

BOARD OF EDUCATION OF THE BOROUGH :  
OF MIDLAND PARK, BERGEN COUNTY, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

NEW JERSEY STATE INTERSCHOLASTIC : DECISION  
ATHLETIC ASSOCIATION, :

RESPONDENT. :

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SYNOPSIS

Petitioning Board sought a reversal of the NJSIAA Executive Committee’s decision denying petitioner’s request to leave the Bergen-Passaic Scholastic League (BPSL) and join the Bergen County Scholastic League (BCSL), effective with the 2002-03 school year. Petitioner is the smallest school in BPSL and as a result of significant enrollment declines, was concerned about competing effectively with the significantly larger schools in the BPSL. The BCSL approved petitioner’s application to join the BCLS by the requisite two-thirds majority vote, but the BPSL did not vote by two-thirds majority to permit the departure.

The NJSIAA contended that petitioner was afforded the full measure of due process to which it was entitled, and that denial of petitioner’s application to withdraw was not arbitrary, capricious or unreasonable. The NJSIAA contended that, in order to prevent a “general instability” throughout all 21 New Jersey Conferences, the NJSIAA requires a school wishing to withdraw from a League objecting to its departure to demonstrate a substantial need to do so, and petitioner failed to make such a demonstration. NJSIAA emphasized that the realignment process was never intended to guaranty competitive success for a single member in a particular sport, especially when there are existing remedies in place, like the Cooperative Sports Program, which could resolve this school’s perceived difficulties.

The Commissioner found that due process was granted petitioner and that there was sufficient credible evidence in the record to support the NJSIAA’s denial of petitioner’s request to leave the BPSL. The petition was dismissed.

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For Petitioner, Robert M. Jacobs, Esq. (Winne, Banta, Rizzi, Hetherington & Basralian)

For Respondent, New Jersey State Interscholastic Athletic Association (NJSIAA),  
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 February 1, 2001 by the Board of Education of the Borough of Midland Park (“Midland Park”), seeking a reversal of the decision of the New Jersey State Interscholastic Athletic Association Executive Committee (“NJSIAA Executive Committee”), dated January 9, 2002, which affirmed the determinations of the Bergen-Passaic Scholastic League (“BPSL”) and the NJSIAA Special Committee on Leagues and Conferences (“NJSIAA Special Committee”) denying Midland Park’s request to leave the BPSL and join the Bergen County Scholastic League (“BCSL”).

On February 11, 2002, respondent NJSIAA filed its Answer to the Petition of Appeal along with a Statement of Items Comprising the Record on Appeal pursuant to *N.J.A.C. 6A:3-7.2*. On February 20, 2002, Midland Park submitted a brief in support of its

position and an Appendix containing the Items Comprising the Record on Appeal. A reply brief was submitted by the NJSIAA on March 5, 2002, whereupon, the record in this matter was closed.

### **BACKGROUND**

The within record evidences the following:

- The NJSIAA is a voluntary association established pursuant to *N.J.S.A.* 18A:11-3, which organizes, oversees and governs high school athletics in the State of New Jersey.
- Midland Park is a public school district in Bergen County, is a member of the NJSIAA and has adopted the Rules and Regulations of that body.
- Midland Park is a member of the BPSL and has been a member of this league for approximately 25 years. (Midland Park’s Brief at 2)
- The BPSL and the other 20 Leagues and Conferences throughout the state serve as local organizations to provide athletic schedules for member schools and to award local championships in various sports.
- The BPSL currently consists of a total of 15 schools, one Group 4 school, one Group 3 school, 5 Group 2 schools, a Parochial A school, with the remaining schools being Group 1 or Parochial B schools,<sup>1</sup> and is divided into two Divisions, the “King Division,” consisting of the League’s larger schools, and the “Carpenter Division,” comprising Midland Park and other smaller schools in the League. (NJSIAA Special Committee Report at 1-2)

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<sup>1</sup> The NJSIAA classifies public schools for competition purposes by enrollment, with Group 1 schools having the smallest enrollments and Group IV the largest. NJSIAA parochial school groupings, also classified by enrollment, are Group A for large schools, Group B for small schools.

