

#120-07

LEAP ACADEMY UNIVERSITY :
CHARTER SCHOOL, INC. AND :
MARCO MORCOS, :

PETITIONERS, :

V. : COMMISSIONER OF EDUCATION

NEW JERSEY STATE : DECISION
INTERSCHOLASTIC ATHLETIC :
ASSOCIATION (NJSIAA) :

RESPONDENT, :

AND :

BOARD OF EDUCATION OF THE :
TOWNSHIP OF PENNSAUKEN, :
CAMDEN COUNTY, :

INTERVENOR. :

SYNOPSIS

Petitioners appealed the decision of the NJSIAA Controversies Committee – affirmed by the NJSIAA Executive Committee – which found that petitioners had engaged in athletic recruitment in violation of Article V, Section 4D of the NJSIAA bylaws. As penalty for this violation, petitioners’ boys’ basketball team and its coach were placed on probation, and disqualified from tournament competition, for a period of two years. The Pennsauken Township Board of Education (Pennsauken) intervened in this controversy as the case involved the transfer of three out-of-state affidavit students into LEAP Academy University High School (LEAP) immediately after their registration in Pennsauken schools. Two of the three students went on to become key players on LEAP Academy University Charter School’s boys’ basketball team; the third was admitted to LEAP, but never attended after inquiries from Pennsauken’s athletic director revealed that the student had been declared academically ineligible and was under suspension from his former high school in New York State. Subsequent inquiries on the two other players revealed that both had been declared academically ineligible in their former states. All three students in question had been enrolled in Pennsauken schools based upon alleged guardianship by two Pennsauken residents who had close ties to the LEAP basketball program.

Petitioners aver: that the NJSIAA Executive Committee based their decision upon findings of fact that are not supported by the record; that the Executive Committee’s conclusions are erroneous, that the final NJSIAA decision is arbitrary, capricious and unreasonable; that due process was denied them; and that the NJSIAA inappropriately exceeded its jurisdiction and authority by requiring a charter school to scrutinize the familial relationships of affidavit students and their legal guardians.

The Commissioner upheld the NJSIAA’s findings and conclusions and denied petitioners’ appeal, noting, *inter alia*, that: respondent’s findings of fact are supported in the record; petitioners’ were accorded the process that they were due; NJSIAA did not act in an arbitrary, capricious or unreasonable manner; and the Commissioner may not substitute her judgment for that of NJSIAA where due process has been provided, and where there is adequate basis for the decision finally reached. The Commissioner further found that the penalties imposed upon petitioners were appropriate to the violations found by the NJSIAA Controversies Committee and affirmed by the NJSIAA Executive Committee.

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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April 3, 2007

AGENCY DKT. NO. 457-12/06

LEAP ACADEMY UNIVERSITY :
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MARCO MORCOS, :
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 :
 INTERVENOR. :

For Petitioner, Genova, Burns & Vernoia

For Respondent, Herbert, Van Ness, Cayci & Goodell

For Intervenor, Quinlan, Dunne & McConnell

This matter was opened by way of a petition filed on December 8, 2006. Respondent's answer and statement of items comprising the record were submitted on December 20, 2006. On December 28, 2006, the Pennsauken Board of Education moved to intervene. On January 4, 2007, the record was filed with the Commissioner. After considering all parties' submissions regarding the intervention motion, the Commissioner granted same on January 12, 2007, and set a schedule for the remaining briefs. All papers allowed by the briefing

schedule were filed as of February 1, 2007.¹ Subsequently, on February 15, 2007, petitioners moved for emergent relief. That motion was denied on February 26, 2007.

BACKGROUND

Petitioner LEAP Academy University Charter School (LEAP) obtained its charter and opened a grammar school in 1997. It expanded in 2004, adding grades nine through twelve.

The purpose of the LEAP Academy is set forth in its charter's mission statement:

The mission of the LEAP Academy University Charter School is to enhance opportunities for the children and families of Camden through the collaborative design, implementation, and integration of education, health and human services programs and through community development.

(LEAP Academy Charter, page 5, emphasis added)

As counsel for petitioners stated during the hearing before the New Jersey State Interscholastic Athletic Association (NJSIAA) Controversies Committee (the Hearing), the funding for LEAP is provided by the district(s) of residence of its students. Pursuant to *N.J.S.A. 18A:36A-12*, these districts pay to the charter school – for the students who reside in their districts but attend LEAP – 90 % of the program budget per pupil for the specific grade level in the district or 90 % of the maximum T&E amount, whichever is lower.

It is undisputed that in 2004 – the year that LEAP added a high school – it launched a boys' basketball program. A review of exhibits in the record reveals that in the Autumn of the following year – i.e., on October 31, 2005 – an eleventh grader from Maryland, C.G., enrolled in the Pennsauken school district based upon the alleged guardianship of Pennsauken resident Tamara Hidalgo, the mother of a LEAP basketball player. No evidence of any prior close ties between Hidalgo and C.G. has been offered by petitioner. Subsequent

¹ A sur-reply brief filed by petitioners on January 16, 2007 was not considered, as there is no provision in the NJSIAA regulations allowing same.

inquiries by Pennsauken's athletic director, William Wright, established that before C.G. arrived, he had become academically ineligible to compete under Maryland's eligibility rules. One day after enrolling in Pennsauken, C.G. transferred to LEAP. He was accepted despite the fact that he held slot #20 on the waiting list.

About three weeks after C.G. appeared in Pennsauken, another out-of-state student, L.J., registered in Pennsauken. L.J., a twelfth grader from Georgia, was enrolled based upon the alleged guardianship of Pennsauken resident Robert Davis, an individual who consistently attended LEAP team practices and sat on the bench with the LEAP coach at games. Petitioner presented no evidence that there was any prior significant connection between L.J. and Davis. Wright eventually learned that two days before L.J. arrived in Pennsauken, he had been declared ineligible to compete in Georgia. L.J. transferred to LEAP on the same day that he registered in Pennsauken. He was accepted despite the fact that he held slot #9 on the LEAP waiting list.

One month later – on the afternoon of January 25, 2006 – Pennsauken's football coach, Reginald Lawrence, saw the LEAP basketball coach, petitioner Marco Morcos, arrive at the Pennsauken High School by car. Another car arrived shortly thereafter, out of which a tall young male and a woman emerged, and joined Morcos in his car. The woman subsequently left the car and entered the school; Morcos drove away with the young male.

