

58-04

BOARD OF EDUCATION OF THE :
TOWNSHIP OF NORTH BRUNSWICK, :
MIDDLESEX COUNTY, :

PETITIONER, :

COMMISSIONER OF EDUCATION

V. :

DECISION

NEW JERSEY STATE INTERSCHOLASTIC :
ATHLETIC ASSOCIATION, :

RESPONDENT. :

_____ :

SYNOPSIS

Petitioning Board of Education sought reversal of the final decision of the NJSIAA, which declared student J.W. ineligible to play football because he transferred to the Board's district for athletic advantage, and further required the Board to forfeit its victory over Colonia High School as a result of J.W.'s participation in that game.

Mindful that the Commissioner's scope of review in NJSIAA matters is appellate in nature, the Commissioner was satisfied that the NJSIAA afforded both the Board and J.W. the full measure of due process to which they were entitled, and that the decision of the NJSIAA was supported by the record and was not not arbitrary, capricious or unreasonable. Petition was dismissed.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

February 18, 2004

AGENCY DKT. NO. 397-11/03

BOARD OF EDUCATION OF THE :
TOWNSHIP OF NORTH BRUNSWICK, :
MIDDLESEX COUNTY, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
NEW JERSEY STATE INTERSCHOLASTIC :
ATHLETIC ASSOCIATION, :
RESPONDENT. :
_____ :

For Petitioner, Anthony B. Vignuolo, Esq. (Borrus, Goldin, Foley, Vignuolo,
Hyman & Stahl, P.C.)

For Respondent, Michael J. Herbert, Esq. (Herbert, Van Ness, Cayci & Goodell)

This matter came before the Commissioner of Education on November 5, 2003, through the filing of a Petition of Appeal by the North Brunswick Board of Education (“North Brunswick” or “Board”). Therein, the Board sought reversal of the final decision of the New Jersey State Interscholastic Athletic Association (“NJSIAA”) declaring J.W., a student newly registered in the District, ineligible to play football because he transferred from the Hillsborough School District (“Hillsborough”) for athletic advantage and requiring North Brunswick to forfeit its victory over Colonia High School (“Colonia”) in a September 26, 2003 game in which J.W. had participated. The petition was accompanied by an application for emergent relief seeking to stay the NJSIAA’s decision pending determination on the merits, to which the NJSIAA responded with a submission including, for the sake of expediency, the entire record of the proceedings on appeal. (*cf. N.J.A.C. 6A:3-7.2*) Following denial of North Brunswick’s emergent application by the Deputy Commissioner on November 13, 2003, the parties were directed to proceed with briefing on the merits in accordance with *N.J.A.C. 6A:3-7.3*, and, the parties’ briefs being duly submitted, the record

before the Commissioner closed on December 11, 2003 with North Brunswick's submission of a letter of clarification regarding certain terminology used in its brief.¹

OPERATIVE FACTS

The following facts were found by the NJSIAA, as stated in its October 17, 2003 decision of the Eligibility Appeals Committee (EAC) at 7-10:

1. J.W. was an outstanding member of the varsity football team at Hillsborough High School for his first three years at that school. In fact, according to the Hillsborough [c]oach, he was the best player on that school's football team. He received All County and All Conference honors in 2002 in football.

2. The Hillsborough High School Athletic Department has [an] "athletic contract," which is signed by each student-athlete and his or her parent or guardian before each season, recognizing that it is a "privilege to participate in all athletic activities" at the school and agreeing further to obey certain regulations established by the school Athletic Department and the NJSIAA, including satisfactory "citizenship" and an agreement to "at all times...conduct myself in an orderly manner, both on and off the school grounds, in such a way as to bring credit to my team, school and family."

3. J.W. had been involved in a few out of school incidents involving the police prior to the Spring of 2003.

4. In the Spring of 2003, J.W. was suspended from the baseball team in Hillsborough because of out of school conduct involving the police. At that time, he was specifically warned by the Hillsborough football coach that any further infractions would lead to his removal from the football team.

