

New Jersey Commissioner of Education

Final Decision

Board of Education of the Cumberland County
Technical Education Center, Cumberland County,

Petitioner,

v.

Board of Education of the Cumberland Regional High
School District, Cumberland County and Board of
Education of the City of Millville, Cumberland County,

Respondents.

Synopsis

Petitioner, the Board of Education of the Cumberland County Technical Education Center (CCTech) filed an appeal in 2018 seeking to compel the respondent Boards to permit full-time students of CCTech who reside within either the Cumberland Regional High School District (Cumberland) or the Millville School District (Millville) to participate in their home district's athletic programs. The respondent Boards had denied CCTech's request, citing financial and other concerns, and contending that they were not required to permit CCTech students to join their athletic programs. CCTech asserted that the respondent Boards' denials were arbitrary, capricious and unreasonable. In a June 2018 decision, the Commissioner directed Cumberland and Millville to meet with CCTech to address logistical concerns and to develop an agreement that would enable CCTech students from Cumberland and Millville to participate in sports programs in their home districts; subsequently, the Commissioner proposed mediation as a means for the three schools to reach an agreement. Prior to the July 2019 hearing in this matter, Cumberland advised that it had reached an agreement with CCTech, and the petition as it pertained to Cumberland was withdrawn.

The ALJ found, *inter alia*, that: the issue here is whether Millville acted in an arbitrary, capricious, and unreasonable manner when it was unable to reach an agreement with CCTech to permit Millville resident students to participate in the sports programs of their home district; the Commissioner clearly expected the parties to reach an agreement within a reasonable period of time after his June 2018 decision; the policies of the New Jersey State Interscholastic Athletic Association (*NJSIAA*) govern this matter as Millville is an *NJSIAA* member; the applicable *NJSIAA* rule governing this issue clearly states that participation in interscholastic sports is subject to discretionary agreement between the principals of both the vocational school and the sending public high school; though discretionary, such determination must be reasonably based on legitimate considerations; CCTech has demonstrated by a preponderance of evidence that the reasons advanced by Millville for not coming to an agreement with CCTech are not legitimate, reasonable or practicable concerns; and there was no reason why CCTech students residing in Millville should be denied the opportunity to participate in Millville's athletic programs. Accordingly, the ALJ ordered Millville to admit CCTech students residing in Millville into the district's sports programs.

The Commissioner noted that, subsequent to the filing of the Initial Decision, Millville advised that the parties had reached a settlement. Accordingly, as an amicable resolution has been reached whereby Millville students attending CCTech are now able to participate in their home district sports programs, the Commissioner determined that the matter herein is now moot.

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.

September 19, 2019

OAL Dkt. No. EDU 11467-18
Agency Dkt. No. 189-8/18

New Jersey Commissioner of Education
Final Decision

Board of Education of the Cumberland County
Technical Education Center, Cumberland
County,

Petitioner,

v.

Board of Education of the Cumberland
Regional High School District, Cumberland
County and Board of Education of the City of
Millville, Cumberland County,

Respondents.

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Although the parties did not file exceptions to the Initial Decision, the Millville Board of Education (Millville) advised that the parties have reached a settlement and, accordingly, the matter should be deemed withdrawn.¹

Upon a comprehensive review of the record, the Commissioner finds that because the parties reached an amicable resolution in this case, enabling students who attend CCTech to participate in the athletic programs offered in their home districts, the matter is now moot. Further, now that CCTech students are permitted to participate in athletic programs at Millville, it is not necessary to evaluate whether Millville's prior rationale for prohibiting CCTech students

¹ The issues raised in the petition of appeal related to the Cumberland Regional Board of Education (Cumberland Regional) and the Cumberland County Technical Education Center (CCTech) were resolved prior to the ALJ's issuance of the Initial Decision, therefore, the ALJ deemed the matter withdrawn with respect to Cumberland Regional.

from participating in its sports program was based on bona fide, legitimate considerations. Accordingly, the petition is hereby dismissed as moot.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: September 19, 2019

Date of Mailing: September 20, 2019

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*. (*N.J.S.A. 18A:6-9.1*).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 11467-18

AGENCY DKT. NO. 189-8/18

**BOARD OF EDUCATION OF THE
CUMBERLAND COUNTY TECHNICAL
EDUCATION CENTER,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE
CUMBERLAND REGIONAL HIGH
SCHOOL DISTRICT, CUMBERLAND
COUNTY,³**

And

**BOARD OF EDUCATION OF THE
CITY OF MILLVILLE, CUMBERLAND
COUNTY,**

Respondents.

Mitchell H. Kizner, Esq., appearing for petitioner Board of Education of the
Cumberland County Technical Education Center (Flaster Greenberg, P.C.,
attorneys)

³ By letter dated July 29, 2019, the OAL was advised that the issues related to the Cumberland Regional Board of Education and CCTech had been resolved with a Memorandum of Agreement to be approved by their respective Boards of Education on July 25, 2019, that would permit Cumberland Regional student residents attending CCTech to participate in Cumberland Regional athletic activities. Accordingly, Cumberland Regional's involvement in this matter has been resolved and the petition, insofar as it relates to Cumberland Regional, is withdrawn.

