

STATE-OPERATED SCHOOL DISTRICT OF	:	
THE CITY OF PATERSON AND THE	:	
PATERSON EASTSIDE HIGH SCHOOL,	:	
PASSAIC COUNTY,	:	
	:	
PETITIONERS,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
NEW JERSEY STATE INTERSCHOLASTIC	:	DECISION
ATHLETIC ASSOCIATION,	:	
	:	
RESPONDENT.	:	
	:	
_____	:	

SYNOPSIS

Petitioning District sought reversal of the NJSIAA Executive Committee’s decision affirming the decision of the Controversies Committee placing the Paterson Eastside High School basketball team on probation for two years and suspending the team from participation in the 1999 NJSIAA Basketball Tournament due to unsportsmanlike conduct at a March 5, 1998 Group IV semi-final NJSIAA championship game against Teaneck High School. Petitioner sought punishment of only the individual players, not the whole team.

Having reviewed the record, including transcripts from the Controversies Committee and the Executive Committee and the videotape of the incident, the Commissioner affirmed the determination of NJSIAA. Commissioner determined that the Sportsmanship Rule does not prevent NJSIAA from levying a penalty against a team, even in circumstances where individual perpetrators are able to be identified and are punished. Commissioner concurred with NJSIAA’s decision to punish individual players who participated in and/or instigated the melee **and**, given the magnitude of the unsportsmanlike behavior by the Eastside team members, he also concurred with NJSIAA’s conclusion that the Eastside team itself should be held accountable for the flagrantly unsportsmanlike actions of a number of players on the team. Commissioner determined that such conclusion was supported in the record and, therefore, the penalties levied in the instant matter were not deemed to be a violation of NJSIAA’s rules, nor were they deemed to be patently arbitrary, capricious, or unreasonable or a violation of petitioners’ due process rights.

January 29, 1999

STATE-OPERATED SCHOOL DISTRICT OF :  
THE CITY OF PATERSON AND THE :  
PATERSON EASTSIDE HIGH SCHOOL, :  
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NEW JERSEY STATE INTERSCHOLASTIC : DECISION  
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For Petitioners: Nathaniel M. Davis, Esq. (State-Operated School District  
of Paterson)

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

**PROCEDURAL HISTORY**

This matter has come before the Commissioner of Education by way of a Petition of Appeal and Brief in Support thereof filed on December 11, 1998 by the State-operated School District of Paterson and Paterson Eastside High School (petitioners) seeking a reversal of the decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) Executive Committee dated September 17, 1998, which affirmed the determination of the Controversies Committee dated June 29, 1998, to place the Paterson Eastside High School (Eastside) basketball team on probation for two years and suspending the team from participation in the 1999 NJSIAA Basketball Tournament due to unsportsmanlike conduct at a March 5, 1998 Group IV semi-final basketball championship game against Teaneck High School. Petitioners seek reversal of NJSIAA's decision as being a violation of their due process rights because the decision was a violation of NJSIAA's own rules on sportsmanship (Article IX) and was arbitrary and capricious.

On January 5, 1999, respondent NJSIAA filed its answer to the Petition of Appeal. By letter dated January 11, 1999, the Director of the Bureau of Controversies and Disputes directed NJSIAA to submit by January 19, 1999 its brief and any pertinent information

contained in the record of the matter which had not already been submitted by petitioners.<sup>1</sup> On January 22, 1999, petitioners requested that they be provided an opportunity to submit a letter brief in reply to NJSIAA's brief. With the submission of the petitioners' reply letter brief on January 27, 1999, the record in this matter was closed.

