

BOARD OF EDUCATION OF THE CITY OF CAMDEN, CAMDEN COUNTY,	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	DECISION
NEW JERSEY STATE INTERSCHOLASTIC ATHLETIC ASSOCIATION,	:	
RESPONDENT.	:	
	:	

SYNOPSIS

The Board of Education of the City of Camden (Camden) filed a Petition of Appeal seeking reversal of the final decision of the New Jersey Interscholastic Athletic Association (NJSIAA) placing the Camden High School Basketball Team on probation for two years as the result of an incident at the South Jersey Group III boys' basketball championship contest on March 7, 2006. The incident involved an assault by a Camden player on a member of the Deptford High School team during the post-game handshaking ritual.

The Board argued that the imposition of a team penalty for actions solely attributable to one individual player – who, the Board contends, was appropriately sanctioned by the district – was arbitrary, capricious and unreasonable; not supported by credible evidence; and improperly based upon the past history of the Camden basketball program.

The Acting Assistant Commissioner – to whom the matter was delegated for hearing pursuant to N.J.S.A. 18A:4-34 – upheld the NJSIAA's decision, deeming its intent to compel Camden to address systemic flaws and gaps in the supervision and operation of its basketball program to be a reasonable exercise of the NJSIAA's authority and responsibility for oversight of interscholastic athletic activity statewide.

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.

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For Petitioner, Harvey C. Johnson, Esq. (Wolf, Block, Schorr and Solis-Cohen, LLP)

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

This matter came before the Commissioner of Education on October 2, 2006, through the filing of a Petition of Appeal by the Camden City Board of Education (“Camden” or “Board”), wherein the Board sought reversal of the final decision of the New Jersey State Interscholastic Athletic Association (“NJSIAA” or “Association”) placing the Camden High School Basketball Team on probation for two years as the result of an incident at the South Jersey Group III boys’ basketball championship contest on March 7, 2006. Following the Board’s correction of technical deficiencies in its petition, submission of the record on appeal, and receipt of the NJSIAA’s Answer to the Petition, the parties were directed to proceed with briefing in accordance with *N.J.A.C. 6A:3-7.3*. Camden’s brief was duly submitted, and the record

before the Commissioner closed on November 13, 2006, upon expiration of the time for filing of the NJSIAA's responsive brief.¹

Pursuant to *N.J.S.A.* 18A:4-34, the matter was delegated to the Acting Assistant Commissioner for hearing.

OPERATIVE FACTS

The following facts were found by the NJSIAA, as stated in the July 21, 2006 decision of the NJSIAA Controversies Committee, adopted by the NJSIAA Executive Committee on September 13, 2006:

1. At the conclusion of the March 7, 2006 South Jersey Group III boys' basketball championship contest, played at the Voorhees High School gym, Camden player M.M. assaulted Deptford player R.C. while proceeding through the handshaking ritual after that contest.

2. The conduct of M.M. was unprovoked and resulted in the student being arrested and thereafter being suspended from Camden High School for the remainder of his senior year.

3. Fortunately, despite the unprovoked assault, there was no involvement of any other team members or the crowd and prompt action by Camden and Voorhees Police personnel prevented any further outbreaks of violence.

4. The incident occurred while Coach Clarence Turner was at the head of the handshaking line and there is no evidence that he provoked or encouraged the improper conduct by the student.

5. On March 9, 2006, Camden High School Principal Al Davis submitted a Corrective Action Plan stating that Clarence Turner would no longer be the basketball coach; that the team would not be allowed to participate in post-season playoff games for two years; that

¹ The NJSIAA did file a reply brief, which bore a face date of November 13, 2006 and was received by the Department on November 15, 2006, consistent with the included certificate of service indicating transmission by regular mail. However, Camden's brief was filed on November 3, 2006 via hand delivery, with a proof of service indicating that counsel for the NJSIAA was served on the same day and in the same manner, so that NJSIAA's brief was due on or before November 13, 2006 pursuant to *N.J.A.C.* 6A:3-7.3. Having been thus untimely filed, the NJSIAA's brief is not considered herein, nor are Camden's letter of November 17, 2006 – objecting to the brief's inclusion of past agency decisions adverse to Camden – or the NJSIAA's November 22, 2006 response thereto.

Camden High School would not provide students with support buses to away games and M.M. would no longer attend Camden High School.

6. Prior to the first hearing on this matter on March 31, the Board of Education rescinded all the components of the Principal's Corrective Action Plan except for the action taken against the individual student. Ultimately, at the May 16 hearing, the Board advised that Coach Turner was being retained as the basketball coach.

