

BOARD OF EDUCATION OF THE TOWNSHIP :
OF EDISON, MIDDLESEX COUNTY, :
ON ITS OWN BEHALF AND ON BEHALF OF :
GREGORY RAIFORD, :
 :
PETITIONER, :
 :
V. : COMMISSIONER OF EDUCATION :
 :
NEW JERSEY STATE INTERSCHOLASTIC : DECISION :
ATHLETIC ASSOCIATION, :
 :
RESPONDENT. :

SYNOPSIS

Petitioning Board sought reversal of the NJSIAA’s decision not to allow Gregory Raiford, a 19-year-old educationally disabled student in his senior year, to participate in interscholastic competition in contact sports, *i.e.*, football and basketball, for the 2003-04 school year. He was denied a waiver of the “Age Rule,” Article V, Section 4.C of the NJSIAA Bylaws.

Noting that it conducted the individualized review contemplated by the NJSIAA’s Constitution, Bylaws, Rules and Regulations in its consideration of this matter, the NJSIAA denied the waiver, alleging that the student would have an unfair advantage over the other participants because of his size and experience and that the nature of the competition would be altered.

The Commissioner found that the student was provided the due process to which he was entitled; that the NJSIAA made every effort to provide a full, fair and timely hearing by the Eligibility Appeals Committee; and that NJSIAA’s rule was not applied in an inconsistent manner. The Commissioner found that the NJSIAA’s decision to deny the request for waiver of the provisions of Article V, Section 4.C of the NJSIAA Bylaws was not arbitrary, capricious or unreasonable. Also, the student was granted a “limited” waiver allowing him to travel or “suit up” with the football and basketball teams, or to participate in other team activities such as practices and scrimmages. The Commissioner upheld the NJSIAA’s decision. Petition was dismissed.

<p>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.</p>

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For Petitioner, Edison Township Board of Education, Elizabeth Farley Murphy, Esq.
(Wilentz, Goldman & Spitzer, P.A.)

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

This matter came before the Commissioner of Education on August 25, 2003 through the filing of a Petition of Appeal by the Board of Education of Edison Township (petitioner), on its own behalf and that of student Gregory Raiford. Petitioner sought an order reversing the determination of the Eligibility Appeals Committee (EAC) of the New Jersey State Interscholastic Athletic Association (NJSIAA), wherein Gregory Raiford, a 19-year-old educationally disabled student, was denied a waiver of the “Age Rule,” Article V, Section 4.C of the NJSIAA Bylaws, thereby precluding him from participation in interscholastic competition in contact sports, *i.e.*, football and basketball, for the 2003-04 school year. Petitioner’s submission also included a Motion for Emergent Relief and to Supplement the Record. Respondent’s Answer to the Petition and the motions were filed on September 2, 2003, together with a complete record of the proceedings before the NJSIAA’s EAC. Upon consideration of the

parties' submissions with respect to the Motion for Emergent Relief and to Supplement the Record, such motions were denied by the Commissioner by decision dated September 10, 2003, and a briefing schedule for the matter on its merits was established. On September 22, 2003, petitioner submitted a brief in support of its position, and NJSIAA filed its reply brief on October 2, 2003, whereupon the record in this matter was closed.

Gregory Raiford is a senior in this 2003-04 school year. On November 21, 2002, the principal of John P. Stevens High School, in the Edison Township Public School District, requested the NJSIAA to review the eligibility of Gregory, who turned 19 years of age on June 10, 2003 and would, therefore, be ineligible to participate in sports, specifically basketball, during the 2003-04 school year pursuant to the "Age Rule," Article V, Section 4.C of the NJSIAA Bylaws.^{1 2} On February 13, 2003, petitioner's request for a waiver of the Age Rule was considered by the NJSIAA's Eligibility Committee, which denied the request by a vote of 7-0. On June 4, 2003, an appeal hearing was conducted by NJSIAA's EAC. After considering the evidence, the EAC, by unanimous decision, declined to waive the Age Rule to permit Gregory to compete interscholastically in contact sports. The EAC did, however, grant a waiver to allow him to be a member of, travel with or "suit up" with the football and basketball teams, or to participate in other team activities, as long as he did not compete interscholastically in those sports. The granted waiver also permitted Gregory to *compete* in any non-contact sport during