The Findings of Fact determined by the Controversies Committee in its June 29, 1998 decision are as follows:

1. On March 5, 1998, Teaneck High School hosted a Group IV semi-final NJSIAA championship contest with Paterson Eastside High School.
2. There were approximately 400 to 450 people in the Teaneck gym and there was substantial security provided by both schools. The contest was played without any [untoward] incidents and the conduct of the coaches throughout the contest was totally appropriate.
3. With Teaneck winning by a score of 90 to 64, that school took possession of the basketball after [an] Eastside basket with approximately 15 seconds to play. The ball was brought to the Eastside court, at which time Teaneck player No. 20 was fouled.
4. When Teaneck player No. 20 was surrounded by Eastside players No. 14 and 40, he had some difficulty in getting back to his feet. Some shoving broke out between the players at that point.
5. [A.T.] (Teaneck player No. 42), a JV sophomore player who had been inserted in the last quarter of the game, attempted to prevent Eastside player No. 40 from joining the conflict which was occurring in the vicinity of the fouled player. He approached Eastside player No. 40, with his hands at his side, stating that his Eastside opponent should "calm down" and that "we don't need a fight."
6. Eastside player No. 40 at first backed away from the approaching [A.T.], and then threw a punch at the Teaneck player, which was blocked by him.
7. Immediately after Eastside player No. 40 threw a punch at Mr. [T.], another Eastside player, No. 12, ran toward the Teaneck player and struck him with his fist on his jaw.
8. As a result of the blow received from Eastside player No. 12, Mr. [T.] was knocked unconscious and suffered a broken jaw.
9. In the midst of this melee, the game officials terminated the contest.

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<sup>1</sup> On January 13, 1999, a review of petitioners' submissions indicated that the videotape of the March 5, 1998 incident which had been reviewed by the NJSIAA Committees had not been submitted nor had the June 29, 1998 Controversies Committee Report. NJSIAA was contacted by the Bureau of Controversies and Disputes to request that these documents be submitted with the brief due on January 19, 1999.

10. It is undisputed that several Eastside players who were on the bench came onto the court and joined their battling teammates.
11. Both schools took disciplinary action against various members of their team. Eastside suspended from class, five players who had entered the floor or who had been engaged in fighting. In addition, two of the Eastside players who participated in spring sports were suspended from three contests.
12. Eastside also apologized for the events of March 5 and conducted special meetings with the team to emphasize good sportsmanship. (Controversies Committee Decision at pp. 3-4)

Based on the above Findings of Fact, the Controversies Committee reached the following conclusions:

1. The NJSIAA has taken a strong stand against violence, particularly as it involved NJSIAA championship contests. If a participating team, or the fans of that team engage in violence, at a minimum the team will not be allowed to participate in the subsequent year's championship contests in that sport. That penalty is most appropriate in this case since the team itself was engaged in unprovoked and dangerous conduct which resulted in the serious injury to the Teaneck player.
2. The Committee commends Teaneck for the extraordinary efforts and success in crowd control which effectively curtailed fighting between the two teams.
3. The coaching staff and administration of Paterson Eastside High School were not responsible for any of the improper conduct of the basketball team.
4. The Paterson Eastside boys basketball team is placed on probation for a period of two years, during which time game reports are to be submitted to the NJSIAA. The team shall be excluded from participation in the 1999 NJSIAA basketball tournament.
5. The two underclassmen on the Paterson Eastside team, who were previously suspended for improper conduct, shall be reported to the NJSIAA, and shall be ineligible for the first two regular season contests in the 1998-99 season. (*Id.* at p. 4)

#### **PETITIONERS' POSITION**

Initially, petitioners assert that NJSIAA violated their due process rights by failing to implement properly the Rules and Guidelines of the *NJSIAA Handbook*, asserting that NJSIAA contradicted Article IX of the Bylaws when it meted out to the Paterson Eastside basketball team the severe penalty of two years probation and suspension from participation in

the 1999 championship tournament. In support of this it points to the wording of the Sportsmanship rules which 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 school 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. (NJSIAA Constitution, Bylaws, *NJSIAA Handbook*, at p. 52)

With respect to this, petitioners aver, *inter alia*, that the two underclassmen involved in the incident were found to be ineligible for the two regular season contests for the 1998-99 school year. Moreover, they point to the fact that the Controversies Committee also found that the coaching staff and administration of Paterson Eastside were not responsible for any improper conduct of the basketball team and were, in fact, actually praised by NJSIAA for their actions. Petitioners, therefore, contend that it is apparent from the findings that the member school did not do anything that may have contributed to the individual's action which caused the incident and, in actuality, the offenders of the unsportsmanlike conduct were readily identifiable individuals who were singled out by NJSIAA for punishment.

