

G.W.S., on behalf of minor child, A.F.S., :  
 PETITIONER, :  
 V. : COMMISSIONER OF EDUCATION  
 WILLIAM PETRINO, SUPERINTENDENT, : DECISION  
 AND RAHWAY BOARD OF EDUCATION, :  
 UNION COUNTY, :  
 RESPONDENTS. :  
 \_\_\_\_\_ :

SYNOPSIS

Rahway Board of Education’s policy on extracurricular activities does not allow the participation of students not enrolled in Rahway High School (RHS). On August 24, 1999 the Board passed a motion revising its policy on extracurricular activities which allowed Rahway students currently enrolled in grades 10, 11 and 12 at the Union County Vocational-Technical Magnet School Program for Math, Science and Technology (Magnet School), a full-time program, to participate in extracurricular and intramural athletic activities but excluded students enrolling in the Magnet School as ninth graders effective September 1, 1999. Parent of 9th grade Magnet School student filed a petition and emergent relief application seeking an order reversing the Board’s action.

ALJ granted motion for emergent relief ordering the Board to immediately allow petitioner’s daughter to participate fully in all extracurricular activities offered at RHS and to comply with Article V (G), CL3 of the NJSIAA rules and regulations governing the participation of full-time vocational-technical school students in interscholastic sports at their resident high schools. Because there were no material facts in dispute and the parties appeared to have fully briefed the issues, the Commissioner requested return of the case from the Office of Administrative Law, pursuant to *N.J.A.C.* 1:1-3.3, so that a final decision could be issued rather than an interim decision.

As to participation in interscholastic athletic activities, the Commissioner found that the Board’s policy revision constituted a blanket exclusion of Rahway’s Magnet School students which had the effect of precluding the principal of RHS from complying with NJSIAA’s Art. V (G), CL3, a rule which, pursuant to *N.J.S.A.* 18A:11-3, became Board policy upon Rahway’s becoming a member school of NJSIAA. As to other extracurricular activities, the Commissioner found the record totally devoid of any rational basis for the policy revision. Commissioner, therefore, held that the Board’s action cannot be deemed to be within its discretionary authority in the absence of the Board’s (or principal’s, in the case of interscholastic sports) having determined that such participation is not practicable or reasonable because of scheduling constraints, transportation costs or logistical difficulties, or other valid considerations.

Commissioner directed Board to allow petitioner’s daughter, and other similarly situated Magnet School students, to participate in extracurricular activities at RHS, unless it can demonstrate that such participation is not practicable or reasonable as indicated above. Board was also ordered to revise its extracurricular activities policy in light of the Commissioner’s holding and submit it to the Union County Superintendent of Schools for her review.

OAL DKT. NO. EDU 9797-99  
AGENCY DKT. NO. 276-9/99

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For Petitioner: Gerard Wm. Stagnato, Esq. (Thomas J. Mallon, Esq.)

For Respondent: Alan J. Schnirman, Esq.

### **BACKGROUND AND PROCEDURAL HISTORY**

This matter was opened before the Commissioner by way of a Petition of Appeal and application for emergent relief filed by petitioner on September 13, 1999, pursuant to *N.J.A.C. 6:24-1.1 et seq.* Petitioner and his daughter, A.F.S., are residents of Rahway. A.F.S. attends ninth grade at the Union County Vocational-Technical Magnet School Program for Math, Science and Technology (Magnet School), a full-time program. Rahway Board of Education's Policy 6145 on extracurricular activities does not allow the participation of students not enrolled in Rahway High School. On August 24, 1999 the Board passed a motion revising its policy on extracurricular activities which allowed students residing in Rahway who attend the Magnet School currently enrolled in grades 10, 11 and 12 to participate in extracurricular and intramural athletic activities at Rahway High School (RHS) but excluded from participation students enrolling in the Magnet School as ninth graders effective September 1, 1999. As a result, A.F.S.

is not allowed to participate in any extracurricular activities at RHS. The petition and emergent relief application seek an order from the Commissioner declaring “the policy of the Rahway Board of Education illegal, in violation of the Rules and Regulations of the New Jersey Department of Education and further, order [respondents] to immediately withdraw said motion and immediately invite all Magnet school students to fully participate in all Rahway High School extracurricular activities.”

