

CHRISTIAN OLSEN, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

NEW JERSEY STATE INTERSCHOLASTIC : DECISION
ATHLETIC ASSOCIATION, :

RESPONDENT. :

SYNOPSIS

Petitioner, football coach at Wayne Hills High School, sought reversal of NJSIAA’s Executive Committee’s decision of February 18, 1998 which affirmed the Controversies Committee decision of December 17, 1997, finding that petitioner violated the standards of good sportsmanship (Article IX of the NJSIAA Bylaws) by hiring so-called “volunteer coaches” in 1996 and allowing the participation of his 11-year-old son in a 1995 intra-squad scrimmage. Petitioner further sought elimination or modification of the penalty imposed, which called for his suspension from coaching, starting with the beginning of the 1998 football practice and extending through the fifth game of the regular season. If he were not rehired for 1998, the suspension would be applied in the future at any NJSIAA member school.

Following thorough review of the record in this matter, including the transcript of the hearing before the NJSIAA Controversies Committee, the written decisions of both the Controversies Committee and the Executive Committee, as well as the arguments advanced by the parties, the Commissioner determined to deny petitioner’s request for a *de novo* hearing. Commissioner observed that the relevant standard of review under which he is required to review these matters dictated that such a hearing could only be directed if he were to determine that the record before him were inadequate and, consequently, supplementation of such record was necessary to allow him to properly resolve the appeal, which was not the case herein. Commissioner concluded that petitioner failed to establish by substantial credible evidence that the NJSIAA acted arbitrarily or unreasonably when it determined on the basis of the record before it that petitioner violated Article IX of its Bylaws dealing with sportsmanship and that under the circumstances existing here, petitioner also did not meet the required burden with respect to the particular penalty imposed against him by the NJSIAA. Commissioner also found petitioner’s allegations that he did not receive a full measure of due process in this case to be fully belied by the record. Commissioner adopted findings and conclusions of the NJSIAA as his own. Petition was dismissed. Having so determined this matter on the merits, the Commissioner found it unnecessary to reach to petitioner’s Motion for Stay of Penalty Pending Appeal, as such motion was rendered moot.

JULY 15, 1998

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For Petitioner: Robert A. Fagella, Esq. (Zazzali, Zazzali, Fagella & Nowak)

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

PROCEDURAL HISTORY

This matter has come before the Commissioner of Education by way of a Petition of Appeal filed on April 6, 1998, by petitioner (Olsen) seeking a reversal of the decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) Executive Committee dated February 18, 1998, which affirmed the determination of the Controversies Committee dated December 17, 1997, finding that the conduct of Christian Olsen, a football coach at Wayne Hills High School, in hiring “volunteer coaches” in 1996 and allowing the participation of his 11-year-old son in a 1995 intra-squad scrimmage, constituted violations of Article IX of the NJSIAA Bylaws, concerning the standards of good sportsmanship. Petitioner seeks reversal of such decision as being arbitrary, capricious and unreasonable alleging that it is unsupported by the record. He asks that the Commissioner conduct a *de novo* hearing in this matter, reverse the

NJSIAA's findings of fact, and eliminate or modify the penalty imposed, which calls for his suspension from coaching, starting with the beginning of the 1998 football practice and extending through the fifth game of the regular season at Wayne Hills High School, and further stipulates that if he is not rehired for the 1998 football season, this suspension will be applied wherever he is reemployed as a football coach at an NJSIAA member school, either next year or in the future.

On April 17, 1998, Respondent NJSIAA filed its Answer to the Petition of Appeal, and on April 23, 1998, petitioner filed a transcript of the hearing conducted before the NJSIAA Controversies Committee on October 27, 1998.¹

By letter dated April 30, 1998, the Director of the Bureau of Controversies and Disputes directed petitioner to submit a brief on the merits of his claim within 20 days, accorded the NJSIAA 10 days within which to file a reply brief, and provided petitioner 5 days from his receipt of such reply to respond.

On May 5, 1998, petitioner submitted a Motion for Stay of Penalty Pending Appeal. Such motion was acknowledged and a schedule for responsive pleadings established. Petitioner was further reminded that his brief on the merits of his claims was also due and he was advised that if such brief were not forthcoming, it would be assumed that petitioner relies on the current record as support for both his motion and his case in chief. The NJSIAA filed a brief in opposition to the Stay application on May 20, 1998 and petitioner submitted his reply to the NJSIAA's opposition brief on May 29, 1998.^{2,3}

¹ By letter dated April 30, 1998, receipt of the transcript of testimony before the Controversies Committee was acknowledged. Petitioner was advised that, as his submission did not include a transcript of the hearing before the Executive Committee on February 18, 1998, it must be inferred that he has determined that such transcript is not a necessary component of the record before the Commissioner for consideration.

² Any deviation of submissions to the record in this matter from established timeframes was done pursuant to timely application for, and grant of, extension with consent of adversary.

³ Petitioner's reply brief advised that he believed further briefing on the merits of this matter was unnecessary and he, accordingly, would rely on all currently submitted materials for both his stay application and the case in chief. Additionally, petitioner's request for oral argument is noted but deemed unnecessary to the resolution of this matter.

By letter dated May 14, 1998, Nathanya Simon, Esq., on behalf of the Wayne Hills Football Parents Organization, filed a Motion for Intervention and Participation, pursuant to *N.J.A.C. 6:24-1.7* and *N.J.A.C. 1:1-16*. On May 20, 1998 petitioner, Olsen, advised that he supported this application, and respondent NJSIAA's brief in opposition to the motion was duly filed on May 26, 1998. The Commissioner, by letter dated June 3, 1998 denied the Wayne Hills Football Parents Organization's motion, finding that any interest which this body may possess is not likely to add constructively to the case without causing undue delay or confusion, as the group had not advanced a significant interest in the outcome of this matter which differs from those fully represented and addressed in the current record before him.

