

BOARD OF EDUCATION OF THE :
CITY OF ASBURY PARK, ON ITS OWN :
BEHALF AND *IN LOCO PARENTIS* FOR :
MARC TAYLOR, AND MARC TAYLOR, :

PETITIONERS, :

COMMISSIONER OF EDUCATION

V. :

DECISION

NEW JERSEY STATE :
INTERSCHOLASTIC ATHLETIC :
ASSOCIATION, :

RESPONDENT. :

SYNOPSIS

Petitioning school district and student challenged the determination of the New Jersey State Interscholastic Athletic Association (NJSIAA) denying the student a waiver of the NJSIAA’s rules limiting eligibility for any interscholastic sport to eight semesters from initial participation. The student sought the waiver to enable him to play football during his senior year notwithstanding his participation in high school football as a rising eighth-grader in preseason practice and one game, during which he was injured. Petitioners alleged that NJSIAA misconstrued and misapplied its rules, was unfair in its disproportionate penalizing of the student for an action about which school officials failed to properly advise him, and acted arbitrarily by ignoring a prior precedent where another student had been permitted to play during his senior year under circumstances similar to those of the petitioning student herein.

The Commissioner determined that NJSIAA’s decision was, in itself, fully in accordance with rules and guidelines as consistently interpreted and applied over the years, and that the one purported exception to precedent was, in fact, distinguished by NJSIAA through reasonable exercise of its lawful discretionary judgment. *However*, the Commissioner also found that, under the particular circumstances of this case, NJSIAA’s deferral until Spring 2002 of the student’s September 2000 request for waiver acted to deny due process and effectively foreclose any possibility of remedy with respect to the student’s desire to play football in his senior year, not only within NJSIAA member schools, but also apart from them. The Commissioner found that, under the circumstances, this delay so prejudiced the student that NJSIAA’s denial of his request for waiver rose to the level of arbitrariness and was, therefore, not sustainable on appeal. The Commissioner ordered that the student be granted a waiver to play football for all but the first two games during 2002-2003.

August 8, 2002

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

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For Petitioner, Asbury Park Board of Education, Nicholas Celso, III, Esq.
(Schwartz, Simon, Edelstein, Celso & Kessler)

For Petitioner, Marc Taylor, Timothy E. Shanley, Esq. (St. John & Wayne)

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

PROCEDURAL HISTORY

This matter came before the Commissioner of Education on June 21, 2002 through the filing of an appeal by the Board of Education of the City of Asbury Park, on its own behalf and that of pupil Marc Taylor (petitioners). Petitioners sought review of the June 14, 2002 determination of the Eligibility Appeals Committee (EAC) of the New Jersey State Interscholastic Athletic Association (NJSIAA), wherein Marc Taylor was denied a waiver to participate in football in the 2002-2003 school year on grounds that he had utilized all four years of his eligibility pursuant to the “eight semester rule” and did not meet the NJSIAA’s established criteria for grant of a waiver. Petitioners initially sought emergent relief permitting

Marc Taylor to participate in practices beginning in June 2002 and in an August training camp, and to participate in football during the 2002-2003 school year. However, the application was submitted too late for the Commissioner to address the request as it related to practices in June 2002, and, as was clarified in correspondence between the parties at the behest of the Commissioner, Marc Taylor was, in fact, permitted by NJSIAA's rules and its decision in this matter to practice with the football team and attend August training camp.¹ Consequently, petitioners' application for emergent relief was withdrawn, and their requests to permit Marc Taylor to practice with the team and to participate in August training camp became moot. The only issue remaining before the Commissioner on appeal, therefore, is petitioners' request that Marc Taylor be allowed to participate in football games during the 2002-2003 football season, beginning with Asbury Park's first scrimmage on August 24, 2002.²

THE UNDERLYING DECISION OF THE NJSIAA

The EAC's June 14, 2002 decision set forth the following as its findings of fact in this matter:

1. Asbury Park is one of the 30 "special needs" districts in New Jersey, as a result of the *Abbott v. Burke* decision. That district has two elementary, one middle school and one high school, which is a member of the NJSIAA.
2. Marc Taylor was born on September 10, 1983 and was a student in the seventh grade in the spring of 1998.
3. In the late spring of 1998, Marc Taylor was encouraged to join the Asbury Park freshman football team and eventually presented a permission slip to the freshman football coach, Leroy Hayes.