5. In the late Spring of 2003, J.W. was accused of criminal conduct by a female student in the Hillsborough High School. From late June 2003 until August 25, 2003, J.W. participated in weight training at Hillsborough, followed by actual practice.

6. The Hillsborough football coach excused J.W. from practice on August 25 because his case was to be tried that day in juvenile court in Somerset County. In a discussion at that time, the Hillsborough coach advised if he were found guilty of the charges, that this would be the "last straw" and he would be removed from the team.

¹ The Board indicated, in response to NJSIAA's observation (Brief at 2, note 1) that a "Motion to Vacate" was not appropriate in the present context, that it had, by use of that term, merely intended to appeal the underlying NJSIAA determination as set forth in *N.J.A.C. 6A:3-7.1 et seq.*

7. On August 25, J.W. was found guilty of four counts in juvenile court. As part of that disposition, he was instructed by the court not to have any contact with the accusing female student.

8. On August 26, the Hillsborough coach advised J.W. that he was removed from the team because of the disposition in the court. The coach stated that he would assist the young man and write a letter on his behalf to the judge prior to sentencing, which was then pending.

9. Within a few days of advising J.W. he was removed from the team, the Hillsborough coach spoke separately to both the mother and father of J.W. and explained that he had been removed from the team because of the problems in court and again, offered assistance in writing a letter on the young man's behalf. In one of those conversations, the coach suggested to J.W.'s mother that she should consider putting her son in a "military school."

10. On August 29, 2003, the parents of J.W. withdrew him from Hillsborough High School and registered him in North Brunswick High School. They established a residence in North Brunswick at the home of J.W.'s sister.

11. Shortly after registering at North Brunswick High School, J.W. approached the school's football coach, Mark Zielinski, and asked if he could be a member of the football team.

12. After that first contact with J.W., Coach Zielinski then called the Hillsborough football coach since it appeared unusual that such a skilled player would be wanting to transfer prior to his senior year.

13. In a conversation prior to the first game for any school on September 12, Coach Mantz advised Coach Zielinski that J.W. was not a part of his program any more and that he had been convicted on four counts in court.

14. Coach Zielinski then sought out J.W., who informed him that he had in fact been convicted on four counts.

15. Coach Zielinski then conferred with his Athletic Director, Aaron Speller, and Assistant Principal Sal Mistretta and they concluded that J.W. was in fact eligible to participate on the North Brunswick High School football team. Mr. Speller testified that the only issue they were concerned about was the actual residence of the student, which they were satisfied had been verified.

16. Although transcripts and other information had been submitted by Hillsborough to North Brunswick, there was no written information transmitted concerning the disciplinary action taken by the athletic program at the former school.

17. J.W. was a starter for the entire football game on defense on September 12, 19 and 26. The September 12 and 19 contests were lost but North Brunswick defeated Colonia on September 26.

18. The Colonia Coach and Athletic Director heard about “rumors” relating to the ineligibility of J.W., which [were] supplemented by anonymous e-mails directed to the Colonia football coach prior to the September 26 football game. They did not do anything prior to the game because they believed they could not verify “rumors.”

19. After North Brunswick defeated Colonia on September 26, the Colonia coach and athletic director received further information that J.W. might have been ineligible to participate in the game. The school principal then contacted the NJSIAA leading to a hearing before [the NJSIAA Eligibility Appeals] Committee.

Subsequently, as recounted in the Board’s petition:

On or about October 8, 2003, the NJSIAA [Eligibility Appeals Committee] held a full hearing on the matter to determine whether J.W. was eligible to participate in school athletics and, if ineligible, whether North Brunswick’s September 26, 2003 victory over Colonia should be forfeited because of his participation in the game.

