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Dear Counsel:

I have reviewed the papers filed in the matter of *D.H., on behalf of minor child, A.G., v. New Jersey State Interscholastic Athletic Association*, Agency Dkt. No. 422-11/04, wherein petitioner, parent of a varsity football player in his senior year at St. Joseph Regional High School (St. Joseph),¹ seeks reversal of the decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) to assign St. Joseph to play its championship game against Pope John XXIII Regional High School (Pope John) at Rutgers University rather than Giants Stadium, a venue to which petitioner claims St. Joseph, by virtue of its number one power point ranking, is entitled under NJSIAA rules.² The petition was accompanied by an application for emergent relief, since the game at issue would be played on Friday, December 3, 2004,³ and the matter will be

¹ Several other petitioners are listed in the caption, but the petition was verified solely by D.H.

² Notice of petitioner's application was provided to all schools potentially impacted by the outcome of this matter: Don Bosco Preparatory High School (Don Bosco), Bergen Catholic High School (Bergen Catholic), Pope John XXIII Regional High School (Pope John), and St. Joseph. Don Bosco and Bergen Catholic submitted letters urging that the NJSIAA decision be upheld, while Pope John submitted a letter indicating that it took no legal position on petitioner's application, but was satisfied with assignment of the Rutgers venue and preferred leaving the schedule as is due to the practical difficulties of making a change at this late date. No submission of any kind was received on behalf of St. Joseph.

³ The NJSIAA has scheduled the playoff game between Don Bosco and Bergen Catholic at Giants Stadium on Friday, December 3, 2004 at 8:00 p.m., while the game between St. Joseph and Pope John has been scheduled for Saturday, December 4, 2004 at 5:00 at Rutgers Stadium. Petitioner appears to support the request previously made to NJSIAA by counsel for St. Joseph, that the St. Joseph-Pope John game be scheduled for 2:00 p.m. on December 3 at Giants Stadium, as an alternative to the relief it actually seeks, scheduling of the St. Joseph-Pope John contest at Giants Stadium on Friday, December 3, 2004 at 8:00 p.m.

moot if not decided prior to that date. For the reasons set forth below, I have determined to deny petitioner's motion and dismiss the Petition of Appeal.

In her papers, petitioner contends that she readily meets the requirements for emergent relief established pursuant to *Crowe v. DiGioia*, 90 N.J. 126, 133 (1982) and *N.J.A.C.* 6A:3-7.1(d). Specifically, she argues that her child will suffer irreparable harm if injunctive relief is not ordered, since St. Joseph seniors will not again have the opportunity to play a championship game at Giants Stadium, a benefit they have fairly won and a deprivation that cannot be redressed by monetary damages, or indeed, any other after-the-fact relief; additionally, according to petitioner, failure of an administrative agency to follow its own established procedures has been found to constitute a violation of constitutional rights, and where injunctive relief is requested to prevent the violation of constitutional rights, no further showing of irreparable injury is required. With respect to the legal right underlying her claim, petitioner argues it is well settled that where administrative agencies have established rules and regulations, they are obligated to follow them, "for once an agency exercises its discretion and creates the procedural rules under which it desires to have its actions judged, it denies itself the right to violate these rules. If an agency in its proceedings violates its rules and prejudice results, any action taken as a result of the proceedings cannot stand." (*In re Waterfront Development Permit No. WD88-0443-1, Lincoln Harbor Final Development, Weehawken, Hudson County*, 244 N.J. Super. 426, 434 (App. Div. 1990)) With respect to weighing of the equities, petitioner contends these are clearly in her favor, since, if emergent relief is granted, the NJSIAA will simply be forced to comply with its own regulations and schedule the St. Joseph/Pope John XXIII game at Giants Stadium, whereas, if emergent relief is not granted, the members of the St. Joseph varsity football team will have their constitutional rights violated, and will be denied the opportunity they earned with their performance on the field over the course of the season and to which they are clearly entitled under the NJSIAA's regulations; any logistical or practical difficulties the NJSIAA or other teams might face are unfortunate, but they are immaterial to the outcome of this matter and cannot be allowed to outweigh petitioner's legal rights.