¹ See, Respondent's Brief in Response to Asbury Park's Application for Emergent Relief, at 15; letter of the Acting Director of Controversies and Disputes dated July 9, 2002; and letter of Asbury Park Board of Education dated July 10, 2002.

² Although the appeal on Marc Taylor's behalf was filed by Asbury Park, on July 19, 2002, an appearance was entered, and a brief filed, by counsel representing Taylor individually.

4. Coach Hayes accepted the permission slip and assumed that Marc Taylor was eligible and had met all the requirements of the district. He authorized the issuance of a uniform to Marc Taylor, who then participated in practice throughout the pre-season for the freshman football team.

5. There was no evidence that anyone from the school district advised Marc Taylor that he could not participate on the freshman team as an eighth grader or that he might lose one year of eligibility if he did so.

6. At the first freshman football game against Toms River South, Marc Taylor participated throughout the first half and was injured. Although he participated for a few plays in the second half, an injury to his leg prevented him from any further participation.

7. In September 1999, Marc Taylor entered Asbury Park High School. He thereafter participated in football, basketball and baseball for the next three years, as well as golf in the spring of 2002.

8. Marc Taylor is an outstanding athlete and was the starting quarterback for the Asbury Park football team for the last two seasons. Several colleges have expressed interest in his playing football with the possibility of an athletic scholarship.

9. In addition to the errors made in allowing Marc Taylor to play football on the Asbury Park freshman team as a seventh grader (sic), several other errors were made by the District administration relating to additional football players in 1998, which required the school to forfeit its entire season as well as qualification for a state sectional football championship in that year. (Appendix of Asbury Park, Item Number 3.)

Conclusions and legal determinations were made by the EAC as follows: First, the EAC noted that its Interpretative Guidelines specifically provide that failure of school staff to properly advise student athletes does not constitute grounds for waiver of eligibility regulations, (*id.* at 5), and that Asbury Park's status as an "*Abbott*" district is no reason to treat its students in a manner different from others. Next, the EAC cited Article V, Section 4.I of the NJSIAA Bylaws, and noted that "[it] expressly provides that students below the ninth grade 'who play on

ninth grade or so called freshman or sophomore, junior varsity and varsity teams will be ineligible at the conclusion of eight semesters of such participation.” *Ibid.* The EAC then concluded that, because Marc Taylor participated in a full practice schedule as a rising eighth grader and played in one-half of one game, this constituted participation for a full season in accordance with Article V, Section 4.I of the NJSIAA Bylaws. *Id.* at 6.

The EAC also noted that, while its rules permit, with the acquisition of a waiver, the participation of pre-high school students in high school athletics, the purpose of this rule is to benefit handicapped students who attain the age of fifteen or above in eighth grade and who, without a waiver, would be precluded from participating in high school athletics for four full years because students over 19 years of age may not participate in high school athletics. *Ibid.*

The EAC went on to specifically reject the contention that Marc Taylor’s participation in football while in eighth grade was “*de minimis*,” stressing that even minimal participation implicates a student’s eligibility for one full season under the rules of the NJSIAA. *Id.* at 7. The EAC also rejected the notion that Taylor’s participation in football was necessary to his acquiring a scholarship to attend college, noting that other athletes who lose a year of eligibility have acquired athletic scholarships and that granting waivers on this basis would favor superior athletes over less skilled ones, something the EAC would never countenance because it is contrary to the fundamental purpose of high school athletics. *Ibid.*

Finally, the EAC noted that Marc Taylor had only been denied a waiver to participate in football, and that he was still free to participate in all other sports, since he had not yet exhausted his four years of eligibility in any sport other than football. *Ibid.*

ARGUMENTS OF THE PARTIES ON APPEAL

Initially, it is noted that petitioners do not dispute the material facts of this matter as found by the EAC and set forth above. Rather, the parties disagree on the meaning and application of the rules invoked by NJSIAA to determine Marc Taylor's eligibility status and deny his request for a waiver.