Lawrence related what he saw to the Pennsauken basketball coach and – subsequently – to Wright, the athletic director. Upon checking with the guidance office, Wright learned that D.C., a male student from Rochester, New York, had been registered in Pennsauken by his mother on the day in question, based upon the alleged guardianship of Robert Davis – the same person purported to be L.J.'s guardian. Petitioners have presented no evidence of prior

connection between D.C. and Davis. D.C. transferred out of Pennsauken High School the next day and his application was accepted by LEAP on February 3, 2006.

When Wright called the athletic director of the school D.C. had attended in Rochester, he discovered not only that D.C. had been declared academically ineligible to compete in New York, but that he had also been suspended from school. Wright then sent a letter to the NJSIAA outlining the information about D.C. On February 10, 2006, Robert W. Baly, Assistant Director of the NJSIAA, wrote to LEAP's chief school administrator, Stephanie Branch, Ed.D., advising that there may have been recruitment violations in connection with the enrollment of D.C. at LEAP. Correspondence in the record indicates that within five days of Baly's letter, D.C. backed out of his registration at LEAP and allegedly returned to Rochester.

The LEAP basketball team did very well in the season during which the above referenced students joined it. The record contains articles in the Courier Post that attributed the team's victories to the performances of L.J. and C.G., the youths from Maryland and Georgia. Further, examination of the 2005-2006 LEAP basketball team roster eventually provided to the NJSIAA by the charter school revealed that of 23 basketball players, less than half resided in Camden, the district which LEAP is intended to serve. This is in contrast to LEAP's general student body, eighty-percent of whom reside in Camden.

Although asked to, LEAP did not provide information about any general student body members who had transferred to LEAP from out-of-state. The rationale provided by LEAP was that any out-of-state student would be required to register in a New Jersey district before applying to LEAP. The Commissioner notes, however, that LEAP would have been able to spot out-of-state students by checking the information in their files pertaining to the last school that a

student had actually attended and the institution(s) that would have had to have been contacted to obtain their transcripts.

As referenced above, by way of a letter dated February 10, 2006, LEAP was put on notice by Baly that it may have violated Article V, Section 4D of the NJSIAA bylaws,² which addresses athletic recruitment. That provision states:

The granting of “athletic scholarships,” free tuition, or other assistance of monetary value at any level is forbidden when there is evidence that such grant was offered to induce a student to attend a school for athletic reasons.

(1) The total value and dignity of the individual should not only guarantee to all an equal opportunity to participate in athletics, but should also preclude any excessive emphasis on the importance of athletics.

(2) The proselytizing and recruiting of grammar school students for athletic reasons is strictly forbidden.

(3) Such proselytizing and/or recruiting shall be understood as attempting to induce a student to attend a particular school for athletic reasons by means of:

a. Mail, in the form of letters and brochures, news media, comparing high schools and contrived to point out the assets of the sender, and sending district;

b. Proselytizing interviews, initiated by school personnel or associates, and often further aggravated by the offering of an “athletic scholarship” either from the school directly or indirectly through some affiliated body or individual;

c. Recruitment by Student-Athletes to attend a school for athletic reasons, with the knowledge of that school’s administration.

The February 10th letter from Baly also asked LEAP to provide the following information by February 24, 2006:

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For purposes of this decision, all references to the NJSIAA Handbook will refer to the 2005-2006 Handbook, unless otherwise indicated.

[A] list of all members of your varsity, junior varsity and freshman basketball teams and an explanation as to why these students came to LEAP Academy, from what school they came, how long they were at the sending district, and how long they have been at LEAP Academy. We also want to know your admissions procedures and whether the admittance of these students violated your “lottery system.”

Finally, the letter advised that a hearing by the “Controversies and Disputes Committee” (the Committee) might be required.

On March 17, 2006, the NJSIAA sent notice to LEAP that a hearing before the Committee would take place on March 31, 2006. As of March 21, 2006, LEAP still had not provided the information that NJSIAA had requested on February 10. Eventually LEAP obtained legal representation and the March 31 hearing date was adjourned to allow LEAP’s counsel time to review the matter. The hearing was held on May 16, 2006.

At the hearing, the Committee noted with disappointment that Branch – who was LEAP’s chief school administrator during the relevant period of time – did not appear. LEAP’s counsel stated that Branch’s absence was due to her employment status, which was “in question.” In Branch’s place, LEAP produced Wanda Garcia, a Rutgers employee who served as a liaison between Rutgers and the Chairperson of the LEAP Board of Trustees.

Garcia described the priority system for admitting students into LEAP. In accordance with the LEAP charter, students who are already attending LEAP have first preference, their siblings have second preference, Camden residents on the waiting list are considered next, and students on the non-Camden resident waiting list are considered last. The Committee found Garcia’s testimony about the actual application of the admissions process for the 2005-2006 school year to be contradictory. For example, at different points in her testimony she both testified that there was no waiting list for eleventh and twelfth graders, and

that there were waiting lists for all the grades. The Commissioner further notes that exhibits in the record indicate that there were waiting lists for all grades at the LEAP high school.

In describing LEAP admissions in general, Garcia testified:

We are public schools. So, we got [sic] to take in anyone that [sic] comes in. Once they get into the school, we check their records. If there's something that doesn't seem, you know, right, then [sic] we go back to the sending district and send that student back. (NJSIAA Controversies Committee Hearing Transcript, p. 103³)

This testimony is in contrast to the record, which lacks evidence that LEAP examined the basketball players' backgrounds with any degree of care.

Finally, Garcia testified that D.C. was never admitted to LEAP. The Committee found, to the contrary, that D.C. was admitted, but declined to enroll.

Petitioner Morcos also testified before the Committee on May 16, 2006. He contended that he was unaware of the three out-of-state players' ineligibility to compete because he was not allowed to check the transcripts of students transferring from different schools. The Committee found this assertion at odds with the NJSIAA procedures for permitting transfer students to compete.

Pages 73-75 of the NJSIAA handbook (the Handbook) discuss the NJSIAA's transfer rules, and the transfer waiver form. That form (an example of which is set forth on page 152 of the Handbook), must be completed by the administrators (including athletic directors) of the "previous" and "present" schools of transferring students. The form requires parents to agree to the submission to the NJSIAA of their child's transcripts and other pertinent school records.

