

#259-12

BOARD OF EDUCATION OF THE :
CITY OF SUMMIT, UNION COUNTY, :
on behalf of SETH RYAN, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

NEW JERSEY STATE : DECISION
INTERSCHOLASTIC :
ATHLETIC ASSOCIATION, :

RESPONDENT. :

SYNOPSIS

Petitioner sought reversal of the final decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) denying its request for a waiver of the Eight Semester Rule – which limits a student’s eligibility for high school athletics to eight consecutive semesters following his or her entrance into the 9th grade – to allow Seth Ryan (Ryan) to participate in sports during his senior year at Summit High School. Ryan had played baseball and football as a freshman at Mount Hebron High School in Maryland prior to his family’s relocation to Summit. At the request of his family, Ryan subsequently repeated his 9th grade year at Summit High School so that he would have a chance to mature physically and in other respects in order to reduce the disparity that existed between Ryan and his peers. Ryan continued to play sports in Summit during his sophomore and junior years, and in December 2011, petitioner filed an Eligibility Waiver Request with the NJSIAA requesting a waiver of the strict application of the Eight Semester Rule to enable Ryan to compete in athletics during his senior year.

The NJSIAA’s Eligibility Appeals Committee (EAC) determined, *inter alia*, that while the family’s decision to have Ryan repeat ninth grade may have been appropriate for his growth and development, there was nothing to distinguish Ryan’s case from traditional “red shirting” – *ie*: the intentional holding back of a student to allow him to mature physically or emotionally, which gives the student an athletic advantage over those who were not intentionally held back. The EAC denied the waiver request.

The Commissioner upheld the NJSIAA’s decision and dismissed the petition, finding that petitioner did not meet its burden so as to entitle it to prevail on appeal. In so deciding, the Commissioner – who may not substitute his judgment for that of the NJSIAA on appeal – noted that the NJSIAA’s decision to deny the request for waiver was not arbitrary, capricious or unreasonable.

<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>

June 25, 2012

BOARD OF EDUCATION OF THE :
CITY OF SUMMIT, UNION COUNTY, :
on behalf of SETH RYAN, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
NEW JERSEY STATE : DECISION
INTERSCHOLASTIC :
ATHLETIC ASSOCIATION, :
RESPONDENT. :

For Petitioner, Gilbert E. Owren, Esq. (Drummond & Owren)

For Respondent, Steven. P. Goodell, Esq. (Herbert, Van Ness, Cayci & Goodell, P.C.)

This case involves an appeal of a decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) denying the Summit Board of Education’s (petitioner) request for a waiver of the Eight Semester Rule to allow Seth Ryan (Ryan) to participate in sports during his senior year at Summit High School.

Athletic competition in New Jersey’s public schools is overseen by respondent, NJSIAA, a voluntary, non-profit organization which promulgates the rules and regulations governing high school athletics. *See, B.C. v. Cumberland Reg. Sch. Dist.*, 220 N.J. Super. 214, 234 (App. Div. 1987). Article V, Section J of NJSIAA’s Bylaws, Rules and Regulations restricts a student’s eligibility to play sports to four years. Specifically, the provision known as the Eight Semester Rule provides that, “[n]o student shall be eligible for high school athletics after the expiration of eight consecutive semesters following his or her entrance into the 9th grade. A student becomes ineligible for high school athletics when the class in which he/she was

originally enrolled has graduated.” The NJSIAA Guidelines set forth the reasons for the Eight Semester Rule in the NJSIAA Handbook:

This rule is intended to prohibit “red shirting,” and is also aimed at preventing athletically gifted pupils who are not meeting academic standards from replacing other students who are maintaining their academic standards but who might not have the same athletic prowess. The rule is also aimed at maintaining a uniform progression among all member schools within a four-year cycle and equalizing competition within these schools.

In appropriate cases, the NJSIAA may grant a waiver of the eligibility rules if the overall objectives of the association and its member schools will not be undermined. The Eight Semester Rule can be waived when a student proves that he or she cannot comply with the rule due to circumstances beyond his or her control.

