

B.R.I., on behalf of minor child, E.I.,	:	
	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
	:	
V.	:	DECISION
	:	
NEW JERSEY STATE	:	
INTERSCHOLASTIC ATHLETIC	:	
ASSOCIATION,	:	
	:	
RESPONDENT.	:	
	:	

SYNOPSIS

Petitioning parent sought reversal of the NJSIAA’s decision not to allow his son, who attends private school, to play on a high school tennis team in the Cherry Hill Public School District. Petitioner sought waiver of the provisions of Article V, Section 1, of the NJSIAA Bylaws.

The NJSIAA determined that petitioner’s son, E.I., a classified student with Tourette Syndrome, was not eligible to play tennis at Cherry Hill West since petitioner, without involvement by the Cherry Hill Child Study Team, unilaterally determined to place his child in a private school that was not a Department of Education approved school nor a member of NJSIAA.

The Commissioner found that petitioner was provided the due process to which he was entitled; that the NJSIAA made every effort to provide a full, fair and timely hearing by the Eligibility Appeals Committee; and that NJSIAA’s rule was not applied in an inconsistent manner. Since no student, nonpublic or public, attending one school is permitted to play sports for another school, unless assigned by that school to a vocational/technical school, or as a result of the Child Study Team designation of Individualized Educational Plan, the exception requested could affect all NJSIAA member schools and, thus, create situations where proper oversight and administration of NJSIAA rules would be impossible. Moreover, the Greenberg Academy, where E.I. is enrolled, has no relationship whatsoever to the NJSIAA or the Cherry Hill Child Study Team or the Cherry Hill School District. The Commissioner found that the NJSIAA’s decision to deny E.I.’s request for waiver of the provisions of Article V, Section 1, of the NJSIAA Bylaws was not arbitrary, capricious or unreasonable. Petition 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.

October 9, 2003

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PETITIONER, :
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For Petitioner, Frank P. Cavallo, Jr. (Parker, McCay & Criscuolo, P.A.)

For Respondent, Michael J. Herbert, Esq. (Herbert, Van Ness, Cayci & Goodell)

This matter came before the Commissioner of Education on June 9, 2003, by way of a Petition of Appeal seeking reversal of the final decision of the New Jersey Interscholastic Athletic Association (NJSIAA) not to allow petitioner’s son, who attends private school at the Center for Education, to play on a high school tennis team in the Cherry Hill Public School District. Briefs and the underlying record of proceedings before the NJSIAA were duly submitted in accordance with the provisions of *N.J.A.C. 6A:3-7.1 et seq.*, and the record on appeal closed on August 1, 2003.

The material facts and procedural history of this matter are as follows: E.I. is domiciled in the Cherry Hill School District and attended the public schools of the District from

¹Although the Petition of Appeal, when filed, was captioned, *B.R.I. and R.S.I., on behalf of minor child, E.I. v. New Jersey State Interscholastic Athletic Association*, Petitioner R.S.I., E.I.’s mother, did not provide a notarized statement of verification as required by *N.J.A.C. 6A:3-1.4*. By letter of June 10, 2003, Petitioner B.R.I., who was acting *pro se* at the time, was advised that “no verification has been filed by petitioner R.S.I., so that, if she wishes to continue as a petitioner in this matter, such verification must be filed within 10 days of receipt of this notice.” In that neither B.R.I. nor R.S.I. responded to this notification nor provided the requested verification, B.R.I. is deemed the sole petitioner in this matter.

grade one through grade ten. By his parent's account, E.I. was put on home instruction by the third marking period in tenth grade as he exhibited clinical depression and school phobia due in part to symptoms of Tourette Syndrome and Auditory Processing Delays which affected his performance and social interactions with other students. In consultation with E.I.'s Neuropsychiatrist and the Cherry Hill High School West Child Study Team, E.I.'s medications were altered and additional medications were administered for the depression and E.I. received counseling to address his school phobia. Thereafter, the medications decreased E.I.'s rage episodes and his depression so that he was able to return to Cherry Hill West in the Fall of his junior year. His tics, however, worsened and, according to petitioner, E.I. was tormented by students at the high school. Additionally, according to petitioner, E.I.'s medications were not being followed as required by E.I.'s Individual Education Program (IEP) and E.I. was becoming more and more anxious at the thought of facing another school day. As a result, at the beginning of November 2002, petitioner unilaterally decided to place E.I. at the Greenberg Academy, sometimes referred to as the Center for Education, where Tourette Syndrome students are educated in an individualized environment. Petitioner claims that E.I.'s tics have lessened; he has been accepted by his classmates without ridicule; he has attended almost every day during the 2002-2003 school year; and he has completed eleventh grade.