With the receipt of the last directed submission of the parties, the record in this matter was closed.

BACKGROUND

The record indicates that the within matter culminated with the NJSIAA's receipt of a letter on June 3, 1997, from Ronald Bligh, a former assistant football coach at Wayne Hills High School, making four allegations against petitioner, Head Football Coach, Christian Olsen. Mr. Bligh claimed that: 1) in January 1997, Mr. Olsen had physically attacked him; 2) he had witnessed Mr. Olsen punching his sons; 3) Mr. Olsen had hired and paid "under the table" two non-board approved coaches who had not been granted the mandatory 60 credit substitute state teaching certificate and who had not received criminal background reviews (Mr. Bligh reported that one of these individuals had been charged with a disorderly person narcotic possession charge in June of 1996, before the Fall 1996 season); and 4) Mr. Olsen had allowed a junior high school student (subsequently identified as Mr. Olsen's 11-year-old son) to participate as a quarterback in an intra-squad scrimmage during the football team's in-season practice in August 1995. (Brief of Respondent NJSIAA in Opposition to Application for Stay of Penalty at p. 6) The NJSIAA

forwarded the complaint to Wayne Hills High School and was informed that the allegations would be promptly investigated. On June 11, 1997, the NJSIAA received a detailed report on the charges from the school principal which essentially stated:

- The Wayne Township Board of Education (“Board”) concluded that a physical altercation, accompanied by loud profanities between Mr. Olsen and Mr. Bligh, had, indeed, occurred on school premises on January 23, 1997.
- The Board also concluded that the two non-approved coaches were assisting the primary coaches and were not involved in any coaching or instruction of the team. These two individuals had received a combined contribution from all the other coaches in the amounts of \$350 for one individual and \$700 for the other, based on their amount of time of assistance.
- The Board entered into a “settlement agreement” with Mr. Olsen that withheld his 1997-98 salary increment and terminated him from his 1996-97 coaching positions.
- As to the allegations concerning the participation of Mr. Olsen’s son in the August 1995 practice, the Board concluded that there was no infraction, since it only happened once during the 1995 season; there was no physical contact of players with Mr. Olsen’s son, there were only five or six small hand-off’s to the boy; and the entire team knew about the action.
- The allegation with respect to Mr. Olsen’s contact with his sons was reported to the New Jersey Division of Youth and Family Services (DYFS), with no investigation being conducted by school administration.

(Brief of Petitioner in Support of Application for Stay of Penalty, Exhibit E)

The record indicates that subsequent to the Board’s investigation and report to the NJSIAA, it rehired Mr. Olsen as Head Football Coach, and Mr. Bligh complained to the NJSIAA that the Board’s actions with respect to this matter were inadequate. (Brief of Respondent NJSIAA in Opposition to Application for Stay of Penalty at p. 7)

The parties were advised that a hearing before the NJSIAA Controversies Committee would be conducted.⁴ Such hearing was held on October 27, 1997, and that body's decision was issued on December 17, 1997.

In making its determination in this matter, the NJSIAA Controversies Committee made the following Findings of Fact:

1. The Wayne Township Board of Education has two high schools under its jurisdiction, Wayne Hills High School and Wayne Valley High School.
2. For the past 11 years, Christopher Olsen has served as the head football coach at Wayne Hills and during the 1996 football season, had seven certified assistant coaches on his staff, including Ronald Bligh.
3. In August 1995, an intra squad scrimmage was conducted at the Wayne Hills football field, in front of a large audience. At that time, Coach Olsen's 11 year old son was permitted to participate as a quarterback. This young man had just graduated from the sixth grade and was entering the seventh grade in the Wayne Hills school system.
4. The participation of Mr. Olsen's son in this activity was without the knowledge of the athletic director, the school principal or anyone associated with the Wayne Township Board of Education ("Board").
5. Coach Olsen advised the school investigators that his son only was involved in "five or six snaps as a quarterback" in one half of the scrimmage. In fact, this Committee finds that the young man participated in both halves of that activity and engaged in double or triple those snaps.
6. Christian Olsen was issued an official Wayne Hills helmet and jersey by the team and was portrayed to all the spectators as a member of the school squad.
7. It is uncontradicted that Christian Olsen did not receive any contact on the evening of the scrimmage and the Committee accepts Coach Olsen's contention that the squad was instructed by him not to engage in any such contact.
8. Although the Board concluded that there was no violation of any rule or regulation, the coach admitted himself that he had committed an error and "let my heart lead my head that day."

⁴ On October 17, 1997, the NJSIAA advised the Board that it would not be considering two of the allegations, the alleged fight with Assistant Coach Ronald Bligh on school property on January 23, 1997, and the allegations with respect to physical contact by Mr. Olsen with his sons, as these matters were outside the scope of NJSIAA jurisdiction.

9. In the summer of 1996, Coach Olsen advised his seven assistant coaches that they should “chip in” and contribute a standard amount of money so that he could hire two assistant football coaches, T.Z. and J.S. Although portrayed as “volunteers,” the Committee finds that these individuals were actually unauthorized employees of the Board and carried out the normal responsibilities of assistant coaches throughout the 1996 season.

10. Neither the Board, the Wayne Hills principal or the athletic director were even aware that T.Z. and J.S. had been retained as assistant coaches.