In support of its appeal, Asbury Park first argues that the controlling rule invoked by NJSIAA to find Taylor ineligible does not, in fact, apply to him. According to Asbury Park, Article V, Section 4.J of the NJSIAA Bylaws specifically provides that "[n]o student shall be eligible for high school athletics after the expiration of eight consecutive semesters *following his/her entrance into the 9th grade.*" NJSIAA 2001-2002 Handbook at 51 (*emphasis supplied*) Thus, the argument proceeds, because the plain language of this rule renders it applicable only *after* a pupil enters 9th grade, Marc Taylor's eight semesters of eligibility did not begin until he entered 9th grade and, having had only six semesters of eligibility since that time, he is entitled to participate in football in his senior year. Brief of Asbury Park at 5.

Asbury Park dismisses as irrelevant Article V, Section 4.I of the NJSIAA Bylaws, which provides that "***[s]tudents in any 6th 7th, or 8th grades of any school (Jr. High or Sr. High) who play on the 9th grade or so-called freshman or sophomore, junior varsity and varsity teams will be ineligible at the conclusion of eight consecutive semesters of such participation. ***" Asbury Park contends that the history of this rule shows it to have been originally intended to prohibit pre-high school students from playing high school sports, but then adjusted, as an accommodation to classified students, to permit 8th graders age 15 and over the opportunity to participate in four years of sports through grant of a waiver. Thus, the argument proceeds, the rule does not apply to students such as Marc Taylor, and it may not be read *in pari materia* with

other rules so as to suggest that the eight semesters of normal eligibility begin to run whenever a student begins to participate in a sport, rather than in 9th grade. *Id.* at 7-8.

Asbury Park also argues that Marc Taylor's participation in football as an eighth-grader was *de minimis*, since he was injured in his first game, and that fundamental fairness compels the reversal of so disproportionate a penalty as denial of eligibility for the entire 2002-2003 season. Asbury Park suggests that, rather than imposing the maximum penalty, NJSIAA should have chosen one more appropriate to Marc Taylor's participation in practices and one-half of one game in 8th grade. *Id.* at 11, 15-16.

A waiver is additionally appropriate, Asbury Park contends, because Marc Taylor is a child in an "*Abbott*" district, lacking a nourishing family environment to protect him from inappropriate judgment calls of school staff and now finding himself penalized because he relied on erroneous advice of staff of the district. *Id.* at 18-19

Finally, Asbury Park asserts that, based on the outcome of a prior instance of student eligibility, the EAC's decision is arbitrary and capricious. The prior student was permitted by NJSIAA to play high school football for four years after participating, as an eleven-year old about to enter 7th grade, in a full scrimmage with the high school football team coached by his father; whereas Marc Taylor was denied a waiver to participate in four years of high school football based on his participation in practices and one-half of one game when he was in 8th grade. *Id.* at 12. Asbury Park asserts that there can be no basis for this inconsistency, since Marc Taylor gained by his participation neither an athletic experience advantage, in that he played a different position in 8th grade (offensive line, rather than quarterback), nor a physical advantage, in that he is the same age as other high school seniors. Thus, there was no reason to

deny Taylor a waiver while permitting the prior student to play, and NJSIAA's failure to follow its own precedent was inherently arbitrary and capricious. *Ibid.*