Morcos testified that he filled out this waiver form for his transferring athletes, thereby certifying that he was satisfied that they had not been recruited and had not transferred

³ The transcript of the NJSIAA Controversies Committee Meeting held on May 16, 2006 will be cited using the format (T page number).

for athletic advantage. Thus, Morcos' claim of ignorance of the students' backgrounds suggests that he either failed to review records which were supposed to be available, or that he knowingly signed forms with false representations.

When asked about his meeting with D.C. and D.C.'s mother at the Pennsauken High School, Morcos acknowledged taking D.C. to lunch while the mother registered the youth. The Committee found this to be highly suggestive of a cooperative effort by Morcos and Davis, the alleged "guardian" of D.C., to "have D.C. enrolled at LEAP Academy as a freshman basketball player, by using Pennsauken High School as a New Jersey 'sending district'." (Committee Decision, p.11) It further concluded that Morcos knew that Davis' professed "guardianship" of two basketball players was not an act of altruism, but rather a means of creating a conduit for moving outstanding out-of-state athletes through Pennsauken and into LEAP's basketball team.

Finally, the Committee found Morcos' credibility to be poor. They found, for example, that he was involved in the application for a Katrina Victim waiver for L.J. (ie: waiver of the waiting period for out-of-state varsity players), even though L.J. had not been living in an area affected by Katrina. They also found, as mentioned above, that he was aware of L.J.'s and C.G.'s ineligibility in their respective states of origin when he let them play.

Before issuing its decision, the Committee asked LEAP for further information, including D.C.'s application documents, and an itemization of the districts of residence of all LEAP students.

The Committee's decision was issued on July 21, 2006. In addition to the facts articulated above, the Committee made the following summative factual and legal findings, respectively:

The Committee finds that the ratio of basketball players from outside the City of Camden, combined with the action of Marco Morcos on January 27, 2006, and the use of putative guardianships by individuals active in the LEAP basketball program, clearly evidenced a conscience [sic] attempt to gain an improper athletic advantage through impermissible recruitment efforts, in violation of NJSIAA Bylaws and the Interpretive Guidelines concerning athletic eligibility.

and

The fact that LEAP Academy is a charter school does not absolve that school's administration of its responsibility to verify the eligibility of transferring students. Yet it turned a blind eye toward the questionable use of affidavits to establish residence in Pennsauken High School [sic] for three out-of-state basketball prospects, all of whom were ineligible at their former high schools. (Committee Decision, p. 12)

Based upon the foregoing facts and legal findings, the Committee arrived at six conclusions.

1. When it came to the enrollment of male basketball players, LEAP ignored its responsibility – set forth in its charter and by statute – to give preference to Camden students.
2. Talented male basketball players were granted admission to LEAP because of their athletic ability, rather than their residence or their place on a waiting list, in contravention of *N.J.S.A. 18A:36A-7*.
3. By failing, at the time of admission, to determine the eligibility of three talented basketball players transferring to LEAP from three other states, the LEAP administration failed in its responsibilities to the NJSIAA and other member schools to compete fairly in interscholastic competition.
4. The participation of two of the three out-of-state athletes in the LEAP basketball season “was certainly a contributing factor in that school’s basketball team winning the South

Jersey Group I Basketball Championship and qualifying for the Group I Statewide Championship.” (Committee Decision, p. 12.)

5. LEAP’s supervision of the eligibility of the members of its boys’ basketball program was virtually non-existent, in contravention of its obligations to NJSIAA to assure fair competition.
6. The manner in which out-of-district basketball players have been enrolled in LEAP has not only undermined fair competition but has imposed substantial costs upon sending districts who have little, if anything, to do with the student-athletes.

Based upon its findings and conclusions that petitioner Morcos had engaged in athletic recruitment, and failed to “supervise [LEAP’s] athletic program to assure adherence to principles of fair athletic eligibility” (Committee Decision, p.13), the Committee recommended the following penalties to the NJSIAA Executive Committee:

- A two-year period of probation for the boys’ basketball program, beginning with the 2006-2007 school year, and the submission by the LEAP “Superintendent” of a Corrective Action Plan outlining how compliance with NJSIAA eligibility standards will be assured in the future, and providing for supervision of both the boys’ basketball program and its coach.
- Disqualification of the LEAP boys’ basketball program from the 2007 and 2008 tournaments.
- A two-year period of probation for petitioner Morcos, coinciding with the probation period for the boys’ basketball program, during which time he would be expected to attend appropriate workshops to assure his compliance with the standards which athletic directors and coaches must observe.

Petitioners appealed the Committee's decision to the NJSIAA Executive Committee (the Executive Committee), which heard arguments from the parties on September 13, 2006, and voted – on the same date – to affirm. On December 8, 2006, petitioners filed the present appeal to the Commissioner.

POSITIONS OF THE PARTIES AND COMMISSIONER'S DETERMINATIONS

In the brief supporting their appeal, petitioners make the following five arguments for reversal of the decision below:

- I. The NJSIAA Controversies Committee's findings of fact, upon which the NJSIAA Executive Committee relied, are not supported by the record;
- II. The NJSIAA Controversies Committee's conclusions, which were adopted by the NJSIAA Executive Committee, are not supported by the record;
- III. The NJSIAA Executive Committee's adoption of the Controversies Committee's decision was arbitrary, capricious and/or unreasonable;
- IV. Petitioners were denied due process; and
- V. The NJSIAA inappropriately exceeded its jurisdiction and authority by requiring a charter school to scrutinize the familial relationships of affidavit students and their legal guardians.

Argument I

Petitioners contend that ten findings of fact in the Controversies Committee's decision were erroneous.

1. Petitioners aver that nothing in the record supports the Committee's finding No. 5 that LEAP did not apply the four-tiered enrollment preference system to the basketball

players – particularly those who did not reside in Camden. They argue that the Commissioner should rely on Garcia’s testimony that she felt that no mistakes had been made. However, as respondents point out, the Committee found Garcia’s testimony to be contradictory, and provided cites to the record to support that finding. This also justified its finding that Garcia was not credible, at least on that point, and the Commissioner may not disturb that credibility finding. *See, e.g., D.L. and Z.Y. on behalf of minor children T.L. and K.L. v. Board of Education of the Princeton Regional School District, 366 N.J. Super. 269, 273 (App. Div. 2004)*

In addition, as set forth above, the record includes documents and testimony which show that the basketball players who are the subject of this controversy – none of whom were Camden residents – were accepted to LEAP right away, notwithstanding that they were numbers 9, 20 and 25 on the waiting lists for their respective grades. Further, documents provided by petitioners themselves showed that over half of the LEAP basketball team members were not Camden residents. Considering these facts as a whole, the Commissioner cannot agree that the Committee’s finding No. 5 was unsupported.