11. Contrary to the Board’s conclusion, and based upon the credible evidence presented at the hearing, the Committee finds that T.Z. and J.S. engaged in coaching activities. J.S. was left alone with the freshman squad for periods of time and both he and T.Z. provided specific instruction to the Wayne Hills squad.

12. At least a month before Christmas in 1996, all seven assistant coaches contributed \$150 or \$200 to a fund to make payments to T.Z. and J.S. The Committee finds that these payments were not voluntary but were expected. The Committee further finds that the proposal to make these payments came from Coach Olsen and were therefore implicitly coercive.

13. One of the “volunteers” had been charged with possession of a controlled dangerous substance and had been “conditionally discharged” from that offense. A “conditional discharge” is a procedure under state criminal law which allows the dismissal of a drug charge against a first-time offender, provided he or she does not have any infractions over a subsequent period of time. The Committee notes that the school admitted that it would not have hired this individual, had it known about this criminal charge.

14. Neither T.Z. or J.S. were permitted to coach, pursuant to *N.J.A.C. 6:29-3.3*. The Committee finds that Coach Olsen engaged these two individuals, without the knowledge of his Board or his supervisors, in a surreptitious manner, in an attempt to circumvent both the state regulation and Board policies. Since they were compensated from the pay received by the assistant coaches, they were, in effect, compensated by the Board without that body’s approval.

(NJSIAA Controversies Committee Decision, December 17, 1997, pp. 5-6)

PETITIONER’S POSITION

Petitioner urges that the “charges against him have been wildly mischaracterized, are the result of false testimony by a former colleague (Ronald Bligh) who harbors white-hot animosity [against him], and that the penalty imposed by NJSIAA is grossly disproportionate to

any perceived offense,”⁵ (Brief of Petitioner in Support of Application for Stay of Penalty at p. 3) and argues that when the Commissioner reviews the facts with respect to each of the charges and the resultant penalty he will concur with this assessment.

Charge Involving “Volunteer” Coaches

Petitioner alleges that the NJSIAA’s findings with respect to this charge “are not supported by the record, and are the product of the biased testimony of a single witness.” (*Id.* at p. 4) He states that it is uncontroverted that he “*always*” acknowledged that he allowed two individuals who were not formally approved by the Board to assist the coaching staff on a voluntary basis. As these individuals did not perform “actual ‘coaching’ responsibilities,” petitioner maintains that they did not fall under the purview of *N.J.A.C. 6:29-3.3*.^{6, 7} Petitioner states that the use of volunteers is commonplace, and his only error in this regard was his failure to secure formal approval of the Board, which he claims is attributable to his being “unaware” of the Board’s policy requiring approval of such individuals.⁸ (*Id.*) At issue here, petitioner argues, is the NJSIAA’s finding “that the volunteers actually performed ‘instructional services’-- for a salary***”. (*Id.* at p. 5) Such findings, he urges, were a result of the Committee’s almost exclusive reliance on the testimony of one individual, Ronald Bligh, known to harbor a deep

⁵ Petitioner additionally advances that the specific infraction of NJSIAA rules with which he is charged, Article IX, Section 3 of the NJSIAA Bylaws, dealing with “sportsmanship” is inapplicable here. He argues, “the rule is predominantly directed at the obligation of *schools* to insure fair play. As to individuals, ‘unsportsmanlike’ conduct is defined as ‘striking an official;’ ‘inciting participants and spectators to violence;’ use of obscenities; and public criticism of officials.” Petitioner urges that “[n]one of these types of conduct is remotely at issue here.” (emphasis in text) (Reply Brief of Petitioner in Support of Application for Stay and Reversal of Penalty at p. 2)

⁶ *N.J.A.C. 6:29-3.3(a)* specifies “Any person not certified as a teacher and not in the employ of a district board of education shall not be permitted to organize public school pupils during school time or during any recess in the school day for purposes of instruction, or coaching or for conducting games, events of contests in physical education or athletics.”

⁷ Petitioner additionally asserts that as this matter involves a “legal determination” as to whether the use of volunteers violates *N.J.A.C. 6:29-3.3*, rather than an NJSIAA rule, that body’s interpretation of legal issues are not entitled to the deference it is accorded with respect to fact finding issues. (Brief of Petitioner in Support of Application for Stay of Penalty at pp. 21-22)

⁸ Petitioner further argues that “***to the extent that the NJSIAA decision is based upon [his] purported violation of *internal* rules of the Wayne Board by failing to obtain prior Board approval for such volunteers, that procedural

animosity against him and the Board, and its total disregard of his testimony and that of Athletic Director Bruno, Assistant Coach Riker, and Principal Eugene Sudol (who had conducted the Board's investigation in this matter.) (*Id.* at p. 5) Petitioner presents selected hearing testimony of these individuals which he asserts establishes that the "volunteer" coaches were solely utilized to provide "minor and ancillary assistance to the coaching staff." (*Id.* at p. 7) Petitioner urges that testimony to the contrary from Floyd Bligh (Ronald's brother) is unreliable because, by his own admission, he dropped by football practices only periodically and for short periods of time. (*Id.* at p. 8) As such, petitioner contends, the Committee relied only on the testimony of Ronald Bligh, wherein he stated "that one of the volunteers 'worked individually with the quarterbacks on the team and the second volunteer was left alone by Coach Olsen with the freshman team until the assistant coaches arrived from their classes at 3:45 in the afternoon' (Exhibit A at 4)" despite all of the evidence to the contrary. (*Id.*)

