

J.M.G., on behalf of minor son, J.G, :  
 :  
 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 NEW JERSEY STATE INTERSCHOLASTIC : DECISION ON MOTION  
 ATHLETIC ASSOCIATION, :  
 :  
 RESPONDENT. :  
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SYNOPSIS

By way of petition and motion for emergent relief, petitioning parent sought reversal of the NJSIAA's determination precluding her son, J.G., from participating as a member of the Hamilton Township West High School baseball team during the 1997-98 school year and sought waiver of the NJSIAA's eligibility standards. Petitioner contended J.G. failed to earn requisite academic credits through no fault of his own as he was "forced" to take a calculus course that he failed.

Having reviewed the record of the proceedings before the NJSIAA, as well as the legal arguments of the parties, the Commissioner determined to deny petitioner emergent relief. Commissioner concluded that petitioner failed to satisfy the requirements of the *Crowe* standard in the granting of emergent relief. Moreover, the Commissioner concluded were this matter to be reviewed on its merits, it is likely to be found that J.G. was afforded the due process to which he was entitled and that the Eligibility Appeals Committee's determination was not arbitrary, capricious or unreasonable so as to warrant the Commissioner's intervention. Thus, the Commissioner denied emergent relief. Petition was dismissed.

April 24, 1998

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For Petitioner: David B. Beckett, Esq. (Szaferman, Lakind, Blumstein,  
Watter & Blader)

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

This matter has come before the Commissioner of Education by way of a Petition of Appeal and Motion for Emergent Relief filed on March 30, 1998 by petitioner seeking a reversal of the decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) to preclude her son, J.G., from participating as a member of the Hamilton Township West High School baseball team during the 1997-98 school year, and further seeking a waiver of the NJSIAA's eligibility standards. Respondent's Answer was filed on April 2, 1998, together with a complete record of the proceedings before the NJSIAA Eligibility Appeals Committee (EAC); a brief was filed thereafter. On April 15, 1998, petitioner filed a reply brief.

In accordance with *N.J.A.C.* 6:24-1.5, a grant of emergent relief is considered an extraordinary remedy which can only be issued upon a finding that petitioner has met the four-pronged standard set forth in *Crowe v. DeGioia*, 90 *N.J.* 126 (1982). The *Crowe* standard

requires petitioner to demonstrate that J.G. will be irreparably harmed if not permitted to participate in interscholastic baseball games; that the legal right underlying petitioner's claim is settled; that petitioner has a substantial likelihood of prevailing on the merits of the claim; and that in balancing the interests of the parties, the harm to J.G. will be greater than the harm to the Board, should the requested relief not be granted.

The relevant facts in this matter are not disputed. J.G. is a senior at Hamilton Township High West in the Hamilton Township School District. He was ranked eleventh in his class with a grade point average of 3.821. By the conclusion of his third year in high school, he had exceeded the number of credits needed for graduation. He elected to remain at Hamilton High School, and, in so doing, opted for a rigorous program, which included Calculus I, a half-year course, since it was apparently the only math course which fit into his schedule. In the Fall semester, J.G. received a B in Calculus I for the first marking period, and an F in the second marking period. It is acknowledged that J.G. is also taking Advanced Placement Biology which is currently valued at 5 credits, notwithstanding that it occupies two periods daily. The Board is apparently planning to modify its accreditation policy, and is considering awarding students 10 credits for taking this advanced Biology course, beginning with the current ninth grade class. Therefore, J.G. cannot benefit from this proposed change.

As a result of failing Calculus I, J.G. did not have the 13.75 passing grade credits for the Fall semester. By letter dated February 4, 1998, the Board appealed to the NJSIAA, asserting that J.G. should be determined eligible for participation, in that the accrediting of his AP Biology course, the limited academic offerings and the half-year structure of his calculus course

were all factors beyond his control.<sup>1</sup> On February 5, 1998, petitioner's request for a waiver of the Academic Credit Rule was heard by the Association's Eligibility Committee; the committee unanimously denied the appeal. (NJSIAA's Brief at p. 5) On March 2, 1998, Principal Laird appealed the decision to the EAC. The EAC heard the matter on March 11, 1998, and by a vote of 3-2, denied J.G. a waiver of the Academic Credit Rule. (*Id.* at p. 6) The Committee's determination was memorialized by letter decision dated March 18, 1998.