Petitioner Marc Taylor's individual arguments essentially mirror those of the Asbury Park Board, stressing that the plain language of the rules compels a determination that eight semesters of eligibility for Taylor did not begin until he entered 9th grade, that the "penalty" imposed on Taylor was both disproportionate and unfair, because it entails the loss of his ability to attend college for a minor infraction caused by the actions of others through no fault of his own, and, finally, that NJSIAA's treatment of the other student cited by Asbury Park, who was allowed to play four years of high school football although he participated in a scrimmage when eleven years old, compels a conclusion that the decision of the EAC was arbitrary and capricious. In the latter regard, Marc Taylor asserts that the arbitrariness of the EAC's decision is further demonstrated by quotations from counsel for NJSIAA, in a news account attached to Taylor's brief, indicating that the two cases are not comparable in that the prior student was not increasing his skills or being prepared for anything, whereas Marc Taylor was involved for weeks and participated in an athletic contest. Brief of Marc Taylor, Attachment A at 3. These comments, it is asserted, demonstrate that NJSIAA makes subjective determinations about what constitutes participation as a threshold matter prior to rigid application of its eligibility rules, including the eight-semester rule at issue herein.

In light of the similarity of the two petitioners' arguments, NJSIAA filed, as directed, a single response addressing both petitioners' briefs. Initially, NJSIAA contends that "petitioners embark on an elaborate exegesis designed to show that NJSIAA eligibility rules do not mean what they say." Brief of NJSIAA at 3. NJSIAA argues that the plain language of Article V, Section 4.I of its Bylaws counters petitioners' assertion that Article V, Section 4.J of

NJSIAA Bylaws must be read as mandating that, for students such as Marc Taylor, the eight-semester rule does not begin to run until they enter 9th grade, since they are not eligible for a waiver to play in 6th, 7th or 8th grade. NJSIAA posits that Article V, Section 4.I clearly and unequivocally states that students in 6th, 7th or 8th grade who play on freshman, sophomore, junior varsity or varsity teams will be ineligible at the conclusion of eight semesters from the time they begin such participation. It cautions that concluding otherwise would give schools free license to engage students at a younger age so as to unfairly increase a team's advantage in varsity competition, and students an easy means of extending their high school athletic experience beyond four years. *Id.* at 3-4

NJSIAA next argues that Marc Taylor's ability to obtain a scholarship is not a relevant factor in deciding this matter, both because such argument is largely speculative and because it misconstrues entirely the purpose of high school athletics. NJSIAA notes that it serves approximately 200,000 students each year in 31 separate sports, and that the majority of these students do not have the outstanding physical gifts and skill levels that might lead to an athletic scholarship. Those that do, NJSIAA argues, deserve no preferential treatment in eligibility determinations, since such preference would subordinate the educational mission of schools to the interests of the sports marketplace. *Id.* at 7-8.

NJSIAA contends that granting Marc Taylor more than four years of eligibility would create a dangerous precedent, constituting the only exception to an otherwise absolute rule. *Id.* at 9 NJSIAA stresses that it did *not* impose a penalty on Taylor, as petitioners continually assert. First, Taylor was accorded the same four years of eligibility that all other students enjoy. Second, the NJSIAA did not "punish" him for participating in football while in 8th grade; it denied his request for a waiver from normal eligibility rules based upon

circumstances which did not meet NJSIAA's established criteria for such a waiver. *Id.* at 9. NJSIAA cites to its Interpretive Guidelines relating to the eight-semester rule, wherein it is expressly stated that:

***Since the NJSIAA carefully regulates practice and scrimmages and is most concerned over the possibility of "red shirting," "participation" in any sports season will begin on the very first day that a Student-Athlete participates in or attends practice in a particular sport.

(NJSIAA 2001-2002 Handbook at 72, Brief of NJSIAA at 10)

Again citing its Interpretative Guidelines, NJSIAA notes that it never considers the actions of school district personnel as grounds for granting a waiver, even though such actions may be beyond the control of a student athlete:

***Misinterpretation of NJSIAA eligibility regulations or the failure by the school's staff to properly advise a Student-Athlete will not be considered grounds for waiver of the eligibility regulations.