2. Petitioners challenge the Committee’s finding No. 7, that they failed to carry out their responsibility to carefully review the eligibility – both academic and athletic – of transferring basketball players. Petitioners maintain that the finding relates to ineligibility, an issue that was not included in the NJSIAA’s notice of possible violations, and is therefore not germane to the instant controversy. Intervenor Board of Education of the Township of Pennsauken (“Intervenor” or “Pennsauken”) suggests that the petitioners’ claimed ignorance of the eligibility of the out-of-state students is consistent

with petitioners' design to ensure that the recruited youths would be able to play for LEAP in the 2005-2006 basketball season.

The record shows that on the day D.C.'s mother registered him at Pennsauken High School, petitioner Morcos met with D.C. and his mother and helped them fill out the necessary paperwork. This was not only highly suggestive of a pre-conceived plan to move D.C. to LEAP, but also strongly implied that Morcos knew D.C.'s city and high school of origin. He therefore could have, but allegedly did not, contact same to check on D.C.'s eligibility. In light of his duty to assure the eligibility of transferring affidavit students who are varsity athletes, it would not be arbitrary or unreasonable for the NJSIAA to view Morcos' failure to check with D.C.'s school in Rochester (which school is also supposed to sign the transfer waiver form mentioned above) as a deliberate attempt to protect his recruitment efforts. In fact, given the evidence suggesting Morcos' prior knowledge of D.C., the Commissioner would be hard-pressed to reject as arbitrary or unreasonable the inference that Morcos knew of D.C.'s ineligibility and suspension.

3. Petitioners contend that, contrary to NJSIAA's finding No. 9, Davis was not "an active member of the LEAP basketball coaching contingent." They base this position on Morcos' testimony that Davis was nothing more to the LEAP team than a parent. Respondents point out that there was testimony at the hearing by both Pennsauken's athletic director, William Wright, and Pennsauken's football coach, Reginald Lawrence, that Davis did assist with the coaching of the LEAP team.

The Commissioner notes that Wright testified that he had known Davis for years as a member of the Pennsauken Youth Athletic Association (T58), and that several months before the hearing Davis had personally told Wright that he was no longer at

Rutgers/Camden – where he had been the assistant coach – but was now an assistant coach at LEAP. (T81) Lawrence testified that his staff and LEAP’s staff “hang out” in the same places, and that he had personally observed Davis on the sidelines at LEAP basketball games. (T82) Morcos himself acknowledged that Davis “gives up his time every season, football, baseball, basketball” (T165), and that Davis had warmed-up LEAP players at games and sat on the bench with Morcos. (T168-T169) Petitioners did not present Davis at the hearing to rebut the testimony of Wright and Lawrence.

The Committee is entitled to assign more credibility to the testimony of Wright and Lawrence than to the testimony of Morcos, and the record contains nothing that would allow the Commissioner to reject that credibility determination as capricious. Moreover, the Commissioner finds that bickering over the correct characterization of the relationship between Davis and the LEAP team is unhelpful. What is significant is the fact that Davis indisputably did support the LEAP team, did work in concert with Morcos on the transfer of D.C. from Rochester to LEAP through Pennsauken, and did serve as a guardian to two LEAP basketball-playing, out-of-state transfer students with whom he apparently had no prior ties.

4. The Committee’s finding No. 10 – *i.e.*, that Davis and Morcos acted in concert to have D.C. enrolled at Pennsauken and transferred to LEAP as a freshman basketball player – is challenged by petitioners. They argue that since it is Pennsauken’s role to make the determination as to whether a student applicant’s residency is valid, and the Pennsauken guidance office approved the residency of D.C., Davis and Morcos cannot be assigned responsibility for the fact that Pennsauken became the sending district for a LEAP out-of-state basketball-playing student.

Petitioners do not deny that Morcos worked in concert with Davis by helping D.C. and his mother fill out registration papers for Pennsauken High School, including a form agreeing to make “uncle” Davis a guardian of the six-foot five-inch basketball player. There is no evidence that Morcos assists other students in this manner. Nor did petitioners present any evidence to rebut the strong inference that no familial or significant relationship existed between D.C. and Davis prior to D.C.’s appearance in Pennsauken, and that Davis’ “guardianships” of D.C. and L.J. were meant to facilitate the recruitment of athletes.

Further, in the record is a written document submitted to Pennsauken from D.C.’s mother stating that she was giving custody of her son to “my uncle Mr. Davis” for “financial reasons.” Before any responsibility is assigned to Pennsauken for approving D.C.’s residency, petitioners should be able to show that the scenario presented to Pennsauken – *i.e.*, that Davis is D.C.’s uncle and that financial hardship brought D.C. from Rochester, N.Y. to Pennsauken, N.J. – was accurate and genuine.

5. Petitioners dispute the NJSIAA’s finding No. 13 that D.C. was admitted to LEAP Academy. The Committee made finding No. 13 based upon a letter dated February 16, 2006 from LEAP enrollment coordinator Norma Rosa-Santos to Davis confirming that Davis had – in a telephone conversation of that date – “declined to accept a 9th grade seat for [D.C.] as per the waiting list.” The wording of the letter would appear to signify that D.C. was offered admission to LEAP two weeks after he applied. Thus, finding No. 13, which states that D.C. was admitted to LEAP, cannot be characterized as erroneous.

6. Petitioners maintain that the Committee's finding No. 15 is irrelevant to the issue of recruitment which, petitioners assert, is the only issue set forth in the notice of possible violation sent to them by the NJSIAA. The petitioners reason that it would be a violation of due process to rely upon finding No. 15 in the adjudication of the present controversy, because it pertains to the eligibility of L.J. and not to the issue of recruitment.

In finding No. 15, the Committee found that Morcos asked the NJSIAA for a "Katrina waiver" for L.J. A Katrina waiver is a waiver of the 30-day period that varsity athletes must normally wait before they may play in a new school. As the term suggests, this waiver was created for students who were displaced by hurricane Katrina. It is undisputed that the NJSIAA granted the waiver and L.J. immediately began playing basketball for LEAP. It is also undisputed that L.J. had lived in Georgia before arriving in New Jersey, and had not been displaced by Katrina.