7. The Athletic Director was never consulted by Principal Davis or by the Board concerning any Corrective Action Plan.

8. While the Committee could not conclude that Coach Turner or any personnel at Camden High School were in any way responsible for the unprovoked assault, the Committee believes that continued scrutiny of that program must be maintained, with extra precaution to prevent any reoccurrence of violence of the type that occurred on March 7, 2006.

(Record on Appeal, Item 22 at 4; Item 27²)

The following additional facts may be adduced from the record:

1. M.M. was "the star of the basketball team," an "impact player" who does not usually "foul out" but did so in the game in question. (Item 20, Transcript of May 16 Hearing, at 35-36, 39) He is classified as Emotionally Disturbed and is subject to "swift and wide mood swings." (Item 15, Letter Brief to NJSIAA, at 1; Item 20, Transcript of May 16 Hearing, at 27) Although an "aggressive" player in basketball and football, in his participation in sports, he has no history of explosive behavior or conduct of the type that occurred on March 7. (Item 20, Transcript of May 16 Hearing, at 26-28, 31-32) It is unclear whether Coach Turner actually read M.M.'s IEP and behavioral plan – it was not mandatory that he do so – although he would have been privy to it as a teaching staff member, in contrast to non-certificated assistant coaches. (*Id.* at 30, 33-34)

2. The championship game – which Camden lost – lasted for approximately two hours and there were no officially reported incidents of violence or indications of player agitation during that time, nor were any observed by the Camden Athletic Director. (Item 2, Incident Report; Item 20, Transcript of May 16 Hearing, at 14-15, 27) However, the parents of R.C. contended that a number of unaddressed violations occurred, including instances of tripping, punching and elbowing – two of the three involving M.M. – and that these, together with Camden's

² This and all subsequent "Item" designations refer to the Record on Appeal.

indifference toward R.C. and his family,³ evinced an attempt to minimize the seriousness of the situation and avoid its broader implication as an indicator of problems with the basketball program's leadership and eligibility requirements. (Item 7, Letter to NJSIAA)

3. M.M. punched R.C. in the face. R.C. did not retaliate, but responded by trying to get away as M.M. continued to assault him. R.C. was rushed to the hospital, where he was found to have a broken nose and a cut requiring seven stitches. (Item 7, Letter to NJSIAA) M.M. was charged with aggravated assault. (Item 4, News Report)

4. The corrective action plan submitted by Principal Davis (Item 5) was in response to a letter from the NJSIAA, wherein Davis was asked to submit "the course of action which you plan to implement in addressing this situation." In the same letter, the NJSIAA noted that "quick and decisive action" by school administrators and police had limited the violence to the two students involved, that the incident in question was the "sole action of one Camden player," and that the NJSIAA was "confident that the administration of Camden High School [would] take the necessary and proper actions in dealing with this egregious action by this young man." (Item 3, Letter to Principal Davis) Upon receipt of Principal Davis's plan, the NJSIAA indicated that it would be reviewed by the Controversies Committee at the upcoming meeting of March 31. (Item 8, Letter to Principal Davis)

5. Principal Davis's plan had not been previously approved by the Board, which rejected it upon review as too severe and unjustly punitive toward players and personnel who had no role in the incident in question. At the Controversies Committee meeting, the Board proposed to submit instead a modified plan, most likely limited to action against M.M. (Item 10 at 106-109, Transcript of March 31 Hearing) In response to questioning regarding the Board's intentions with respect to Coach Turner, whose tenure was noted to have been marred by several serious incidents, the Board requested time to consider the issue and submit a plan at a later date. (*Id.* at 114-119, 121-22)

6. NJSIAA confirmed that the Controversies Committee would not make a final decision on Camden's corrective action plan until its May 16 meeting, before which it anticipated that the Board would advise as to "what steps it will take concerning the leadership of the basketball program at the school in the future." (Item 11 at 2, Letter to Counsel for Camden)

³ There is credible testimony on record that Camden school officials did contact the Deptford School District in an attempt to reach R.C.'s family to apologize and inquire about the young man's recovery, but were turned away as a result of Deptford's concerns about sharing R.C.'s personal information with unauthorized third parties. (Item 10, Transcript of March 31 Hearing, at 120-21)