Petitioners also point out that Dr. Westlake, Chairperson of the Controversies Committee, stated at the Executive Committee hearing that both teams were able to control the amount of people coming onto the court (Executive Committee Transcript at pp. 26-27) and yet Dr. Westlake concluded that Eastside's punishment was justified as he stated

\*\*\*Our concern, however, is in cases such as Perth Amboy and Camden, where we had similar situations, that the punishment that we have given to Eastside is uniform, and we feel is justified in this case, especially since the NJSIAA has such a strong stance on violence, and that's the reason we have extended the penalty to Paterson Eastside, and not to Teaneck because we saw that this was initiated from the Eastside bench, and that the punishment we meted out to Eastside is justified. (Executive Committee Transcript at p. 27)

As to this, petitioners argue that the factual circumstances of this matter and those of Perth Amboy High School and Camden High School vary greatly. Petitioners contend that in

the Perth Amboy matter, NJSIAA found that members of that basketball team deliberately instigated the fighting and lead the attack on innocent Shawnee High School students and fans and its coach should not have left the bench, thereby allowing his own team to do so, which resulted in an extended period of fighting and chaos. They maintain that in the instant matter it was a Teaneck player that instigated the incident, not Eastside. They further argue that Eastside's basketball program cannot be compared to Camden High School's because Eastside High School has never been in trouble with NJSIAA prior to this incident, while Camden High School has a lengthy history of serious infractions. They state

In 1991, the Camden High School Basketball program was placed on a two-year probation following a riot after a Camden-Trenton basketball game in the State Tournament. This incident is distinguishable from the present incident because there was no identifiable individual(s) with whom to find fault. In the present matter, however, the NJSIAA identified the individuals that caused the disturbance in the game.\*\*\*

In 1997, Camden was found to be responsible for a disturbance which erupted after a basketball game in Atlantic City High School due to poor crowd control. In the present matter, Paterson did not have a problem with controlling its fans.\*\*\*

In February 1991, the coach of the Camden High School basketball team refused to complete a game thereby violating the NJSIAA sportsmanship rule. In the present matter, the officials terminated the game and found Paterson Eastside coaches acted in a sportsmanlike manner.\*\*\*

In March 1998, the Camden High School basketball team fans were unruly, belligerent and out of control. The basketball coach sent three unsupervised players to the locker room before the game ended. The Camden High School basketball team climbed into the stands after making obscene gestures to the crowd. In the present matter, the Eastside fans were in control and the team was supervised closely.\*\*\* (Petitioners' Brief at p. 10)

Petitioners further contend that the actions NJSIAA took against Eastside were reached in an arbitrary and capricious manner, averring, *inter alia*, that the facts and findings of the case do not comport with the sportsmanship rules that NJSIAA so diligently attempted to uphold and protect and NJSIAA went beyond the formulated and stated rules in order to make an example out of the Paterson Public School District. Petitioners urge that NJSIAA cannot bend and twist rules so as to find guilt and fault in every interscholastic athletic incident. (Petitioners' Brief at p. 13) Petitioners acknowledge that NJSIAA has a compelling interest to prevent

violence on the playing field but urge that NJSIAA also has a compelling interest to make sure that all schools are treated fairly and justly under the rules which it promulgates. Petitioners also maintain