With respect to the Committee's finding that the "Christmas gift of \$700 and \$350 respectively given to the two volunteers *** by the entire *** coaching staff was part of a preordained, surreptitious plan 'coerced' by Coach Olsen," petitioner advances that the within record fully fails to support such a finding. (*Id.* at pp. 8-9) He avers that at the hearing he clearly explained the circumstances surrounding the monetary gift given to the volunteers in appreciation for their assistance throughout the season, when he stated

Near the end of the season, all seven coaches got together and agreed they wanted to do something for the two volunteers***. [Petitioner] testified that the *entire* coaching staff -- including Bligh -- were involved in the joint decision to "chip in" \$150 each (T95-96). [Petitioner] emphasized that it was "100% voluntary" on behalf of all seven coaches (T97). (emphasis in text) (*Id.* at p. 9)

violation simply does not implicate NJSIAA concerns." (emphasis in text) (Reply Brief of Petitioner in Support of Application for Stay and Reversal of Penalty at p. 5)

Petitioner cites selected testimony of Assistant Coach Riker and certain statements of Ronald Bligh, the complainant, which he says confirms that the payments were not “coerced.” (*Id.* at p. 10) As such, petitioner argues, aside from the testimony advanced by Bligh, there is “virtually no factual basis” to support the Committee’s findings with respect to this charge. (*Id.* at p. 11)

In addition, petitioner alleges, there are real issues surrounding the “procedural fairness” of the Controversies Committee’s hearing itself. In this connection, he first advances that “***it is important to note that Olsen and the Board were led to believe that the issue to be address[ed] by the Controversies Committee was the penalty for *using* volunteers in a non-coaching capacity without prior Board approval (which Olsen has always admitted) not *whether* they were in fact volunteers.”⁹ (emphasis in text) (Brief of Petitioner in Support of Application for Stay of Penalty at p. 11) Moreover he asserts “the proceedings were rushed” (*id.*),

[n]either opening nor closing statements were permitted. Repeatedly, the parties were advised that the hearings were “inquisitorial”, not adversarial. On several occasions the Committee indicated that 2-1/4 hours expended on the hearing were longer than expected or permitted. Olsen was led to believe that the Committee would not entertain a lengthy group of witnesses regarding the charges. (*Id.* at p. 12)

Finally, petitioner asserts that he has submitted certifications of all of the coaching staff members employed during the year at issue, as well as ones from the two volunteers, which, he attests, along with the testimony adduced at hearing confirms

(1) there was *never* any agreement to make payment in advance for the coaches; (2) that the decision to chip in \$150 each occurred near the end of the year, not at the start of the season; (3) that the decision was spontaneous and not “coerced” by Olsen, and was timed as a Christmas gift; (4) that the volunteers were never left alone with the students, nor otherwise encouraged to perform

⁹ Petitioner cites correspondence from NJSIAA Director, Boyd Sands, dated September 19, 1997, and that of Michael Herbert, dated October 17, 1997, as support for this contention. (Brief of Petitioner in Support of Application for Stay of Penalty, Exhibits C and D, respectively)

actual coaching responsibilities in violation of the rules; and (5) that Mr. Bligh's testimony to the contrary is simply untrue. (emphasis in text) (Brief of Petitioner in Support of Application for Stay of Penalty at p. 12)

As such, he argues that the Committee's decision that Ronald Bligh was credible and that petitioner, Bruno, Riker, Sudol and all of the assistant coaches were untruthful, is clearly erroneous. (*Id.*) Petitioner argues that the Commissioner must find that the Committee's reliance of the testimony on Bligh, who "admittedly had every reason to lie in light of his admitted hatred of Olsen" (*id.* at p. 15) was misplaced and, therefore, there is no credible evidence to support this alleged violation. (*Id.*)

Charge Involving Participation of Petitioner's Son in a Practice

Petitioner asserts that the Committee's conclusion with respect to his son's participation in a scrimmage game is "outrageous and unfair." (Brief of Petitioner in Support of Application for Stay of Penalty at p. 15) He contends that such conclusion is founded on a premise that he attempted to "conceal" his child's participation which is clearly untrue in that the mock scrimmage was conducted in front of hundreds, possibly thousands, of parents, students, and faculty. (*Id.* at pp. 15-16) He cites to the testimony of Principal Sudol wherein he stated, "Olsen acknowledged the incident regarding his son 'immediately' as soon as it was raised (T39)." (*Id.* at p. 16)

Petitioner further asserts that the Committee's emphasis on how many "snaps" his son took in a game which occurred over two years ago is a distinction without a difference. He urges that "[he] strongly believe[s] that this type of participation by [his] son on a celebratory night for the Wayne athletic program did not violate NJSIAA rules, [and] it surely does not warrant the hostile language or conclusions found in the NJSIAA decision." (*Id.* at p. 17) He

contends that if a violation of the rules did occur, “it was a technical, but understandable, violation.” (*Id.* at p. 18)

Penalty

Most troubling in this entire matter, petitioner argues, is the “draconian” penalty imposed by the Committee. (Brief of Petitioner in Support of Application for Stay of Penalty at p. 18) He avers that even viewing his “transgressions” in the most unfavorable light

[f]or these two isolated events, NJSIAA imposed an outrageously severe penalty of a complete suspension ***commencing with the start of the season. Since this involves all of the critical pre-season practice period, as well as a majority of the actual football season, the Committee has effectively attempted to terminate [his] career as a coach. (*Id.* at pp. 18-19)

Petitioner cites to a letter from NJSIAA Director, Boyd Sands, (Brief of Petitioner in Support of Application for Stay of Penalty, Exhibit G), which he avers confirms “that in the last five years there *has never been a penalty in excess of one game for a violation of NJSIAA rules.*” (emphasis in text) (*Id.* at p. 18) Petitioner maintains, that even conceding that he received a minor penalty for a NJSIAA infraction some six years ago, “it is absurd to claim his conduct now warrants a penalty so severe.” (*Id.*)