It is undisputed that at no time did petitioner seek to have E.I. placed by the school district, in the Center or elsewhere, since he believed E.I.'s situation required immediate resolution. When E.I. then sought to participate on the Cherry Hill High School West Tennis Team during the 2002-03 school year,² his request was denied by the local school district based on its obligation to abide by operative rules of the NJSIAA. On or about March 3, 2003, a

² E.I. played tennis on the Cherry Hill West High School tennis team during his freshman and sophomore years while attending high school at Cherry Hill West.

request for eligibility waiver was made to NJSIAA, supported by a letter from the principal of Cherry Hill West High School, and its denial was unsuccessfully appealed to the NJSIAA Eligibility Appeals Committee (Committee), where, on March 5, 2003, the Committee conducted a hearing and denied petitioner's appeal. The denial of petitioner's request for an eligibility waiver for E.I. to play tennis for Cherry Hill West High School was memorialized in a written document on March 13, 2003, which constitutes the final decision now before the Commissioner on appeal.

PETITIONER'S POSITION

Initially, petitioner asserts that the NJSIAA acted arbitrarily and capriciously when it denied petitioner's request to participate on the tennis team at Cherry Hill West High School. (Petitioner's Brief in Support of Appeal at 6-7) *Citing Florence County School District Four v. Carter*, 510 U.S. 7, 12 (1993); *Bernardsville Board of Education v. J.H.*, 42 F.3d 149 (3rd Cir. 1994); *School Comm. of Burlington Mass. v. Department of Education*, 471 U.S. 359 (1985) and pointing to *N.J.A.C.* 6A:14-2.10 and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.S., 1400 *et seq.*, petitioner argues that a parent has the right to place his child in a private school without the consent of their local board of education. (*Id.* at 7) Petitioner points out that a student placed in a private school setting by the Cherry Hill West Child Study Team or by an Individualized Placement Program or through assignment to a vocational school program, would be permitted to participate in interscholastic sports for Cherry Hill West even where the private school placement resulted in enrollment in a school that is not a member of NJSIAA because the student remains under the jurisdiction of the assigning school. (*Ibid.*) Thus, petitioner argues, NJSIAA's decision denying petitioner's request was based on petitioner's

decision not to request payment for his son's education or to wait over three months to be placed in an institution which may not have achieved the success that his placement with the Center for Education has achieved with his son. (*Id.* at 8)

Secondly, petitioner submits that the NJSIAA violated the Rehabilitation Act of 1973, which provides that no otherwise qualified individual with a disability shall be excluded solely by reasons of his or her disability from participation in, or be denied the benefits of, any program or activity receiving federal financial assistance. (*Id.* at 9) Citing numerous federal court cases, petitioner maintains that NJSIAA is subject to the Rehabilitation Act and, therefore, required to provide a handicapped individual the opportunity to participate in its programs. (*Id.* at 11) Thus, petitioner contends, E.I. is excluded from participation in the Cherry Hill West High School program solely because of his handicap. (*Id.* at 12) If E.I. were not handicapped, petitioner contends, he would remain a student at Cherry Hill West High School and, thus, be entitled to participate in the tennis program. (*Ibid.*) Therefore, petitioner concludes, the NJSIAA decision must be reversed as violative of the Rehabilitation Act of 1973.