With respect to the merits of her claim, petitioner argues that the plain language of the applicable NJSIAA rule, from Section 6 ("Sites") of the 2004 football tournament regulations, unequivocally requires that the teams ranked highest in terms of power points must play at Giants Stadium, and that this requirement is subject to only two limitations: 1) for South Jersey public championship games, the home team must agree to the venue, and, 2) only one nonpublic championship game may be played at each venue. Therefore, according to petitioner, the rules clearly entitle St. Joseph, which is the highest-ranking team playing in this year's high school football championship games, to play its game at Giants Stadium. Moreover, petitioner contends, the NJSIAA's explanations for not scheduling St. Joseph's game at Giants Stadium are illogical and contrary to its own regulations: First, according to petitioner, there are no geographic considerations which favor scheduling the Bergen Catholic-Don Bosco game at Giants Stadium rather than the St. Joseph-Pope John game so as to ignore power point rankings, in that all four schools are located in the northern

region of the state and all are closer to Giants Stadium than to Rutgers, and the additional distances St. Joseph, Bergen Catholic and Don Bosco would have to travel to play at Rutgers rather than Giants Stadium are the same, approximately 35 miles, while the additional distance Pope John XXIII would have to travel to play at Rutgers rather than Giants Stadium is approximately 17 miles, “not substantially less.”⁴ Second, had the NJSIAA followed its regulations when it initially scheduled the championship games, the issue of more than one non-public school championship game at a single venue would not exist, and in any event, this regulation has not been enforced in the past.⁵ Third, the section of the regulations indicating that the selection of a designated site for any round will be in the sole discretion of the NJSIAA Executive Director clearly applies to the selection of the predetermined sites, not to the assignment of games to particular locations; to interpret it otherwise not only belies its plain language, but would also render the entire scheme set out in section 6(a) meaningless. Fourth, had the NJSIAA followed its regulations when it initially scheduled the championship games there would be no issue with the times of the games, because the St. Joseph-Pope John game would have been played at 8:00 p.m. at Giants Stadium on December 3, 2004. Fifth, a review of the eleven championship games which are being played at Giants Stadium and Rutgers other than the St. Joseph game reveals that in every case the game is scheduled to be played at the venue closest to the highest ranked team; in fact, of the twelve championship games scheduled by the NJSIAA to be played at either Giants Stadium or Rutgers, in every game but the contest at issue, the game is being played at the site closest to the highest-ranked team. Finally, it is true that St. Joseph agreed to follow the NJSIAA regulations with respect to tournaments, but just as member schools must agree to be bound by the regulations, the NJSIAA is mutually and similarly bound.

In response to petitioner’s arguments, the NJSIAA submitted a certification of its Executive Director and a supporting brief, wherein it set forth the basis for actions and its belief that they must be upheld under the standard of review applicable to this matter.⁶

Upon careful consideration of the parties’ positions, I find that the decision of the NJSIAA must be upheld. It is well-established that the Commissioner’s scope of review in matters involving NJSIAA determinations is appellate in nature.

⁴ Petitioner submits the following graph:

<i>School</i>	<i>To Giants Stadium</i>	<i>To Rutgers Stadium</i>
St. Joseph	16.43 miles	51.74 miles
Pope John XXIII	44.95 miles	61.53 miles
Don Bosco	18.29 miles	53.59 miles
Bergen Catholic	12.13 miles	47.43 miles

⁵ Petitioner offers no factual support for this statement.

⁶ The NJSIAA’s papers additionally challenged petitioner’s standing to bring this appeal. However, given the outcome of this matter on substantive grounds and the brief time available for its consideration, I decline to rule on this question in the present context.

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, 188. That is, the Commissioner may not overturn an action by the NJSIAA in applying its rules, absent a finding that the Association applied the rules 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 Committees. *Dam Jin Koh and Hong Jun Kim v. NJSIAA*, 1987 *S.L.D.* 259; *see, also, N.J.A.C.* 6A:3-7.4(a). The scope of the Commissioner's review in NJSIAA matters has also been codified through duly promulgated regulations⁷ to provide notice of this standard to the public and regulated parties:

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).

The burden of proof that an action was thus improper rests with the person or entity challenging the decision. *Kopera v. West Orange Board of Education*, 60 *N.J. Super.* 288, 297 (App. Div. 1960). It must be remembered that the arbitrary, capricious or unreasonable standard of review is extremely narrow in its scope and, consequently, imposes a heavy burden on those who challenge determinations of the NJSIAA. The standard, as defined by the New Jersey Courts provides:

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).

Upon careful consideration of the record and arguments of the parties, and mindful of the applicable standard of review, I am satisfied that the decision of the

⁷ *See* 31 *N.J.R.* 4173(a) and 32 *N.J.R.* 1177(a).

NJSIAA in this instance satisfies the requirements of law. In its essence, petitioner's claim raises two questions: First, whether the pertinent section of the 2004 football tournament rules accord the NJSIAA Executive Director authority with respect to the selection of tournament game sites and discretion to choose them on bases other than power point rankings, and second, if so, was such discretion, in this instance, exercised in a manner that was reasonable and consistent with applicable regulations. On both points, I find that the question must be answered in the affirmative.