### PARTIES' POSITIONS

Petitioner argues that J.G. will be irreparably harmed if a waiver of the Academic Credit rule is not granted, so as to allow him to play baseball this season. In this regard, petitioner contends that J.G. has been accepted by the University of Rhode Island with a partial academic scholarship. As such, she asserts that "\*\*\*\*Rhode Island's baseball coach \*\*\*\* wants to scout JG during this semester and indicated that there may be some athletic scholarship for JG depending, in part, upon his performance at a game." (Petition of Appeal at p. 4) If the coach is unable to see J.G. play baseball during this season, petitioner concludes, J.G.'s "ability to obtain a scholarship will be irreparably harmed." (*Id.*) Petitioner distinguishes this matter from *John Dean IV and John Dean III, on behalf of his minor son, T.D. v. New Jersey State Interscholastic Association and the Board of Education of the Township of Deptford, Gloucester County*, 94 N.J.A.R. 2d (EDU) 437 (1994), noting that here, "\*\*\*\*there is strong proof that minor child JG will be deprived of the ability to compete for a baseball scholarship." (Petitioner's Brief at p. 8)

Petitioner further contends that "\*\*\*\*irreparable harm is shown because the minor JG will be absolutely deprived of his ability to play baseball if the matter is not decided on an emergent basis. The *res* of the entire matter will disappear if the matter is not handled on

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<sup>1</sup> The District asserts that, had the Calculus I class been structured like other academic math offerings for one full year, J.G. "would have earned a passing grade after two marking periods." (Michael D. Laird, Principal,

anything other than an interim relief basis.” (*Id.*) Here, there is no monetary relief which can be granted petitioner’s son, should she not prevail on this emergent claim.

The NJSIAA counters that petitioner cannot demonstrate irreparable harm, since no student has a constitutional right to participate in interscholastic sports, and neither the Commissioner nor the Courts has viewed the denial of athletic eligibility as irreparable injury. (NJSIAA’s Brief at p. 8) Rather, participation in interscholastic sports is deemed a privilege.

Further, the NJSIAA contends that petitioner has provided no proof that her son could lose a baseball scholarship if he cannot play this spring. Thus, respondent finds such potential harm to be speculative. (*Id.* at p. 10)

Petitioner, however, contests the NJSIAA’s claim that there is no evidence of a potential baseball scholarship, asserting that the testimony by J.G.’s father “\*\*\*was that he has received an academic scholarship and that if [he were] permitted to play[,] there would be people looking for him and he might receive an athletic scholarship for his baseball skills.” (Petitioner’s Reply at p. 3, citing to NJSIAA’s Exhibit G at p. 101) Thus, petitioner maintains that she has demonstrated irreparable harm will follow absent the requested relief since “\*\*\*there is no way to compensate [her son] for the losses that he will endure after the fact \*\*\*.” (*Id.*)

As to the likelihood of success on the merits, petitioner asserts that the NJSIAA’s determination is contrary to this State’s emphasis on academic achievement. Although petitioner recognizes that NJSIAA’s eligibility standards are an effort to “\*\*\*assure that athletic competition is subordinate to the academic goals of its member schools,” (Petition of Appeal at p. 5, citing to *New Jersey State Interscholastic Athletic Association Handbook*, 1997-97, at p. 61), she reasons that the NJSIAA’s decision in this matter has the opposite effect. She argues,

Given [J.G.'s] extensive credits, and given his excellent achievement and efforts to reach for academic excellence, the failure to waive the 13.75 credit rule in the instant case is contrary to the purposes of the guidelines and to the educational goals within the State of New Jersey. It will penalize a student who is attempting to achieve academic excellence and would reward students for taking simple courses that are well below their level.