In conclusion, petitioner urges that in order for the Commissioner to accept the findings and conclusion of the Controversies Committee decision, he would have to “accept the testimony of a single, discredited witness, -- now more discredited than ever in light of developments subsequent to the Controversies hearing¹⁰ -- and reject the contrary testimony of almost a dozen persons intimately involved in the case.” (Brief of Petitioner in Support of

¹⁰ Petitioner makes allegations against Ronald Bligh “about other matters,” which he asserts go directly to Bligh’s credibility at the hearing, in that he contends that the NJSIAA has recently received charges that Mr. Bligh’s son participated in wrestling practices in violation of NJSIAA rules, which petitioner contends Bligh specifically denied at the Controversies Committee hearing. (Brief of Petitioner in Support of Application for Stay of Penalty at p. 14), and that he is also charged with using uncertified volunteers.” (*Id.*, Exhibit H)

Application for Stay of Penalty at p. 22) Moreover, he proffers, even if it is determined that some penalty is warranted, the Commissioner cannot support the penalty imposed here, “the most severe in recent NJSIAA history.” (*Id.*)

NJSIAA’S POSITION

Initially, the NJSIAA proffers that it is a voluntary, not-for-profit Association of over 400 New Jersey public and parochial schools, which is governed by the provisions of *N.J.S.A.* 18A:11-3 and functions pursuant to a constitution, bylaws, rules and regulations approved by the Commissioner. It asserts that the Association’s rules and regulations are deemed to be the policy of each member Board of Education (*N.J.S.A.* 18A:11-3; *B.C. v. Board of Education of the Cumberland Regional School District*, 220 *N.J. Super.* 214, 217 (App. Div. 1987) Further, it advances, Wayne Hills High School is a member of the Association and “has adopted the rules and regulations of the NJSIAA as its own.” (Brief of Respondent NJSIAA in Opposition to Application for Stay of Penalty at p. 3)

The NJSIAA asserts that it “relies upon its member schools to assure that its constitution, bylaws, rules and regulations are adhered to by its coaches and student-athletes,” a system which for the most part, it asserts, works well. (*Id.* at pp. 4-5) However, it avers “there are several schools who, for whatever reason, fail to supervise or discipline their coaches in a manner consistent with the standards of sportsmanship and fair play,” and it is in cases such as these where, it appears that appropriate action is not taken against such coaches, the NJSIAA Controversies Committee conducts full evidentiary hearings, and imposes or recommends penalties. (*Id.* at p. 5)

The NJSIAA advances that Article IX, Section 3 of its Bylaws details the standards of sportsmanship which must be adhered to by all member schools, coaches and student-athletes. In pertinent part, this code of conduct states

It shall be the responsibility of each member school to insure that all individuals employed by or directly associated with the athletic program, including its student-athletes, comport themselves in a sportsmanlike manner when representing their school, especially at interscholastic events.

Unsportsmanlike conduct shall subject the individual to disciplinary action. The member schools with which the individual is associated may also be subject to disciplinary action if it is found that the member school's policies, actions, or failure to act, substantially contributed to the individual's conduct.

(Brief of Respondent NJSIAA in Opposition to Application for Stay of Penalty at p. 3, quoting Sands Cert., Exhibit A)

The Role of Ronald Bligh's Testimony

The NJSIAA specifically disavows petitioner's contention that the Committee's determinations on these charges were made in almost exclusive reliance on the testimony of Ronald Bligh, rather, it contends, such testimony "was only a small part of the evidence concerning the two charges ***." (Brief of Respondent NJSIAA in Opposition to Application form Stay of Penalty at p. 20) With respect to the incident concerning petitioner's son it asserts

***the evidence concerning the use of Mr. Olsen's ***son as a quarterback in the scrimmage was uncontradicted. Neither the Athletic Director [nor] the Principal were aware of this occurrence and Coach Olsen himself admitted to every detail set forth in the Committee's report. In addition, another witness, Ronald Tulino, testified about the involvement of Mr. Olsen's son in the quarterback scrimmage. (Tr. 105.)" (*Id.*)

Moreover, despite petitioner's attempt to argue that he never attempted "to conceal" his son's participation in the scrimmage, citing the testimony of Principal Sudol to confirm that he acknowledged the incident "as soon as it was raised," the NJSIAA points out that petitioner failed to mention that this same witness testified that he was "completely unaware of the involvement of

the youngster and that when he found out about the activity a year and one-half after it occurred ‘he was shocked.’ (Tr. 39.)” (*Id.* at pp. 23-24) The NJSIAA argues that “[i]n point of fact, Mr. Olsen never told the principal, never told the athletic director[,] and never informed anyone in the Wayne Hills administration that he was engaged in this unprecedented stunt in August 1995, involving his 11 year old son, until Bligh complained about it in the Spring of 1997.” (*Id.* at p. 24)

With respect to the “volunteer coaches” charge, the NJSIAA urges that

it was uncontradicted that the two individual assistant coaches were not approved by the Board, and one had been charged with possession of a controlled dangerous substance. The petitioner does not dispute that the \$150 to \$200 payments made by the assistant coaches came from their own Board approved salaries. It is also uncontradicted that neither the Athletic Director nor the Principal knew of their role. (Tr. 33-34.) The only dispute was whether or not the individuals were actually “coaching,” and the Committee concluded that they were. The Committee believed that Ronald Bligh’s version [regarding the payments to the volunteers] was both more credible and plausible. The Committee also concluded that the contributions by the other coaches were not voluntary and were not a “Christmas gift,” since there were uniform payments, and according to Assistant Coach Riker, who was produced by Mr. Olsen, the payments were made not at Christmas time, but in late October or early November. (Tr. 120.) (Brief of Respondent NJSIAA in Opposition to Application for Stay of Penalty at pp. 20-21)

