

#320-09

DARYUS QUARLES, :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
NEW JERSEY STATE : DECISION  
INTERSCHOLASTIC ATHLETIC :  
ASSOCIATION, :  
RESPONDENT. :

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SYNOPSIS

Petitioner sought reversal of the final decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) denying his request for a “hardship waiver” to allow him to participate in Paulsboro High School interscholastic basketball contests for the 2009-2010 school year, following his March 2009 transfer from a private school back to his former public school without a *bona fide* change in parental residence. Petitioner contended that the transfer, which was made after the completion of the 2008-2009 basketball season, was because of financial hardship and homesickness, rather than athletic advantage.

The NJSIAA’s Eligibility Appeals Committee (EAC) determined that petitioner’s reason for enrolling at Life Center Academy (Life Center) was to better position himself for athletic recruitment by colleges – in contravention of Article V, Section 4(K) of the NJSIAA bylaws – and that since petitioner’s transfer back to Paulsboro was not in connection with a bona fide change of residence by petitioner’s parents or guardians, petitioner was subject to a one year period of ineligibility pursuant to Article V, Section 4(K)(2), the Transfer Rule. NJSIAA contends that: the “hardship” provision of its transfer rule permits waivers from athletic ineligibility *only* where the transfer is compelled by an “unforeseeable, unavoidable, and uncorrectable act, condition or event that causes the imposition of severe and non-athletic burden upon the student or his family,” and petitioner’s transfer back to Paulsboro did not meet that criteria; petitioner’s claim that his transfer was due to financial hardship was contradicted by the fact that he was allowed to continue as a student at Life Center – which is not a member of NJSIAA and has “an outstanding basketball program” – through the end of the basketball season, despite purported financial difficulties; and petitioner’s claim of homesickness does not constitute a hardship.

The Commissioner upheld the NJSIAA’s decision and dismissed the petition, finding that petitioner did not meet his burden so as to entitle him to prevail on appeal. The Commissioner – who may not substitute her judgment for that of the NJSIAA on appeal – noted, *inter alia*, that petitioner is 18 years old and therefore falls under Article V, Section 4(K)(1) of the NJSIAA Bylaws, which states that “[a transferring] student who becomes emancipated shall be deemed not to have made a bona fide change of residence”, thereby subjecting him or herself to the transfer rule; petitioner’s two transfers cannot be considered without reference to each other; there is sufficient evidence supporting the NJSIAA’s finding that petitioner transferred to Life Center for athletic considerations; and NJSIAA’s denial of a hardship waiver of the Transfer Rule was not arbitrary, capricious or unreasonable.

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.

October 2, 2009

DARYUS QUARLES, :  
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Daryus Quarles, Petitioner *Pro Se*

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

This matter came before the Commissioner of Education on July 6, 2009, through the filing of a *pro se* petition of appeal by Daryus Quarles (petitioner), in substantial compliance with applicable procedural rules at *N.J.A.C. 6A:3-7.1*.<sup>1</sup> In his appeal, petitioner sought reversal of the final decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) denying his request for a “hardship waiver” exempting him from NJSIAA Article V, Section 4(K)(2) (the Transfer Rule) that requires a 365-day ineligibility period for student athletes who transfer schools without a *bona fide* change in parental residence.<sup>2</sup> On July 24, 2009 the NJSIAA duly filed an answer and statement of items comprising the record.

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<sup>1</sup> Petitioner provided a copy of the NJSIAA decision that he challenges, a transcript of the May 6, 2009 hearing at which the question of his eligibility to play basketball at Paulsboro High School in the coming year was examined, and certain exhibits, including documents pertaining to his father’s economic circumstances and an application by a family friend to gain guardianship of him.

<sup>2</sup> Insofar as petitioner is 18 years old, the Commissioner notes that “[a] student who becomes emancipated shall be deemed not to have made a bona fide change of residence.” Article V, Section 4(K)(1) of the NJSIAA Bylaws.

Petitioner's brief was filed on July 28, 2009; respondent's brief was filed on August 5, 2009, and petitioner's reply brief was filed on August 14, 2009. Upon receipt of these submissions, the record was closed and the matter proceeded to determination.

It is undisputed that petitioner is eighteen years old and a rising Senior in Paulsboro High School. For most of his life petitioner has lived in Paulsboro with his mother, who continues to reside there. In his Freshman and Sophomore high school years, petitioner attended Paulsboro High School. Petitioner testified that he is 6 feet 7 inches tall (T15<sup>3</sup>), has won recognition for his basketball skills since his early years at Paulsboro High School and has been highly recruited by colleges. (T13; T15-16)

For the first six months of his Junior year, petitioner attended Life Center Academy (Life Center), a private religious school in Burlington County. There are conflicting accounts in the record regarding the reason why petitioner transferred from Paulsboro High School to Life Center. Petitioner's father, Albert Quarles, testified that when petitioner failed 9<sup>th</sup> grade mathematics, a representative of Huntington Learning Center recommended Life Center. (T8) Petitioner testified that because Life Center's school year was organized into semesters, he had hoped to catch up on his mathematics courses by taking one during each semester of the school year – as opposed to taking two mathematics courses at the same time, which would allegedly be required at Paulsboro High School. (T14) Albert Quarles also testified that a Rutgers coach had recommended Life Center because petitioner needed to improve his grades to go to college, even with his athletic talent.

