

BOARD OF EDUCATION OF THE TOWNSHIP :
OF NUTLEY, ESSEX COUNTY, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

NEW JERSEY STATE INTERSCHOLASTIC : DECISION
ATHLETIC ASSOCIATION, :

RESPONDENT. :

SYNOPSIS

The Board of Education of the Township of Nutley (Nutley) filed a Petition of Appeal seeking reversal of the decision of the New Jersey Interscholastic Athletic Association Executive Committee (NJSIAA) affirming a determination of the Northern New Jersey Interscholastic League (NNJIL) and the NJSIAA Special Committee on Leagues and Conferences (Special Committee) denying Nutley’s request to withdraw from the NNJIL and join the Northern Hills Conference (NHC).

Nutley avers that the decisions denying its application to withdraw from the NNJIL were arbitrary, capricious and unreasonable. Nutley claims that its application to join the NHC was made due to an imbalance in the current makeup of the NNJIL, resulting in negative impact to competitiveness which, in turn, occasions health and safety concerns for its student-athletes. Nutley charges that the record is replete with recognition by NJSIAA committees that a problem exists due to unbalanced competition in the NNJIL, and further contends that attempts to achieve balanced scheduling have “failed miserably”, pointing out that the NNJIL has not implemented “cross over” scheduling nor addressed scheduling based on “strength of programs” in regard to contests with the strong parochial school members of the NNJIL, as required by action of the NJSIAA Executive Committee in 2000.

The NJSIAA advances that the emphasis in realigning leagues has always been “to assure full scheduling for schools, particularly those with heavy minority populations or parochial schools who would otherwise be denied entrance into local Leagues and Conferences,” and a school’s win/loss record is not a concern of the Association or the Commissioner. It is well established that in order to assure stability of the leagues, a school wishing to withdraw without the permission of both leagues must present substantial reasons for doing so, and satisfy seven alignment criteria to justify a league transfer. Nutley failed to satisfy four of the seven criteria, in that a transfer: was not justified based on size or geography; would increase financial expenses; and would have a severe negative impact on the NNJIL. The NJSIAA avers that Nutley’s application to change leagues is predicated upon its desire to have a winning sports program, especially in football.

On appeal, the Commissioner upholds NJSIAA’s determination to deny petitioning Board’s request to withdraw from the NNJIL, finding that: Nutley was accorded the full measure of due process to which it is entitled; that the determination of NJSIAA was well-grounded in the record; and that Nutley has failed to establish that the denial of their withdrawal from the NNJIL was arbitrary, capricious or unreasonable, and therefore, under the established standard of review of NJSIAA matters, there is no basis upon which the Commissioner can overturn the NJSIAA’s decision here. However, the Commissioner emphasizes that the NNJIL must immediately act to implement, as directed by the NJSIAA’s Executive Committee, inter-division or “cross over” game scheduling based upon the relative strength of programs of the competing schools to help insure a healthy competitive balance for all schools in parochial-public school competition.

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, Robert J. Pansulla, Esq. (Gaccione, Pomaco & Malanga)

For Respondent, New Jersey State Interscholastic Athletic Association (NJSIAA),
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PROCEDURAL HISTORY

This matter has come before the Commissioner of Education by way of a Petition of Appeal filed on April 6, 2005 by the Board of Education of the Township of Nutley (“Nutley”), Essex County, seeking reversal of the decision of the New Jersey Interscholastic Athletic Association Executive Committee (“NJSIAA Executive Committee”), dated March 2, 2005, which affirmed the determination of the Northern New Jersey Interscholastic League (“NNJIL”) and the NJSIAA Special Committee on Leagues and Conferences (“NJSIAA Special Committee”) denying Nutley’s request to withdraw from the NNJIL and join the Northern Hills Conference (“NHC”).¹

¹ It is noted that subsequent to the NNJIL’s denial of its request to withdraw from that Conference, Nutley went to Superior Court to attempt to secure a ruling allowing the change. That Court directed that Nutley first exhaust its administrative remedies.

