

#87-15

M.C., on behalf of minor child, K.C., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
NEW JERSEY STATE : DECISION
INTERSCHOLASTIC :
ATHLETIC ASSOCIATION, :
RESPONDENT. :

SYNOPSIS

Petitioner appealed the decision of the Eligibility Appeals Committee (EAC) of the New Jersey State Interscholastic Athletic Association (NJSIAA) which found that her daughter, K.C., transferred from Mount Saint Dominic Academy (Mount St. Dominic) to West Orange High School for athletic advantage; the resulting ruling made K.C. ineligible to participate in cross-country, winter track and spring track for a one-year period. Petitioner contended that the one-year period of ineligibility should be changed to the customary 30-day ineligibility period because: she did not receive adequate due process from the NJSIAA; the NJSIAA's decision was arbitrary, capricious and unreasonable; and the primary reason for K.C.'s transfer was not for athletic advantage, but rather because of family finances and health issues.

The NJSIAA contended that: the petitioner was provided with due process; the decision of the EAC was not arbitrary and capricious as there was overwhelming evidence in the record that K.C. transferred for athletic advantage; the petitioner made written statements on three separate occasions that K.C. was transferring due to her dissatisfaction with the new running coach at Mount St. Dominic; and petitioner's explanation for the transfer provided at the time of the hearing was not credible, whereas statements made by petitioner at the time of the transfer – which were part of the record – best explain K.C.'s decision to leave Mount St. Dominic in favor of West Orange High School. The NJSIAA urged that it did not apply its rules arbitrarily and capriciously to the petitioner, and as such the Commissioner should affirm the decisions of the EAC.

The Commissioner upheld the NJSIAA's decision and dismissed the petition, finding that petitioner did not meet her burden so as to entitle her to prevail on appeal. In so deciding, the Commissioner – who may not substitute his judgment for that of the NJSIAA on appeal – noted that the NJSIAA's decision ruling that K.C. is ineligible to participate in cross-country, winter track and spring track for a one-year period was neither arbitrary nor unreasonable.

<p>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.</p>

March 6, 2015

M.C., on behalf of minor child, K.C., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
NEW JERSEY STATE : DECISION
INTERSCHOLASTIC :
ATHLETIC ASSOCIATION, :
RESPONDENT. :

For Petitioner, Arthur C. Hopkins, Esq.

For Respondent, Steven. P. Goodell, Esq. (Herbert, Van Ness, Cayci & Goodell, P.C.)

This case involves an appeal of a decision of the Eligibility Appeals Committee (EAC) of the New Jersey State Interscholastic Athletic Association (NJSIAA) finding that K.C. transferred from Mount Saint Dominic Academy (Mount St. Dominic) to West Orange High School for athletic advantage, and ruling that K.C. is ineligible to participate in cross-country, winter track and spring track for a one-year period.

Athletic competition in New Jersey's public schools is overseen by respondent, NJSIAA – a voluntary, non-profit organization which promulgates the rules and regulations governing high school athletics. *See, B.C. v. Cumberland Reg. Sch. Dist.*, 220 N.J. Super. 214, 234 (App. Div. 1987). Article V, Section 4 (K)(2) of NJSIAA's Bylaws, Rules and Regulations imposes restrictions upon transfer students' eligibility for participation in varsity sports. Generally, when a student-athlete transfers from one school to another without a bona fide change of residence by the student's parent or guardian there is a 30-day period of ineligibility in any sport which the student has previously participated in. Article V, Section 4 (K)(2) (a).

New Jersey high schools have agreed that students should not transfer from one school to another for athletic reasons. Pursuant to Article V, Section 4 (K)(5),

Any evidence of a transfer for athletic advantage shall subject the athlete to a prompt determination of eligibility by the Eligibility Appeals Committee and may subject the school and the athlete to disciplinary proceedings as set forth in Article X herein. A transfer for athletic advantage is defined as, but not limited to:

- a. Seeking a superior athletic team;
- b. Seeking relief due to a conflict with the philosophy or action of an administrator, teacher or coach relating to sports;
- c. Seeking a team consistent with the student's athletic abilities;
- d. Seeking a means to nullify punitive action by the previous school; or
- e. Seeking to be coached by the coach at the new school.

Therefore, if it is determined that the athlete transferred to another school for an athletic advantage, the athlete is subject to an extended period of ineligibility beyond 30 days.

On appeal, the petitioner argues that the decision of the NJSIAA imposing a one-year period of ineligibility on K.C. should be reversed and only the customary 30-day period of ineligibility should be imposed. First, petitioner maintains that she did not receive adequate due process from the NJSIAA. The petitioner contends that she experienced a "trial by surprise" at the October 1, 2014 EAC hearing, in that she had no sense of what the hearing was about in advance. Petitioner argues that: she had little knowledge of what documents had been submitted to the EAC; she had no opportunity to gather countervailing documents in advance of the hearing; and she had no opportunity to structure her testimony to address the eligibility criteria established by the bylaws and rules of the NJSIAA. The petitioner also contends that despite the fact that she waived her right to counsel at the hearing, the waiver is meaningless because she did not have adequate advance notice of the nature of the proceedings and the potential consequences of waiving her right to counsel.