John G. Geppert, Jr., Esq., appearing for respondent Board of Education of the Cumberland Regional High School District, Cumberland County (Scarini Hollenbeck, attorneys)

Arnold Robinson, Esq., appearing for respondent Board of Education of the City of Millville, Cumberland County (Robinson and Robinson, attorneys)

Record Closed: July 25, 2019

Decided: August 6, 2019

BEFORE **SUSAN M. SCAROLA**, ALJ (Ret., on recall):

STATEMENT OF THE CASE

The petitioner, the Board of Education of the Cumberland County Technical Education Center (CCTech), seeks to compel the respondents, the Board of Education of the Cumberland Regional High School District (CR) and the Board of Education of the City of Millville (Millville), to comply with the directive of the Commissioner of the Department of Education (Commissioner) and to resolve any outstanding issues in order to permit its full-time students who reside within those districts to participate in their athletic programs. CR has now resolved those issues with a Memorandum of Agreement (MOA); Millville has not, contending that it continues to have reasonable logistical and financial concerns.

PROCEDURAL HISTORY

In a previous related matter, EDU 12252-16, CCTech filed a Request for Emergent Relief to compel CR and Millville to permit its students to participate in sports in their home districts. On August 23, 2016, the request was denied, a decision adopted by the Commissioner on September 20, 2016.

On March 29, 2018, after three days of hearing, an Initial Decision was filed concluding that both CR and Millville had demonstrated by a preponderance of the credible evidence that they each had valid, legitimate, reasonable, or practical concerns for denying CCTech the ability to compel CR and Millville to admit its students into their respective athletic programs for school year 2016–2017.

On June 7, 2018, the Commissioner of Education issued an Order concurring with the ALJ that Cumberland and Millville’s decisions barring CCTech’s students from participating in their sports programs for the 2016–2017 school year were not arbitrary, capricious, or unreasonable. However, the Commissioner directed the principals of Cumberland and Millville to meet with the principal of CCTech within twenty days of his decision to address the logistical concerns and to develop an agreement that would enable the CCTech students to participate in sports programs in their home districts of CR and Millville.⁴ He reminded the Districts that a blanket policy purporting to bar all of CCTech students from CR’s and Millville’s athletic programs was “absolutely impermissible.” CCTech v. Cumberland Reg’l & Millville, EDU 12252-16, Comm’r (June 7, 2018), <http://njlaw.rutgers.edu/collections/oal/>.

Following this directive, CCTech met individually with CR (on June 26 and July 18, 24, 2018) and Millville (on July 3, 2018). The relative progress of those negotiations was disputed, and the parties were then unsuccessful in resolving the issues.

On August 6, 2018, CCTech filed a Petition for Emergent Relief with the Commissioner arguing that respondents were engaged in a pattern of delay in implementing the Commissioner’s June 7, 2018, decision. The Commissioner transmitted the matter to the Office of Administrative Law (OAL), where it was filed on

⁴ The Commissioner also set some parameters for the negotiations. Concerns about student enrollment and State funding were not “bona fide legitimate reasons” for failing to accommodate these students. He also directed CCTech to give the districts “all of the information necessary to facilitate meaningful discussion.” In the event an agreement could not be reached or if one of the parties failed to participate in the process, the Commissioner stated, CCTech “may file another petition of appeal.” Bd. of Educ. of Cumberland Cty. Tech. Educ. Ctr. v. Bd. of Educ. of Cumberland Reg’l High Sch. Dist., Cumberland Cty., Bd. of Educ. of Millville, Cumberland Cty., EDU 12252-16, Comm’r (June 7, 2018), <http://njlaw.rutgers.edu/collections/oal/>.

August 9, 2018, as OAL Dkt. No. EDU 11467-18. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

On August 14, 2018, the application for emergent relief was denied by the Hon. Kathleen Calemme, ALJ. On September 10, 2018, the Commissioner agreed that CCTech was not entitled to emergent relief, and directed that “this matter shall continue with proceedings at the OAL,” and “[W]hile this matter is pending at the OAL, [he would] designate an individual to facilitate discussions between the parties to assist in reaching an agreement that will enable the students to participate in sports in their home districts.” Up to that date, no agreement had been reached between the respective parties.⁵

On November 21, 2018, CR filed a motion for summary decision, which was joined by Millville on November 26, 2018, and assigned to me. On December 8, 2018, CCTech filed a response contending that the Commissioner had remanded the matter for further proceedings and that no reason had presented itself for the matter to be dismissed. On April 12, 2019, the motion was denied, and the matter continued.

Prior to the hearing, CR advised that CCTech and it had resolved their differences and that an MOA was pending their respective boards’ approval. The hearing was held on July 25, 2019, and the record closed.

On July 29, 2019, CCTech advised that the MOA had been approved by their respective boards on July 25, 2019, which would permit CR student residents attending CCTech to participate in CR athletic activities. That matter has been resolved, and the petition insofar as it related to CR is withdrawn.

⁵ The first mediation session scheduled for November 29, 2018, was postponed for a date unknown at Millville’s request.

FACTUAL DISCUSSION

Background⁶ (uncontested facts)

CCTech operates one of the five public high schools located in Cumberland County, New Jersey. From its inception in the 1970's until the school year ending June 30, 2016, CCTech operated as a part-time educational program whereby students would attend academic courses at the schools in their home districts (presumably where they resided) and would attend vocational courses at CCTech.

