respected by his peers. He has never been a discipline problem for his parents or teachers. He was rarely absent from school and participated in a number of activities over the years. He has experienced success in sports and his parents describe athletics as the one bright spot for Joe at school, given his struggle academically with reading. It was clear that Joe Schisel is not only liked by school officials, he is loved. Their support for him was enormously moving.

The State Board of Education has a long established rule regarding the eligibility of high school students; this rule negatively impacts Joe Schisel on July 10, 1994. The rule, included among other eligibility requirements, states that "all contestants shall be under 20 years of age."

Mr. Saggau testified that the rule at issue, once a rule of the Association before the State Board of Education assumed rulemaking authority in the area of extracurricular activities, is one of the most lenient age rules in the United States. The National Federation of State High Schools, an organization to which the Association belongs, recommends an age rule that would deny eligibility for the school year if a student turns 19 prior to September 1 of that year. Mr. Saggau also testified that

¹The hearing panel was not advised about the nature or existence, if any, of a birth defect or genetic disorder causing Joe's learning disability, but a deficiency of some sort must have been apparent at an early age.

many states have adopted that rule or a similar rule such as a student remains eligible until his or her nineteenth birthday. Only a very small number of states have adopted a 20 years-old limitation on eligibility.

Mr. Saggau also testified that the purposes of the rule are fairness of competition and safety. Specifically, with respect to fairness, the rule ensures to the extent possible that students will not be held back in school to gain physical maturity and improve their athletic skills so that they are stronger and better athletes in high school, especially in the junior and senior years. This is a practice known as "redshirting."

Second, in conjunction with fairness the rule also operates as a safety feature, limiting the upper levels of competition to students aged nineteen and younger. Because students in ninth grade, at the age of fourteen or fifteen, are eligible to compete against all high school students, the age 20 limitation caps the disparity in age among participating athletes to four or five years. Fourteen year-old ninth graders find themselves competing with nineteen year-old seniors; this is a five-year age span. However, the 14 year-old would not have to compete against 20 year-old students, a six-year age span.

Mr. Saggau testified also that the Iowa rule has been in place for over forty-five years and that it has withstood at least one court challenge.² Moreover, it was reexamined as recently as 1992, when the Department asked the member schools and the four governing organizations (music, speech, and boys and girls athletics) to examine the rules governing extracurricular participation for any areas that needed revision. The 20 years-old limitation was not an area of concern to any of the member schools or the organizations.

Appellant's argument is that Joe was never retained for athletic purposes or even for physical maturation reasons; it was the school system that recommended Joe wait until 6 years of age to start kindergarten and then recommended Joe enter the pre-first grade class thereafter. Joe should not now be penalized by that same system (broadly defined) to eliminate him the day before the state tournament baseball series begins.³ At most, he would only need three additional weeks or seven games of eligibility because the state tournament is held the 30th and 31st of July. (Mr. Saggau stated that it takes seven games, from districts to state finals, to win the tournament.) Appellant especially urges the panel and Director that if ever a situation cried out for an exception to the rule, it is Joe's;

²Apparently the student who lost in district court chose not to appeal to the Iowa Supreme Court. We have no record of a reported decision on this issue in Iowa.

³Appellant points out that Garner-Hayfield's first game in the tournament is scheduled against Algona, a team they've already lost to twice, on Monday July 11. Realistically, Garner-Hayfield could lose, resulting in Joe's "extended" eligibility, if granted, being as short as 1 day.

as a special education student for all these years, Joe should be given special consideration.

II. Conclusions of Law

The rule at issue is one of eleven scholastic eligibility criteria. It states simply:

All contestants must be under 20 years of age.