7. In response, on May 9, 2006 the Board submitted a statement of position, wherein it vigorously argued that the “unfortunate incident” of March 7 was the sole responsibility of a single student, classified as Emotionally Disturbed and subject to “swift and wide mood swings,” against whom appropriate action had been taken – in terms of both individual punishment and setting an example to the student body – in that he would be removed from school for the remainder of the year and deprived of participation in prom and graduation activities. Reference was made to news stories where: 1) M.M. claimed he thought R.C. was reaching for his hand to fight him, because he said “What, do you want to fight?” during the game, and M.M. and his family apologized; and 2) a Deptford Assistant Superintendent was quoted as urging that the entire Camden school and community not be blamed for the actions of one student. (Item 15, Letter Brief to NJSIAA at 1-3) The Board further argued that no action could properly be taken against Coach Turner as a result of this incident, since he violated no NJSIAA rule or bylaw, could not be held responsible for a student action completely out of his control – one which he neither incited nor instructed – and cannot be implicated in the present based solely on past transgressions for which he has already “served his time.” (*Id.* at 4-6)

8. Consistent with its statement of position, the Board submitted to NJSIAA, on May 15, 2006, a corrective action plan consisting solely of removal of M.M. from Camden High School, placing him on homebound instruction for the remainder of the school year and precluding him from participating in any prom or graduation activities. (Item 16, Corrective Action Plan)

9. The Board had previously been advised that if it determined not to continue Coach Turner, he should be allowed to attend the May 16 hearing, with counsel, if he so chose (Item 11, April 25 Letter from Counsel for NJSIAA, at 2); however, upon learning that Camden did intend to continue Turner in his position, counsel for NJSIAA requested that he be produced at hearing. (Item 18, May 15 Letter from Counsel for NJSIAA) Coach Turner did not appear at the May 16 hearing due to “short notice.” (Item 17, May 15 Letter from Counsel for Camden; Item 19, Hearing Sign-In Sheet)

10. At the hearing, NJSIAA framed the issue from its perspective as concern that there would be “no changes next year, no efforts made beyond what has been done up to the assault to deal with the whole issue of crowd control and violence***We’d like to zero in on***what steps are going to be taken to prevent this kind of occurrence in the future?” (Item 20, Transcript of May 16 Hearing, at 7-8) The Board responded that crowd control and violence were “not a part of this

incident,” and that, indeed, the district had been praised for its control of the situation once the assault occurred; thus, there were no issues of crowd or student body control before the Committee, and the severe punishment meted out to the individual student involved was the appropriate response on the part of the district. (*Id.* at 9-11)

11. The district’s sole witness – Athletic Director Mark Pease – testified that the assault was completely unforeseeable, but that his policy is to be prepared for any eventuality through the presence of police officers, who – in this instance – did, in fact, keep the incident from escalating beyond the two participants. He further testified to the importance he places on sportsmanship with his coaches and students, and to his respect for Coach Turner, with whom he has had no problems in the two years he has served as full-time Athletic Director. (Item 20, Transcript of May 16 Hearing, at 16-18, 24-25, 31-32, 37-38)

12. Under questioning from the Committee, Director Pease testified that, for reasons he cannot explain, he is generally left out of decision-making with respect to personnel issues affecting the basketball program (Item 20, Transcript of May 16 Hearing, at 25-26, 28-29), and that, although he is exploring ways of evaluating coaches, the district at present has no official written evaluation mechanism (*Id.* at 24).

Following the hearings on March 31 and May 16, 2006, the NJSIAA Controversies Committee issued a written decision on July 21, 2006 (Item 22) which made findings of fact as set forth above and concluded that the Camden team must be placed on probation for two years, during which time it would not be precluded from competition or qualification for the State championship, but would be required to submit specific progress reports and provide for Athletic Director attendance at appropriate NJSIAA seminars and workshops. It did so because – notwithstanding that the assault in question was found to be attributable solely to M.M., with Coach Turner, the team and Camden personnel having no responsibility for its commission – the NJSIAA deemed it clear from the record that tighter supervision of the Camden basketball program was necessary in light of its history of past problems, the Board’s overruling of the official (Principal Davis) responsible for the team’s activity under NJSIAA Bylaws, the absence

of mechanisms for supervising and evaluating coaching staff, and the limited-to-nonexistent involvement of the Athletic Director in the conduct of the program. (*Id.* at 5; see also Item 20, Transcript of May 16 Hearing, at 41-42)

Camden duly appealed the decision of the Controversies Committee to the NJSIAA Executive Committee, arguing that probation was not warranted because the team's past history could not be used to justify present punishment when there was no finding of violation of NJSIAA rules by any member of the Camden school administration or basketball team other than M.M. Thus, according to the Board, the decision wrongly punished individuals who were found by NJSIAA itself to have played no role in the incident in question. (Item 24, Letter-Brief of Appeal)

