

IOWA DEPARTMENT OF EDUCATION
(Cite as 30 DoE App. Dec. 058)

In re: Athletic Eligibility

EZEKIEL ROSE,

Appellant,

Case No. 21DOEAE2001
DE Admin.Doc. No. 5137

v.

IOWA DEPARTMENT OF
EDUCATION,

Appellee.

DECISION

This matter was heard in person at the Wallace State Office Building on April 20, 2021, by Kathleen M. O'Neill, designated administrative law judge with the Iowa Department of Inspections and Appeals Division of Administrative Hearings, presiding on behalf of Dr. Ann Lebo, Director of the Iowa Department of Education (Department).

The Appellant's mother, Robin Rose, was personally present as a representative for Ezekiel "Zeke" Rose. Attorney Brian Humke represented the Appellee, Iowa High School Athletic Association (IHSAA). Also appearing and presenting testimony for IHSAA were Executive Director Tom Keating and Assistant Director Todd Tharp. Brent Cook, vice chairperson for the IHSAA Board of Control (Board), provided testimony.

An evidentiary hearing was held pursuant to departmental rules found at 281—Iowa Administrative Code (IAC) chapter 6. Jurisdiction for this appeal is pursuant to Iowa Code section 280.13 and 281 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.

Zeke Rose seeks reversal of a decision that the Board made on March 11, 2021, denying his request for additional eligibility under the provisions of eligibility requirements, 281 IAC 36.15(2)(e). The IHSAA offered pages 1-63, which were made a part of the record. Both parties made closing arguments and filed timely post-hearing briefs.

FINDINGS OF FACT

The Appellant, Ezekiel "Zeke" Rose, was born on February 26, 2003; he turned 18 in February 2021. He was homeschooled throughout his life, so his parents determined his level of curriculum and whether he passed each grade. In September 2016, his parents

completed a Competent Private Instruction (CPI) report for the 2016-2017 school year. This is a report submitted by a parent, guardian, or legal custodian who places the child under competent private instruction, not in an accredited school. The parent furnishes a report to the public school district by September 1 of the school year in which the child will be under competent private instruction.¹ The report provides the child's name and age, the period of time during which the child has been or will be under competent private instruction for the year, an outline of the course of study, texts used, and the name and address of the instructor.² The form also asks if the child would like to dual enroll in activities with the school.

Zeke's 2016 CPI form listed the following answers:

- Grade level for the 2016-2017 school year:
 - o 9th grade
- Do you desire dual enrollment in the public school for the child under competent private instruction:
 - o yes
- Dual enrollment is desired for:
 - o Extra-curricular activities
- Subjects or activities you wish your child to dual enroll in:
 - o sports

(p. 9). Chariton Community Schools did not offer an eighth grade soccer program. Zeke did not participate in sports during the 2016-2017 school year. (Rose testimony).

Zeke's August 2017 CPI report listed Zeke as 10th grade for the 2017-2018 school year. The form requested dual enrollment in order for Zeke to participate in sports. During this school year, Zeke participated in soccer and the soccer program listed him as a freshman. (p. 14). Zeke's August 2018 CPI report listed Zeke as 10th grade for the 2018-2019 school year, as Zeke's parents felt that he needed to repeat that grade. Zeke participated in soccer during the 2018-2019 school year, and the soccer program listed him as a sophomore. (p. 19). The CPI report for the 2019-2020 school year listed Zeke as 11th grade and requested dual enrollment in order to participate in soccer. (p. 21). The CPI report for the 2020-2021 school year listed Zeke as 12th grade and requested dual enrollment in order to participate in soccer. (p. 25).

Chariton Community Schools found that Zeke was ineligible to participate in athletics during the 2020-2021 year, as he had completed his eight consecutive semesters. (Rose testimony, p. 48). Mr. and Mrs. Rose wrote letters on December 8, 2020 and January 14, 2021, requesting an eligibility ruling and asking that Zeke's eligibility be extended through his senior year. Mr. and Mrs. Rose explained that Zeke's 2016-2017 CPI report indicated 9th grade; however, he was still completing some 8th grade work, and should have been listed as an 8th grader. He did not register for soccer in 2016-2017 because he was smaller and

¹ Iowa Code (ICA) 299.4 (2021).