The material facts in this case do not appear to be in dispute. Ryan is a student at Summit High School and he will begin his senior year in September 2012. Ryan attended Mount Hebron High School in Maryland as a freshman and he played on the freshman football and baseball teams. Following his freshman year at Mount Hebron his family moved to Summit, New Jersey. After consultation with educational professionals at Summit High School, Ryan’s family decided that it would be in his best interest to repeat ninth grade at Summit High School so that he would have a chance to mature physically and in other respects so as to reduce the disparity between him and his peers. Ryan has participated in football and baseball during his freshman, sophomore and junior years at Summit High School.

Based on the fact that Ryan has already had four years of athletic eligibility, on December 5, 2011 an Eligibility Waiver Request was filed by the petitioner with the NJSIAA requesting a waiver from the strict application of the Eight Semester Rule so that Ryan can participate in high school athletics during his senior year. On February 9, 2012, the NJSIAA Eligibility Committee voted 9-0 to deny the waiver request. The Eligibility Committee

determined that Ryan is ineligible to participate in interscholastic athletics during his senior year because his case has not met the test of “truly extraordinary circumstances” warranting a waiver of the Eight Semester Rule.

Thereafter, the petitioner appealed the decision of the Eligibility Committee to the Eligibility Appeals Committee (EAC). Following a hearing on March 7, 2012, at which sworn testimony was taken from Summit High School’s athletic director and assistant principal, the EAC concluded that it could not grant a waiver of the Eight Semester Rule. The EAC found that although the family’s decision to have Ryan repeat ninth grade may have been appropriate for his growth and development, there was nothing that distinguishes Ryan’s case from traditional “red shirting.” The EAC explained that “red shirting is the intentional holding back of a student to allow the student to mature physically or emotionally. Red shirting gives a student an athletic advantage over students who were not intentionally held back.” (Eligibility Appeal Committee decision letter dated March 15, 2012). Additionally, the EAC determined that Ryan had already played four years of high school sports, and allowing him a fifth year would provide him with an advantage over all other students. Finally, the EAC concluded that allowing Ryan a fifth year of eligibility would necessarily displace another Summit High School student who only had four years of eligibility.

On April 12, 2012, the petitioner filed an appeal with the Commissioner of Education challenging the decision of the NJSIAA. Petitioner provided a copy of the NJSIAA decision, a transcript of the hearing before the EAC and other items comprising the record. On April 23, 2012, the NJSIAA filed its answer to the petition. On May 2, 2012, the petitioner filed its brief in support of the requested relief and on May 15, 2012, the NJSIAA filed its reply brief.

In its brief, the petitioner argues that the NJSIAA should have granted the waiver request because this is not a case of “red shirting” in that repeating ninth grade did not give Ryan

an advantage over his teammates or opponents, but rather it simply reduced the disadvantage that he faced due to his extreme physical, emotional and social immaturity. The petitioner argues that Ryan's immaturity was a circumstance beyond his control that supports a waiver of the Eight Semester Rule. The petitioner stresses that the Ryan family wanted to have him repeat a grade while still in Maryland – prior to his freshman year at Mount Hebron High School – but decided against it because Ryan and his peers had been together since kindergarten, and there would have been stigma attached to repeating a grade.

The petitioner also maintains that a waiver is warranted because Ryan has maintained his academic standards, is not a “difference maker” on the football field and is not replacing other students because of his athletic ability. The petitioner also argues that the NJSIAA's application of its own rules in this case was arbitrary and capricious. The petitioner cites two cases where the NJSIAA recently granted a waiver of the Eight Semester Rule, and argues that those cases were factually similar. As a result, the petitioner argues that the NJSIAA's decision should be reversed and the requested waiver should be granted.