NJSIAA'S POSITION

In presenting its "Statement of Facts," the NJSIAA avers that E.I. received excellent grades during his attendance at Cherry Hill West High School, maintaining an academic average of all "A's" and "B's," except for one "C" in physical education. (NJSIAA Brief at 3) NJSIAA also avers that, contrary to petitioner's assertions that the Child Study Team was not instituting appropriate modifications to deal with E.I.'s disability, the testimony at hearing was otherwise. (*Ibid.*) Citing to psychologist and Child Study Team member Dr. Gloria Wuhl's testimony, NJSIAA contends that a specific plan had been developed to deal

with E.I.'s medical problems; that E.I. had been placed in an appropriate setting; and that E.I. had been abruptly removed from Cherry Hill West by his parents while the plan for an appropriate placement was being implemented. (*Id.* at 3-4) NSJIAA also points out that Dr. Wuhl testified that the Greenberg Academy has not been approved as an acceptable school by the Department of Education and that E.I.'s transfer to that school came as a surprise. (*Id.* at 4) NJSIAA also points out that the Greenberg Academy does not have a sports program, is not a member of NJSIAA and that the Cherry Hill School District had nothing to do with E.I.'s enrollment in the Greenberg Academy, which is not approved by the Department of Education as a school for the disabled. (*Ibid.*) The NJSIAA asserts that this case, therefore, centers on the question of whether petitioner may compel the NJSIAA to render his son eligible to play on Cherry Hill West's tennis team after petitioner made the voluntary decision to withdraw his son from Cherry Hill West High School and place him in a school having no connection with Cherry Hill West High School. (*Ibid.*)

Citing Dam Jin Koh and Hong Jun Kim v. NJSIAA, 1987 S.L.D. 259, *Brady v. NJSIAA*, 96 N.J.A.R.2d (EDU) at 980 and *N.J.A.C. 6A:3-7.4*, the NJSIAA points out that the Commissioner's scope of review in NJSIAA determinations is an appellate one; thus, the Commissioner may not overturn an eligibility decision of the NJSIAA absent a finding that it applied its rules in a patently arbitrary, capricious or unreasonable manner. (*Id.* at 5) The NJSIAA asserts that petitioner cannot meet his burden of demonstrating that the NJSIAA Bylaws, Article V, Section 1, or its application violated any federal or state laws or was arbitrary or unreasonable. (*Ibid.*)

Initially, the NJSIAA maintains that this appeal does not implicate any rights under federal law, averring that the federal court decisions cited by petitioner have absolutely no

application to the facts of this case, where the challenge is to the requirement that a child, whether disabled or not, be enrolled in a member school to participate in interscholastic sports, because none of the cited decisions supports the right of a parent to forsake a school's academic program, while at the same time requiring that school to include his child in its athletic program. (*Id.* at 5-6) The NJSIAA maintains that it has adopted rules, as set forth in its 2002-2003 *NJSIAA Handbook*, to assure that disabled students are fully accommodated to participate in four seasons in any sport, as demonstrated by: 1) the provision that any handicapped or classified student is not required to comply with the Academic Credit Rule and 2) the provision permitting disabled students to participate in interscholastic sports in the seventh and eighth grades to make certain that they involve themselves in four seasons of a sport before turning 19. (*Id.* at 6-7) The NJSIAA also points out that, although home-schooled students are not eligible to participate in interscholastic sports, a student placed on home instruction under the auspices of the school district is eligible to participate in that district's sports program. (*Id.* at 7)

Secondly, the NJSIAA contends that E.I. participated on the Cherry Hill West tennis team for two years while attending that school and there is no allegation that his disability in any way impeded his participation in interscholastic sports at this member school. (*Ibid.*) The NJSIAA maintains that, if E.I. had remained a student at Cherry Hill West, or if he had been placed by the Cherry Hill School District in an education setting under the district's jurisdiction, then E.I. could have continued to participate in the Cherry Hill School District's interscholastic program but, instead, the parent decided to place his son in a private school outside the Cherry Hill School district's jurisdiction. (*Ibid.*) Thus, the cause of E.I.'s inability to participate in interscholastic sports is not his disability but, rather, was due solely to a parental decision made

“without any pressure or compulsion from Cherry Hill West or from the NJSIAA.” to educate E.I. in a private school. (*Id.* at 7-8)