The NJSIAA ruled² that J.W. was ineligible to participate in school athletics because he transferred for competitive advantage, finding it was J.W.’s intent to nullify the punitive actions taken by Hillsborough High School against him. The NJSIAA further ruled that the victory over Colonia should be forfeited because of J.W.’s participation in the game. (Petition of Appeal at 3-4)

On November 5, 2003, North Brunswick filed the instant appeal, which then proceeded as set forth above.

NORTH BRUNSWICK’S POSITION

North Brunswick argues that the NJSIAA applied the wrong standard in determining whether the District had appropriately investigated J.W.’s eligibility prior to permitting him to participate in interscholastic football. The Board contends:

The [NJSIAA] incorrectly applied a standard requiring “no doubt” in investigating a student-athlete’s eligibility, which was cited from the NJSIAA Interpretive Guidelines §4 on “Observance of Eligibility Standards and

² NJSIAA issued its written decision on October 17, 2003, but the parties were given an oral decision within a day of the hearing. (Hearing Transcript at 132, NJSIAA Brief on Emergent Relief at 14)

Appeals.” As this section does not pertain to the enforcement of eligibility standards, §6, which interprets enforcement as stated in Bylaw Article X, §1 should have been applied. The NJSIAA should have applied the “make certain” standard set forth in Bylaw Article X, §1 and interpreted in §6 of the guidelines, which does pertain to the enforcement of eligibility standards. Under this standard a member school is expected to “make certain” by performing due diligence. (Board’s Brief on the Merits at 2, citations omitted)

The District proffers that it *did* “make certain” J.W. was eligible to participate by “performing due diligence.” It argues that it initiated contact with Hillsborough, the staff of which “never completely and clearly advised” that J.W. was removed from the team for disciplinary reasons;³ that it questioned J.W. and his family, who gave a plausible explanation for J.W.’s transfer; and that it reviewed J.W.’s records from Hillsborough, which, in violation of law did not indicate the disciplinary action taken against J.W. with respect to the football team.⁴ Thus, North Brunswick avers, it made all the appropriate inquiries and received responses that “relieved its concerns and at no time suggested a disciplinary removal.” (Board’s Brief on Emergent Relief at 4-5, quotation at 5; Board’s Brief on the Merits at 5-10) The Board having been duly diligent, it argues, NJSIAA should not have imputed the EAC’s own doubts to the Board and used this as a basis to require forfeiture. If the Board carried out its duty to make certain a student is eligible, the Board proffers, “then the member school has fulfilled its obligation and should not be penalized for undetectable information that is unknown to the member school when it found the student-athlete eligible or for suspicious

³ The Board particularly objects to NJSIAA’s failure to accord sufficient weight to the Hillsborough coach’s statement to the North Brunswick coach to the effect that if J.W. wanted to play for North Brunswick, that was North Brunswick’s call; it further objects to the lack of specificity in the Hillsborough coach’s statements in response to the North Brunswick coach’s questioning. (Board’s Brief on the Merits at 5, 7) The Board also notes that it, unlike Hillsborough, does not discipline student-athletes for conduct unrelated to school behavior, and that Hillsborough’s policy was never communicated to North Brunswick’s coach. (*Id.* at 6)

⁴ The Board complains that prior to J.W.’s transfer, the principal took no official action to suspend him from the team and that Hillsborough does not, as a matter of policy, include actions related to athletics in discipline records. (Board’s Brief on the Merits at 6, 9)

information that is satisfied through investigation.” (Board’s Brief on the Merits at 3) The Board explains:

North Brunswick was diligent in its pre-season determination finding J.W. eligible to participate in interscholastic competition. This determination should not be discarded and penalized by a contrary NJSIAA finding, occurring over a month later and supplemented with additional information that was unavailable to North Brunswick at the original time of determination. At the time J.W. participated in athletics, North Brunswick made certain he was eligible as required by *NJSIAA Bylaw Article X, §1*, and yet, in its decision, the NJSIAA found that there was “overwhelming circumstantial evidence” indicating eligibility was questionable regardless of North Brunswick[s] due diligence. This is not the standard as set forth in *Bylaw Article X, §1*, but rather the suggestion in the *Interpretive Guidelines §4*, which is unrelated to the enforcement of eligibility standard found in §6.

