

CHRISTOPHER LOMBARDI, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

NEW JERSEY STATE INTERSCHOLASTIC : DECISION

ATHLETIC ASSOCIATION, :

RESPONDENT. :

SYNOPSIS

Petitioner appealed the decision of the Eligibility Appeals Committee (EAC) of the New Jersey State Interscholastic Athletic Association (NJSIAA) denying his request for a waiver of the Eight Semester Rule that would have allowed him to participate in baseball at New Providence High School for the 2017 season. Petitioner had played baseball for New Providence during the 2012-2013, 2013-2014, and 2014-2015 school years, but was placed on extended home instruction midway through his senior year (2015-2016) and not permitted on school grounds following behavioral incidents that the District deemed threatening, including taking a “selfie” with a gun and telling another student that he wanted to “shoot up the school.” In June 2016, after having been declassified for 11th grade, the petitioner was reclassified by the District pursuant to an IEP for Attention Deficit Hyperactivity Disorder (ADHD) and learning disabilities, and was given a 5th year of educational services to address his academic deficiencies. Petitioner contended, *inter alia*, that the EAC’s decision to deny his waiver request was arbitrary, capricious and unreasonable. He argued that the EAC’s decision was discriminatory as it essentially concluded – with no evidentiary basis – that any actions that arise from a behavioral or psychological disability, as opposed to a learning disability, were within the petitioner’s control.

On appeal, the NJSIAA contended, *inter alia*: that the petitioner was provided with due process; that, while not disputing that petitioner may have had academic difficulties which were exacerbated or caused by his ADHD, what led to the petitioner’s inability to participate in baseball in 2016 were his disciplinary problems, not academic issues; further, the EAC considered all relevant evidence, including all medical reports and petitioner’s 5th year IEP, but determined that they did not support a finding that the petitioner required an extra year of athletic eligibility due to circumstances beyond his control. The NJSIAA requested that the Commissioner affirm the decision of the EAC.

The Commissioner upheld the NJSIAA’s decision and dismissed the petition, finding that petitioner did not meet his burden to show that the EAC’s denial of his waiver request was arbitrary, capricious or unreasonable. In so deciding, the Commissioner – who may not substitute her judgment for that of the NJSIAA on appeal – noted that the record in this matter is devoid of any evidence that the EAC’s application of NJSIAA’s eligibility rules and waiver requirements in this case was discriminatory in nature. The petition was dismissed.

<p>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.</p>

AGENCY DKT. NO. 73-4/17

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 RESPONDENT. :

For Petitioners, Laura A. Siclari, Esq. (McCusker Anselmi Rosen Carvelli)

For Respondent, Michael W. Herbert, Esq. (Parker McCay, P.A.)

This case involves an appeal of a decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) denying petitioner Christopher Lombardi’s request for a waiver of the Eight Semester Rule that would have allowed him to participate in baseball at New Providence High School for the 2017 season.¹

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

¹ Petitioner requested emergent relief in this matter and on April 24, 2017 the Commissioner issued a decision denying the petitioner’s request for emergent relief. Despite the fact that the 2017 baseball season is over, the petitioner has requested that the matter move forward because he is seeking a determination from the Commissioner that the NJSIAA discriminated against him based on his behavioral disability.

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 will not be undermined. 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 underlying facts in this matter are not in dispute. The petitioner participated in baseball at New Providence High School during the 2012-2013, 2013-2014, and 2014-2015 school years. The petitioner received special education services pursuant to an Individualized Education Plan (IEP) during 9th and 10th grade at New Providence High School but was declassified for 11th grade. The petitioner did not play baseball during the 2015-2016 school year because midway through his senior year he was placed on extended home instruction and was not permitted on school grounds based on several behavioral incidents that the New Providence School District (District) deemed to be threatening.² Prior to his graduation, in June 2016, the District re-classified the petitioner pursuant to an IEP for Attention Deficit Hyperactivity Disorder (ADHD) and learning disabilities, and provided him with a 5th year of

² In one incident, petitioner took a “selfie” with a gun. In a second incident, petitioner told another student that he wanted “to shoot up the school,” and advised the student to wear red so that petitioner could easily identify him and avoid taking aim at him.

educational services to address his academic deficiencies. In January 2017, the petitioner was placed at the Shepard School, an out-of-district placement for his 5th year of high school.