² *Id.*

younger than other children his age. Zeke registered for the soccer team only three years, and this was his senior year and fourth year registered. Included in their December 8, 2020 letter of appeal was a chart showing Zeke's actual grade verses what grade the CPI report showed. (p. 54, Rose testimony).

School Year:	CPI Report:	Actual Grade:	Soccer Registration:	Age:
2016-2017	9 th	8 th	Not registered	13 years old
2017-2018	10 th	9 th	9 th	14 years old
2018-2019	10 th	10 th	10 th	15 years old
2019-2020	11 th	11 th	11 th	16 years old
2020-2021	12 th	12 th	12 th	17 years old

On January 28, 2021, Tim Milledge, the 7-12 athletic director and assistant principal for Chariton, requested the IHSAA review Zeke's eligibility. Included in the appeal was a letter from Cole Pierschbacher, soccer coach at Chariton, supporting extending eligibility for Zeke. (p. 51, 52).

Assistant Director Todd Tharp, on behalf of the IHSAA requested documentation and transcripts related to Zeke's schooling and background. He reviewed Zeke's transcripts in relation to scholarship eligibility based on the first time Zeke enrolled as a freshman. Because Zeke was dually enrolled, he had no transcript, so Mr. Tharp referenced the CPI report, which showed that Zeke was first enrolled as a freshmen during the 2016-2017 year. Mr. Tharp determined that Zeke had exhausted his eight semesters of eligibility and sent a letter on February 17, 2021, notifying Mr. Milledge of the decision. (p. 48-49).

On March 1, 2021, Mr. and Mrs. Rose appealed that decision to the IHSAA Board of Control (p. 47). On March 11, 2021, Zeke, and Mr. and Mrs. Rose appeared for a hearing before the Board. The Board upheld the decision to deny the extension of eligibility. (p. 56, Cook testimony). The Appellant appealed.

At hearing, Robin Rose explained that she saw this as a simple cut and dry issue that had been drawn out too long. She made a mistake in the 2016-2017 CPI form. They did not intend for Zeke to play soccer in 2016-2017, and did not know about the eight-semester rule. Zeke started school early at age five, and kept up with his peers until 8th grade. In 8th grade, he was only 13 years old and smaller than other kids his age, so prior to completing the CPI form, they chose that he would not play on the high school soccer team. It was not until 2018-2019 that they realized that the form had incorrectly listed him as a 9th grade student. Zeke did not participate, practice, or have any dealing with the soccer team during 2016-2017. (Rose testimony).

Zeke was not asking to play five years; he simply wanted to play his fourth year of soccer, or eight consecutive semesters in participation. Mrs. Rose acknowledged that she made a mistake on the 2016-2017 CPI form, but noted that many people made mistakes during this

process, including IHSAA. One mistake should not define a child's ability to play soccer. Zeke was currently age appropriate for his senior year of high school and did not have an advantage over other players. Allowing him to play would benefit the team and make the competition more equal between the schools, which met the definition of the rule. (Rose testimony).

CONCLUSIONS OF LAW

Standard of Review

This appeal is brought pursuant to 281 Iowa Administrative Code 36.17, which states that “an appeal may be made . . . by giving written notice of the appeal to the state director of education. . . . The procedures for hearing adopted by the state board of education and found at 281—Chapter 6 shall be applicable, except that the decision of the director is final. Appeals to the executive board and the state director are not contested cases under Iowa Code subsection 17A.2(5).”