- The enrollment in the schools comprising the BPSL ranges from a high of 1,397 students to the 181 students of Midland Park, currently the smallest school in the league. (*Id.* at 2-3)
- For approximately the last 5-6 years, Midland Park has experienced a dramatically decreasing enrollment. In addition to an overall general decline, two specific other factors have significantly exacerbated this situation. First, the Commissioner permitted the severance of a sending-receiving relationship between Midland Park and Ho-Ho-Kus. During the four-year phase-out of this relationship, Midland Park lost a total of 60-80 students. Second, for a number of years, Midland Park has served as a host district for a program known as the Secondary Hearing Impaired Program (SHIP) conducted by the Bergen County Special Services School District. Through this program, Midland Park served the educational needs of a number of deaf and hearing-impaired students. Due to recent technological and medical advances, many of these SHIP students have been able to return to a modified educational environment in their home districts. (Midland Park's Brief at 2-3)
- As a result of the significant enrollment declines, Midland Park claims that participation in sports at the school dropped substantially between the 1995-96 and the 2001-02 school years, purportedly, 18% for fall sports, 37% for spring sports, and 45% for winter sports. (*Id.* at 3)
- Midland Park asserts that based on its substantially declining enrollments, considerable decreases in the numbers of students participating in its athletic programs, and concerns about competing effectively or safely with the significantly larger schools in the BPSL, it

made application for admission into the BCSL in accordance with the Constitution and Bylaws of that League. (*Id.* at 4)

- The BCSL is comprised of smaller schools than the BPSL, with 14 of its 18 public school members classified as Group 1. (NJSIAA Special Committee Report at 2-3)
- On May 2, 2000, the BCSL approved Midland Park's application to join the BCSL by the requisite two-thirds majority vote. (Midland Park's Brief at 4)
- Midland Park, subsequently, informed the BPSL of its intention to join the BCSL and of its desire to withdraw from the BPSL, effective with the 2002-03 school year. On May 8, 2001, the BPSL voted 8-7 in favor of Midland's application to leave that League. However, because a two-thirds majority vote of the member schools was necessary to permit the departure, the vote failed. (*Id.* at 4-5)
- Midland Park appealed the BPSL's denial of its application to withdraw to the NJSIAA Special Committee.<sup>2</sup> A hearing on Midland Park's appeal was conducted by the Committee on November 19, 2001. On December 10, 2001, the NJSIAA Special Committee issued its report denying Midland Park's release from the BPSL to join the BCSL. (NJSIAA Special Committee Report)

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<sup>2</sup> A letter dated May 24, 2001, from Roger A. Fitzgerald, Principal, Midland Park High School to Boyd Sands, Executive Director, NJSIAA, presents Midland Park's reasons for appeal:

One basis for this appeal is school size, the average number of students per school in the BCSL is lower and would level the playing field for our students in all sports offered. A second reason for this appeal is for the safety of our students. It should be obvious that a school with a large enrollment will have a larger pool of students to pick from for athletic teams, especially in contact sports. The third reason is to be more competitive in various sports. For example Midland Park has been released by the BPSL for Varsity Football for the past two years because we simply could not compete with the larger schools in our league. We have also been forced to begin a cooperative program in wrestling and to drop our boys tennis team because we could not get a sufficient turnout of students. (May 24, 2001 Letter from Roger A. Fitzgerald to Boyd Sands at 2)

- In so concluding, the NJSIAA Special Committee’s Report found the following to be “Findings of Fact”:

1. The Midland Park High School has an enrollment, grades 10-12 of 181 students. It is the smallest school within the Bergen-Passaic Scholastic League (“BPSL”).