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<sup>3</sup> "T" designates the above referenced transcript of the May 6, 2009 hearing. "15" is the page number upon which the relevant testimony may be found.

Life Center is not a member of the NJSIAA and consequently does not have to comply with NJSIAA rules.<sup>4</sup> Thus, it was not obligated to sign a waiver form stating that petitioner's transfer to it (and from it) was not for athletic advantage. Nor was it required to wait 365 days before accepting petitioner into its athletic programs.

Representatives of respondent describe Life Center as an athletic powerhouse with an established, outstanding basketball program, and petitioner has not contradicted this description. Petitioner testified that while he was at Life Center, he made a verbal commitment to attend St. Joseph's University as a student athlete:

When I went to Life Center – St. Joe's is where I wanted to go.  
While I was at Life Center, I verbally committed to St. Joe's.  
(T13-14)

It is undisputed that petitioner stayed at Life Center through the 2008-2009 basketball season and then transferred back to Paulsboro High School. It is also undisputed that Life Center did not charge petitioner for tuition. He was charged \$200 per month for housing only. Petitioner's eighteenth birthday was on March 1, 2009, and the parties agree that he returned to Paulsboro High School on March 2, 2009. It is undisputed that upon returning to Paulsboro he went to live with a friend, Nanette Bagby, rather than his mother, with whom he had always lived prior to attending Life Center.<sup>5</sup>

When asked why petitioner left Life Center, Albert Quarles testified that he could not afford to pay the \$200 monthly fee for housing and that petitioner was homesick. (T15) Documents that petitioner provided to the Commissioner, but that he had not submitted to the NJSIAA at or prior to the hearing, corroborated that petitioner's father had not been paying the

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<sup>4</sup> The Paulsboro school district, however, is a member of the NJSIAA.

<sup>5</sup> Petitioner's father lives in another municipality.

full \$200 monthly housing fee. No one disputes the fact that petitioner was nonetheless allowed to stay at Life Center for six months.

The NJSIAA's Eligibility Appeals Committee (EAC) sent out its decision in this matter on May 13, 2009. It determined that petitioner's reason for enrolling at Life Center was to better position himself for athletic recruitment by colleges, in contravention of the purpose of such NJSIAA rules as Article V, Section 4(K), that were put in place to discourage school transfers for athletic advantage. The "facts" that the EAC articulated in support of its determination were:

1. Petitioner was encouraged to go to Life Center by a college coach that was recruiting him.
2. Petitioner transferred back to Paulsboro only after improving his basketball skills, verbally committing to St. Joseph's, and finishing the basketball season at Life Center.

The EAC also found that since petitioner's transfer back to Paulsboro was not in connection with a bona fide change of residence by petitioner's parents or guardian, it required a one-year period of ineligibility, pursuant to the Transfer Rule.<sup>6</sup>

Petitioner's claim that he should be granted a hardship waiver under Article V, Section 4(K)(2) was rejected by the EAC. It emphasized the rule's own definition of hardship, *i.e.*, "an unforeseeable, unavoidable and uncorrectable act, condition or event that causes the imposition of a severe and non-athletic burden upon the student or his/her family." For the following reasons, the EAC did not believe that the circumstances relating to petitioner's transfer back to Paulsboro High School met the definition:

1. Homesickness is not, in the EAC's opinion, a "hardship."

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<sup>6</sup> The EAC pointed out that Bagby, the friend with whom petitioner now lives, is not in fact petitioner's legal guardian. The Commissioner notes, however, that petitioner is 18 years old, rendering the question of guardianship irrelevant.

2. There was no testimony about a change in petitioner's economic circumstances. Thus, the inability of petitioner's father to pay the Life Center housing fees had not been "unforeseeable."
3. Petitioner's economic situation notwithstanding, he was nonetheless allowed to stay at Life Center through the 2008-2009 basketball season.

In summary, the EAC found that petitioner's transfers and their underlying purpose qualified as the type of conduct that the Transfer Rule was promulgated to discourage, and that petitioner should be subject to the 365-day waiting period set forth in Article V, Section 4(K)(2).