Commencing in September 2016, CCTech began operating a full-time program for ninth-graders, consisting of both vocational and academic courses, in new, larger facilities. Within four years, all students attending grades nine to twelve at CCTech will have been transitioned to full-time students. CCTech does not offer an athletic program for its students, although it has some athletic and sports facilities. The Bridgeton and Vineland public school districts have permitted their CCTech students to participate in their athletic programs. No formal protocol to handle disciplinary or other matters is in effect with those two districts and CCTech.

In April 2016, Millville advised its eighth-grade students and their parents that if they chose to attend CCTech, they would be unable to participate in sports at Millville.

Millville is a member of the New Jersey State Interscholastic Athletic Association (NJSIAA) and has adopted the bylaws, rules, and regulations of the NJSIAA that govern high-school sports and athletic activities. The applicable NJSIAA rule pertinent to the issues presented here is found in Article V, Section 4(G), CL3, of its bylaws, which provides:

If a Vocational/Technical High School/Public Academy does not offer the particular sport in which one of its full-time students desires to participate, that student may participate in that sport at his/her home school upon agreement of both

⁶ This information was set forth in the Initial Decision of March 29, 2018 and is provided for an understanding of the present issue.

Principals, regardless of the number of sports programs offered at the Vocational/Technical High School/Public Academy.

TESTIMONY

For Petitioner CCTech

Gregory McGraw is the principal of CCTech and participated in the transition of CCTech from part-time to full-time. He is familiar with sports in the public-school setting, having previously served as a coach at CR for a number of years.

After the Commissioner's decision in June 2018, he tried to resolve the issues with CR and Millville. Those with CR were resolved with an MOA that was to be signed by the respective boards on July 25, 2019.

McGraw met with Millville on July 3, 2018, and presented a proposed agenda to resolve the issues. Millville responded to the agenda about a month or two later (P-1). Much of the proposal responses, including paragraphs 1, 2, 5, 8, 9, 10, and 12 were satisfactory to CCTech, but particular areas of disagreement remained in paragraphs 3, 4, 6, 7, and 11. McGraw reviewed each of the responses.

Paragraph 3 of the proposal response reads as follows:

3. Academic Clearance.

Millville agrees to the proposal outlined by Mr. McGraw whereby CCTEC students would adhere to Millville academic standards for sports eligibility. CCTEC will assign an employee to monitor CCTEC student academic performance and email weekly status reports to Millville coaches.

Millville indicated that the second sentence needed to be clarified. CCTech was willing to permit Millville athletic directors to access CCTech's Genesis system to check

on students' academic progress. CCTech was also willing to assign a counselor and to provide weekly reports to Millville to ensure academic eligibility.

McGraw noted that CCTech students played sports on Vineland and Bridgeton's teams, and that their athletic directors have access to CCTech's computer system and there have been no issues. McGraw agreed that Millville coaches needed to monitor their athletic activities in Millville to ensure eligibility.

Paragraph 4 of the proposal response reads as follows:

4. Transportation.

Millville agrees to the offer of CCTech providing transportation to CCTech students at its own expense.

CCTech must transport its students and arrive on the same schedule as Millville students for practice and games so as not to create additional supervision burdens for Millville staff. CCTech must provide transportation at the end of each student's athletic activity back to CCTech for parental pickup so as not to create additional supervision burdens for Millville staff of CCTech students.

CCTech must transport its students to and from all Millville athletic program activities so that CCTech students adhere to the same schedule as Millville students including college recruitment interviews.

McGraw testified that CCTech would transport its students to practices at the same times that practices commence. McGraw stated that it is unreasonable for CCTech to transport students from Millville back to CCTech after activities when they would be in Millville, where they presumably live. They could go home just like any other Millville athletes on the team. That was how it was working for Vineland, Bridgeton, and soon CR. CR was a bit different since its student athletes attending CCTech were from different areas, so CR had agreed to send an activity bus to CCTech to transport students.

As for the provision that “CCTech must transport its students to and from all Millville athletic program activities so that CCTech students adhere to the same schedule,” McGraw had no problem with practices, but he wanted some flexibility, for example, if a student were taking a test. Practices and games start at different times, and CCTech would be willing to transport its students to the away games. Sometimes parents can transport the students, or the security team. In some cases, CCTech might be on the way to the game, so pickup could occur that way. They would try to match up transportation with the schedule.

CCTech was willing to make every effort to get students to college recruiting interviews, but wanted some flexibility in working it out. McGraw has been able to work out any issues with Vineland and Bridgeton when this came up, and has had no major problems with these towns when it came to the student athletes.

Paragraph 6 of the proposal response reads as follows:

6. Student Discipline.

Millville cannot agree to disparate disciplinary standards and systems for CCTech and Millville students participating in the sports program. Such disparities would result in unequal treatment of CCTech and Millville students which would be perceived as fundamentally unfair by both our students and our community.

CCTech and its students would have to agree to be bound by Millville school and team disciplinary standards for their conduct while participating in the Millville sports program and further agree to submit themselves to the Millville disciplinary system including final review by the Millville Board of Education.

CCTech’s position was that team discipline was Millville’s and its coaches’ decision and that CCTech would support that decision. But if those infractions rose to a team punishment, that should be a collaborative decision with CCTech and Millville. CCTech wants to hold its students accountable and will discipline them as much as possible as Millville does, but wants the opportunity to work it out with Millville. For

example, if a student athlete were to cause a problem, but that student was in the process of being evaluated for an IEP, that would be something that CCTech would want to decide.

McGraw agreed that all students should be held to the same standards and that there should be no disparate treatment. He thought potential disparities could be resolved with collaboration. It was unreasonable for CCTech to not have any say in discipline of a student attending its school.