Application of the *Article X, §1* “make certain standard” relieved petitioner of any responsibility once its due diligence failed to reveal any suspicious circumstances.***The burden of inquiry of “no doubt” as applied by NJSIAA improperly imposed a burden on the petitioner not required by law. The Commissioner must now act to correct this injustice. (Board’s Brief on the Merits at 3-5, citations omitted)

The Board concludes by reiterating that it raised, acted on, and satisfied all appropriate concerns upon J.W.’s senior-year transfer into the District, and that NJSIAA’s decision finding the Board culpable nonetheless places unreasonable demands on a district to “make certain by not only requiring it to investigate the suspicious circumstances but also to investigate their investigations.” (Board’s Brief on the Merits at 9-10)⁵

NJSIAA’S POSITION

The NJSIAA first stresses that member schools adopt NJSIAA regulations as their own, and that the NJSIAA has for over two decades had a policy, incorporated into its *Handbook* since the 1984-85 school year and into its Bylaws since 1987, that games won using an ineligible player must be forfeited. It further notes that since 1991-92, its

⁵ Although the Board sought reversal of the entirety of the NJSIAA’s decision, which addressed both J.W.’s eligibility and the question of penalty against the Board for using an ineligible player, the Board’s arguments on appeal are directed exclusively to the latter.

Interpretive Guidelines have clearly indicated that “if a school has any doubt whatsoever about the eligibility of a student, it should contact the NJSIAA Headquarters for an initial interpretation and, if necessary, submit a formal request to the NJSIAA for an eligibility ruling by the Eligibility Committee prior to the beginning of each of the sports seasons.***A school should never allow a student to participate in interscholastic sports if it has any doubt whatsoever as to that student’s eligibility and until an interpretive ruling has been issued by [the NJSIAA]. Otherwise, the school risks imposition of appropriate penalties for the use of an ineligible student, including the forfeiture of games won by that school utilizing such a student...” (emphasis in text) (NJSIAA Brief on the Merits at 3-4, quoting *NJSIAA Handbook* at 66-67; NJSIAA Brief on Emergent Relief at 2-4).

The NJSIAA next emphasizes, citing *D.J.K. and H.J.K. v. NJSIAA*, 1987 *S.L.D.* 259 and *Board of Education of the City of Camden v. NJSIAA*, 92 *N.J.A.R.* 2d (EDU)182, 188, that the Commissioner’s scope of review over its decisions is appellate in nature, so that where due process has been granted and the record provides an adequate basis for the NJSIAA’s decision, the Commissioner may not overturn that decision even if he might have reached a different result in a *de novo* review. (NJSIAA Brief on the Merits at 7-8; NJSIAA Brief on Emergent Relief at 18-19) The NJSIAA notes that the EAC promptly held a hearing on J.W.’s eligibility, which was attended by representatives from North Brunswick, Hillsborough and Colonia, as well as by J.W.’s parents and their counsel,⁶ and that the hearing took well over three hours and resulted in a 12-page decision setting forth with specificity the basis for the EAC’s findings. (NJSIAA Brief on the Merits at 5, 8-9; NJSIAA Brief on Emergent Relief at 19-20) The NJSIAA further maintains that its decision was based on substantial credible evidence in the record. Specifically, it points to the extensive background

⁶ J.W. was invited to appear, but elected not to do so.