¹ This rule, in pertinent part, specifies "An athlete becomes ineligible for high school athletics if he/she attains the age of nineteen prior to September 1.***" (*NJSIAA Handbook*, 2002-2003, at 45) Rationale for this rule is provided by the *NJSIAA Interpretive Guidelines For Student-Athlete Eligibility* which state: "This rule is not only aimed at preventing 'red-shirting' but is also aimed at encouraging students to satisfactorily complete their academic studies starting with the elementary school level. It is also a safety measure to assure that 13-and 14-year-old students are not expected to compete against adults who are six or more years older, with substantially greater physical size, strength and skills." (*NJSIAA Handbook* at 70)

² It is noted that although the within Petition of Appeal seeks a waiver of the Age Rule to permit participation in both basketball and football, the record indicates that the Eligibility Waiver Request made to the NJSIAA by the District on November 21, 2002, the issue before both the NJSIAA Eligibility Committee and the NJSIAA Eligibility Appeals Committee (EAC), and the subject of the EAC's final decision, all dealt with an application to allow Gregory Raiford to play *basketball* in his senior year of high school.

his senior year. The EAC issued a written decision to this effect on June 9, 2003, explaining its rationale for granting only a limited waiver thusly:

The Committee was extraordinarily sympathetic to the plight of this young man. However, it was noted at the hearing that special provisions had been made for this type of student several years ago when the NJSIAA amended its eligibility rules to permit eighth graders to play on a high school team so as to allow such students four years of competition in any sport. These provisions are set forth in Article V, Section 4.1 of the NJSIAA Bylaws and the clarifications to that section in the *NJSIAA Handbook*. (See *NJSIAA Handbook*, pp. 51, 53.) This legislation was designed in recognition that the Association does not grant waivers of the Age Rule for contact sports, since that Age Rule, imbedded in Article V, Section 4.C. of the NJSIAA Bylaws, is predicated on health and safety considerations. The facts in this case show that the student did not participate in the eighth grade and therefore his eligibility has been limited to three years based on the Age Rule. Accordingly, the Committee must respectfully decline waiving the Age Rule to permit this student to participate in any contact sports in interscholastic competition during his senior year, including basketball.

(Statement of Items Comprising the Record on Appeal, Exhibit H, at 1, 2)

The record evidences the following facts: Gregory was born and raised in Plainfield. His father was a victim of homicide in 1993 and his mother is HIV positive and has not been a positive influence in his life. Gregory was retained three times in elementary school in Plainfield because of excessive absenteeism. In approximately February 1997, guardianship of Gregory was transferred to his paternal aunt, Laura Grayer, and he entered Edison Township Public Schools in September 1997 as a 6th grader. He was classified in October 1998, with a disability category of specific learning disability. Gregory participated in football as a freshman and in basketball, at JV Varsity level as a freshman and Varsity level as a sophomore and junior.

PETITIONER'S POSITION

Petitioner contends that the NJSIAA's decision was arbitrary, capricious and unreasonable as it failed to conduct an individualized review as to the appropriateness of applying the Age Rule to Gregory, thereby violating its own Constitution, Bylaws, Rules and Regulations and Gregory's rights pursuant to Federal law. Specifically, petitioner alleges that in reaching its determination the NJSIAA failed to consider whether the granting of a waiver under the particular circumstances here was a "reasonable and necessary" accommodation, in violation of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the Civil Rights Act. (Petition of Appeal at 6) Further, petitioner charges "[t]he decision also neglected to 'take into account the size, agility and skills of the student in question and the degree to which these issues will not fundamentally alter the competition' as required by NJSIAA's own interpretive guidelines." (*Ibid.*)

In this connection, petitioner points out that, as a classified student, Gregory is entitled to the protections of Section 504 of the Rehabilitation Act of 1973, which provides:

[n]o otherwise qualified individual with a disability ***shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance***. 29 *U.S.C.* Section 794(a).