McGraw did not see collaboration as a problem. He recalled an incident a year or two ago where a fistfight occurred between two girls. The principal of the school wanted a ten-day suspension for both. Although CCTech thought the punishment was excessive, the principal ultimately agreed to keep it the same for both students. In the MOA with CR, they agreed on team discipline, with the coach having that authority, but for infractions within school, CCTech needed input.

Paragraph 7 of the proposal response reads as follows:

7. Other Logistical Issues.

Participation in the sports program is a privilege that must be earned by Millville students by adherence to higher standards of conduct including fostering school spirit, serving as role models and school leaders and involvement in the community. It would not be fair to have Millville students earn the privilege of participation and not require the same of CCTech students. Millville must run one sports program with rules that apply equally to all participants. Therefore, CCTech students would have to meet the same standards by participating in the same activities on the same schedule as their teammates. For example, Leader's Club activities; pep rallies; nutritional program; student mentoring activities; community activities. CCTech must also transport its students to these activities at its sole expense.

McGraw noted that not all athletes are members of the Leader's Club, as it is tied to physical education and teachers' recommendations. It is not inclusive of all students or athletes. As for other activities, such as pep rallies, or other entire-team events

during the school day, CCTech would make every effort to get the student there, subject to whatever may be happening at CCTech, such as testing. It would be a collaboration between the principals. If every team member were expected to perform community service, then the Millville student attending CCTech would also be expected to participate.

McGraw agreed that team unity was important and that having all members of a team following the same rules and standards was important. He expected that they would be able to work out a way for CCTech and Millville students to meet the same standards and follow the same rules, just as CCTech had done with the other districts.

Dina Rossi Elliott, Ed.D., testified that she has been the superintendent of CCTech for seven and a half years. She stated that McGraw was accurate in his responses to Millville's concerns as presented in the agenda response proposals. She addressed the remaining proposal issues:

Paragraph 8 of the proposal responses reads as follows:

8. [Financial Concerns.]

Millville will pay for the general cost of the sports programs utilized by CCTech students but will not incur extra out of pocket expenses for CCTech students, e.g., uniforms—equipment—supplies or need for additional staff solely due to CCTech student participation. CCTech must pay those out of pocket expenses for its students. The estimated cost per student would be in the \$300–500 range depending upon the sport.

It would be unfair to ask the Millville district to use its scarce resources to pay the extra out of pocket costs for CCTech students.

Dr. Rossi was familiar with the Commissioner's decision of June 2018. Although the decision said nothing about requiring CCTech to pay for sports, CCTech decided to offer a financial reimbursement for sports because it was clear that finances were an issue. So CCTech came up with a plan that it could afford and that also would not be a

financial barrier to students participating in sports. The financial incentive to Millville also included Vineland, Bridgeton, and CR.

In determining the financial assistance to offer to districts sending students to CCTech, it created a \$100,000 fund. Each of the four sending districts (Vineland, Bridgeton, CR, and Millville) would receive a portion based on their respective percentage of students enrolled as of October 15 of each year. CCTech used this number because it is part of the ASSA,⁷ and the ASSA not only must be agreed upon with the sending district, but also was subject to State audit. CCTech could not use the number of students who participated in sports, because this number was always in flux and was not reliable because students get cut or quit a team. Some students might participate in three sports; others might participate in just one. It would be an unreliable statistic to count athletes because they could not be tracked financially or accurately.

CCTech thought its formula was a solid way to pay the districts. It looked at funding for 2018–2019 and used that year as the basis for their calculation. The amount it agreed upon was affordable and had minimal impact on the financial status of the district. For 2018–2019, Vineland had 317 students attending CCTech (44.77% of the total CCTech enrollment); Bridgeton had 137 students (19.35%); CR had 103 students (14.55%); and Millville had 151 students (21.33%). For year 2018–2019, Millville would have received \$21,327.68. Based on the projected enrollment for 2019–2020, Millville will have approximately 21.84% of CCTech’s student enrollment and would receive a payment of \$21,835.44. The payment would be made to Millville in December when the ASSA is finalized.

CCTech also polled its students to see how many were interested in participating in sports, and determined that those numbers were unreliable. Some students said they might try but were not sure. Others picked sports whose seasons overlapped or were duplicates. It looked at Vineland and Bridgeton to try to get a sense of how many of the CCTech students participated in sports and what percentage participated in those

⁷ Application for State School Aid.

towns. Using those numbers, it estimated that approximately thirty to forty Millville students attending CCTech would be participating in sports.

Taking all sports into consideration, CCTech made a reasonable estimate of \$300–500 per student. If forty Millville students decided to play sports, the total using the highest amount of \$500 per student was \$20,000. Using the funding formula as determined by CCTech will provide Millville with \$21,853, more than the estimated cost. Dr. Rossi noted that the Commissioner did not say that CCTech had to pay anything for its students to participate in sports activities in their resident districts. She also noted that a number of students had declined the offer to attend CCTech, and of those who declined and gave a reason, approximately twenty-five students said it was because of sports. Dr. Rossi agreed with McGraw that CCTech’s cooperation with Vineland and Bridgeton has been running smoothly.

Paragraph 11 of the proposal responses reads as follows:

11. [Term of Agreement.]

Any agreement will be for a term of 12 months and then renegotiated by the parties.