The NJSIAA states that its decision is to be an example to other member schools. However, such punishments fail to serve their expected purpose. Although all member schools teach good sportsmanship and proper field conduct, there will be instances when individual team members will engage in activities which the member schools do not condone or cannot control. In most cases involving interscholastic athletics at the high school, the majority of the athletes are very passionate about their involvement in their particular sport. In such passion, the emotions of players run very high sometimes resulting in great moments for the athlete or detrimental actions. In the present matter the results were detrimental for both the player injured and the players causing the injury. However, the member school, who has abided by all of the rules and regulations of NJSIAA and has taught its players good sportsmanship, cannot always control the passionate actions of individual team members.\*\*\*

Secondly, the identifiable individual or individuals which NJSIAA stated caused the injury are no longer students in the school district. The identified students graduated from Paterson Eastside High School. The two students who were suspended for one game were suspended for leaving the bench but did not cause any injuries. The punishment for those individual students leaving the bench is justified and is not being appealed. It is the unfair action of the NJSIAA of suspending an entire team for actions for those who are no longer in school which are fundamentally unfair. (*Id.* at p. 14)

### **RESPONDENT'S POSITION**

NJSIAA avers, *inter alia*, that although the videotape presented at the Controversies Committee hearing shows the entire event, it does not clearly show all the actors and points to the testimony of Eastside's Assistant Athletic Director, Elbert Harris, that it was impossible to determine definitively who threw the punch that broke A.T.'s jaw. Mr. Harris<sup>2</sup> states

\*\*\*I want the committee to look at every particular individual who landed a punch, where it lands, where it goes, what happens because you just cannot -- it is my contention it is impossible to

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<sup>2</sup> At this point in the transcript of the May 12, 1998 Controversies Committee hearing, Mr. Harris is incorrectly identified as Mr. Harrison.

tell what blow broke this kid's jaw. It's impossible. If you would follow each and every blow, you will find -- you will see where the origin is and where the conclusion of the punch is.

\*\*\*So, it's impossible to definitively say who broke this kid's jaw.  
(Controversies Committee Transcript at pp. 252-253)

In response to petitioners' allegations that they were denied due process, NJSIAA contends that its bylaws provide a two-step process for determining facts and penalties. On May 12, 1998, via notice from NJSIAA, the Controversies Committee, comprised of nine educators from around the state, held a hearing to review the events of the March 5, 1998 Group IV semi-final game between Teaneck and Eastside. The hearing was transcribed by a certified shorthand reporter, the transcript of which has 74 pages of testimony. All documents submitted by the parties were reviewed by the Committee, including a videotape of the incident. Sworn testimony was heard from ten witnesses and counsel for both schools were permitted to examine and cross-examine witnesses and give closing statements. The Controversies Committee issued a formal decision with findings of fact and conclusions on June 29, 1998. Pursuant to NJSIAA's Bylaws (Article XIII, Section 5, *NJSIAA Handbook*, 1998-99), that decision was able to be appealed to NJSIAA's Executive Committee, the Association's governing body. Petitioners invoked this provision and the 34-member Executive Committee heard oral argument from Eastside's counsel and from Dr. Eugene Westlake, Chairperson of the Controversies Committee. The Executive Committee voted 29-5 to deny the appeal. Of this, NJSIAA states "[t]here can be no question but that the NJSIAA provided Eastside with the fullest due process. Eastside had every opportunity to present its case to educators who were knowledgeable in the area." (NJSIAA's Brief at p. 9)

NJSIAA further contends that the Eastside student-athletes have no constitutional right to participate in the State Championship Tournament, citing in support thereof *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, *Palmer by Palmer v. Merluzzi*, 689 *F. Supp.* 400, 408-409 (*D.N.J.* 1988), *aff'd* 868 *F.2d* 90, 96 (3d Cir. 1978), *Camden City Bd. of Ed. v. NJSIAA*, unpublished decision of the Appellate Division dated February 18, 1992 (Docket No. A-2802-91T2), *Van Velson v. NJSIAA*, 92 *N.J.A.R.* 2d (EDU) 264.