Additionally, the NJSIAA points out that the Greenberg Academy has no relationship whatsoever to the NJSIAA or the Cherry Hill School District as the Greenberg Academy has no sports program, is not a member of the NJSIAA and E.I. was placed at the Greenberg Academy without involvement by the Cherry Hill Child Study Team or the Cherry Hill School District. (*Id.* at 8) The NJSIAA also notes that the NJSIAA is a voluntary association of schools subject to an internal governance structure established by the member schools themselves. (*Ibid.*) Thus, the NJSIAA posits, the NJSIAA can only function through its member schools who are obligated to administer interscholastic sports at the local level and are responsible for assuring that students are given a physical examination, are under the supervision of certified coaches and adhere to the eligibility standards of the NJSIAA. (*Id.* at 9) The NJSIAA also sets forth the position that Article V, Section 1, of the Bylaws of the NJSIAA, which was adopted in 1978 and requires that a student must be enrolled in a NJSIAA member school to participate in the school’s interscholastic athletic program of that school, serves several legitimate interests of the NJSIAA and its member schools, as follows:

1. Each member school is responsible for properly administering and enforcing all NJSIAA rules and regulations, including eligibility rules, to its own students; allowing students to attend one school and compete athletically for another would make proper oversight and administration of rules and regulations impossible.
2. Sports offered by member schools are an integral part of the overall academic and extracurricular program provided for each student enrolled in that school.
3. Allowing students to participate on the athletic teams of other schools would discourage the initiation of appropriate athletic programs by the schools attended by the students and may even

encourage schools in difficult financial situations to eliminate programs as a cost saving measure if their students are free to participate in that activity at another school.

4. Allowing a non-enrolled student to participate in a member school's athletic program would wrongfully deny an enrolled student the opportunity to participate in that athletic program at his or her own school. (*Id.* at 10-11)

Moreover, the NJSIAA asserts that *E.L. and N.L., on behalf of R.L. v. NJSIAA*, decided by the Commissioner, August 31, 1998, where, as in this case, petitioning parents voluntarily placed their children in a private school and claimed that provisions of Article V, Section 1, of the NJSIAA Bylaws infringed on parental choice, is controlling. (*Id.* at 11-12) In *E.L.*, the Commissioner found that the four above-enumerated reasons were "sound reasons for the rule as it stands" and the Commissioner further determined that NJSIAA's application of Article V, Section 1, of the NJSIAA Bylaws to deny petitioners' request to allow their son to play ice hockey for the Cranford public high school when he was enrolled in the Oratory Catholic Preparatory School was neither arbitrary nor unjust since the parental choice had been made by petitioners to enroll their son in a school which did not provide ice hockey. (*Id.* at 12)

The Commissioner held that:

...That petitioners argue the rule compels them to make a choice with respect to their son's education 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 the public school education. (*Id.* at 12, *citing E.L., supra*, at 7)

Citing cases from court decisions in Maryland, Oklahoma, Montana and Maine, the NJSIAA submits that "courts in other jurisdictions have held that school district policies and requirements which forbid non-enrolled students from participating in public school classes or extracurricular programs are permissible if they are rationally related to the school's objectives

and interests.” (*Ibid.*) In particular, the NJSIAA points out that, in *Kapstein v. Conrad School District*, 931 P.2d 1311 (1997), the Montana Supreme Court held that that, in balancing the students’ right to participate in public school sports programs with the school district’s right to organize and administer its academic and athletic programs, the school district’s interest in integrating its academic and extracurricular activities outweighed the private school students’ interest in participating in extracurricular activities. (*Id.* at 13-14) Similarly, in *Pelletier v. Maine Principals’ Association*, 261 F. Supp. 2d 10 (Me. D.C. 2003), the United States District Court upheld the Maine Principals’ Association rule that permitted home schooled students to participate in interscholastic athletics, but only at their local public high school, reasoning that “Maine’s decision to open the public school athletic programs to home-schooled students without at the same time opening the private school programs does not create a burden on parental choice.” (*Id.* at 14-15, *citing Pelletier* at 14)