*(Id. at pp. 5, 6)*

Petitioner further argues that, due to circumstances beyond his control, J.G. was forced to take an “AP” calculus course, as there was no other math course meeting his requirements which would fit into his schedule. *(Id. at p. 6)* Further, because the Board did not offer sufficient credits for the biology course which J.G. is taking, “\*\*\*he was in a precarious position as he was only to meet the 13.75 credit requirement by passing all courses. Unfortunately, he did not pass calculus.” *(Id.)* Petitioner thus concludes that it was arbitrary and capricious for the NJSIAA to deny the waiver request.

The NJSIAA counters that petitioner cannot make a preliminary showing of reasonable probability of ultimate success on the merits. Here, respondent reviews the Academic Credit Rule and notes that the purpose of the rule is to encourage “\*\*\*students to complete their studies and is an essential eligibility requirement of the NJSIAA, critical for maintaining the integrity of competition and providing students with incentives for academic development.\*\*\*” (NJSIAA’s Brief at p. 11) Citing prior decisions involving the NJSIAA, respondent further argues that the Commissioner and the Courts have “consistently ruled that eligibility requirements are fundamental to the operation of a sports program.” *(Id. at p. 12)* The Association points out that the rule applies to all students equally, and the rule reflects its desire to ensure that academics come before athletics. *(Id.)* Moreover, to the extent petitioner asserts that it has abused its discretion by denying J.G. “a break” because he was taking a difficult course, the NJSIAA asserts,

\*\*\*the EAC should never be put in the position of having to evaluate which courses were more worthy than others. The EAC must be impartial, and cannot determine whether failing a calculus course is less significant than failing a PE course. All students should be expected to challenge themselves and take courses commensurate with their abilities. The EAC will not discriminate among courses or make value judgments regarding the difficulty of courses. (*Id.* at pp. 13)

Further, the Association disputes petitioner's contention that her son's failure was beyond his control. Here, NJSIAA affirms that J.G. "had no hospitalization, no disability, no sick parent at home that he had to care for; no excuse that the EAC had the power to consider under the eligibility guidelines\*\*\*." (*Id.*) If the administration of the Hamilton High School West had any question that petitioner's son did not deserve his failing grade, the NJSIAA contends that the school could have reviewed the grade. Likewise, the school could have reconsidered how to weight the course. Respondent underscores that these decisions are not within its jurisdiction and it cannot "second guess" a school's grading policy. (*Id.* at pp. 13, 14)

The Association advises that the EAC's decision was reflective and deliberative, rendered after having reviewed all the arguments. While petitioner may disagree with its decision, respondent maintains that its decision was, nevertheless, rendered after a fair and deliberate process. Thus, it should not be set aside. (*Id.* at p. 15)

In her reply, petitioner contends that the NJSIAA is attempting to "shift the blame" to the Hamilton Township Board of Education. (Petitioner's Reply at p. 1) Petitioner continues,

The NJSIAA, unlike the Commissioner, does not have the responsibility for academic integrity and academic policy in the State. As such, it could not fully adjudicate the claim and its attempt to suggest that the Hamilton School Board should have adjusted its grading or credit practices when there was a viable and clear way to resolve this matter -- namely, to have the waiver rules applied by the NJSIAA, is simply an attempt to avoid responsibility to enforce its rules appropriately. (*Id.* at p. 1, 2)

Petitioner concludes that, because the NJSIAA's decision did not take into consideration "broader educational policy" and the laudable goal that students should be rewarded for taking higher level courses, its decision is not entitled to deference. (*Id.* at p. 2)

Petitioner argues that equity favors granting emergent relief. Absent said relief, petitioner contends that J.G. will be deprived of his ability to play baseball and to compete for an academic scholarship; he will also be penalized for his pursuit of academic excellence. (Petitioner's Brief at p. 9) Whereas, the harm to NJSIAA, according to petitioner, is minimal. That is, NJSIAA will not be compelled to change its Guidelines, "but will simply emphasize that the Guidelines are subordinate to the overall objectives of the educational policies of the State of New Jersey, which is the same exception that is already included within the Guidelines." (*Id.*)

