

BOARD OF EDUCATION OF THE TOWNSHIP	:	
OF NORTH BERGEN, HUDSON COUNTY,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
NEW JERSEY STATE INTERSCHOLASTIC	:	DECISION
ATHLETIC ASSOCIATION,	:	
	:	
RESPONDENT.	:	

SYNOPSIS

Petitioner sought reversal of the final decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) stripping North Bergen High School (North Bergen) of the 2011 North Jersey, Section 1, Group IV, State Football Championship, for recruiting violations. The petitioner did not challenge the underlying recruiting violations as determined by the NJSIAA Controversies Committee, but contends that the matter should never have come before the Executive Committee and was not afforded the requisite due process before that committee. The matter had come before the Executive Committee when Montclair High School – the school that lost the state championship game to North Bergen – appealed the penalty decision of the Controversies Committee, which placed North Bergen on probation for two years and required the school to comply with a corrective action plan regarding its process for determining student eligibility. The Controversies Committee’s penalty determination had not required North Bergen to forfeit its state championship.

The petitioner argued, *inter alia*, that the Executive Committee wrongly considered Montclair’s appeal of the Controversies Committee’s decision, and emphasized that Montclair was not a party to the original hearing and thus should have been precluded by NJSIAA bylaws from filing an appeal. The NJSIAA contended that the Executive Committee enacts the bylaws and has the authority to interpret and administer its own rules – including Article XIII, Section 5, which states that “in the event any party is aggrieved by a decision of the Controversies Committee, it may appeal to the Executive Committee.” The NJSIAA interpreted any aggrieved party to include Montclair because it was the member school that had lost the state title to North Bergen, and that Montclair’s interest did not become real until after the Controversies Committee determined that North Bergen had cheated. Accordingly, the NJSIAA contended that the Executive Committee’s decision to allow Montclair to appeal the penalty aspect of the case was not arbitrary or capricious; the NJSIAA also asserted that their bylaws are clear that the Executive Committee has the final word on penalty decisions.

The Assistant Commissioner – to whom this matter has been delegated to pursuant to *N.J.S.A. 18A:4-34* – upheld the NJSIAA’s decision and dismissed the petition, finding that the petitioner did not meet its burden so as to entitle it to prevail on appeal. In so deciding, the Assistant Commissioner – whose judgment may not be substituted for that of the NJSIAA on appeal – noted that the NJSIAA’s decision to modify the penalty against North Bergen was not arbitrary, capricious or unreasonable as it was based upon the Controversies Committee’s findings of significant recruiting violations.

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, North Bergen Board of Education, Patrick J. Jennings, Esq.

For Respondent, New Jersey State Interscholastic Athletic Association, Steven. P. Goodell, Esq.

For Montclair Board of Education, Derlys Maria Gutierre, Esq.

This case involves an appeal of a decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) Executive Committee stripping North Bergen High School (North Bergen) of the 2011 North Jersey, Section 1, Group IV, State Football Championship, for recruiting violations.<sup>1</sup> On appeal, North Bergen is not challenging the underlying recruiting violations, but rather contends that this matter should not have come before the Executive Committee, and that it was not afforded the requisite due process before the Executive Committee.

Athletic competition in New Jersey's public schools is overseen by the 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). The

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<sup>1</sup> Montclair High School was not named as a party to the appeal; however Montclair brought the matter before the Executive Committee, challenging the fact that North Bergen had not been stripped of the football championship despite the recruiting violations found by the Controversies Committee. Montclair filed an Answer to the appeal as well as a brief in support of its position.

NJSIAA member schools have adopted a number of eligibility rules for student athletes that have been approved by the Commissioner of Education pursuant to *N.J.S.A.* 18A:11-3 and are published in the NJSIAA Handbook. One of the eligibility rules is the Athletic Recruitment Rule, which prohibits schools – or anyone associated with the school – from pressuring, urging or enticing a student to enroll in or transfer to the school for athletic purposes. NJSIAA Bylaws, Article V, Section 4.D. Schools accused of recruiting are subjected to a hearing before the Controversies Committee, and face potential penalties including probation, forfeiture of games and/or championship rights and the suspension of players and/or coaches. NJSIAA Bylaws, Article X, Penalties.