On April 11, 2005, Nutley submitted copies of all exhibits filed with the NJSIAA Committees in support of its appeal, along with the transcripts of the hearing held on January 12, 2005 before the NJSIAA Special Committee and those of the March 2, 2005 hearing before the NJSIAA Executive Committee. Respondent NJSIAA filed its Answer to the Petition of Appeal, pursuant to *N.J.A.C. 6A:3-7.2*, on April 14, 2005. On May 3, 2005, Nutley submitted a brief in support of its position, and a reply brief was submitted by the NJSIAA on May 20, 2005, whereupon the record in this matter was closed.

BACKGROUND

The within record evidences the following:

- The NJSIAA is a voluntary association established pursuant to *N.J.S.A. 18A:11-3*, which organizes, oversees and governs high school athletics in the State of New Jersey.
- Nutley is a public school district in Essex County, and a member of the NJSIAA, and has adopted the Rules and Regulations of that body.
- Nutley is currently a member of the NNJIL and has been since 1982. (Nutley's Brief at 5)
- The NNJIL is currently comprised of 19 member schools. Nutley High School is one of the 13 Group III and Group IV public schools in Bergen, Essex and Passaic Counties included in that League. There are also six parochial school members, including two girls' schools (Holy Angels Academy and Immaculate Heart Academy), three boys' schools (Bergen Catholic, Don Bosco and St. Joseph's) and one co-ed school (Paramus Catholic). (NJSIAA Special Committee February 9, 2005 Decision at 1-2)
- Nutley applied, and was accepted for membership in the NHC. Such application was made, it avers, due to the imbalance that exists in the current makeup of the NNJIL,

resulting in negative impact to competitiveness which, in turn, occasions health and safety concerns for its students who participate in sports. (Petition of Appeal at 2-5)

The NNJIL, however, rejected Nutley's request to withdraw from that Conference, thus preventing Nutley from entering the NHC.

- Almost since the inception of the NNJIL, a number of public schools have attempted to leave that league because of the perceived domination of competition by the parochial schools as a result of their ability to draw an enrollment from a larger geographic area. (NJSIAA Answer to Petition of Appeal at 3; NJSIAA Special Committee February 9, 2005 Decision at 2)
- Historically, the schools in the NNJIL were arranged by population in two divisions. However, in an attempt to address the issue of unfair competition, while also maintaining the viability of the NNJIL, the NJSIAA conducted hearings in 1999 and ultimately issued a report on January 3, 2000, which allowed for the creation of two separate divisions of public schools based upon population, and one division made up solely of parochial schools. The NNJIL was directed to provide for competition with parochial schools on the basis of competitive power and strength so as to mitigate any unfair competitive imbalance.^{2 3} (*Ibid.*; NJSIAA Special Committee February 9, 2005 Decision at 2-3)

² Specifically, this Special Committee urged that future scheduling take into account the relative strength of a school's athletic program for each sport. This was to be accomplished by dividing the League into three sections, based on the strength of a school's athletic program for each sport over the previous five years. Inter-division or "crossover" games would then be scheduled between programs of similar strength. Scheduling in this manner, based on strength of program, should insure that the League will maintain "a competitive balance that is healthy for all schools. It also has the added benefit of allowing schools to play games against a wider variety of opponents. As the strength of a school's program rises or falls each year, the school's opponents will change accordingly." (Special Committee on League and Conferences Decision, February 9, 2005 citing to January 2000 Special Committee Report, Attachment A, pp. 4, 5)

³ This decision, on appeal by the parochial schools, was affirmed by the Commissioner of Education on June 23, 2000. See *In the Matter of the Divisional Realignment by the Northern New Jersey Interscholastic League*, Commissioner Decision No. 209-00.