The NJSIAA advances that it “is obligated to follow relevant New Jersey statutory and administrative law pertaining to the employment of coaching personnel.” (*Id.* at pp. 7-8) It avers that only after considering the credible testimony and the broad language of *N.J.A.C.* 6:29-3.3(a) which provides “that non-certified and/or non-Board approved persons ‘shall not be permitted to *organize* public school pupils...for purposes of instruction, or *coaching or for conducting games, events or contests,*” the Committee made its factual findings with respect to this charge. (emphasis in text) (*Id.* at p. 10)

Credibility Findings of the NJSIAA

The NJSIAA urges that the Controversies Committee fully considered all of the testimony proffered at the hearing, that of Ronald Bligh, Floyd Bligh and Ronald Tulino asserting petitioner had violated sportsmanship rules, along with that advanced by “[petitioner], Principal Sudol, Joseph Modica and Assistant Coach Riker testifying on behalf of [petitioner] and the Board.” (Brief of Respondent NJSIAA in Opposition to Application for Stay of Penalty at p. 21) It avers that the Committee carefully weighed all of the testimony and “assessed the demeanor of the witnesses, their personal interests and the consistency of their statements***” (*id.*), ultimately determining that petitioner’s testimony was not credible. In so deciding, the NJSIAA contends, that the Committee fully recognized the ill will existing between petitioner and Ronald Bligh, and, even when considering that Bligh’s motivation was a result of his “animus” toward petitioner (*id.*), found his version of the events which transpired, more credible¹¹ stating

The Committee takes note of the fact that Ronald Bligh never complained about these two charges until he had a physical altercation with Coach Olsen. No doubt he was motivated by his animus toward Mr. Olsen. However, while his motivation might be questionable, the Committee found his testimony to be credible. In contrast, the Committee found Coach Olsen to be evasive and inconsistent. He deliberately concealed his improper activities from his supervisors. Only when he was confronted with Mr. Bligh’s charges did he acknowledge the engagement of the “volunteer coaches” and the participation of his 11 year old son in a football scrimmage a year and a half earlier. Even then, the version he provided to the Board investigators was at variance with the credible sworn testimony before the Committee. (Brief of Respondent NJSIAA in Opposition to Application for Stay of Penalty at pp. 21-22, citing Sands Certif., Exhibit A, p. 5)

¹¹ Obviously, it argues, petitioner’s allusion to unsubstantiated criminal charges against Ronald Bligh and its recitation regarding recent charges, subsequent to the disposition of this matter, dealing with Bligh’s alleged use of volunteers and the improper participation of his child in practices, are unsubstantiated facts which have no bearing upon the assessment of Bligh’s testimony. (Brief of Respondent NJSIAA in Opposition to Application for Stay of Penalty, at p. 20)

The NJSIAA cites *Nesta v. Meyer*, 100 N.J. Super. 434, 450 (App. Div. 1968); citing *Hartpense v. Gloueff*, 15 N.J. 545, 549 (1954), for the proposition that “[c]redibility assessments made by a trier of fact who had an opportunity to observe the demeanor of the witnesses while testifying [are] entitled to great weight, and should not ordinarily be overturned.” (*Id.*) It avers that petitioner in this matter has not advanced any viable reason herein why the Controversies Committee’s credibility determinations should be reversed. (*Id.*) It further maintains that petitioner’s declaration that in order for the Committee to accept the allegations against him, it would have to label as untruthful the testimony of the Principal, the Athletic Director, and Coach Riker, is fallacious and deceptive in that

***neither the Athletic Director nor the Principal knew of the deployment of the assistant coaches and were unaware of the engagement of Coach Olsen’s 11 year old son at the football scrimmage. The Committee did disagree with Principal Sudol’s interpretation of the rules and found his “investigation” and the Board’s response to be totally inadequate. Coach Riker’s testimony was limited to his statement that the payments were not coercive and that the volunteers had a limited role. Again, much of that testimony revolved around the definition of “coaching” under N.J.A.C. 6:29-3.3(a), a legal interpretation that was squarely within the jurisdiction of the NJSIAA.

(Brief of Respondent NJSIAA in Opposition to Application for Stay of Penalty at pp. 22-23)

Moreover, the NJSIAA proffers that it finds curious petitioner’s assertion that the Committee’s decision also evidences that it found that “assistant coaches (Ziza, Sullivan, Johnson, Santora, Smith and Comforti) were also untruthful” (*id.* at p. 23), in that these individuals did not testify at the hearing and, “although they had submitted letters before the *** hearing, they submitted their certifications only after the issuance of the Controversies Committee decision on December 17, 1997.” (*Id.*) NJSIAA also finds “significant” that the certifications of the two volunteers were *identical*, as were those, dated January 7, 1998, of the assistant coaches. (*Id.*) As such, the NJSIAA advances that not only were the certifications “submitted after the

Controversies Committee closed the hearing record, but were obviously tailored to respond to that Committee's decision." (*Id.*)¹²