Millville wants the agreement to be renegotiated after a year. CCTech sees this as a barrier to its students participating in sports. An ongoing cycle of starting and stopping negatively impacts students.

CCTech was able to resolve this issue with CR in their MOA by agreeing that at a specific time each year (February), they would meet to tweak the agreement before the end of the school year so that the athletes could remain on the fields and to provide their respective boards with notice of the resolution. CCTech would offer this same resolution to Millville, and objects to an automatic termination of the agreement.

As to CCTech offering sports, Dr. Rossi noted that at this time, CCTech had no plans for interscholastic sports. This was because it has a student population that may not be sizable enough to field a team; because it may have student athletes on another

district's field, which could negatively affect student recruiting or team unity in ongoing sports; and because CCTech's mission is academic and technology oriented for career and college.

Sports programs take money from the budget, and academic and technology training is costly. For example, CCTech must pay for shop equipment and culinary kitchens that are commercial grade. Combining this with academic funding makes sports teams not currently feasible. CCTech focuses its resources on career and college, and has extracurricular activities tied to that. If CCTech had a sports program, those monies would have to be budgeted as in any other district, so the cost would be included in calculating tuition and the costs would go up to sending districts.

Dr. Rossi was aware that Millville had been an Abbott district and that it was an economically challenged community. Ninety percent of its budget was from State aid. She agreed that Millville was facing budget deficits and had been cutting programs and staff, which could hurt students. She also agreed that it was a reasonable concern of Millville's that the cost of CCTech students participating in Millville sports be "cost neutral."

For Respondent Millville

Stephanie DeRose testified that she is the principal of Millville Senior High School. Her concern was discipline, and that the perception of disparity in discipline could affect the students. She did not want students to feel discriminated against and that students could be placed in a bullying situation if discipline were disparate. School discipline could result in a student being disqualified from participating in sports, so it was important that CCTech students participating in Millville sports be held to the same standard as Millville students.

As far as collaboration with McGraw, she noted that he may not always be there. Millville has in-school suspension but CCTech does not, and this could result in

students not being eligible to play sports. CCTech does not have the middle level of discipline that Millville has.

DeRose noted that Millville has budgeting issues and not enough money. Sports costs vary, but the high school would have to absorb the additional costs if CCTech students played on Millville teams. She might have to cut other budget items to accommodate the students. Millville is in the process of developing its own vocational program, and she would have to sacrifice something to make sports possible. DeRose wanted the cost of sports for CCTech students in Millville to be cost neutral, and CCTech's formula was based on speculation. She acknowledged that Millville would be receiving over \$21,000 under the formula developed by CCTech. Costs could change over time. She wants cost neutrality so that Millville does not have to sacrifice any of its programs to pay for CCTech students to play sports in Millville. This can be done by having costs itemized for each student athlete.

Michael Jones, a teacher of history at Millville Senior High School, is also head coach of the men's basketball team, and the spring and fall weight team. He is familiar with the dynamics of sports in Millville.

He expressed how important it is for a coach to have all his athletes adhere to the same standards and rules. Students vocalize if they see disparity. If a CCTech student participates in Millville sports and is treated differently, such disparity would affect team unity, which could negatively impact team performance.

Millville students are held to certain expectations to play sports. They are expected and required to participate in community activities and community service, such as cleaning up streets, charity work, and fundraisers. These are team bonding experiences. Millville set these parameters to help the community and to get its students to experience helping others. If CCTech students played in Millville and did not perform all these activities, it would be detrimental to the sports program.

Jones did not recall any student who did not participate in these activities, but if they did not, he would try to come up with alternatives. He could not think of any reason why CCTech students would not participate, but if they did not, he would try to find out the reason and to find something else for the student to do.

Findings

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's story in light of its rationality or internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Here, the witnesses appeared to testify credibly. Each one answered the questions directly. Each of these educator witnesses was knowledgeable, insightful, and forthright about his or her respective educational and athletic programs. They appeared to care deeply for their students and expressed their concern about how their respective programs would be impacted by the decisions being made. No witness appeared to be unreasonable in his or her view about sports participation, or in his or her ability to collaborate with others. I accept their testimony as fact. The real issue is

how these facts can be applied to the particular concerns of Millville and its relationship with its students who attend CCTech and who wish to participate in Millville sports activities.

LEGAL ANALYSIS

The issue presented by CCTech is whether Millville was acting arbitrarily, capriciously, and unreasonably when it was unable to reach an agreement with CCTech to permit Millville student residents who had enrolled at CCTech to be able to participate in its athletic and sports programs.

It is clear that the Commissioner expected the parties to reach an agreement within a reasonable period of time after his decision of June 2018. The original petition covered school year 2016–2017. School year 2019–2020 is now fast approaching and no agreement has yet been reached between Millville and CCTech. Students who entered as freshman may graduate next year without having had the opportunity to play sports in their home district.

Because Millville did not have a formal policy addressing the participation of vocational-school students in its athletic programs, the policies of the NJSIAA govern. Under N.J.S.A. 18A:11-3, a board of education may join a voluntary association, such as the NJSIAA, which regulates the conduct of student activities between and among members. “The said rules and regulations shall be deemed to be the policy of the board of education and enforced first by the internal procedures of the association.” N.J.S.A. 18A:11-3. The applicable NJSIAA rule pertinent to the issues presented here is found in Article V, Section 4(G), CL3, of its bylaws, which provides:

If a Vocational/Technical High School/Public Academy does not offer the particular sport in which one of its full-time students desires to participate, that student may participate in that sport at his/her home school upon agreement of both Principals, regardless of the number of sports programs offered at the Vocational/Technical High School/Public Academy.