- As a result of this realignment, the three divisions of the NNJIL are now configured thusly:

DIVISION A – (Smaller Public)

	<u>Enrollment</u>
Bloomfield	1,289
Hackensack	1,228
Ridgewood	1,164
Belleville	1,135
Teaneck	1,017
Nutley	1,008
Paramus	951

DIVISION B – (Larger Public)

	<u>Enrollment</u>
Clifton	2,435
Eastside	2,101
Passaic	1,948
J.F. Kennedy	1,628
Barringer	1,471
Montclair	1,316

DIVISION C – (Parochial)

	<u>Enrollment</u>
Immaculate Heart Academy	1,262
Bergen Catholic	1,236
Don Bosco Prep	1,136
Paramus Catholic	1,012
Academy of the Holy Angels	784
St. Josephs	664

(NJSIAA Special Committee February 9, 2005
Decision at 4-5)

- In contrast, the enrollment of the average school in the NHC is significantly smaller than the schools comprising the NNJIL:

	<u>Enrollment</u>
Passaic County Tech	1,464
West Orange	1,389
West Milford	1,088
Wayne Valley	1,055
West Side	976
Millburn	822
Passaic Valley	805
Montville	796
Lakeland	773
Orange	677
Delbarton	668
Caldwell	594
Pequannock	534
Mt. St. Dominic	492
Madison	480
DePaul	426
Butler	368
Academy of St. Elizabeth	338
Villa Walsh	294
Morris Catholic	270

(Id. at 5-6)

- For the years 2001-2003 Nutley maintained a strong baseball team and was competitive in soccer, wrestling and ice hockey. It also had strong girls' tennis and softball teams and was competitive in girls' soccer, cross country, volleyball and basketball. (Nutley's Application Athletic Results Exhibits)
- On January 12, 2005, Nutley appeared before the NJSIAA's Special Committee to appeal the NNJIL's denial of its application to leave that Conference. (Nutley's Brief in Support of Appeal, at 6).
- As has been its practice for over two decades, in considering requests for transfer of a school from one conference to another when one of the two conferences rejects the

transfer application, the NJSIAA Special Committee considered seven Realignment Criteria:

1. Size of schools involved;
2. Geographic location of schools;
3. Nature of total athletic program and facilities;
4. The effect on other leagues and their existing relationships should the request to move from one league to another be granted;
5. Administrative personnel for programs offered;
6. Consideration must be given to the financial burden placed upon the school;
7. Any negative effect that the transfer might have upon the present balance of minority and non-minority schools in a league or conference, at variance with the mandate of the Commissioner of Education in November 1979.

- By decision dated February 9, 2005, the NJSIAA Special Committee denied Nutley's application. In so concluding, the Committee made the following "Findings of Fact" and "Conclusions":

Findings of Fact

1. Nutley High School is one of 13 public schools in the NNJIL.
2. Nutley has the second smallest enrollment of any public school in the NNJIL but has been placed in a separate division where any enrollment disparity has been appreciably reduced.
3. With the exception of contests against parochial school members in the NNJIL, Nutley has had moderate success in its sports program, which the Committee finds is unrelated to its size.
4. If Nutley were to leave the NNJIL it would depart from a League division with schools of comparable size, in close geographic proximity and join a Conference with schools having widely diverse enrollments and geographic locations.
5. The departure of Nutley from the NNJIL would have a substantial adverse impact on that League. It would deprive several public schools, of comparable size in close geographic proximity, of a suitable opponent. It would also lead to applications being pursued by those very schools to leave the NNJIL since they have the same basic complaint as that articulated by Nutley High School. It would inevitably lead to further instability in the NNJIL.

6. The Committee further finds that if Nutley were to leave the NNJIL, it would disrupt the carefully designed divisional alignment which have (sic) received the approval of the NJSIAA and the Commissioner of Education.

Conclusions

1. The application of Nutley High School does not satisfy several of the criteria for realignment. Its size is more appropriate in the NNJIL, rather than the NHC, particularly in the context of its own division. It is surrounded by other member public schools in the NNJIL and its geographic location is much more appropriate within its existing Conference. Without question, there will be a further financial burden placed upon Nutley if it has to travel greater distances and there would be a comparable burden placed upon public schools in the NNJIL that now compete against Nutley within the framework of that League. More significantly, the transfer of Nutley from the NNJIL will have a severe adverse impact on that League.