At the September 13, 2006 hearing of the Executive Committee, Camden consistently argued the impropriety of placing its basketball team on probation – regardless of how inconsequential some might have perceived that penalty to be – based on “past history in terms of incidences with Coach Turner” rather than on present facts. The Board proffered: “...in America, you have to define who did something wrong if you’re going to punish them***[and]*** in this particular situation, your Controversies Committee and everybody has said that [Camden High School, Coach Turner and Athletic Director Pease] did everything [they were] supposed to do” and that “the only person who did something wrong” was M.M., who was punished by the school district to a degree commensurate with the seriousness of his actions. (Item 26, Transcript of September 13 Hearing, quotations at 10-11) The Executive Committee was unpersuaded, voting unanimously (with one abstention) to adopt the decision of the Controversies Committee (*Id.* at 77), and stressing that the form of probation imposed in

this instance neither prevented team participation in games nor sanctioned any official, but was rather a constructive action aimed at ensuring greater communication and collaboration on the part of the Board, administration and athletic staff in their conduct of the basketball program. The Committee memorialized that decision in a letter of the same date. (Item 27)

CAMDEN'S POSITION ON APPEAL

On appeal before the Commissioner, Camden contends that the final decision of the NJSIAA must be overturned as arbitrary, capricious, unreasonable, and unsupported by substantial credible evidence in the record. Relying largely on arguments made throughout proceedings before the NJSIAA, Camden reiterates that there is neither evidence nor a finding that Camden High School violated any NJSIAA rule or regulation, and that past history cannot be used to find present fault or penalize innocent parties for the unapproved and unexpected acts of one individual. Indeed, the Board proffers, in order to affirm the NJSIAA's decision, the Commissioner "would have to find that the NJSIAA found fault in the entire Camden High School basketball program for the March 7, 2006 incident, essentially placing culpability of (*sic*) this vicious assault on each member of the Camden High School basketball program, its coach, or the school***, [which] review of the record [clearly] indicates***is not the case." (Camden's Brief at 7-8; see also 19-20)

Camden stresses that NJSIAA's own findings expressly exonerated Coach Turner, team members other than M.M., and district personnel from any responsibility for the assault or any violation of regulation, and that its own bylaws (Article IX, Section 3) state that "Unsportsmanlike conduct shall subject *the individual* to disciplinary action

[and the] member school with which the individual is associated may also be subject to disciplinary action if it is found that the member school's policies, actions, or failure to act, *substantially contributed to the individual's conduct.*" (emphasis supplied by Camden) Thus, according to Camden, in the absence of a determination that the school or its personnel instructed, provided policy or substantially contributed to a player's unsportsmanlike conduct – which in the case of M.M. was shown to be both unexpected and unpreventable – the school cannot be penalized for that individual player's actions, and the NJSIAA's decision to impose a two-year probationary period on the Camden team is both unsupported by the facts and contrary to NJSIAA regulation. (Camden's Brief at 9-12; see also 14-16, 19-20)⁴

The Board further contends that the NJSIAA improperly based its decision on the Camden team's past history rather than its present innocence, thereby violating the underlying intent of the New Jersey Rules of Evidence, *N.J.R. Evid.* 404(b), "'Evidence of other crimes, wrongs, or acts is not admissible to prove the disposition of a person in order to show that he acted in conformity therewith.' " According to the Board, this rule, which is reflected in decisional law clearly establishing that past wrongs cannot be admitted into evidence and used to prove a defendant's guilt of present charges,⁵ recognizes that, while past wrongdoing may be highly probative, it also encourages fact-finders to ignore the facts and issues presently before them and rely instead upon information irrelevant to the current matter, as the NJSIAA did here in punishing

⁴ In support of its position on appeal, Camden additionally analogizes this matter to the case of *Nydegger v. Don Bosco Preparatory High School*, 202 N.J. Super. 535, 537 (Law Div. 1985), a tort matter wherein it was held that "in the absence of instruction by a coach to one of his players to commit a wrongful act...a coach is not responsible to a player on an opposing team who is injured," and to a recent incident in professional football where a star player was severely penalized for an on-field incident, while no other team members or personnel were punished. (Camden's Brief at 10-12)

⁵ The Board cites a number of criminal cases for this proposition. (Camden's Brief at 14)

individuals who played no part in the March 7, 2006 incident based solely on the team's past history. (Camden's Brief at 12-16; see also 19-20)