Thus, participation in interscholastic sports is subject to the agreement of the principals of both the vocational school and the public high school.

In G.W.S. ex rel. A.F.S. v. Petrino & Rahway Board of Education, Union County, EDU 09797-99, Comm'r (November 29, 1999), <http://njlaw.rutgers.edu/collections/oal/>, the Rahway school district had permitted vocational students in grades nine through twelve to participate in extracurricular activities and sports programs in their home districts. Starting in September 1999, participation was denied to ninth-graders enrolling in the vocational school. The Commissioner noted that under the NJSIAA rules, vocational-technical-school students may participate in the sports programs of their home districts upon the agreement of the (high-school) principals. Although the decision to allow participation is discretionary, “that discretionary authority must be reasonably exercised based on bona fide, legitimate considerations.” The Commissioner has noted that participation in interscholastic sports may not be practicable or reasonable because of “scheduling constraints, transportation costs or logistical difficulties, or other valid considerations.”

The question, then, is whether Millville, a member of the NJSIAA, and the superintendent or principal in the high school have continuing bona fide, legitimate reasons for denying CCTech students the opportunity to participate in the Millville athletic program.

Each of Millville’s concerns as set forth in its proposal responses to CCTech’s offers will be addressed.

3. Academic Clearance.

Millville agrees to the proposal outlined by Mr. McGraw whereby CCTEC students would adhere to Millville academic standards for sports eligibility. CCTEC will assign an employee to monitor CCTEC student academic performance and email weekly status reports to Millville coaches.

As to whether this remains a reasonable concern, Millville indicated that it agrees with the first sentence, but wants a better way to verify academic eligibility. CCTech

agreed that Millville coaches needed to be able to monitor student academic performance. CCTech was willing to permit Millville to access CCTech's Genesis system to check on students' academic progress. CCTech was also willing to assign a counselor and to provide weekly reports to Millville to ensure academic eligibility. CCTech students play sports on Vineland and Bridgeton's teams and their athletic directors have direct access to CCTech's computer system, with no issues. The same policy would also apply to CR students as set forth in their MOA. No reason was presented why this plan would not also work for Millville.

It is not reasonable for Millville to deny CCTech students the opportunity to play sports based on this concern. Each principal can designate one or two people available for daily contact if the Millville coaches have concerns over the academic qualifications of any CCTech student athlete playing in Millville.

4. Transportation.

Millville agrees to the offer of CCTech providing transportation to CCTech students at its own expense.

CCTech must transport its students and arrive on the same schedule as Millville students for practice and games so as not to create additional supervision burdens for Millville staff. CCTech must provide transportation at the end of each student's athletic activity back to CCTech for parental pickup so as not to create additional supervision burdens for Millville staff of CCTech students.

CCTech must transport its students to and from all Millville athletic program activities so that CCTech students adhere to the same schedule as Millville students including college recruitment interviews.

Millville expressed concern that if CCTech students arrived at times not in sync with its program, students would be unsupervised. CCTech has agreed to transport its students to practices at the same times as practices commence to avoid this problem.

As for CCTech transporting its students back to CCTech after games or practices in Millville, it is unreasonable for CCTech to have to transport students from Millville back to CCTech when they would already be in the city in which they reside, Millville.

The students could go home, or be picked up by their parents, just as any other Millville resident athlete on the team. This was how it worked for Vineland and Bridgeton and, soon, CR, although is a bit different for CR, as its student athletes attending CCTech were from different areas. To handle this, CR will be using an activity bus to CCTech to transport its students.

As for the provision that “CCTech must transport its students to and from all Millville athletic program activities so that CCTech students adhere to the same schedule,” CCTech had no problem with this, but wanted some flexibility, if, for example, a student were taking a test. Practices and games start at different times and CCTech was willing to transport its students to the away games. Parents or the security team could also assist with transportation as agreed. In some cases, CCTech might be on the way to a game from Millville so the students could be picked up at CCTech. CCTech would try to match up transportation with the practice, game, and event schedules.

CCTech was willing to make every effort to get students to college-recruiting interviews, but wanted some flexibility in working it out. Any issues that arose with Vineland and Bridgeton were resolved amicably and no major problems have occurred. CCTech thought that some flexibility and collaboration with Millville would resolve any issues. No reason was presented to believe that the principals involved could not come to a reasonable resolution of any transportation issue that might arise.

It is not reasonable for Millville to deny CCTech students the opportunity to play sports based on this concern. Each principal or his or her designee can review the practice, game, and event schedules and can work out times for pickup and drop-off that do not cause students to be unsupervised, and get the students to their games, practices, and recruiting interviews on time.

6. Student Discipline.

Millville cannot agree to disparate disciplinary standards and systems for CCTech and Millville students participating in the sports program. Such disparities would result in unequal treatment of CCTech and Millville

students which would be perceived as fundamentally unfair by both our students and our community.

CCTech and its students would have to agree to be bound by Millville school and team disciplinary standards for their conduct while participating in the Millville sports program and further agree to submit themselves to the Millville disciplinary system including final review by the Millville Board of Education.

