University Interscholastic League

State Executive Committee

Case No. 16-0817-02

DECISION ON APPEAL

August 17, 2016
Austin, TX

On the above date, the University Interscholastic League (UIL) State Executive Committee (SEC) held a hearing to consider the appeal of a District Executive Committee's (DEC) decision to deny student/Appellant an overage waiver. Student/Appellant was represented at the hearing by his guardian, former superintendent, and athletic director. The following members of the SEC were present and participated in the decision of this case: Mike Motheral, Chair, Darrian Dover, Paul Galvan, Johanna Denson, Robin Battershell, James Colbert, Phil Cotham, Gil Garza, Amy Jacobs, and Marcus Nelson.

Background and Facts

Appellant sought to overturn the DEC's decision to deny his request for a waiver of the Age Rule, Section 446, UIL *Constitution and Contest Rules.* [1] Appellant's former superintendent stated that the student met all criteria for an overage waiver, including being retained in the 5th and 6th grades due to a disability that delayed his education for a year or more. On behalf of the Appellant, the superintendent claimed that a lack of effective parental oversight combined with Appellant's handicapping condition was the cause of being retained twice before the 7th grade. Although the waiver had been initially approved by the DEC, due to the UIL's biennial realignment, Appellant's school district was assigned to a different DEC for the upcoming school year. The chair of the new DEC felt obligated to review the overage waiver because students in the new district would be affected by the decision if granted. The new DEC determined that there was insufficient evidence to conclude that the student's disability was the reason why he was held back and therefore denied the waiver.

State Executive Committee Discussion

Appellant sought to overturn the DEC's decision to deny an overage waiver. Appellant and representative were allowed to present facts relevant to the case, answer questions from the SEC, and close the hearing with a summary statement. The chair of the SEC clarified that the issue to be settled revolved around the reason for the delay in Appellant's education. Among other things, SEC members inquired about Appellant's decision-making ability, how much school he missed during the two years he was retained, and why the issues with his age were not remedied before his senior year.

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[1] *Section 446, of the UIL Constitution and Contest Rules states, "a student who is nineteen on September 1 preceding the contest, and who initially enrolled in the ninth grade no more than four calendar years ago, and who prior to the end of his or her second year in high school was in special education, under the auspices of an ARD committee or identified as a 504 student by a 504 committee, is eligible to participate in a UIL varsity athletic contest as a representative of a member school if: (A) the student has or had a disability which delayed his or her education for a year or more; (B) the student is currently in special education and under the auspices of an ARD committee or is currently identified as a 504 student by a 504 committee, and (C) the student has not already participated one extra year under this exception."*

Appellant's athletic director stated that he has made both good and bad decisions. When asked to clarify who made the decision to withdraw Appellant in the 5th and 6th grades, Appellant answered that his mother made him stay home to care for his siblings approximately the last eight weeks of his fifth grade year and then a majority of the second semester of his 6th grade year. Appellant's former superintendent addressed the issue of whether or not Appellant was retained because of a disability and why the school did not address the student's age issue in the 8th grade. He stated that Appellant was placed in special education at his former school, but when he transferred to the new school "someone dropped the ball," and he did not receive special education services. He emphasized that there was no record that the student was ever dismissed from special education. He further argued that Appellant has a disability that causes him trouble in reading and writing, which was why his teachers chose to retain him and why he is still having trouble passing state standardized EOC English I and II test.

The chair of the DEC testified that the committee voted 4-2 to deny Appellant's overage waiver. He revealed that he received a letter stating that the waiver had been granted by the previous DEC, but since the eligibility was for the upcoming school year he felt obligated to review it. The main question the DEC considered was whether or not he was retained for a disability. The chair of the DEC explained that 100% of the evidence provided was that he was retained because of poor parenting and not attending school. He stated that the school did not know he was in special education when he transferred in the 3rd grade and that he did not receive 504 accommodations until October of his junior year in high school. The chair of the DEC concluded that he could not have been retained because of his disability because his school was not aware that he was classified as a special education student.

Appellant and representatives were afforded the opportunity to respond to other testimonies and give a summary statement. Appellant's superintendent stated that he receives money from the state for having a handicapped condition and it was this handicapped condition that caused him to not be successful in the 5th grade, which was why he was retained.

Decision

After hearing the argument and evidence presented by the Appellant and representatives, the SEC voted 5-4 to grant the Appellant's request to overturn the District Executive Committee's decision. As a result, the decision of the DEC is overturned and the Appellant's request for an overage waiver is granted.