On December 3, 2011 the North Bergen High School football team won the 2011 North Jersey, Section 1, Group IV, State Football Championship. Thereafter, on January 22, 2012, the Star Ledger published an article alleging that two of North Bergen’s star players, D.L. and E.M., had been recruited to play football and were living in apartments rented out by the football coach, Vincent Ascolese. As a result of the Star Ledger article, the NJSIAA asked North Bergen to conduct an investigation and report its findings. On February 9, 2012, North Bergen issued a report prepared by special counsel Michael Gannaio.

NJSIAA Executive Director Steven Timko reviewed North Bergen’s report and determined that a hearing should be held before the NJSIAA Controversies Committee to determine whether North Bergen or Coach Ascolese had broken NJSIAA rules prohibiting recruiting. Following a hearing where testimony was taken,<sup>2</sup> the Controversies Committee found that North Bergen and Coach Ascolese violated NJSIAA’s recruitment rule. Specifically, the Controversies Committee found that two students, D.L. and E.M., were recruited by North Bergen; both students received special treatment at the time of registration; and Coach Ascolese himself provided subsidized housing to the students in the

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<sup>2</sup> At the hearing, testimony was given by: D.L.; D.L.’s father; E.M.’s mother; Coach Vincent Ascolese; Vincent Ascolese, Jr.; Jerry Maietta, North Bergen High School’s athletic director; and John Belluardo, North Bergen’s supervisor of residency.

district without a written lease. Additionally, the Controversies Committee concluded that D.L. was provided monetary assistance by Coach Ascolese's family during a trip to the top-prospect combine (an event which provides players an opportunity to demonstrate their abilities) in Oklahoma. Finally, the Controversies Committee determined that either North Bergen knew or should have known that D.L. was living alone and that he was not a bona fide permanent resident of North Bergen. Based on the recruitment violations, the Controversies Committee placed North Bergen on probation for two years and required North Bergen to comply with a corrective action plan describing the school's process for determining student eligibility. The Controversies Committee did not require North Bergen to forfeit its state football championship.

On May 25, 2012, Montclair High School – the school that lost to North Bergen in the state championship game – appealed the decision of the Controversies Committee to NJSIAA's Executive Committee. Montclair's appeal challenged the penalty imposed by the Controversies Committee, not the findings or conclusions. Following a hearing on June 6, 2012, the Executive Committee: denied the request of North Bergen for an adjournment of the hearing on behalf of Coach Ascolese due to the coach's health condition; found that Montclair had standing to challenge the Controversies Committee's decision; and modified the penalty imposed on North Bergen. The Executive Committee held that the recruitment violations found by the Controversies Committee warranted the forfeiture of the 2011 Section I, Group IV State Football Championship, and as a result no championship was awarded in that Section.

On September 4, 2012, North Bergen filed a petition with the Commissioner of Education challenging the decision of the NJSIAA. On appeal, North Bergen argues that the Executive Committee's decision should be reversed because the committee wrongfully entertained Montclair's appeal of the Controversies Committee's decision. North Bergen emphasizes that Montclair was not a

party to the Controversies Committee's hearing and thus is precluded under the NJSIAA bylaws from filing an appeal. North Bergen claims that if Montclair was truly a party, it would have received notice of the hearing before the Controversies Committee and it would have participated in that hearing. Additionally, North Bergen contends that the Executive Committee improperly denied its request to adjourn the June 6, 2012 hearing. Finally, North Bergen asserts that the Executive Committee abandoned its role as an objective appellate body and instead improperly substituted its judgment for the judgment of the Controversies Committee. As a result, North Bergen argues that the NJSIAA's decision should be reversed and Montclair's appeal should be dismissed.