2. In June 2001, this Committee mandated that the BPSL include Hawthorne Christian Academy, with an enrollment of only 152 students to receive first priority scheduling and ultimately to become a member as of September 2004.<sup>3</sup>

3. As a result of the departure of the ascending (sic) district of Ho-Ho-Kus, and the loss of some students in the Secondary Hearing Impaired Program (“SHIP”), Midland Park student enrollment has dropped significantly over the past five years.

4. In football seasons of 1997 and 1998, Midland Park posted a 0 and 18 record, which that school maintains is attributable to its small size and the fact that it had to play larger schools within the BPSL.

5. Midland Park has also dropped its boys tennis team as of the 1999-2000 school year, even though that program was highly competitive the previous year. It has also entered into a cooperative sports program in wrestling within Waldwick High School, a BCSL member, this past year.

6. The BPSL has taken proactive steps to assist Midland Park in coping with its problems in football and wrestling. It allowed the school to maintain an independent football schedule for the past three years, resulting in an 8-2 record this past year in that sport. It also cooperated in allowing Midland Park to maintain a cooperative sports program in wrestling with Waldwick High School.

7. The BCSL, National and American Divisions, has voted to allow Midland Park to join as a member, stating that the expansion of that League will allow it greater scheduling opportunities.

8. While the Committee does not doubt that the difficulties Midland Park has experienced in mounting a competitive football

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<sup>3</sup> The body of the NJSIAA Special Committee’s Report indicates that if and when Hawthorne Christian Academy enters the BPSL, it, rather than Midland Park, would be the smallest member. (NJSIAA Special Committee Report at 4)

program is [sic] attributable to a large degree to the school's small size, that size has not affected the school's ability to be competitive in programs other than football and wrestling.

9. The Committee finds that the BPSL has attempted to assist Midland Park High School and further finds that the departure of that school from the League will be disruptive to this Conference. (*Id.* at 5-6)

The NJSIAA Special Committee's Report next made the following "Conclusions":

1. The application by Midland Park satisfies six of the seven criteria for realignment, as set forth in February 1996 NJSIAA Leagues and Conferences Procedures (*e.g.*, size, geography, scope of programs, administrative personnel, financial burden and any negative impact on diversity goals). However, the Committee believes that the application does not survive criteria (sic) No. 4, dealing with the adverse impact on the present League.

2. The Committee is quite sympathetic to the problems encountered by Midland Park, but has concluded on balance that the departure of this school to the BCSL will create an imbalance within the BPSL, which should not be allowed at this time.

3. In recognition of the fact that Midland Park and other Group 1 schools in BPSL and the BCSL are encountering competitiveness problems in football, it is urged that some consideration be given to combining these Conferences for football scheduling alone. Such an arrangement was recently initiated by the Olympic and Burlington County Scholastic League, which was encountering similar problems in football scheduling.

4. In addition, Midland Park may well consider expanding its cooperative sports program to include football and other activities where it is encountering genuine competitive problems. Indeed, the cooperative sports program was designed to deal with schools such as Midland Park, which have been experiencing a substantial decline in enrollment. The BPSL has demonstrated in the past that it would cooperate in any such endeavors.

(*Id.* at 6)

- Midland Park filed exceptions to the Special Committee's Report with the Executive Committee of the NJSIAA. Such exceptions were considered at a hearing conducted on

January 9, 2002, where the Executive Committee subsequently voted 24-5 to adopt the report of the NJSIAA Special Committee denying Midland Park's request to change leagues. (January 9, 2002 Letter from Boyd A. Sands to Robert M. Jacobs, Esq.)