NJSIAA next argues that it has the authority to exclude Eastside's basketball team from the 1999 State Tournament, contending that the Constitution, Bylaws, Rules and



Regulations give the Association the broad power to penalize inappropriate conduct (Article X of the Bylaws, *NJSIAA Handbook* at pages 53-54). The Controversies Committee, after conducting a hearing and subject to appeal to the Executive Committee, may impose one or more of a number of penalties, which may include probation, forfeiture of games and championship rights, suspension of players and fines. Of this, NJSIAA states

\*\*\*These penalties serve the same three purposes that all penalty provisions serve. By publishing penalties in advance they discourage inappropriate conduct and **deterrence**. By requiring reports and monitoring of the offender, they offer **rehabilitation**. And by allowing strong penalties for bad conduct, they impose **punishment**. (emphasis in text) (NJSIAA's Brief at p. 10)

NJSIAA avers that there is nothing arbitrary or capricious about keeping a team out of a championship tournament due to the actions of selected team members. It maintains, *inter alia*, that in this case, it is particularly appropriate that the team be punished because it was the acts of team members, as opposed to actions of an administrator, coach or fans, that caused the melee. Moreover, it contends that the Eastside team is responsible for the acts of team members who instigated the fight and caused serious bodily injury to a Teaneck player, averring that

The following facts are undeniable, and all bespeak team involvement and team responsibility for the incident:

- Eastside was the team about to [lose] a championship-caliber game by a lopsided margin.
- Two Eastside players knocked down a Teaneck player.
- An Eastside player threw a wild first punch.
- Another Eastside player threw a punch that knocked a Teaneck player unconscious and broke his jaw.
- The player who committed the assault was not in the game at the time, but left the bench to enter the fight.
- Other Eastside players left the bench to join the fight.
- It was impossible to identify all the Eastside team players involved, and even the player who committed the assault could not be definitively identified. (NJSIAA's Brief at p. 12)

NJSIAA rebuts Eastside's argument that it is fundamentally unfair to suspend the team from championship play for the actions of students who are no longer in school, urging that it cannot be said that punishing a team for the acts of another individual violates due process. It cites a variety of judicial decisions in support of this factor and quotes the following passage from the Appellate Division decision in *Camden City Bd. of Ed., supra*, which states

We conclude that due process was afforded at every stage, and that the sanction imposed was reasonably designed to serve a legitimate state interest. **Unfortunately, the sanction also falls upon players who were personally innocent of any wrongdoing last March. But this is not a ground for vacating the otherwise valid order of the Commissioner.** We cannot say that the Commissioner's action was disproportionate to the threat of harm. (Slip Op. at p. 6) (emphasis in text) (NJSIAA's Brief at p. 13)

NJSIAA flatly rejects petitioners' argument that it has played fast and loose with the rules, averring that petitioners would have the Commissioner conclude that because no administrator, coach or fan contributed to the incident, the Eastside team cannot be held responsible. It reiterates that "[c]ertainly a team can be held responsible for acts of members of the team, and, as noted above, this incident was the result of team action in a team sport." (*Id.* at p. 14) NJSIAA also argues that petitioners have misread the Sportsmanship Rule, maintaining that the rule says that the individual shall be punished for unsportsmanlike conduct, and the school may be punished. As to this, NJSIAA emphasizes that (1) the rule does **not** say that if the school's policies or actions did not contribute to the unsportsmanlike conduct, then **only** the individual can be punished and (2) the penalty provision of Article X allows a team to be excluded from the championships, subject only to a hearing before the Controversies Committee with right of appeal to the Executive Committee, and subject to the constraints of substantive due process, all conditions which were followed in the instant matter.