In his appeal, petitioner makes several points. He contends that the EAC has presented no credible evidence that he attended Life Center to promote his standing as a basketball player. He emphasizes his father's difficult financial situation, urging that it was the reason that he left Life Center and that it satisfies the standard for a hardship waiver of the waiting period for transfer students.

In the alternative, petitioner argues that Article V, Section 4(K) only applies to transfers between public schools and should not affect his ability to play basketball at Paulsboro High School in the coming season. In that regard petitioner denies that *D.S.J. on behalf of minor child J.J. v. NJSIAA* (Commissioner Decision No. 93-09, March 13, 2009) – a case relied upon by respondent – applies to the present matter. In *D.S.J.*, the Commissioner upheld the NJSIAA's denial of a hardship waiver to a student whose parent transferred him for good faith academic reasons from Seton Hall Preparatory School to Parsippany High School. Petitioner appears to argue that *D.S.J.* is inapposite because the student in that case transferred between two NJSIAA member schools.

Petitioner also replies to respondent's references to discussions between his father and college coaches by pointing to the National Collegiate Athletic Association (NCAA) recruiting rules that allow certain types of contacts between college coaches and students or their parents at certain stages of student athletes' high school careers. For example, those rules allow for discussions between players and college coaches during the second year of high school – when initiated by the students. After June 15 of the second high school year, college coaches may call students once a month. Using the NCAA rules as a framework, petitioner maintains that there was nothing improper about a coach recommending to Mr. Quarles – during petitioner's Sophomore year – that petitioner transfer to Life Center.

Finally, petitioner asks that if the Commissioner affirms the decision of the EAC to impose a waiting period, the 365 days of ineligibility be counted from March 2, 2009 – the date of his re-enrollment into Paulsboro High School. Petitioner advises that this period would expire prior to the basketball playoffs.

At the outset of any discussion of this controversy, it is important to address the standard to which the Commissioner must conform. More specifically, *N.J.A.C. 6A:3-7.5(a)(1)* provides that the Commissioner shall not substitute her judgment for that of the NJSIAA, so long as the petitioner has been given due process and the NJSIAA's decision is supported by "sufficient credible evidence in the record as a whole." And *N.J.A.C. 6A:3-7.5(a) (2)* prohibits the Commissioner from overturning the NJSIAA's application of its own rules absent a demonstration that the rules were applied in an arbitrary, capricious or unreasonable manner.

It is helpful to recognize that the present case includes two transfers – the first one from Paulsboro High School to Life Center and the second one from Life Center back to

Paulsboro High School. The two transfers should not be examined without reference to each other.

Prior to the first switch, from Paulsboro to Life Center, at least one college basketball coach had recommended that petitioner – a highly recognized basketball player – transfer to Life Center, which apparently 1) has an outstanding athletic program,<sup>7</sup> 2) is not subject to the NJSIAA rules requiring schools to certify that student-athlete transfers are not taking place for athletic reasons, and 3) could welcome petitioner into its basketball program immediately. While it may not have been improper for a coach to have discussions with petitioner’s father, it is not unreasonable to conclude that the kind of transfer the coach(es) recommended was meant to help advance petitioner’s athletic career. Indeed, while petitioner was attending Life Center, he made a verbal commitment to attend St. Joseph’s University as a student-athlete.

The record also shows that Life Center – a private school – not only waived tuition from petitioner, but allowed him to stay long after it became clear that petitioner’s father was not paying the monthly charges for housing. Life Center kept petitioner, a highly talented basketball player, until the basketball season had ended. Respondent argues that these facts signify that petitioner was essentially on an athletic scholarship at Life Center until leaving at the

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<sup>7</sup> Paulsboro High School basketball coach Chila testified that Life Center has a better basketball program than Paulsboro. T6-7



end of the basketball season.<sup>8</sup> Such scholarships are prohibited by NJSIAA Article V, Section 4(D).<sup>9</sup>

The Commissioner is also mindful that petitioner's stated reason for attending Life Center was to make progress in completing required academic courses. More specifically, petitioner stated that he had wished to make up two mathematics classes by taking them consecutively in the two semesters comprising the Life Center school year instead of having to take them simultaneously at Paulsboro High School. However, when petitioner left Life Center he abandoned that goal.

Upon a thorough review of the facts pertaining to the first transfer, the Commissioner cannot find that the NJSIAA was arbitrary, capricious or unreasonable in determining that there is sufficient credible evidence to conclude that the first of petitioner's transfers was made for athletic advantage.

Petitioner focuses more on the second transfer, *i.e.*, from Life Center back to Paulsboro High School. As referenced above, he contends that the economic circumstances connected with his transfer back to Paulsboro, and his homesickness, provide the basis for him to be granted a hardship waiver of the Transfer Rule. Also, insofar as his transfer was from a non-public school not affiliated with the NJSIAA, petitioner maintains that the Transfer Rule should not be imposed upon him. His position is that the rule only applies to transfers between "public schools."

