

#394-12

ERICK D. VILLAGRA, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 NEW JERSEY STATE INTERSCHOLASTIC : DECISION
 ATHLETIC ASSOCIATION, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner sought reversal of the final decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) denying his request for a waiver of the Eight Semester Rule – which limits a student’s eligibility for high school athletics to eight consecutive semesters following his or her entrance into the 9th grade – to allow Erick Villagra (Villagra) to participate in sports during his senior year at Bernards High School (Bernards). Villagra played junior varsity soccer as a freshman and varsity soccer as a sophomore, prior to his family’s decision in June 2010 to send their son to Paraguay to attend school for financial and other personal reasons. Petitioner did not adjust well in Paraguay, and returned to the U.S. in July 2011. Subsequently, petitioner had to repeat his junior year at Bernards because he did not earn enough credits during the year he spent in Paraguay; petitioner played varsity soccer for Bernards during that year. He did not participate in sports during his year in Paraguay. In April 2012, Bernards High School filed an Eligibility Waiver Request with the NJSIAA requesting a waiver of the strict application of the Eight Semester Rule to enable Villagra to compete in soccer during his senior year. The request was denied, as NJSIAA found that petitioner’s case does not meet the test of “truly extraordinary circumstances” that would warrant a waiver of the Eight Semester Rule. Petitioner subsequently appealed the decision to the NJSIAA’s Eligibility Appeals Committee.

The Eligibility Appeals Committee (EAC) determined that it could not grant a waiver of the Eight Semester Rule because, *inter alia*: the family’s decision to send petitioner to school in Paraguay was voluntary; petitioner did not maintain the required academic standards during his time in Paraguay; petitioner is an excellent soccer player on a highly competitive team; and allowing petitioner to play soccer during his fifth year of high school would upset the competitive balance between schools and displace another Bernards student who only had eight semesters of eligibility.

The Commissioner upheld the NJSIAA’s decision and dismissed the petition, finding that petitioner did not meet his burden so as to entitle him 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 to deny the request for waiver was not arbitrary, capricious or 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>

September 27, 2012

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For Petitioner, Erick D. Villagra, *Pro Se*

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

This case involves an appeal of a decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) denying the request of petitioner, Erick Villagra, for a waiver of the Eight Semester Rule to allow him to participate in soccer during his senior year at Bernards High School.

Athletic competition in New Jersey’s public schools is overseen by the 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 J of NJSIAA’s Bylaws, Rules and Regulations restricts a student’s eligibility to play sports to four years. Specifically, the provision – known as the Eight Semester Rule – provides that “[n]o student shall be eligible for high school athletics after the expiration of eight consecutive semesters following his or her entrance into the 9th grade. A student becomes ineligible for high school athletics when the class in which he/she was originally enrolled has graduated.” The NJSIAA Guidelines set forth the reasons for the Eight Semester Rule in the NJSIAA Handbook:

This rule is intended to prohibit “red shirting,” and is also aimed at preventing athletically gifted pupils who are not meeting academic standards from replacing other students who are maintaining their academic standards but who might not have the same athletic prowess. The rule is also aimed at maintaining a uniform progression among all member schools within a four-year cycle and equalizing competition within these schools.

In appropriate cases, the NJSIAA may grant a waiver of the eligibility rules if the overall objectives of the association and its member schools will not be undermined. The Eight Semester Rule can be waived when a student proves that he or she cannot comply with the rule due to circumstances beyond his or her control. Waivers of the eligibility rules, however, are not granted where a student has repeated an academic semester or year of secondary school for academic reasons. Additionally, the “waiver will take into account the size, agility and skills of the student and the degree to which these issues will fundamentally alter the competition.” (NJSIAA Handbook, p. 49).

The material facts in this case do not appear to be in dispute. Petitioner is a student at Bernards High School and he will begin his senior year in September 2012. In September 2008, petitioner began his freshman year at Bernards High School (Bernards) and played soccer as a freshman and a sophomore. Following his sophomore year, his parents made the decision – in June 2010 – to send him to Paraguay to attend school because his parents were having financial difficulties and had recently learned that their fifth child would be born with Down’s syndrome. Petitioner’s parents made the decision to send the petitioner and his sister to finish high school and to attend college in Paraguay because the cost of living and the cost of college is far less expensive than in the United States. Petitioner did not adjust well in Paraguay and, as a result, returned to the United States in July of 2011. Petitioner did not earn enough credits during the year he spent in Paraguay and therefore had to repeat his junior year at Bernards. Petitioner played junior varsity soccer as a freshman at Bernards and varsity soccer as a sophomore and junior at Bernards. Petitioner did not play any sports in Paraguay.