(NJSIAA 2002-2002 Handbook at 69, NJSIAA Brief at 11)

Permitting the result sought by Taylor would countenance something NJSIAA cannot permit: the effective rewarding of schools and officials not doing their jobs by allowing them to benefit from the participation of athletes who have obtained an unfair advantage over their peers in skill and experience. *Id.* at 11

In response to petitioners' arguments claiming that a prior student's eligibility determination demonstrates that Marc Taylor was denied fairness and equal protection, NJSIAA contends that it has decided over 546 eligibility cases since its establishment in 1983, granting waivers in about a third of them, but that it has *never once* granted a waiver permitting a student to participate for more than four seasons in any one sport. Brief of NJSIAA at 13. Additionally, NJSIAA notes, 43 decisions have issued from the Commissioner and courts during this same time, at least half of which have involved the eight-semester rule. Rather than looking to this

body of precedent, which is entirely consistent with NJSIAA's determination in the instant matter, according to NJSIAA, petitioners instead rely on one anomalous situation arising out of a matter involving the unsportsmanlike conduct and subsequent discipline of a coach. *Id.* at 13-14

NJSIAA acknowledges that the student in question, the coach's son, C.O., participated by his father's arrangement in a single simulated drill in 1995 while 11 years old,³ and subsequently was permitted to play high school football for four seasons. However, NJSIAA differentiates C.O.'s situation from that of Marc Taylor, stressing that C.O. was not actually, nor intended to be, a member of the team, was not issued a uniform other than a helmet and jersey, did not practice, and played only in one exhibition; whereas Marc Taylor participated as a team member in a full preseason of practice and an actual interscholastic contest. *Id.* at 13-14. NJSIAA also notes that Marc Taylor was age appropriate to participate in high school football, whereas C.O. was only 11 years old, and that Taylor had the benefit of a month of practice, whereas C.O. played in an exhibition with no possibility of skill enhancement. *Id.* at 14. In effect, NJSIAA argues that C.O. did not "participate" in football so as to cause his eligibility to begin prior to 9th grade; thus, he had no need of a waiver to play for four years, as Marc Taylor did.

DETERMINATION

The NJSIAA is a voluntary association. The Commissioner's scope of review in matters involving the NJSIAA is appellate. *See 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. The Commissioner may not overturn an action by the NJSIAA in applying eligibility rules absent a finding that the Association applied the rules in a patently arbitrary, capricious or unreasonable manner. *B.C. v.*

³ The coach was disciplined by NJSIAA for this and other infractions, in a determination later upheld by the Commissioner.

Cumberland Regional School District, 220 N.J. Super. 214, 231-232 (App. Div. 1987). As codified to provide notice of this standard to the public and regulated parties:⁴

1. If the NJSIAA has granted a petitioner due process and its decision is supported by sufficient credible evidence in the record as a whole, the Commissioner shall not substitute his *** judgment for that of the NJSIAA, even if the Commissioner might judge otherwise in a *de novo* review.

2. The Commissioner shall not overturn NJSIAA's application of its own rules absent a demonstration by the petitioner that such rules were applied in an arbitrary, capricious, or unreasonable manner. *N.J.A.C. 6A:3-7.4(a)*.

The burden of proof that an action was thus deficient rests with the person challenging the decision. *Kopera v. West Orange Bd. of Education*, 60 N.J. Super. 288, 297 (App. Div. 1960). It is well established that,

In the law, "arbitrary" and "capricious" means having no rational basis. *** 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) *Bayshore Sew. Co. v. Dep't. of Env., N.J.*, 122 N.J. Super. 184, 199-200 (Ch. Div. 1973), *aff'd* 131 N.J. Super. 37 (App. Div. 1974).