2. The problems of competitive imbalance facing Nutley are indistinguishable from the problems facing comparably sized public schools in the "A" Division of the NNJIL. Indeed, the difficulties facing Nutley are shared by Paramus, Belleville, Bloomfield and Teaneck High Schools, all of which could present the same arguments as those advanced by Nutley to leave the NNJIL.

3. Since 1999, the NNJIL has attempted to address the competitive imbalance created by the presence of strong parochial schools as members. On January 12, 2000, the NJSIAA Executive Committee approved reports made by this Committee to maintain the three division structure, but to encourage the use of "strength of programs" in the scheduling of "cross over" contests with those parochial schools. On June 23, 2000, the Commissioner of Education approved those reports. Evidently, that aspect of the NJSIAA reports has not been followed by the NNJIL and the Committee encourages it to institute such a system so that Nutley and other schools can gain some degree of relief. Again, when arranging cross over contests, the NNJIL should consider scheduling public schools on the basis of competitive success or strength, on a program-by-program format.

4. There was no evidence there was any correlation between the size of Nutley High School and injuries that have occurred on the

playing field. Instead, particularly in football, there might have been lopsided defeats against parochial schools which hopefully can be remedied by a resort to the recommended strength factor in arranging for cross over contests.

- On March 2, 2005, Nutley appealed the NJSIAA’s Special Committee’s decision to the NJSIAA Executive Committee which, by a vote of 21 in favor, 5 opposed, with 3 recusals, adopted the decision of the Special Committee denying Nutley’s application to leave the NNJIL and join the NHC. The Executive Committee, however, went on to specifically direct that the NNJIL implement the cross over scheduling based on strength of programs ordered in 2000. (March 14, 2005 letter from Boyd A. Sands to Joseph Zara, Superintendent of Schools, Nutley)

NUTLEY’S POSITION

Nutley contends that the decisions of the NJSIAA Special Committee and the NJSIAA Executive Committee denying its application to withdraw from the NNJIL were arbitrary, capricious and unreasonable. It charges that, although the record is replete with recognition by these Committees that a problem exists due to unbalanced competition in this League, and – notwithstanding that Nutley has satisfied the requisite applicable criteria warranting a change in leagues – the NJSIAA’s sole rationale for denial of its application is that if Nutley changes leagues, all the other schools experiencing similar disparity in competitiveness with the private and larger schools will want to move as well. (Nutley’s Brief at 2)

Nutley claims that its application to change leagues was motivated by “an embarrassing lack of competitive balance in [its] games”⁴ and increasing pressure from the parents of its students participating in sports who fear enhanced injuries as a result of this

⁴As an example, “football defeats by scores of 67-14, 55-0, and 42-13 against private or much larger schools.”

competitive imbalance. (*Ibid.*) It seeks to correct this problem by competing in the NHC “where it is more suited as a Group 3 school.” (*Id.* at 5) Pointing to testimony presented at the Special Committee hearing – ironically by representatives of the league preventing its withdrawal – which acknowledged and confirmed the existing disparity, Nutley observes that a stated goal of the NJSIAA is to “foster competition,” and avers that for them to recognize the existence of a problem and ignore it “is arbitrary and unreasonable in and of itself.” (*Id.* at 3)

Next, to support its contention that its application to withdraw from the NNJIL fully satisfied each of the seven requisite Realignment Criteria, Nutley presents the following discourse:

1. Size of Schools Involved

Of the nineteen (19) teams currently listed in Nutley’s conference, only two (2) have a smaller enrollment and both of those are private institutions which can select [their] membership to improve [their] athletic programs from outside of [their] geographic region. As explained throughout, the imbalance of the member schools in the NNJIL has negatively impacted competition, which has been documented by Nutley in support of this appeal through injury reports, disparity in results and statistics. More importantly, Nutley has an obligation to respond to the concerns raised by the parents of its district, especially when the concern is prompted by the impact to health, safety and welfare of the participant students. Nutley has gone through the expense and effort of this process.