### **MIDLAND PARK'S POSITION**

Midland Park charges that the decisions of the NJSIAA Special Committee, and the NJSIAA Executive Committee, denying its request to leave the BPSL because its departure would result in an adverse impact on, or create an imbalance within, the BPSI, are conclusions totally devoid of credible evidentiary support in the record before these bodies. As such, Midland Park contends the decisions of both Committees deprived it of due process and constituted an arbitrary, capricious and unreasonable application of rules by the NJSIAA, so that pursuant to the standard of review set forth in *N.J.A.C. 6A:3-7.4*, the NJSIAA's decision must be set aside. (Midland Park's Brief at 7, Point I)

In finding detrimental negative impact on the BPSL, Midland Park advances, the NJSIAA Special Committee relied, to a large extent, on statements of a BPSL representative to the effect that if Midland were to be permitted to leave that League, a "domino effect" would result, whereby other small schools in the League would also seek to be released. (*Id.* at 9) Specifically, Dave Moyle, Athletic Director of Pompton Lakes High School, testifying on behalf of the BPSL, stated:

Our concern is if Midland Park leaves us it's going to have a major impact on our other smaller schools. What is to stop the next school to coming down here and appealing to you and then the next school, the next smallest school, and that's what happens. That's our concern. (Transcript at 49-50) (Midland Park's Brief at 9)



Midland Park submits that Mr. Moyle's declaration is "at best, merely speculative and conjecture." (Midland Park's Brief at 9) It proffers that the record is devoid of any evidence, testimony, or even any explicit suggestion by this or any other witness, "that any of the smaller schools in the BPSL had indicated to the League an intention to seek to be released from the League in the event that Midland Park is released, or that any of the smaller schools in the League have taken any action in the last decade, by formal application or otherwise, to be released from the League." (*Id.* at 10)<sup>4 5</sup>

Moreover, the record further evidences that the notion that Midland Park's departure would cause a "domino effect" with the smaller schools is negated by an analysis of the vote actually taken by the BPSL on Midland Park's application:

a number of the smaller districts in the BPSL (including Immaculate Conception, Eastern Christian and Don Bosco Tech) all voted *against* allowing Midland Park to leave. Were there to be any legitimacy to the concern that Midland Park's leaving would have a domino effect o[n] other small schools \*\*\*, it is far more logical to assume that *all* of the smaller schools in the league would have voted to *permit*, rather than to not allow, Midland Park to leave. (emphasis in text) (*Id.* at 11-12)

Next, Midland Park proposes that the record lacks any factual or evidentiary basis for the NJSIAA Special Committee to have concluded that its departure from the BPSL would "create an imbalance" within that League. (Midland Park's Brief at 16) To the contrary, the record rather establishes, at least insofar as football is involved, that as a consequence of

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<sup>4</sup> To the contrary, the testimony and evidence adduced in this matter, petitioner avers, confirms that a number of the League's *larger* schools have sought, and been granted, permission to leave the League.

<sup>5</sup> Midland Park also vigorously objects to Mr. Moyle's representation, made for the first time before the NJSIAA Executive Committee, whose consideration of this matter, pursuant to the NJSIAA's own rules and procedures, is to be confined to the record established before the NJSIAA Special Committee, that two other small schools had indicated a desire to leave the BPSL and, indeed, voted for Midland Park's release for this reason. This impermissible supplementation of the record should not have been allowed and "must be viewed as having prejudiced the position of Midland Park before [this Committee] to the extent that such 'evidence' was considered by [them]." (Midland Park's Brief at 13-14)

Midland Park “being compelled to remain in the League and to resume playing a league, rather than an independent schedule, as of September 2002 (and without the addition of a new school\*\*\*), there will once again be thirteen (13) football schools in the BPSL,\*\*\*which creates an imbalance requiring the scheduling of byes each week.” (*Ibid.*) This being the case, Midland Park urges that it stands to reason that if it were permitted to withdraw from the BPSL, the League’s imbalance would be *cured*, to the benefit, rather than to the detriment, of the BPSL. (*Ibid.*) It, additionally, suggests that rather than denying Midland Park’s application out-of-hand, the NJSIAA Special Committee could have, alternatively, permitted Midland Park to continue to play an independent football schedule, an option, which at least on a short-term basis, would serve to alleviate the difficulties it is currently experiencing. (*Id.* at 18)