The petition and application for emergent relief were forwarded to the Office of Administrative Law (OAL) on September 18, 1999. A hearing on the emergent relief application was conducted by the Administrative Law Judge (ALJ) on October 7, 1999. On October 14, 1999, the ALJ issued an order on the emergent relief application which was received by the Commissioner on October 18, 1999. The ALJ’s order reads in pertinent part that

The Rahway Board of Education and Doctor William Petrino shall immediately and without further delay allow {A.F.S.} to fully participate in all extra-curricular activities including band clubs, dramatic or musical presentations and intramural and interscholastic sports offered by Rahway High School, and

IT IS FURTHER ORDERED, that the Rahway Board of Education shall order the Principal of Rahway High School to comply with Art. V(G)-CL3 of the Rules & Regulations governing New Jersey Interscholastic Athletic Association and without further delay come to an agreement with the Principal of Union County Vocational Technical School for Math, Science and Technology (UCVTS), allowing students of the Rahway School District attending UCVTS to fully participate in Rahway High School interscholastic athletic events regardless of the number of sports programs offered at the Vocational/Technical High School.

Upon a preliminary review of the record of the emergent relief hearing provided to the Commissioner by the OAL, including the audiotape of the proceedings, and the parties’ exceptions to the ALJ’s order submitted by the Board on October 26, 1999 and petitioner’s reply thereto submitted on October 29, 1999, it appeared that no genuine issues of material fact were in dispute and that the parties had fully briefed the issues. Consequently, on November 1, 1999,

a letter was sent to the parties indicating that the matter appeared amenable to a ruling on the merits by the Commissioner within the time accorded him by regulation for review of the emergent relief order, and the parties were accorded an opportunity to submit to the Commissioner within ten days any further arguments or affidavits not presented during oral argument on the emergent relief application, with replies, if deemed necessary, to be submitted five days thereafter. The OAL's Director and Chief Administrative Law Judge was requested to return the matter to the Commissioner, pursuant to *N.J.A.C. 1:1-3.3*, because it appeared to be in the best interest of the parties for the Commissioner to issue a determination directly since there were no disputed facts necessitating further fact-finding and the matter had been fully briefed by the parties.

No submissions were filed by the parties in response to the November 1, 1999 letter. The matter was returned by the OAL on November 17, 1999; whereupon, the record of the matter was deemed closed.

### **UNDISPUTED FACTS**

Upon review of the entire record of this matter, the following undisputed facts material to this case have been adduced:

1. A.F.S. resides with her parents in Rahway. She is a fourteen-year-old ninth grader at the UCVT Magnet School Program for Math, Science and Technology (Magnet School) in Scotch Plains, a full-time program.
2. Rahway is paying the cost of tuition and transportation for A.F.S.'s attendance at the Magnet School.
3. Prior to August 24, 1999, students residing in Rahway who attended the Magnet School were permitted to participate in extracurricular activities and sports.
4. Board Policy 6145 on extracurricular activities does not allow for the participation of students who are not enrolled in Rahway High School. On August 24, 1999, the Board passed a motion which revised its policy on extracurricular activities and sports to permit the Principal of RHS to enter into an agreement

with the Principal of UCVT for participation of current Magnet School students in grades 10, 11 or 12 to participate in extracurricular and intramural athletic activities at RHS.

5. On August 25, 1999, the respondent superintendent sent a letter to petitioner regarding the Board's motion of August 24, 1999 relative to Policy 6145 and Magnet School student participation in extracurricular activities which reads in pertinent part:

As a result of this motion, Rahway students enrolling in ninth grade effective September 1, 1999, will not be eligible for participation in the extracurricular activities including bands, clubs, dramatic or musical presentations, and intramural and interscholastic sports operated by the Rahway Board of Education. (Exhibit A)

6. Article V(G), CL3 of the New Jersey State Interscholastic Association (NJSIAA) Handbook, a voluntary association to which respondent belongs, governs the participation of full time vocational school students in interscholastic athletic activities in its member schools. It states:

If a Vocational/Technical High School does not offer the particular sport in which one of its full-time students desires to participate, that student may participate in that sport at his/her sending school upon agreement of both Principals, regardless of the number of sports programs offered at the Vocational/Technical High School. (*NJSIAA Handbook* at p. 42)

7. A.F.S. desires to participate in interscholastic swimming and soccer and certain other extracurricular activities offered at Rahway High School, such as the drama club.

8. Policy 1645, as revised by the Board on August 24, 1999, precludes A.F.S. from participating in extracurricular and athletic activities operated by respondents.

