

E.L. AND N.L., on behalf of minor, R.L., :
PETITIONERS, :
V. : COMMISSIONER OF EDUCATION
NEW JERSEY STATE INTERSCHOLASTIC : DECISION
ATHLETIC ASSOCIATION, :
RESPONDENT. :
:

SYNOPSIS

Petitioning parents sought reversal of NJSIAA's decision to preclude petitioners' son, R.L., from participating as a member of the Cranford High School ice hockey team. R.L. attended Oratory Catholic Preparatory School, which did not offer ice hockey.

Commissioner affirmed the NJSIAA's decision noting that the Commissioner may not overturn an action by the NJSIAA in applying eligibility rules absent a finding that the Association applied the rules in a patently arbitrary, capricious and unreasonable manner. Commissioner concurred with the Association that petitioners failed to state a cause of action upon which relief might be granted, noting that one of NJSIAA's most fundamental rules is that students be enrolled in the school for which they compete on the interscholastic athletic team and, further, that sports are an integral part of the overall academic and extracurricular program of each member school and by allowing students to enroll in one school and participate in another school's athletic program, it would discourage the initiation of appropriate programs by member schools. Moreover, the Commissioner emphasized that participation in interscholastic sports is a privilege rather than a right and that both schools herein are voluntary members of NJSIAA and thus, governed by the rules and regulations of that Association.

AUGUST 31, 1998

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For Petitioners: Michael R. Ricciardulli, Esq. (Ruprecht, Hart & Weeks)

For Respondent: Steven P. Goodell, Esq. (Herbert, Van Ness, Cayci & Goodell)

This matter has come before the Commissioner of Education by way of a Petition of Appeal filed on May 14, 1998 by petitioners seeking a reversal of the decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) to preclude petitioners' son, R.L., from participating as a member of the Cranford High School ice hockey team because R.L. attends Oratory Catholic Preparatory School (Oratory) in Summit, New Jersey.¹ Oratory does not offer ice hockey to its students. By letter dated February 13, 1998 from Boyd A. Sands, Executive Director, the NJSIAA denied R.L.'s application. The letter stated, in pertinent part,

Since our rules and regulations are clear and explicit, there is no provision for a waiver to permit the arrangement that is addressed in your letter. Accordingly, you should consider this determination as the final administrative decision of the NJSIAA.*** (Letter of Boyd A. Sands, February 13, 1998 at pp. 1, 2)

Initially, the Commissioner provided the parties an opportunity to brief the question of jurisdiction, in that the enabling statute provides, in pertinent part, that,

¹ Petitioners are residents of Cranford, New Jersey.

***In matters involving *only public school districts and students*, faculty, administrators and boards thereof, appeals shall be to the commissioner and thereafter the Superior Court. In all other matters, appeals shall be made directly to the Superior Court. *** (emphasis added) (*N.J.S.A. 18A:11-3*)

Both parties agreed that the Commissioner had jurisdiction to determine this matter. The NJSIAA argued that its decision concerned R.L.'s ineligibility to play hockey at Cranford High School, a public school, and does not affect R.L.'s eligibility to play sports at Oratory. Further, NJSIAA asserts that the broader issue herein is whether a student who attends one school, be it a private, parochial or public school, should be permitted to participate in interscholastic athletics for another school. (NJSIAA's Letter Brief, June 11, 1998 at p. 1) Petitioners similarly contend that the language in the enabling statute should not preclude the Commissioner from hearing controversies such as the one herein, and further argue that the Commissioner's jurisdiction in this matter is consonant with the Legislative intent of the education statutes, in general. Accordingly, the Commissioner determined to hear and decide the within matter. A briefing schedule was thereafter established and the parties were provided the opportunity to file primary briefs, as well as reply briefs.

PETITIONERS' POSITION

Petitioners initially contend that a student's constitutional right to a thorough and efficient education necessarily includes activities which foster sportsmanship, honesty and creativity. (Petitioners' Brief at p. 3) Recognizing that, as parents, they have the right to choose the type and character of education best suited for their son, petitioners contend that it has never been judicially determined that by choosing in favor of a private or sectarian education, they must preclude their son from availing himself of any state-supported educational service or facility. (*Id.* at pp. 3, 4) This is particularly true, petitioners reason, since "****all taxpayers bear the burden of supporting public schools without consideration of whether their children attend

public schools.” (*Id.* at p. 4) Petitioners aver that New Jersey’s interest in student achievement and the improvement of educational standards pertains to all children in the State.