Petitioner, therefore, seeks immediate reinstatement of J.G. to the boy's varsity baseball team of Hamilton High School West, with full ability to play for the boy's varsity baseball team in all interscholastic games and practices. (Petition of Appeal at p. 7)

The Association, however, argues that, absent the relief requested, there is nothing preventing petitioner's son from continuing his education and from practicing with the baseball team. (NJSIAA's Brief at p. 16) It further argues that, should emergent relief be granted, the baseball teams could suffer a hardship if petitioner's son is later found ineligible. That is, since the eligibility rule and guidelines provide that when a member school uses an ineligible player in a game, the contest must be forfeited, if petitioner does not prevail on the merits of her claim after having been granted emergent relief, her son's teams will be required to forfeit those games in which he participated. (*Id.*)

Finally, the NJSIAA argues that allowing J.G. to play baseball under these circumstances presents a hardship to the other schools who are members of the Association and



whose athletes have met the Academic Credit Rule, not to mention the athlete from J.G.'s own team who met the academic standard but will be displaced because petitioner's son is playing. (*Id.* at pp. 16, 17) Petitioner, however, views the Association's arguments in this regard to be "speculative and unsupported." (Petitioner's Reply at p. 3)

#### DETERMINATION

Having carefully reviewed the record of proceedings before the NJSIAA<sup>2</sup>, as well as the legal arguments presented by the parties, the Commissioner determines to deny petitioner emergent relief, as requested.

In accordance with prior case law, the inability to participate in interscholastic sports, alone, does not constitute irreparable injury. Thus, petitioner cannot demonstrate irreparable harm merely because her son is precluded from playing baseball; nor can she establish that a settled legal right is underlying her claim, *Crowe, supra*, at 133, where J.G. possesses no legal right to participate in such extracurricular activities. *Martin A. Domacasse v. Board of Education of the North Warren Regional School District, Warren County*, decided by the Commissioner April 4, 1996, affirmed State Board April 17, 1996; *Camden City Board of Education v. NJSIAA*, N.J. Superior Court Appellate Division decision of February 18, 1992, Docket No. A-2802-91T2; *Burnside et al. v. NJSIAA*, 1984 *S.L.D.* 1695 (App. Div. 1984), *cert. denied*, 101 *N.J.* 236 (1985). In the instant matter, the Commissioner notes that even assuming, *arguendo*, that the petitioner has demonstrated that her son has been offered the chance to compete for an athletic scholarship, and assuming deprivation of said opportunity rises to the level of irreparable harm sufficient to warrant extraordinary remedy, petitioner has not satisfied the remaining prongs sufficient to warrant emergent relief.

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<sup>2</sup> The record includes a transcript of the hearing before the EAC.

The Commissioner determines that petitioner has failed to demonstrate a likelihood of success on the merits of her claim. In this regard, he recognizes that the NJSIAA is a voluntary association. In cases involving the Association, the Commissioner's scope of review is an appellate one. *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, 183. As such, he may not overturn an action by NJSIAA in applying eligibility rules absent a finding that the Association applied the rules in a patently arbitrary, capricious and unreasonable manner. *B.C. v. Cumberland Regional School District*, 220 *N.J. Super.* 214, 231-232 (App. Div. 1987). Further, the burden of proof that an action was so deficient rests with the person challenging the decision. *Kopera v. West Orange Bd. of Education*, 60 *N.J. Super.* 288, 297 (App. Div. 1960). Thus, the Commissioner may not substitute his judgment for that of the NJSIAA, even when he might judge otherwise in a *de novo* review. *Dam Jin Koh and Hong Jun Kim v. NJSIAA*, 1987 *S.L.D.* 259.

In the instant matter, two separate committees of educators convened to consider petitioner's request for a waiver of the NJSIAA's Academic Credit Rule. The EAC held a hearing at which Principal Laird, petitioner, J.G.'s father and the athletic director appeared to testify on J.G.'s behalf. (NJSIAA's Brief at p. 6) Upon review, the EAC fairly determined

\*\*\* there are no exceptions to [the Academic Credit Rule] so as to distinguish between underachieving students and those who have maintained a high level of academic performance. The rule is intended to encourage the general student population alike to achieve at the highest level of their ability using sports as an incentive for that purpose.