Upon careful consideration of this matter, and mindful of the applicable standard of review, for the reasons set forth below, the Commissioner determines to reverse the decision of the NJSIAA and permit Marc Taylor to participate in football during the 2002-2003 season.

Initially, the Commissioner stresses that the EAC decision itself, and NJSIAA's arguments on appeal, correctly identify and construe the controlling rules in this matter, and apply them reasonably, consistent with over two decades of decisional precedent. In this latter

⁴ See, 31 N.J.R. 4173(a) and 32 N.J.R. 1177(a).

regard, the Commissioner specifically finds rationally based and supported by undisputed facts the NJSIAA's proffered basis for distinguishing the one instance petitioners cite as evidence that NJSIAA enforces its eligibility rules selectively and inconsistently.⁵ The Commissioner also concurs with NJSIAA's observation that Marc Taylor's inability to participate in extra semesters of football resulted from even-handed application of NJSIAA eligibility rules, not from a determination to "penalize" the student for an earlier "infraction."

However, notwithstanding the above, the Commissioner's careful review of the entire record, including the parties' submissions in support of Marc Taylor's request for emergent relief, reveals an infirmity in the manner in which Taylor's request for waiver was addressed by NJSIAA that resulted in a denial of "due process" to Marc Taylor as contemplated by *N.J.A.C.* 6A:3-7.4(a). The record shows that there was a nearly two-year delay from the time school officials, recognizing Taylor's problem at the beginning of his sophomore year, first sought a waiver of the eight-semester rule to the time NJSIAA agreed to entertain his application. In all likelihood, given that the decision presently on appeal is entirely consistent with NJSIAA rules and past precedent, the outcome of any earlier eligibility hearing would have been no different than that of the EAC determination herein. *But*, by deferring consideration of Taylor's request for waiver until the end of his junior year, NJSIAA effectively foreclosed the student not only from playing for one of its member schools, but also from *any* possibility of meaningful relief related to his desire to play football as a high school senior.

⁵ The Commissioner notes that, even if he had found NJSIAA's basis for distinction between C.O. and Marc Taylor questionable, such a conclusion would not necessarily compel a determination that NJSIAA had acted arbitrarily or unlawfully in the matter herein. NJSIAA's rules limit eligibility in any sport to eight semesters. Assuming, *arguendo*, that a case could be identified where a student athlete *was* provided more than eight semesters of eligibility on a basis arguably inconsistent with prior precedent, that single anomaly would not demand that NJSIAA's established rules and two decades of their consistent application by NJSIAA, the Commissioner and the courts, be disregarded in all future cases.

Therefore, although NJSIAA provided sufficient proceedings and opportunity for petitioners to present arguments in support of the request for a waiver, the inordinate delay in hearing the request rendered the process provided of limited value. Due process, as contemplated by the standard of review in cases such as this, mandates both that sufficient proceedings and procedures be accorded the affected individual and that such proceedings be meaningful when conducted; in other words, that such proceedings be conducted at a time when they are capable of producing a meaningful result. That did not occur in this case.

Had the NJSIAA acted upon petitioners' September 13, 2000 application (Appendix to Asbury Park's Brief at 9), rather than replying that the appropriate time for submission of such an application was the Spring of Taylor's junior year, when his eligibility would be exhausted (Appendix to Asbury Park's Brief at 10), Taylor would have had available to him options that could have minimized or eliminated the effect of any EAC decision denying him a waiver. As set forth in the undisputed Affidavit of Joseph Stinson:

(5) Alternatively, I attempted to locate a private school which would accept Marc for his senior year in lieu of attending Asbury Park High School. After receiving the oral decision on June 6, 2002, by the Association declining Marc's request for a waiver of the eight semester rule, I contacted Milford Academy, Salisbury Prep, Blair Academy and Pennington, all secondary schools in the tri-state area which are not member schools affiliated with the Association or similar rules and regulations. I was advised by each of these schools that their athletic recruitment for senior year had already been completed and that they designated quarterbacks for their varsity teams. They also indicated that the scholarship program for senior level secondary schooling had been completed and there were no funds available that they could apply towards Marc. In fact, these schools indicated that they had already sent out acceptances for applications for enrollment in the senior year in general.