The petitioner applied to the NJSIAA for a waiver of the Eight Semester Rule so that he could participate on the New Providence High School baseball team in the spring of 2017 while he was receiving educational services at the Shepard School.³ On February 7, 2017, the Eligibility Committee denied the petitioner's waiver request. The waiver request was then appealed to the Eligibility Appeals Committee (EAC). Following a hearing on March 6, 2017, at which sworn testimony was taken, the EAC determined that the petitioner did not qualify for a waiver of the eligibility rules.

In reaching its decision to deny the waiver request, the EAC recognized that the petitioner may have academic difficulties that have been exacerbated or caused by his ADHD; however, what led to the petitioner not playing baseball in the spring of 2016 were his disciplinary problems. As such, the EAC determined that the circumstances were not entirely beyond the petitioner's control – thereby making him ineligible for a waiver. The EAC also noted that because disciplinary problems contributed to the petitioner's inability to play baseball in 2016, it would not be appropriate to displace another student by giving the petitioner a waiver to play baseball.

On appeal, the petitioner contends that the EAC's decision to deny his waiver request is arbitrary, capricious and unreasonable, arguing that the decision was discriminatory because it attaches a negative inference to any non-academic related disability. The petitioner asserts that the EAC essentially concluded that any actions that arose from a behavioral or

³ The Shepard School does not offer athletic teams so the petitioner would have to play for New Providence High School if he was granted a waiver. It should be noted that New Providence High School did not participate in the petitioner's appeal before the NJSIAA.

psychological disability, as opposed to a learning disability, were within the petitioner's control. Yet there is no medical or evidentiary basis for the EAC to have made such distinction.

The petitioner also contends that the EAC failed to consider all of his medical reports and the Shepard School IEP for the spring 2017 semester, which establish that his difficulties were disability-based and outside of his control, and resulted in him having to attend schooling beyond his senior year. The highly unusual decision of the District to reclassify the petitioner before graduation and retain him for an extra year of educational services should have been afforded significant weight by the EAC in establishing that the petitioner's circumstances were outside of his control. Therefore, based on the petitioner's diagnoses of ADHD, learning disabilities and lack of control over his behavior, the EAC should have determined that having to repeat 12th grade was not within his control. As a result, the petitioner should have been granted an eligibility waiver and allowed to participate in baseball during the spring of 2017.

In reply, the NJSIAA asserts that the petitioner received full and fair due process, noting that two separate committees – the Eligibility Committee and the EAC – convened to carefully consider the petitioner's waiver request. The NJSIAA further stresses that the eligibility rules are designed to ensure that all students have an equal opportunity to play high school sports, and limits that opportunity to four years. The Interpretive Guidelines make clear that waivers of the Eight Semester Rule should only be granted “where it is determined that a student cannot comply because of circumstances beyond his/her control.”

In this case, the evidence presented to the EAC demonstrates that the circumstances that led to the petitioner's ineligibility were not entirely beyond his control. Specifically, the petitioner engaged in multiple threatening behaviors that led to his removal from school during the spring semester of his fourth year of high school, thereby causing him to

miss the 2016 baseball season. The NJSIAA does not dispute that the petitioner may have had academic difficulties that were exacerbated or caused by his ADHD; however, what led to the petitioner's inability to participate in baseball in 2016 were his disciplinary problems, not his academic problems. Contrary to the petitioner's assertions, the EAC considered all relevant evidence, including all medical reports and the Shepard School IEP, but determined that they did not support a finding that the petitioner required an extra year of athletic eligibility due to circumstances beyond his control. Therefore, the NJSIAA requests that the Commissioner affirm the decision of the EAC.

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. Petitioners seeking to overturn decisions of the NJSIAA therefore bear a heavy burden.

Considering the record of this matter in light of the prescribed standard of review, the Commissioner affirms the decision of the EAC. After the petitioner was afforded the

requisite due process, the EAC determined that a waiver of the eligibility rules should not be granted in this case because the circumstances that caused the petitioner to miss a semester of high school athletics were not beyond his control. Specifically, the EAC found that the petitioner's actions, i.e. taking the gun "selfie" and threatening "to shoot up the school" that led to his removal from school grounds for the spring 2016 semester, were not beyond his control. The petitioner has not demonstrated on appeal that the EAC's assessment of those circumstances was arbitrary, capricious or unreasonable. The District's decision to provide the petitioner with a 5th year of educational services does not mean that the events that led to the petitioner being out on extended home instruction for the spring 2016 semester were beyond his control. Moreover, the record is devoid of evidence that the EAC's application of the NJSIAA's eligibility rules and waiver requirements in this case was discriminatory in nature.

Accordingly, the EAC's decision denying the request for waiver is upheld and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: November 3, 2017

Date of Mailing: November 6, 2017

⁴ 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.