Finally, Camden argues that it acted properly in rescinding the unapproved corrective action plan submitted by Principal Davis and replacing it with a Board-approved plan that appropriately (and severely) penalized M.M. for his unacceptable actions without taking action against blameless personnel and team members. Notwithstanding the "confusing" language of NJSIAA bylaws with regard to the role of the principal in district athletic programs, the Board avers, *N.J.S.A.* 18A:10-1 and 18A:11-1 make it clear that the district board of education is the ultimate authority in matters of operating district schools and enforcing and maintaining State regulations, policies and resolutions, including those of the NJSIAA where the board has voted to participate in that organization. Thus, Camden concludes, Principal Davis erred in submitting a plan without Board approval, and the Board exercised its lawful authority in overriding his determination based on its own finding that M.M. was the sole responsible party and that NJSIAA regulations required no corrective action other than appropriate sanction of M.M. (Camden's Brief at 16-18; see also 19-20)

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 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; 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 demonstration by the petitioner that the Association applied such 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); *Kopera v. West Orange Board of Education*, 60 N.J. Super. 288, 297 (App. Div. 1960). Nor may the Commissioner substitute his or her own judgment for that of the NJSIAA, even if he or she 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)*.

This standard has been codified to provide clear notice to the public and regulated parties:⁶

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:3-7.5(a)*.

The New Jersey courts have also spoken as to the narrow scope of "arbitrary, capricious, or unreasonable" in the context of challenges such as that herein:

⁶ See 31 N.J.R. 4173(a) and 32 N.J.R. 1177(a).

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 Envt. Protection*, 122 N.J. Super. 184, 199-200 (Ch. Div. 1973), aff’d 131 N.J. Super. 37 (App. Div. 1974).

Thus, the Board in this matter bears a heavy burden, and, upon careful consideration of the record in light of the prescribed standard of review, the Acting Assistant Commissioner cannot find that the NJSIAA action here at issue should be overturned as unreasonable or unsupported by credible evidence. To the contrary, the Acting Assistant Commissioner is satisfied that the decision of the NJSIAA to place the Camden High School basketball team on two years’ probation as a result of the incident at the South Jersey Group III boys’ basketball championship contest on March 7, 2006 was a reasonable exercise of the Association’s authority and its responsibility for oversight of interscholastic athletic activity statewide, undertaken after affording full due process to the Board and grounded in the undisputed facts at hand.

While the Board persists in characterizing the NJSIAA’s action as an unwarranted punishment of innocent students and staff and an impermissible finding of present guilt based on past transgressions, it is clear that the Association’s purpose in imposing a two-year period of required reporting was not to punish individuals, but rather to compel the Camden Board – which consistently took the stance that it did not have a problem beyond the bad behavior of one student – to work constructively with the Association in addressing demonstrated flaws and gaps in the supervision and operation of its basketball program. All of these – the lack of communication and cooperation

between the Board and Principal, the circumscribed role of the Athletic Director, and the absence of a formal system of supervision and evaluation with clear expectations as to the duties of coaching staff – had been identified in the present proceeding, and all were likely to have enabled in whole or part the incident of March 7 and the Board’s limited reaction to it.

For instance, it is uncontested that a student was admitted to the team whose disability can have behavioral manifestations. Yet there was no policy that the team’s coach – a teaching staff member – be required to read the student’s IEP to determine whether there was relevant information regarding possible behavior, or strategies to address such behavior. This is quite apart from the very different question of whether onsite officials would be able to maintain crowd control – as they fortunately were here – and prevent further injuries once an incident had occurred. Nor did the Board give any indication that it intended in any way to reconsider its practices and procedures in light of the March 7 incident and the NJSIAA’s obvious concerns regarding it, nor to better integrate the Athletic Director and High School Principal – key local officials in matters involving interscholastic athletic activity – into future decisions about the operations of the basketball team.

Given its responsibility to do everything possible to ensure the safety and good sportsmanship of student athletes, as well as staff and spectators, it was not at all unreasonable – given the facts educed at hearing and faced with Camden’s insistence that nothing needed to change – for the NJSIAA to take the position that systemic adjustments were needed in the supervision of the Camden basketball program and to direct that the district report regularly to the Association on its progress in this regard. While awareness

that the district had a history of past problems clearly factored into the decisions of both the Controversies Committee and the Executive Committee, it is equally clear that such awareness was not the determinative basis for them.

Accordingly, the Camden 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 Acting Assistant Commissioner upholds that decision and dismisses the Petition of Appeal.

IT IS SO ORDERED.⁷

ACTING ASSISTANT COMMISSIONER OF EDUCATION

Date of Mailing: December 28, 2006

Date of Decision: December 28, 2006

⁷ 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*