Pursuant to 34 *C.F.R.* Section 104.3(j)(1), (j)(2)(ii), it argues, a disabled individual is defined as one "who 'has a physical or mental impairment which substantially limits one or more major life activities,' such as 'learning.'" (Petitioner's Brief in Support of Appeal at 5) Moreover, it contends, 34 *C.F.R.* Section 104.4(b)(1)(i), specifies that "[a] recipient of federal funds may not deny an otherwise qualified disabled person the opportunity to participate in or benefit from an aid, benefit or service." (*Id.* at 6)

Petitioner, additionally, argues that Title II of The Americans with Disabilities Act, 42 *U.S.C.* 12101 *et seq.* (ADA) and a recent Supreme Court case interpreting this provision further supports Gregory's entitlement to a waiver here. Specifically, petitioner observes that Title II of the ADA specifies:

[s]ubject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. (42 *U.S.C.* Section 12132)

The ADA defines a "qualified individual with a disability" as:

an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, ***meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity. (42 *U.S.C.* Section 12131(2))
(Petitioner's Brief in Support of Appeal at 6)

Petitioner argues that, pursuant to the dictates of the ADA, the NJSIAA is required to make "reasonable and necessary" modifications to meet Gregory's disability, *i.e.*, a waiver of the Age Rule, "provided the requested modification would not fundamentally alter the nature of the service." (*Ibid.*)

In support of its position here, petitioner cites to the Supreme Court's decision in *PGA Tour, Inc. v. Martin*, 532 *U.S.* 661 (2001). In this case, a golfer suffering from a degenerative condition, which caused his leg to atrophy causing him significant pain when walking, was denied permission to use a golf cart by the PGA which determined that his use of a cart would fundamentally alter the nature of the competition because he would not be subject to the fatigue experienced by other players walking the course during the tournament. The Court disagreed stating:

Petitioner's refusal to consider Martin's personal circumstances in deciding whether to accommodate his disability runs counter to the clear language and purpose of the ADA. As previously stated, the ADA was enacted to eliminate discrimination against "individuals" with disabilities, 42 U.S.C. Section 12101(b)(1), and to that end Title III of the Act requires without exception that any "policies, practices, or procedures" of a public accommodation be reasonably modified for disabled "individuals" as necessary to afford access unless doing so would fundamentally alter what is offered, Section 12182(b)(2)(A)(ii). *To comply with this command, an individualized inquiry must be made to determine whether a specific modification for a particular person's disability would be reasonable under the circumstances as well as necessary for that person, and yet at the same time not work a fundamental alteration. Martin, supra, at 688 (emphasis added) (Petitioner's Brief in Support of Appeal at 7)*

Additionally, petitioner cites to *Cruz v. Pennsylvania Interscholastic Ass'n., Inc.*, 157 F.Supp. 2d 485 (E.D. Pa. 2001), a case which it contends is "very similar" to the instant matter, as further evidence of its entitlement to a waiver. In this case the petitioner charged that the Association violated the ADA by refusing the school district's request for a waiver of the Age Rule for a 19-year-old classified student. The *Cruz* court observed that *Martin, supra*, clarified that a fundamental requirement of the ADA is that a disabled person must be evaluated on an individual basis. It posits that *Cruz, supra*, further found that, pursuant to *Martin*, three inquiries are relevant in such an individualized evaluation: "(1) whether the requested modification is reasonable; (2) whether it is necessary for the disabled individual; and (3) whether it would fundamentally alter the nature of the competition." *Cruz* at 498-99. (Petitioner's Brief in Support of Appeal at 8)

Finally, in this regard, petitioner argues that the NJSIAA's Interpretive Guidelines with respect to the Age Rule, in pertinent part, provide:

In contact sports, the rule may be waived if the student can't comply due to circumstances beyond the student's control. A determination will take into account the size, agility and skills of

the student in question and the degree to which these issues will not fundamentally alter the competition. (NJSIAA Interpretive Guidelines at 70) (Petitioner’s Brief in Support of Appeal at 3-4)