As a result of the aforementioned imbalance in number of the present enrollment of the schools in its current conference, and resulting negative impact to competitiveness, Nutley presented its concern for injuries and incidents which impact the health, safety and welfare of the students who participate in sports at Nutley to NJSIAA. Yet Nutley was told that NJSIAA cannot address this obvious problem due to statewide balance concerns. However, that conclusion unreasonably ignores the neat fit of Nutley into the Northern Hills Conference.

Nutley has already been accepted into the Northern Hills Conference because its addition would balance the competition for the conference and for Nutley. This is confirmed by the

enrollment numbers of the membership schools. The appropriateness of the size of schools in the Northern Hills Conference, as compared to Nutley, was confirmed through Mr. SanFillipo's testimony as Executive Director of the Northern Hills Conference, quoted in relevant part above, and found in its entirety in the transcript. [citation omitted] It is apparent that as a Group 3 school, Nutley is better suited in the Northern Hills Conference due to the comparable size of the schools involved. (emphasis in text)

2. Geographic Location of Schools

The geographic location of the schools is comparable as to each league. Nutley offered exact mileage calculations for each and every school of each conference in its submission, and the difference is negligible.

Important to note is both conferences are geographically diverse, and calls for Nutley to travel to urban and suburban areas. Nutley has a local county competition in each conference (i.e. Bloomfield, and Belleville currently, West Orange and Caldwell in the new conference). Each conference has a school within Newark. The geographical location of the schools involved justifies Nutley's attempt to change into the Northern Hills Conference.

3. Nature of Total Athletic Programs and Facilities, Administrative Personnel and Financial Burden

Grouping the next three items of the criteria, and as admitted at the hearings, Nutley would fit neatly into the Northern Hills Conference. In deliberations, an NJSIAA member went so far as to say that it should be Nutley, who considers its financial burden. The impact for the financial decisions are made locally. The point here is greater since it is the parents – the taxpayers of Nutley – that are pleading with Nutley to change leagues. Notwithstanding this analysis, there is no financial burden placed on Nutley for the change.

The nature of the total athletic programs is comparable in each league. The facilities and administrative personnel for these programs are all comparable among the leagues. This was also confirmed and admitted during the hearings, and justifies Nutley's entry into the Northern Hills Conference.

4. Impact on Other Leagues

Nutley submits that it can be stipulated through the record developed that a balance dealing with minority or urban scheduling is not an issue here. In fact, as discussed above when summarizing the geographic locations for the schools, it was confirmed that each conference has a school in Newark, and an even mix of other schools in urban and/or minority areas. Thus, the only actual item to address from the criteria is the effect on the other leagues. As to the Northern Hills Conference, it has accepted Nutley, and the impact deemed favorable. Mr. SanFillipo confirmed this as the league's Executive Director, and it is not refuted.

As to NNJIL, the member schools who appeared at the hearings below admitted that Nutley's request was legitimate and that a problem existed. But, they also confirmed that other schools were interested in joining NNJIL. Upon information and belief, Passaic County Tech was a school that had been voted out of its conference and, sought to enter NNJIL. There are other adjustments that can be made to balance the competitiveness without disrupting the continuation of NJSIAA's handling of the leagues. NJSIAA's goal of "fostering competition" would be enhanced by this change. (emphasis in text)

Here, not only do we have a school board, but we have concerns of parents disgusted with the competitive imbalance being experienced by their children. Moreover, Nutley has to answer to the parents, as taxpayers of Essex County, as to the protection being afforded to their children. The parents are disgruntled and concerned about the unlevel competitive scheduling in the athletic programs that their children compete in for Nutley. Nutley's participation in the Northern Hills Conference cures the problem. (Nutley's Brief at 9-13)

Notwithstanding Nutley's manifest satisfaction of the criteria, it contends, the decision of the NJSIAA's Special Committee, adopted by the NJSIAA's Executive Committee, stated in a conclusory manner that Nutley's injuries claim is not substantiated and questioned the integrity of Nutley's geographic data. However, the "real reason" for its denial of the application is blended into the opinion's conclusions, where it states "that Nutley's appealing of the competitive imbalance cannot succeed because other schools have the same complaint."