(6) As a result of the Association's choice to postpone a decision on the waiver application of Marc Taylor, the final appeal of the waiver was not heard until June 5, 2002. The decision was

rendered on June 6, 2002 and a written decision was dated and received June 14, 2002. The unnecessary and undue delay in rendering this decision has resulted in irreparable harm to Marc Taylor, in that he will be unable to participate in football either within Asbury Park or at a private school and thus either lose or substantially reduce his chances of receiving a college scholarship.

(Brief of Asbury Park in Support of Application for Emergent Relief, Appendix A at 3-4)

NJSIAA's failure to act on petitioners' earlier request for a waiver, therefore, prejudiced Marc Taylor to such an extent that its denial of his request for continued eligibility at the end of his junior year rises to the level of arbitrariness and a denial of due process, notwithstanding that the EAC decision *itself* is, in every respect, rationally based and consistent with law.

The Commissioner fully supports NJSIAA in its desire to enforce its rules so as to ensure, to the greatest extent possible, fair, equal and consistent treatment of student athletes statewide. However, implementation of this objective must not entirely disregard the needs of individual students. The Commissioner can ascertain no basis for what appears to be a policy or practice on NJSIAA's part of deferring applications for waiver of eligibility rules until a student's eligibility has been nearly exhausted. Such policies and practices can, under particular factual circumstances, as occurred herein, have the *effect* of punishing students, which, as vigorously and persuasively argued by NJSIAA, is not the purpose or intent of eligibility rules. Therefore, to the extent that NJSIAA does not address applications for waiver of its eligibility rules, when the circumstances of an application make such consideration appropriate, prior to the impending expiration of a student's eligibility, the Commissioner cautions NJSIAA that deferral of earlier applications may render its subsequent eligibility determinations susceptible on appeal.

That said, the Commissioner also cannot ignore the fact that Marc Taylor did participate in football as a rising 8th grade student. As such, under the particular circumstances

detailed herein, the Commissioner determines that a waiver must be granted to Marc Taylor permitting him to participate in football during his senior year. Notwithstanding this finding, the Commissioner recognizes that Marc Taylor *did* participate in football while a rising 8th grade student and further recognizes that a measure of responsibility must fall on students and their parents or guardians to become cognizant of rules governing their participation in extracurricular activities which, it is well-established, is not an entitlement, but rather, a privilege. As such, the Commissioner directs that Marc Taylor may not participate in the first two games of the 2002 football season for the Asbury Park High School.

Accordingly, for the reasons set forth herein, the decision of the NJISAA is reversed, and Marc Taylor is granted a waiver to participate in football during his senior year, excluding the first two games of the 2002 season for the Asbury Park High School football team.

IT IS SO ORDERED.^{6 7}

COMMISSIONER OF EDUCATION

Date of Decision: August 8, 2002

Date of Mailing: August 8, 2002

⁶ On July 31, 2002 counsel for NJSIAA wrote to the Commissioner asking for a delay in consideration of the instant matter, on grounds that NJSIAA had been presented through the press with anonymously submitted information, including a videotape, purporting to show that Marc Taylor had, in fact, participated in more than part of one game as a member of the Freshman football team. Immediately thereafter, counsel for the Asbury Park Board of Education filed an objection to such request. The Commissioner has not considered NJSIAA's request, nor the Board's objection to it, because the question of how many games Marc Taylor may, or may not, have played is immaterial to the Commissioner's determination herein, which is based entirely on other grounds.

⁷ Pursuant to *N.J.S.A.* 18A:11-3, this decision shall constitute the final decision of the State administrative agency and may be appealed to the Superior Court. *N.J.A.C.* 6A:3-7.5.