In conclusion, the NJSIAA acknowledges that petitioner has the freedom to choose where his son will be educated, but asserts that petitioner does not have the right, under either state laws or constitution or their federal counterparts, to select only the portions of the offered public education which best serve his interests. (*Id.* at 15) The NJSIAA, therefore, contends that its decision in the instant matter must be upheld in that it is consistent with the Commissioner’s decision in *E.L., supra.*; the rule in question is rationally related to the legitimate interests of the NJSIAA and its member schools, and the eligibility rule does not infringe upon petitioner’s rights. (*Ibid.*)

COMMISSIONER'S DETERMINATION

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 its Constitution, Bylaws, rules and regulations, which are approved by the Commissioner of Education and adopted annually by the member schools. Upon adoption by the member schools, the said rules and regulations are deemed school policy and are enforced first by the internal procedures of the NJSIAA.

The Commissioner's scope of review in matters involving the NJSIAA is appellate. *See N.J.S.A.* 18A:11-3; *N.J.A.C.* 6A:3-7.4; *Board of Education of the City of Camden v. NJSIAA*, 92 *N.J.A.R.2d* (EDU) 182, 183. The Commissioner may not overturn an action by the NJSIAA in applying eligibility rules absent a finding that the rules were applied in a patently arbitrary, capricious or unreasonable manner. *B.C. v. Cumberland Regional School District*, 220 *N.J. Super.* 214, 231-232 (App. Div. 1987). Nor may the Commissioner substitute his judgment for that of the NJSIAA, *even if he would decide differently in a de novo hearing*, where due process has been provided and where there is adequate basis for the decision reached by the NJSIAA Eligibility Appeals Committee. *Dam Jin Koh, supra*. As codified to provide notice of this standard to the public and regulated parties:³

1. If the NJSIAA has granted a petitioner due process and its decision is supported by sufficient credible evidence in the record as a whole, the Commissioner shall not substitute his *** judgment for that of the NJSIAA, even if the Commissioner might judge otherwise in a *de novo* review.

2. The Commissioner shall not overturn NJSIAA's application of its own rules absent a demonstration by the petitioner that such rules were applied in an arbitrary, capricious, or unreasonable manner. *N.J.A.C.* 6A:3-7.4(a).

³ *See*, 31 *N.J.R.* 4173(a) and 32 *N.J.R.* 1177(a).

The burden of proof that an action was thus deficient rests with the person challenging the decision. *Kopera v. West Orange Bd. of Education*, 60 N.J. Super. 288, 297 (App. Div. 1960). It is well-established that:

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., N.J.*, 122 N.J. Super. 184, 199-200 (Ch. Div. 1973), *aff’d* 131 N.J. Super. 37 (App. Div. 1974).

Upon careful consideration of this matter, and mindful of the applicable standard of review, the Commissioner determines to affirm the NJSIAA’s decision denying petitioner’s request for a waiver of the provisions of Article V, Section 1, of the NJSIAA Bylaws for the reasons set forth below.

Initially, the Commissioner finds that petitioner was provided the due process to which he was entitled and that the NJSIAA made every effort to provide a full, fair and timely hearing by the Eligibility Appeals Committee. Upon review of the testimony and the documentation provided by petitioner and the Cherry Hill School District, it is noted that the Committee voted unanimously to deny petitioner’s request for a waiver of Article V, Section 1, of the NJSIAA Bylaws, which states:

A student, to be eligible for participation in the interscholastic athletic program of a member school, must be enrolled in that school and must meet all the eligibility requirements of the Constitution, Bylaws, and Rules and Regulations, of the NJSIAA. (*NJSIAA Handbook* at 42)

The Committee's decision, memorialized in a written document on March 13, 2003, explains the Committee's reasoning, as follows:

[1.] There are many students who are not enrolled in a NJSIAA member school, but who are eligible to participate in interscholastic sports, where they have been assigned by that school to a vocational/technical school or as a result of the Child Study Team designation or Individualized Educational Plan. However, these students remain under the jurisdiction of the assigning school. Students who have left the jurisdiction of the member school cannot be eligible to participate on that school's athletic teams.

[2.] To allow any other arrangement would permit parents to enroll in any school of their choice without any oversight by a member school and then participate in that school's team in the unbridled discretion of the student's parents.

