

New Jersey Commissioner of Education

Final Decision

T.M.,

Petitioner,

v.

New Jersey State Interscholastic 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 entrance into the 9th grade – to allow T.M. to participate in sports during his senior year at Hillsborough High School (Hillsborough). T.M. played on the freshman basketball team at Franklin High School during the 2019-2020 school year as a ninth grader, prior to his family becoming homeless in January 2020. T.M. completed that year remotely from various locations, often with sporadic internet service, because of COVID-19 protocols then in effect. His grades fell during this period, though his lowest grade was an 89 (eighty-nine). During the 2020-2021 school year, T.M.’s family decided to keep him home from school because they were concerned about his family’s health if he attended in person and afraid his academics would suffer if he attended school virtually. In June 2021, T.M.’s family found stable housing, and he began attending Hillsborough as a sophomore for the 2021-2022 school year; he played on the varsity basketball team for both his sophomore and junior years, averaging seven points per game. In August 2023, petitioner filed an Eligibility Waiver Request with the NJSIAA requesting a waiver of the strict application of the Eight Semester Rule to enable T.M. to compete in basketball during his senior year. The request was denied, as NJSIAA found that T.M. did not meet the standards for granting a waiver of the Eight Semester Rule. Petitioner then appealed the decision to the NJSIAA’s Eligibility Appeals Committee, which also determined not to grant the waiver, concluding, *inter alia*, that T.M.’s voluntary decision not to attend school for the 2020-2021 school year was “effectively an academic redshirt” and that granting him a waiver would give him an opportunity – a fifth year of eligibility – that other students do not get.

Upon careful review and consideration, the Commissioner upheld the NJSIAA’s decision and dismissed the petition. In so doing, 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, and petitioner was afforded the due process to which he is entitled.

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, Gracia Montilus, Esq.

For Respondent, Alexis C. Smith, Esq.

This case involves an appeal of a decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) denying petitioner T.M.'s request for a waiver of the Eight Semester Rule to allow him to participate in sports during his senior year at Hillsborough High School (Hillsborough).

Athletic competition in New Jersey's public schools is overseen by respondent, NJSIAA, a voluntary, non-profit organization which promulgates the rules and regulations governing high school athletics. *See B.C. v. Cumberland Reg. Sch. Dist.*, 220 N.J. Super. 214, 234 (App. Div. 1987). Article V, Section 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 are not undermined by the proposed waiver. 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.

The material facts in this case do not appear to be in dispute. T.M. began high school at Franklin High School (Franklin) in Franklin, New Jersey during the 2019-2020 school year; he played on the freshman basketball team. In January 2020, T.M and his family were evicted from their home and stayed with family and friends in various locations. T.M. attended school remotely during the spring of 2020 due to the Covid-19 pandemic. T.M. had inconsistent access to the internet and struggled academically. However, T.M. passed all of his courses and his lowest grade was an 89 (eighty-nine). T.M.’s family decided to keep him home from school during the 2020-2021 school year because they were concerned about his family’s health if he attended school in person and his academics if he attended school virtually. In June 2021, T.M.’s family found stable housing, and he began attending Hillsborough as a sophomore for

the 2021-2022 school year; he played on the varsity basketball team for his sophomore and junior years.

Because T.M. has already had four years of athletic eligibility, on August 25, 2023, an Eligibility Waiver Request was filed by the petitioner with the NJSIAA, requesting a waiver from the strict application of the Eight Semester Rule so that T.M. can participate in basketball during his senior year. On September 26, 2023, the NJSIAA Eligibility Committee voted 6-0 to deny the waiver request, finding that T.M. did not meet the standards for granting 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 October 24, 2023, at which sworn testimony was taken from T.M. and his father, the EAC denied the request for a waiver of the Eight Semester Rule. The EAC determined that the family's choice for T.M. not to attend school during the 2020-2021 school year was voluntary and not compelled by circumstances beyond their control. Although T.M. expressed concerns that his grades would drop with remote learning, the EAC found that he passed all his courses with above-average grades during his remote learning period in the spring of 2020. The EAC also noted that remote or hybrid instruction was common in 2020-2021 and does not distinguish T.M. from other students across the State who learned remotely during the pandemic. Furthermore, although T.M. indicated that he had unreliable internet access, his sister was able to take college classes remotely in the fall of 2020, and T.M. did not re-enroll in school in January 2021 when the family regained reliable internet access. The EAC concluded that T.M.'s voluntary decision not to attend school for the 2020-2021 school year was "effectively an academic redshirt" and