9. UCVT Magnet School does not offer any interscholastic athletic activities. It does offer several extracurricular clubs.

## PETITIONER'S POSITION

Essentially, petitioner contends that by statutory obligation respondents are required to provide a complete, thorough and efficient education to all public school students, which includes affording those students attending the Magnet School complete and full access to any and all extracurricular activities regularly provided Rahway High School students. He further avers that extracurricular activities are an integral/essential part of a student's education, citing in support thereof *Willet v. Colts Neck Board of Education*, 1966 S.L.D. 202, 206 and *Board of Education of Asbury Park v. Asbury Park Education Association*, 145 N.J. Super. 495, at 505 (Chanc. Div. 1976). Moreover, petitioner maintains that participation in extracurricular activities is a strong factor in determining college admission, as well as the possibility of scholarships awarded on the basis of such activities. By being denied entry to extracurricular activities as a ninth grader, A.F.S. will be unable to show a four-year commitment to any extracurricular activity, thus diminishing the likelihood of obtaining athletic or other scholarships.

Given the above, petitioner argues that the disputed policy is not only arbitrary, capricious and unreasonable but also discriminatory because it does not apply to all students residing in Rahway who attend the UCVT School, only to those who attend the UCVT Magnet School. Petitioner urges that the policy is violative of *N.J.S.A. 18A:36-20 et seq.*, and *N.J.A.C. 6:4-1.1 et seq.*, which mandate that there be no discrimination among students and further mandate equality among education programs. Of this, petitioner states "This newly announced policy of preclusion of 9<sup>th</sup> grade students constitutes discrimination against A.F.S. and other students similarly situated, based upon their social status, i.e. students of the Magnet School. In addition, the blanket exclusion of these students from extracurricular activities is arbitrary and capricious." (Petitioner's Reply Exceptions at p. 2).

## RESPONDENTS' POSITION

Respondent Board and Superintendent (Board) urge that if petitioner were granted the relief he seeks it would violate its Policy 6145 which predates the creation of the UCVT Magnet School. This policy relative to extracurricular activities states, *inter alia*, that “The Board of Education specifically recognizes that only pupils of the Rahway School District shall participate in the extracurricular activities referenced herein.” The Board further argues that it would violate Article V, Section 1 of the NJSIAA ByLaws which states that “[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, By-Laws, and Rules and Regulations of the NJSIAA.” (*NJSIAA Handbook* at p. 34) As to Paragraph CL3 of Article V(G), cited above, the Board emphasizes that participation of a full-time student at a vocational/technical school in interscholastic athletics at the resident high school is allowed only upon agreement of the principals of the two schools. Thus, the rule for participation in interscholastic athletics for full-time vocational/technical school students is permissive, not mandatory.<sup>1</sup> The Board further emphasizes that, pursuant to its action of August 24, 1999, it does not have such an agreement for ninth grade students at the UCVT Magnet School, only those in grades 10-12. Consequently, the Board urges, an order granting petitioner the remedy he seeks “would usurp the NJSIAA ByLaws and be contrary to the well-settled principle that participation in interscholastic sports is a privilege rather than a right. *Burnside, et al. vs. NJSIAA*, 1984 *S.L.D.*, 1686, 1693, *aff’d* N.J. Superior Court, App. Div. 1695, cert. denied 101 *N.J.* 236 (1985).”

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<sup>1</sup> During oral arguments at the October 7, 1999 hearing on the emergent relief application at the OAL, the Board indicated that there are shared-time students who reside in Rahway who participate in Rahway High School athletic programs but they do so because, under the NJSIAA rules, a shared-time student at a vocational/technical high school has a right to participate in interscholastic athletic programs not offered at the vocational/technical school pursuant to Article V (G), CL 2 of the NJSIAA ByLaws. Rahway’s shared-time students are enrolled in Rahway High School, attending that school for part of their school day and the UCVT School for the remainder. Magnet School students are at UCVT the entire school day and, therefore, are not enrolled at Rahway High School.

The Board further believes that the decision of the Commissioner on August 31, 1998 in *E.L. and N.L., on behalf of minor, R.R. v. NJSIAA*, a case involving a private school student who desired to participate as a member of the Cranford High School ice hockey team, is supportive of its position in the instant matter. In the *E.L.* decision, the Commissioner held that one of NJSIAA's most fundamental rules is that students be enrolled in the school for which they compete on interscholastic athletic teams and, therefore, upheld the NJSIAA rules denying the student's petition.