Notwithstanding the clear mandates of federal law, the courts, and even the NJSIAA’s own rules with regard to the necessity of an “individualized assessment” in making a determination regarding a waiver of the rule for a “disabled” student, the June 9, 2003 determination of the NJSIAA was completely devoid of such an examination and analysis, rendering this decision arbitrary, capricious and unreasonable, requiring its reversal. (Petitioner’s Brief in Support of Appeal at 8)

In conclusion, petitioner contends that the NJSIAA’s assertion that its Constitution, Bylaws and Rules and Regulations have undertaken to accommodate disabled students “generally” is of no import here, as such general provisions do not serve to “diminish its obligation to provide reasonable accommodations for disabled students on a case-by-case basis.” (*Id.* at 9) Petitioner further argues that the record does not sustain a finding that school officials should have encouraged Gregory to play contact sports in 7th and 8th grade or “that this was a practical solution in Gregory’s case.” (*Ibid.*)

NJSIAA’S POSITION

Citing D.J.K. and H.J.K. v. NJSIAA, 1987 S.L.D. 259 and Board of Education of the City of Camden v. NJSIAA, 92 N.J.A.R. 2d (EDU)182, 188, the NJSIAA, initially, points out that the Commissioner’s scope of review in NJSIAA determinations is an appellate one; thus, where due process has been granted and the record substantiates that there is an adequate basis for the decision reached below, the Commissioner may not overturn an eligibility decision of the NJSIAA. (Respondent’s Letter Brief at 2)

The NJSIAA next underscores that the purpose of the Age Rule, as set forth in the *NJSIAA Handbook* is as “a safety measure to assure that 13 and 14-year-old students are not expected to compete against students who are six or more years older, with substantially greater physical size, strength and skills. **In view of this paramount safety factor, waivers of this rule will be granted only in truly extraordinary circumstances.**” (*NJSIAA Handbook*, p. 70) (Respondent’s Letter Brief at 5) (emphasis in text) Recognizing that the education of students who are classified or disabled may be extended beyond the customary 12-year period and, therefore, they may turn 19 years of age before their senior year of high school, the NJSIAA rules make provision for accommodation of such students by allowing them to compete in interscholastic sports in 7th or 8th grade, thus providing for a full eight semesters of competition. (*NJSIAA Handbook*, p. 70) (*Ibid.*) At the time he attended middle school in Edison Township, Gregory was 15 years of age and was eligible to participate in high school sports pursuant to Article V, Section 41.1 of the NJSIAA’s Bylaws. (*Id.* at 10)³

The NJSIAA next avows that petitioner has cited no facts in support of its contention that the EAC’s decision was arbitrary, capricious or unreasonable or that this body failed to conduct an “individualized” review of this case. As specified in its rules, the NJSIAA avers, “[w]aivers for contact sports are only granted in situations that were beyond the student’s control; and such a **waiver will take into account the student’s size, skill, agility and the degree to which these factors will not fundamentally alter the competition.**” (*NJSIAA Handbook*, p. 70) (Respondent’s Letter Brief at 5-6) (emphasis in text) It observes that the EAC hearing was attended by Gregory Raiford’s guardian, along with the Principal and the Athletic Director of J.P. Stevens High School. Although Gregory received a specific invitation from the

³ The NJSIAA points out that petitioner presented no circumstances beyond Gregory’s control which would have prevented him from participating in contact sports during 7th or 8th grade. (Respondent’s Letter Brief at 6)

NJSIAA to attend, he did not do so.⁴ As a result of Gregory's failure to attend the EAC hearing, the Committee was required to rely on the information provided by Principal Riccio and Athletic Director Capraro which, although limited, established that:

[Gregory Raiford] as described by his principal is a tall, well built student; he is six foot two inches tall and weighs 170 pounds. What is more, the record reflects that [he] has been a member of the varsity basketball team for three years, and therefore must possess significant skill. (Respondent's Letter Brief at 12)