information in the record regarding J.W.'s history and the athletic contract signed by both J.W. and his parents indicating that further trouble with the law would lead to removal from the team; to the North Brunswick coach's statements to the effect that he was suspicious of J.W.'s status prior to the beginning of the football season based on the timing of J.W.'s arrival in the District and how good a player he was; to the fact that the Hillsborough coach undisputedly informed the North Brunswick coach that J.W. was no longer part of Hillsborough's football program and had been in trouble with the law; that J.W.'s parents clearly indicated, as a consequence of the conversation between the Hillsborough and North Brunswick coaches, that J.W. had been convicted on four counts in a criminal matter; that J.W.'s father had expressed his son's interest in playing football to North Brunswick officials prior to J.W.'s transfer there; and that J.W. transferred to North Brunswick within days of his removal from the Hillsborough football team. (NJSIAA Brief on the Merits at 5-6, 11-16)

In response to the Board's emphasis on the Hillsborough coach's statement to the effect that the decision to permit J.W. to play rested with the North Brunswick coach, the NJSIAA points to its clear rules and to the North Brunswick coach's statement that he does not rely on other coaches to ascertain those rules. (*Id* at 10-11, 14) Thus, the NJSIAA concludes, the Board cannot possibly meet its burden of demonstrating that the NJSIAA's decision was arbitrary, capricious, unreasonable or unsupported by substantial credible evidence in the record as a whole. (*Id* at 10, 16)

COMMISSIONER'S DETERMINATION

The NJSIAA is a voluntary association of public and nonpublic schools, organized pursuant to *N.J.S.A.* 18A:11-3, to oversee athletics for its member schools in accordance with its Constitution, Bylaws, rules and regulations, which are approved by the Commissioner of Education and adopted annually by the member schools. Upon adoption by

the member schools, these rules and regulations are deemed school policy and are enforced by the internal procedures of the NJSIAA.

It is well-established that the Commissioner's scope of review in matters involving NJSIAA determinations is appellate in nature. *N.J.S.A.* 18A:11-3; *N.J.A.C.* 6A:3-7.4; *Board of Education of the City of Camden v. NJSIAA*, 92 *N.J.A.R.* 2d (EDU) 182, 188. That is, the Commissioner may not overturn an action by the NJSIAA in applying its rules, absent a finding that the Association applied the rules in a patently arbitrary, capricious or unreasonable manner. *B.C. v. Cumberland Regional School District*, 220 *N.J. Super.* 214, 231-232 (App. Div. 1987). Nor may the Commissioner substitute his judgment for that of the NJSIAA, *even if he were to decide differently in a de novo hearing*, where due process has been provided and where there is adequate basis for the decision reached by the NJSIAA Committees. *Dam Jin Koh and Hong Jun Kim v. NJSIAA*, 1987 *S.L.D.* 259; *see, also*, *N.J.A.C.* 6A:3-7.4(a). The scope of the Commissioner's review in NJSIAA matters has also been codified to provide notice of this standard to the public and regulated parties:⁷

1. If the NJSIAA has granted a petitioner due process and its decision is supported by sufficient credible evidence in the record as a whole, the Commissioner shall not substitute his ***judgment for that of the NJSIAA, even if the Commissioner might judge otherwise in a *de novo* review.
2. The Commissioner shall not overturn NJSIAA's application of its own rules absent a demonstration by the petitioner that such rules were applied in an arbitrary, capricious, or unreasonable manner. *N.J.A.C.* 6A:3-7.4(a).

The burden of proof that an action was thus improper rests with the person or entity challenging the decision. *Kopera v. West Orange Board of Education*, 60 *N.J. Super.*

⁷ See 31 *N.J.R.* 4173(a) and 32 *N.J.R.* 1177(a).

288, 297 (App. Div. 1960). It must be remembered that the arbitrary, capricious or unreasonable standard of review is extremely narrow in its scope and, consequently, imposes a heavy burden on those who challenge determinations of the NJSIAA. The standard, as defined by the New Jersey Courts provides:

In the law, “arbitrary” and “capricious” means having no rational basis. *** Arbitrary and capricious action of administrative bodies means willful and unreasoning action, without consideration and in disregard of circumstances. Where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.*** (citations omitted) *Bayshore Sew. Co. v. Dep’t of Env’t. Protection*, 122 N.J. Super. 184, 199-200 (Ch. Div. 1973), *aff’d* 131 N.J. Super. 37 (App. Div. 1974).