(*Id.* at 14) It cannot be determined that Nutley was accorded due process at the two NJSIAA hearings, it proffers, when such hearings resulted in “conclusory” findings. (*Id.* at 18)

Finally, Nutley advances that attempts to achieve balanced scheduling have “failed miserably,” as the NNJIL has neither successfully implemented cross over scheduling nor addressed scheduling based on strength of programs. (*Id.* at 15)

Nutley urges that it has gone through the effort and expense in support of its application and appeal, and has satisfied the necessary criteria. Therefore, it should be allowed to withdraw from the NNJIL to enter the NHC. (*Id.* at 19)

NJSIAA’S POSITION

The NJSIAA’s brief initially presents a comprehensive overview of the history of the League and Conference realignment process begun in 1982 in response to a previously expressed concern of the Commissioner of Education “that a number of inner city and parochial schools were not being allowed to have a full schedule of contests because they were denied membership in local Leagues and Conferences.” (NJSIAA Brief at 3) It stresses that the underlying focus of this and all subsequent realignment plans “has always been to assure full scheduling for schools, particularly those with heavy minority populations or parochial schools who would otherwise be denied entrance into local Leagues and Conferences.”⁵ (*Ibid.*) Although the NJSIAA has endeavored to have Conferences ordered by geography and size, it

⁵ Succeeding statewide realignments of Leagues and Conferences to insure fulfillment of the Commissioner’s directive took place in 1984, 1987 and 1998. In accomplishing such realignments the NJSIAA routinely applied seven criteria, *i.e.*, “size of school; geographic location; nature of the athletic programs and facilities; impact on existing relationship with leagues and conferences; administrative personnel; the financial impact; and any negative effect that a transfer might have on diversity concerns.” (NJSIAA Brief at 5)

emphasizes that assuring schools' competitive success is not now, nor has it ever been, a consideration or concern of either the Commissioner or the NJSIAA. (*Id.* at 4)

The NJSIAA points out that since the third statewide realignment, a number of schools have voluntarily transferred from one League to another as school population fluctuated. Where a school desires such a transfer over the objection of its current League, rather than conduct a statewide realignment, the NJSIAA considers *ad hoc* applications. However, in order to insure that general instability is not occasioned throughout the 21 Conferences in New Jersey, such a school must demonstrate "some substantial need" to transfer and satisfy the seven established realignment criteria. (NJSIAA Brief at 6)

With the underlying intent and purpose of the realignment process detailed, the NJSIAA proposes that it cannot be credibly disputed that Nutley was provided a full measure of due process in consideration of its transfer application. There were seven published realignment criteria; they were permitted to submit a detailed application addressing those criteria; they were accorded two separate hearings and were represented by counsel at both of these proceedings. At the Special Committee hearing on January 12, 2005, they were allowed to fully advance their arguments and to cross-examine NNJIL witnesses. On February 10, 2005, this Committee issued a detailed decision, which fully set forth a discussion of the evidence and testimony, findings of fact and conclusions of law. At the NJSIAA Executive Committee hearing on March 2, 2005, Nutley was again provided an opportunity to present its arguments and, after lengthy consideration and debate, the Executive Committee ultimately adopted the report of the NJSIAA Special Committee's report by a vote of 21 to 5. (NJSIAA Brief at 14-15)

The NJSIAA next submits that Nutley has not sustained its burden of providing substantial reasons for withdrawal from the NNJIL. Initially in this regard, contrary to Nutley’s assertion that denial of its application was solely because other teams would seek to leave the conference as well, the instant record establishes that Nutley failed to satisfy four of the seven alignment criteria to justify a transfer. As found by the Special Committee in its conclusions:

1. Its size is more appropriate in the NNJIL, rather than the NHC, particularly in the context of its own division. It is surrounded by other member public schools in the NNJIL and its geographic location is much more appropriate within its existing Conference. Without question, there will be a further financial burden placed upon Nutley if it has to travel greater distances and there would be a comparable burden placed upon public schools in the NNJIL that now compete against Nutley within the framework of that League. More significantly, the transfer of Nutley from the NNJIL will have a severe adverse impact on that League. (Decision at 9, emphasis supplied.)