It is NJSIAA's contention that the penalty levied in this matter was balanced and in proportion to the seriousness of the incident in that Eastside and its players are still permitted to play a full schedule of conference and nonconference games and the players are still eligible for individual awards and recognition. It also avows, *inter alia*,

Unfortunately, violence is often not far from the surface at sports contests. Sports is by its nature competitive, emotional, and often rewards aggression. That is all the more reason that authorities that regulate sports must be vigilant to catch and contain violence when it erupts. It is incumbent upon the NJSIAA to spread the message that violence is unacceptable, no matter who started a

particular incident, and that violence has consequences that extend far beyond the individual participants. The Commissioner recognized this when he wrote that “[no]thing less than swift, certain action must be taken by the Association to deter any notion that aggression at sporting events will be tolerated. [*Camden, supra*, at p. 191] (NJSIAA’s Brief at pp. 15–16)

### **PETITIONERS’ REPLY**

Petitioners’ reply brief objects to the statement on page two of NJSIAA’s brief which references Teaneck’s Athletic Director’s testimony (Controversies Committee Transcript at pp. 222-223) that according to the Teaneck player, someone had stepped on his hand while he was on the floor and he pushed that person in order to get up. They object to the statement because the Teaneck player did not testify and, therefore, the statement is hearsay. Petitioners also object to the statements on page two relative to A.T.’s testimony, averring, *inter alia*, that A.T. has a vested interest in this matter, given that he and his parents have filed tort claims against the Paterson school district and individuals involved in the March 5, 1998 incident. They further except to the NJSIAA’s description of A.T.’s actions, arguing that he approached the Eastside player with raised hands across most of the court while the Eastside player tried to retreat. Petitioners characterize A.T.’s action in doing this as provocation for the Eastside player’s actions, maintaining that it is evident from the Eastside player’s retreat and his missed punch that he was trying to ward off A.T. They also point out that it was security and personnel from both Teaneck and Paterson that restored order to the game, not just Teaneck’s.

Petitioners go on to object to NJSIAA references to violent incidents in other basketball games found on page 11 of NJSIAA brief (lines 1-7) which had nothing to do with the incident in this matter, stating, *inter alia*, that

\*\*\*The mere mention of these facts seems to suggest that NJSIAA is promoting the idea of arbitrary and capricious decision making in order to control the violent atmosphere at sporting events in urban areas. This statement alone presents the prejudice and bias of the NJSIAA against urban schools which leads to arbitrary and capricious decisions. There are incidents of violence throughout all schools in the state of New Jersey whether urban, suburban, or rural. However, it is apparent that the only schools that seem to be addressed are the urban school districts.\*\*\*

The NJSIAA would attempt to blind all involved with the incident that occurred by harping on the violence of the incident, the violence in other school districts, and its attempts to control such violence. However, the NJSIAA is also committing violence in this

matter. It is violence against basic fairness and justice. It is violence against its own rules. Rules which the NJSIAA carefully thought out and crafted. The NJSIAA would now like to commit violence upon those rules by offering a separate meaning than what the plain text states.

The NJSIAA has a history of being a stickler for the rules and being unyielding in its decisions in regard to those rules. The NJSIAA has a long history of suspending athletes and coaches for a misinterpretation of the NJSIAA rules. The NJSIAA always seems to state that the rule is the rule as stated in the handbook. Now, in this incident it seems that a rule is not actually the rule. The rule seems to mean something other than what the plain text conveys. The NJSIAA seems to be nothing more than an all too powerful organization that will do anything to control its membership. (Petitioners' Reply Brief at pp. 2-3)

NJSIAA vehemently objects to what they consider to be petitioners' extraordinary attack against the Association, avowing that it had no vested interest in finding for or against either Paterson or Teaneck at the hearing, its only interest being to make a determination based on the evidence. NJSIAA also vehemently denies that it demonstrated prejudice and bias against urban schools which leads to arbitrary and capricious decisions, pointing out that by way of a letter dated October 6, 1998, it provided Paterson's counsel with a list of contested cases involving schools that had been kept out of the playoffs since 1984 (Paterson Exhibit 29), a list which includes rural, suburban and urban schools alike. Moreover, NJSIAA emphasizes, *inter alia*, that Paterson ignores the fact that during the 1980's the Association expended over \$100,000 fighting in the courts for the right of urban schools to compete against suburban schools in integrated conferences. NJSIAA states "[t]o imply that NJSIAA has targeted urban schools under these circumstances is simply reckless." (NJSIAA letter dated January 27, 1999)