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<sup>8</sup> While petitioner is correct that neither he nor his father testified that he had transferred to Life Center for athletic reasons, the Commissioner cannot find that the respondent's inference of athletic motivation was unsupported by the evidence in its totality.

<sup>9</sup> Petitioner submitted a letter from Life Center dated June 9, 2009 stating that petitioner was on a need-based scholarship. This letter was dated after the hearing and NJSIAA decision in this matter and the Commissioner must therefore carefully consider the evidentiary weight, if any, to give to its contents.

The Commissioner is not persuaded by these arguments. First, petitioner's father's circumstances were and are such that it was likely known by petitioner and his father at the outset that he would have difficulty paying for his son's tenure at Life Center. Thus, the requirement that petitioner's "hardship" be an unforeseeable one is not met. Moreover, the financial difficulties did not appear to be the catalyst for the transfer back to Paulsboro High School. To the contrary, petitioner was allowed to remain at Life Center long after Mr. Quarles began submitting less than what he owed for the monthly housing fees.

Additionally, in correspondence dated June 4, 2009 and addressed to "To Whom It May Concern," Life Center stated that petitioner wanted to transfer back to school in December 2008, but – after discussions between Mr. Quarles and Life Center's coach Arroyo – it was decided that it would be better for Daryus to remain at Life Center. This determination was made in spite of Mr. Quarles' failure to make the monthly housing payments. Further, it cannot escape the Commissioner's notice that the discussions about petitioner reportedly occurred not between his father and the dean or principal of Life Center, but between his father and the coach, who jointly decided not to allow Daryus to return to Paulsboro in the middle of basketball season.

Petitioner, his father, and others suggested that homesickness was both a reason for petitioner's transfer back to Paulsboro High School and the basis for a hardship waiver from imposition of the Transfer Rule. However, the Commissioner notes that when petitioner transferred back to Paulsboro, he did not return home to his mother, or any other family member. As an 18-year-old, petitioner could establish his own residency in Paulsboro for purposes of receiving a free education in the Paulsboro public schools and was free, as a legal matter, to live with Ms. Bagby. However, his choice not to return to his family undermines his argument about

homesickness. And there is no precedent for the granting of a hardship waiver based upon the fact that a student misses his friends.

The Commissioner must also disagree with petitioner's suggestion that the Transfer Rule only applies to "public schools." The language of Article V, Section 4(K) makes no such distinction, and petitioner offers no Commissioner decision or other authority in support of this proposition. Moreover, the Commissioner agrees with respondent's analysis that carving out from the purview of the Transfer Rule all private schools or all secondary schools that are not members of the NJSIAA would grossly undermine the purpose of the rule. That purpose, as articulated by the NJSIAA and endorsed by the Commissioner, is to prevent transfers for athletic advantage, which transfers undermine fair competition and displace student athletes who are already in the programs into which the transferring athletes enter:

[The Commissioner] cannot substitute her judgment for that of the NJSIAA, nor can she find the NJSIAA to have applied its rules in a patently arbitrary or unreasonable manner, particularly in light of the NJSIAA's duty to ensure fairness and integrity in athletic competition statewide [and] the potential for creation of an unworkable "slippery slope" if parental decisions to transfer students for academic reasons were deemed to fall within the purview of the "hardship" waiver . . . .

*(D.S.J. on behalf of minor child J.J. v. NJSIAA, supra, p. 10)*

Petitioners seeking to overturn decisions of the NJSIAA bear a heavy burden. Considering the record of this matter and in light of the prescribed standard of review, the Commissioner cannot find that petitioner has met his burden so as to entitle him to prevail on appeal. Petitioner received the process to which he was due. There is sufficient evidence in the record to support the NJSIAA's finding that athletic considerations underlay the transfer to Life Center, and that the transfer back to Paulsboro occurred after petitioner had achieved the athletic objectives, such as a verbal commitment to St. Joseph's University. Nor can the

Commissioner characterize the NJSIAA's denial of a hardship waiver of the Transfer Rule as arbitrary, capricious or unreasonable under the above described circumstances of this case.

The Commissioner appreciates that petitioner is a young man with great promise, but is constrained to uphold the letter and spirit of the NJSIAA bylaws that were promulgated to ensure fairness in secondary school athletics. Accordingly, the petition is dismissed.<sup>10</sup>

IT IS SO ORDERED.<sup>11</sup>

COMMISSIONER OF EDUCATION

Date of Decision: October 2, 2009

Date of Mailing: October 5, 2009

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<sup>10</sup> Petitioner's request that he be allowed to participate in the "play-offs" was not adjudicated below and will consequently not be addressed in this decision.

<sup>11</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36, N.J.S.A. 18A:6-9.1*.