(NJSIAA’s Brief at 15-16)

Furthermore, although Nutley proposed that district parents were increasingly concerned about “enhanced and significant injuries” brought about by the lack of competitive balance in the games, it “did not present any evidence to show that injuries in football were disproportionate or [that] there was any correlation between the perceived or actual competitive balance and injuries.” (*Id.* at 16). The NJSIAA also points to a number of factual inaccuracies contained in Nutley’s brief in this matter:

First, the school claims that it has the smallest enrollment of the public schools. In fact, Paramus High School has a smaller enrollment and Nutley’s size is comparable to the other schools placed in the Division A of the NNJIL. Nutley states that the difference in mileage between the two conferences “was negligible.” In fact, as the Special Committee found, as set forth in Chart C of its decision, that the traveling distances were

substantial.⁶ In addition, as also noted by the Special Committee, Nutley was surrounded by other NNJIL public high schools (Passaic, Belleville, Bloomfield and Montclair). Nutley claims that “on information and belief” Passaic County Tech had sought to enter the NNJIL. In fact, Passaic County Tech never applied to the NNJIL and was recently admitted to the NHC instead. Nutley states that the real reason for the transfer denial was that other schools had the same complaint about competitive imbalance. While it is correct that the Special Committee found that the problems facing Nutley were similar[ly] shared by Paramus, Belleville, Bloomfield and Teaneck High Schools, the Special Committee also acknowledged that these schools had been placed with Nutley in the smaller division in the hope that it would mitigate the “competitive imbalance” created by the parochial schools.

Nutley also contends that the NNJIL representatives testified that Nutley’s request was legitimate. Just the opposite is true. In fact, George Middleton, the NNJIL Secretary, testified at length against the transfer. He first noted that the injuries suffered by Nutley were not unusual, noting that “inherent in football is injury.” Mr. Middleton noted that on the subject of competitive balance that Nutley beat Clifton, the largest school in the NNJIL, in football the last two times that they played, demonstrating the lack of correlation between size and strength of program. He

⁶ For ease of comparison, Chart C is reproduced below:

NNJIL – Distance

Academy of the Holy Angels (Demarest) – 22 miles
 Barringer (Newark) – 5 miles
 Belleville – 1.5 miles
 Bergen Catholic (Oradell) – 15 miles
 Bloomfield – 2 miles
 Clifton – 2 miles
 Don Bosco Prep (Ramsey) – 23 miles
 Eastside (Paterson) – 6 miles
 Hackensack – 12 miles
 Immaculate Heart Academy (Westwood) – 20 miles
 J.F. Kennedy (Paterson) – 6 miles
 Montclair – 4 miles
 Paramus – 13 miles
 Paramus Catholic – 12 miles
 Passaic – 2.5 miles
 Ridgewood – 16 miles
 St. Joseph Regional (Montvale) – 24 miles
 Teaneck – 15 miles

NHC – Distance

Academy of St. Elizabeth (Covent Station) – 22 miles
 Butler – 19 miles
 Caldwell – 8 miles
 Delbarton (Morristown) – 27 miles
 DePaul Diocesan (Wayne) – 14 miles
 Lakeland Regional (Wanaque) – 20 miles
 Madison – 23 miles
 Millburn – 16 miles
 Montville Township – 17 miles
 Mount St. Dominic Academy – 7 miles
 Orange – 9 miles
 Passaic Co. Tech. (Wayne) – 12 miles
 Passaic Valley (Little Falls) – 7 miles
 Pequannock Twp. (Pompton Plains) – 15 miles
 Villa Walsh Academy (Morristown) – 25 miles
 Wayne Valley (Wayne) – 12 miles
 West Milford – 30 miles
 West Orange – 7 miles
 West Side (Newark) – 8 miles