Respondent NJSIAA argues that finding No. 15 was not presented as an eligibility determination, but rather as another fact illustrating the lengths to which petitioners were prepared to go to add L.J. to the LEAP basketball team. More specifically, the NJSIAA contends that the "misportrayal of a 'Katrina victim' to gain advantage was part and parcel of Mr. Morcos' disregard of the rules of fair play in his eagerness to establish a basketball powerhouse." Intervenor Pennsauken points out that "acts of recruiting are necessarily almost never acts that come with signed confessions from the Coaches. They are more often findings and conclusions that must be pieced together from the evidence." (Intervenor's Brief, January 22, 2007, p. 9) The Commissioner agrees that the unjustified Katrina waiver request suggests that L.J. was the subject of an affirmative effort to draw

athletes to LEAP. As such, it was a legitimate finding, germane to the subject of this controversy.

7. In its finding No. 16, the NJSIAA referred to the fact that the father of C.G. – an all-state basketball player from Maryland who had been declared ineligible to play in Maryland – named the mother of a LEAP team member as C.G.’s guardian. Petitioners contend that this finding is irrelevant to the NJSIAA’ charge that LEAP and Morcos engaged in recruitment violations. They claim – as they did regarding finding No. 15 – that finding No. 16 pertains to the issue of eligibility, which issue was not identified in the notices to them of possible NJSIAA violations. Further, LEAP suggests that C.G. is a child of the Hidalgos, that the Hidalgo’s “family composition” is of no concern to LEAP or the NJSIAA, and that in accepting C.G., LEAP was merely fulfilling its duty not to discriminate against families with other than “natural issue” or adopted children.

Respondent NJSIAA explained that, in the Controversies Committee’s view, finding No. 16 was relevant because, aside from athletic recruitment, “there was no plausible explanation given for the transfer of an Allstate basketball player from Maryland to reside in a Pennsauken residence other than the fact that this residence was that of the mother of another player on the basketball team.” (Respondent’s Reply Brief, p. 26) As respondent pointed out, petitioners did not present Hidalgo, C.G.’s parents or any other witness to explain the reason for the transfer. The Commissioner is also hard pressed to find anything in the record that rebuts the strong inference that the impetus behind C.G.’s appearance in the Hidalgo home was C.G.’s enlistment into the LEAP basketball team.

In addition, the Commissioner notes that in petitioners’ brief certain liberties have been taken with the term “legal guardian.” While the respective parents of L.J., C.G. and D.C.

signed school forms or presented notes purporting to give guardianship to Davis and Hidalgo, respectively, those writings did not bestow the status of “legal guardian.” That status is defined generally in New Jersey statutes as “the person who exercises continuing control over the person or property, or both, of a child, including any specific right of control over an aspect of the child’s upbringing, pursuant to a court order.” *See, e.g., N.J.S.A. 3B:12A-4; N.J.S.A. 26:2H-61(b); N.J.S.A.26:2H-110; N.J.S.A. 44:10-44; N.J.S.A. 44:10-57; N.J.S.A. 44:10-71.* (Emphasis added.) Similarly, in federal statutes such as 42 *U.S.C.A. 675 (7)*, the term “legal guardianship” is defined as “a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decisionmaking.” (Emphasis added.) In the NJSIAA bylaws themselves, the term “guardian” means a “person who has control over the person and property of a child as established by the order of a court of competent jurisdiction.” (Article V, Section 4(K), emphasis added.) In light of the foregoing, the Commissioner is not persuaded that C.G. was nor is the Hidalgo’s child. The Commissioner consequently regards petitioners’ discussion about avoiding discrimination against families to be a red herring.

8. Petitioners contend that there is no evidence in the record to support the Committee’s finding No. 17 that the three out-of-state basketball players were accepted to LEAP without regard to the four-tiered admissions policy that was created to insure that the applications of Camden residents receive preference. They urge the Commissioner to accept Garcia’s testimony that LEAP correctly applied its policies to the three out-of-

state students – without mistake. For substantially the same reasons articulated in the Commissioner’s discussion of petitioners’ challenge to the Controversies Committee’s finding No. 5, the Commissioner rejects as meritless petitioner’s challenge to the Committee’s finding No. 17.

9. Petitioners challenge the Committee’s finding No. 18 – *i.e.*, that the high percentage of out-of-district students on the basketball team, combined with putative guardianships by team-related individuals and Morcos’ actions on January 25, 2006 – evidenced an intent by petitioners to gain athletic advantage through recruitment. In petitioners’ exception to that finding they simply suggest that there may be an alternate explanation for the fact that non-resident basketball players flock to LEAP in much higher proportion than non-basketball playing out-of-district students. Since no “studies” of this phenomenon have been conducted by LEAP or anyone else, petitioners urge the Commissioner to reject finding No.18 as conjecture.

Petitioners do not refute the facts upon which finding No. 18 is based. Nor do they even discuss two of the three facts which form the basis of the finding. They merely speculate that the disproportionate number of non-Camden residents on the basketball team might be a function of some factor yet to be identified. Such speculation cannot prevail over unrebutted facts. The Commissioner cannot conclude that finding No. 18 is arbitrary or unreasonable.

10. Finally, petitioners challenge the Committee’s finding No. 19, that LEAP abdicated its responsibility to verify that its transferring athletes were eligible to play, and turned a blind eye to the glaring fact that three ineligible, out-of-state basketball players arrived

within a span of two months, all by establishing residence with team-related adults in Pennsauken. For the reasons set forth in the discussions of findings No. 7, 10 and 16, the Commissioner rejects petitioners' position.

Argument II

Petitioners maintain that all seven of the Controversies Committee's conclusions were erroneous.

The first and second conclusions both alleged that when it came to talented basketball players, LEAP violated statutory and charter provisions that required enrollment preferences for Camden residents. The documents showing immediate acceptance for the three out-of-state basketball players, together with the high proportion of out-of-district students on the basketball team, support the Committee's conclusion.

The third conclusion was that by failing to check the eligibility of its transferring players, LEAP abdicated its responsibility to the NJSIAA and other member schools to compete fairly. Petitioners ask the Commissioner not to consider Morcos' negligence because the NJSIAA never specifically notified petitioners that they would be charged with violations of eligibility rules. The Commissioner will not compartmentalize the evidence in this case. Morcos' professed ignorance about the out-of-state students' eligibility will not serve as the basis for a determination that petitioners violated NJSIAA rules concerning eligibility. Rather, it will be considered as corroborative of petitioners' zeal to get gifted athletes into its basketball program.