Petitioners argue that Article V, Section I of the NJSIAA Bylaws “is invalid as it precludes a student, such as [R.L.], who is enrolled in a parochial school from participating in a sport, which is ***offered by the local public high school***” but not at the parochial school. (*Id.* at p. 6) They assert that the NJSIAA’s provision “directly contravenes well-settled public policy to afford adequate education to all students, irrespective of whether a parent exercises his or her right to send a student to parochial school.” (*Id.*) Petitioners aver that “[t]o preclude [R.] from the opportunity to play hockey, just because it is too expensive, and thus, [not] offered at Oratory, would force him to forego participation at a competitive level for the next four years.***” (*Id.* at pp. 6, 7)

Further, petitioners maintain that their son’s participation in Cranford High School’s sports program would not hurt Cranford’s program, would not advance the religious purposes of Oratory, and would not result in a significant number of similar situations or negatively affect competition among schools. (*Id.* at p. 7) They add,

The only parochial students that would be allowed to play sports in public schools would be those who have chosen to privately fund their education through a private parochial school that *does not offer the sport in question*. Moreover, the [petitioners] are taxpayers in Cranford, and thus, are paying the same monies as if [R.] were attending the Cranford High School. (emphasis in text) (*Id.*)

Thus, in their reply to the NJSIAA’s position, stated *infra*, petitioners contend that the NJSIAA’s rule should provide for this exception. (Petitioners’ Reply to NJSIAA’s Answer, June 24, 1998, at p. 3) Such a narrow exception

***would not discourage the initiation of appropriate programs by other member schools, as this exception would only affect a few students. This proposition is corroborated by the fact that most private schools offer a wide variety of sports, are generally

competitive, and usually do not offer a sport only because of expense and/or lack of facilities.*** (Id. at p. 4)

Such an exception would not, as the NJSIAA contends, *infra*, make proper oversight and administration of the rules impossible, since the rules “***would not change nor be rendered more difficult to enforce due to the participation of one, or even a small handful of children participating in a sport at a public school ***.” (Id. at p. 5) Neither is there evidence, petitioners argue, that by allowing a non-enrolled student to participate in a sport at a public school, that a public school student would be denied the opportunity to participate, as the NJSIAA so predicts. (Id.)

Petitioners, therefore, conclude that the NJSIAA’s rule is unjust, as applied under this circumstance. They argue that the rule compels them to make a choice between attendance at a private school, which may better suit their son’s needs, or forego the benefits of a private school so that R.L. can participate in a sport in which he has talent. (Id. at p. 6)

RESPONDENT’S POSITION

In its Answer, the NJSIAA contends that petitioners fail to state a cause of action upon which relief may be granted, affirming that one of its most fundamental rules is that students be enrolled in the school for which they compete on the interscholastic athletic team.

The NJSIAA Bylaws read,

A student, to be eligible for participation in the interscholastic athletic program of a member school, must be enrolled in that school and must meet all the eligibility requirements of the Constitution, Bylaws, and Rules and Regulations, of the NJSIAA. (New Jersey State Interscholastic Athletic Association Handbook, 1997-98, Constitution, Bylaws, and Rules and Regulations, Article V, Section I, at p. 34)

According to the NJSIAA, the rationale for the rule, in part, is that “sports are an integral part of the overall academic and extra-curricular program of each member school and by allowing students to enroll in one school and participate in another school’s athletic program, it would

discourage the initiation of appropriate programs by member schools.” (NJSIAA’s Brief at p. 4) These rules, according to the NJSIAA, have been adopted by the member schools and approved by the Commissioner of Education. Both Oratory and Cranford High School, as members of the NJSIAA, have adopted this rule. (NJSIAA’s Answer at p. 3) The relief which petitioners seek, to have R.L. play ice hockey for the Cranford High School team, cannot be granted under the applicable rules which have been consistently applied. To ignore the rule or to apply it differently under this circumstance would be arbitrary, according to the NJSIAA.