The petitioner also argues that the NJSIAA's decision was arbitrary, capricious and unreasonable. The petitioner claims that five students who ran on the Mount St. Dominic track team transferred to other high schools coincident with the release of their former track coach at Mount St. Dominic, and three of the students who were superior athletes and transferred to superior track programs were allowed to transfer without untoward consequence by the NJSIAA. Yet K.C. – who is not a superior athlete and who transferred to an inferior track program – received the draconian penalty of a one-year period of ineligibility. The petitioner argues that inconsistent decisions reached in comparable circumstances are inherently arbitrary and the essence of capriciousness. Additionally, the petitioner stresses that the primary reason for her transfer was not for athletic advantage, but rather had more to do with family finances and health issues, and it strains credulity to even suggest that the transfer of K.C. – who rarely ever ran in a varsity meet, never scored in a cross-country meet and simply enjoys running – to an inferior track program was for athletic advantage. Therefore, the petitioner requests that the decision of the NJSIAA be reversed and suggests that only the customary 30-day period of ineligibility be imposed.

In reply, the NJSIAA maintains that the petitioner was provided with due process as the EAC issued its final decision after a hearing on notice to the parties and a full right to be heard. NJSIAA's assistant director scheduled the hearing and spoke directly to the petitioner about the hearing procedures and her right to have an attorney available. The petitioner, K.C., and West Orange High School administrators were able to present their arguments at the hearing, and the only documents that were relied upon by the EAC were drafted by the petitioner herself.

The NJSIAA also maintains that the decision of the EAC was not arbitrary, capricious or unreasonable as there was overwhelming evidence in the record that K.C.

transferred for athletic advantage. The NJSIAA points out that on three separate occasions the petitioner made written statements that K.C. was transferring due to her dissatisfaction with the new running coach at Mount St. Dominic. Additionally, the EAC did not find credible the petitioner's explanations for K.C.'s transfer at the time of the hearing. Rather, the statements made by the petitioner at the time of the transfer best explain the decision to leave Mount St. Dominic and transfer to West Orange High School. With respect to the other students who also transferred, the NJSIAA contends that it treated each student fairly and each case was decided on the merits of the individual case, taking into account the strength of the evidence before the EAC and the credibility of the witnesses. Therefore, the NJSIAA argues that it did not apply its rules arbitrarily and capriciously to the petitioner, and as such the Commissioner should affirm the decision of the EAC.

Upon careful review and consideration, the Commissioner determines to uphold the decision of the NJSIAA and dismiss petitioner's appeal. As explained above, 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 a constitution, bylaws, rules and regulations approved by the Commissioner of Education and adopted annually by member schools – for which they become school policy enforceable by the NJSIAA.

It is well-established that the Commissioner's scope of review in matters involving NJSIAA decisions, including determinations made by the Eligibility Appeals Committee, 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 it applied such rules in a patently arbitrary, capricious or unreasonable manner. *N.J.A.C.* 6A:3-7.5(a)(2); *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 own judgment for that of the NJSIAA, where due process has been provided and where there is sufficient credible evidence in the record as a whole to serve as a basis for the decision reached by the NJSIAA. *N.J.A.C. 6A:3-7.5(a)(1)*; *Dam Jin Koh and Hong Jun Kim v. NJSIAA*, 1987 *S.L.D.* 259.

Additionally, the New Jersey courts have spoken as to the narrow scope of “arbitrary, capricious, or unreasonable” in the context of challenges such as petitioner’s:

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

Petitioners seeking to overturn decisions of the NJSIAA therefore bear a heavy burden, and – considering the record of this matter in light of the prescribed standard of review – the Commissioner cannot find that petitioner herein has met her burden so as to entitle her to prevail on appeal.

More specifically, the Commissioner cannot find that the NJSIAA applied its rules in a patently arbitrary or unreasonable manner, in light of its duty to ensure fairness and integrity in athletic competition statewide. Additionally, there is no basis in the record to reject the EAC’s determinations of witness credibility. It is undisputed that K.C. was dissatisfied with the new running coach at Mount St. Dominic, and there is substantial evidence in the record indicating that K.C.’s decision to transfer to West Orange High School was in fact for athletic advantage – including the Student/Parent Exit Form in which the petitioner stated that the decision to leave Mount St. Dominic was due to “[K.C.]’s goal to run in college. At present

Mount does not have that to offer her.” Moreover, the circumstances related to other track students who also transferred from Mount Saint Dominic around the same time as K.C. are not before the Commissioner, and there is no evidence in the record indicating that the NJSIAA applied its rules differently to the other student athletes that transferred from Mount St. Dominic.

Accordingly, the Commissioner – having found that petitioner was afforded the due process to which she was entitled, and that the NJSIAA’s decision ruling that K.C. is ineligible to participate in cross-country, winter track and spring track for a one-year period was neither arbitrary nor unreasonable – determines to uphold the NJSIAA’s decision and hereby dismisses the petition of appeal.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: March 6, 2015

Date of Mailing: March 9, 2015

¹ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.