Upon careful consideration of the record of this matter, and mindful of the applicable standard of review, the Commissioner is satisfied that the decision of the NJSIAA finding J.W. ineligible to play football and requiring North Brunswick to forfeit its victory over Colonia High School as a result of permitting him to participate in the game was not arbitrary, capricious or unreasonable. The Commissioner is further satisfied that the EAC’s findings of fact, credibility determinations and weighing of evidence, as well as the inferences and conclusions drawn from these, were substantially supported by the record and reached after affording both the Board and J.W. the full measure of due process to which they were entitled.

With regard to North Brunswick’s arguments on appeal, the Commissioner finds entirely without merit the Board’s claim that the requirement of the *Interpretive Guidelines* at § 6, to “make certain” of a player’s eligibility, and the directive at § 4, to obtain an NJSIAA determination if there is “any doubt whatsoever” about such eligibility, refer to different situations and establish different standards, so that the NJSIAA erred in applying the § 4 standard rather than the § 6 standard in deciding the instant matter. To the contrary, the

Commissioner finds the two sections to be both clear and consistent in their instructions to member districts, and he finds it entirely reasonable and in accordance with the *Guidelines* for the NJSIAA to have concluded, under all of the circumstances herein, that, although North Brunswick did, in fact, undertake inquiries with regard to J.W.'s eligibility (the "due diligence" referenced by the Board on appeal), those inquiries revealed information sufficient to preclude certainty as to the young man's status, thereby requiring further action by the District before permitting him to play.

The Commissioner further finds reasonable the NJSIAA's determination to reject any reliance by North Brunswick on Hillsborough's purported failure to comply with pupil record law, since nothing in the controlling statute, *N.J.S.A.* 18A:36-19a, requires on its face that actions relating to athletic programs be included in the disciplinary records forwarded to a new district upon transfer of a student, and it is undisputed that Hillsborough's policy is not to include such information in its pupil records. Moreover, to any extent that Hillsborough may have had information in its possession pursuant to *N.J.S.A.* 2A:4A-60 at the time J.W.'s records were transferred (and the record on appeal does not clearly establish that it did), had notice of that information been provided to North Brunswick, such notice would have revealed substantially what the North Brunswick coach had already learned through conversations with J.W. and his parents. The Commissioner observes in this regard that J.W.'s involvement with the law is not, *in itself*, the cause of his inability to participate in the North Brunswick football program, since that District's policy is generally not to penalize student-athletes for infractions occurring outside school; rather, J.W.'s ineligibility is based

on his seeking to evade the consequences of his removal from Hillsborough's team by transferring to another district.⁸

Accordingly, the North Brunswick Board of Education having failed to sustain its burden of establishing that the NJSIAA's decision in this matter was arbitrary, capricious, unreasonable or contrary to law, the Commissioner upholds that decision and dismisses the Petition of Appeal.

IT IS SO ORDERED.⁹

COMMISSIONER OF EDUCATION

Date of Decision: February 18, 2004

Date of Mailing: February 20, 2004

⁸ In addition to the arguments set forth above, the NJSIAA preliminarily urged that this matter be found moot upon the Deputy Commissioner's denial of emergent relief, since tournament rankings had already occurred at that point and, by the time briefing was concluded, the football season would effectively be over. (NJSIAA Brief on the Merits at 6-7) However, because the Board did not have an opportunity to argue this point, the Commissioner declines to reach it and instead addresses the merits of the appeal.

⁹ This decision, as the final decision of the State administrative agency, may be appealed to the Superior Court. *N.J.S.A.* 18A:11-3, *N.J.A.C.* 6A:3-7.5