The Association next contends that 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 et al. v. NJSIAA*, 1984 *S.L.D.* 1677, 1686, 1693, *aff’d* N.J. Superior Court, Appellate Division 1695, *cert. denied* 101 *N.J.* 236 (1985) and *Board of Education of the City of Camden v. NJSIAA*, 92 *N.J.A.R.* 2d (EDU) 182, 183.)

The NJSIAA further contends that Article V, Section I of the Bylaws is rationally related to legitimate interests of the Association and its member schools, thus meeting the appropriate standard for an organization which does not regulate a fundamental right. The NJSIAA herein argues,

***First, sports offered by member schools are an integral part of the overall academic and extra-curricular program provided for each student enrolled in that school. Second, allowing students to participate on athletic teams of other member schools would discourage the initiation of appropriate programs by other member schools. It may even encourage schools in difficult financial situations to eliminate programs as a cost saving measure if their students are free to participate in that activity at another school. Third, each member school is responsible for properly administering and enforcing all NJSIAA rules and regulations, including eligibility rules, to its own students; allowing students to attend one school and compete athletically for another would make proper oversight and administration of rules and regulations impossible. Finally, allowing a non-enrolled student to participate in a member school’s athletic program would wrongfully deny an

enrolled student the opportunity to participate in that athletic program at his or her own school. (NJSIAA's Brief at pp. 9, 10)

The NJSIAA maintains that it has not denied R.L. the opportunity to participate in sports as he may do so through Oratory, provided he meets the NJSIAA eligibility requirements. Moreover, the NJSIAA notes that, since R.L. has not started high school yet, he is also free to enroll at Cranford High School and to participate in sports at that school, in accordance with eligibility requirements.

DISCUSSION

The NJSIAA is a voluntary association, which, while authorized to make and promulgate rules, is not bound by the requirements of the Administrative Procedure Act. *Burnside et al., supra*, at 1686, 1695, 1700) Although *N.J.S.A.* 18A:11-3 expressly provides for appeals from NJSIAA determinations to the Commissioner, the Commissioner's scope of review is an appellate one. *Board of Education of the City of Camden, supra*. That is, the Commissioner may not overturn an action by the 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.

It is a well-settled principle that participation in interscholastic sports is a privilege, rather than a right. *Burnside et al., supra*, at 1686, 1693. As such, participation may not be denied for arbitrary and capricious reasons, nor may any participant be discriminated against in his application for such privilege. (*Id.* at 1693, 1694) Here, petitioners specifically

claim that that they “***are *not* contesting that Article V, Section 1 of the NJSIAA rules is arbitrary and capricious. However, it is their contention that it is unjust in [this] very limited circumstance ***.” (emphasis added) (Petitioners’ Reply at p. 6) Yet, the Commissioner concurs with the NJSIAA that this situation is not as limited as petitioners suggest, since an exception to the rule, even under petitioners’ terms, could affect students attending all nonpublic schools operating secondary education programs in the State; there are 176 such schools.² By extension, since no student – nonpublic or public – attending one school is permitted to play sports for another, the exception requested here could affect every member school in the State.

Additionally, recognizing that both the Oratory Catholic Preparatory School and the Cranford High School are *voluntary* members of the NJSIAA, and that, “[u]pon the adoption of said resolution the board, its faculty, and students shall be governed by the rules and regulations of that association,” and further noting that “[t]he said rules and regulations shall be deemed to be the policy of the board of education ***,” *N.J.S.A. 18A:11-3*, the Commissioner cannot find that the application of Article V, Section I is arbitrary or unjust, as applied to petitioners’ son. Indeed, the NJSIAA articulates sound reasons for the rule as it stands. That petitioners argue the rule compels them to make a choice with respect to their son’s education does not elevate their claim to one of prejudicial or unjust treatment; indeed, many parents are similarly faced with having to weigh the varied components of a private or parochial education against those of a public school education.

Accordingly, the Commissioner finds no basis on which to overturn the NJSIAA’s decision and, therefore, affirms its determination.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

AUGUST 31, 1998

² Data obtained from the Division of Field Services.