In light of the information in the record and that adduced at hearing, the NJSIAA argues that "[a]llowing [Gregory] to participate in football and basketball, would result in giving him an unfair advantage over the other participants and would fundamentally alter the nature of the competition." (*Ibid.*) NJSIAA further argues that there are additional factors in the record which also support denial of the waiver:

Petitioner would be a starter on the Stevens' basketball team. Allowing him to participate would displace another student, who has not had an opportunity to play for four years, from that starting position. It would also be unfair to opposing teams whose athletes have met the eligibility standards. It would also set the very unwise precedent of permitting a member school to ignore the ability to allow a student to participate in the eighth grade, which would allow four years of participation, to serve as an excuse for waiving eligibility rules. Indeed, it would encourage "red shirting" by allowing student-athletes to play when they are older, stronger and more skilled than their opponents. (*Id.* at 12, 13)

Consequently, notwithstanding petitioner's contention to the contrary, it is evident that the EAC conducted the individualized review contemplated by the NJSIAA's Constitution, Bylaws, Rules and Regulations in its consideration of this matter.

Finally, the NJSIAA maintains that the Age Rule, or its application here, does not violate Section 504 of the Rehabilitation Act or the ADA. In this regard, it avers that petitioner's

⁴ The NJSIAA proffers that one of the purposes of urging students seeking a waiver of the Age Rule to attend the EAC hearing is to provide the Committee members an opportunity to personally assess the size and athletic skills of the student. (Respondent's Letter Brief at 11)

reliance on *Martin, supra*, dealing with a disabled individual who wished to use a golf cart while participating in the PGA tour, is misplaced. In that decision

[t]he Court found that Martin should be permitted to use the cart because such a use did not fundamentally alter the character of the competition. The purpose of the rule against the use of golf carts was to inject fatigue into the game which would [affect] a [player's] shot-making ability. The Court found that allowing Martin to use the golf cart would not alter an essential element of the game which was essentially shot-making. Allowing Martin to use a cart would only have a peripheral impact on the game, and would not give Martin an advantage over the other players. The Court found that even if Martin was permitted to use a golf cart, he would still be required to walk at least 25% of the course, equal to approximately 1¼ miles from the golf cart to the course. Additionally, Martin's disability caused him to fatigue much faster than other competitors, that he [w]as in significant pain when he walked; and with each step there was a danger of fracturing his leg and hemorrhaging. Permitting Martin to use a golf cart during the tournament in no way gave him an advantage over the other participants, and did not fundamentally alter the nature of the competition. (citations omitted) (Respondent's Letter Brief at 7, 8)

In *Martin*, the NJSIAA argues, it is fully evident that the individual's disability precluded his compliance with the PGA rule. Here, on the other hand, Gregory did not repeat three grades in elementary school as a consequence of any disability but, rather, because of excessive absenteeism. The causal connection between *Martin's* inability to comply with the rule was evident in that case, such is not the case in this matter. "Instead, it was demonstrated that the student could have participated for four years and that the School District did not avail itself of that accommodation. NJSIAA properly found that the granting a waiver of the age requirement in this situation would fundamentally alter the nature of the competition as contrary to the rules." (*Id.* at 13) The NJSIAA finds support for its position in *Baisden v. West Virginia Secondary School Activities Commission*, 568 S.E.2d 32 (W.V. 2002), wherein the Supreme Court of Appeals, West Virginia, reversed a lower court determination granting a waiver of the age

requirement for a 19-year-old student to play football. The court held that an individualized approach to granting waivers was preferable and “waivers should be granted where a student’s disabilities have delayed his progression through the education process and it is shown that a waiver will not materially alter the quality of the interscholastic sports competition involved.” (citations omitted) (Respondent’s Letter Brief at 9) Notwithstanding, the court in this matter found a waiver inappropriate as the student’s size and ability would compromise the safety of the other players. (*Ibid.*)

Petitioner’s claim that *Cruz, supra*, supports its position, the NJSIAA charges, is in error. In that case the court ruled that the association was required to consider applications for waiver of its Age Rule and to review each such application on a case-by-case basis. The NJSIAA points out that the *Cruz* court required nothing additional to that which is already provided by the NJSIAA. Applications for waivers of the age requirement are accepted from anyone who wishes to apply and each of these is reviewed and considered on a case-by-case basis pursuant to the factors articulated in *Martin, supra*.

