

**New Jersey Commissioner of Education****Final Decision**

C.W.,

Petitioner,

v.

New Jersey State Interscholastic Athletic Association,

Respondent.

**Synopsis**

Petitioner appealed the decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) denying C.W.'s request for a waiver to allow him to participate in interscholastic sports at Hackettstown High School. C.W. is a sophomore at the Netherlands Reformed Christian School (NRCS), a nonpublic religious school that is not a member of the NJSIAA and does not provide an athletic program for its students; if C.W. attended public school, he would do so at Hackettstown High School, which is a member of the NJSIAA. The NJSIAA twice denied requests for a waiver in this case, explaining in both instances that its rules do not allow students who choose to attend a private school to participate in interscholastic sports at their local public high school, and that NJSIAA cannot grant a waiver or exception to the rule. C.W. subsequently filed a motion for emergent relief.

Upon careful review and consideration, the Commissioner upheld the NJSIAA's decision and dismissed the petition. In so doing, the Commissioner explained that he 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. The Commissioner concluded, *inter alia*, that the NJSIAA's application of the Enrollment Rule to C.W. is neither arbitrary nor discriminatory; NJSIAA presented sound reasons for precluding students attending nonmember schools from participating in sports at their local public schools, even though homeschooled students are afforded that opportunity if local board of education policy provides for it; further, the Commissioner concluded that the Enrollment Rule is not discriminatory and does not infringe on C.W.'s religious freedom. Accordingly, the Commissioner affirmed the NJSIAA's decision. Petitioner's motion for emergent relief was denied, and the petition of appeal was dismissed.

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.

**New Jersey Commissioner of Education**

**Final Decision**

A.W., on behalf of minor child, C.W.,

Petitioner,

v.

New Jersey State Interscholastic Athletic  
Association,

Respondent.

For Petitioner, Thomas J. Vargo, Esq.

For Respondent, Steven P. Goodell, Esq.

This case involves an appeal of a decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) denying petitioner's request for a waiver to allow his child, C.W., to participate in interscholastic sports at Hackettstown High School.

Athletic competition in New Jersey's schools is overseen by respondent, NJSIAA, 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. The NJSIAA's Enrollment Rule requires that "a student, to be eligible for participation in the interscholastic

athletic program of a member school, must be enrolled in that school.”<sup>1</sup> NJSIAA Bylaws, Article V, Eligibility of Athletes.

The material facts in this case do not appear to be in dispute. C.W. is a sophomore at the Netherlands Reformed Christian School (NRCS), a nonpublic religious school. NRCS is not a member of the NJSIAA, and it does not provide any athletics. If C.W. attended public school, he would do so at Hackettstown High School, which is a member of the NJSIAA.

On July 25, 2024, petitioner wrote to NJSIAA Executive Director, Colleen Maguire, requesting that she use her authority to make an exception to the Enrollment Rule to allow C.W. to play basketball at Hackettstown High School. On July 29, 2024, Ms. Maguire denied petitioner’s request, stating that the NJSIAA rules do not allow students who choose to attend a private school to participate in interscholastic sports at their local public high school, and that she does not have the authority to grant a waiver or exception to the rule. On August 24, 2024, petitioner again requested an authorization or waiver to allow C.W. to participate. On September 13, 2024, the NJSIAA issued a response, stating that the NJSIAA cannot grant the request for a waiver.

On September 23, 2024, petitioner filed an appeal with the Commissioner of Education challenging the decision of the NJSIAA. On September 30, 2024, petitioner filed an application for emergent relief. On October 4, 2024, the NJSIAA filed its answer and opposition to the application for emergent relief.

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<sup>1</sup> The student must also meet all of the other eligibility requirements of the NJSIAA’s Constitution, Bylaws, and Rules and Regulations.

Petitioner argues that the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution requires similarly situated persons to be treated alike. According to petitioner, homeschooled students – who do not have access to interscholastic sports – are permitted to participate in interscholastic athletics at their local high school, and because C.W. likewise has no access to interscholastic athletic sports, there is no legitimate reason to deny him the same opportunity, when the only difference between C.W. and homeschooled students is C.W.'s choice to attend a religious school.