### **COMMISSIONER'S DETERMINATION**

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, 188. That is, the Commissioner may not overturn an action by NJSIAA in applying its rules absent a finding that NJSIAA applied the rules in a patently arbitrary, capricious or unreasonable manner. *B.C. v. Cumberland Regional School District*, 220 *N.J. Super.* 214, 231-232 (App. Div. 1987) Nor may the Commissioner substitute his judgment for that of NJSIAA, even if he were to decide differently in a *de novo*

hearing, where due process has been provided and where there is adequate basis for the decision reached by the NJSIAA Committees. *Dam Jin Koh and Hong Jun Kim v. NJSIAA* 1987 S.L.D. 259. Further, the burden of proof rests with the person challenging the decision. *Kopera v. West Orange Board of Education*, 60 N.J. Super. 288, 297 (App. Div. 1960). Moreover, it is well-settled that participation in interscholastic sports is a privilege, rather than a right. *Burnside, supra; Palmer by Palmer, supra; Camden City Bd. of Ed., supra*.

Initially, the Commissioner will deal with those portions of petitioners' reply brief which he, too, regrettably finds to be an extraordinary attack on NJSIAA. To accuse NJSIAA of prejudice and bias against urban districts because in section four of its brief it refers to violent incidents that had nothing to do with the instant matter is, in the Commissioner's judgment, unfounded. Clearly, the specified passage from NJSIAA's brief is intended to do no more than provide examples of violence in the milieu of sporting events which have occurred recently and were highly publicized.<sup>3</sup> Furthermore, Petitioners' brief submitted on January 5, 1999 clearly raises the Camden matter referenced at page 11 of NJSIAA's brief, as well as the 1992 Camden case. As pointed out by NJSIAA in its October 6, 1998 letter (Petitioners' Exhibit 29), the Association provided to petitioners' counsel a series of matters which resulted in the suspension of teams from State championships, a series of cases which includes schools with a wide array of demographic characteristics. Further, having undertaken a painstaking review of the record in this matter, including a thorough scrutiny of the videotape of the incident, the Commissioner finds no basis whatsoever to support petitioners' allegations that NJSIAA has shown prejudice or bias against urban schools. Having so determined, the Commissioner will now turn to the other substantive issues under consideration in this matter.

Integral to this matter is a determination as to whether or not NJSIAA violated its own rules and regulations when it levied punishments against not just individual players, who were involved in the March 5, 1998 incident at the Group IV semi-final championship basketball game between Eastside and Teaneck, but also the Eastside team when NJSIAA put it on probation for two years and prohibited it from playing in the 1998-99 championship season. The text of the Sportsmanship Rule pertinent to the instant matter reads as follows:

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<sup>3</sup> The disputed passage in NJSIAA's brief also references a recent incident at the girls basketball game between Newark's West Side High School and Wayne Valley High School involving the shooting of two youths outside of the West Side High School.

### Section 3. Association Responsibility:

The Association recognizes and appreciates that the influence and responsibility of the school administration with regard to good sportsmanship extends to all levels of competition. However, it must also be seen that the NJSIAA has been vested with the responsibility to ensure that all contests under its jurisdiction are concluded satisfactorily. In exercising its responsibility as it applies to the principles of good sportsmanship, the Association will be guided by the following rule:

#### SPORTSMANSHIP RULE/POLICY

#### HIGH STANDARDS OF COURTESY, FAIR PLAY AND SPORTSMANSHIP

#### MUST FEATURE ALL ASSOCIATION COMPETITIONS.

(While this rule is a general statement and one which may be difficult to reduce to objective standards in terms of enforcement, it is the heart of the entire Association program. Good sportsmanship, respect for rules, respect for others, and fair play, are basically the motives through which an interscholastic athletic program is justified and defended.)