The Committee's fourth conclusion was that the two out-of-state athletes that played on LEAP's basketball team, L.J. and C.G., were contributing factors in the team's

South Jersey Group I Championship. Petitioners challenge the conclusion by asserting that all the team members contributed to its success.

Acknowledgment of the efforts of all the members of a team is appropriate in the stewardship of team morale and the cultivation of good social values. However, for purposes of assessing the significance of the addition of the out-of-state athletes to the LEAP team, the reality is reflected in two newspaper articles that are contained in the record. One article, dated March 8, 2006, named L.J. and C.G. as two of the three players “featured” in a tournament game against Burlington City. L.J. scored 28 of the ninety LEAP points and was responsible for two baskets and two free throws toward the end of the game when the score was close.

Another article, dated March 10, 2006, entitled “[] Lifts LEAP to Final,” describes L.J. as the “sensational senior guard,” a “driving force” that led LEAP to victory. Petitioner Morcos was quoted as saying that L.J. was the team’s “catalyst.” C.G. was also named as a “top player.” In light of L.J.’s and C.G.’s performances during the tournament, the Commissioner cannot determine that the NJSIAA’s conclusion No. 4 is arbitrary or capricious.

The Controversies Committee alleged, in its conclusion No. 5, that LEAP did not monitor the eligibility of its basketball team members and, consequently, breached its duty to assure fair competition. Petitioners suggest that this is irrelevant to the charge of “recruitment” which is the subject of this controversy.

As discussed above, the Commissioner will not compartmentalize the evidence. The facts presented in this matter show, in particular, that the LEAP administration failed to execute its obligation to check its athletes’ eligibility before certifying same to the NJSIAA. That was clearly a violation of the NJSIAA Bylaws concerning eligibility and mitigated against

fair competition. However, the evidence as a whole suggests recruitment, *i.e.*, an affirmative pursuit by Morcos and associates of out-of-district talent.

The Controversies Committee reasonably found that a number of measures were taken to facilitate the infusion of such athletes, such as team-related putative guardians and immediate admission to LEAP, notwithstanding waiting list rankings. Morcos testified that he signed the forms that require him to certify to the eligibility of his transferring players, but he also testified that he did not, in fact, check that eligibility. Thus his certifications were misleading and could be reasonably construed as another measure that was taken to facilitate the supplementation of the LEAP basketball team with non-Camden residents.

The Committee's conclusion No. 6 summarized the effect on sending districts of the methods employed by LEAP to add gifted athletes to its basketball team. Petitioners characterize the conclusion as irrelevant to the instant controversy. Respondents contend that the sending districts' tuition payments made on behalf of the out-of-district athletes constitute just the kind of "assistance of monetary value" that, under NJSIAA By-law Article V, Section 4 D may not be "offered to induce a student to attend a school for athletic reasons."

The Commissioner finds that conclusion No. 6 is correct that sending districts that are improperly used as conduits for the recruitment of athletes are unfairly burdened by the costs of tuition for those athletes. However, for the purposes of the instant controversy, that conclusion does not advance respondents' case. Students – including 'affidavit students' – have the right to attend charter schools, for which the districts of residence pay tuition. This "assistance of monetary value" *per se* is not deemed improper under the current school laws. Moreover, by definition, all 'affidavit students' – including, of course, those who attend charter

schools – receive “assistance of monetary value” by virtue of the room, board and other care provided by the affidavit guardian.

It is only when the statutory provisions that allow affidavit students are misused – *e.g.*, as mechanisms to enable athletic recruiting, as opposed to avenues of relief for families experiencing hardship – that the burden on the sending districts to pay tuition becomes unfair. Thus, the sending district’s payment of tuition is not an element of proof in the establishment of a recruiting or other violation. Rather, the establishment of a violation is a precondition to a finding that the sending district has been improperly required to pay tuition for the ‘affidavit student’.

Moreover, upon review of the record, the Commissioner notes that it is less likely that the three out-of-state athletes – as to whom there was no showing of hardship – were enticed to come to Pennsauken for free tuition and room and board in a stranger’s house, and more likely that their motivation to transfer to LEAP was that they had all been declared ineligible to compete in their respective states of origin and expected to be able to play in New Jersey.

In sum, the Commissioner does not regard conclusion No. 6 as directly determinative of whether petitioners violated the NJSIAA bylaws. However, the Commissioner accepts the other factual findings and conclusions set forth in the Committee’s decision, finds that they are supported by the record, and affirms respondents’ ultimate assessment that petitioners violated the cited rules regarding recruitment.

Consequently, the Commissioner affirms the Committee’s conclusion No. 7, which imposes penalties upon petitioners for recruiting and failing to do their part to assure fairness in their competition with other NJSIAA member schools.

Argument III

Petitioners claim that the decision of the Controversies Committee – which was affirmed by the Executive Committee of NJSIAA – was arbitrary and capricious. The grounds for petitioners’ claim are as follows.

First, petitioners contend that the Committee’s decision was “almost completely devoid of citations to the record and relevant legal authority including NJSIAA rules and bylaws.” (Petitioners’ Brief, p. 33) Thus, reasoned petitioners, its decision was vague and ambiguous, rendering it arbitrary, capricious and unreasonable.

Second, petitioners aver that the Committee erroneously ignored the legal authority provided by *N.J.S.A.* 18A:38-1 in concluding that there were improprieties related to Davis’ and Hidalgo’s ‘legal guardianships’ of the out-of-state basketball players.

Third, petitioners allege that “[w]rongdoing was incorrectly imputed against LEAP Academy based upon Pennsauken’s admission of three students into the Pennsauken School District.” (*Ibid.*)

Fourth, petitioners assert that the Committee improperly concluded that LEAP had violated its own enrollment procedures.

Respondents do not specifically reply to petitioners’ point heading alleging arbitrariness on the part of the Controversies Committee, but rather incorporate in other sections of their briefs positions that counter petitioners’ allegations. The Commissioner will refer to respondents’ positions as needed.

First it is important to bear in mind that the Commissioner’s scope of review in matters involving NJSIAA is appellate in nature. *See 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, 183. Thus, the Commissioner may

not overturn an action by NJSIAA absent a finding that NJSIAA acted in a patently arbitrary, capricious or unreasonable manner – nor may she substitute her judgment for that of NJSIAA, even if she would decide differently in a *de novo* hearing – where due process has been provided and where there is adequate basis for the decision finally reached. *B.C. v. Cumberland Regional School District*, 220 N.J. Super. 214, 231-232 (App. Div. 1987); *Dam Jin Koh and Hong Jun Kim v. NJSIAA*, 1987 S.L.D. 259. As codified in 2000 to provide notice of this long-held standard to the public and regulated parties:

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 or her judgment for that of 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))

For the reasons set forth in her analysis of petitioners' Argument IV, the Commissioner finds that petitioners were accorded the process that they were due. Consequently, she will only reject the NJSIAA's decision if it is patently arbitrary, capricious and unreasonable.