While arguably inartfully worded, the rules governing selection of tournament sites clearly envision that the Executive Director will make the selection of sites for particular games, and that he or she will be accorded a degree of flexibility in doing so for reasons of geography, facility availability and overall fairness of distribution among teams, notwithstanding any particular team's power point ranking.⁸ Moreover, the rule is equally clear about participating schools' obligation to accept the Executive Director's determination, and St. Joseph was, through November 23, 2004 correspondence from its counsel to which the NJSIAA responded the next day, given an opportunity to present its objection to this determination and receive an explanation for it, notwithstanding that it did not prevail in its request for an alternative time and venue.

⁸ The applicable rules read in pertinent part:

Due to the unavailability of sites, if suitable, playoff games shall be held on the home site of the higher seeded team as determined by the power ranking and tie-breaking procedure. This includes undefeated and untied teams.

Suitability of the playing field and/or seating facilities, as well as the selection of a designated site will be the sole determination of the NJSIAA Executive Director, and must be accepted by the competing schools. The decision on the change in site will be made when the site is inappropriate due to the lack of facilities or cannot seat the anticipated crowd. The schools must understand that they cannot be guaranteed that they will have a practice workout at the designated field due to weather or other conditions. A designated field may also be used more than one time for a team in a specific group playoff.

(a) Teams must indicate on their Football Intention Card that they will go to any predetermined multi-game site for any round or not be eligible for the playoffs if selected. The selection process will be determined by the highest-powered ranked team per game in descending order, given geographic considerations.

(1) When multiple, pre-determined sites are available, schools will be selected based on power points. The assignment will be based on the highest-ranked team as indicated with the highest ranked teams playing at Giant Stadium then Rutgers University (*sic*) considering 2 and 3 below.

(2) A South Jersey public championship will be played at any venue (above) provided the home team (power point-qualified) agrees to do same.

(3) **Only one Non-Public championship, provided power point-qualified, will be played at each venue with no more than one South Jersey Non-Public team participating. (Example: Don Bosco vs. Holy Cross)**

In the absence of the above condition for the Non-Public schools, the next highest Non-Public game would be given the option of participating at each venue. [**Boldface** and underscoring in original]

Thus, the only question remaining in this matter is whether the Executive Director abused his discretion first in assigning the St. Joseph-Pope John game to Rutgers Stadium rather than Giants Stadium, and then in refusing St. Joseph's request to reschedule the game for Friday afternoon because Giants Stadium appeared available at that time and had been assigned to other teams for the remainder of the tournament weekend.

With respect to the original assignment, the basis for the NJSIAA's determination is set forth at length in the certification of its Executive Director, particularly in paragraphs 9-13. Therein, it is explained that because Giants Stadium and Rutgers Stadium were available for only 12 of the 20 championship contests this year, site selections overall were based primarily on geography, and, given the rules' provision (itself based on considerations of equity and provided to member schools in August 2004) that only one nonpublic school could play at Giants Stadium, given the choice between the Don Bosco-Bergen Catholic contest and the St. Joseph-Pope John contest, the former was chosen because the cumulative distance to Giants Stadium for the participating schools was half the cumulative distance between the stadium and the teams for the latter. The NJSIAA also demonstrates that, when the entire schedule is considered, the six contests involving schools with the highest power point rankings were all treated in a manner that placed geography above power point ranking. Under these circumstances, I cannot characterize NJSIAA's action as arbitrary, unlawful, in bad faith, or infirm in any other way that might render it susceptible to reversal by the Commissioner. With respect to St. Joseph's request for rescheduling to an unassigned time slot, the NJSIAA's proffered rationale, based on a policy decision that student athletes, fans and athletic staffs should not be required to leave their campuses earlier than the end of the normal school day in order to attend playoff games, is both reasonable and educationally sound.

Accordingly, because I cannot find that the NJSIAA acted contrary to its rules as claimed by petitioner, or that it abused its discretion in the assignment of venue for this year's football championship playoff game between St. Joseph and Pope John, there is no basis on which to award, on an emergent basis or otherwise, the relief petitioner seeks. Consequently, I hereby DENY petitioner's application for emergent relief and DISMISS the Petition of Appeal.

Sincerely,

Dwight R. Pfennig
Acting Commissioner

VIA FAX and REGULAR MAIL

c: Dennis Calo, Esq.
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Paul J. Giblin, Sr., Esq.