Finally, Midland Park contends that in concluding that its declining enrollment has not affected the school’s ability to be competitive in sports other than wrestling and football, the NJSIAA Special Committee relied on erroneous statistics. Specifically, “while the Special Committee concluded that the boys’ soccer team was 8-2 this past year (Decision at page 5), in fact, the actual record was 1-16-1 overall, with a 0-10 record in the Carpenter (smaller school) Division of the BPSL.” (Midland Park’s Brief at 20) Therefore, it alleges that the NJSIAA Special Committee’s determination was based, at least in part, on “inaccurate information.” (*Id.* at 20)

Midland Park tenders that, because the record fails to demonstrate any sufficient or substantial evidence that the BPSL would suffer adverse impact should Midland Park be allowed to withdraw from that League, the NJSIAA’s findings of such adverse impact are arbitrary, capricious and unreasonable, necessitating reversal.

## NJSIAA'S POSITION

The NJSIAA's submission initially presents an overview of the history of League and Conference realignment begun in 1982, noting that the realignment process was in response to a prior expressed concern of the Commissioner of Education "that a number of inner city and parochial schools were not being allowed to have a full schedule of contests because they were denied membership in local Leagues and Conferences." (NJSIAA's Brief at 3) It emphasizes that the underlying intent of realignment of Leagues and Conferences, from its inception through today, has been to "afford full scheduling for minority and parochial schools who had been deprived of those opportunities prior to 1982." (*Id.* at 4) Of significant import in this regard, it proffers, is that assuring that a school's athletic program is victorious is not now, nor has it ever been, a concern of either the Commissioner or the NJSIAA. The NJSIAA advances that subsequent to the third statewide realignment in 1987, accomplished with the objective of assuring that the Commissioner's directive was, indeed, effectuated,

[a] number of schools have voluntarily transferred from one League to another as population among New Jersey schools fluctuated. Where either League objected, then the NJSIAA would consider *ad hoc* applications, rather than general statewide realignments. However, in doing so, the NJSIAA maintained its principal goal. If a school was denied of any membership, then it would be admitted to an appropriate League or Conference. If it was presently in a League or Conference and wished to transfer to another conference over the objection of its existing Conference, then it would have to demonstrate some substantial need to do so. Otherwise, general instability would be created throughout the 21 Conferences in New Jersey. Accordingly, in considering a request for admissions or transfers, the NJSIAA consistently applied the standards of the 1983 Leagues and Conferences Position Statement that it had to "be shown that there has been a violation of the order of the Commissioner of Education, that there be an opportunity for a full schedule of interscholastic sports." (2001-2002 *NJSIAA Handbook*, p. 142.) (NJSIAA's Brief at 5-6)

With this underlying policy with regard to realignment outlined, the NJSIAA submits that there can be no question here that Midland Park was provided a full measure of due process in consideration of its application. It avers that, pursuant to the League and Conference Statement (*NJSIAA Handbook*, 1999-2000 at 133-135), the Executive Committee's role in reviewing a decision of a league or conference is "limited to determine [sic] whether the actions of the conferences were arbitrary or capricious or in violation of the NJSIAA Constitution and Bylaws. The NJSIAA and its Executive Committee will not substitute its judgment concerning such issues for that of the conference." (*Id.* at 135) (NJSIAA's Brief at 12) In this matter, the NJSIAA provided Midland Park two hearings to consider the school's transfer application, where Midland Park was represented by counsel, had an opportunity to present witnesses, was able to cross examine witnesses from the BPSL and the BCSL, was permitted to make opening and closing statements and was allowed to submit documentary evidence. Further, the proceedings were stenographically recorded and the Special Committee issued a comprehensive decision within three weeks. The same procedures were accorded before the NJSIAA Executive Committee. Committee members, additionally, posed questions to representatives of Midland Park, the Special Committee and the BPSL, and subsequently voted overwhelmingly to adopt the Special Committee's report. (*Id.* at 12-13)

The NJSIAA next submits that in reviewing a League transfer decision, consideration must be given to the fact that the realignment process was instituted solely to provide adequate scheduling for interscholastic competitions. It argues that here:

There was never any contention \*\*\*that Midland Park was denied that scheduling, only that the school was non-competitive in football (and perhaps some other sports). Yet the standard that is to be applied is that of the 1983 Statement of Leagues and Conferences which states as follows:

...The ability of member schools to have a winning season, or to obtain state or national prominence in its particular sport, is simply not a concern of the Association. (NJSIAA's Brief at 13-14)

The NJSIAA observes that, contrary to Midland Park's assertion, the within record establishes that its decision is supported by sufficient credible evidence. Specifically, Midland Park challenges the decision with respect to the finding that it was competitive in programs other than football and wrestling, that its departure from the BPSL would be disruptive to that Conference and that its application failed to satisfy criteria No. 4 of the Leagues and Conferences realignment standards because it would have an adverse impact on the BPSL should Midland Park be permitted to leave. The NJSIAA counters that the evidence in the record to support these findings and conclusions was "formidable." (NJSIAA's Brief at 14) First, the record, and even Midland Park's application itself, demonstrates that Midland Park has had significant competitive success within its current League. The NJSIAA points out that Midland Park's boys baseball team had a record of 22 and 7 for the past year and were co-champions within the BPSL's Carpenter Division; their freshman boy's basketball team was undefeated; their girl's volleyball team was 15 and 6 last year and the champions within the Carpenter Division; the girl's softball team ended last season with a 15 and 9 record, and the girl's tennis team, in the last three years, had a 25-16 one loss record and were division champions in 1998-1999. Finally, Midland Park's football team, although playing an independent schedule outside of the BPSL last season, still competed against another small school in the BPSL, which it defeated 38 to 7.<sup>6</sup> (NJSIAA's Brief at 14-15)

The NJSIAA further submits that the Special Committee found the testimony of David Moyle, who represented the BPSL at the November 19 hearing, particularly informative,

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<sup>6</sup> See Midland Park's Brief, Attachment 1, Appendix 9, pp. 2-3; Transcript of NJSIAA Special Committee Hearing, November 19, 2001, p. 53, lines 19-21; p. 43, lines 19-24.

as he explained that the BPSL had adopted a rule barring the League's three small schools, which includes Midland Park, from playing the League's two largest schools (Passaic County Technical Institute and Garfield) in football. As such, the NJSIAA contends, Midland Park cannot credibly claim that they are required to compete against much larger schools in football.

(*Id.* at 15) The NJSIAA claims that this information was also particularly meaningful

because Midland Park is alleging that the average enrollment in the BPSL is 467 students, as compared to 347 students in the League it is seeking to enter, the BCSL. \*\*\*In fact, as it relates to football, with the elimination of the two largest schools in the BPSL, Passaic Tech and Garfield, the average enrollment of competing football schools in the BPSL is 388 students, or only 41 students larger than the BCSL. In addition, with the inclusion of Hawthorne Christian, Midland Park will no longer be the smallest school in the BPSL.  
(NJSIAA's Brief at 16)

The NJSIAA proposes that the written materials which had been presented to the Special Committee, along with the testimony of the BPSL representative, persuaded the Committee that, although Midland Park is a relatively small school, this situation was not adversely affecting its competitiveness in sports other than wrestling and football. (*Ibid.*) It further professes that the Special Committee additionally relied on testimony that Midland Park's departure from the League would have an adverse impact on other small League schools, for example, Waldwick, with an enrollment of 279 students, which Midland Park defeated in football this past season. It reasons that were Midland Park permitted to withdraw from the League, it would be extremely difficult to explain to Waldwick and other small League schools, who might be struggling in one or more sports, why they also should not leave the BPSL.  
(*Id.* at 17)