It shall be the responsibility of each member school to insure that all individuals employed by or directly associated with the athletic program, including 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 school 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. (*NJSIAA Handbook* at pp. 51-52)

Upon careful and independent review of the record of this matter, including transcripts from the Controversies Committee and the Executive Committee hearings and a the videotape of the March 5, 1998 incident, the Commissioner affirms the determination of NJSIAA to place the Paterson Eastside High School basketball team on probation for two years and to prohibit the team's participation in the 1998-99 championship tournament based upon the findings and conclusions about the culpability of Eastside players involved in the incident reached by the Controversies Committee and Executive Committee after their examination of the evidence. In reaching his determination in this matter, the Commissioner agrees with NJSIAA's argument that the above-cited Sportsmanship Rule does not prevent it from levying a penalty

against a team, even in circumstances where individual perpetrators are able to be identified and are punished. In the instant matter, NJSIAA determined to punish individual Eastside players who participated in and/or instigated the violent melee **and**, given the magnitude of the unsportsmanlike behavior by Eastside team members, NJSIAA also concluded that the team itself should be held accountable for the flagrantly unsportsmanlike actions of a number of players on the team. Such conclusion is supported in the record and, therefore, the penalties levied in the instant matter are not deemed to be a violation of NJSIAA's rules nor are they deemed to be patently arbitrary, capricious, or unreasonable or a violation of petitioners' due process rights. As clearly stated in the above-cited Sportsmanship Article IX, the NJSIAA Rule in dispute herein is a **general statement** which is intended **to be a guide** to NJSIAA in exercising its responsibility relative to good sportsmanship which, as stated in the Constitution and Bylaws of NJSIAA, is the heart of the Association's entire program. That NJSIAA determined in the instant matter to apply the Sportsmanship Rule such that the "member school's actions" may be found to be actions of individual team members, and not just actions by coaches, administrators or fans, is a reasonable decision on NJSIAA's part, one which has the legitimate and rational purpose of promoting not only good sportsmanship at sporting events but also a safe environment free from violence and/or chaotic disruption, no matter how quickly contained or controlled those conditions may have been dealt with.

As quoted above, NJSIAA and its member schools have determined that good sportsmanship, respect for rules, respect for others, and fair play, are basically the motives through which an interscholastic athletic program is justified and defended. A review of the record in this matter demonstrates that these elements of good sportsmanship were flagrantly violated by the Eastside basketball team. The fact that several of the participants in the melee have graduated and that only two of the other student-athletes who were also disciplined remain on the Eastside basketball team is of no moment whatsoever. As NJSIAA correctly indicates, it is well-established in law that teams can be kept from participating in championship games even where players were personally innocent of wrongdoing. *City of Camden, supra*. That the unsportsmanlike actions in the instant matter may be distinguishable from those demonstrated by Perth Amboy High School or Camden High School in a variety of games which resulted in suspension from championship games does not make NJSIAA's determination relative to the Eastside High School incident of March 5, 1998 improper or any less valid. Each circumstance of unsportsmanlike conduct, particularly those involving brawls/melees, and certainly where violence is involved, as unequivocally happened herein, must be judged and swiftly dealt with by

NJSIAA. Vigilant action by NJSIAA is necessary so that member schools know that their Association “will catch and contain violence when it erupts” so as to deter future violence and aggression at sporting events. This is true whether a brawl or a melee, particularly where violence and bodily harm results, is instigated or contributed to by coaches, administrators, fans or team members, individually identifiable or not, and, whether the incident occurs in a rural, suburban or urban setting. As aptly stated by NJSIAA, violence is unacceptable no matter who starts a particular incident and, indeed, NJSIAA is entirely correct when stating that **violence has consequences that extend far beyond individual participants.**

Accordingly, the Commissioner finds no basis on which to overturn NJSIAA’s decision and, therefore, affirms its determination in this matter.<sup>4</sup>

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

January 29, 1999

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<sup>4</sup> In accordance with *N.J.S.A. 18A:11-3*, this decision, as the Commissioner’s final determination in the instant matter, may be appealed to New Jersey Superior Court.