granting him a waiver would give him an opportunity – a fifth year of eligibility – that other students do not get. The EAC found that T.M.’s participation as a fifth-year senior would provide Hillsborough an athletic advantage because he would be a starter for a competitive team who averaged seven points per game last season. Finally, the EAC concluded that allowing T.M. a fifth year of eligibility would be unfair to other students because there are a limited number of positions available on the varsity basketball team and if T.M. made the team, he would displace another student who only had four years of eligibility.

On December 21, 2023, the petitioner filed an appeal with the Commissioner of Education challenging the decision of the NJSIAA. On December 28, 2023, the NJSIAA filed its answer to the petition. On January 24, 2024, the petitioner filed his brief in support of the requested relief and on February 5, 2024, the NJSIAA filed its reply brief.

In his brief, the petitioner argues that the Eight Semester Rule was created to ensure that a student with poor grades who was ineligible to play because of poor academic standing would not be granted another year to play high school sports; however, T.M. has a 3.4 GPA. Additionally, T.M. argues that the circumstances of his family becoming homeless, together with the Covid-19 pandemic, were beyond his control.

In reply, the NJSIAA asserts that it provided the petitioner with 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 consecutive years starting when a student first enters high school. The NJSIAA argues that the family’s decision for T.M. not to attend school during the

2020-2021 school year was entirely voluntary, noting that both T.M. and his father indicated in their testimony that the reason they did not want T.M. to attend school remotely was because he did not want to risk having bad grades. Accordingly, the NJSIAA maintains that the petitioner's ineligibility is not due to circumstances beyond his control, but instead constitutes "academic red shirting" and that any waiver would contradict the intent of the Eight Semester Rule. Additionally, the NJSIAA argues that Hillsborough would receive an advantage if T.M. were granted a waiver. The NJSIAA notes that T.M. is six feet, five inches tall (6'5"), would be a starter on a competitive team, and averaged seven points per game last season. According to the NJSIAA, T.M.'s participation would displace another student who only had four years of eligibility for high school sports.

Upon careful review and consideration, the Commissioner determines to uphold the decision of the NJSIAA and dismiss the 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. Hillsborough is a member of the NJSIAA.

It is well-established that the Commissioner's scope of review in matters involving NJSIAA decisions, including determinations made by the EAC, 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 petitioners:

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, considering its duty to ensure fairness and integrity in athletic competition statewide, the Commissioner cannot find that the NJSIAA applied its rules in a patently arbitrary or unreasonable manner. T.M. has already had the opportunity to participate in four years of high school athletics – including the year when his family chose not to have him attend school – as envisioned by the eligibility rules. Moreover, the Commissioner is in accord with the NJSIAA’s finding that the family’s decision to have T.M. not attend school during the

2020-2021 school year was voluntary and does not amount to circumstances beyond their control. The record demonstrates that, despite the Covid-19 pandemic, T.M. earned good grades during the period of remote instruction in the spring of 2020, but his family chose to have him skip school during the following year for their own reasons. The Commissioner finds that the record supports the NJSIAA's conclusions that T.M.'s participation would affect the ability of another student to play basketball and would give Hillsborough an athletic advantage. Finally, the NJSIAA's conclusion that the circumstances in this case are effectively "red shirting" is not arbitrary, capricious, or unreasonable.

Accordingly, the Commissioner – having found that the 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 – upholds the NJSIAA's decision and dismisses the petition of appeal.

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 13, 2024
Date of Mailing: February 15, 2024

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J. Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.