“The decision shall be based on the laws of the United States, the state of Iowa and the regulations and policies of the department of education and shall be in the best interest of education.”³ The most applicable controlling case law directs that the standard of review is abuse of discretion, and no party disputed that standard.⁴ Therefore, the Director of the Department of Education will examine the IHSAA Board of Control's application of the scholarship rule to Zeke to see whether the Board abused its discretion. “Abuse of discretion is synonymous with unreasonableness, and a decision is unreasonable when it is based on an erroneous application of law or not based on substantial evidence.”⁵

Scholarship Rule

In 2016, Ezekiel Rose's parents completed a competent private instruction (CPI) report and submitted it to Chariton public schools, asking that Zeke be dual enrolled as a 9th grade student.⁶ Dual enrollment is defined under Iowa Code section 299A.8:

1. If a parent, guardian, or legal custodian of a school-age child who is receiving competent private instruction under this chapter submits a request, the child shall also be registered in a public school for dual enrollment purposes. If the child is enrolled in a public school district for dual enrollment

³ 281 Iowa Administrative Code (IAC) 6.17(2).

⁴ *Sioux City Cmty. Sch. Dist. v. Iowa Dep't of Educ.*, 659 N.W.2d 563, 566 (Iowa 2003)

⁵ *City of Dubuque v. Iowa Utilities Bd.*, 2013 WL 85807, 4 (Iowa App. 2013), citing *Sioux City Cmty. Sch. Dist.* 659 N.W.2d at 566 (holding that the Iowa Department of Education erred when it did not apply the abuse of discretion standard).

⁶ ICA § 299A.1(1). CPI means “private instruction provided on a daily basis for at least one hundred forty-eight days during a school year, to be met by attendance for at least thirty-seven days each school quarter, by or under the supervision of a licensed practitioner in the manner provided under section 299A.2.”

purposes, the child shall be permitted to participate in any academic activities in the district and shall also be permitted to participate on the same basis as public school children in any extracurricular activities available to children in the child's grade or group. Dual enrollment of a child solely for purposes of accessing the annual achievement evaluation shall not constitute a dual enrollment purpose.

2. If the child is enrolled for dual enrollment purposes, the child shall be included in the public school's basic enrollment under section 257.6. A pupil who is participating only in extracurricular activities shall be counted under section 257.6, subsection 1, paragraph "a", subparagraph (6). A pupil enrolled in grades nine through twelve under this section shall be counted in the same manner as a shared-time pupil under section 257.6, subsection 1, paragraph "a", subparagraph (3).

The issues presented by this appeal is whether Zeke presents sufficient "extenuating circumstances" based on dual enrollment status during the 2016-2017 to justify granting him an additional year of eligibility to participate in athletics during his senior year. The relevant rule, 281 Iowa Administrative Code 36.15(2)(e) provides:

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. However, a student who engages in athletics during the summer following eighth grade is also eligible to compete during the summer following twelfth grade. 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 the executive board finds that the interests of the student and interscholastic athletics will be benefited.

Prior reported cases have noted that the reason for the eight-semester rule is three-fold: (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.⁷ Red-shirting is sitting out of school for a semester or year for purposes of gaining a physical (developmental) advantage.⁸

The administrative rule recognizes that eligibility may be extended based on extenuating circumstances, "such as health." The phrase "such as health" is meant as a *nonexclusive* example of sufficient circumstances for extension.⁹ Neither case law nor administrative rules provide an exclusive list of exceptions. Prior decisions have noted that the "such as" terminology, indeed the very creation of an exception, is acknowledgement of the fact that there may be a myriad of unimagined, unanticipated, rather unique circumstances that

⁷ *In re Justin Moretti-Monpetit*, 23 D.o.E. App. Dec. 295 (2005).

⁸ See *In re Jason Jewett*, 7 D.o.E. App. Dec. 335 (1990).

⁹ *In re Terry Thill*, 3 D.P.I. App. Dec. 190 (1983).

could arise in a student's life, and the rule exception cannot contemplate them all.¹⁰ Prior case law provides a path in order to make that determination.