In reply, the NJSIAA maintains that the Executive Committee's decision to hear Montclair's appeal was not arbitrary, capricious or unreasonable and is entitled to wide deference. The NJSIAA stresses that the Executive Committee enacts the bylaws and has the authority to interpret and administer its own rules. Article XIII, Section 5, states that "in the event any party is aggrieved by a decision of the Controversies Committee, it may appeal to the Executive Committee." The Executive Committee interpreted any aggrieved party to include Montclair because it was the member school that had lost the state title to North Bergen in the championship game and as a result Montclair could appeal the Controversies Committee's determination that North Bergen should not be stripped of the football championship even though it was guilty of recruiting violations. The NJSIAA argues that the Executive Committee's interpretation of the rule was reasonable because it was not until after the Controversies Committee found that North Bergen had cheated that Montclair's interest became real. Montclair had nothing to do with the recruiting violations, but rather had an interest in seeing that the state title that it lost was awarded to a school that had followed the rules of the Association. Further, the NJSIAA notes that Montclair did not appeal the Controversy Committee's findings and conclusions, only the penalty.

As a result, NJSIAA contends that the Executive Committee's decision to allow Montclair to appeal this limited aspect of the case was based on a solid foundation of reason and was not arbitrary or capricious.

The NJSIAA also argues that the Executive Committee had the power to affirm, reverse or modify the decision of the Controversies Committee because the bylaws make clear that the Executive Committee has the final word on any penalty. Moreover, the NJSIAA claims that the penalty imposed by the Executive Committee was reasonable in this case in light of the willful nature of the recruiting violations found by the Controversies Committee. The NJSIAA further stresses that forfeiture of games and forfeiture of championship rights are both penalties allowed under the bylaws.

The NJSIAA maintains that North Bergen was provided with the proper due process. Although North Bergen states that its request for the adjournment of the June 6, 2012 hearing was wrongfully denied, the NJSIAA contends that North Bergen never argued it was prejudiced by the timing of the hearing, but rather merely requested a delay so that Coach Ascolese could be present for the hearing. The NJSIAA points out that only oral argument was permitted at the Executive Committee hearing; Coach Ascolese's attorney was present to argue his case; and Montclair did not appeal any penalty regarding the coach. Therefore, the NJSIAA requests that the Commissioner affirm the decision of the Executive Committee.

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. 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 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, New Jersey courts have spoken as to the narrow scope of arbitrary, capricious, or unreasonable, noting that “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.” *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) (citations omitted).

Upon consideration of the record and in light of the prescribed standard of review, the Assistant Commissioner – to whom this matter has been delegated to pursuant to *N.J.S.A. 18A:4-34* – finds that North Bergen has not met its burden on appeal. More specifically, the Assistant Commissioner cannot find that the NJSIAA applied its rules in a patently arbitrary or unreasonable manner when the Executive Committee interpreted its bylaws to find that Montclair had standing to appeal the penalty imposed on North Bergen by the Controversies Committee. The Executive Committee – which is charged with interpreting its own rules and bylaws – determined that under the circumstances present in this case Montclair, who lost the championship game to North Bergen, was a “party... aggrieved by” the Controversies Committee’s decision in accordance with Article XIII, Section 5. Although North Bergen played the championship game with the benefit of two star players who were illegally recruited, the Controversies Committee did not strip North Bergen of the title. It is without question that the Executive Committee applied a broad interpretation of the phrase “any party... aggrieved”; however, the Assistant Commissioner cannot find that the interpretation was unreasonable under the circumstances in this matter. Moreover, in the absence of any precedent narrowly defining what constitutes “any party... aggrieved,” there is nothing to demonstrate that the NJSIAA applied the phrase

arbitrarily in this case. Further, the NJSIAA's determination that Montclair's interest did not culminate until the Controversies Committee found that North Bergen had cheated is likewise not unreasonable.

Additionally, based on the Controversies Committee's findings with respect to the significant recruiting violations, the Executive Committee's decision to strip North Bergen of the State Football Championship was not arbitrary, capricious or unreasonable. As the NJSIAA points out, the Executive Committee did not consider new information during its hearing but rather it took the Controversy Committee's findings and modified the penalty based upon those findings and conclusions. The Executive Committee believed that the recruiting violations were egregious, warranting the forfeiture of the championship, and there is no doubt that the Executive Committee is fully authorized to modify a penalty imposed by the Controversies Committee. See Article X, Penalties.

Accordingly, the NJSIAA's decision is upheld and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>3</sup>

ASSISTANT COMMISSIONER OF EDUCATION

Date of Decision: December 14, 2012

Date of Mailing: December 17, 2012

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<sup>3</sup> Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.