(NJSIAA Special Committee Decision, February 9, 2005, at 6-7)

commented that “certainly Nutley is not the worse (sic) athletic program [in] the NNJIL.” He also noted that by being placed in Division A, Nutley would have to play most of its schedule against smaller schools. Mr. Middleton went on to note that Paramus, a small public school in the NNJIL, had its best football season in 20 years and made the football playoffs this year. Again this demonstrated the lack of any correlation between size and competitive success. (citations omitted) (NJSIAA Brief at 16-17)

In conclusion, the NJSIAA urges that Nutley’s application, in fact, is predicated on its desire to have a winning sports program, especially in football, which — pursuant to the realignment goals and objectives of the Association and the Commissioner — cannot be the basis for ordering a league transfer. Notwithstanding the considerable evidence supporting the Special Committee’s conclusion that a transfer was not justified based on size or geography, and would undoubtedly impose a greater financial burden on Nutley due to a significantly increased travel requirement, and would have a severe negative impact on the NNJIL — whose stability must be one of the NJSIAA’s prime objectives — Nutley is pursuing relief from the Commissioner because it wants to have a winning sports program. The NJSIAA submits, “[i]f that were the basis for schools transferring from one conference to another, then the process would be endless and conference structures would be eroded and scheduling of regular season contests would be chaotic.” This is precisely the reason why schools such as Nutley have the burden of providing substantial reasons why they should be permitted to leave their current conference, without any consideration whatsoever to their win/loss football record. (NJSIAA Brief at 17-18)

COMMISSIONER'S DETERMINATION

It is well-established that the Commissioner's scope of review in NJSIAA determinations is appellate in nature. *N.J.S.A.* 18A:11-3, *N.J.A.C.* 6A:3-7.4; *Board of Education of the City of Camden v. NJSIAA*, 92 *N.J.A.R.* 2d (EDU) 182, 188 (1992). That is, the Commissioner may not overturn an action by the NJSIAA in applying its rules absent a finding that the NJSIAA applied the rules in a patently arbitrary, capricious or unreasonable manner. Nor may the Commissioner substitute her judgment for that of the NJSIAA, *even if 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. Further, the burden of proof rests with the person or entity challenging the decision. *Kopera v. West Orange Board of Education*, 60 *N.J. Super.* 288, 297 (App. Div. 1960).

The arbitrary, capricious or unreasonable standard of review is extremely narrow in its scope and, consequently, imposes a heavy burden on those who challenge determinations of the NJSIAA. The standard, as defined by the New Jersey Courts provides:

In the law, "arbitrary" and "capricious" means having no rational basis. (citation omitted) ***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) Moreover, the court should not substitute its judgment for that of an administrative or legislative body if there is substantial evidence to support the ruling. (citation omitted) (*Bayshore Sewerage Co. v. Dept. of Env't. Protection*, 122 *N.J. Super.* 184, 199-200 (Ch. Div. 1973), *aff'd* 131 *N.J. Super.* 37 (App. Div. 1974))

Guided by these principles, having carefully reviewed and considered the record, including the transcripts of the Special Committee and Executive Committee hearings, all exhibits, and the parties' briefs on appeal, the Commissioner is persuaded that Nutley has been accorded the full measure of due process to which it is entitled, that the Special Committee's findings and conclusions are well-grounded in the record, and that Nutley, therefore, has failed to establish that the NJSIAA's determination upholding the denial of Nutley's withdrawal from the NNJIL was arbitrary, capricious or unreasonable. However, this said, the Commissioner is compelled to emphasize that the NNJIL must immediately act to implement, as directed by the NJSIAA's Executive Committee, inter-division or "cross over" game scheduling based upon the relative strength of programs of the competing schools to help insure a healthy competitive balance for all schools in parochial-public school competition.

Accordingly, having found that due process was granted Nutley and that there is sufficient credible evidence in the record to support the NJSIAA's denial of its request to leave the NNJIL, the Commissioner can find no basis under the established standard of review on which to overturn the NJSIAA's decision and, therefore, affirms its determination in this matter.

IT IS SO ORDERED.⁷

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 3, 2005

Date of Mailing: October 3, 2005

⁷ This decision, as the Commissioner's final determination in this matter, may be appealed to the Superior Court pursuant to *N.J.S.A.* 18A:11-3.