In the case of *Olmstead*, the student opted out of football during his sophomore year in order to work and earn money for his family. This caused his grades to suffer. After improving academically, Mr. Olmstead sought an additional year to play football, based on family hardship. The Department found that this was not a "significant enough situation, particularly where he missed no semesters or trimesters of school, to justify giving him another football season."¹¹

In the case of *Jewett*, Mr. Jewett had a diagnosed growth delay that caused physical immaturity and required medical treatment; he also suffered a serious sports injury. This combination caused him to miss 75% of a wrestling season. The Department found that this circumstance was not unusual enough to justify granting additional eligibility.¹² Similarly, in *Thill*, the Department denied an extension request because the record failed to establish that the student's drug and alcohol problem was sufficiently severe to constitute extenuating circumstances.¹³

In the case of *Terence Cullen*, there is no dispute that Mr. Cullen's grades dropped based on a stressful home environment. Mr. Cullen attended and completed six semesters of high school in New York, where he participated in sports. He broke his back and played only one game his junior year and his grades declined significantly. His parents divorced and he moved to Iowa with his mother and brother. Mr. Cullen passed all of his classes and was within approximately four credits of being eligible to graduate, although the counselor believed that the school could offer Mr. Cullen additional course offerings over a two-year period that would help him prepare for college. Mr. Cullen chose to enroll in 12th grade. The Department found that although the circumstances of his parents' divorce were outside of Mr. Cullen's control, the family's situation was not the type of unique circumstance contemplated by prior Department of Education decisions as justifying an exception to the eight-semester rule. The Department further found that missing a season or even a year of athletics due to a physical injury did not justify an extension of the eight-consecutive semester rule. The Department emphasized that Mr. Cullen chose to enroll in 12th grade, but recognized that even if he had repeated the 11th grade, he ran the possibility of not being able to participate in athletics the following year.¹⁴

In the same case, *Cullen*, Chase Cullen, brother of Terence Cullen, failed to establish sufficiently compelling and/or unique circumstances to justify extending the eight-consecutive semester rule for him.¹⁵ Mr. Cullen was diagnosed with Attention Deficit Disorder, experienced both academic and behavioral difficulties in school, and chose to

¹⁰ *Jewett, supra*, at p. 338.

¹¹ *In re Olmstead*, 10 D.o.E. App. Dec. 330 (1993).

¹² *Jewett, supra*, at p. 339.

¹³ *In re Terry Thill*, 3 D.P.I. App. Dec. 190 (1983).

¹⁴ *In re Cullen*, 25 D.o.E. Dec. 134 (2008).

¹⁵ *Id.*

repeat freshman year after moving to Iowa. The Department found that his case was similar to *Klayton Williams*, as both Mr. Williams and Mr. Cullen were young compared to their classmates. Mr. Williams had a learning disability and struggled academically throughout his school years. Mr. Williams asked to repeat eighth grade after failing three core academic courses, but the school denied his request. After Mr. Williams failed three core courses in the 11th grade and received D's in all of his other courses, he voluntarily repeated 11th grade while sitting out sports for the entire year.¹⁶ Neither Mr. Cullen nor Mr. Williams were granted an extra year of eligibility.

In two cases, the Department found sufficient extenuating circumstances to extend additional athletic eligibility. In the case of *North*, the student grew up in an unstable home, with parents imprisoned for drug activity. Mr. North enrolled in special education and was labeled as "behavior disordered." He also faced legal trouble for burglary and did not attend school one year. Mr. North lived in multiple homes, until one family provided a stable home. Subsequently, Mr. North was able to maintain a job, improve academically, and applied to play sports. The Department found that at most, Mr. North had exercised one month of his athletic eligibility during his high school years, and the Department granted an extension of the eight-consecutive semester rule based on severe circumstances beyond the student's control, which caused him to be absent from school for an entire year.¹⁷

In *Owens*, the student lacked of stable residence and parental support, moving between states to live with each parent. This resulted in Mr. Owens not attending school for an entire year because he had to work full-time to support himself. The Department found that the student had used only six semesters of eligibility, so granted an extension based on severe circumstances beyond the student's control.¹⁸

Analysis

The question is whether Zeke meets the exception of "extenuating circumstances such as health," which would benefit the student and interscholastic athletics, in order to extend his eligibility. This is a unique situation, based on his dual enrollment status, with no significant dispute over the facts.