### **COMMISSIONER'S DETERMINATION**

Upon a thorough review of the record in this matter, the Commissioner finds and determines that the Board's action on August 24, 1999 to revise its policy for participation in extracurricular activities (Policy 6145) so as to exclude students enrolled in the ninth grade effective September 1, 1999 at the Magnet School was arbitrary, capricious and unreasonable for the reasons set forth below.

As to participation in interscholastic athletic activities, the Commissioner finds without merit the Board's argument that because A.F.S. is not enrolled in Rahway High School she is prohibited by Article V, Section 1 of the NJSIAA ByLaws to participate in Rahway High School interscholastic athletic programs. Its reliance on that provision is not applicable herein. Because A.F.S. attends a full-time vocational/technical high school, the controlling NJSIAA rule is Article V (G), CL3 which provides that where a sport is not offered at a vocational/technical school, a student attending the vocational/technical school full-time may participate in that sport at the high school "sending" the student, upon agreement of both principals.

While the Board is correct in stating that this rule is permissive, not mandatory, the Commissioner finds that the August 24, 1999 revision to Policy 6145 constitutes a blanket exclusion of Magnet School students from participation in interscholastic activities. This revision, by its very terms, has the effect of precluding Rahway High School's principal, under

any circumstance, from entering into an agreement with the UCVT Magnet School Principal for such students. Thus, the Board's action is contrary to the NJSIAA rule, which, by virtue of its participation in this voluntary athletic association is deemed to be the policy of the Board (*N.J.S.A.* 18A: 11-3 ).

Furthermore, while participation in interscholastic sports is discretionary, *i.e.* subject to the agreement of the principals of both the UCVT Magnet School and Rahway High School, that discretionary authority must be reasonably exercised based on *bona fide*, legitimate considerations, as it clearly was not in the present matter.

The Commissioner finds equally without merit the Board's "non-enrollment" argument based on prior decisional law. Unlike the student in *E.L., supra*, who was a private school student seeking to participate in a public high school's interscholastic athletics program, A.F.S. is not a private school student. Pursuant to the provisions of *N.J.S.A.* 18A: 54-20.1 and *N.J.A.C.* 6:43-3.11, she is attending a public vocational/technical program operated by a county vocational school. Her tuition and transportation are funded by the Rahway School District. NJSIAA rules do not preclude her participation in the sports she desires.

As to the Board's decision with respect to other types of extracurricular activities, the Commissioner finds and determines that the August 24, 1999 revision exceeds its discretionary authority because the record is totally devoid of any rational basis for the Board to have taken action to allow the participation of Magnet school students currently enrolled in grades 10, 11 and 12 but to have excluded the participation of students enrolling in the Magnet School as ninth graders effective September 1, 1999. To create a blanket exclusion of a particular group or category of public school students from extracurricular activities or intramural athletic programs without a sound rational basis for such exclusion is inherently arbitrary, capricious and unreasonable. Such an exclusion as has occurred in the instant matter, whether in terms of a particular student or a group of students, cannot be deemed to be within a

board's lawful discretionary authority in the absence of the board's (or the principal's, in the case of interscholastic athletic programs) having determined that participation is not practicable or reasonable because of scheduling constraints, transportation costs or logistical difficulties, or other valid considerations.<sup>2</sup>

Accordingly, for the reasons set forth above, the Board is directed to allow A.F.S., and other similarly situated Rahway students who attend the UCVT Magnet School, to participate in extracurricular activities and athletic programs at Rahway High School, unless it can demonstrate that such participation is not practicable or reasonable because of scheduling constraints, transportation costs or logistical difficulties, or other valid considerations. The Board is further directed to review and revise its Policy for student participation in extracurricular activities in light of considerations set forth herein and to submit the revised policy to the Union County Superintendent of Schools for her review.<sup>3, 4</sup>

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

November 29, 1999

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<sup>2</sup> Nothing herein, however, requires a board to take unreasonable or extraordinary steps to accommodate a county vocational student's participation in extracurricular activities operated by the district which is funding that student's placement.

<sup>3</sup> The Commissioner notes that it may be helpful for NJSIAA guidelines to clarify that agreements between principals, as referenced above, may not be made on an arbitrary or unreasonable basis.

<sup>4</sup> This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.