Finally, the NJSIAA argues that Midland Park should not be allowed to leave the BPSL, thereby disrupting this otherwise stable and well-functioning League, when there are

alternatives available to handle its football problems. It points out that, over 16 years ago, the NJSIAA, as an amendment to its Bylaws, created the Cooperative Sports Program (Article III, Section 7, 2000-2001 *NJSIAA Handbook*, pp. 40-41), which allows a small school experiencing difficulty in fielding sports programs to join with similarly situated schools to create joint athletic programs. (*Id.* at 18) The Cooperative Sports Program provides an opportunity for student athletes to compete even though they are attending schools whose enrollment figures would not ordinarily justify a full athletic team. Indeed, in its report, the Special Committee, in its Conclusion No. 4, urged Midland Park to consider a wider use of this alternative. The NJSIAA submits that, although Midland Park is involved in a Cooperative Wrestling Program with Waldwick, it steadfastly “insists on having its own football team on its own terms.” (*Ibid.*)

In conclusion, the NJSIAA reemphasizes that the realignment process was never intended to guaranty competitive success for a single member school in a particular sport, especially when there are existing remedies in place which could resolve this school’s perceived difficulties.

### **COMMISSIONER’S DETERMINATION**

It is well-established that the Commissioner’s scope of review in NJSIAA determinations is appellate in nature. *N.J.S.A.* 18A:11-3, *N.J.A.C.* 6A:3-7.4; *Board of Education of the City of Camden v. NJSIAA*, 92 *N.J.A.R.* 2d (EDU) 182, 188 (1992). That is, the Commissioner may not overturn an action by the NJSIAA in applying its rules absent a finding that the NJSIAA applied the rules in a patently arbitrary, capricious or unreasonable manner. Nor may the Commissioner substitute his judgment for that of the 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 or entity challenging the decision. *Kopera v. West Orange Board of Education*, 60 N.J. Super. 288, 297 (App. Div. 1960).

The arbitrary, capricious or unreasonable standard of review is extremely narrow in its scope and, consequently, imposes a heavy burden on those who challenge determinations of the NJSIAA. The standard, as defined by the New Jersey Courts provides:

In the law, “arbitrary” and “capricious” means having no rational basis. (citation omitted) \*\*\*Arbitrary and capricious action of administrative bodies means willful and unreasoning action, without consideration and in disregard of circumstances. Where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached. (citations omitted) Moreover, the court should not substitute its judgment for that of an administrative or legislative body if there is substantial evidence to support the ruling. (citation omitted) (*Bayshore Sewerage Co. v. Dept. of Env't. Protection*, 122 N.J. Super. 184, 199-200 (Ch. Div. 1973), *aff'd* 131 N.J. Super. 37 (App. Div. 1974))

Guided by these principles, the Commissioner has carefully considered the record, as well as the arguments of counsel, and hereby affirms the determination of the NJSIAA upholding the denial of Midland Park’s withdrawal from the BPSL. The Commissioner, initially, concurs with the NJSIAA that Midland Park was afforded the full measure of due process to which it is entitled. Similarly, he finds that, as persuasively argued by the NJSIAA, its Special Committee’s findings and conclusions are grounded in the record. The Commissioner further concludes that the NJSIAA has a legitimate interest, in order to prevent a “general instability” throughout all 21 New Jersey Conferences, of requiring a school wishing to withdraw from a League objecting to its departure to demonstrate a *substantial* need to do so. As evidenced by the record here, Midland Park has failed to make such a demonstration. For all of



these reasons, the NJSIAA Special Committee's denial of Midland Park's application cannot be termed arbitrary, capricious or unreasonable.

Accordingly, having found that due process was granted Midland Park and that there is sufficient credible evidence in the record to support the NJSIAA's denial of its request to leave the BPSL, the instant Petition of Appeal is dismissed.

IT IS SO ORDERED.<sup>7</sup>

COMMISSIONER OF EDUCATION

Date of Decision: 4/4/02

Date of Mailing: 4/8/02

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<sup>7</sup> This decision, as the Commissioner's final determination in this matter, may be appealed to the Superior Court pursuant to *N.J.S.A.* 18A:11-3.