Turning to petitioners' first contention, the Commissioner agrees that the Controversies Committee's decision did not employ many citations to the record. However, the Commissioner found in the record the factual bases for the Committee's findings. Consequently, the Commissioner will not disturb those findings and cannot characterize them as vague or ambiguous.

In addition, the Commissioner notes that extensive notice was given to petitioners about the rules that would be the subject of the hearing, and the Controversies Committee discussed the relevant NJSIAA bylaws and interpretive comments on pages 9-10 of its decision.

Included in that discussion was Bylaw 4(D)(1), which identifies “excessive emphasis on the importance of athletics” as indicative of recruiting, and Bylaw 4(D)3(c), which states that recruitment includes the attendance of a student-athlete at a school for athletic reasons – with the knowledge of the administration. Given the foregoing, the Commissioner rejects the view that the Committee’s decision was invalid for vagueness.⁴

Petitioners’ second and third proposed bases for a determination that the Committee’s decision was arbitrary and capricious are essentially the same – *i.e.*, that there is no evidence of impropriety related to the purported ‘guardianships’ of the three out-of-state athletes. The first flaw in petitioner’s position is the contention that Davis and Hidalgo were the students’ legal guardians. As mentioned above, under New Jersey law and NJSIAA regulations, a court order is required to establish legal guardianship. No proof of any such court orders was presented by petitioners.

The second weakness in petitioners’ argument is their statement that Davis and Hidalgo are not “officially” or “formally” associated with LEAP. The Commissioner does not find that this sort of hair-splitting is useful. The individuals purporting to be guardians were clearly invested in the LEAP basketball team, and facilitated the infusion into it of talented athletes, with the knowledge of the LEAP athletic director. Moreover, as set forth above, there was testimony from multiple, first-hand sources that Davis assisted in the coaching of the LEAP team.

Third, the petitioners’ explication of *N.J.S.A.* 18A:38-1 does not help them. The evidence in the record created a strong inference, or *prima facie* case, that the underlying reasons

⁴ The Commissioner rejects petitioners’ argument that the NJSIAA proscriptions against recruitment only apply to primary school students. As mentioned by respondents, other provisions in the bylaws, such as Article V, Section 4K which addresses secondary school transfer students, clearly illustrate that recruiting proscriptions apply to high school student athletes.

for the three athletes' transfers to Pennsauken were not the reasons for which the affidavit-student exception to New Jersey's regular residency rules was created. It was thus incumbent upon petitioners to rebut that strong evidence by offering facts that showed a familial or other longstanding and close relationship between the respective students and Davis and Hidalgo, court orders imposing guardianships upon Davis and Hidalgo, affidavits from the athletes' parents describing genuine financial or other significant family hardship, and/or other forms of evidence to rebut the inference that the guardianships were created to funnel L.J., C.G. and D.C. into the LEAP basketball program.⁵ Petitioners failed to do so.

As mentioned above, the remaining reason given for petitioners' assertion that the Controversies Committee's decision was arbitrary and capricious was the Committee's conclusion that LEAP had violated its own enrollment procedures that were intended to give preference to Camden residents. This issue was addressed in the discussion of the Controversies Committee's finding No.5.

As explained in that discussion, the Commissioner will not disturb the Committee's finding that the testimony of petitioners' witness, Garcia, about enrollment procedures was inconsistent and lacked credibility. Further, the Commissioner is satisfied that the Committee's finding about enrollment procedure irregularities is supported by documents and testimony in the record that show that the basketball players who are the subject of this controversy – none of whom were Camden residents – were accepted to LEAP right away, notwithstanding that they were numbers 9, 20 and 25 on the waiting lists for their respective

⁵ In the present case it is petitioners and those affiliated with petitioners that are in a superior position to produce the information needed to reveal the nature of the relationships, or lack thereof, between Davis, Hidalgo and the three student athletes. Thus, respondents' presentation of facts adequate to raise a strong inference of recruiting is sufficient to shift the burden of production to petitioners to prove the legitimacy of the guardianships. *See, e.g., Furst v. Einstein Moomjy, Inc.*, 182 N.J. 1, 31 (2004) (In shifting the burden of production of evidence to defendants, we acknowledge that the retailer is in a superior position to present proof of the product's market value.)

grades. In addition, the record contains documents provided by petitioners, themselves, showing that over half of the LEAP basketball team members were not Camden residents. Considering these facts as a whole, the Commissioner cannot find that the Committee's conclusion about enrollment irregularities was arbitrary and capricious.

In sum, the Commissioner finds that petitioner's contention that the Controversies Committee's decision was arbitrary and capricious is without merit.

Argument IV

Petitioners maintain that since the NJSIAA identified only one by-law – *i.e.*, Article V, Section 4D, in its numerous notices to LEAP of possible violations, it was an infringement upon petitioners' due process rights to examine, in this proceeding, any other possible violations by petitioners of the NJSIAA rules. More specifically, petitioners suggest that it was improper of the Controversies Committee to consider such facts as the use of Davis and Hidalgo as 'guardians' to establish residency for the out-of-state athletes, and Morcos' failure to check the transferring athletes' eligibility before signing their NJSIAA transfer waiver forms, which forms state that such signature indicates that the transferring student has met all NJSIAA eligibility requirements. These facts, according to petitioners, are not germane to the issue of recruiting.

Petitioners further argue that since the Controversies Committee failed to specifically cite Article V, Section 4D of its by-laws when it concluded that penalties should be imposed upon petitioners, and since the NJSIAA Executive Committee adopted the Controversies Committee's conclusions without offering any clarification, the basis of the penalties cannot be ascertained. Urging that there is no evidence that they committed recruitment violations, and relying on the absence of a specific cite to the recruiting by-law in the

Committee's conclusion No.7 (imposing the penalties), petitioners reason that the penalties must have been imposed because of violations of other by-laws or rules, as to which petitioners received no notice.