The issue of discipline and disparate treatment of CCTech students playing on Millville teams is a genuine concern for Millville, as well as for CCTech. Millville wants to retain all control over discipline of CCTech students playing sports in Millville, while CCTech wants to have input and use a collaborative practice to resolve any disciplinary issues that might arise.

Millville did not want students to feel discriminated against and wanted to prevent any bullying situations. Because school discipline could result in a student being disqualified from participating in sports, it was important that CCTech students participating in Millville sports be held to the same standards as Millville's students. Millville has in-school suspension but CCTech does not, and this could result in students not being eligible to play sports. CCTech does not have the middle level of discipline that Millville has.

CCTech's position was that team discipline was Millville's, and its coaches', responsibility and that CCTech would support their decisions. But if those infractions rose to a team punishment, CCTech thought that it should be a collaborative decision between it and Millville. CCTech wants to hold its students accountable and was willing to discipline them as much as possible as Millville does, but wanted the opportunity to work it out with Millville and have input and cooperation on any decision. CCTech proffered the example of a student athlete who might be in the process of being evaluated for an IEP. In such case, CCTech would want to have input into what discipline should be imposed.

CCTech agreed that all students should be held to the same standards and that there should be no disparate treatment. It felt that potential disparities could be

resolved with collaboration between the principals or their designees. It was unreasonable for Millville to insist that CCTech not have any input into the discipline of its students participating in Millville sports and to yield final decision-making authority to the Millville BOE.

CCTech did not see collaboration as a problem. The principal of CCTech was previously able to resolve a disciplinary issue between two students. Although CCTech thought the punishment was excessive, the principal ultimately agreed to keep it the same for both students to avoid the appearance of disparate treatment. In the MOA with CR, CCTech agreed on team discipline with the coach having that authority, but for infractions within school, CCTech received input.

While disparate disciplinary treatment is a valid consideration for Millville, it would be unreasonable for it to have final say in imposing discipline on a CCTech student participating in Millville sports. The principals of the schools appeared to be reasonable and cooperative educators, seeking the best for their students. No reason was presented why they, or their designees, could not collaborate and reach agreement on any discipline to be imposed, except that they may not always be employed in these positions. This is not a sufficient basis to determine that CCTech and Millville would not be able to reasonably address any disciplinary issues that might arise.

Accordingly, it is not reasonable for Millville to deny CCTech students the opportunity to play sports based on this concern. The principals, or their designees, can collaborate and resolve any disciplinary issues that may arise.⁸

7. Other Logistical Issues.

Participation in the sports program is a privilege that must be earned by Millville students by adherence to higher standards of conduct including fostering school spirit, serving as role models and school leaders and involvement in the community. It would not be fair to have Millville students earn the privilege of participation and not require the same of CCTech students. Millville must run one sports program with rules that apply equally to all participants. Therefore, CCTech students would have to meet the same standards by participating in the same activities on the

⁸ If this becomes an issue, the parties can develop alternate methods for resolving disciplinary issues.

same schedule as their teammates. For example, Leader's Club activities; pep rallies; nutritional program; student mentoring activities; community activities. CCTech must also transport its students to these activities at its sole expense.

Both districts agreed that team unity was important and that having all members of a team following the same rules and standards was also important. Millville contended that its students are held to certain expectations to be able to play sports. They are expected, and required, to participate in community activities and community service, such as cleaning up streets, charity work, fundraisers, and team bonding experiences.

Millville set these parameters to help the community and to get its students to experience helping others. It argued that if CCTech students played in Millville and did not perform all these activities, it would be detrimental to its sports program. If all the athletes did not adhere to the same standards and rules, the disparity would affect team unity, which could negatively impact team performance.

As to the activities listed by Millville, CCTech noted that not all athletes are members of the Leader's Club. As for other activities such as pep rallies, or other entire-team events that might occur during the school day, CCTech would make every effort to get its students there, subject to whatever may be happening at CCTech, such as testing. If every team member were expected to perform community service, then the Millville student attending CCTech would also be expected to participate. CCTech and Millville students could meet the same standards and follow the same rules, but this would require collaboration between the principals, recognizing that some flexibility was necessary. If a student could not participate in these activities, an alternative could be found that satisfied Millville.

It is not reasonable for Millville to deny CCTech students the opportunity to play sports based on this concern. Each principal or his or her designee can exchange schedules and proposed activities, and can reach a reasonable accommodation for Millville students attending CCTech, recognizing that some flexibility is required to assure that students are able to achieve academically as well as athletically.

8. [Financial Concerns.]

Millville will pay for the general cost of the sports programs utilized by CCTech students but will not incur extra out of pocket expenses for CCTech students, e.g., uniforms—equipment—supplies or need for additional staff solely due to CCTech student participation. CCTech must pay those out of pocket expenses for its students. The estimated cost per student would be in the \$300–500 range depending upon the sport.

It would be unfair to ask the Millville district to use its scarce resources to pay the extra out of pocket costs for CCTech students.

In his decision of June 2018, the Commissioner stated, “[C]oncerns regarding the impact on student enrollment at Cumberland and Millville and corresponding State funding do not equate to bona fide legitimate reasons for denying CTech students the opportunity to participate in sports programs.” CCTech v. Cumberland Reg’l & Millville, EDU 12252-16, Comm’r (June 7, 2018), <http://njlaw.rutgers.edu/collections/oal/>. The cost for permitting students to participate in sports was not addressed in the Commissioner’s decision. Neither does NJSIAA Article V, Section 4(G), CL3, mention any reimbursement for expenses incurred by the resident student district:

If a Vocational/Technical High School/Public Academy does not offer the particular sport in which one of its full-time students desires to participate, that student may participate in that sport at his/her home school upon agreement of both Principals, regardless of the number of sports programs offered at the Vocational/Technical High School/Public Academy.