In reply, the NJSIAA asserts that it provided the petitioner with elaborate due process, noting that this case was heard by two NJSIAA committees, both of which unanimously denied the request for a waiver of the Eight Semester Rule. The NJSIAA stresses that the Eight Semester Rule is designed to ensure that all students have an equal opportunity to play high school sports, and limits that opportunity to four years. Here Ryan is seeking an opportunity to play sports for five years. Moreover, Ryan was a starter on an excellent football team; if he plays on a team for a fifth year, he would be taking playing time away from another student who only has four years of eligibility. The NJSIAA also emphasizes that the family's decision to have Ryan repeat the ninth grade was entirely voluntary: he had passed his courses and would have been a sophomore when he enrolled at Summit High School had his family not asked to

have him kept back for their own personal reasons. The NJSIAA further maintains that there was no evidence that the decision to do so was compelled by circumstances beyond their control. Finally, the NJSIAA contends that the family decision to have Ryan repeat ninth grade to give him an opportunity to grow physically and emotionally is indistinguishable from “red shirting.”

Further, the NJSIAA argues it did not apply its rules arbitrarily and capriciously to Ryan, and that the cases cited by the petitioner in support of its claim have no bearing on the present appeal. The NJSIAA notes that those cases were decided on their own unique set of facts and set no precedent for this case. Additionally, the NJSIAA argues that those cases are distinguishable; notably, in those cases the waiver recipient was not given an opportunity to play five years of high school sports as the petitioner is attempting to accomplish through the current waiver request. Therefore, the NJSIAA requests that the Commissioner affirm the decision of the EAC.

Upon careful review and consideration, the Commissioner determines to uphold the decision of the NJSIAA and dismiss petitioner’s appeal. As explained above, 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 a constitution, bylaws, rules and regulations approved by the Commissioner of Education and adopted annually by member schools, for which they become school policy enforceable by the NJSIAA. Summit High School is a member of the NJSIAA.

It is well-established that the Commissioner’s scope of review in matters involving NJSIAA decisions, including determinations made by the Eligibility Appeals Committee, is appellate in nature. *N.J.S.A. 18A:11-3*; *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 demonstration by the petitioner that

it applied such rules in a patently arbitrary, capricious or unreasonable manner. *N.J.A.C. 6A:3-7.5(a)(2)*; *B.C. v. Cumberland Regional School District*, 220 *N.J. Super.* 214, 231-232 (App. Div. 1987); *Kopera v. West Orange Board of Education*, 60 *N.J. Super.* 288, 297 (App. Div. 1960). Nor may the Commissioner substitute his own judgment for that of the NJSIAA, where due process has been provided and where there is sufficient credible evidence in the record as a whole to serve as a basis for the decision reached by the NJSIAA. *N.J.A.C. 6A:3-7.5(a)(1)*; *Dam Jin Koh and Hong Jun Kim v. NJSIAA*, 1987 *S.L.D.* 259.

Additionally, the New Jersey courts have spoken as to the narrow scope of “arbitrary, capricious, or unreasonable” in the context of challenges such as petitioners:

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).

Petitioners seeking to overturn decisions of the NJSIAA therefore bear a heavy burden and, considering the record of this matter in light of the prescribed standard of review, the Commissioner cannot find that petitioner herein has met its burden so as to entitle it to prevail on appeal.

More specifically, the Commissioner cannot find that the NJSIAA applied its rules in a patently arbitrary or unreasonable manner, in light of its duty to ensure fairness and integrity in athletic competition statewide. Ryan has already had the opportunity to participate in four years of high school athletics as envisioned by the eligibility rules. Moreover, the Commissioner is in accord with the NJSIAA’s finding that the Ryan family’s decision to have Ryan repeat ninth grade to give him an opportunity to grow physically and emotionally was voluntary and does not amount to circumstances beyond their control. Finally, the NJSIAA’s

conclusion that the circumstances in this case are indistinguishable from “red shirting” is not arbitrary capricious or unreasonable.

Accordingly, the Commissioner – having found that petitioner was afforded the due process to which it was entitled and that the NJSIAA’s decision denying the request for waiver was neither arbitrary nor unreasonable – upholds the NJSIAA’s decision and dismisses the petition of appeal.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 25, 2012

Date of Mailing: June 26, 2012

¹ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.