Based on the fact that petitioner has already had four years of athletic eligibility, on April 11, 2012 an Eligibility Waiver Request was filed by Bernards High School with the NJSIAA requesting a waiver from the strict application of the Eight Semester Rule so that the petitioner can participate in soccer during his senior year. On April 12, 2012 the NJSIAA Eligibility Committee voted 9-0 to deny the waiver request. The Eligibility Committee determined that petitioner is ineligible to participate in interscholastic athletics during his senior year because his case has not met the test of “truly extraordinary circumstances” warranting a waiver of the Eight Semester Rule.

Thereafter, the petitioner appealed the decision of the Eligibility Committee to the Eligibility Appeals Committee (EAC). Following a hearing on May 9, 2012 – at which sworn testimony was taken from the petitioner, his father and his aunt – the EAC concluded that it could not grant a waiver of the Eight Semester Rule. The EAC found that although the family made its decision in what they thought was the best interest of the petitioner, the family’s decision to send petitioner to Paraguay to school was a voluntary decision. The EAC was also concerned that the petitioner did not maintain the required academic standards during his time in Paraguay, noting that “waivers cannot be granted when they are based on a student’s failure to meet required academic standards.” (Eligibility Appeal Committee decision letter dated March 15, 2012). Additionally, the EAC determined that petitioner was an excellent soccer player on a highly-competitive team and that allowing him to participate in soccer during his fifth year of high school would upset the competitive balance between schools and would displace another Bernards High School student who only had eight semesters of eligibility.

On appeal, the petitioner argues that the NJSIAA should have granted the waiver request because his parents’ decision to send him to Paraguay for his junior year was a circumstance beyond his control that supports a waiver of the Eight Semester Rule. The petitioner stresses that he was a minor at the time his parents made the decision to send him to Paraguay and that he did not agree with the move. The petitioner also maintains that his grades were poor because he could not

concentrate in school due to being homesick and having a difficult time adjusting to the new culture and environment. Finally, the petitioner contends that he did not participate in any sports while he was in Paraguay, and therefore he meets the eligibility rules.

In reply, the NJSIAA asserts that it provided the petitioner with elaborate due process, noting that this case was heard by two NJSIAA committees, both of which unanimously denied the request for a waiver of the Eight Semester Rule. The NJSIAA stresses that the Eight Semester Rule is designed to ensure that all students have an equal opportunity to play high school sports, and limits that opportunity to four years. Here, petitioner is seeking an opportunity to play soccer in his fifth year of high school. The NJSIAA emphasizes that despite the fact that the family's decision to send petitioner to Paraguay was undoubtedly made for good reasons, the decision was entirely voluntary. The NJSIAA further maintains that the petitioner did not maintain the required academic standards during his time in Paraguay and waivers are not granted when a student has to repeat a grade due to academic difficulties. Additionally, allowing the petitioner a fifth year of eligibility would be unfair to other schools because he has had an extra year to grow and mature; he is an excellent soccer player; and he was a starter on a team that won a State Championship. Finally, if petitioner was able to play soccer during his fifth year of high school it would be unfair to other students at Bernards High School because he would be taking playing time away from another student who only has four years of eligibility. 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 this one:

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 his burden so as to entitle him 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. It is undisputed that the petitioner had to repeat his junior year when

he returned to the United States because he did not maintain the required academic standards during his time in Paraguay. The NJSIAA waiver provisions advise that waivers are not granted when a student has to repeat a grade due to academic difficulties. Further, the EAC's determination that the competitive balance between schools would be impacted if petitioner was afforded an opportunity to play soccer during his fifth year of high school was not arbitrary and capricious in light of the fact that the petitioner is an excellent soccer player at a school with an exceptional soccer team.

Accordingly – the Commissioner having found that petitioner was afforded the due process to which he was entitled and that the NJSIAA's decision denying the request for waiver was neither arbitrary nor unreasonable – the NJSIAA's decision is upheld and the petition of appeal dismissed.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: September 27, 2012

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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.