The NJSIAA emphasizes that its decision in this matter is fully sustainable pursuant to *Martin*. Its enacted standards for modifying the Age Rule are reasonable; its rules allow for exceptions to the age requirement; students who will reach age 19 prior to having eight semesters of interscholastic ability are permitted to play in 7th or 8th grade; and the rules allow for waivers of the age requirement under certain circumstances. A waiver in this matter, it contends, would fundamentally alter the nature of the competition and, therefore, pursuant to *Martin*, was appropriately denied. (*Id.* at 9, 10)

COMMISSIONER'S DETERMINATION

The NJSIAA is a voluntary association of public and nonpublic schools, organized pursuant to *N.J.S.A.* 18A:11-3, to oversee athletics for its member schools in accordance with its Constitution, Bylaws, rules and regulations, which are approved by the Commissioner of Education and adopted annually by the member schools. Upon adoption by the member schools, these rules and regulations are deemed school policy and are enforced by the internal procedures of the NJSIAA.

It is well-established that the Commissioner's scope of review in matters involving 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. That is, the Commissioner may not overturn an action by the NJSIAA in applying its rules, absent a finding that the Association 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 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; *see, also*, *N.J.A.C.* 6A:3-7.4(a). The scope of the Commissioner's review in NJSIAA matters has also been codified to provide notice of this standard to the public and regulated parties:⁵

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

⁵ *See*, 31 *N.J.R.* 4173(a) and 32 *N.J.R.* 1177(a).

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(a)*.

Moreover, the burden of proof that an action was thus improper 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). It must be remembered that 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. *** 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't. Protection*, 122 *N.J. Super.* 184, 199-200 (Ch. Div. 1973), *aff'd* 131 *N.J. Super.* 37 (App. Div. 1974).

Upon careful consideration of the record of this matter, and mindful of the applicable standard of review, the Commissioner is satisfied that the decision of the NJSIAA denying a waiver of the Age Rule for Gregory Raiford, with respect to competing interscholastically in contact sports, was not arbitrary, capricious, unreasonable or violative of law. Initially in this regard, the Commissioner determines that petitioner was provided with the full measure of due process to which it was entitled. Two separate committees convened to consider petitioner's request for a waiver of the NJSIAA's Age Rule. The EAC hearing was

attended by the school principal, the athletic director and Gregory Raiford's guardian, each giving sworn, recorded testimony which was considered by that body. The Commissioner finds that the EAC rendered its decision based on the record before it and the evidence presented by petitioner.

Next, while not unmindful of the value of athletic competition to Gregory, the Commissioner recognizes the legitimate interest of the NJSIAA in upholding its regulations, based on health and safety considerations, designed to protect younger, less skilled students from having to compete against more skilled adult athletes. He further notes that, notwithstanding Gregory's inability to compete interscholastically in contact sports, the EAC, after considering the circumstances in his case, granted him a "limited" waiver. As such, he is not precluded from being a member of, traveling with, or "suing up" with the football and basketball teams, or participating in other team activities such as practices and scrimmages. Thus, the Commissioner concludes that Gregory is not prevented from taking advantage of many of the beneficial aspects of the football and basketball programs even though he is ineligible to participate in interscholastic competition in these sports. Moreover, the Commissioner is also cognizant that Gregory was granted a full waiver with respect to non-contact sports, allowing him to participate competitively in any of these activities.

Accordingly, petitioner having failed to sustain its burden of establishing that denial of a waiver for Gregory Raiford to compete interscholastically in contact sports was

arbitrary, capricious, unreasonable or violative of law, the Commissioner upholds the NJIAA's decision and dismisses the Petition of Appeal.

IT IS SO ORDERED.⁶

COMMISSIONER OF EDUCATION

Date of Decision: December 5, 2003

Date of Mailing: December 5, 2003

⁶ 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.