[3.] In this case, the student's parents had the ability to have their son assigned to an appropriate placement to deal with his disability. Instead of utilizing the opportunities available through the member school's system, including the placement in an alternative school, the parents voluntarily decided to place their son outside of the Cherry Hill School District's jurisdiction, in the Center for Education in Marlton, New Jersey.

[4.] By removing their son from the Cherry Hill West system without any assignment by the District to the private school, the parents made a voluntary determination to remove their son from the ability to participate in interscholastic sports at Cherry Hill West.

[5.] The Committee believes that the parent's motives were certainly laudable and does not in any way question that determination. However, since the choice was totally voluntary and outside the jurisdiction of a member school, there is no basis for granting a waiver of the provisions of Article V, Section 1 of the NJSIAA Bylaws. Accordingly, this student will not be eligible to participate on the Cherry Hill High School West tennis team or any other athletic program at that member school. (NJSIAA's March 13, 2003 Letter memorializing the Committee's decision of March 5, 2003)

Given the explicitness of Article V, Section 1, of the Bylaws and the NJSIAA's articulation of sound reasons for its decision, the Commissioner cannot find that the application

of Article V, Section 1, is arbitrary or unjust, as applied to petitioner's son. In so determining, the Commissioner observes that the record is devoid of any allegation that the NJSIAA's rule is being applied in an inconsistent manner. Moreover, since no student, nonpublic or public, attending one school is permitted to play sports for another school,⁴ the exception requested here could affect all NJSIAA member schools and, thus, create a situation that would make the proper oversight and administration of NJSIAA rules impossible.

Although the Commissioner completely agrees with petitioner's assertion that he has the right to place his son in a private school at his own expense without the consent of the local board of education, the fact that petitioner has that right does not mean that he concomitantly has the right to participate in interscholastic athletics in his local public school while attending a private school that has no relationship to the local public school. As set forth by the Commissioner in *E.L., supra*, at 7, "[t]hat petitioners argue the rule compels them to make a choice with respect to their son's education 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 and parochial education against those of the public school education." Moreover, the NJSIAA's determination that non-enrolled students are to be excluded from participating in interscholastic sports in member schools' sports programs is consistent with the findings of courts in other jurisdictions.

Additionally, the Commissioner finds petitioner's argument that E.I. is excluded from participation on the Cherry Hill West tennis team by virtue of his handicap because, absent the handicap, he would remain at Cherry Hill West High School, to be without merit. In so

⁴Article V, Section 1 of the Bylaws has been interpreted to permit students to participate in a school's interscholastic program where students have been assigned by that school to a vocational/technical school or as a result of the Child Study Team designation of Individualized Educational Plan, which did not occur in the instant matter.

determining, the Commissioner observes that there is no allegation that E.I.'s disability in any way impeded his participation on the tennis team for the two years he was on Cherry Hill West's team while attending that school. Additionally, as the NJSIAA points out, the NJSIAA Bylaws and the Interpretative Guidelines to the NJSIAA Handbook support the NJSIAA's contentions that it has adopted rules to accommodate disabled students to ensure their full participation in interscholastic sports in their member schools' sports programs and that E.I.'s situation arises not from disability, but from parental choice.

In the instant matter, the Greenberg Academy where E.I. is enrolled has no relationship whatsoever to the NJSIAA or the Cherry Hill School District and E.I. was enrolled at the Greenberg Academy without any involvement by the Cherry Hill Child Study Team or the Cherry Hill School District. Under these circumstances, therefore, and for the reasons set forth above, the Commissioner cannot find that the NJSIAA's decision to deny E.I.'s request for waiver of the provisions of Article V, Section 1, of the NJSIAA Bylaws was arbitrary, capricious or unreasonable.

Accordingly, the decision of the NJSIAA Eligibility Appeals Committee is sustained and the Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.⁵

COMMISSIONER OF EDUCATION

Date of Decision: October 9, 2003

Date of Mailing: October 10, 2003

⁵ This decision, as the Commissioner's final determination in this matter, may be appealed to the Superior Court pursuant to *N.J.S.A.* 18A:11-3.