

A.L.M., on behalf of minor son, T.L.M., :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
NEW JERSEY STATE INTERSCHOLASTIC : DECISION  
ATHLETIC ASSOCIATION,, :  
RESPONDENT. :  
:

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SYNOPSIS

Petitioning parent sought reversal of the NJSIAA's determination precluding her son, T.L.M, from participating as a member of the Parsippany High School track team during the 1997-98 school year and sought waiver of the NJSIAA's eligibility standards. Petitioner contended T.L.M. failed to earn requisite academic credits through circumstances beyond his control.

Having reviewed the record of the proceedings before the NJSIAA, as well as the legal arguments of the parties, the Commissioner determined to dismiss the petition. Commissioner concluded that T.L.M. was afforded the due process to which he was entitled. Petitioner, however, failed to demonstrate that the Eligibility Appeals Committee's determination denying waiver of the Academic Credit Rule was arbitrary, capricious or unreasonable so as to warrant the Commissioner's intervention. Petition was dismissed.

APRIL 30, 1998

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For Petitioner: A.L.M., *pro se*

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

This matter has come before the Commissioner of Education by way of a Petition of Appeal filed on April 2, 1998 by petitioner seeking a reversal of the decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) to preclude her son from participating as a member of the Parsippany High School track team during the 1997-98 school year, and further seeking a waiver of the NJSIAA's eligibility standards. Respondent's Answer and brief were filed on April 13, 1998, together with a complete record of the proceedings before the NJSIAA Eligibility Appeals Committee (EAC). Although petitioner was provided an opportunity to submit a reply to the NJSIAA's submission, no reply was submitted.

Petitioner's son is a sophomore at Parsippany High School. He failed his Biology course last fall, thereby rendering him unable to earn the 13.75 credits required by NJSIAA guidelines in order to be eligible for high school athletics in the spring semester. *NJSIAA*

*Handbook*, 1997-98, at p. 38. Because petitioner's request for a waiver of the Academic Credit Rule was filed so close to the start of the spring sports season, this matter was heard directly by the Eligibility Appeals Committee (EAC) on March 11, 1998. After hearing testimony and reviewing the record, the EAC voted unanimously to deny the student a waiver of the Academic Credit Rule. (NJSIAA's Brief at p. 4) The Committee noted, in pertinent part,

\*\*\*Although there was an illusion to "medical reasons," none of the testimony or the materials presented demonstrated that the student was physically unable to pass the required academic standard to be eligible for sports this spring. Indeed, the major complaint brought to the Committee was a disagreement with the Biology teacher and his method of evaluating this student.

The Committee also notes that this student will be eligible to participate on the spring track team, as long as he does not engage in interscholastic sports. In addition, as a sophomore, he will have two full years to participate in high school sports, assuming that he improves his academic performance. (*Id.* at p. 5, citing to EAC decision, March 18, 1988)

#### PETITIONER'S POSITION

Petitioner's submission to the Commissioner of Education essentially incorporates, by reference to appended documents, her arguments presented before the NJSIAA, asserting that her son's failure in Biology class was a circumstance beyond his control. Petitioner attributes her son's failing grade to a stressful family situation, which, apparently necessitated him being in court last fall for substantial periods of time. Petitioner supplemented her appeal with a letter dated March 31, 1998 from a Superior Court Judge who affirmed, in pertinent part,

While I do not have an intimate familiarity with the daily social and academic functioning of [T.], I do believe that it is reasonable to surmise that these [family] issues affected [T.'s] ability to perform effectively in his academic studies, and may have substantially contributed to his failing grade. \*\*\* (Letter from Reginald Stanton, Judge of the Superior Court, Morris/Sussex Vicinage, March 31, 1998)

### RESPONDENT'S POSITION

The Association initially contends prior case law has established that participation in interscholastic sports is not a constitutional right, but a privilege, and participation in such sports is subject to eligibility requirements and preconditions. (NJSIAA's Brief at p. 6, citing *Burnside v. NJSIAA*, unpublished decision of the Appellate Division dated November 15, 1984, Docket No. A-625-84T7; *Board of Education of the City of Camden v. NJSIAA*, 92 N.J.A.R. 2D (EDU) 182, 188)

The Association next asserts that the purpose of the Academic Credit 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 Brief at p. 7) Citing prior decisions involving the NJSIAA, respondent further argues that "[t]he Commissioner and the courts have consistently ruled that eligibility requirements are fundamental to the operation of a sports program." (*Id.* at p. 8)

Notwithstanding petitioner's arguments to the contrary, the Association maintains that petitioner has failed to establish that her son was unable to meet the credit requirements due to circumstances beyond his control. In this regard, the NJSIAA argues that petitioner's assertion that her son suffered "medical hardship" lacks merit. (*Id.*) The Association reasons that "[t]he note petitioner submitted from the doctor does not diagnose any illness, nor does it even imply than an illness caused [T.] to fail his course." (*Id.*) Further, petitioner's second contention was that the failing grade was due, in part, to a "personality conflict" between her son and his teacher. However, the NJSIAA notes that it does not establish grading policies or standards for granting

credits, nor will it interfere with the grading decisions of teachers or schools. (*Id.*) Finally, as to petitioner's contention that her son's involvement in a court proceeding last fall rendered him unable to pass Biology, the Association argues that

[t]his argument did not appear in the papers submitted to the NJSIAA, and was first raised, briefly, at the hearing.\*\*\* A letter from Judge Stanton was submitted to the Commissioner, although the letter was not presented to the EAC, is not part of the record, and should not be considered. (*Id.* at p. 9, footnote omitted)

Thus, the Association affirms that the EAC was within its discretion when it found that the status of petitioner's son was not caused by circumstances beyond his control.

#### DISCUSSION AND CONCLUSION

The NJSIAA is a voluntary association. The Commissioner's scope of review in NJSIAA determinations 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. The Commissioner 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). In such cases, 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.

Having carefully reviewed the record of proceedings before the NJSIAA<sup>1</sup>, as well as the arguments presented by the parties, the Commissioner concludes there is no indication that

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<sup>1</sup> The record includes a transcript of the hearing before the EAC.

the NJSIAA's action was arbitrary, capricious or unreasonable. The Commissioner notes that the EAC rendered its decision based upon the evidence presented by petitioner, including all documents submitted by the school. (NJSIAA's Brief at p. 9) Petitioner had an opportunity to be represented by counsel, to examine and cross-examine witnesses. The Commissioner is satisfied, then, that the NJSIAA fairly examined the purpose of the Academic Credit Rule, and whether petitioner had demonstrated that her son met the rule's exception. Further, the Commissioner notes that the letter from Judge Stanton was not before the NJSIAA when it rendered its decision; however, even considering such evidence on appeal, *arguendo*, it is insufficient to establish the claim made by petitioner herein.

Accordingly, the Commissioner concludes that petitioner has failed to demonstrate that the determination by the NJSIAA was arbitrary, capricious and unreasonable. Thus, the Commissioner adopts as his own the findings and conclusions of the NJSIAA and dismisses this Petition of Appeal.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

APRIL 30, 1998