Due Process

The NJSIAA advances that petitioner's claim that he did not receive a full measure of due process in this matter is without foundation. In this connection, it first observes that the NJSIAA's Bylaws have detailed provisions for assuring maximum due process for member schools, and individuals accused of violating NJSIAA rules. It avers that Article XIII, Section 4 of these Bylaws states that the Controversies Committee "shall conduct formal hearings, on notice to all involved parties who shall be afforded the right of counsel, the presentation of testimony under oath, cross examination and a written decision." (Brief of Respondent NJSIAA in Opposition to Application for Stay of Penalty, at p. 4) It avers that this provision further specifies that "all parties will be allowed to submit any relevant documents or written presentations to the Controversies Committee for its consideration...at least ten days before the scheduled hearing." (*Id.*) Additionally, it asserts, if an individual disagrees with the Controversies Committee's decision, the Bylaws make provision for an appeal to the NJSIAA's Executive Committee, with such appeal "[being] confined to the record developed before the Controversies Committee. (NJSIAA Bylaws, Article XIII, Section 5.)" (*Id.*)

The NJSIAA argues that, notwithstanding petitioner's contention to the contrary, "every conceivable aspect of due process," in full conformance with its Bylaws, was accorded petitioner and his counsel in this matter. (Brief of Respondent NJSIAA in Opposition to Application for Stay of Penalty at p. 18) In this regard it offers

¹² It is noted that petitioner was clearly on notice that the certifications of both the "volunteers" and the assistant coaches, submitted in January 1998, could not be considered in its appeal to the Executive Committee in that NJSIAA Bylaws, Article XII, Section 5, specifically provides that this body may only consider matters "confined to the record developed before the Controversies Committee." (See Boyd A. Sands letter to Robert A. Fagella, Esq.

***First, at the direction of the NJSIAA, an investigation was conducted under the auspices of the school administration in June 1997, leading to the issuance of a report on June 11, 1997. (Sands Cert., p. 6.) Thereafter, on September 19, the parties were notified for a full evidentiary hearing by the NJSIAA Controversies Committee for October 27, 1997. (Sands Cert., ¶8.) Both the attorney for the Board and Coach Olsen submitted detailed materials and prehearing briefs on October 16 and 17, 1997. (Sands Cert., ¶9.) The Controversies Committee received these briefs and all of the documents were submitted by the Board and Coach Olsen, ten days in advance of the hearing. A complete hearing was conducted on October 27, including the receipt of sworn testimony, the right of cross-examination and the preparation of a stenographic record.

On December 17, 1997, the Controversies Committee issued a detailed decision, referencing the 14 exhibits, including counsels' prehearing briefs, and setting forth 14 specific findings of fact correlated to the record, together with conclusions and penalties against both the Board and Coach Olsen. (Fagella Cert., Exh. A.)

Thereafter, counsel for the Board and Coach Olsen were permitted to submit additional briefs to the Executive Committee and another hearing was held by that body on February 17, 1998, at which time both counsel and his client and wife were allowed to address that Committee. (Sands Cert., ¶17). (*Id.* at pp. 18-19)

The NJSIAA specifically disavows petitioner's allegation that the Controversies Committee hearing was circumscribed. It advances that petitioner's intimation that he was prejudiced because "neither opening nor closing statement were permitted" fails to "[acknowledge] that the Controversies Committee had already received detailed briefs from both counsel." (Brief of Respondent NJSIAA in Opposition to Application for Stay of Penalty at p. 19) Likewise, it asserts that, "[i]n point of fact, at no time was Coach Olsen or the Board ever informed that they would be limited in presenting witnesses, providing the testimony was relevant and not cumulative." (*Id.*) It, additionally, proffers that the record in this matter also confirms "that on numerous occasions, counsel made inquiries of the NJSIAA which were promptly answered and

and Stephen R. Fogarty, Esq. dated January 29, 1998, Brief of Respondent NJSIAA in Opposition to Application for Stay of Penalty, Exhibit K)

the record is devoid of any attempt to unfairly limit the presentation of this case.” (*Id.*) As such, the NJSIAA argues that it is readily apparent that petitioner’s claims of a “rush to justice” in this matter are wholly unfounded. (*Id.*)

Penalty

The NJSIAA urges that the Commissioner should reject out of hand petitioner’s assertions that the penalty imposed in this matter was “outrageously severe.” (Brief of Respondent NJSIAA in Opposition to Application for Stay of Penalty at p. 25) The NJSIAA advances that petitioner’s pronouncements with regard to the severity of the penalty imposed contain some significant inaccuracies and minimization or overlooking of some relevant facts impacting on the imposition of the penalty. It asserts that only after determining that petitioner had violated the Sportsmanship Rule, did the Controversies Committee impose a penalty against petitioner and, in doing so, the Committee fully detailed its rationale for the penalty imposed, stating

In this case, Coach Olsen was involved in a serious violation of the standards of sportsmanship. In addition, this Coach has already been involved in past improper conduct of a serious nature. On February 28, 1992, this Committee issued a decision finding that Coach Olsen had violated Article IX, Section 3 of the Association Bylaws for making press comments about an officiating crew for a game conducted on October 29, 1991. Those comments were to the effect that the officiating crew should be “castrated” and should “die in hell.” As a result, Coach Olsen was fined \$200 and placed on a period of probation for two years. In its report, this Committee concluded by stating “[I]f there is any repetition of verbal assaults on game officials by Coach Olsen, the matter will be immediately reopened by the Committee for further disciplinary action.” The Committee takes note of the fact that no apologies were ever issued for this serious violation, other than “counseling” by the Wayne Board of Education.

The conduct of Coach Olsen in permitting his 11 year old son to participate in a scrimmage and then secretly hiring two unapproved coaches, one of whom had been charged with a serious criminal

violation, was contrary to state law, and constituted a serious infraction which warrants much more severe penalties.