While the committee is most sympathetic to the problems faced by this young man, it could not find any circumstances that would justify a waiver of the Academic Credit Rule. He voluntarily decided to take the course in questions [sic], was given an opportunity to pass and regrettably was not able to do so. There was no demonstration that his failure to achieve the required academic standards was because of circumstances beyond his

control. (NJSIAA's Brief at pp. 6, 7, citing to the EAC's decision of March 18, 1998)

Were this case to be reviewed on its merits, the Commissioner notes it is unlikely that petitioner would be successful in asserting that J.G.'s failing grade in Calculus I was a circumstance which was not within his control, where petitioner fails to allege that her son made any extraordinary efforts to ensure his passing the course, having been presented with a progress report which clearly indicated that he was struggling in that class. (NJSIAA's Brief at Exhibit C) Instead, petitioner makes the highly implausible claim that, "\*\*\*\*through no fault of his own he received a failing grade." (Petition of Appeal at p. 2) That petitioner chooses to focus on the Board's scarcity of course offerings and its accreditation policies does not mask the relevant issue of her son's performance in his chosen Calculus class. Indeed, at the hearing before the EAC, counsel for petitioner never squarely addresses the reason why J.G. was *unable to pass the course*. Instead, counsel reiterates that J.G. was *unable to drop the course*, due to limited offerings, and returns to the issue of the accreditation of his biology course. (NJSIAA's Brief at Exhibit G at pp. 103, 104) One of the committee members pressed petitioner's counsel:

DR. KUPERSMITH: I'd like to -- just can I follow up for you with this question in mind: What effort did the student, [J.G.], here put into the passing of his course? What sort of circumstances did he face? We want to hear about what was in his control, what was outside his control in terms of passing this course, specific course that he took in Calculus. (Tr. 104)

Here, petitioner's counsel deferred to Mr. Laird, principal of Hamilton High School West, who acknowledged that J.G. "ran into problems after he received a B in the first marking period." (Tr. 105) Mr. Laird, however, merely stated that the work got more difficult, that J.G. "hit the wall" and the only other math course available as an option for him was "a math topics course which is for students who basically have gotten D or [have] not been able to do the Pre-Calc," a course

which J.G. passed in his junior year. (Tr. 105, 106) Given the lack of evidence to support petitioner's claim that her son's failure was not within his control, and having been accorded due process in this matter, the Commissioner finds that petitioner is not likely to establish that the determination by the NJSIAA was arbitrary, capricious and unreasonable, so as to prevail on the merits of her claim.

The Commissioner further notes his concurrence with the NJSIAA's view that, to the extent petitioner contends the local Board's grading and accreditation policies are inequitable, it was not within the Association's authority to offer a remedy. As the Association correctly stated,

Like the student, Hamilton's administration also had in its power [the ability] to remedy this unfortunate situation. This particular grade could have been reviewed, if there were any question that the student might not have deserved it. The school grading policy that dictated how the final grade was calculated could have been reviewed to see if this situation was appropriate. Most importantly, the school could have considered how to weight the [Biology] course in terms of credits to be awarded, especially if it is now claiming that the [Biology] course should actually have been worth more credits than petitioner earned. However, it did none of these things, and none of those decisions [is] within the jurisdiction of the NJSIAA to make. (NJSIAA's Brief at p. 13)

Finally, the Commissioner determines that the equities in this matter lie on the side of NJSIAA, since the issuance of a stay of its decision, under less than "truly extraordinary circumstances" may result not only in a weakening of the NJSIAA's Academic Credit Rule, but may also jeopardize the high school baseball teams' chances for interscholastic competition.

Accordingly, the Commissioner finds that petitioner has failed to meet the legal standard necessary to warrant the extraordinary remedy of emergent relief. Inasmuch as petitioner recognizes that the subject of this appeal will be lost if a decision is not made on an emergent basis, and noting that a review of the merits of this matter is not guaranteed to occur

before the end of the baseball season, the Commissioner determines that no purpose would be served by ordering further proceedings. Accordingly, the within Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

April 24, 1998