281 IAC 36.15(2) (b) .

With respect to students with disabilities or other special needs, the eligibility rules have flexibility. For example, a special education student "shall not be denied ineligibility on the basis of scholarship if the student is making adequate progress... toward the goals and objectives on the student's" I.E.P. Id. at (c). Students earning credits in summer school or through correspondence can redeem eligibility over the summer despite second semester grades that might otherwise make them ineligible in the fall. Id. at (i). Drop-outs may be allowed to participate upon re-enrolling despite the operation of some of the other rules if the local superintendent and board decide to approve the drop-out's eligibility. (However, a 20 year-old returning drop-out could not be permitted to play; the 20 year-old age limitation rule is not waivable). Our point in reciting these rules, otherwise irrelevant to this case, is to illustrate that the overall rules scheme for student eligibility is flexible where special needs students are concerned.

While it is true that a special education student has the right to an education through the age of 21, that right does not automatically translate into a right to participate in extracurricular athletics to age 21. The age limitation rule, like the 8 semester limitation rule, stems in part from a concern for potential redshirting, but a student might lose eligibility under the eight-semester rule before he or she reaches 20. See In re Shawn Shaffer, 9 D.o.E. App. Dec. 376, 379 (1992); In re Jason Jewett, 7 D.o.E. App. Dec. 335 (1990).

The age limitation rule pertains directly to a student's physical maturity, a factor that is generally not affected by the student's status as a special education student. Moreover, it isn't directly related to height and weight, for a person's muscle development, agility, and coordination are impacted by the physical maturation process, not just his or her build.

In the Shawn Shaffer case cited above, it was observed that the state has never granted an exception to the 20th birthday rule. 9 D.o.E. App. Dec. at 379. In addition, this agency denied a petition for a rule amendment in approximately 1990

from the parent of a special education student who participated in swimming; she sought to carve out exceptions for certain (non-contact) sports on the theory that safety is only an issue in contact sports; therefore the age 20 limitation rule has less justification in swimming. We denied her request to amend the rule as she suggested, concluding that the age 20 rule also strongly rests on fairness of competition and a finding that physical development and maturity are factors in every form of athletics, contact or not. This conclusion is consistent with the courts' views on the subject. See, e.g., Thomas v. Greencastle Comm. Sch. Corp., 603 N.E.2d 190 (Indiana App. 1992).

There is a timeworn expression that is quite applicable in this case: "Hard cases make bad law." The hearing panelists all wanted very much to make an exception for Joe Schisel. It was clear that Joe wasn't redshirted⁴; that despite his above-average and all-around athletic ability his athletic director and superintendent were not here because Joe's absence from the team will mean sure defeat for Garner-Hayfield on July 11; Joe is not a hulking, bulked up young man. We struggled, frankly, to try to find an excuse, some way to grant this terrific kid an extra three weeks. There simply isn't one. If we were to rule in Joe's favor, this "hard case" would indeed make bad law for everyone who came after Joe.

The birthday rule may seem arbitrary. After all, it's exceedingly doubtful that Joe would be more of a physical threat or a better athlete on July 11 than he will be on the 8th or 9th when the team plays its last regular season game. Nevertheless, line drawing is part of life, part of the rules of the game, if you will. If Iowa had adopted the National Federation rule recommendation, Joe would have been ineligible all year. If we had an 18 year-old age limitation rule, he wouldn't have enjoyed most of the last two years. If we hadn't extended the eight semester rule to encompass the summer after twelfth grade, Joe wouldn't have played any baseball after he graduated because he presumably began his eligibility with baseball the summer after eighth grade.

It bothers us that such decisions as this can't be made, realistically, on a case-by-case basis. But the hard fact is, they cannot. The rule contains no built-in exceptions nor expresses the potential for any deviation. The most the hearing panel can recommend is that the State Board *consider* an amendment that would allow a student who turns 20 to complete the season in the sport in which he or she was participating. Unfortunately for Joe, that is not the rule now.

⁴Joe's father testified that had he known 14 years ago what he knows now, he and his wife would have made the same decisions regarding Joe's education.

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 June 11, 1994, denying an eligibility extension or waiver from the age 20 rule limitation is hereby affirmed.

7-5-94

Date

Kathy Lee Collins

Kathy Lee Collins, J.D.
Administrative Law Judge

It is so ordered.

7-7-94

Date

Al Ramirez

Al Ramirez, Ed.D.
Director of Education