As in 1992, the Controversies Committee is disappointed by the failure of the Wayne Township Board of Education to sanction the improper conduct of the head football coach. The Committee takes cognizance of the fact that Coach Olsen was deprived of one year's increment and thereafter denied coaching for the winter and spring semesters of last year. However, that increment withholding dealt with his fist fight with Ronald Bligh on January 23, 1997. Further, it has now turned out that the winter and spring "coaching" assignments related to his role as a strength and conditioning coach, apparently correlated to his football coaching. Given the seriousness of the present charges before the Controversies Committee, and the past record of Coach Olsen, the sanctions imposed by the Board were wholly inadequate.

(*Id.* at pp. 25-26, citing Fagella Cert., Exh. A., pp. 7, 8)

The NJSIAA proffers that, although acknowledging that disciplinary action had been taken against him some six years ago, petitioner seeks to categorize this prior violation as merely an "infraction involving criticism of officials." It maintains that such a contention cannot reasonably be accepted in that petitioner's infraction "involved the issuance of inflammatory comments about game officials in the public press***" (*id.* at p. 26), which is totally "inappropriate conduct on the part of a coach, whose actions have a direct impact on impressionable high school students." (*Id.*) The seriousness of this matter was further compounded, the NJSIAA asserts, by the fact that neither petitioner, the school, nor, for that matter, the Board ever issued any apology for the despicable conduct which transpired. (*Id.*) Likewise, it advances, petitioner's assertion that the penalty assessed against him far exceeded that imposed on other coaches is both erroneous and misleading. Petitioner's citation to a communication from Director Sands as support for his contention that there has never been a penalty of more than a one game suspension imposed on a coach does not reflect the fact that such communication was referring only to penalties imposed on *football* coaches. (emphasis in text) (*Id.* at p. 27) It posits that, "[i]n point of fact, last year the wrestling coach at Garfield was suspended for an entire year and several years ago, the

basketball coach at Clayton was also suspended for an entire year. (Sands Cert., ¶19)” (*Id.*) Neither do petitioner’s protestations recognize that “[*he*] is the only athletic coach ever to appear before the Controversies Committee more than once. (Sands Cert., Exh. J.)” (emphasis in text) (*Id.* at p. 27) Additionally, the NJSIAA contends that petitioner’s remonstrance fails to recognize “that in many cases, schools do conscientiously investigate and discipline athletic coaches either without the necessity of NJSIAA intervention, or in the wake of NJSIAA determinations.” (*Id.*) As an example, it offers that out of the 27 coaches receiving NJSIAA penalties during the period May 1992 through December 1997, “9 of those coaches were not reemployed by their schools***.” (*Id.*)

APPLICABLE LAW

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; *Brady v. NJSIAA*, 96 *N.J.A.R.* 2d (EDU) 977. As such, if the NJSIAA has granted due process and there is an adequate basis in the record to support its decision, the Commissioner cannot substitute his judgment for that of the Association, even if he would judge otherwise in a *de novo* review. *Dam Jin Koh and Hong Jun Kim v. NJSIAA*, 1987 S.L.D. 259. Moreover, the Commissioner may not overturn a finding of the NJSIAA in applying its rules absent a finding that the Association did so in a patently arbitrary, capricious, or unreasonable manner. (*Brady, supra*) Further, the burden that an action of the Association is so deficient rests with the person challenging the decision. (*Id.*)

COMMISSIONER’S DETERMINATION

After a thorough consideration of the record of this matter, including the transcript of the hearing before the NJSIAA Controversies Committee, the written decisions of both the Controversies Committee and the Executive Committee, as well as the arguments advanced by the

parties, the Commissioner initially determines to deny petitioner's request for a *de novo* hearing in this matter. The relevant standard of review under which the Commissioner is compelled to review these matters dictates that such a hearing could only be directed if the Commissioner were to determine that the record before him was inadequate and, therefore, supplementation of this record was necessary to allow him to properly resolve the appeal. Upon his full review, the Commissioner concludes that such is not the case in the instant matter.

Herein, the Commissioner is satisfied that petitioner has failed to establish by substantial credible evidence that the NJSIAA acted arbitrarily or unreasonably when it concluded, on the basis of the record before it,¹³ that petitioner violated Article IX of its Bylaws dealing with sportsmanship.¹⁴ He, likewise, concludes that, under the circumstances existing here, petitioner has also not met such required burden with respect to the particular penalty imposed against him by the NJSIAA. Moreover, the Commissioner finds petitioner's proclamations that he was unaware of the "real" charges against him and that he failed to receive a full measure of due process in this case fully belied by the within record.

Accordingly, the Commissioner adopts as his own the findings and conclusions of the NJSIAA in this matter and dismisses the Petition of Appeal. Having so determined this matter on its merits at this point in time, the Commissioner finds it unnecessary to reach to petitioner's Motion for Stay of Penalty Pending Appeal, as such motion has been rendered moot.

IT IS SO ORDERED.

¹³ The Commissioner finds that after hearing of and disagreeing with the Controversies Committee's decision, petitioner has attempted to supplement and alter the record with a series of ex post facto certifications. In that these submissions were not a part of the record before the Controversies Committee, nor, pursuant to NJSIAA Bylaws, Article XII, Section 5, of which petitioner was fully aware, the Executive Committee, such materials may not be considered by the Commissioner.

¹⁴ The Commissioner observes that, notwithstanding petitioner's arguments to the contrary, the NJSIAA's obligation to insure that interscholastic sports are closely regulated to assure fair competition and to safeguard participants dictates that it is fully empowered to interpret its own Bylaws and administrative laws and regulations governing its members.

COMMISSIONER OF EDUCATION

JULY 15, 1998