- Zeke has continuously been home-schooled during his education and has never attended classes at Chariton Community Schools.
- Zeke turned 18 in February 2021.
- During the 2016-2017 school year, Zeke's parents filed the appropriate CPI paperwork for dual enrollment with the Chariton school district and listed Zeke as a 9th grade student, doing both 8th and 9th grade work.
- The 2016 CPI dual enrollment form listed "sports" as the dually enrolled activity.

¹⁶ *In re Klayton Williams*, 25 D.o.E. App. Dec. 58 (2008).

¹⁷ *In re Shawn North*, 8 D.o.E. App. Dec. 87(1990).

¹⁸ *In re Joshua Owens*, 20 D.o.E.App.Dec.92(2001).

- Chariton Community Schools did not offer an eighth grade soccer program.
- The 2017-2018 and 2018-2019 dual enrollment paperwork listed Zeke as a 10th grade student.
- The 2019-2020 dual enrollment paperwork listed Zeke as an 11th grade student.
- The 2020-2021 dual enrollment paperwork listed Zeke as a 12th grade student.
- Chariton Community Schools found that Zeke was ineligible for athletics during the 2020-2021 year, as he had completed his eight consecutive semesters.

Zeke argues that his situation is distinguishable because he did not enroll or participate in sports during the 2016-2017 school year. He was only enrolled in soccer for three years, and due to the pandemic, was unable to play during the 2019-2020 season. He is currently 18 years of age, which is under age 20, in accordance with 281 Iowa Administrative Code 36.15(2), and he did not believe that the term redshirting applied to his situation.

Previous decisions demonstrate that a student faces a heavy burden when seeking to establish the type of “extenuating circumstances” that justify an extension of the eight consecutive semester rule. The cases show that each situation is individual and no specific pattern exists in order to determine what meets the definition of extenuating circumstances. Each decision presents a compelling situation illustrating unimaginable hardships. At times, the outcomes of cases run in opposition to one another. However, while cases can run counter to each other, it is because each case is based on the individual, unique circumstances in combination with those distinguishable facts, all in play together.

Olmstead demonstrated that the exception clause was built to take into consideration those students “who, for reasons generally beyond their control and unrelated to athletics were unable to attend school and participate in sports for a time.” Zeke missed the 2016-2017 sports year due to an inadvertent paperwork error; he did *not* miss the soccer season based on extenuating circumstances. As in *Williams and Chase Cullen*, both were young compared to their classmates and Mr. Williams repeated a grade, but neither were granted an extra year of eligibility.

The undersigned must look at whether the Board’s decision was unreasonable, or based on an erroneous application of law or not based on substantial evidence. During the 2016-2017 school, Chariton Community Schools determined that Zeke was enrolled in the 9th grade and began the eight-semester eligibility clock. On the 2017-2018 dual enrollment paperwork, Zeke’s parents listed Zeke as a 10th grade student, which affirmed the school district’s belief that Zeke was enrolled in the correct grade. Zeke subsequently repeated 10th grade.

Applying the standard fairly, a student is eligible to participate in interscholastic athletics “upon entering the ninth grade for the first time.” This standard applies whether the student is enrolled in academics at a home school, public school, or private school. Students do not have the ability to change his or her grade retroactively based on a mistake, or the decision to repeat a grade. The bottom line is Zeke was dual enrolled at Chariton starting in 2016, with the opportunity to play soccer for eight consecutive

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semesters. Zeke did not demonstrate that he faced extenuating circumstances so unique as to justify an exception. Allowing someone to participate in an additional year of athletics beyond eight semesters provides a competitive advantage that does not benefit interscholastic athletics.

The Board applied the rule as written and the undersigned cannot conclude applying the rule as written is an abuse of discretion.

DECISION

For the foregoing reasons, the March 11, 2021 decision of the Board of Control of the Iowa High School Athletic Association, which denied the request of Ezekiel Rose for an additional year of athletic eligibility, is AFFIRMED. There are no costs associated with this appeal to be assigned to either party.

Dated this 27th day of April, 2021.



Kathleen M. O'Neill
Administrative Law Judge

It is so ordered.

April 29, 2021

Date



Ann Lebo, Director
Iowa Department of Education