Petitioner asserts that he is likely to succeed on the merits of his claim for these reasons, and that he meets the other criteria for emergent relief because C.W. will miss out on the start of the basketball season if this matter is not resolved quickly, causing irreparable harm; C.W.'s right to religious freedom and the prohibition against disparate treatment are well-settled; and the equities are in C.W.'s favor because the NJSIAA has not shown it will be burdened by C.W.'s participation.

In reply, the NJSIAA argues that there is no law or NJSIAA rule that supports petitioner's request. The NJSIAA contends that although some of its eligibility rules can be waived, there is no such provision for a waiver of the Enrollment Rule; even if there were, C.W. has not been prevented from playing sports due to circumstances beyond his control – which is typically required for a waiver – as his choice to attend NRCS is a voluntary one. Additionally, the NJSIAA asserts that the Executive Director has no authority to dictate to a member school that it must allow a student who is not enrolled at the school to participate on its sports teams, when there is no rule allowing for same.

The NJSIAA argues that its rules are neutral on their face and do not prevent C.W. from playing basketball at Hackettstown based on his religion, noting that some religious schools are members of the NJSIAA and offer sports, and that any student who attends a non-religious nonmember school is also precluded from participating in sports at a member school. The NJSIAA also contends that while Department of Education policy allows homeschooled students to participate in extracurricular activities if the local board of education has a policy permitting it, the NJSIAA has no authority to extend that policy to students who are not homeschooled.

The NJSIAA contends that, for these reasons, petitioner has failed to establish a settled legal right or a likelihood of success on the merits. The NJSIAA also argues that petitioner has failed to satisfy the other requirements for emergent relief, because there is no fundamental right to participate in high school athletics and therefore C.W. will not suffer irreparable harm if he does not participate. The NJSIAA also claims that the equities are in its favor because of its interest in enforcing its rules for all member schools and students.

Upon careful review and consideration, the Commissioner determines to uphold the decision of the NJSIAA and dismiss petitioner's appeal. It is well-established that the Commissioner's scope of review in matters involving NJSIAA decisions 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).

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

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.

“It is well-settled that participation in interscholastic sports is a privilege, rather than a right. As such, participation may not be denied for arbitrary and capricious reasons, nor may any participant be discriminated against in his application for such privilege.” *E.L. and N.L., o/b/o R.L. v. NJSIAA*, Commissioner Decision No. 382-98 (decided Aug. 31, 2008) (internal citation omitted). The Commissioner concludes that the NJSIAA’s application of the Enrollment Rule to C.W. is neither arbitrary nor discriminatory. The NJSIAA has presented sound reasons for precluding students attending nonmember schools from participating in sports at their local public schools, even though homeschooled students are afforded that opportunity if local board of education policy provides for it. Additionally, the Commissioner concludes that the Enrollment Rule is not discriminatory and does not infringe on C.W.’s religious freedom. The Commissioner finds that

C.W., who has chosen to attend NRCS, is not similarly situated to homeschooled students for purposes of participating in sports. Furthermore, the Enrollment Rule is applied equally to all students who attend nonmember schools – religious and non-religious alike. Finally, C.W. and his family have made a voluntary choice for him to attend NRCS. This choice “does not elevate their claim to one of prejudicial or unjust treatment; indeed, many parents are similarly faced with having to weigh the varied components of a private or parochial education against those of a public school education.” *Ibid.*

Because the Commissioner has determined to affirm the NJSIAA’s decision on its merits, the request for emergent relief is moot.

Accordingly, the Commissioner affirms the NJSIAA’s decision. Petitioner’s motion for emergent relief is denied, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>2</sup>



ACTING COMMISSIONER OF EDUCATION

Date of Decision:      October 25, 2024  
Date of Mailing:      October 28, 2024

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<sup>2</sup> 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.