Millville wants the cost of permitting CCTech students to play on its teams to be “cost neutral.” It cites budgetary concerns, the development of new projects, and State-aid losses. No statutory or regulatory basis for this proposition has been cited.

In order to address this concern, CCTech created a fund of \$100,000 as a financial incentive to be distributed to the four districts (Vineland, Bridgeton, CR, and Millville) whose students attend CCTech. It was not mandated by the Commissioner or the statute or regulations and was seen by CCTech as a reasonable way to address Millville’s concerns and to reduce the costs to the districts where CCTech students play.

In determining the amount distributed from the fund, CCTech would provide each of the four districts with a portion based on their respective percentage of students enrolled as of October 15 of each year (the ASSA number). CCTech used this number because the ASSA must be agreed upon with the sending district, and was also subject to State audit, so it could be verified by any district. CCTech could not use the number of students who participated in sports because this number was always in flux and was not reliable. It is a statistic that cannot be accurately tracked or verified.

Using 2018–2019 as the basis for their calculation, Millville had 151 students attending CCTech (21.33% of the total CCTech enrollment) and would have received \$21,327.68. Based on the projected enrollment for 2019–2020, Millville would have approximately 21.84% of CCTech’s student enrollment and would receive a payment of \$21,835.44. The payment would be made in December when the ASSA is finalized by the State.

CCTech estimated that approximately thirty to forty Millville students attending CCTech would be participating in sports. Taking all sports into consideration, CCTech made the reasonable cost estimate of \$300–500 per student. If forty students decided to play sports, the total using the highest amount of \$500 per student was \$20,000. Using the funding formula as determined by CCTech would have provided Millville with \$21,853, more than the estimated cost.

Millville objected to CCTech’s proposal and countered that it wanted to be paid in accordance with an itemized list of the cost for each student athlete: Millville did not want to receive more than it was entitled to for the cost of athletic participation, nor did it want to receive less. However, CCTech felt that this counter-proposal was unwieldy. Students may try out for a sport or start and drop out. Or they may switch sports. They may participate in several sports. An accounting would not be available with any reasonable accuracy for verification by the public, unlike CCTech’s proposal, which is capable of verification.

Accordingly, it is not reasonable for Millville to deny CCTech students the opportunity to play sports in Millville based on this concern, as CCTech has made a very reasonable proposal that addresses this issue for Millville and its three other sending districts.

11. [Term of Agreement.]

Any agreement will be for a term of 12 months and then renegotiated by the parties.

Millville wants the agreement to be renegotiated after a year. CCTech objects to an automatic termination and proposes to resolve this issue as it did with CR in their MOA by agreeing that, at a specific time each year (February), they would meet to tweak the agreement before the end of the school year so that the athletes could remain on the fields and to provide their respective boards with notice of the resolution.

The position of CCTech is reasonable. Given that it has been more than three years since this litigation commenced and the end is not yet in sight, and its students are not yet participating in sports, it would be most unreasonable to terminate the agreement after twelve months and have to start anew. It is not reasonable for Millville to want to renegotiate each year with the likely attendant delay in implementing the Commissioner's directive to permit the CCTech students to play sports in the district where they reside.

Accordingly, it is not reasonable for Millville to deny CCTech students the opportunity to play sports based on this concern.

CONCLUSION

Under the NJSIAA rules as adopted by Millville, vocational-school students may participate in the sports programs of their home districts upon the agreement of the principals. Although the decision to allow participation is discretionary, that discretionary authority must be reasonably exercised based on bona fide, legitimate considerations. Here, I **CONCLUDE** that CCTech has demonstrated by a

preponderance of the credible evidence that the reasons advanced by Millville for not coming to an agreement with CCTech for the participation of its students in Millville's athletic activities, as directed by the Commissioner, are not legitimate, reasonable, or practicable concerns. CCTech has addressed each concern of Millville with reasonable and practical solutions. Accordingly, there is no reason why CCTech students residing in Millville should be denied the opportunity to participate in Millville's athletic program.

ORDER

I **ORDER** that the application of the petitioner, Cumberland County Technical Education Center, Cumberland County, to compel the respondent, the Board of Education of the City of Millville, Cumberland County, to admit its students residing in Millville into Millville's athletic and sports programs, is **GRANTED**. The principals of the high schools shall collaborate in effectuating this decision.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

August 6, 2019

DATE



SUSAN M. SCAROLA, ALJ

Date Received at Agency:

Date Mailed to Parties:

SMS/cb

APPENDIX

WITNESSES

For petitioner Cumberland County Technical Education Center:

Gregory McGraw

Dina Rossi Elliott

For respondent City of Millville:

Stephanie DeRose

Michael Jones

EXHIBITS

For petitioner Cumberland County Technical Education Center:

P-1 Meeting Agenda, dated June 27, 2018

P-2 Memorandum of Agreement between CCTech and CR (not provided)

P-3 Allocation of Fund

P-4 CCTech Proposed Athletic Compensation

For respondent City of Millville:

R-1 Millville Response to 7-3-18 Meeting

OAL exhibit:

OAL-1 Letter dated July 29, 2019, approving MOA between CCTech and CR