Respondent Pennsauken counters that the testimony and documentary evidence in the record describing the guardianships offered to the out-of-state basketball players – and LEAP's certification to the NJSIAA that the players were eligible, when they were, in fact, ineligible in their respective states – was presented to demonstrate a pattern of recruiting, not to expand the scope of the NJSIAA's charges against petitioners. The Commissioner agrees.

The record includes proof that the parents of three outstanding basketball players from three different states – New York, Maryland and Georgia – appeared in Pennsauken within two months of each other and bestowed guardianship of their sons upon two individuals connected to the LEAP basketball program. Those individuals, in turn, immediately transferred the students from Pennsauken High School to LEAP, where two of them immediately joined the basketball team. There was no showing of any prior connection or relationship between the two “guardians” and the out-of-state students or their families. All three athletes had been declared ineligible to play basketball in their states of origin. The two that remained at LEAP were subsequently written-up in New Jersey newspapers as the players that were most responsible for LEAP's tournament wins.

The record also includes Morcos' admission, in his testimony before the Controversies Committee, that he did not check the transferring athletes' eligibility. (Nor is there any evidence that the chief operating officer of LEAP or anyone else at the school did so.) In fact, Morcos took the position, citing no authority, that he was not permitted to review the athletes' academic records. This is contrary to the NJSIAA Transfer Waiver Form that Morcos

was required to provide for each athlete. That form, which Morcos signed for the athletes in question, requires certification that the students meet all the eligibility criteria in Article V of the NJSIAA bylaws.

Petitioners clearly failed in their responsibility to assure that their athletes were eligible to compete. In the Commissioner's view, the significance of this fact for purposes of this controversy is not its suggestion that NJSIAA bylaws other than Article V(4)(D) were violated by petitioners. Rather, the Commissioner finds that, when Morcos' submission of misleading transfer waiver forms is considered along with other facts established above, it helps suggest a deliberate plan to improve the level of petitioners' basketball program by: 1) inviting talented out-of-state athletes who could not compete in their home states to live with adults committed to the LEAP team; 2) transferring the athletes to LEAP immediately after their registration in Pennsauken; and 3) hiding from the NJSIAA the athletes' ineligibility in their states of origin.

There were enough examples of this conduct in a short period of time to suggest that out-of-state athletes were not gathering in Pennsauken and immediately transferring to LEAP by coincidence. Added to this picture was the discrepancy between the out-of-district percentage of the total student body and the out-of-district percentage of the basketball team. Further, Morcos' undisputed assistance with D.C.'s enrollment at Pennsauken implies that he had a role in the advent of the three athletes into LEAP Academy and its basketball team.

These facts, viewed collectively, are supportive of the notion that the reason for L.J.'s, C.G.'s and D.C.'s registration in Pennsauken and immediate transfer to LEAP was athletics, in violation of NJSIAA's bylaw concerning recruitment. Petitioners were given ample notice of the charge, were represented by counsel, and had an opportunity to be heard and the

right to appeal. They received the process they were due, *see, e.g., Doe v. Poritz*, 142 N.J. 1, 106(1995), but did not present evidence adequate to rebut the legitimate inferences.

Argument V

Petitioners allege that the penalties that the NJSIAA imposed upon them were sanctions for admitting affidavit students from Pennsauken and receiving tuition payments from Pennsauken. In their brief, p.51, they protest that “LEAP has no control over this legislation [concerning charter school attendance by out-of-district students] or where the guardians of affidavit students reside.” Petitioners highlight the fact that it was Intervenor Pennsauken who approved the out-of-state youths as affidavit students, pursuant to *N.J.S.A.* 18A:38-1, and argue that petitioners should not be penalized for what Pennsauken set in motion, simply because LEAP benefited by the students’ athletic talents. These arguments are duplicative of those made in petitioners’ Argument III.

Respondents rejoin that petitioners confuse the issue of admission to a school with the issue of participation in interscholastic sports. While it was Intervenor Pennsauken who had to approve the enrollment of the out-of-state students into its school district, it was LEAP who was responsible for certifying the eligibility of its athletes. Respondents cite to Article V, Sections 4A and 4B of the NJSIAA bylaws which require member schools to submit annual affidavits, signed by the principals, certifying that all competing students meet all of the NJSIAA eligibility requirements.⁶ Clarifying comment # 1 to Bylaw V, Section 4 (NJSIAA Handbook, p.45) explains that this must be done before a student’s first participation in an interschool

⁶ The required affidavits for LEAP were apparently signed by Morcos instead of the head of the school. Although the individual who served as the head of petitioner LEAP was asked to attend the hearing before the Controversies Committee, she did not.

scrimmage or game, and the record must include an athlete's personal statistics, including credits passed in the previous school year or semester, and prior participation in athletic competition.

The Commissioner notes that at the time Pennsauken accepted the three out-of-state students as affidavit students, it had no way of knowing that the students were exceptional athletes who were ineligible to compete in their home states, and that they planned to join the LEAP basketball team – with the knowledge of the LEAP athletic director. Moreover, affidavits had been provided to Pennsauken by Davis, Hidalgo and the students' parents that alleged familial relationships and/or hardship as reasons for the arrival of the three students into Pennsauken homes. In other words, Pennsauken accepted the students on the basis of far less than full disclosure. The Commissioner must consequently reject petitioners' argument that Pennsauken's acceptance of the students can shield LEAP and Morcos from penalties for recruiting.

Based upon all of the foregoing, the Commissioner determines that petitioners have failed to demonstrate that NJSIAA's decision either was reached in violation of their due process rights or was unsupported by sufficient credible evidence in the record as whole. Nor have they established as arbitrary, capricious or unreasonable NJSIAA's conclusion that petitioners' conduct violated the intent of Article V, Section 4D, especially when viewed in the context of other NJSIAA rules.

Thus, for the reasons articulated, *supra*, the Commissioner upholds the decision of the NJSIAA Executive Committee which, in turn, upheld the NJSIAA Controversies Committee's decision. The Commissioner further finds that the penalties imposed upon petitioners were appropriate to the violations found by the Controversies Committee and

affirmed by the Executive Committee. Accordingly, the Commissioner denies petitioners' appeal.

IT IS SO ORDERED.⁷

COMMISSIONER OF EDUCATION

Date of Decision: April 3, 2007

Date of Mailing: April 3, 2007

⁷ This decision, as the Commissioner's final determination, may be appealed to the Superior Court of New Jersey, Appellate Division, pursuant to *N.J.S.A.* 18A:11-3.